

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

Electronically Filed
Jul 09 2019 06:32 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS DEVELOPMENT GROUP, LLC,)
a Nevada limited liability company,)
Appellant,)
vs.)
JAMES R. BLAHA, an individual; BANK OF)
AMERICA, NA, a National Banking)
Association, as successor by merger to BAC)
HOME LOANS SERVICING, LP;)
RECONTRUST COMPANY NA, a Texas)
corporation; 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,)
Respondents.)

Supreme Court No. 79055

District Court Case No. A-15-715532-C

DOCKETING STATEMENT

1. Judicial District: Eighth Department: XXX
County: Clark Judge: The Honorable Jerry A. Wiese II
District Court Docket No. A-15-715532-C

1 **2. Attorney filing this docket statement:**

2 Roger P. Croteau, Esq.
3 Timothy E. Rhoda, Esq.
4 Roger P. Croteau & Associates, Ltd.
5 9120 West Post Road, Suite 100
6 Las Vegas, Nevada 89148
7 (702) 254-7775 (telephone)
8 *Attorney for Appellant*
9 *Las Vegas Development Group, LLC*

10 **3. Attorney representing Respondents:**

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

12 Aaron A. Maurice, Esq.
13 Brittany Wood, Esq.
14 Kolesar & Leatham
15 400 Rampart Boulevard, Suite 400
16 Las Vegas, Nevada 89145
17 (702) 362-7800

18 B. BANK OF AMERICA, NA, as successor by merger to BAC HOME LOANS
19 SERVICING, LP and RECONTRUST COMPANY NA

20 Darren T. Brenner, Esq.
21 William S. Habdas, Esq.
22 Akerman, LLP
23 1635 Village Center Circle, Suite 200
24 Las Vegas, Nevada 89134
25 (702) 634-5000

26 C. EZ PROPERTIES, LLC and K&L BAXTER FAMILY LIMITED
27 PARTNERSHIP

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

4. Nature of disposition below:

- | | |
|--|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify) _____ |

1 a Motion for Summary Judgment, asserting primarily that summary judgment should be
2 entered pursuant to this Court's decision in the matter of *Bank of Am., N.A. v. Thomas*
3 *Jessup, LLC Series VII*, 2019 Nev. LEXIS 6, 435 P.3d 1217, 135 Nev. Adv. Rep. 7, 2019
4 WL 1087513. The remaining Defendants joined in said Motion. In *Jessup*, this Court
5 held that Bank of America was excused from tendering payment of the superpriority lien
6 amount as a result of correspondence from the HOA's agent which the Court found to
7 have advised that such a payment was futile. This was contrary to the district court's
8 findings at the time of trial. The *Jessup* matter is currently the subject of a pending
9 petition for en banc rehearing. A response to the petition for en banc rehearing was
10 recently ordered.

11 Plaintiff opposed the Motion for Summary Judgment, noting that the deposition
12 testimony in this case very specifically proved that the HOA's agent would have accepted
13 any payment that the bank might have remitted to it (but did not). Indeed, it was
14 undisputed in this case that the bank remitted no amount of money to the HOA or its
15 agent. The Motion for Summary Judgment and Joinders were granted by the district
16 court by way of Order dated May 20, 2019, with the district court finding that although it
17 did not necessarily agree with the *Jessup* decision, it was bound to follow it. This is the
18 Order appealed from.

19 **9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate
20 sheets as necessary): The primary issue on appeal is whether the Bank was relieved of
21 any obligation to tender any amount of money to the HOA in satisfaction of the
22 superpriority portion of the HOA's lien based upon the correspondence sent to the Bank's
23 attorneys by the HOA's agent. The facts surrounding the Bank's "tender" herein are
24 substantially identical to those that exist in *Jessup*. However, as stated above, in this
25 case, the HOA's agent explicitly testified that it would have accepted any payment that
26 the Bank or its attorney might have remitted. This evidence directly contradicts this
27 Court's determination in *Jessup*.

28 **10. Pending proceedings in this court raising the same or similar issues.** If you are aware

of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised: *Bank of Am., N.A. v. Thomas Jessup, LLC Series VII*, Case No. 73785

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A ☐ Yes ☐ No If not, explain:

The constitutionality of NRS 116.3116 *et seq.* was not a basis upon which summary judgment was granted in this case.

12. Other issues. Does this appeal involve any of the following issues?

- ☒ Reversal of well-settled Nevada precedent (identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☐ A substantial issue of first-impression
- ☐ An issue of public policy
- ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- ☐ A ballot question

If so, explain: Although *Jessup* is not "well settled," with a petition for en banc rehearing pending, this case demonstrates exactly why the Panel's decision in *Jessup* is erroneous and must be reversed or, at the very least, severely limited.

