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Jun 26 2019 08:22 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

1 **NOAS**  
2 **ROGER P. CROTEAU, ESQ.**  
3 Nevada Bar No. 4958  
4 **TIMOTHY E. RHODA, ESQ.**  
5 Nevada Bar No. 7878  
6 **ROGER P. CROTEAU & ASSOCIATES, LTD.**  
7 9120 West Post Road, Suite 100  
8 Las Vegas, Nevada 89148  
9 (702) 254-7775  
10 (702) 228-7719 (facsimile)  
11 [croteaulaw@croteaulaw.com](mailto:croteaulaw@croteaulaw.com)  
12 ***Attorney for Plaintiff***  
13 **LAS VEGAS DEVELOPMENT GROUP, LLC**

8  
9 DISTRICT COURT  
10 CLARK COUNTY, NEVADA

11 \*\*\*

12 LAS VEGAS DEVELOPMENT GROUP, LLC, )  
13 a Nevada limited liability company, )

14 Plaintiff, )

Case No. A-15-715532-C  
Dept. No. XXX

15 vs. )

16 JAMES R. BLAHA, an individual; BANK OF )  
17 AMERICA, NA, a National Banking )  
18 Association, as successor by merger to BAC )  
19 HOME LOANS SERVICING, LP; )  
20 RECONTRUST COMPANY NA, a Texas )  
21 corporation; JOSE PEREZ, JR. an individual; )  
22 EZ PROPERTIES, LLC, a Nevada limited )  
liability company; K&L BAXTER FAMILY )  
LIMITED PARTNERSHIP, a Nevada limited )  
partnership; FCH FUNDING, INC, an unknown )  
corporate entity; DOE individuals I through )  
XX; and ROE CORPORATIONS I through )  
XX, )

Defendants.)

23 **NOTICE OF APPEAL**

24 **NOTICE IS HEREBY GIVEN** that the Plaintiff, LAS VEGAS DEVELOPMENT  
25 GROUP, LLC, by and through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD.,  
26 hereby appeals to the Supreme Court of the State of Nevada from (1) the Order Granting James  
27 R. Blaha and Noble Home Loans, Inc.'s Motion for Summary Judgment and All Joinders  
28

1 Thereto, entered on or about May 20, 2019; and (2) all interlocutory orders made appealable  
2 thereby.

3 DATED this 18<sup>th</sup> day of June, 2019.

4 ROGER P. CROTEAU & ASSOCIATES, LTD.

5  
6 /s/ Timothy E. Rhoda  
7 ROGER P. CROTEAU, ESQ.  
8 Nevada Bar No. 4958  
9 TIMOTHY E. RHODA, ESQ.  
10 Nevada Bar No. 7878  
11 9120 West Post Road, Suite 100  
12 Las Vegas, Nevada 89148  
13 (702) 254-7775  
14 *Attorney for Plaintiff*  
15 **LAS VEGAS DEVELOPMENT GROUP, LLC**  
16  
17  
18  
19  
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21  
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26  
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**CERTIFICATE OF SERVICE**

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 18<sup>th</sup> day of June, 2019, I caused a true and correct copy of the foregoing document to be served on all parties as follows:

X VIA ELECTRONIC SERVICE: through the Eighth Judicial District Court's Odyssey e-file and serve system.

Akerman LLP

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William S. Habdas, Esq.

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Law Offices of Kevin R. Hansen

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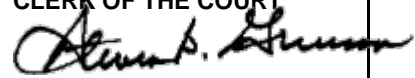
\_\_\_\_ VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on service list below in the United States mail at Las Vegas, Nevada.

\_\_\_\_ VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated on the service list below.

\_\_\_\_ VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this date to the addressee(s) at the address(es) set forth on the service list below.

/s/ Timothy E. Rhoda

An employee of ROGER P. CROTEAU &  
ASSOCIATES, LTD.



1 **ASTA**  
2 **ROGER P. CROTEAU, ESQ.**  
3 **Nevada Bar No. 4958**  
4 **TIMOTHY E. RHODA, ESQ.**  
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11 **[croteaulaw@croteaulaw.com](mailto:croteaulaw@croteaulaw.com)**  
12 ***Attorney for Plaintiff***  
13 **LAS VEGAS DEVELOPMENT GROUP, LLC**

14  
15 DISTRICT COURT  
16 CLARK COUNTY, NEVADA

17 \*\*\*

18 LAS VEGAS DEVELOPMENT GROUP, LLC, )  
19 a Nevada limited liability company, )  
20 )  
21 Plaintiff, )  
22 vs. )  
23 )  
24 JAMES R. BLAHA, an individual; BANK OF )  
25 AMERICA, NA, a National Banking )  
26 Association, as successor by merger to BAC )  
27 HOME LOANS SERVICING, LP; )  
28 RECONTRUST COMPANY NA, a Texas )  
corporation; JOSE PEREZ, JR. an individual; )  
EZ PROPERTIES, LLC, a Nevada limited )  
liability company; K&L BAXTER FAMILY )  
LIMITED PARTNERSHIP, a Nevada limited )  
partnership; FCH FUNDING, INC, an unknown )  
corporate entity; DOE individuals I through )  
XX; and ROE CORPORATIONS I through )  
XX, )  
Defendants.)

Case No. A-15-715532-C  
Dept. No. XXX

29 **CASE APPEAL STATEMENT**

30 COMES NOW, Plaintiff, LAS VEGAS DEVELOPMENT GROUP, LLC, by and through  
31 its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby submits its Case  
32 Appeal Statement.

1           **1. Name of appellant filing this case appeal statement:**

2           LAS VEGAS DEVELOPMENT GROUP, LLC

3           **2. Identify the judge issuing the decision, judgment, or order appealed from:**

4           The Honorable Jerry A. Wiese II

5           **3. Set forth the name, law firm, address, and telephone number of all counsel**  
6           **on appeal and identify the party or parties whom they represent:**

7           a.       LAS VEGAS DEVELOPMENT GROUP, LLC

8                   Roger P. Croteau, Esq.  
9                   Timothy E. Rhoda, Esq.  
10                  Roger P. Croteau & Associates, Ltd.  
11                  9120 West Post Road, Suite 100  
12                  Las Vegas, Nevada 89148  
13                  (702) 254-7775

14           **4. Identify each respondent and the name and address of appellate counsel, if**  
15           **known, for each respondent (if the name of a respondent's appellate counsel**  
16           **is unknown, indicate as much and provide the name and address of that**  
17           **respondent's trial counsel:**

18           a.       JAMES R. BLAHA and NOBLE HOME LOANS f/k/a FCH FUNDING

19                   Respondents' appellate counsel is unknown at this time but will  
20                   presumably be Respondents' trial counsel:

21                   Aaron A. Maurice, Esq.  
22                   Brittany Wood, Esq.  
23                   Kolesar & Leatham  
24                   400 Rampart Boulevard, Suite 400  
25                   Las Vegas, Nevada 89145  
26                   (702) 362-7800

27           b.       BANK OF AMERICA, NA, as successor by merger to BAC HOME  
28                   LOANS SERVICING, LP and RECONTRUST COMPANY NA

                    Respondents' appellate counsel is unknown at this time but will  
                    presumably be Respondents' trial counsel:

                    Darren T. Brenner, Esq.  
                    William S. Habdas, Esq.  
                    Akerman, LLP  
                    1160 Town Center Drive, Suite 330  
                    Las Vegas, Nevada 89144  
                    (702) 634-5000

c. EZ PROPERTIES, LLC and K&L BAXTER FAMILY LIMITED  
PARTNERSHIP

Respondents' appellate counsel is unknown at this time but will  
presumably be Respondents' trial counsel:

Kevin R. Hansen, Esq.  
Law Offices of Kevin R. Hansen  
5440 West Sahara Avenue, Suite 206  
Las Vegas, Nevada 89146  
(702) 478-7777

d. JOSE PEREZ, JR.

Defendant, Jose Perez, Jr., is not a party to this appeal because he had  
neither appeared nor answered at the time of the Order appealed from. A  
default was entered against said Defendant on or about July 8, 2015.

**5. Indicate whether any attorney identified above in response to question 3 or 4  
is not licensed to practice law in Nevada and, if so, whether the district court  
granted that attorney permission to appear under SCR 42 (attach a copy of  
any district court order granting such permission):**

N/A

**6. Indicate whether appellant was represented by appointed or retained counsel  
in the district court:**

Retained counsel

**7. Indicate whether appellant is represented by appointed or retained counsel  
on appeal:**

Retained counsel

**8. Indicate whether appellant was granted leave to proceed in forma pauperis,  
and the date of entry of the district court order granting such leave:**

N/A

**9. Indicate the date the proceedings commenced in the district court, e.g., date  
complaint, indictment, information, or petition was filed:**

The original Complaint in this matter was filed on March 19, 2015, in the Eighth  
Judicial District Court of the State of Nevada in and for Clark County, Nevada.

1           **10. Provide a brief description of the nature of the action and result in the**  
2           **district court, including the type of judgment or order being appealed and**  
3           **the relief granted by the district court:**

4           The action is a primarily a quiet title action related to real property that  
5           was the subject of a HOA lien foreclosure sale pursuant to NRS Chapter 116.  
6           Plaintiff alleges that the HOA lien foreclosure sale served to extinguish any and  
7           all deeds of trust previously secured by the property. Notwithstanding the  
8           extinguishment of the deed of trust, the applicable Defendants thereafter caused a  
9           foreclosure sale based upon the deed of trust to take place, purportedly divesting  
10          the Plaintiff of ownership of the property. Plaintiff contends that because the deed  
11          of trust was extinguished as a matter of law, the bank's foreclosure sale and all  
12          transfers of the property that occurred thereafter were void and ineffective. As a  
13          result, Plaintiff asserts that it remains the owner of the property free and clear of  
14          any interests of the Defendants.

15          On March 19, 2019, Defendants, James Blaha and Noble Home Loans,  
16          Inc., filed a Motion for Summary Judgment, asserting primarily that summary  
17          judgment should be entered pursuant to this Court's decision in the matter of *Bank*  
18          *of Am., N.A. v. Thomas Jessup, LLC Series VII*, 2019 Nev. LEXIS 6, 435 P.3d  
19          1217, 135 Nev. Adv. Rep. 7, 2019 WL 1087513. The remaining Defendants  
20          joined in said Motion. In *Jessup*, this Court held that Bank of America was  
21          excused from tendering payment of the superpriority lien amount as a result of  
22          correspondence from the HOA's agent which the Court found to have advised that  
23          such a payment was futile. This was contrary to the district court's findings at the  
24          time of trial. The *Jessup* matter is currently the subject of a pending petition for  
25          en banc rehearing.

26          Plaintiff opposed the Motion for Summary Judgment, noting that the  
27          deposition testimony in this case very specifically proved that the HOA's agent  
28          would have accepted any payment that the bank might have remitted to it (but did

not). Indeed, it was undisputed in this case that the bank remitted no amount of money to the HOA or its agent. The Motion for Summary Judgment and Joinders were granted by the district court by way of Order dated May 20, 2019, with the district court finding that although it did not necessarily agree with the *Jessup* decision, it was bound to follow it. This is the Order appealed from.

**11. Indicate whether the case has previously been the subject of an appeal or an original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:**

This matter was previously the subject of an appeal before this Court: Las Vegas Development Group, LLC v. James R. Blaha, et al., Supreme Court Case No. 71875.

**12. Indicate whether this appeal involves child custody or visitation:**

N/A

**13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:**

Unless or until the *Jessup* matter is finally resolved, Plaintiff does not believe there is a significant possibility of settlement given the positions of the various parties. If/when the *Jessup* opinion is reconsidered, a significant likelihood of settlement may exist.

DATED this 18<sup>th</sup> day of June, 2019.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Timothy E. Rhoda  
ROGER P. CROTEAU, ESQ.  
Nevada Bar No. 4958  
TIMOTHY E. RHODA, ESQ.  
Nevada Bar No. 7878  
9120 West Post Road, Suite 100  
Las Vegas, Nevada 89148  
(702) 254-7775  
*Attorney for Plaintiff*  
**LAS VEGAS DEVELOPMENT GROUP, LLC**



**CERTIFICATE OF SERVICE**

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 18<sup>th</sup> day of June, 2019, I caused a true and correct copy of the foregoing document to be served on all parties as follows:

X VIA ELECTRONIC SERVICE: through the Eighth Judicial District Court's Odyssey e-file and serve system.

**Akerman LLP**

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**Kolesar and Leatham**

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\_\_\_\_ VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on service list below in the United States mail at Las Vegas, Nevada.

\_\_\_\_ VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated on the service list below.

\_\_\_\_ VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this date to the addressee(s) at the address(es) set forth on the service list below.

/s/ Timothy E. Rhoda

An employee of ROGER P. CROTEAU &  
ASSOCIATES, LTD.

EIGHTH JUDICIAL DISTRICT COURT

**CASE SUMMARY**

**CASE NO. A-15-715532-C**

**Las Vegas Development Group LLC, Plaintiff(s)**  
**vs.**  
**James Blaha, Defendant(s)**

§  
§  
§  
§  
§  
§

Location: **Department 30**  
 Judicial Officer: **Wiese, Jerry A.**  
 Filed on: **03/19/2015**  
 Case Number History:  
 Cross-Reference Case **A715532**  
 Number:  
 Supreme Court No.: **71875**

**CASE INFORMATION**

**Statistical Closures**

06/18/2019 Summary Judgment

Case Type: **Other Title to Property**

Case Status: **06/18/2019 Closed**

**DATE**

**CASE ASSIGNMENT**

**Current Case Assignment**

Case Number A-15-715532-C  
 Court Department 30  
 Date Assigned 10/12/2015  
 Judicial Officer Wiese, Jerry A.

**PARTY INFORMATION**

		<i>Lead Attorneys</i>
<b>Plaintiff</b>	<b>Las Vegas Development Group LLC</b>	<b>Croteau, Roger P, ESQ</b> <i>Retained</i> 702-254-7775(W)
<b>Defendant</b>	<b>Bank of America NA</b>	<b>Brenner, Darren T.</b> <i>Retained</i> 702-634-5000(W)
	<b>Blaha, James R</b>	<b>Maurice, Aaron R.</b> <i>Retained</i> 702-362-7800(W)
	<b>EZ Properties LLC</b>	<b>Hansen, Kevin R.</b> <i>Retained</i> 702-478-7777(W)
	<b>FCH Funding Inc</b>	<b>Wood, Brittany</b> <i>Retained</i> 702-362-7800(W)
	<b>K&amp;L Baxter Family Limited Partnership</b>	<b>Hansen, Kevin R.</b> <i>Retained</i> 702-478-7777(W)
	<b>Perez, Jose, Jr.</b>	
	<b>Recontrust Company NA</b>	<b>Brenner, Darren T.</b> <i>Retained</i> 702-634-5000(W)
<b>Counter Claimant</b>	<b>Bank of America NA</b>	<b>Brenner, Darren T.</b> <i>Retained</i> 702-634-5000(W)
<b>Counter Defendant</b>	<b>Las Vegas Development Group LLC</b>	<b>Croteau, Roger P, ESQ</b> <i>Retained</i> 702-254-7775(W)











**CASE SUMMARY****CASE NO. A-15-715532-C**

**Cross Claimant**      **Bank of America NA**  
                                  Removed: 04/04/2019  
                                  Dismissed

**Brenner, Darren T.**  
                                  *Retained*  
                                  702-634-5000(W)

**Cross Defendant**    **Absolute Collection Services, LLC**  
                                  Removed: 04/04/2019  
                                  Dismissed

**Nevada Trails II Community Association**  
                                  Removed: 04/04/2019  
                                  Dismissed

DATE	EVENTS & ORDERS OF THE COURT	INDEX
	<b><u>EVENTS</u></b>	
03/19/2015	 Lis Pendens Filed By: Counter Defendant Las Vegas Development Group LLC <i>Lis Pendens</i>	
03/19/2015	 Complaint Filed By: Counter Defendant Las Vegas Development Group LLC <i>Complaint</i>	
03/19/2015	Case Opened	
04/17/2015	 Affidavit Filed By: Counter Defendant Las Vegas Development Group LLC <i>Affidavit of Service - K and L Baxter Family Limited Partnership</i>	
04/20/2015	 Affidavit Filed By: Counter Defendant Las Vegas Development Group LLC <i>Affidavit of Service - FCH Funding Inc</i>	
04/21/2015	 Affidavit Filed By: Counter Defendant Las Vegas Development Group LLC <i>Affidavit of Service - Bank of America NA</i>	
05/01/2015	 Affidavit of Service Filed By: Counter Defendant Las Vegas Development Group LLC <i>Affidavit of Service - Jose Perez Jr</i>	
05/04/2015	 Acceptance of Service Filed By: Counter Defendant Las Vegas Development Group LLC <i>Acceptance of Service of Summons and Complaint</i>	
05/06/2015	 Affidavit of Service Filed By: Counter Defendant Las Vegas Development Group LLC <i>Affidavit of Service - James R Blaha</i>	
05/11/2015	 Initial Appearance Fee Disclosure Filed By: Defendant Blaha, James R <i>Initial Appearance Fee Disclosure</i>	
05/11/2015	 Answer to Complaint Filed by: Defendant Blaha, James R <i>Defendants James R. Blaha and Noble Home Loans, Inc.'s (Formerly Known as FCH Funding Inc.) Answer to Complaint</i>	













**CASE SUMMARY**

**CASE NO. A-15-715532-C**

06/01/2015	 Initial Appearance Fee Disclosure Filed By: Defendant EZ Properties LLC <i>Initial Appearance Fee Disclosure</i>
06/01/2015	 Answer to Complaint Filed by: Defendant EZ Properties LLC <i>Defendant Ex Properties, LLC and K&amp;L Baxter Family Limited Partnership Answer to Plaintiff's Complaint</i>
07/06/2015	 Initial Appearance Fee Disclosure Filed By: Counter Claimant Bank of America NA <i>Initial Appearance Fee Disclosure</i>
07/06/2015	 Notice of Appearance Party: Counter Claimant Bank of America NA <i>Notice of Appearance</i>
07/08/2015	 Default Filed By: Counter Defendant Las Vegas Development Group LLC <i>Default</i>
07/08/2015	 Notice of Entry Filed By: Counter Defendant Las Vegas Development Group LLC <i>Notice of Entry of Default Jose Perez Jr</i>
07/20/2015	 Answer Filed By: Counter Claimant Bank of America NA <i>Defendants Bank of America, N.A. and Recontrust Company, N.A.'s Answer To Plaintiff's Complaint</i>
10/09/2015	 Notice of Early Case Conference Filed By: Counter Defendant Las Vegas Development Group LLC <i>Notice of Early Case Conference</i>
10/09/2015	 Demand for Jury Trial Filed By: Defendant Blaha, James R <i>Demand for Jury Trial</i>
10/12/2015	 Notice of Department Reassignment <i>Notice of Department Reassignment</i>
10/12/2015	 Peremptory Challenge Filed by: Defendant Blaha, James R <i>Peremptory Challenge of Judge</i>
11/13/2015	 Stipulation and Order Filed by: Defendant Blaha, James R <i>Stipulation and Order Regarding the Handling and Use of Confidential Information</i>
11/20/2015	 Notice of Entry of Order Filed By: Defendant Blaha, James R <i>Notice of Entry of Order</i>

# CASE SUMMARY

CASE NO. A-15-715532-C

11/23/2015	 Joint Case Conference Report Filed By: Counter Defendant Las Vegas Development Group LLC <i>Joint Case Conference Report</i>
01/13/2016	 Notice to Appear for Discovery Conference <i>Notice to Appear for Discovery Conference</i>
03/16/2016	 Scheduling Order <i>Scheduling Order</i>
04/05/2016	 Order Setting Jury Trial <i>Order Setting Jury Trial</i>
08/09/2016	 Motion for Summary Judgment Filed By: Defendant Blaha, James R <i>James R. Blaha and Noble Home Loans, Inc.'s Motion for Summary Judgment</i>
08/09/2016	 Motion to Add Party Filed By: Counter Claimant Bank of America NA <i>Defendant Bank of America, N.A.'s Motion to Add Affirmative Defenses and to Add Parties and Assert Claims</i>
08/16/2016	 Joinder to Motion For Summary Judgment Filed By: Defendant EZ Properties LLC <i>Defendants Ez Properties, Llc And K&amp;L Baxter Family Limited Partnership Joinder To Defendants James R. Blaha And Noble Home Loans, Inc's Motion For Summary Judgment</i>
08/16/2016	 Joinder To Motion Filed By: Defendant EZ Properties LLC <i>Defendants Ez Properties, Llc And K&amp;L Baxter Family Limited Partnership Joinder To Defendant Bank Of America, N.A.'S Motion To Add Affirmative Defenses And To Add Parties And Assert Claims.</i>
08/26/2016	 Opposition to Motion For Summary Judgment Filed By: Counter Defendant Las Vegas Development Group LLC <i>Opposition to Motion for Summary Judgment</i>
08/26/2016	 Joinder to Motion For Summary Judgment Filed By: Counter Claimant Bank of America NA <i>Defendant Bank Of America, N.A.'S Joinder To Defendants James R. Blaha And Noble Home Loans, Inc.'s Motion For Summary Judgment</i>
08/30/2016	 Opposition to Motion Filed By: Counter Defendant Las Vegas Development Group LLC <i>Opposition to Motion to Add Affirmative Defenses and to Add Parties and Assert Claims</i>
09/06/2016	 Reply to Opposition Filed by: Defendant Blaha, James R <i>James R. Blaha and Noble Home Loans, Inc.'s Reply to Plaintiff's Opposition to Motion for Summary Judgment</i>
09/06/2016	 Reply in Support Filed By: Counter Claimant Bank of America NA <i>Defendant Bank of America's Reply in Support of its Motion to Add Affirmative Defenses and to Add Parties and Assert Claims</i>

# CASE SUMMARY

CASE NO. A-15-715532-C

10/05/2016	 Notice of Entry of Order Filed By: Defendant Blaha, James R <i>Notice of Entry of Order</i>
10/05/2016	 Findings of Fact, Conclusions of Law and Judgment Filed by: Defendant Blaha, James R <i>Order Granting James R. Blaha and Noble Home Loans, Inc.'s Motion for Summary Judgment and All Joinders Thereto</i>
10/05/2016	 Memorandum of Costs and Disbursements Filed By: Defendant Blaha, James R <i>Memorandum of Costs and Disbursements</i>
10/11/2016	 Notice of Motion Filed By: Counter Defendant Las Vegas Development Group LLC <i>Notice of Motion</i>
10/11/2016	 Motion to Amend Judgment Filed By: Counter Defendant Las Vegas Development Group LLC <i>Motion to Alter or Amend Judgment; for Reconsideration; and for Clarification</i>
10/31/2016	 Opposition to Motion Filed By: Counter Claimant Bank of America NA <i>Defendant Bank Of America, N.A.'S Opposition To Las Vegas Development Group, LLC's Motion To Alter Or Amend Judgment, For Reconsideration, Or For Clarification</i>
10/31/2016	 Opposition to Motion Filed By: Defendant Blaha, James R <i>James R. Blaha and Noble Homes Loans, Inc.'s Opposition to Plaintiff's Motion to Alter or Amend Judgment; for Reconsideration; and for Clarification</i>
11/01/2016	 Joinder Filed By: Defendant Blaha, James R <i>James R. Blaha and Noble Home Loans, Inc.'s Joinder to Bank of America, N.A.'s Opposition to Plaintiff's Motion to Alter or Amend Judgment; for Reconsideration; and for Clarification</i>
11/02/2016	 Joinder Filed By: Defendant EZ Properties LLC <i>Defendants EZ Properties and K&amp;L Baxter Joinder to Defendant Bank of America, NA's Opposition to Plaintiff's Motion to Alter or Amend Judgment, for reconsideration and for clarification.</i>
11/02/2016	 Joinder Filed By: Defendant EZ Properties LLC <i>Defendants EZ Properties and K&amp;L Baxter Family Limited Partnership Joinder to Defendants James R. Blaha and Noble Home Loans Inc Opposition to Plaintiff's Motion to Alter or Amend Judgment, for Reconsideration; and For Clarification.</i>
11/30/2016	 Order Denying Motion Filed By: Defendant Blaha, James R <i>Order Denying Plaintiff's Motion to Alter or Amend Judgment; for Reconsideration; and for Clarification</i>
12/01/2016	 Notice of Entry of Order


# CASE SUMMARY

CASE NO. A-15-715532-C

	<p>Filed By: Defendant Blaha, James R <i>Notice of Entry of Order</i></p>
12/01/2016	<p> Notice of Appeal Filed By: Counter Defendant Las Vegas Development Group LLC <i>Notice of Appeal</i></p>
12/08/2016	<p> Case Appeal Statement Filed By: Counter Defendant Las Vegas Development Group LLC <i>Case Appeal Statement</i></p>
12/14/2016	<p> Request Filed by: Counter Defendant Las Vegas Development Group LLC <i>Request for Transcript of Proceedings</i></p>
01/19/2017	<p> Transcript of Proceedings <i>Reporter's Transcript of Proceedings dated 11/15/16</i></p>
02/03/2017	<p> Reporters Transcript <i>Reporter's Transcript of Motions - 9/13/2016</i></p>
11/20/2017	<p> Notice of Change of Address Filed By: Counter Claimant Bank of America NA; Defendant Recontrust Company NA <i>Notice Of Change Of Address</i></p>
06/04/2018	<p> NV Supreme Court Clerks Certificate/Judgment - Affd/Rev Part <i>Nevada Supreme Court Clerk's Certificate Judgment - Affirmed in Part, Reversed in Part and Remand</i></p>
06/06/2018	<p> Notice of Hearing <i>Notice of Hearing</i></p>
07/18/2018	<p> Amended Order Setting Jury Trial <i>Amended Order Setting Civil Jury Trial, Pre-Trial Conference and Calendar Call</i></p>
09/11/2018	<p> Stipulation Filed by: Counter Defendant Las Vegas Development Group LLC <i>Stipulated Scheduling Order</i></p>
11/21/2018	<p> Notice of Rescheduling of Hearing Filed by: Counter Claimant Bank of America NA <i>Re-Notice of Motion to Add Affirmative Defenses and to Add Parties and Assert Claims</i></p>
01/17/2019	<p> Order Granting Motion Filed By: Counter Claimant Bank of America NA <i>Order Granting Bank of America, N.A.'s Motion to Add Affirmative Defenses, Parties and Claims</i></p>
01/18/2019	<p> Notice of Entry of Stipulation and Order Filed By: Counter Claimant Bank of America NA <i>Notice of Entry of Order Granting Bank of America, N.A.'s Motion to Add Affirmative Defenses, Parties and Claims</i></p>
01/23/2019	<p> Answer and Crossclaim</p>

# CASE SUMMARY

CASE NO. A-15-715532-C

	<p>Filed By: Counter Claimant Bank of America NA; Defendant Recontrust Company NA  <i>Defendant Bank of America, N.A. and Recontrust, N.A.'s Amended Answer to Plaintiff's Complaint and Bank of America's Counterclaim Against Plaintiff and Cross-Claims Against HOA and HOA Trustee</i></p>
01/23/2019	<p> Summons Electronically Issued - Service Pending            Party: Counter Claimant Bank of America NA; Defendant Recontrust Company NA  <i>Summons - Nevada Trails II Community Association</i></p>
01/23/2019	<p> Summons Electronically Issued - Service Pending            Party: Counter Claimant Bank of America NA; Defendant Recontrust Company NA  <i>Summons - Absolute Collection Services, LLC</i></p>
01/31/2019	<p> Affidavit of Service            Filed By: Counter Claimant Bank of America NA  <i>Affidavit of Service on Absolute Collection Services, LLC c/o Shane Cox</i></p>
01/31/2019	<p> Affidavit of Service            Filed By: Counter Claimant Bank of America NA  <i>Affidavit of Service on Nevada Trails II Community Association c/o First Service Residential, Nevada, LLC</i></p>
02/21/2019	<p> Motion to Dismiss            Filed By: Cross Defendant Nevada Trails II Community Association  <i>Nevada Trails II Community Association Motion to Dismiss and to Amend Caption</i></p>
02/21/2019	<p> Initial Appearance Fee Disclosure  <i>Initial Appearance Fee Disclosure</i></p>
02/25/2019	<p> Joinder To Motion            Filed By: Cross Defendant Absolute Collection Services, LLC  <i>Absolute Collection Services, LLC's Joinder to Nevada Trails II Community Association's Motion to Dismiss</i></p>
02/25/2019	<p> Initial Appearance Fee Disclosure            Filed By: Cross Defendant Absolute Collection Services, LLC  <i>Absolute Collection Services, LLC's Initial Appearance Fee Disclosure</i></p>
02/28/2019	<p> Lis Pendens            Filed By: Counter Claimant Bank of America NA; Defendant Recontrust Company NA  <i>Lis Pendens</i></p>
03/19/2019	<p> Motion for Summary Judgment            Filed By: Defendant Blaha, James R  <i>James R. Blaha and Noble Home Loans, Inc.'s Motion for Summary Judgment</i></p>
03/19/2019	<p> Certificate of Service            Filed by: Defendant Blaha, James R  <i>Certificate of Service for James R. Blaha and Noble Home Loans, Inc.'s Motion for Summary Judgment</i></p>
03/19/2019	<p> Clerk's Notice of Hearing  <i>Notice of Hearing</i></p>
03/20/2019	



# CASE SUMMARY

CASE NO. A-15-715532-C

	 Joinder to Motion For Summary Judgment Filed By: Defendant EZ Properties LLC; Defendant K&L Baxter Family Limited Partnership <i>DEFENDANTS EZ PROPERTIES, LLC AND K&amp;L BAXTER FAMILY LIMITED PARTNERSHIP JOINDER TO DEFENDANTS JAMES R. BLAHA AND NOBLE HOME LOANS, INC'S MOTION FOR SUMMARY JUDGMENT</i>
03/25/2019	 Opposition to Motion For Summary Judgment Filed By: Cross Defendant Nevada Trails II Community Association <i>Nevada Trails II Community Association Limited Opposition to James R. Blaha and Noble Home Loans, Inc.'s Motion for Summary Judgment</i>
03/25/2019	 Joinder To Motion Filed By: Counter Claimant Bank of America NA; Defendant Recontrust Company NA <i>Bank of America, N.A. and Recontrust Company, N.A.'s Joinder to James R. Blaha and Noble Home Loans, Inc.'s Motion for Summary Judgment</i>
04/02/2019	 Motion Filed By: Counter Defendant Las Vegas Development Group LLC <i>Motion to Continue Pursuant to NRCP 56(d)</i>
04/04/2019	 Ex Parte Motion Filed By: Counter Defendant Las Vegas Development Group LLC <i>Ex Parte Motion for Order Shortening Time on Motion to Continue Pursuant to NRCP 56(D)</i>
04/04/2019	 Stipulation and Order for Dismissal Without Prejudice Filed By: Counter Claimant Bank of America NA <i>Stipulation and Order of Dismissal of Bank of America, N.A.'s Claims Against Nevada Trails II Community Association and Absolute Collection Services, LLC Without Prejudice</i>
04/04/2019	 Opposition Filed By: Defendant Blaha, James R <i>Opposition to Plaintiff's Ex Parte Motion for Order Shortening Time on Motion to Continue Pursuant to NRCP 56(d)</i>
04/05/2019	 Notice of Entry of Stipulation & Order for Dismissal Filed By: Counter Claimant Bank of America NA <i>Notice of Entry of Stipulation and Order of Dismissal of Bank of America, N.A.'s Claims Against Nevada Trails II Community Association and Absolute Collection Services, LLC Without Prejudice</i>
04/12/2019	 Opposition Filed By: Defendant Blaha, James R; Defendant FCH Funding Inc <i>Opposition to Plaintiff's Motion to Continue Pursuant to NRCP 56(d)</i>
04/12/2019	 Joinder to Opposition to Motion Filed by: Counter Claimant Bank of America NA; Defendant Recontrust Company NA <i>Bank of America, N.A. and Recontrust Company, N.A.'s Joinder to James R. Blaha and Noble Home Loans, Inc.'s Opposition to Motion to Continue</i>
04/15/2019	 Joinder to Opposition to Motion Filed by: Defendant EZ Properties LLC <i>JOINDER TO OPPOSITION</i>
04/19/2019	 Opposition to Motion For Summary Judgment

# CASE SUMMARY

CASE NO. A-15-715532-C

Filed By: Counter Defendant Las Vegas Development Group LLC  
*Opposition to Motion for Summary Judgment*

04/22/2019



Reply to Opposition

Filed by: Defendant Blaha, James R  
*James R. Blaha and Noble Home Loans, Inc.'s Reply to: (1) Nevada Trails II Community Association's Limited Opposition; and (2) Plaintiff's Opposition to the Blaha Defendants' Motion for Summary Judgment*

04/23/2019



Joinder

Filed By: Counter Claimant Bank of America NA; Defendant Recontrust Company NA  
*Bank of America, N.A. and Recontrust Company, N.A.'s Joinder to James R. Blaha and Nobel Home Loans, Inc.'s Reply to (1) Nevada Trails II Community Association's Limited Opposition; and (2) Plaintiff's Opposition to the Blaha Defendants' Motion for Summary Judgment*

05/24/2019



Findings of Fact, Conclusions of Law and Judgment

Filed by: Defendant Blaha, James R  
*Order Granting James R. Blaha and Noble Home Loans, Inc.'s Motion for Summary Judgment and All Joinders Thereto*

05/24/2019



Notice of Entry of Order

Filed By: Defendant Blaha, James R  
*Notice of Entry of Order*

05/28/2019



Notice of Entry of Order

Filed By: Defendant Blaha, James R; Defendant FCH Funding Inc  
*Notice of Entry of Order*

06/18/2019



Order to Statistically Close Case

*Civil Order to Statistically Close Case*

06/18/2019



Notice of Appeal

Filed By: Counter Defendant Las Vegas Development Group LLC  
*Notice of Appeal*

06/18/2019



Case Appeal Statement

Filed By: Counter Defendant Las Vegas Development Group LLC  
*Case Appeal Statement*

## **DISPOSITIONS**

10/05/2016

**Summary Judgment** (Judicial Officer: Wiese, Jerry A.)

Debtors: Las Vegas Development Group LLC (Plaintiff)  
Creditors: James R Blaha (Defendant), Bank of America NA (Defendant), Recontrust Company NA (Defendant), Jose Perez, Jr. (Defendant), EZ Properties LLC (Defendant), K&L Baxter Family Limited Partnership (Defendant), FCH Funding Inc (Defendant)  
Judgment: 10/05/2016, Docketed: 10/12/2016

04/04/2019

**Order of Dismissal Without Prejudice** (Judicial Officer: Wiese, Jerry A.)

Debtors: Absolute Collection Services, LLC (Cross Defendant), Nevada Trails II Community Association (Cross Defendant)  
Creditors: Bank of America NA (Cross Claimant)  
Judgment: 04/04/2019, Docketed: 04/05/2019

05/24/2019

**Summary Judgment** (Judicial Officer: Wiese, Jerry A.)

Debtors: Las Vegas Development Group LLC (Plaintiff)

# CASE SUMMARY

CASE NO. A-15-715532-C





Creditors: James R Blaha (Defendant), Bank of America NA (Defendant), Recontrust Company NA (Defendant), EZ Properties LLC (Defendant), K&L Baxter Family Limited Partnership (Defendant), FCH Funding Inc (Defendant)  
Judgment: 05/24/2019, Docketed: 05/24/2019

## HEARINGS

- 02/02/2016  **Discovery Conference** (9:30 AM) (Judicial Officer: Bulla, Bonnie)  
Scheduling Order Will Issue;  
Journal Entry Details:  
*Counsel anticipate 3 - 5 days for trial re: Quiet Title. No settlement conference requested. COMMISSIONER RECOMMENDED, discovery cutoff is 11/09/16; adding parties, amended pleadings, and initial expert disclosures DUE 08/11/16; rebuttal expert disclosures DUE 09/09/16; dispositive motions TO BE FILED BY 12/09/16. Scheduling Order will issue.;*
- 09/13/2016 **Motion** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)  
*Defendant Bank of America, N.A.'s Motion to Add Affirmative Defenses and to Add Parties and Assert Claims*  
Moot;
- 09/13/2016 **Motion for Summary Judgment** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)  
Granted;
- 09/13/2016 **Joinder** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)  
*Defendants Ez Properties, Llc And K&L Baxter Family Limited Partnership Joinder To Defendant Bank Of America, N.A.'S Motion To Add Affirmative Defenses And To Add Parties And Assert Claims.*  
Moot;
- 09/13/2016 **Joinder** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)  
*Defendants EZ Properties LLC and K&L Baxter Family Limited Partnership Joinder to Defendants James R Blaha and Noble Home Loans Inc's Motion for Summary Judgment*  
Moot;
- 09/13/2016 **Joinder** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)  
*Defendant Bank Of America, N.A.'S Joinder To Defendants James R. Blaha And Noble Home Loans, Inc.'s Motion For Summary Judgment*  
Moot;
- 09/13/2016  **All Pending Motions** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)  
Matter Heard;  
Journal Entry Details:  
*Defendants Ez Properties, Llc And K&L Baxter Family Limited Partnership Joinder To Defendant Bank Of America, N.A.'S Motion To Add Affirmative Defenses And To Add Parties And Assert Claims. Defendant Bank Of America, N.A.'S Motion To Add Affirmative Defenses And To Add Parties And Assert Claims. Deft Blaha Motion for Summary Judgment Defendants Ez Properties, Llc And K&L Baxter Family Limited Partnership Joinder To Defendant Bank Of America, N.A.'S Motion for Summary Judgment Mr. Morris argued this was a deed of trust foreclosure sale; Plaintiff did not have an interest in the property; and could not seek action due to the statue of limitations. Opposition by Mr. Croteau and argument regarding the sale being illegitimate and the chain of title. Court considered NRS 107.090. COURT ORDERED, motion for summary judgment GRANTED; pending motions are hereby MOOT.;*
- 11/15/2016  **Motion to Amend Judgment** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)  
*Plaintiff's Motion to Alter or Amend Judgment; for Reconsideration; and for Clarification*  
Denied;  
Journal Entry Details:  
*Plaintiff's Motion to Alter or Amend Judgment; for Reconsideration; and for Clarification Mr. Croteau argued for reconsideration of the order regarding the statute of limitation to file Complaint as to the legal findings reached by the Court. Opposition by Mr. Maurice. Court finds the order an accurate reflection. COURT ORDERED motion DENIED.;*

# CASE SUMMARY

CASE NO. A-15-715532-C

01/09/2017	<b>CANCELED Pre Trial Conference</b> (9:00 AM) (Judicial Officer: Wiese, Jerry A.) <i>Vacated</i>
01/30/2017	<b>CANCELED Calendar Call</b> (9:00 AM) (Judicial Officer: Wiese, Jerry A.) <i>Vacated</i>
02/06/2017	<b>CANCELED Jury Trial</b> (1:30 PM) (Judicial Officer: Wiese, Jerry A.) <i>Vacated</i>
07/18/2018	 <b>Status Check</b> (9:00 AM) (Judicial Officer: Wiese, Jerry A.) <i>Status Check: Supreme Court Return</i> <i>Trial Date Set;</i> <i>Journal Entry Details:</i> <i>Jamie Combs, Esq., present on behalf of Defendant. Ms. Wood advised matter was resolved by the application of the statute of limitations, however, there were other issues that were briefed as part of the Motion for Summary Judgment. Counsel added, one claim was resolved. Upon Court's inquiry, Counsel stated discovery and depository deadlines had passed. COURT ORDERED, a Trial date SET; Counsel can file any new pleading and motions that need to be ruled on. 07/01/19 9:00 AM PRE TRIAL CONFERENCE 07/22/19 9:00 AM CALENDAR CALL 07/29/19 10:30 AM JURY TRIAL ;</i>
01/02/2019	 <b>Motion</b> (9:00 AM) (Judicial Officer: Wiese, Jerry A.) <i>Defendant Bank of America's Re-Notice of Motion to Add Affirmative Defenses, and to Add Parties and Assert Claims</i> <i>Motion Granted;</i> <i>Journal Entry Details:</i> <i>Natalie Winslow, Esq. on behalf of Bank of America NA, also present. Upon Court's inquiry, Ms. Winslow advised matter was handled by another attorney, however, it was her understanding the Motion was unopposed. COURT ORDERED, Motion to Add Affirmative Defenses GRANTED.;</i>
03/27/2019	<b>CANCELED Motion to Dismiss</b> (9:00 AM) (Judicial Officer: Wiese, Jerry A.) <i>Vacated - Moot</i> <i>Nevada Trails II Community Association Motion to Dismiss and to Amend Caption</i>
03/27/2019	<b>CANCELED Joinder</b> (9:00 AM) (Judicial Officer: Wiese, Jerry A.) <i>Vacated - Moot</i> <i>Cross Defendant Absolute Collection Services LLC's Joinder to KB Silverado Homeowners Association's Motion to Dismiss</i>
04/17/2019	 <b>Motion to Continue</b> (9:00 AM) (Judicial Officer: Wiese, Jerry A.) <i>Events: 04/04/2019 Ex Parte Motion</i>  <b>MINUTES</b>  <b>Ex Parte Motion</b> <i>Filed By: Counter Defendant Las Vegas Development Group LLC</i> <i>Ex Parte Motion for Order Shortening Time on Motion to Continue Pursuant to NRCP 56 (D)</i> <i>Motion Denied;</i> <i>Journal Entry Details:</i> <i>Kelley Blatnik, on behalf of Nevada Trails II Community, also present. Ms. Blatnik advised Nevada Trails was dismissed, therefore, would not be making an argument. Mr. Maurice argued there was no reason to take the depositions again and discovery closes on April 30. Argument by Mr. Croteau. Upon Court's inquiry, Mr. Croteau indicated with the deposition, he anticipates on expanding the relationship between what happened over the year leading up to the letter. Court NOTED deposition was taken before with Plaintiff's participation, and ORDERED, Motion DENIED. Upon Court's further inquiry regarding an opposition, Mr. Croteau indicated he would file a response by the end of this week.;</i>
04/24/2019	<b>Motion for Summary Judgment</b> (9:00 AM) (Judicial Officer: Wiese, Jerry A.)