13. Trial. If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? N/A

14. Judicial disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? No If so, which Justice?

N/A

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from: The Order granting summary judgment was entered on or about May 24, 2019.

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review: N/A

16. Date written notice of entry of judgment or order served: Notice of Entry of the Order granting summary judgment was served on May 28, 2019.

Was service by:

☐ Delivery

☒ Mail/electronic/fax

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59),

(a) Specify the type of motion, the date and method of service of the motion, and date of filing

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing: _____

Note: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion: N/A

(c) Date written notice of entry of order resolving tolling motion was served: N/A

Was service by:

☐ Delivery

☐ Mail/electronic/fax

18. Date notice of appeal was filed: Appellant, Las Vegas Development Group, LLC, filed its Notice of Appeal on June 18, 2019.

If more than one party has appealed from the judgment or order, list the date each notice

of appeal was filed and identify by name the party filing the notice of appeal: James R. Blaha and Noble Home Loans, Inc. f/k/a FCH Funding, Inc. filed a Notice of Cross Appeal on July 2, 2019

- 19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other** NRAP 4(a)

SUBSTANTIVE APPEALABILITY

- 20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The district court's order granting of summary judgment constituted a final judgment appealable pursuant to NRAP 3A(b)(1). The Order resolved the action as to all parties other than one party who had not appeared and who was defaulted.

- 21. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Plaintiff - LAS VEGAS DEVELOPMENT GROUP, LLC

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

Defendants - BANK OF AMERICA, NA, as successor by merger to BAC HOME LOANS SERVICING, LP and RECONTRUST COMPANY NA

Defendants - EZ PROPERTIES, LLC and K&L BAXTER FAMILY LIMITED PARTNERSHIP

Defendant - JOSE PEREZ, JR.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served,

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

4 **22. Give a brief description (3 to 5 words) of each party's separate claims,**
5 **counterclaims, cross-claims, or third party claims, and the date of formal disposition**
6 **of each claim.** Plaintiff's Complaint is primarily a claim for Quiet Title/Declaratory
7 Relief seeking to recover title to real property. Plaintiff further seeks damages associated
8 with its deprivation of its real property. Plaintiff's claims were disposed at the time that
9 summary judgment was granted.

10 **23. Did the judgment or order appealed from adjudicate ALL the claims alleged below**
11 **and the rights and liabilities of ALL the parties to the action or consolidated actions**
12 **below?**

13 ☒ Yes

14 ☐ No

15 **24. If you answered "No" to question 23, complete the following:**

16 (a) Specify the claims remaining pending below:

17 (b) Specify the parties remaining below:

18 (c) Did the district court certify the judgment or order appealed from as a final judgment
19 pursuant to NRCP 54(b)?

20 ☐ Yes

21 ☐ No

22 (d) Did the district court make an express determination, pursuant to NRCP 54(b), that
23 there is no just reason for delay and an express direction for the entry of judgment?

24 ☐ Yes

25 ☐ No

26 **25. If you answered "No" to any part of question 24, explain the basis for seeking**
27 **appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

28 N/A

1 **26. Attach file-stamped copies of the following documents:**

- 2 • The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- 3 • Any tolling motion(s) and order(s) resolving tolling motion(s)
- 4 • Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims,
- 5 cross-claims and/or third-party claims asserted in the action or consolidated action
- 6 below, even if not at issue on appeal
- 7 • Any other order challenged on appeal
- 8 • Notices of entry for each attached order

9 See attached:

10 Exhibit 1 - Complaint

11 Exhibit 2 - Order Granting James R. Blaha and Noble Home Loans, Inc.'s Motion for

12 Summary Judgment and all Joinders Thereto

13 Exhibit 3 - Notice of Entry of Order Granting James R. Blaha and Noble Home

14 Loans, Inc.'s Motion for Summary Judgment and all Joinders Thereto

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Name of appellant: Las Vegas Development Group, LLC

Name of counsel of record: Roger P. Croteau, Esq.

Timothy E. Rhoda, Esq.

State and county where signed: Clark County, Nevada

DATED this 9th day of July, 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 Appellant
LAS VEGAS DEVELOPMENT GROUP, LLC

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of ROGER P. CROTEAU & ASSOCIATES, LTD.
and that on the 9th day of July, 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 Nevada Supreme Court's eflex e-file and
serve system.