# CASE SUMMARY

CASE NO. A-15-715532-C

Events: 03/19/2019 Motion for Summary Judgment  
*James R. Blaha and Noble Home Loans, Inc.'s Motion for Summary Judgment*  
Motion Granted;

04/24/2019

**Joinder** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)

Events: 03/25/2019 Joinder To Motion  
*Bank of America, N.A. and Recontrust Company, N.A.'s Joinder to James R. Blaha and Noble Home Loans, Inc.'s Motion for Summary Judgment*  
Motion Granted;

04/24/2019



**All Pending Motions** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)

Matter Heard;  
Journal Entry Details:  
*JAMES R. BLAHA AND NOBLE HOME LOANS, INC.'S MOTION FOR SUMMARY JUDGMENT...BANK OF AMERICA, N.A. AND RECONTRUST COMPANY, N.A.'S JOINDER TO JAMES R. BLAHA AND NOBLE HOME LOANS, INC.'S MOTION FOR SUMMARY JUDGMENT* Court NOTED the Jessup case was on point and allowed Mr. Croteau to make argument. Extensive arguments by Mr. Maurice, Mr. Haddas, and Mr. Croteau. COURT ORDERED, DECISION PENDING.;

04/24/2019



**Minute Order** (4:00 PM) (Judicial Officer: Wiese, Jerry A.)

Minute Order - No Hearing Held;  
Journal Entry Details:

*The above-referenced matter came on for hearing on Wednesday, April 24, 2019, with regard to the Defendants, Blaha and Noble Home Loans Motion for Summary Judgment, and various joinders. After reviewing the pleadings and entertaining oral argument, the Court indicated that while it may not agree completely with the Nevada Supreme Court's reasoning in the case of Bank of America N.A. v. Thomas Jessup LLC, 135 Nev. Adv. Op. 7, 435 P.3d 1217 (Nev. 2019), the Court was obligated to follow that law. In the present case, as well as in the Jessup case, a homeowner had become delinquent on its monthly HOA assessments, and various notices were sent out. Upon receiving the Notice of Default, the Bank retained the law firm of Miles, Bauer, and an attorney with Miles Bauer, Rock Jung, wrote a letter to ACS, indicating that whatever the amount of the super-priority lien was, upon adequate proof, the amount would be tendered. In response, an employee of ACS, Kelly Mitchell, sent a fax to Miles, Bauer, indicating in part, "I am making you aware that it is our view that without the action of foreclosure [by the bank], a 9 month Statement of Account is not valid. . ." Following receipt of the ACS correspondence, neither Miles, Bauer, nor the bank, took any further action to protect the deed of trust. The Nevada Supreme Court, in Jessup, held that "Miles Bauer's offer to pay the yet-to-be-determined superpriority amount was not sufficient to constitute a valid tender." The Court went on, however, and held that "Although ACS's fax did not explicitly state that it would reject a superpriority tender, we believe this is the only reasonable construction of the fax. . ." Consequently, the Court concluded that "Miles Bauer's offer to pay the superpriority portion of Foxfield's lien, combined with ACS's rejection of that offer, operated to cure the default as to that portion of the lien such that the ensuing foreclosure sale did not extinguish the first deed of trust." Id. The facts in the present case are identical to those in the Jessup case, and consequently, this Court is compelled to follow the Supreme Court's lead and must conclude that the ACS correspondence indicated an intention to reject any tender, and combined with Miles Bauer's offer to pay the superpriority portion of the lien, it operated "to cure the default as to that portion of the lien, such that the ensuing foreclosure sale did not extinguish the first deed of trust." Based upon this finding, the Court finds that no genuine issue of material fact remains, and Summary Judgment is appropriate in favor of the Defendant. The parties requested that the Court rule also on the issues of equitable relief and the statute of limitations, and as the Court had not seen those as determinative issues, they had not previously been considered. The Court took those matters under advisement, and now renders the following decision: With regard to the statute of limitations issue, defense counsel made a compelling argument that the decisions which have come from the Federal District Courts in Nevada relating to the statute of limitations, being either 4 or 5 years, seem to be applied to banks which have asserted claims for quiet title. In the present case, the bank's claims, and the other Defendants claims, were asserted as defenses when Las Vegas Development Group brought suit. If a plaintiff were to wait until the last day before the statute of limitations ran to file a lawsuit for quiet title, and thereafter serves the action on the Defendants, and the Defendants position is that they are entitled to title in a piece of property, how can it be fair to prevent the Defendants from defending the case and asserting those claims, when arguably they had no reason to believe it was a disputed issue until suit was*

# CASE SUMMARY

CASE NO. A-15-715532-C

filed? Even though the parties to these HOA foreclosure matters must know at the time of the foreclosure sales, that they are potentially buying into a litigated issue, until one party asserts a claim, they may not feel a need to. If the Bank believed all along, that it had preserved its property interest, by offering to pay for 9 months of assessments, why would it need to file suit? This Court finds that whether the statute of limitations is 4 years, 5 years, or some other time period, the Defendant in a case has the right to defend and assert as one of its defenses, that it is entitled to the property, or that it has an interest in the subject property. Consequently, the Court does not find that the Defendants in this case are precluded from asserting the defenses that they have asserted. Similarly, with regard to the issue of "equitable estoppel, the Court does not find that the evidence supports the claim that the Plaintiff's claims are barred by this doctrine. This Court finds that the Plaintiff's claims were timely filed, and that the Defendants have the right to defend claims against them, as they have asserted in this action. Based upon the foregoing, and the Court's obligation to follow Jessup, the Court finds that there are no genuine issues of material fact that remain, and Summary Judgment is GRANTED in favor of the Defendants, Blaha, and Noble Home Loans, as well as the other Defendants. The Court concludes that the HOA foreclosure sale did not extinguish the bank's deed of trust. Counsel for Blaha and Noble Home Loans is to prepare an Order consistent with the foregoing, and with the Court's oral pronouncements at the time of the hearing on this matter, have it reviewed by all parties as to form and content, and submit it to the Court for signature within 10 days. CLERK'S NOTE: The above minute order has been distributed to: Roger Croteau, Esq., (croteaulaw@croteaulaw.com), Darren Brenner, Esq., (darren.brenner@akerman.com), William Habdas, Esq., (william.habdas@akerman.com), Aaron Maurice, Esq., (amaurice@klnevada.com), Kevin Hansen, Esq., (kevin@kevinrhansen.com), and Brittany Wood, Esq., (bwood@klnevada.com). //04/25/19 vm;

07/01/2019	<b>CANCELED Pre Trial Conference</b> (9:00 AM) (Judicial Officer: Wiese, Jerry A.) <i>Vacated - Case Closed</i>
07/22/2019	<b>CANCELED Calendar Call</b> (9:00 AM) (Judicial Officer: Wiese, Jerry A.) <i>Vacated - Case Closed</i>
07/29/2019	<b>CANCELED Jury Trial</b> (10:30 AM) (Judicial Officer: Wiese, Jerry A.) <i>Vacated - Case Closed</i>

DATE

FINANCIAL INFORMATION

<b>Cross Defendant</b> Absolute Collection Services, LLC	
Total Charges	223.00
Total Payments and Credits	223.00
<b>Balance Due as of 6/20/2019</b>	<b>0.00</b>
 <b>Cross Defendant</b> Nevada Trails II Community Association	
Total Charges	223.00
Total Payments and Credits	223.00
<b>Balance Due as of 6/20/2019</b>	<b>0.00</b>
 <b>Counter Claimant</b> Bank of America NA	
Total Charges	423.00
Total Payments and Credits	423.00
<b>Balance Due as of 6/20/2019</b>	<b>0.00</b>
 <b>Defendant</b> Blaha, James R	
Total Charges	1,073.00
Total Payments and Credits	1,073.00
<b>Balance Due as of 6/20/2019</b>	<b>0.00</b>
 <b>Defendant</b> EZ Properties LLC	
Total Charges	623.00
Total Payments and Credits	623.00
<b>Balance Due as of 6/20/2019</b>	<b>0.00</b>
 <b>Defendant</b> FCH Funding Inc	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 6/20/2019</b>	<b>0.00</b>

# CASE SUMMARY

CASE NO. A-15-715532-C

<b>Defendant</b> K&L Baxter Family Limited Partnership	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 6/20/2019</b>	<b>0.00</b>
 <b>Defendant</b> Recontrust Company NA	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 6/20/2019</b>	<b>0.00</b>
 <b>Counter Defendant</b> Las Vegas Development Group LLC	
Total Charges	326.00
Total Payments and Credits	326.00
<b>Balance Due as of 6/20/2019</b>	<b>0.00</b>
 <b>Counter Defendant</b> Las Vegas Development Group LLC	
Appeal Bond Balance as of 6/20/2019	<b>500.00</b>



## DISTRICT COURT CIVIL COVER SHEET A - 1 5 - 7 1 5 5 3 2 - C

Clark County Nevada

Case No. \_\_\_\_\_

(Assigned by Clerk's Office)

V I I I

**I. Party Information**

Plaintiff(s) (name/address/phone):

**LAS VEGAS DEVELOPMENT GROUP, LLC**, a Nevada limited liability company,

Attorney (name/address/phone):

**ROGER P. CROTEAU & ASSOCIATES, LTD.****9120 W. POST ROAD, SUITE 100****LAS VEGAS, NEVADA 89148****(702) 254-7775**

Defendant(s) (name/address/phone):

**JAMES R. BLAHA**, an individual; **BAC HOME LOANS SERVICING, LP**, a Texas limited partnership; **RECONTRUST COMPANY, NA**, a Texas corporation; **JOSE PEREZ, JR.**, an individual; **EZ PROPERTIES, LLC**, a Nevada limited liability company; **K & L BAXTER FAMILY LIMITED PARTNERSHIP**, a Nevada limited partnership; **FCH FUNDING, INC.**, an unknown corporate entity; **DOE** individuals I through XX; and **ROE CORPORATIONS** I through XX,

Attorney (name/address/phone):

**II. Nature of Controversy** (Please check applicable bold category and applicable subcategory, if appropriate)**Civil Case Filing Types**

Real Property	Torts	
<b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input checked="" type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Other Torts</b> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate	Construction Defect & Contract	Judicial Review/Appeal
<b>Probate</b> ( <i>select case type and estate value</i> ) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <b>Estate Value</b> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ		Other Civil Filing
<b>Civil Writ</b> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant	<input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ	<b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

**Business Court Filings should be filed using the Business Court civil coversheet**

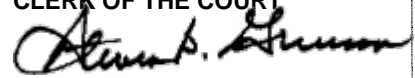
March 19, 2015

Date

/s/ Timothy E. Rhoda

Sig nature of initiating party or representative





1 **FFCL**

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7 Attorneys for Defendants

8 JAMES R. BLAHA and NOBLE HOME

LOANS, INC. formerly known as FCH

9 FUNDING, INC.

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 \* \* \*

13 LAS VEGAS DEVELOPMENT GROUP, LLC,  
14 a Nevada limited liability company,

15 Plaintiff,

16 vs.

17 JAMES R. BLAHA, an individual; BANK OF  
18 AMERICA, NA, a National Banking  
19 Association, as successor by merger to BAC  
20 HOME LOANS SERVICING, LP;  
21 RECONTRUST COMPANY NA, a Texas  
22 corporation; JOSE PEREZ, JR. an individual;  
23 EZ PROPERTIES, LLC, a Nevada limited  
24 liability company; K&L BAXTER FAMILY  
25 LIMITED PARTNERSHIP, a Nevada limited  
26 partnership; FCH FUNDING, INC., an  
27 unknown corporate entity; DOE individuals I  
28 through XX; and ROE CORPORATIONS I  
through XX,

Defendants.

ALL RELATED CLAIMS

CASE NO. A-15-715532-C

DEPT NO. XXX

**ORDER GRANTING JAMES R.  
BLAHA AND NOBLE HOME  
LOANS, INC.'S MOTION FOR  
SUMMARY JUDGMENT AND ALL  
JOINDERS THERETO**

James R. Blaha and Noble Home Loans, Inc.'s Motion for Summary Judgment and,  
Defendants Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP,  
and Recontrust Company, NA's (collectively "BANA Defendants") and Defendants EZ

1 Properties, LLC and K&L Baxter Limited Partnership's (collectively "EZ Defendants") Joinders  
2 thereto having come on for hearing on the 24<sup>th</sup> day of April 2019, James R. Blaha ("Blaha") and  
3 Noble Home Loans, Inc. ("NHLS") (and collectively the "Blaha Defendants") having appeared  
4 through their attorney of record, Aaron R. Maurice, of the law firm of Kolesar & Leatham;  
5 Plaintiff, Las Vegas Development Group, LLC ("LVDG"), having appeared through its attorney  
6 of record, Roger P. Croteau, of the law firm of Roger P. Croteau & Assoc., Ltd.; the BANA  
7 Defendants having appeared through their attorney of record, William S. Haddas, of the law firm  
8 of Akerman, LLP; and the EZ Defendants having appeared through their attorney of record,  
9 Kevin R. Hansen, of the Law Offices of Kevin R. Hansen; the Court having reviewed the papers  
10 and pleadings on file herein and having carefully considered the same; the Court having heard  
11 the oral arguments of counsel; the Court being fully advised in the premises, and good cause  
12 appearing therefore:

13 I.

14 **UNDISPUTED MATERIAL FACTS**

15 1. On March 28, 2007, a deed of trust ("Deed of Trust") was recorded securing a  
16 home loan in the amount of \$456,000 on property commonly described as 7639 Turquoise Stone  
17 Ct., Las Vegas, NV 89113; APN 176-10-213-042 ("Property"), showing Jose Perez Jr. as the  
18 borrower; Countrywide Bank, FSB ("Countrywide") as the lender; Recontrust Company, N.A.  
19 ("Recontrust") as the trustee; and Mortgage Electric Registration Systems, Inc. ("MERS") as the  
20 beneficiary of record, acting solely as nominee for Countrywide and its successors and assigns.

21 2. Three years later, on April 12, 2010, the Nevada Trails II Homeowners  
22 Association ("Nevada Trails") recorded a Notice of Delinquent Assessment Lien against the  
23 Property, asserting a delinquency in the amount of \$908. The Notice of Delinquent Assessment  
24 Lien did not identify the amount, if any, of an alleged superpriority lien.

25 3. On July 23, 2010, Nevada Trails recorded a Notice of Default and Election to Sell  
26 Under Notice of Delinquent Assessment Lien, asserting a delinquency in the amount of \$1,917.  
27 The Notice of Default did not identify the amount, if any, of an alleged superpriority lien.

28 4. On September 16, 2010, counsel for BAC sent correspondence to ACS in

1 response to the Notice of Default and Election to Sell Under Notice of Delinquent Assessment  
2 Lien. The correspondence acknowledged:

3 [A] portion of your HOA lien is arguably senior to BAC's first deed  
4 of trust, specifically the nine months of assessments for common  
5 expenses incurred before the date of your notice of delinquent  
6 assessment dated July 21, 2010. . . . It is unclear, based on the  
7 information known to date, what amount the nine months' of  
8 common assessments pre-dating the NOD actually are. That  
9 amount, whatever it is, is the amount BAC should be required to  
10 rightfully pay to fully discharge its obligations to the HOA per NRS  
11 116.3102 and my client hereby offers to pay that sum upon  
12 presentation of adequate proof of the same by the HOA.

13 Please let me know what the status of any HOA lien  
14 foreclosure sale is, if any. My client does not want these issues to  
15 be further exacerbated by the wrongful HOA sale that and it is my  
16 client's goal and intent to have the issues resolved as soon as  
17 possible. Please refrain from taking any further action to enforce the  
18 HOA lien until my client and the HOA have had an opportunity to  
19 speak to attempt to fully resolve all issues.

20 5. ACS responded to the September 16, 2010 correspondence, rejecting BAC's  
21 assertion that it was entitled to tender a nine-month priority payment before a foreclosure by  
22 BAC, stating, in relevant part:

23 [I]n conversations past, you had stated your client[']s position of  
24 paying for 9 months of assessments . . . all occurring before  
25 foreclosure by your client.

26 I am making you aware that it is our view that without the  
27 action of foreclosure [by the Bank], a 9 month Statement of  
28 Account is not valid. At this time, I respectfully request that you  
submit the Trustees Deed Upon Sale showing your client's  
possession of the property and the date that it occurred. At that  
time, we will provide a 9 month super priority lien Statement  
of Account.

As discussed, any Statement of Account from us will show  
the entire amount owed. We intend to proceed on the above-  
mentioned account up to and including foreclosure. All such  
notifications have been and will be sent to all interested parties.  
We recognize your client's position as the first mortgage  
company as the senior lien holder. Should you provide us with a  
recorded Notice of Default or Notice of Sale, we will hold our  
action so your client may proceed.

(last three emphasis added).

6. On October 27, 2010, Perez filed a Chapter 7 Bankruptcy as Case Number 10-  
30260-lbr.

1           7.       On October 28, 2010, in violation of the automatic stay, Nevada Trails recorded a  
2 Notice of Trustee's Sale, asserting a delinquency in the amount of \$2,989. The Notice of  
3 Trustee's Sale did not identify the amount, if any, of an alleged super-priority lien.

4           8.       On February 28, 2011, Nevada Trails recorded a second Notice of Trustee's Sale,  
5 asserting a delinquency in the amount of \$4,446. The Notice of Trustee's Sale did not identify  
6 the amount, if any, of an alleged super-priority lien.

7           9.       On April 12, 2011, LVDG purchased the Property at the HOA Foreclosure Sale  
8 for \$5,200.01.

9           10.      On April 14, 2011, a Corporation Assignment of Deed of Trust was recorded  
10 reflecting that the Deed of Trust had been assigned to BAC Home Loans Servicing, LP formerly  
11 known as Countrywide Home Loans Servicing LP.

12          11.      On April 14, 2011, the trustee of the Deed of Trust recorded a Notice of Default  
13 and Election to Sell Under Deed of Trust.

14          12.      On April 20, 2011, a Release of Lien was recorded, rescinding the Notice of  
15 Delinquent Assessment Lien recorded on April 12, 2010

16          13.      On August 9, 2011, a State of Nevada Foreclosure Mediation Program Certificate  
17 was recorded, authorizing the beneficiary of the Deed of Trust to proceed with the foreclosure.

18          14.      On August 9, 2011, a Notice of Trustee's Sale was recorded, noticing a sale of the  
19 Property for August 29, 2011.

20          15.      On August 29, 2011, the trustee of the Deed of Trust sold the Property at a public  
21 auction (the "Deed of Trust Foreclosure Sale"). On September 19, 2011, a Trustee's Deed upon  
22 Sale was recorded reflecting that EZ had purchased the Property at the Deed of Trust Foreclosure  
23 Sale for \$151,300.

24          16.      On September 30, 2011, Blaha purchased the Property from EZ for \$208,000.  
25 Three months later, Blaha obtained a loan in the amount of \$162,000 from NHLS which was  
26 secured by the Property. Blaha has been the record title holder of the Property since September  
27 30, 2011.

28          17.      During the five months in which title to the Property was vested in the name of

1 LVDG, LVDG spent no money improving the Property. Rather, LVDG only spent \$257  
2 maintaining the Property – paying one power bill and four HOA assessments. With regard to  
3 these expenses, LVDG testified as follows:

4 Q. It looks like there's one entry for NV Energy and that  
5 was on June 3rd, 2011. Do you see that?

6 A. Okay.

7 Q For \$32?

8 A. Right.

9 Q. Any understanding as to why there are no entries for  
10 water, sewer, any of the other normal and customary expenses that  
11 would go with property ownership?

12 A. No, not for sure. The – typically the electric was the  
13 first thing you needed to get in there if you were going to look at a  
14 property and keep the air conditioner on or whatever. I mean,  
15 that's the first bill we turned on is Nevada Energy, and then maybe  
16 water if we needed to. But not knowing what we did with this  
17 property, I can't tell you why we did – we didn't go – I mean, we  
18 may have looked at this property and it took too much work or too  
19 much money or in a foreclosure. I don't know.

20 Q. Right.

21 A. I don't know.

22 Q. But you don't see anything here reflecting that any  
23 property taxes were paid or sewer fees or garbage. Correct?

24 A. No.

25 Q. According to my math, it looks like \$257 total was  
26 spent by Las Vegas Development Group, other than legal fees, in  
27 connection with this property. Do you agree with that?

28 A. Yep. That looks right.

18. LVDG never purchased homeowner's insurance for the Property. See Exhibit 19,  
p.186, 20-22.

19. In contrast, during the time in which Blaha has owned the Property, Blaha has  
spent \$139,616, maintaining and improving the Property. Blaha has expended \$23,399 in  
property taxes and \$4,146 in HOA dues. The \$347,696 Mr. Blaha spent to purchase, improve

1 and maintain the Property is sixty-seven times the amount of money LVDG invested in the  
2 Property during the five-month period title was vested in LVDG in 2011.

3 20. In the 2010 to 2011 time-period, LVDG would frequently sell properties  
4 purchased at HOA foreclosure sales to lenders that asserted an interest in the property for double  
5 the amount LVDG had paid at the HOA foreclosure sale. During the 2010 to 2011 time-period,  
6 LVDG determined that the cost of establishing free and clear title to all of the properties  
7 purchased by LVDG at HOA foreclosure sales was too expensive (LVDG had purchased  
8 approximately 200 properties at HOA foreclosure sales). As such, LVDG elected to walk away  
9 from some of its investments rather than litigate with the secured lenders. Specifically, LVDG  
10 testified:

11 Well, at the early stage we really looked at the huge cost of  
12 litigation and didn't know where we stand. I mean, we felt we  
13 were right but we didn't know where the answer was going to be,  
14 and it was a big giant we were fighting and we weren't deciding  
15 which way we were going. What we tried at first – the first thing is  
16 let's see if we can get them to either stop or buy us out and move  
17 on, and the last thing was just let it go. **I mean, at some point  
18 litigation costs got so expensive that we, at that stage, walked  
19 away from it.**

20 21. With regard to the Property in this litigation, LVDG did not take any steps to try  
21 to enjoin BAC from foreclosing on the Deed of Trust. Similarly, prior to filing this action,  
22 LVDG took no action to attempt to set aside the Deed of Trust Foreclosure Sale. Moreover,  
23 LVDG took no steps to prevent EZ from encumbering or selling the Property following its  
24 purchase at the Deed of Trust Foreclosure Sale. Similarly, LVDG took no action to prevent  
25 Blaha from taking title to the Property. LVDG also took no action to prevent Blaha from  
26 obtaining financing secured by the Property.

27 22. After the Deed of Trust Foreclosure, LVDG stopped paying the HOA association  
28 fees. As to why LVDG stopped paying association fees, LVDG testified:

29 Q. Do you know why the Las Vegas Development  
30 Group stopped paying association fees in August of 2011 with  
31 respect to the property?

32 A. I assume **because there is a disputed owner and the  
33 HOA takes the dues from the recorded owner, and the**

1 recorder showed the recorded owner to be somebody different.  
2 I don't know if they even would have accepted it.

3 (emphasis added).

4 22. In 2011, LVDG was aware that there was a dispute with respect to the issue of  
5 whether an HOA foreclosure sale could extinguish a prior recorded deed of trust. For this  
6 reason, LVDG retained legal counsel to send correspondence to beneficiaries of deeds of trust  
7 secured by real property that LVDG purchased at HOA foreclosure sales. By 2012, LVDG was  
8 represented by legal counsel in Nevada retained to actively defend LVDG's title to real property  
9 purchased at HOA foreclosure sales. When asked to explain why LVDG waited until March 19,  
10 2015, to take any action to challenge the Deed of Trust Foreclosure Sale, LVDG testified as  
11 follows:

12 Q. The question is: Why did Las Vegas Development  
13 Group wait more than three years after all of the events that it  
14 seeks to – or all the conveyances that it seeks to set aside to bring  
15 this lawsuit?

16 A. I don't know what to say. He's telling me not to  
17 answer, so...

18 Q. I don't think he's telling you not to answer this  
19 question.

20 MR. CROTEAU: Whatever. Answer it. It doesn't matter.  
21 None of this matters. Answer it.

22 A. We dealt with properties that we were in the process of  
23 buying or being foreclosed on. That's stuff that had already  
24 happened before we got attorneys involved. We were – we had  
25 our hands full taking care of that, and we came back to this  
26 knowing it was always here when we had more time with our  
27 attorneys.

28 23. Despite the fact that Blaha has been the record title holder of the Property since  
September 30, 2011, on March 19, 2015 – 1,298 days after the Deed of Trust Foreclosure Sale –  
LVDG filed a Complaint seeking to rescind the Deed of Trust Foreclosure Sale. The following  
day, LVDG recorded a Lis Pendens.

24. In its Complaint, LVDG claims that the Deed of Trust Foreclosure Sale was void  
because the HOA Foreclosure Sale extinguished the Deed of Trust. LVDG's Complaint offers

1 no explanation as to why LVDG took no steps to stop the Deed of Trust Foreclosure Sale or  
2 why, immediately thereafter, LVDG did not take steps to have the Deed of Trust Foreclosure  
3 Sale set aside.

4 25. On August 9, 2016, the Blaha Defendants moved for summary judgment (“Initial  
5 Motion for Summary Judgment”). The Blaha Defendants’ Initial Motion for Summary Judgment  
6 argued, in part, that LVDG’s claims were barred by the statute of limitations in NRS 107.080(5)-  
7 (6) because LVDG failed to bring an action challenging the Deed of Trust Foreclosure within  
8 120 days of receiving actual notice of the Deed of Trust Foreclosure. The Blaha Defendants’  
9 Initial Motion for Summary Judgment also raised arguments regarding the doctrine of laches,  
10 equitable estoppel and the fact that LVDG’s equitable mortgage claim failed as a matter of law.  
11 The Blaha Defendants’ Motion for Summary Judgment was joined by the other Defendants in  
12 this case.

13 26. This Court granted the Blaha Defendants’ Initial Motion for Summary Judgment,  
14 concluding that LVDG’s claims were barred by NRS 107.080(5)-(6). However, this Court did  
15 not reach the Blaha Defendants’ equitable arguments, deeming them “moot” based on this  
16 Court’s conclusion that LVDG’s claims were barred by the statute of limitations. On December  
17 1, 2016, after this Court denied LVDG’s Motion for Reconsideration, LVDG filed a Notice of  
18 Appeal.

19 27. On May 3, 2018, the Nevada Supreme Court issued an order affirming in part,  
20 reversing in party and remanding. See Las Vegas Development Group, LLC v. Blaha, 134 Nev.  
21 Adv. Op. 33, 416, P.3d 233 (Nev. 2018). The Court affirmed this Court’s dismissal of LVDG’s  
22 slander of title claim; however, the Court concluded that the time limitations imposed by NRS  
23 107.080(5)-(6) do not apply to this case because the action challenges the authority to conduct  
24 the Deed of Trust Foreclosure Sale and not the manner in which the Deed of Trust Foreclosure  
25 Sale was conducted. Because this Court had determined that the Blaha Defendants’ equitable  
26 arguments were moot, the Nevada Supreme Court did not review the equitable arguments,  
27 instead remanding the case to this Court for further consideration.

28 28. On June 13, 2018, the Nevada Supreme Court issued its Remittitur to this Court.



1           29.     On September 11, 2018, this Court entered a Stipulated Scheduling Order, setting  
2 the close of discovery for April 30, 2019.

3           30.     On September 25, 2018, the Blaha Defendants took the deposition of the 30(b)(6)  
4 designee for ACS. Counsel for LVDG was present at the deposition and asked questions of the  
5 witness.

6           31.     On March 18, 2018, the Blaha Defendants served their Fifth Supplemental  
7 Disclosure of Witnesses and Documents.

8           32.     On March 19, 2019, the Blaha Defendants once again moved for summary  
9 judgment (“Blaha Defendants’ Motion for Summary Judgment”). The Blaha Defendants’  
10 Motion for Summary Judgment argued, that pursuant to the Nevada Supreme Court’s decision in  
11 Bank of America v. Thomas Jessup, LLC Series VII, 135 Nev. Adv. Op. 7, \_\_\_ P.3d. \_\_\_ (Mar.  
12 7, 2019), the NRS Chapter 116 HOA Foreclosure Sale did not extinguish BAC’s first Deed of  
13 Trust. As a result, BAC’s NRS Chapter 107 foreclosure of its Deed of Trust terminated any  
14 interest LVDG acquired as a result of its bid at the NRS Chapter 116 HOA Foreclosure Sale.  
15 The Blaha Defendants’ Motion for Summary Judgment also argued that LVDG’s claims are  
16 barred by the doctrine of laches and the doctrine of equitable estoppel.

17           33.     On March 20, 2019, the EZ Defendants filed a Joinder to the Blaha Defendants’  
18 Motion for Summary Judgment.

19           34.     On March 25, 2019, the BANA Defendants filed a Joinder to the Blaha  
20 Defendants’ Motion for Summary Judgment.

21           35.     On March 25, 2019, the HOA filed a Limited Opposition to the Blaha  
22 Defendants’ Motion for Summary Judgment (“HOA Opposition”). The HOA Opposition  
23 conceded that Jessup controls this case and acknowledged that the Deed of Trust survived the  
24 HOA Foreclosure Sale such that title to the Property should be quieted in favor of the Blaha  
25 Defendants.

26           36.     During the four years in which this action was pending, LVDG did not notice a  
27 single deposition or propound any written discovery requests on any party to this action or on  
28 any third-parties who may have information relevant to the case.

38. On April 5, 2019, this Court entered its Order of Dismissal of BANA's claims against the HOA and ACS, without prejudice, pursuant to the stipulation of the parties.

39. On April 17, 2019, this Court heard argument on LVDG's Motion to Continue Pursuant to NRCP 56(d). This Court issued an oral order denying the Motion. This Court did, however, grant LVDG leave to submit a late-filed opposition prior to the April 24, 2019 hearing on the Blaha Defendants' Motion for Summary Judgment. In addition, the Court granted the Blaha Defendants leave to submit a late-filed Reply following service of LVDG's Opposition.

40. On April 19, 2019, LVDG filed an Opposition to the Blaha Defendants' Motion for Summary Judgment ("LVDG's Opposition").

41. On April 22, 2019, the Blaha Defendants filed their Reply to LVDG’s Opposition (“Blaha Defendants’ Reply”).

42. On April 23, 2019, the BANA Defendants filed a Joinder to the Blaha Defendants Reply.

43. On April 24, 2019, this Court heard oral argument on the Blaha Defendants' Motion for Summary Judgment.

## STANDARD OF REVIEW

1. A motion for continuance under NRCP 56(d) (formerly, NRCP 56(f)) is appropriate only when the movant expresses how further discovery will lead to the creation of a genuine issue of material fact. Francis v. Wynn Las Vegas, LLC, 127 Nev. Adv. Op. 60, 127 Nev. 657 (Nev. 2011)(quoting Aviation Ventures v. Joan Morris, Inc., 121 Nev. 113, 118, 110 P.3d 59, 69 (Nev. 2005)). If the movant has previously failed to diligently pursue discovery, it is not an abuse of discretion for the district court to deny the motion. Id. (upholding district court's denial of defendant's request for a continuance under former NRCP 56(f)).

2. NRCP 56(d) requires that the party opposing a motion for summary judgment and seeking a denial or continuance of the motion in order to conduct further discovery provide an affidavit or declaration giving the reasons why the party cannot present “facts essential to justify its opposition.” See NRCP 56(d); Choy v. Ameristar Casinos, Inc., 127 Nev. 870, 872, 265 P.3d 698, 700 (Nev. 2011)(applying the similar language of former NRCP 56(f) to uphold the district court’s denial of a request for a continuance).

3. NRCP 56(c) provides that summary judgment shall be granted when, after a review of the record viewed in the light most favorable to the non-moving party, there are no remaining genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). “A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party.” Posadas v. City of Reno, 109 Nev. 448, 452, 851 P.2d 438, 441 (1993).

4. In determining whether summary judgment is appropriate, the Court applies a burden-shifting analysis. Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada, 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007). If – as in the present case – “the nonmoving party will bear the burden of persuasion at trial, the party moving for summary judgment may satisfy the burden of production by either (1) submitting evidence that negates an essential element of the nonmoving party’s claim, or (2) pointing out that there is an absence of evidence to support the nonmoving party’s case.” Id. (internal quotations omitted).

5. If the moving party satisfies its burden, the burden then shifts to the nonmoving party who “must transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact.” Id. The evidence submitted by the nonmoving party must be relevant and admissible, and he or she “is not entitled to build a case on the gossamer threads of whimsy, speculation and conjecture.” Collins v. Union Fed. Sav. & Loan Ass’n, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983) (internal quotations omitted).

III.

**CONCLUSIONS OF LAW**

1  
2  
3 1. LVDG's Complaint seeks to set aside the NRS Chapter 107 Deed of Trust  
4 Foreclosure Sale that took place on August 29, 2011, and all subsequent transfers of the Property  
5 – including Blaha's September 30, 2011 purchase of the Property.

6 2. LVDG's Complaint asserts five causes of action against the Blaha Defendants: (1)  
7 Quiet Title; (2) Equitable Mortgage; (3) Slander of Title; (4) Equitable Relief – Wrongful  
8 Foreclosure; and (5) Equitable Relief – Rescission.

9 3. LVDG's slander of title claim was previously dismissed as barred by the two-year  
10 statute of limitation imposed by NRS 11.190(4)(c) as LVDG waited 1,298 days from the Deed of  
11 Trust Foreclosure Sale to file its Complaint. See Las Vegas Development Group, LLC v. Blaha,  
12 134 Nev. Adv. Op. 33, 416, P.3d 233 (Nev. 2018).

13 4. LVDG's Opposition consented to the dismissal of its claim for Equitable  
14 Mortgage. See LVDG Opposition, p.28, ll.10.

15 5. Each of LVDG's remaining causes of action are premised upon the allegation that  
16 the NRS Chapter 116 HOA Foreclosure Sale extinguished the Deed of Trust such that the NRS  
17 Chapter 107 Deed of Trust Foreclosure Sale and all subsequent transfers in the Property should  
18 be set aside by this Court.

19 6. LVDG's Motion to Continue Pursuant to NRCP 56(d) is denied due to the fact  
20 that the deposition of the 30(b)(6) designee for ACS had been taken previously with the  
21 participation of LVDG's counsel and that the HOA filed an Opposition conceding that Jessup  
22 controls this case.

23 7. On March 7, 2019, the Nevada Supreme Court issued its decision in Bank of  
24 America v. Thomas Jessup, LLC Series VII, 135 Nev. Adv. Op. 7, \_\_\_\_ P.3d. \_\_\_\_ (Mar. 7, 2019)  
25 ("Jessup"). Even if this Court does not completely agree with Nevada Supreme Court's  
26 reasoning in Jessup, Jessup is binding precedent and this Court is not permitted to ignore binding  
27 precedent.  
28

1           8.       The exact same communications that were analyzed by the Nevada Supreme  
2 Court in Jessup with respect to BAC's attempted tender of the superpriority lien and ACS's  
3 rejection of BAC's attempted tender of the superpriority lien were exchanged in this case.

4           9.       Here, like in Jessup, counsel for BAC Home Loans Servicing sent correspondence  
5 to Absolute Collection Services, LLC ("ACS") in response to the Notice of Default and Election  
6 to Sell Under Notice of Delinquent Assessment Lien.

7           10.      The correspondence requested that ACS identify the superpriority lien amount so  
8 that BAC could "fully discharge its obligations to the HOA per NRS 116.3102", confirming that  
9 BAC "hereby offers to pay that sum upon presentation of adequate proof of the same by the  
10 HOA."

11          11.      ACS responded to the September 16, 2010 correspondence by using the same  
12 form letter that was considered by the Nevada Supreme Court in Jessup.

13          12.      As in Jessup, the ACS correspondence stated: "I am making you aware that it is  
14 our view that without the action of foreclosure [by the Bank], a 9 month Statement of Account is  
15 not valid. . . I respectfully request that you submit the Trustees Deed Upon Sale showing your  
16 client's possession of the property and the date that it occurred. At that time, we will provide a 9  
17 month super priority lien Statement of Account."

18          13.      In Jessup, the Nevada Supreme Court interpreted this exact language and held:  
19 "Although ACS's fax did not explicitly state that it would reject a superpriority tender, we  
20 believe this is the only reasonable construction of the fax."

21          14.      In Jessup, the Court held the "offer to pay the superpriority portion of the [HOA]  
22 lien, combined with ACS's rejection of that offer, operated to cure the default as to that portion  
23 of the lien such that the ensuing [HOA] foreclosure did not extinguish the first deed of trust."

24          15.      Here, the facts related to the attempted tender and rejection of the attempted  
25 tender are identical to the facts in Jessup, consequently, this Court is compelled to follow the  
26 Nevada Supreme Court's lead and must conclude that the ACS correspondence indicated an  
27 intention to reject the tender and, combined with BAC's counsel's offer to pay the superpriority  
28 portion of the lien, it operated "to cure the default as to that portion of the lien such that the

1 ensuing [HOA] foreclosure did not extinguish the first deed of trust.” Based upon this finding,  
2 the Court finds that no genuine issue of material fact remain and Summary Judgment is  
3 appropriate in favor of the Defendants.

4 16. With respect to LVDG’s argument that this Court need not consider Jessup  
5 because any claim that the HOA Foreclosure Sale did not extinguish the Deed of Trust is barred  
6 by the statute of limitations, this Court rejects this argument.

7 17. Here, the BANA Defendant’s claims and the other Defendants’ claims were  
8 asserted as defenses when LVDG filed its Complaint.

9 18. Title to the Property has been vested in the name of James Blaha since September  
10 30, 2011, and, for the last four years, the Blaha Defendants, the BANA Defendants and the EZ  
11 Defendants have been actively defending this action by asserting that the NRS Chapter 116 HOA  
12 Foreclosure Sale did not extinguish the Deed of Trust.

13 19. Whether the statute of limitations is four years, five years or some other time  
14 period, the Defendants in this case have the right to defend and assert as one of their defenses,  
15 that the Defendant is entitled to the property or that it has some interest in the property.

16 20. Consequently, this Court does not find that the Defendants in the case are  
17 precluded from asserting the defenses set forth in their pleadings.

18 21. With regard to the issue of equitable estoppel, the Court does not find that the  
19 evidence supports the claim that the Plaintiff’s claims are barred by this doctrine. This Court  
20 finds that the Plaintiff’s claims were timely filed, and that the Defendants have the right to  
21 defend against them, as they have asserted in this action.

22 **NOW THEREFORE:**

23 **SUMMARY JUDGMENT IS HEREBY ENTERED** in favor of the Defendants, James  
24 R. Blaha and Noble Home Loans, Inc., as well as the other Defendants, and against the Plaintiff.  
25 The Court concludes that the NRS Chapter 116 HOA Foreclosure Sale did not extinguish the  
26 bank’s Deed of Trust.

KOLESAR & LEATHAM  
400 South Rampart Boulevard, Suite 400  
Las Vegas, Nevada 89145  
Tel: (702) 362-7800 / Fax: (702) 362-9472


1 **IT IS HEREBY ORDERED THAT** title to the Property is quieted in the name of James  
2 R. Blaha, subject to the NHLS Deed of Trust and promissory note executed by James R. Blaha.

3 DATED this 20 day of May, 2019

4   
5 DISTRICT COURT JUDGE

6 Submitted by:

7 **KOLESAR & LEATHAM**

8 By   
9 AARON R. MAURICE, ESQ.  
10 Nevada Bar No. 006412  
11 BRITTANY WOOD, ESQ.  
12 Nevada Bar No. 007562  
13 400 South Rampart Boulevard, Suite 400  
14 Las Vegas, Nevada 89145  
15 Attorneys for Defendants JAMES R. BLAHA  
16 and NOBLE HOME LOANS, INC.  
17 formerly known as FCH FUNDING, INC.

18 Approved as to form:

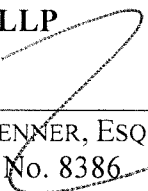
19 **ROGER P. CROTEAU & ASSOC., LTD.**

20 [Did not sign]

21 ROGER P. CROTEAU, ESQ.  
22 Nevada Bar No. 4958  
23 TIMOTHY E. RHODA, ESQ.  
24 Nevada Bar No. 7878  
25 9120 West Post Road, Suite 100  
26 Las Vegas, Nevada 89148  
27 *Attorney for Plaintiff*  
28 LAS VEGAS DEVELOPMENT GROUP

Approved as to form:

**AKERMAN, LLP**

  
DARREN BRENNER, ESQ.  
Nevada Bar No. 8386  
WILLIAM S. HABDAS, ESQ.  
Nevada Bar No. 13138  
1160 Town Center Drive, Suite 330  
Las Vegas, NV 89144  
*Attorney for Defendants*  
BANK OF AMERICA, N.A. and  
RECONTRUST COMPANY, N.A.

Approved as to form:

**LAW OFFICES OF KEVIN R. HANSEN**

Signed in counterpart

KEVIN R. HANSEN, ESQ.  
Nevada Bar No. 6336  
AMY WILSON, ESQ.  
Nevada Bar No. 13421  
5440 West Sahara Ave., Suite 206  
Las Vegas, Nevada 89146  
*Attorney for Defendants*  
EZ PROPERTIES, LLC & K&L  
BAXTER FAMILY LIMITED PARTNERSHIP

1 **IT IS HEREBY ORDERED THAT** title to the Property is quieted in the name of James  
2 R. Blaha, subject to the NHLS Deed of Trust and promissory note executed by James R. Blaha.

3 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

4 \_\_\_\_\_  
5 DISTRICT COURT JUDGE

6 Submitted by:  
7 **KOLESAR & LEATHAM**

8 By \_\_\_\_\_  
9 AARON R. MAURICE, ESQ.  
10 Nevada Bar No. 006412  
11 BRITTANY WOOD, ESQ.  
12 Nevada Bar No. 007562  
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14 Las Vegas, Nevada 89145  
15 Attorneys for Defendants JAMES R. BLAHA  
16 and NOBLE HOME LOANS, INC.  
17 formerly known as FCH FUNDING, INC.

18 Approved as to form:  
19 **ROGER P. CROTEAU & ASSOC., LTD.**

20 Approved as to form:  
21 **AKERMAN, LLP**

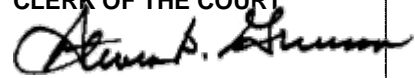
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29 *Attorney for Plaintiff*  
30 LAS VEGAS DEVELOPMENT GROUP

31 \_\_\_\_\_  
32 DARREN BRENNER, ESQ.  
33 Nevada Bar No. 8386  
34 WILLIAM S. HABDAS, ESQ.  
35 Nevada Bar No. 13138  
36 1160 Town Center Drive, Suite 330  
37 Las Vegas, NV 89144  
38 *Attorney for Defendants*  
39 BANK OF AMERICA, N.A. and  
40 RECONTRUST COMPANY, N.A.

41 Approved as to form:  
42 **LAW OFFICES OF KEVIN R. HANSEN**

43 \_\_\_\_\_  
44 KEVIN R. HANSEN, ESQ.  
45 Nevada Bar No. 6336  
46 AMY WILSON, ESQ.  
47 Nevada Bar No. 13421  
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49 Las Vegas, Nevada 89146  
50 *Attorney for Defendants*  
51 EZ PROPERTIES, LLC & K&L  
52 BAXTER FAMILY LIMITED PARTNERSHIP





1 **NEOJ**

AARON R. MAURICE, ESQ.

2 Nevada Bar No. 006412

BRITTANY WOOD, ESQ.

3 Nevada Bar No. 007562

**KOLESAR & LEATHAM**

4 400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

5 Telephone: (702) 362-7800

Facsimile: (702) 362-9472

6 E-Mail: amaurice@klnevada.com

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7 Attorneys for Defendants,

8 JAMES R. BLAHA and NOBLE HOME

LOANS, INC. formerly known as FCH

9 FUNDING, INC.

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 \* \* \*

13 LAS VEGAS DEVELOPMENT GROUP, LLC,  
14 a Nevada limited liability company,

15 Plaintiff,

16 vs.