____ 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.

EXHIBIT 1

EXHIBIT 1

DISTRICT COURT CIVIL COVER SHEET A - 15 - 715532 - 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	
Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input checked="" type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Other Torts <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
Probate (select case type and estate value) <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 Estate Value <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	Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General Contract Case <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	Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ		Other Civil Filing
Civil Writ <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 Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

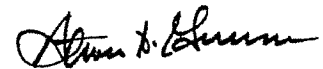
Business Court Filings should be filed using the Business Court civil coversheet

March 19, 2015

Date

/s/ Timothy E. Rhoda

Sig nature of initiating party or representative



CLERK OF THE COURT

1 **COMP**
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
12 *Attorney for Plaintiff*
13 **LAS VEGAS DEVELOPMENT GROUP, LLC**

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,)

vs.)

JAMES R. BLAHA, an individual; BANK OF)
AMERICA, NA, a National Banking)
Association, as successor by merger to BAC)
HOME LOANS SERVICING, LP;)
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. VIII

**ARBITRATION EXEMPTION
CLAIMED: (1) TITLE TO REAL
PROPERTY; (2) DECLARATORY
RELIEF**

COMPLAINT

COMES NOW, Plaintiff, LAS VEGAS DEVELOPMENT GROUP, LLC, by and through
its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby complains and alleges
as follows:

PARTIES

1. At all times relevant to this matter, Plaintiff, LAS VEGAS DEVELOPMENT GROUP, LLC, was and is a Nevada limited liability company, authorized to do business and doing business in the County of Clark, State of Nevada.
2. Upon information and belief, at all times relevant to this matter, Defendant, BANK OF AMERICA, NA, ("*BANA*"), successor by merger to BAC HOME LOANS SERVICING, LP ("*BAC Home Loans*"), was and is and doing business in the County of Clark, State of Nevada.
3. Upon information and belief, at all times relevant to this matter, Defendant, RECONTRUST COMPANY NA ("*Recontrust*"), was and is a Texas corporation, authorized to do business and doing business in the County of Clark, State of Nevada.
4. Upon information and belief, at all times relevant to this matter, Defendant, JOSE PEREZ, JR. was and is an individual and resident of the County of Clark, State of Nevada.
5. Upon information and belief, at all times relevant to this matter, Defendant, EZ PROPERTIES, LLC ("*EZ Properties*"), was and is a Nevada limited liability company, authorized and doing business in the County of Clark, State of Nevada.
6. Upon information and belief, at all times relevant to this matter, Defendant, K & L BAXTER FAMILY LIMITED PARTNERSHIP (*Baxter Family Partnership*), was and is a Nevada limited partnership, authorized and doing business in the County of Clark, State of Nevada.
7. Upon information and belief, at all times relevant to this matter, Defendant, JAMES R. BLAHA, was and is an individual and resident of the County of Clark, State of Nevada.
8. Upon information and belief, at all times relevant to this matter, Defendant, FCH FUNDING, INC. ("*FCH Funding*"), was and is an unknown corporate entity, doing business in the County of Clark, State of Nevada.
9. Plaintiff is unaware of the true names and capacities whether individuals, corporations, associates, or otherwise of Defendants DOES I through X and ROE Corporations I

1 through X, inclusive, and therefore sues these Defendants by such fictitious names.

2 Plaintiff is informed and believes and thereupon alleges that the Defendants, and each of
3 them, are in some manner responsible and liable for the acts and damages alleged in this
4 Complaint. Plaintiff will seek leave of this Court to amend this Complaint to allege the
5 true names and capacities of the DOES and ROE CORPORATIONS Defendants when
6 the true names of the DOES and ROE CORPORATIONS Defendants are ascertained.

7 **GENERAL ALLEGATIONS**

- 8 10. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1
9 through 9 hereof as if set forth fully herein.
- 10 11. On or about June 8, 2004, a Declaration was recorded in the Official Records of the Clark
11 County Recorder as instrument number 200406080002308, thereby creating Nevada
12 Trails II Community Association (*the "HOA"*) and perfecting a lien in favor of the HOA
13 on all real property located within the common interest community it governed, including
14 but not limited to that real property commonly known as 7639 Turquoise Stone Court,
15 Las Vegas, Nevada 89113, Assessor Parcel No. 176-10-213-042 (*the "Property"*).
- 16 12. The lien having been recorded prior to any other liens is first in right and first in time as
17 to all other interests recorded after the Declaration with the exception of liens for real
18 estate taxes and other governmental assessments.
- 19 13. N.R.S. Chapter 116 provides that the lien perfected by the Declaration is subordinate to a
20 "