17 JAMES R. BLAHA, an individual; BANK OF  
18 AMERICA, NA, a National Banking  
19 Association, as successor by merger to BAC  
20 HOME LOANS SERVICING, LP;  
21 RECONTRUST COMPANY NA, a Texas  
22 corporation; JOSE PEREZ, JR. an individual;  
23 EZ PROPERTIES, LLC, a Nevada limited  
24 liability company; K&L BAXTER FAMILY  
25 LIMITED PARTNERSHIP, a Nevada limited  
26 partnership; FCH FUNDING, INC., an  
27 unknown corporate entity; DOE individuals I  
28 through XX; and ROE CORPORATIONS I  
through XX,

Defendants.

ALL RELATED CLAIMS

CASE NO. A-15-715532-C

DEPT NO. XXX

**NOTICE OF ENTRY OF ORDER**

KOLESAR & LEATHAM

400 S. Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

TEL: (702) 362-7800 / FAX: (702) 362-9472

## KOLESAR &amp; LEATHAM

**400 S. Rampart Boulevard, Suite 400**

**Las Vegas, Nevada 89145**

**TEL: (702) 362-7800 / FAX: (702) 362-9472**

Please take notice that an Order was entered with the above court on the 24<sup>th</sup> day of May, 2019, a copy of which is attached hereto.

DATED this 24<sup>th</sup> day of May, 2019.

**KOLESAR & LEATHAM**

By

AARON R. MAURICE, ESQ.

Nevada Bar No. 006412

BRITTANY WOOD, ESQ.

Nevada Bar No. 007562

400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

Attorneys for Defendants,  
JAMES R. BLAHA and NOBLE HOME  
LOANS, INC. formerly known as FCH  
FUNDING, INC.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Kolesar & Leatham, and that on the 24<sup>th</sup> day of  
3 May, 2019, I caused to be served a true and correct copy of foregoing NOTICE OF ENTRY OF  
4 ORDER in the following manner:

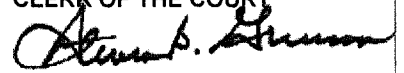
5 (ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-  
6 referenced document was electronically filed on the date hereof and served through the Notice of  
7 Electronic Filing automatically generated by that Court's facilities to those parties listed on the  
8 Court's Master Service List.

9  
10 

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An Employee of KOLESAR & LEATHAM

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KOLESAR & LEATHAM  
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1 **FFCL**  
AARON R. MAURICE, ESQ.  
2 Nevada Bar No. 006412  
BRITTANY WOOD, ESQ.  
3 Nevada Bar No. 007562  
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4 400 South Rampart Boulevard, Suite 400  
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bwood@klnevada.com

7  
8 Attorneys for Defendants  
JAMES R. BLAHA and NOBLE HOME  
9 LOANS, INC. formerly known as FCH  
FUNDING, INC.

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 \* \* \*

13 LAS VEGAS DEVELOPMENT GROUP, LLC,  
14 a Nevada limited liability company,

15 Plaintiff,

16 vs.

17 JAMES R. BLAHA, an individual; BANK OF  
AMERICA, NA, a National Banking  
18 Association, as successor by merger to BAC  
HOME LOANS SERVICING, LP;  
19 RECONTRUST COMPANY NA, a Texas  
corporation; JOSE PEREZ, JR. an individual;  
20 EZ PROPERTIES, LLC, a Nevada limited  
liability company; K&L BAXTER FAMILY  
21 LIMITED PARTNERSHIP, a Nevada limited  
partnership; FCH FUNDING, INC., an  
22 unknown corporate entity; DOE individuals I  
through XX; and ROE CORPORATIONS I  
through XX,

23 Defendants.

24 **ALL RELATED CLAIMS**  
25

CASE NO. A-15-715532-C

DEPT NO. XXX

**ORDER GRANTING JAMES R.  
BLAHA AND NOBLE HOME  
LOANS, INC.'S MOTION FOR  
SUMMARY JUDGMENT AND ALL  
JOINDERS THERETO**

26 James R. Blaha and Noble Home Loans, Inc.'s Motion for Summary Judgment and,  
27 Defendants Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP,  
28 and Recontrust Company, NA's (collectively "BANA Defendants") and Defendants EZ

1 Properties, LLC and K&L Baxter Limited Partnership's (collectively "EZ Defendants") Joinders  
2 thereto having come on for hearing on the 24<sup>th</sup> day of April 2019, James R. Blaha ("Blaha") and  
3 Noble Home Loans, Inc. ("NHLS") (and collectively the "Blaha Defendants") having appeared  
4 through their attorney of record, Aaron R. Maurice, of the law firm of Kolesar & Leatham;  
5 Plaintiff, Las Vegas Development Group, LLC ("LVDG"), having appeared through its attorney  
6 of record, Roger P. Croteau, of the law firm of Roger P. Croteau & Assoc., Ltd.; the BANA  
7 Defendants having appeared through their attorney of record, William S. Haddas, of the law firm  
8 of Akerman, LLP; and the EZ Defendants having appeared through their attorney of record,  
9 Kevin R. Hansen, of the Law Offices of Kevin R. Hansen; the Court having reviewed the papers  
10 and pleadings on file herein and having carefully considered the same; the Court having heard  
11 the oral arguments of counsel; the Court being fully advised in the premises, and good cause  
12 appearing therefore:

13 I.

14 **UNDISPUTED MATERIAL FACTS**

15 1. On March 28, 2007, a deed of trust ("Deed of Trust") was recorded securing a  
16 home loan in the amount of \$456,000 on property commonly described as 7639 Turquoise Stone  
17 Ct., Las Vegas, NV 89113; APN 176-10-213-042 ("Property"), showing Jose Perez Jr. as the  
18 borrower; Countrywide Bank, FSB ("Countrywide") as the lender; Recontrust Company, N.A.  
19 ("Recontrust") as the trustee; and Mortgage Electric Registration Systems, Inc. ("MERS") as the  
20 beneficiary of record, acting solely as nominee for Countrywide and its successors and assigns.

21 2. Three years later, on April 12, 2010, the Nevada Trails II Homeowners  
22 Association ("Nevada Trails") recorded a Notice of Delinquent Assessment Lien against the  
23 Property, asserting a delinquency in the amount of \$908. The Notice of Delinquent Assessment  
24 Lien did not identify the amount, if any, of an alleged superpriority lien.

25 3. On July 23, 2010, Nevada Trails recorded a Notice of Default and Election to Sell  
26 Under Notice of Delinquent Assessment Lien, asserting a delinquency in the amount of \$1,917.  
27 The Notice of Default did not identify the amount, if any, of an alleged superpriority lien.

28 4. On September 16, 2010, counsel for BAC sent correspondence to ACS in

1 response to the Notice of Default and Election to Sell Under Notice of Delinquent Assessment  
2 Lien. The correspondence acknowledged:

3 [A] portion of your HOA lien is arguably senior to BAC's first deed  
4 of trust, specifically the nine months of assessments for common  
5 expenses incurred before the date of your notice of delinquent  
6 assessment dated July 21, 2010. . . . It is unclear, based on the  
7 information known to date, what amount the nine months' of  
8 common assessments pre-dating the NOD actually are. That  
9 amount, whatever it is, is the amount BAC should be required to  
10 rightfully pay to fully discharge its obligations to the HOA per NRS  
11 116.3102 and my client hereby offers to pay that sum upon  
12 presentation of adequate proof of the same by the HOA.

13 Please let me know what the status of any HOA lien  
14 foreclosure sale is, if any. My client does not want these issues to  
15 be further exacerbated by the wrongful HOA sale that and it is my  
16 client's goal and intent to have the issues resolved as soon as  
17 possible. Please refrain from taking any further action to enforce the  
18 HOA lien until my client and the HOA have had an opportunity to  
19 speak to attempt to fully resolve all issues.

20 5. ACS responded to the September 16, 2010 correspondence, rejecting BAC's  
21 assertion that it was entitled to tender a nine-month priority payment before a foreclosure by  
22 BAC, stating, in relevant part:

23 [I]n conversations past, you had stated your client[']s position of  
24 paying for 9 months of assessments . . . all occurring before  
25 foreclosure by your client.

26 I am making you aware that it is our view that without the  
27 action of foreclosure [by the Bank], a 9 month Statement of  
28 Account is not valid. At this time, I respectfully request that you  
submit the Trustees Deed Upon Sale showing your client's  
possession of the property and the date that it occurred. At that  
time, we will provide a 9 month super priority lien Statement  
of Account.

As discussed, any Statement of Account from us will show  
the entire amount owed. We intend to proceed on the above-  
mentioned account up to and including foreclosure. All such  
notifications have been and will be sent to all interested parties.  
We recognize your client's position as the first mortgage  
company as the senior lien holder. Should you provide us with a  
recorded Notice of Default or Notice of Sale, we will hold our  
action so your client may proceed.

(last three emphasis added).

6. On October 27, 2010, Perez filed a Chapter 7 Bankruptcy as Case Number 10-  
30260-lbr.

1           7.       On October 28, 2010, in violation of the automatic stay, Nevada Trails recorded a  
2 Notice of Trustee's Sale, asserting a delinquency in the amount of \$2,989. The Notice of  
3 Trustee's Sale did not identify the amount, if any, of an alleged super-priority lien.

4           8.       On February 28, 2011, Nevada Trails recorded a second Notice of Trustee's Sale,  
5 asserting a delinquency in the amount of \$4,446. The Notice of Trustee's Sale did not identify  
6 the amount, if any, of an alleged super-priority lien.

7           9.       On April 12, 2011, LVDG purchased the Property at the HOA Foreclosure Sale  
8 for \$5,200.01.

9           10.      On April 14, 2011, a Corporation Assignment of Deed of Trust was recorded  
10 reflecting that the Deed of Trust had been assigned to BAC Home Loans Servicing, LP formerly  
11 known as Countrywide Home Loans Servicing LP.

12          11.      On April 14, 2011, the trustee of the Deed of Trust recorded a Notice of Default  
13 and Election to Sell Under Deed of Trust.

14          12.      On April 20, 2011, a Release of Lien was recorded, rescinding the Notice of  
15 Delinquent Assessment Lien recorded on April 12, 2010

16          13.      On August 9, 2011, a State of Nevada Foreclosure Mediation Program Certificate  
17 was recorded, authorizing the beneficiary of the Deed of Trust to proceed with the foreclosure.

18          14.      On August 9, 2011, a Notice of Trustee's Sale was recorded, noticing a sale of the  
19 Property for August 29, 2011.

20          15.      On August 29, 2011, the trustee of the Deed of Trust sold the Property at a public  
21 auction (the "Deed of Trust Foreclosure Sale"). On September 19, 2011, a Trustee's Deed upon  
22 Sale was recorded reflecting that EZ had purchased the Property at the Deed of Trust Foreclosure  
23 Sale for \$151,300.

24          16.      On September 30, 2011, Blaha purchased the Property from EZ for \$208,000.  
25 Three months later, Blaha obtained a loan in the amount of \$162,000 from NHLS which was  
26 secured by the Property. Blaha has been the record title holder of the Property since September  
27 30, 2011.

28          17.      During the five months in which title to the Property was vested in the name of

1 LVDG, LVDG spent no money improving the Property. Rather, LVDG only spent \$257  
2 maintaining the Property – paying one power bill and four HOA assessments. With regard to  
3 these expenses, LVDG testified as follows:

4 Q. It looks like there's one entry for NV Energy and that  
5 was on June 3rd, 2011. Do you see that?

6 A. Okay.

7 Q For \$32?

8 A. Right.

9 Q. Any understanding as to why there are no entries for  
10 water, sewer, any of the other normal and customary expenses that  
11 would go with property ownership?

12 A. No, not for sure. The – typically the electric was the  
13 first thing you needed to get in there if you were going to look at a  
14 property and keep the air conditioner on or whatever. I mean,  
15 that's the first bill we turned on is Nevada Energy, and then maybe  
16 water if we needed to. But not knowing what we did with this  
17 property, I can't tell you why we did – we didn't go – I mean, we  
18 may have looked at this property and it took too much work or too  
19 much money or in a foreclosure. I don't know.

20 Q. Right.

21 A. I don't know.

22 Q. But you don't see anything here reflecting that any  
23 property taxes were paid or sewer fees or garbage. Correct?

24 A. No.

25 Q. According to my math, it looks like \$257 total was  
26 spent by Las Vegas Development Group, other than legal fees, in  
27 connection with this property. Do you agree with that?

28 A. Yep. That looks right.

18. LVDG never purchased homeowner's insurance for the Property. See Exhibit 19,  
p.186, 20-22.

19. In contrast, during the time in which Blaha has owned the Property, Blaha has  
spent \$139,616, maintaining and improving the Property. Blaha has expended \$23,399 in  
property taxes and \$4,146 in HOA dues. The \$347,696 Mr. Blaha spent to purchase, improve



1 and maintain the Property is sixty-seven times the amount of money LVDG invested in the  
2 Property during the five-month period title was vested in LVDG in 2011.

3 20. In the 2010 to 2011 time-period, LVDG would frequently sell properties  
4 purchased at HOA foreclosure sales to lenders that asserted an interest in the property for double  
5 the amount LVDG had paid at the HOA foreclosure sale. During the 2010 to 2011 time-period,  
6 LVDG determined that the cost of establishing free and clear title to all of the properties  
7 purchased by LVDG at HOA foreclosure sales was too expensive (LVDG had purchased  
8 approximately 200 properties at HOA foreclosure sales). As such, LVDG elected to walk away  
9 from some of its investments rather than litigate with the secured lenders. Specifically, LVDG  
10 testified:

11 Well, at the early stage we really looked at the huge cost of  
12 litigation and didn't know where we stand. I mean, we felt we  
13 were right but we didn't know where the answer was going to be,  
14 and it was a big giant we were fighting and we weren't deciding  
15 which way we were going. What we tried at first – the first thing is  
16 let's see if we can get them to either stop or buy us out and move  
17 on, and the last thing was just let it go. I mean, at some point  
18 litigation costs got so expensive that we, at that stage, walked  
19 away from it.

20 21. With regard to the Property in this litigation, LVDG did not take any steps to try  
21 to enjoin BAC from foreclosing on the Deed of Trust. Similarly, prior to filing this action,  
22 LVDG took no action to attempt to set aside the Deed of Trust Foreclosure Sale. Moreover,  
23 LVDG took no steps to prevent EZ from encumbering or selling the Property following its  
24 purchase at the Deed of Trust Foreclosure Sale. Similarly, LVDG took no action to prevent  
25 Blaha from taking title to the Property. LVDG also took no action to prevent Blaha from  
26 obtaining financing secured by the Property.

27 22. After the Deed of Trust Foreclosure, LVDG stopped paying the HOA association  
28 fees. As to why LVDG stopped paying association fees, LVDG testified:

29 Q. Do you know why the Las Vegas Development  
30 Group stopped paying association fees in August of 2011 with  
31 respect to the property?

32 A. I assume because there is a disputed owner and the  
33 HOA takes the dues from the recorded owner, and the

recorder showed the recorded owner to be somebody different.  
I don't know if they even would have accepted it.

(emphasis added).

22. In 2011, LVDG was aware that there was a dispute with respect to the issue of whether an HOA foreclosure sale could extinguish a prior recorded deed of trust. For this reason, LVDG retained legal counsel to send correspondence to beneficiaries of deeds of trust secured by real property that LVDG purchased at HOA foreclosure sales. By 2012, LVDG was represented by legal counsel in Nevada retained to actively defend LVDG's title to real property purchased at HOA foreclosure sales. When asked to explain why LVDG waited until March 19, 2015, to take any action to challenge the Deed of Trust Foreclosure Sale, LVDG testified as follows:

Q. The question is: Why did Las Vegas Development Group wait more than three years after all of the events that it seeks to – or all the conveyances that it seeks to set aside to bring this lawsuit?

A. I don't know what to say. He's telling me not to answer, so...

Q. I don't think he's telling you not to answer this question.

MR. CROTEAU: Whatever. Answer it. It doesn't matter. None of this matters. Answer it.

A. We dealt with properties that we were in the process of buying or being foreclosed on. That's stuff that had already happened before we got attorneys involved. We were – we had our hands full taking care of that, and we came back to this knowing it was always here when we had more time with our attorneys.

23. Despite the fact that Blaha has been the record title holder of the Property since September 30, 2011, on March 19, 2015 – 1,298 days after the Deed of Trust Foreclosure Sale – LVDG filed a Complaint seeking to rescind the Deed of Trust Foreclosure Sale. The following day, LVDG recorded a Lis Pendens.

24. In its Complaint, LVDG claims that the Deed of Trust Foreclosure Sale was void because the HOA Foreclosure Sale extinguished the Deed of Trust. LVDG's Complaint offers

1 no explanation as to why LVDG took no steps to stop the Deed of Trust Foreclosure Sale or  
2 why, immediately thereafter, LVDG did not take steps to have the Deed of Trust Foreclosure  
3 Sale set aside.

4 25. On August 9, 2016, the Blaha Defendants moved for summary judgment (“Initial  
5 Motion for Summary Judgment”). The Blaha Defendants’ Initial Motion for Summary Judgment  
6 argued, in part, that LVDG’s claims were barred by the statute of limitations in NRS 107.080(5)-  
7 (6) because LVDG failed to bring an action challenging the Deed of Trust Foreclosure within  
8 120 days of receiving actual notice of the Deed of Trust Foreclosure. The Blaha Defendants’  
9 Initial Motion for Summary Judgment also raised arguments regarding the doctrine of laches,  
10 equitable estoppel and the fact that LVDG’s equitable mortgage claim failed as a matter of law.  
11 The Blaha Defendants’ Motion for Summary Judgment was joined by the other Defendants in  
12 this case.

13 26. This Court granted the Blaha Defendants’ Initial Motion for Summary Judgment,  
14 concluding that LVDG’s claims were barred by NRS 107.080(5)-(6). However, this Court did  
15 not reach the Blaha Defendants’ equitable arguments, deeming them “moot” based on this  
16 Court’s conclusion that LVDG’s claims were barred by the statute of limitations. On December  
17 1, 2016, after this Court denied LVDG’s Motion for Reconsideration, LVDG filed a Notice of  
18 Appeal.

19 27. On May 3, 2018, the Nevada Supreme Court issued an order affirming in part,  
20 reversing in party and remanding. See Las Vegas Development Group, LLC v. Blaha, 134 Nev.  
21 Adv. Op. 33, 416, P.3d 233 (Nev. 2018). The Court affirmed this Court’s dismissal of LVDG’s  
22 slander of title claim; however, the Court concluded that the time limitations imposed by NRS  
23 107.080(5)-(6) do not apply to this case because the action challenges the authority to conduct  
24 the Deed of Trust Foreclosure Sale and not the manner in which the Deed of Trust Foreclosure  
25 Sale was conducted. Because this Court had determined that the Blaha Defendants’ equitable  
26 arguments were moot, the Nevada Supreme Court did not review the equitable arguments,  
27 instead remanding the case to this Court for further consideration.

28 28. On June 13, 2018, the Nevada Supreme Court issued its Remittitur to this Court.

1           29.     On September 11, 2018, this Court entered a Stipulated Scheduling Order, setting  
2 the close of discovery for April 30, 2019.

3           30.     On September 25, 2018, the Blaha Defendants took the deposition of the 30(b)(6)  
4 designee for ACS. Counsel for LVDG was present at the deposition and asked questions of the  
5 witness.

6           31.     On March 18, 2018, the Blaha Defendants served their Fifth Supplemental  
7 Disclosure of Witnesses and Documents.

8           32.     On March 19, 2019, the Blaha Defendants once again moved for summary  
9 judgment ("Blaha Defendants' Motion for Summary Judgment"). The Blaha Defendants'  
10 Motion for Summary Judgment argued, that pursuant to the Nevada Supreme Court's decision in  
11 Bank of America v. Thomas Jessup, LLC Series VII, 135 Nev. Adv. Op. 7, \_\_\_ P.3d. \_\_\_ (Mar.  
12 7, 2019), the NRS Chapter 116 HOA Foreclosure Sale did not extinguish BAC's first Deed of  
13 Trust. As a result, BAC's NRS Chapter 107 foreclosure of its Deed of Trust terminated any  
14 interest LVDG acquired as a result of its bid at the NRS Chapter 116 HOA Foreclosure Sale.  
15 The Blaha Defendants' Motion for Summary Judgment also argued that LVDG's claims are  
16 barred by the doctrine of laches and the doctrine of equitable estoppel.

17           33.     On March 20, 2019, the EZ Defendants filed a Joinder to the Blaha Defendants'  
18 Motion for Summary Judgment.

19           34.     On March 25, 2019, the BANA Defendants filed a Joinder to the Blaha  
20 Defendants' Motion for Summary Judgment.

21           35.     On March 25, 2019, the HOA filed a Limited Opposition to the Blaha  
22 Defendants' Motion for Summary Judgment ("HOA Opposition"). The HOA Opposition  
23 conceded that Jessup controls this case and acknowledged that the Deed of Trust survived the  
24 HOA Foreclosure Sale such that title to the Property should be quieted in favor of the Blaha  
25 Defendants.

26           36.     During the four years in which this action was pending, LVDG did not notice a  
27 single deposition or propound any written discovery requests on any party to this action or on  
28 any third-parties who may have information relevant to the case.

38. On April 5, 2019, this Court entered its Order of Dismissal of BANA's claims against the HOA and ACS, without prejudice, pursuant to the stipulation of the parties.

39. On April 17, 2019, this Court heard argument on LVDG's Motion to Continue Pursuant to NRC 56(d). This Court issued an oral order denying the Motion. This Court did, however, grant LVDG leave to submit a late-filed opposition prior to the April 24, 2019 hearing on the Blaha Defendants' Motion for Summary Judgment. In addition, the Court granted the Blaha Defendants leave to submit a late-filed Reply following service of LVDG's Opposition.

40. On April 19, 2019, LVDG filed an Opposition to the Blaha Defendants' Motion for Summary Judgment ("LVDG's Opposition").

41. On April 22, 2019, the Blaha Defendants filed their Reply to LVDG's Opposition ("Blaha Defendants' Reply").

42. On April 23, 2019, the BANA Defendants filed a Joinder to the Blaha Defendants Reply.

43. On April 24, 2019, this Court heard oral argument on the Blaha Defendants' Motion for Summary Judgment.

## II.

## STANDARD OF REVIEW

1. A motion for continuance under NRCP 56(d) (formerly, NRCP 56(f)) is appropriate only when the movant expresses how further discovery will lead to the creation of a genuine issue of material fact. Francis v. Wynn Las Vegas, LLC, 127 Nev. Adv. Op. 60, 127 Nev. 657 (Nev. 2011)(quoting Aviation Ventures v. Joan Morris, Inc., 121 Nev. 113, 118, 110 P.3d 59, 69 (Nev. 2005)). If the movant has previously failed to diligently pursue discovery, it is not an abuse of discretion for the district court to deny the motion. Id. (upholding district court's denial of defendant's request for a continuance under former NRCP 56(f)).

2. NRCP 56(d) requires that the party opposing a motion for summary judgment and seeking a denial or continuance of the motion in order to conduct further discovery provide an affidavit or declaration giving the reasons why the party cannot present “facts essential to justify its opposition.” See NRCP 56(d); Choy v. Ameristar Casinos, Inc., 127 Nev. 870, 872, 265 P.3d 698, 700 (Nev. 2011)(applying the similar language of former NRCP 56(f) to uphold the district court’s denial of a request for a continuance).

3. NRCP 56(c) provides that summary judgment shall be granted when, after a review of the record viewed in the light most favorable to the non-moving party, there are no remaining genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). “A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party.” Posadas v. City of Reno, 109 Nev. 448, 452, 851 P.2d 438, 441 (1993).

4. In determining whether summary judgment is appropriate, the Court applies a burden-shifting analysis. Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada, 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007). If – as in the present case – “the nonmoving party will bear the burden of persuasion at trial, the party moving for summary judgment may satisfy the burden of production by either (1) submitting evidence that negates an essential element of the nonmoving party’s claim, or (2) pointing out that there is an absence of evidence to support the nonmoving party’s case.” Id. (internal quotations omitted).

5. If the moving party satisfies its burden, the burden then shifts to the nonmoving party who “must transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact.” Id. The evidence submitted by the nonmoving party must be relevant and admissible, and he or she “is not entitled to build a case on the gossamer threads of whimsy, speculation and conjecture.” Collins v. Union Fed. Sav. & Loan Ass’n, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983) (internal quotations omitted).

III.

**CONCLUSIONS OF LAW**

1  
2  
3 1. LVDG's Complaint seeks to set aside the NRS Chapter 107 Deed of Trust  
4 Foreclosure Sale that took place on August 29, 2011, and all subsequent transfers of the Property  
5 – including Blaha's September 30, 2011 purchase of the Property.

6 2. LVDG's Complaint asserts five causes of action against the Blaha Defendants: (1)  
7 Quiet Title; (2) Equitable Mortgage; (3) Slander of Title; (4) Equitable Relief – Wrongful  
8 Foreclosure; and (5) Equitable Relief – Rescission.

9 3. LVDG's slander of title claim was previously dismissed as barred by the two-year  
10 statute of limitation imposed by NRS 11.190(4)(c) as LVDG waited 1,298 days from the Deed of  
11 Trust Foreclosure Sale to file its Complaint. See Las Vegas Development Group, LLC v. Blaha,  
12 134 Nev. Adv. Op. 33, 416, P.3d 233 (Nev. 2018).

13 4. LVDG's Opposition consented to the dismissal of its claim for Equitable  
14 Mortgage. See LVDG Opposition, p.28, ll.10.

15 5. Each of LVDG's remaining causes of action are premised upon the allegation that  
16 the NRS Chapter 116 HOA Foreclosure Sale extinguished the Deed of Trust such that the NRS  
17 Chapter 107 Deed of Trust Foreclosure Sale and all subsequent transfers in the Property should  
18 be set aside by this Court.

19 6. LVDG's Motion to Continue Pursuant to NRCP 56(d) is denied due to the fact  
20 that the deposition of the 30(b)(6) designee for ACS had been taken previously with the  
21 participation of LVDG's counsel and that the HOA filed an Opposition conceding that Jessup  
22 controls this case.

23 7. On March 7, 2019, the Nevada Supreme Court issued its decision in Bank of  
24 America v. Thomas Jessup, LLC Series VII, 135 Nev. Adv. Op. 7, \_\_\_ P.3d. \_\_\_ (Mar. 7, 2019)  
25 ("Jessup"). Even if this Court does not completely agree with Nevada Supreme Court's  
26 reasoning in Jessup, Jessup is binding precedent and this Court is not permitted to ignore binding  
27 precedent.  
28

8. The exact same communications that were analyzed by the Nevada Supreme Court in Jessup with respect to BAC's attempted tender of the superpriority lien and ACS's rejection of BAC's attempted tender of the superpriority lien were exchanged in this case.

9. Here, like in Jessup, counsel for BAC Home Loans Servicing sent correspondence to Absolute Collection Services, LLC ("ACS") in response to the Notice of Default and Election to Sell Under Notice of Delinquent Assessment Lien.

10. The correspondence requested that ACS identify the superpriority lien amount so that BAC could "fully discharge its obligations to the HOA per NRS 116.3102", confirming that BAC "hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA."

11. ACS responded to the September 16, 2010 correspondence by using the same form letter that was considered by the Nevada Supreme Court in Jessup.

12. As in Jessup, the ACS correspondence stated: "I am making you aware that it is our view that without the action of foreclosure [by the Bank], a 9 month Statement of Account is not valid. . . I respectfully request that you submit the Trustees Deed Upon Sale showing your client's possession of the property and the date that it occurred. At that time, we will provide a 9 month super priority lien Statement of Account."

13. In Jessup, the Nevada Supreme Court interpreted this exact language and held: "Although ACS's fax did not explicitly state that it would reject a superpriority tender, we believe this is the only reasonable construction of the fax."

14. In Jessup, the Court held the "offer to pay the superpriority portion of the [HOA] lien, combined with ACS's rejection of that offer, operated to cure the default as to that portion of the lien such that the ensuing [HOA] foreclosure did not extinguish the first deed of trust."

15. Here, the facts related to the attempted tender and rejection of the attempted tender are identical to the facts in Jessup, consequently, this Court is compelled to follow the Nevada Supreme Court's lead and must conclude that the ACS correspondence indicated an intention to reject the tender and, combined with BAC's counsel's offer to pay the superpriority portion of the lien, it operated "to cure the default as to that portion of the lien such that the



1 ensuing [HOA] foreclosure did not extinguish the first deed of trust.” Based upon this finding,  
2 the Court finds that no genuine issue of material fact remain and Summary Judgment is  
3 appropriate in favor of the Defendants.

4 16. With respect to LVDG’s argument that this Court need not consider Jessup  
5 because any claim that the HOA Foreclosure Sale did not extinguish the Deed of Trust is barred  
6 by the statute of limitations, this Court rejects this argument.

7 17. Here, the BANA Defendant’s claims and the other Defendants’ claims were  
8 asserted as defenses when LVDG filed its Complaint.

9 18. Title to the Property has been vested in the name of James Blaha since September  
10 30, 2011, and, for the last four years, the Blaha Defendants, the BANA Defendants and the EZ  
11 Defendants have been actively defending this action by asserting that the NRS Chapter 116 HOA  
12 Foreclosure Sale did not extinguish the Deed of Trust.

13 19. Whether the statute of limitations is four years, five years or some other time  
14 period, the Defendants in this case have the right to defend and assert as one of their defenses,  
15 that the Defendant is entitled to the property or that it has some interest in the property.

16 20. Consequently, this Court does not find that the Defendants in the case are  
17 precluded from asserting the defenses set forth in their pleadings.

18 21. With regard to the issue of equitable estoppel, the Court does not find that the  
19 evidence supports the claim that the Plaintiff’s claims are barred by this doctrine. This Court  
20 finds that the Plaintiff’s claims were timely filed, and that the Defendants have the right to  
21 defend against them, as they have asserted in this action.

22 **NOW THEREFORE:**

23 **SUMMARY JUDGMENT IS HEREBY ENTERED** in favor of the Defendants, James  
24 R. Blaha and Noble Home Loans, Inc., as well as the other Defendants, and against the Plaintiff.  
25 The Court concludes that the NRS Chapter 116 HOA Foreclosure Sale did not extinguish the  
26 bank’s Deed of Trust.

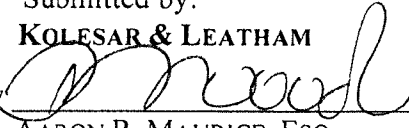
KOLESAR & LEATHAM  
400 South Rampart Boulevard, Suite 400  
Las Vegas, Nevada 89145  
Tel: (702) 362-7800 / Fax: (702) 362-9472

1 IT IS HEREBY ORDERED THAT title to the Property is quieted in the name of James  
2 R. Blaha, subject to the NHLS Deed of Trust and promissory note executed by James R. Blaha.

3 DATED this 20 day of May, 2019

4   
5 DISTRICT COURT JUDGE

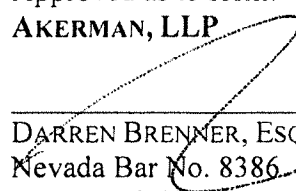
6 Submitted by:  
7 **KOLESAR & LEATHAM**

8 By   
9 AARON R. MAURICE, ESQ.  
10 Nevada Bar No. 006412  
11 BRITTANY WOOD, ESQ.  
12 Nevada Bar No. 007562  
13 400 South Rampart Boulevard, Suite 400  
14 Las Vegas, Nevada 89145  
15 Attorneys for Defendants JAMES R. BLAHA  
16 and NOBLE HOME LOANS, INC.  
17 formerly known as FCH FUNDING, INC.

18 Approved as to form:  
19 **ROGER P. CROTEAU & ASSOC., LTD.**

20 [ Did not Sign ]  
21 ROGER P. CROTEAU, ESQ.  
22 Nevada Bar No. 4958  
23 TIMOTHY E. RHODA, ESQ.  
24 Nevada Bar No. 7878  
25 9120 West Post Road, Suite 100  
26 Las Vegas, Nevada 89148  
27 *Attorney for Plaintiff*  
28 LAS VEGAS DEVELOPMENT GROUP

Approved as to form:  
**AKERMAN, LLP**

  
DARREN BRENNER, ESQ.  
Nevada Bar No. 8386  
WILLIAM S. HABDAS, ESQ.  
Nevada Bar No. 13138  
1160 Town Center Drive, Suite 330  
Las Vegas, NV 89144  
*Attorney for Defendants*  
BANK OF AMERICA, N.A. and  
RECONTRUST COMPANY, N.A.

Approved as to form:  
**LAW OFFICES OF KEVIN R. HANSEN**

23 Signed in counterpart  
24 KEVIN R. HANSEN, ESQ.  
25 Nevada Bar No. 6336  
26 AMY WILSON, ESQ.  
27 Nevada Bar No. 13421  
28 5440 West Sahara Ave., Suite 206  
Las Vegas, Nevada 89146  
*Attorney for Defendants*  
EZ PROPERTIES, LLC & K&L  
BAXTER FAMILY LIMITED PARTNERSHIP

KOLESAR & LEATHAM  
400 South Rampart Boulevard, Suite 400  
Las Vegas, Nevada 89145  
Tel: (702) 362-7800 / Fax: (702) 362-9472

1 **IT IS HEREBY ORDERED THAT** title to the Property is quieted in the name of James  
2 R. Blaha, subject to the NHLs Deed of Trust and promissory note executed by James R. Blaha.

3 DATED this \_\_\_\_ day of \_\_\_\_\_, 2019.

4  
5 \_\_\_\_\_  
6 DISTRICT COURT JUDGE

7 Submitted by:  
8 **KOLESAR & LEATHAM**

9 By \_\_\_\_\_  
10 AARON R. MAURICE, ESQ.  
11 Nevada Bar No. 006412  
12 BRITTANY WOOD, ESQ.  
13 Nevada Bar No. 007562  
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15 Las Vegas, Nevada 89145  
16 Attorneys for Defendants JAMES R. BLAHA  
17 and NOBLE HOME LOANS, INC.  
18 formerly known as FCH FUNDING, INC.

19 Approved as to form:  
20 **ROGER P. CROTEAU & ASSOC., LTD.**

21 Approved as to form:  
22 **AKERMAN, LLP**

23 \_\_\_\_\_  
24 ROGER P. CROTEAU, ESQ.  
25 Nevada Bar No. 4958  
26 TIMOTHY E. RHODA, ESQ.  
27 Nevada Bar No. 7878  
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*Attorney for Plaintiff*  
LAS VEGAS DEVELOPMENT GROUP

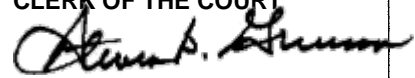
\_\_\_\_\_

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Nevada Bar No. 8386  
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1160 Town Center Drive, Suite 330  
Las Vegas, NV 89144  
*Attorney for Defendants*  
BANK OF AMERICA, N.A. and  
RECONTRUST COMPANY, N.A.

Approved as to form:  
**LAW OFFICES OF KEVIN R. HANSEN**

\_\_\_\_\_ 5/1/2017

KEVIN R. HANSEN, ESQ.  
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AMY WILSON, ESQ.  
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*Attorney for Defendants*  
EZ PROPERTIES, LLC & K&L  
BAXTER FAMILY LIMITED PARTNERSHIP



1 **NEOJ**

AARON R. MAURICE, ESQ.

2 Nevada Bar No. 006412

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bwood@klnevada.com

7 Attorneys for Defendants,

8 JAMES R. BLAHA and NOBLE HOME

LOANS, INC. formerly known as FCH

9 FUNDING, INC.

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 \* \* \*

13 LAS VEGAS DEVELOPMENT GROUP, LLC,  
14 a Nevada limited liability company,

15 Plaintiff,

16 vs.

17 JAMES R. BLAHA, an individual; BANK OF  
18 AMERICA, NA, a National Banking  
19 Association, as successor by merger to BAC  
20 HOME LOANS SERVICING, LP;  
21 RECONTRUST COMPANY NA, a Texas  
22 corporation; JOSE PEREZ, JR. an individual;  
23 EZ PROPERTIES, LLC, a Nevada limited  
24 liability company; K&L BAXTER FAMILY  
25 LIMITED PARTNERSHIP, a Nevada limited  
26 partnership; FCH FUNDING, INC., an  
27 unknown corporate entity; DOE individuals I  
28 through XX; and ROE CORPORATIONS I  
through XX,

Defendants.

ALL RELATED CLAIMS

CASE NO. A-15-715532-C

DEPT NO. XXX

**NOTICE OF ENTRY OF ORDER**

KOLESAR & LEATHAM  
400 S. Rampart Boulevard, Suite 400  
Las Vegas, Nevada 89145  
TEL: (702) 362-7800 / FAX: (702) 362-9472

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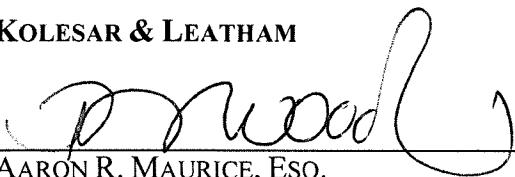
**NOTICE OF ENTRY OF ORDER**

Please take notice that an Order was entered with the above court on the 24<sup>th</sup> day of May, 2019, a copy of which is attached hereto.

DATED this 28<sup>th</sup> day of May, 2019.

**KOLESAR & LEATHAM**

By



AARON R. MAURICE, ESQ.

Nevada Bar No. 006412

BRITTANY WOOD, ESQ.

Nevada Bar No. 007562

400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

Attorneys for Defendants,  
JAMES R. BLAHA and NOBLE HOME  
LOANS, INC. formerly known as FCH  
FUNDING, INC.

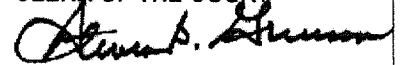
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(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by that Court's facilities to those parties listed on the Court's Master Service List.

Lennie Fraga  
An Employee of KOLESAR & LEATHAM

**KOLESAR & LEATHAM**  
400 S. Rampart Boulevard, Suite 400  
Las Vegas, Nevada 89145  
TEL: (702) 362-7800 / FAX: (702) 362-9472



1 **FFCL**

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7 Attorneys for Defendants

8 JAMES R. BLAHA and NOBLE HOME

LOANS, INC. formerly known as FCH

9 FUNDING, INC.

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 \* \* \*

13 LAS VEGAS DEVELOPMENT GROUP, LLC,  
14 a Nevada limited liability company,

15 Plaintiff,

16 vs.

17 JAMES R. BLAHA, an individual; BANK OF  
18 AMERICA, NA, a National Banking  
19 Association, as successor by merger to BAC  
20 HOME LOANS SERVICING, LP;  
21 RECONTRUST COMPANY NA, a Texas  
22 corporation; JOSE PEREZ, JR. an individual;  
23 EZ PROPERTIES, LLC, a Nevada limited  
24 liability company; K&L BAXTER FAMILY  
25 LIMITED PARTNERSHIP, a Nevada limited  
26 partnership; FCH FUNDING, INC., an  
27 unknown corporate entity; DOE individuals I  
28 through XX; and ROE CORPORATIONS I  
through XX,

Defendants.

**ALL RELATED CLAIMS**

CASE NO. A-15-715532-C

DEPT NO. XXX

**ORDER GRANTING JAMES R.  
BLAHA AND NOBLE HOME  
LOANS, INC.'S MOTION FOR  
SUMMARY JUDGMENT AND ALL  
JOINDERS THERETO**

James R. Blaha and Noble Home Loans, Inc.'s Motion for Summary Judgment and,  
Defendants Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP,  
and Recontrust Company, NA's (collectively "BANA Defendants") and Defendants EZ

1 Properties, LLC and K&L Baxter Limited Partnership's (collectively "EZ Defendants") Joinders  
2 thereto having come on for hearing on the 24<sup>th</sup> day of April 2019, James R. Blaha ("Blaha") and  
3 Noble Home Loans, Inc. ("NHLS") (and collectively the "Blaha Defendants") having appeared  
4 through their attorney of record, Aaron R. Maurice, of the law firm of Kolesar & Leatham;  
5 Plaintiff, Las Vegas Development Group, LLC ("LVDG"), having appeared through its attorney  
6 of record, Roger P. Croteau, of the law firm of Roger P. Croteau & Assoc., Ltd.; the BANA  
7 Defendants having appeared through their attorney of record, William S. Habdas, of the law firm  
8 of Akerman, LLP; and the EZ Defendants having appeared through their attorney of record,  
9 Kevin R. Hansen, of the Law Offices of Kevin R. Hansen; the Court having reviewed the papers  
10 and pleadings on file herein and having carefully considered the same; the Court having heard  
11 the oral arguments of counsel; the Court being fully advised in the premises, and good cause  
12 appearing therefore:

13 I.

14 **UNDISPUTED MATERIAL FACTS**

15 1. On March 28, 2007, a deed of trust ("Deed of Trust") was recorded securing a  
16 home loan in the amount of \$456,000 on property commonly described as 7639 Turquoise Stone  
17 Ct., Las Vegas, NV 89113; APN 176-10-213-042 ("Property"), showing Jose Perez Jr. as the  
18 borrower; Countrywide Bank, FSB ("Countrywide") as the lender; Recontrust Company, N.A.  
19 ("Recontrust") as the trustee; and Mortgage Electric Registration Systems, Inc. ("MERS") as the  
20 beneficiary of record, acting solely as nominee for Countrywide and its successors and assigns.

21 2. Three years later, on April 12, 2010, the Nevada Trails II Homeowners  
22 Association ("Nevada Trails") recorded a Notice of Delinquent Assessment Lien against the  
23 Property, asserting a delinquency in the amount of \$908. The Notice of Delinquent Assessment  
24 Lien did not identify the amount, if any, of an alleged superpriority lien.

25 3. On July 23, 2010, Nevada Trails recorded a Notice of Default and Election to Sell  
26 Under Notice of Delinquent Assessment Lien, asserting a delinquency in the amount of \$1,917.  
27 The Notice of Default did not identify the amount, if any, of an alleged superpriority lien.

28 4. On September 16, 2010, counsel for BAC sent correspondence to ACS in



1 response to the Notice of Default and Election to Sell Under Notice of Delinquent Assessment  
2 Lien. The correspondence acknowledged:

3 [A] portion of your HOA lien is arguably senior to BAC's first deed  
4 of trust, specifically the nine months of assessments for common  
5 expenses incurred before the date of your notice of delinquent  
6 assessment dated July 21, 2010. . . . It is unclear, based on the  
7 information known to date, what amount the nine months' of  
8 common assessments pre-dating the NOD actually are. That  
9 amount, whatever it is, is the amount BAC should be required to  
10 rightfully pay to fully discharge its obligations to the HOA per NRS  
11 116.3102 and my client hereby offers to pay that sum upon  
12 presentation of adequate proof of the same by the HOA.

13 Please let me know what the status of any HOA lien  
14 foreclosure sale is, if any. My client does not want these issues to  
15 be further exacerbated by the wrongful HOA sale that and it is my  
16 client's goal and intent to have the issues resolved as soon as  
17 possible. Please refrain from taking any further action to enforce the  
18 HOA lien until my client and the HOA have had an opportunity to  
19 speak to attempt to fully resolve all issues.

20 5. ACS responded to the September 16, 2010 correspondence, rejecting BAC's  
21 assertion that it was entitled to tender a nine-month priority payment before a foreclosure by  
22 BAC, stating, in relevant part:

23 [I]n conversations past, you had stated your client[']s position of  
24 paying for 9 months of assessments . . . all occurring before  
25 foreclosure by your client.

26 I am making you aware that it is our view that without the  
27 action of foreclosure [by the Bank], a 9 month Statement of  
28 Account is not valid. At this time, I respectfully request that you  
submit the Trustees Deed Upon Sale showing your client's  
possession of the property and the date that it occurred. At that  
time, we will provide a 9 month super priority lien Statement  
of Account.

As discussed, any Statement of Account from us will show  
the entire amount owed. We intend to proceed on the above-  
mentioned account up to and including foreclosure. All such  
notifications have been and will be sent to all interested parties.  
We recognize your client's position as the first mortgage  
company as the senior lien holder. Should you provide us with a  
recorded Notice of Default or Notice of Sale, we will hold our  
action so your client may proceed.

(last three emphasis added).

6. On October 27, 2010, Perez filed a Chapter 7 Bankruptcy as Case Number 10-  
30260-lbr.

7. On October 28, 2010, in violation of the automatic stay, Nevada Trails recorded a Notice of Trustee's Sale, asserting a delinquency in the amount of \$2,989. The Notice of Trustee's Sale did not identify the amount, if any, of an alleged super-priority lien.

8. On February 28, 2011, Nevada Trails recorded a second Notice of Trustee's Sale, asserting a delinquency in the amount of \$4,446. The Notice of Trustee's Sale did not identify the amount, if any, of an alleged super-priority lien.

9. On April 12, 2011, LVDG purchased the Property at the HOA Foreclosure Sale for \$5,200.01.

10. On April 14, 2011, a Corporation Assignment of Deed of Trust was recorded reflecting that the Deed of Trust had been assigned to BAC Home Loans Servicing, LP formerly known as Countrywide Home Loans Servicing LP.

11. On April 14, 2011, the trustee of the Deed of Trust recorded a Notice of Default and Election to Sell Under Deed of Trust.

12. On April 20, 2011, a Release of Lien was recorded, rescinding the Notice of Delinquent Assessment Lien recorded on April 12, 2010

13. On August 9, 2011, a State of Nevada Foreclosure Mediation Program Certificate was recorded, authorizing the beneficiary of the Deed of Trust to proceed with the foreclosure.

14. On August 9, 2011, a Notice of Trustee's Sale was recorded, noticing a sale of the Property for August 29, 2011.

15. On August 29, 2011, the trustee of the Deed of Trust sold the Property at a public auction (the "Deed of Trust Foreclosure Sale"). On September 19, 2011, a Trustee's Deed upon Sale was recorded reflecting that EZ had purchased the Property at the Deed of Trust Foreclosure Sale for \$151,300.

16. On September 30, 2011, Blaha purchased the Property from EZ for \$208,000. Three months later, Blaha obtained a loan in the amount of \$162,000 from NHLS which was secured by the Property. Blaha has been the record title holder of the Property since September 30, 2011.

17. During the five months in which title to the Property was vested in the name of

1 LVDG, LVDG spent no money improving the Property. Rather, LVDG only spent \$257  
2 maintaining the Property – paying one power bill and four HOA assessments. With regard to  
3 these expenses, LVDG testified as follows:

4 Q. It looks like there's one entry for NV Energy and that  
5 was on June 3rd, 2011. Do you see that?

6 A. Okay.

7 Q For \$32?

8 A. Right.

9 Q. Any understanding as to why there are no entries for  
10 water, sewer, any of the other normal and customary expenses that  
11 would go with property ownership?

12 A. No, not for sure. The – typically the electric was the  
13 first thing you needed to get in there if you were going to look at a  
14 property and keep the air conditioner on or whatever. I mean,  
15 that's the first bill we turned on is Nevada Energy, and then maybe  
16 water if we needed to. But not knowing what we did with this  
17 property, I can't tell you why we did – we didn't go – I mean, we  
18 may have looked at this property and it took too much work or too  
19 much money or in a foreclosure. I don't know.

20 Q. Right.

21 A. I don't know.

22 Q. But you don't see anything here reflecting that any  
23 property taxes were paid or sewer fees or garbage. Correct?

24 A. No.

25 Q. According to my math, it looks like \$257 total was  
26 spent by Las Vegas Development Group, other than legal fees, in  
27 connection with this property. Do you agree with that?

28 A. Yep. That looks right.

18. LVDG never purchased homeowner's insurance for the Property. See Exhibit 19,  
p.186, 20-22.

19. In contrast, during the time in which Blaha has owned the Property, Blaha has  
spent \$139,616, maintaining and improving the Property. Blaha has expended \$23,399 in  
property taxes and \$4,146 in HOA dues. The \$347,696 Mr. Blaha spent to purchase, improve

1 and maintain the Property is sixty-seven times the amount of money LVDG invested in the  
2 Property during the five-month period title was vested in LVDG in 2011.

3 20. In the 2010 to 2011 time-period, LVDG would frequently sell properties  
4 purchased at HOA foreclosure sales to lenders that asserted an interest in the property for double  
5 the amount LVDG had paid at the HOA foreclosure sale. During the 2010 to 2011 time-period,  
6 LVDG determined that the cost of establishing free and clear title to all of the properties  
7 purchased by LVDG at HOA foreclosure sales was too expensive (LVDG had purchased  
8 approximately 200 properties at HOA foreclosure sales). As such, LVDG elected to walk away  
9 from some of its investments rather than litigate with the secured lenders. Specifically, LVDG  
10 testified:

11 Well, at the early stage we really looked at the huge cost of  
12 litigation and didn't know where we stand. I mean, we felt we  
13 were right but we didn't know where the answer was going to be,  
14 and it was a big giant we were fighting and we weren't deciding  
15 which way we were going. What we tried at first – the first thing is  
16 let's see if we can get them to either stop or buy us out and move  
17 on, and the last thing was just let it go. I mean, at some point  
18 litigation costs got so expensive that we, at that stage, walked  
19 away from it.

20 21. With regard to the Property in this litigation, LVDG did not take any steps to try  
21 to enjoin BAC from foreclosing on the Deed of Trust. Similarly, prior to filing this action,  
22 LVDG took no action to attempt to set aside the Deed of Trust Foreclosure Sale. Moreover,  
23 LVDG took no steps to prevent EZ from encumbering or selling the Property following its  
24 purchase at the Deed of Trust Foreclosure Sale. Similarly, LVDG took no action to prevent  
25 Blaha from taking title to the Property. LVDG also took no action to prevent Blaha from  
26 obtaining financing secured by the Property.

27 22. After the Deed of Trust Foreclosure, LVDG stopped paying the HOA association  
28 fees. As to why LVDG stopped paying association fees, LVDG testified:

29 Q. Do you know why the Las Vegas Development  
30 Group stopped paying association fees in August of 2011 with  
31 respect to the property?

32 A. I assume because there is a disputed owner and the  
33 HOA takes the dues from the recorded owner, and the

1 recorder showed the recorded owner to be somebody different.  
2 I don't know if they even would have accepted it.

3 (emphasis added).

4 22. In 2011, LVDG was aware that there was a dispute with respect to the issue of  
5 whether an HOA foreclosure sale could extinguish a prior recorded deed of trust. For this  
6 reason, LVDG retained legal counsel to send correspondence to beneficiaries of deeds of trust  
7 secured by real property that LVDG purchased at HOA foreclosure sales. By 2012, LVDG was  
8 represented by legal counsel in Nevada retained to actively defend LVDG's title to real property  
9 purchased at HOA foreclosure sales. When asked to explain why LVDG waited until March 19,  
10 2015, to take any action to challenge the Deed of Trust Foreclosure Sale, LVDG testified as  
11 follows:

12 Q. The question is: Why did Las Vegas Development  
13 Group wait more than three years after all of the events that it  
14 seeks to – or all the conveyances that it seeks to set aside to bring  
15 this lawsuit?

16 A. I don't know what to say. He's telling me not to  
17 answer, so...

18 Q. I don't think he's telling you not to answer this  
19 question.

20 MR. CROTEAU: Whatever. Answer it. It doesn't matter.  
21 None of this matters. Answer it.

22 A. We dealt with properties that we were in the process of  
23 buying or being foreclosed on. That's stuff that had already  
24 happened before we got attorneys involved. We were – we had  
25 our hands full taking care of that, and we came back to this  
26 knowing it was always here when we had more time with our  
27 attorneys.

28 23. Despite the fact that Blaha has been the record title holder of the Property since  
September 30, 2011, on March 19, 2015 – 1,298 days after the Deed of Trust Foreclosure Sale –  
LVDG filed a Complaint seeking to rescind the Deed of Trust Foreclosure Sale. The following  
day, LVDG recorded a Lis Pendens.

24 24. In its Complaint, LVDG claims that the Deed of Trust Foreclosure Sale was void  
25 because the HOA Foreclosure Sale extinguished the Deed of Trust. LVDG's Complaint offers

1 no explanation as to why LVDG took no steps to stop the Deed of Trust Foreclosure Sale or  
2 why, immediately thereafter, LVDG did not take steps to have the Deed of Trust Foreclosure  
3 Sale set aside.

4 25. On August 9, 2016, the Blaha Defendants moved for summary judgment ("Initial  
5 Motion for Summary Judgment"). The Blaha Defendants' Initial Motion for Summary Judgment  
6 argued, in part, that LVDG's claims were barred by the statute of limitations in NRS 107.080(5)-  
7 (6) because LVDG failed to bring an action challenging the Deed of Trust Foreclosure within  
8 120 days of receiving actual notice of the Deed of Trust Foreclosure. The Blaha Defendants'  
9 Initial Motion for Summary Judgment also raised arguments regarding the doctrine of laches,  
10 equitable estoppel and the fact that LVDG's equitable mortgage claim failed as a matter of law.  
11 The Blaha Defendants' Motion for Summary Judgment was joined by the other Defendants in  
12 this case.

13 26. This Court granted the Blaha Defendants' Initial Motion for Summary Judgment,  
14 concluding that LVDG's claims were barred by NRS 107.080(5)-(6). However, this Court did  
15 not reach the Blaha Defendants' equitable arguments, deeming them "moot" based on this  
16 Court's conclusion that LVDG's claims were barred by the statute of limitations. On December  
17 1, 2016, after this Court denied LVDG's Motion for Reconsideration, LVDG filed a Notice of  
18 Appeal.

19 27. On May 3, 2018, the Nevada Supreme Court issued an order affirming in part,  
20 reversing in party and remanding. See Las Vegas Development Group, LLC v. Blaha, 134 Nev.  
21 Adv. Op. 33, 416, P.3d 233 (Nev. 2018). The Court affirmed this Court's dismissal of LVDG's  
22 slander of title claim; however, the Court concluded that the time limitations imposed by NRS  
23 107.080(5)-(6) do not apply to this case because the action challenges the authority to conduct  
24 the Deed of Trust Foreclosure Sale and not the manner in which the Deed of Trust Foreclosure  
25 Sale was conducted. Because this Court had determined that the Blaha Defendants' equitable  
26 arguments were moot, the Nevada Supreme Court did not review the equitable arguments,  
27 instead remanding the case to this Court for further consideration.

28 28. On June 13, 2018, the Nevada Supreme Court issued its Remittitur to this Court.

29. On September 11, 2018, this Court entered a Stipulated Scheduling Order, setting the close of discovery for April 30, 2019.

30. On September 25, 2018, the Blaha Defendants took the deposition of the 30(b)(6) designee for ACS. Counsel for LVDG was present at the deposition and asked questions of the witness.

31. On March 18, 2018, the Blaha Defendants served their Fifth Supplemental Disclosure of Witnesses and Documents.

32. On March 19, 2019, the Blaha Defendants once again moved for summary judgment ("Blaha Defendants' Motion for Summary Judgment"). The Blaha Defendants' Motion for Summary Judgment argued, that pursuant to the Nevada Supreme Court's decision in Bank of America v. Thomas Jessup, LLC Series VII, 135 Nev. Adv. Op. 7, \_\_\_ P.3d. \_\_\_ (Mar. 7, 2019), the NRS Chapter 116 HOA Foreclosure Sale did not extinguish BAC's first Deed of Trust. As a result, BAC's NRS Chapter 107 foreclosure of its Deed of Trust terminated any interest LVDG acquired as a result of its bid at the NRS Chapter 116 HOA Foreclosure Sale. The Blaha Defendants' Motion for Summary Judgment also argued that LVDG's claims are barred by the doctrine of laches and the doctrine of equitable estoppel.

33. On March 20, 2019, the EZ Defendants filed a Joinder to the Blaha Defendants' Motion for Summary Judgment.

34. On March 25, 2019, the BANA Defendants filed a Joinder to the Blaha Defendants' Motion for Summary Judgment.

35. On March 25, 2019, the HOA filed a Limited Opposition to the Blaha Defendants' Motion for Summary Judgment ("HOA Opposition"). The HOA Opposition conceded that Jessup controls this case and acknowledged that the Deed of Trust survived the HOA Foreclosure Sale such that title to the Property should be quieted in favor of the Blaha Defendants.

36. During the four years in which this action was pending, LVDG did not notice a single deposition or propound any written discovery requests on any party to this action or on any third-parties who may have information relevant to the case.

37. On April 2, 2019, LVDG filed a Motion to Continue Pursuant to NRCP 56(d), requesting a continuance pursuant to NRCP 56(d) to allow LVDG to perform discovery to attempt to prove that that Jessup is “wholly inapplicable to this action” by taking the deposition of the “HOA Trustee [ACS] and the HOA.”

38. On April 5, 2019, this Court entered its Order of Dismissal of BANA’s claims against the HOA and ACS, without prejudice, pursuant to the stipulation of the parties.

39. On April 17, 2019, this Court heard argument on LVDG’s Motion to Continue Pursuant to NRCP 56(d). This Court issued an oral order denying the Motion. This Court did, however, grant LVDG leave to submit a late-filed opposition prior to the April 24, 2019 hearing on the Blaha Defendants’ Motion for Summary Judgment. In addition, the Court granted the Blaha Defendants leave to submit a late-filed Reply following service of LVDG’s Opposition.

40. On April 19, 2019, LVDG filed an Opposition to the Blaha Defendants’ Motion for Summary Judgment (“LVDG’s Opposition”).

41. On April 22, 2019, the Blaha Defendants filed their Reply to LVDG’s Opposition (“Blaha Defendants’ Reply”).

42. On April 23, 2019, the BANA Defendants filed a Joinder to the Blaha Defendants Reply.

43. On April 24, 2019, this Court heard oral argument on the Blaha Defendants’ Motion for Summary Judgment.

## II.

### STANDARD OF REVIEW

1. A motion for continuance under NRCP 56(d) (formerly, NRCP 56(f)) is appropriate only when the movant expresses how further discovery will lead to the creation of a genuine issue of material fact. Francis v. Wynn Las Vegas, LLC, 127 Nev. Adv. Op. 60, 127 Nev. 657 (Nev. 2011)(quoting Aviation Ventures v. Joan Morris, Inc., 121 Nev. 113, 118, 110 P.3d 59, 69 (Nev. 2005)). If the movant has previously failed to diligently pursue discovery, it is not an abuse of discretion for the district court to deny the motion. Id. (upholding district court’s denial of defendant’s request for a continuance under former NRCP 56(f)).



2. NRCP 56(d) requires that the party opposing a motion for summary judgment and seeking a denial or continuance of the motion in order to conduct further discovery provide an affidavit or declaration giving the reasons why the party cannot present “facts essential to justify its opposition.” See NRCP 56(d); Choy v. Ameristar Casinos, Inc., 127 Nev. 870, 872, 265 P.3d 698, 700 (Nev. 2011)(applying the similar language of former NRCP 56(f) to uphold the district court’s denial of a request for a continuance).

3. NRCP 56(c) provides that summary judgment shall be granted when, after a review of the record viewed in the light most favorable to the non-moving party, there are no remaining genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). “A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party.” Posadas v. City of Reno, 109 Nev. 448, 452, 851 P.2d 438, 441 (1993).

4. In determining whether summary judgment is appropriate, the Court applies a burden-shifting analysis. Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada, 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007). If – as in the present case – “the nonmoving party will bear the burden of persuasion at trial, the party moving for summary judgment may satisfy the burden of production by either (1) submitting evidence that negates an essential element of the nonmoving party’s claim, or (2) pointing out that there is an absence of evidence to support the nonmoving party’s case.” Id. (internal quotations omitted).

5. If the moving party satisfies its burden, the burden then shifts to the nonmoving party who “must transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact.” Id. The evidence submitted by the nonmoving party must be relevant and admissible, and he or she “is not entitled to build a case on the gossamer threads of whimsy, speculation and conjecture.” Collins v. Union Fed. Sav. & Loan Ass’n, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983) (internal quotations omitted).

III.

**CONCLUSIONS OF LAW**

1  
2  
3 1. LVDG's Complaint seeks to set aside the NRS Chapter 107 Deed of Trust  
4 Foreclosure Sale that took place on August 29, 2011, and all subsequent transfers of the Property  
5 – including Blaha's September 30, 2011 purchase of the Property.

6 2. LVDG's Complaint asserts five causes of action against the Blaha Defendants: (1)  
7 Quiet Title; (2) Equitable Mortgage; (3) Slander of Title; (4) Equitable Relief – Wrongful  
8 Foreclosure; and (5) Equitable Relief – Rescission.

9 3. LVDG's slander of title claim was previously dismissed as barred by the two-year  
10 statute of limitation imposed by NRS 11.190(4)(c) as LVDG waited 1,298 days from the Deed of  
11 Trust Foreclosure Sale to file its Complaint. See Las Vegas Development Group, LLC v. Blaha,  
12 134 Nev. Adv. Op. 33, 416, P.3d 233 (Nev. 2018).

13 4. LVDG's Opposition consented to the dismissal of its claim for Equitable  
14 Mortgage. See LVDG Opposition, p.28, ll.10.

15 5. Each of LVDG's remaining causes of action are premised upon the allegation that  
16 the NRS Chapter 116 HOA Foreclosure Sale extinguished the Deed of Trust such that the NRS  
17 Chapter 107 Deed of Trust Foreclosure Sale and all subsequent transfers in the Property should  
18 be set aside by this Court.

19 6. LVDG's Motion to Continue Pursuant to NRCP 56(d) is denied due to the fact  
20 that the deposition of the 30(b)(6) designee for ACS had been taken previously with the  
21 participation of LVDG's counsel and that the HOA filed an Opposition conceding that Jessup  
22 controls this case.

23 7. On March 7, 2019, the Nevada Supreme Court issued its decision in Bank of  
24 America v. Thomas Jessup, LLC Series VII, 135 Nev. Adv. Op. 7, \_\_\_ P.3d. \_\_\_ (Mar. 7, 2019)  
25 (“Jessup”). Even if this Court does not completely agree with Nevada Supreme Court's  
26 reasoning in Jessup, Jessup is binding precedent and this Court is not permitted to ignore binding  
27 precedent.  
28

1           8.       The exact same communications that were analyzed by the Nevada Supreme  
2 Court in Jessup with respect to BAC's attempted tender of the superpriority lien and ACS's  
3 rejection of BAC's attempted tender of the superpriority lien were exchanged in this case.

4           9.       Here, like in Jessup, counsel for BAC Home Loans Servicing sent correspondence  
5 to Absolute Collection Services, LLC ("ACS") in response to the Notice of Default and Election  
6 to Sell Under Notice of Delinquent Assessment Lien.

7           10.      The correspondence requested that ACS identify the superpriority lien amount so  
8 that BAC could "fully discharge its obligations to the HOA per NRS 116.3102", confirming that  
9 BAC "hereby offers to pay that sum upon presentation of adequate proof of the same by the  
10 HOA."

11          11.      ACS responded to the September 16, 2010 correspondence by using the same  
12 form letter that was considered by the Nevada Supreme Court in Jessup.

13          12.      As in Jessup, the ACS correspondence stated: "I am making you aware that it is  
14 our view that without the action of foreclosure [by the Bank], a 9 month Statement of Account is  
15 not valid. . . I respectfully request that you submit the Trustees Deed Upon Sale showing your  
16 client's possession of the property and the date that it occurred. At that time, we will provide a 9  
17 month super priority lien Statement of Account."

18          13.      In Jessup, the Nevada Supreme Court interpreted this exact language and held:  
19 "Although ACS's fax did not explicitly state that it would reject a superpriority tender, we  
20 believe this is the only reasonable construction of the fax."

21          14.      In Jessup, the Court held the "offer to pay the superpriority portion of the [HOA]  
22 lien, combined with ACS's rejection of that offer, operated to cure the default as to that portion  
23 of the lien such that the ensuing [HOA] foreclosure did not extinguish the first deed of trust."

24          15.      Here, the facts related to the attempted tender and rejection of the attempted  
25 tender are identical to the facts in Jessup, consequently, this Court is compelled to follow the  
26 Nevada Supreme Court's lead and must conclude that the ACS correspondence indicated an  
27 intention to reject the tender and, combined with BAC's counsel's offer to pay the superpriority  
28 portion of the lien, it operated "to cure the default as to that portion of the lien such that the

1 ensuing [HOA] foreclosure did not extinguish the first deed of trust.” Based upon this finding,  
2 the Court finds that no genuine issue of material fact remain and Summary Judgment is  
3 appropriate in favor of the Defendants.

4 16. With respect to LVDG’s argument that this Court need not consider Jessup  
5 because any claim that the HOA Foreclosure Sale did not extinguish the Deed of Trust is barred  
6 by the statute of limitations, this Court rejects this argument.

7 17. Here, the BANA Defendant’s claims and the other Defendants’ claims were  
8 asserted as defenses when LVDG filed its Complaint.

9 18. Title to the Property has been vested in the name of James Blaha since September  
10 30, 2011, and, for the last four years, the Blaha Defendants, the BANA Defendants and the EZ  
11 Defendants have been actively defending this action by asserting that the NRS Chapter 116 HOA  
12 Foreclosure Sale did not extinguish the Deed of Trust.

13 19. Whether the statute of limitations is four years, five years or some other time  
14 period, the Defendants in this case have the right to defend and assert as one of their defenses,  
15 that the Defendant is entitled to the property or that it has some interest in the property.

16 20. Consequently, this Court does not find that the Defendants in the case are  
17 precluded from asserting the defenses set forth in their pleadings.

18 21. With regard to the issue of equitable estoppel, the Court does not find that the  
19 evidence supports the claim that the Plaintiff’s claims are barred by this doctrine. This Court  
20 finds that the Plaintiff’s claims were timely filed, and that the Defendants have the right to  
21 defend against them, as they have asserted in this action.

22 **NOW THEREFORE:**

23 **SUMMARY JUDGMENT IS HEREBY ENTERED** in favor of the Defendants, James  
24 R. Blaha and Noble Home Loans, Inc., as well as the other Defendants, and against the Plaintiff.  
25 The Court concludes that the NRS Chapter 116 HOA Foreclosure Sale did not extinguish the  
26 bank’s Deed of Trust.

KOLESAR & LEATHAM  
400 South Rampart Boulevard, Suite 400  
Las Vegas, Nevada 89145  
Tel: (702) 362-7800 / Fax: (702) 362-9472

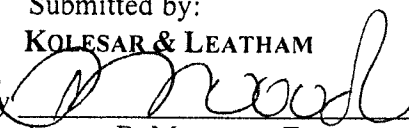
1 IT IS HEREBY ORDERED THAT title to the Property is quieted in the name of James  
2 R. Blaha, subject to the NHLs Deed of Trust and promissory note executed by James R. Blaha.

3 DATED this 20 day of May, 2019

4   
5 DISTRICT COURT JUDGE

6 Submitted by:

7 KOLESAR & LEATHAM

8 By   
9 AARON R. MAURICE, ESQ.  
10 Nevada Bar No. 006412  
11 BRITTANY WOOD, ESQ.  
12 Nevada Bar No. 007562  
13 400 South Rampart Boulevard, Suite 400  
14 Las Vegas, Nevada 89145  
15 Attorneys for Defendants JAMES R. BLAHA  
16 and NOBLE HOME LOANS, INC.  
17 formerly known as FCH FUNDING, INC.

18 Approved as to form:

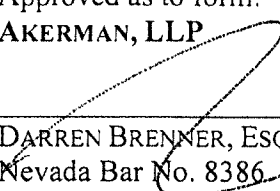
19 ROGER P. CROTEAU & ASSOC., LTD.

20 [ Did not sign ]

21 ROGER P. CROTEAU, ESQ.  
22 Nevada Bar No. 4958  
23 TIMOTHY E. RHODA, ESQ.  
24 Nevada Bar No. 7878  
25 9120 West Post Road, Suite 100  
26 Las Vegas, Nevada 89148  
27 Attorney for Plaintiff  
28 LAS VEGAS DEVELOPMENT GROUP

Approved as to form:

AKERMAN, LLP

  
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Nevada Bar No. 13138  
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Las Vegas, NV 89144  
Attorney for Defendants  
BANK OF AMERICA, N.A. and  
RECONTRUST COMPANY, N.A.

Approved as to form:

LAW OFFICES OF KEVIN R. HANSEN

Signed in counterpart

KEVIN R. HANSEN, ESQ.  
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AMY WILSON, ESQ.  
Nevada Bar No. 13421  
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Attorney for Defendants  
EZ PROPERTIES, LLC & K&L  
BAXTER FAMILY LIMITED PARTNERSHIP

KOLESAR & LEATHAM  
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Las Vegas, Nevada 89145  
Tel: (702) 362-7800 / Fax: (702) 362-9472

1 **IT IS HEREBY ORDERED THAT** title to the Property is quieted in the name of James  
2 R. Blaha, subject to the NHLS Deed of Trust and promissory note executed by James R. Blaha.

3 DATED this \_\_\_\_ day of \_\_\_\_\_, 2019.

4  
5 \_\_\_\_\_  
6 DISTRICT COURT JUDGE

7 Submitted by:  
8 **KOLESAR & LEATHAM**

9 By \_\_\_\_\_  
10 AARON R. MAURICE, ESQ.  
11 Nevada Bar No. 006412  
12 BRITTANY WOOD, ESQ.  
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14 400 South Rampart Boulevard, Suite 400  
15 Las Vegas, Nevada 89145  
16 Attorneys for Defendants JAMES R. BLAHA  
17 and NOBLE HOME LOANS, INC.  
18 formerly known as FCH FUNDING, INC.

19 Approved as to form:  
20 **ROGER P. CROTEAU & ASSOC., LTD.**

21 Approved as to form:  
22 **AKERMAN, LLP**

23 \_\_\_\_\_  
24 ROGER P. CROTEAU, ESQ.  
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\_\_\_\_\_

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RECONTRUST COMPANY, N.A.

Approved as to form:  
**LAW OFFICES OF KEVIN R. HANSEN**

\_\_\_\_\_ 5/1/2017

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EZ PROPERTIES, LLC & K&L  
BAXTER FAMILY LIMITED PARTNERSHIP

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Title to Property**

**COURT MINUTES**

**February 02, 2016**

---

A-15-715532-C      Las Vegas Development Group LLC, Plaintiff(s)  
vs.  
James Blaha, Defendant(s)

---

**February 02, 2016      9:30 AM      Discovery Conference**

**HEARD BY:** Bulla, Bonnie      **COURTROOM:** RJC Level 5 Hearing Room

**COURT CLERK:** Alan Castle

**RECORDER:** Francesca Haak

**REPORTER:**

**PARTIES**

**PRESENT:**      Hansen, Kevin R.      Attorney  
                 Linder, Robert W.      Attorney  
                 Morgan, Melanie D.      Attorney  
                 Wood, Brittany      Attorney

**JOURNAL ENTRIES**

- Counsel anticipate 3 - 5 days for trial re: Quiet Title. No settlement conference requested.  
COMMISSIONER RECOMMENDED, discovery cutoff is 11/09/16; adding parties, amended pleadings, and initial expert disclosures DUE 08/11/16; rebuttal expert disclosures DUE 09/09/16; dispositive motions TO BE FILED BY 12/09/16. Scheduling Order will issue.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Title to Property**

**COURT MINUTES**

**September 13, 2016**

---

A-15-715532-C      Las Vegas Development Group LLC, Plaintiff(s)  
vs.  
James Blaha, Defendant(s)

---

**September 13, 2016    9:00 AM**

**All Pending Motions**

**HEARD BY:** Wiese, Jerry A.

**COURTROOM:** RJC Courtroom 14A

**COURT CLERK:** Alice Jacobson

**RECORDER:**

**REPORTER:** Amber McClane

**PARTIES**

**PRESENT:**      Croteau, Roger P, ESQ                      Attorney  
                         Habdas, William S.                              Attorney

**JOURNAL ENTRIES**

- Defendants Ez Properties, Llc And K&L Baxter Family Limited Partnership Joinder To Defendant Bank Of America, N.A.'S Motion To Add Affirmative Defenses And To Add Parties And Assert Claims.

Defendant Bank Of America, N.A.'S Motion To Add Affirmative Defenses And To Add Parties And Assert Claims.

Deft Blaha Motion for Summary Judgment

Defendants Ez Properties, Llc And K&L Baxter Family Limited Partnership Joinder To Defendant Bank Of America, N.A.'S Motion for Summary Judgment

Mr. Morris argued this was a deed of trust foreclosure sale; Plaintiff did not have an interest in the property; and could not seek action due to the statue of limitations. Opposition by Mr. Croteau and argument regarding the sale being illegitimate and the chain of title. Court considered NRS 107.090. COURT ORDERED, motion for summary judgment GRANTED; pending motions are hereby MOOT.



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Title to Property**

**COURT MINUTES**

**November 15, 2016**

---

A-15-715532-C      Las Vegas Development Group LLC, Plaintiff(s)  
vs.  
James Blaha, Defendant(s)

---

**November 15, 2016      9:00 AM      Motion to Amend  
Judgment**

**HEARD BY:** Wiese, Jerry A.

**COURTROOM:** RJC Courtroom 14A

**COURT CLERK:** Alice Jacobson

**RECORDER:**

**REPORTER:** Kristy Clark

**PARTIES**

**PRESENT:**      Croteau, Roger P, ESQ      Attorney  
                 Hansen, Kevin R.      Attorney  
                 Maurice, Aaron R.      Attorney

**JOURNAL ENTRIES**

- Plaintiff's Motion to Alter or Amend Judgment; for Reconsideration; and for Clarification

Mr. Croteau argued for reconsideration of the order regarding the statute of limitation to file Complaint as to the legal findings reached by the Court. Opposition by Mr. Maurice. Court finds the order an accurate reflection. COURT ORDERED motion DENIED.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Title to Property**

**COURT MINUTES**

**July 18, 2018**

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A-15-715532-C      Las Vegas Development Group LLC, Plaintiff(s)  
vs.  
James Blaha, Defendant(s)

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**July 18, 2018      9:00 AM      Status Check**

**HEARD BY:** Wiese, Jerry A.      **COURTROOM:** RJC Courtroom 14A

**COURT CLERK:** Vanessa Medina

**RECORDER:**

**REPORTER:** Kimberly Farkas

**PARTIES**

**PRESENT:** Wood, Brittany      Attorney

**JOURNAL ENTRIES**

- Jamie Combs, Esq., present on behalf of Defendant.

Ms. Wood advised matter was resolved by the application of the statute of limitations, however, there were other issues that were briefed as part of the Motion for Summary Judgment. Counsel added, one claim was resolved. Upon Court's inquiry, Counsel stated discovery and depository deadlines had passed. COURT ORDERED, a Trial date SET; Counsel can file any new pleading and motions that need to be ruled on.

07/01/19 9:00 AM PRE TRIAL CONFERENCE

07/22/19 9:00 AM CALENDAR CALL

07/29/19 10:30 AM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Title to Property**

**COURT MINUTES**

**January 02, 2019**

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A-15-715532-C      Las Vegas Development Group LLC, Plaintiff(s)  
vs.  
James Blaha, Defendant(s)

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**January 02, 2019      9:00 AM      Motion**

**HEARD BY:** Wiese, Jerry A.      **COURTROOM:** RJC Courtroom 14A

**COURT CLERK:** Vanessa Medina

**RECORDER:**

**REPORTER:** Kimberly Farkas

**PARTIES**

**PRESENT:** Maurice, Aaron R.      Attorney

**JOURNAL ENTRIES**

- Natalie Winslow, Esq. on behalf of Bank of America NA, also present.

Upon Court's inquiry, Ms. Winslow advised matter was handled by another attorney, however, it was her understanding the Motion was unopposed. COURT ORDERED, Motion to Add Affirmative Defenses GRANTED.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Title to Property**

**COURT MINUTES**

**April 17, 2019**

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A-15-715532-C      Las Vegas Development Group LLC, Plaintiff(s)  
vs.  
James Blaha, Defendant(s)

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**April 17, 2019      9:00 AM      Motion to Continue**

**HEARD BY:** Wiese, Jerry A.      **COURTROOM:** RJC Courtroom 14A

**COURT CLERK:** Vanessa Medina

**RECORDER:**

**REPORTER:** Kimberly Farkas

**PARTIES**

**PRESENT:**      Croteau, Roger P, ESQ      Attorney  
                  Habdas, William S.      Attorney  
                  Hansen, Kevin R.      Attorney  
                  Maurice, Aaron R.      Attorney

**JOURNAL ENTRIES**

- Kelley Blatnik, on behalf of Nevada Trails II Community, also present.

Ms. Blatnik advised Nevada Trails was dismissed, therefore, would not be making an argument.

Mr. Maurice argued there was no reason to take the depositions again and discovery closes on April 30. Argument by Mr. Croteau. Upon Court's inquiry, Mr. Croteau indicated with the deposition, he anticipates on expanding the relationship between what happened over the year leading up to the letter. Court NOTED deposition was taken before with Plaintiff's participation, and ORDERED, Motion DENIED. Upon Court's further inquiry regarding an opposition, Mr. Croteau indicated he would file a response by the end of this week.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Title to Property**

**COURT MINUTES**

**April 24, 2019**

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A-15-715532-C      Las Vegas Development Group LLC, Plaintiff(s)  
vs.  
James Blaha, Defendant(s)

---

**April 24, 2019**

**9:00 AM**

**All Pending Motions**

**HEARD BY:** Wiese, Jerry A.

**COURTROOM:** RJC Courtroom 14A

**COURT CLERK:** Vanessa Medina

**RECORDER:**

**REPORTER:** Kimberly Farkas

**PARTIES**

**PRESENT:**      Croteau, Roger P, ESQ      Attorney  
                     Habdas, William S.      Attorney  
                     Hansen, Kevin R.      Attorney  
                     Maurice, Aaron R.      Attorney

**JOURNAL ENTRIES**

- JAMES R. BLAHA AND NOBLE HOME LOANS, INC.'S MOTION FOR SUMMARY JUDGMENT...BANK OF AMERICA, N.A. AND RECONTRUST COMPANY, N.A.'S JOINDER TO JAMES R. BLAHA AND NOBLE HOME LOANS, INC.'S MOTION FOR SUMMARY JUDGMENT

Court NOTED the Jessup case was on point and allowed Mr. Croteau to make argument. Extensive arguments by Mr. Maurice, Mr. Habdas, and Mr. Croteau. COURT ORDERED, DECISION PENDING.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Title to Property****COURT MINUTES****April 24, 2019**

A-15-715532-C      Las Vegas Development Group LLC, Plaintiff(s)  
    vs.  
    James Blaha, Defendant(s)

**April 24, 2019****4:00 PM****Minute Order****HEARD BY:** Wiese, Jerry A.**COURTROOM:** No Location**COURT CLERK:** Vanessa Medina**RECORDER:****REPORTER:****PARTIES****PRESENT:**

**JOURNAL ENTRIES**

- The above-referenced matter came on for hearing on Wednesday, April 24, 2019, with regard to the Defendants, Blaha and Noble Home Loans Motion for Summary Judgment, and various joinders. After reviewing the pleadings and entertaining oral argument, the Court indicated that while it may not agree completely with the Nevada Supreme Court's reasoning in the case of Bank of America N.A. v. Thomas Jessup LLC, 135 Nev. Adv. Op. 7, 435 P.3d 1217 (Nev. 2019), the Court was obligated to follow that law. In the present case, as well as in the Jessup case, a homeowner had become delinquent on its monthly HOA assessments, and various notices were sent out. Upon receiving the Notice of Default, the Bank retained the law firm of Miles, Bauer, and an attorney with Miles Bauer, Rock Jung, wrote a letter to ACS, indicating that whatever the amount of the super-priority lien was, upon adequate proof, the amount would be tendered. In response, an employee of ACS, Kelly Mitchell, sent a fax to Miles, Bauer, indicating in part, "I am making you aware that it is our view that without the action of foreclosure [by the bank], a 9 month Statement of Account is not valid. . ." Following receipt of the ACS correspondence, neither Miles, Bauer, nor the bank, took any further action to protect the deed of trust. The Nevada Supreme Court, in Jessup, held that "Miles Bauer's offer to pay the yet-to-be-determined superpriority amount was not sufficient to constitute a valid tender." The Court went on, however, and held that "Although ACS's fax did not explicitly state that it would reject a superpriority tender, we believe this is the only reasonable construction of the fax. . ." Consequently, the Court concluded that "Miles Bauer's offer to pay the superpriority portion of

Foxfield's lien, combined with ACS's rejection of that offer, operated to cure the default as to that portion of the lien such that the ensuing foreclosure sale did not extinguish the first deed of trust." Id.

The facts in the present case are identical to those in the Jessup case, and consequently, this Court is compelled to follow the Supreme Court's lead and must conclude that the ACS correspondence indicated an intention to reject any tender, and combined with Miles Bauer's offer to pay the superpriority portion of the lien, it operated "to cure the default as to that portion of the lien, such that the ensuing foreclosure sale did not extinguish the first deed of trust." Based upon this finding, the Court finds that no genuine issue of material fact remains, and Summary Judgment is appropriate in favor of the Defendant.

The parties requested that the Court rule also on the issues of equitable relief and the statute of limitations, and as the Court had not seen those as determinative issues, they had not previously been considered. The Court took those matters under advisement, and now renders the following decision: With regard to the statute of limitations issue, defense counsel made a compelling argument that the decisions which have come from the Federal District Courts in Nevada relating to the statute of limitations, being either 4 or 5 years, seem to be applied to banks which have asserted claims for quiet title. In the present case, the bank's claims, and the other Defendants' claims, were asserted as defenses when Las Vegas Development Group brought suit. If a plaintiff were to wait until the last day before the statute of limitations ran to file a lawsuit for quiet title, and thereafter serves the action on the Defendants, and the Defendants' position is that they are entitled to title in a piece of property, how can it be fair to prevent the Defendants from defending the case and asserting those claims, when arguably they had no reason to believe it was a disputed issue until suit was filed? Even though the parties to these HOA foreclosure matters must know at the time of the foreclosure sales, that they are potentially buying into a litigated issue, until one party asserts a claim, they may not feel a need to. If the Bank believed all along, that it had preserved its property interest, by offering to pay for 9 months of assessments, why would it need to file suit? This Court finds that whether the statute of limitations is 4 years, 5 years, or some other time period, the Defendant in a case has the right to defend and assert as one of its defenses, that it is entitled to the property, or that it has an interest in the subject property. Consequently, the Court does not find that the Defendants in this case are precluded from asserting the defenses that they have asserted. Similarly, with regard to the issue of "equitable estoppel, the Court does not find that the evidence supports the claim that the Plaintiff's claims are barred by this doctrine. This Court finds that the Plaintiff's claims were timely filed, and that the Defendants have the right to defend claims against them, as they have asserted in this action.

Based upon the foregoing, and the Court's obligation to follow Jessup, the Court finds that there are no genuine issues of material fact that remain, and Summary Judgment is GRANTED in favor of the Defendants, Blaha, and Noble Home Loans, as well as the other Defendants. The Court concludes that the HOA foreclosure sale did not extinguish the bank's deed of trust.

Counsel for Blaha and Noble Home Loans is to prepare an Order consistent with the foregoing, and with the Court's oral pronouncements at the time of the hearing on this matter, have it reviewed by all parties as to form and content, and submit it to the Court for signature within 10 days.

CLERK'S NOTE: The above minute order has been distributed to: Roger Croteau, Esq.,

(croteaulaw@croteaulaw.com), Darren Brenner, Esq., (darren.brenner@akerman.com), William Habdas, Esq., (william.habdas@akerman.com), Aaron Maurice, Esq., (amaurice@klnevada.com), Kevin Hansen, Esq., (kevin@kevinrhansen.com), and Brittany Wood, Esq., (bwood@klnevada.com).  
//04/25/19 vm





**EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE**  
**NOTICE OF DEFICIENCY**  
**ON APPEAL TO NEVADA SUPREME COURT**

**ROGER P. CROTEAU, ESQ.**  
**9120 W. POST RD., SUITE 100**  
**LAS VEGAS, NV 89148**

**DATE: June 20, 2019**  
**CASE: A-15-715532-C**

**RE CASE:** LAS VEGAS DEVELOPMENT GROUP, LLC vs. JAMES R. BLAHA; BANK OF AMERICA, NA, a National Banking Association, as successor by merger to BAC HOME LOANS SERVICING, LP; RECONTRUST COMPANY NA; JOSE PEREZ, JR; EZ PROPERTIES, LLC; K&L BAXTER FAMILY LIMITED PARTNERSHIP; FCH FUNDING, INC

NOTICE OF APPEAL FILED: June 18, 2019

**YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.**

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)\*\*
  - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)\*\*
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)\*\*
  - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
  - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

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NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

*Please refer to Rule 3 for an explanation of any possible deficiencies.*

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*\*\*Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

# Certification of Copy

State of Nevada }  
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING JAMES R. BLAHA AND NOBLE HOME LOANS, INC.'S MOTION FOR SUMMARY JUDGMENT AND ALL JOINDERS THERETO; NOTICE OF ENTRY OF ORDER; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

LAS VEGAS DEVELOPMENT GROUP, LLC,

Plaintiff(s),

vs.

JAMES R. BLAHA; BANK OF AMERICA, NA, a National Banking Association, as successor by merger to BAC HOME LOANS SERVICING, LP; RECONTRUST COMPANY NA; JOSE PEREZ, JR; EZ PROPERTIES, LLC; K&L BAXTER FAMILY LIMITED PARTNERSHIP; FCH FUNDING, INC,

Defendant(s),

Case No: A-15-715532-C

Dept No: XXX

now on file and of record in this office.

**IN WITNESS THEREOF**, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 20 day of June 2019.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk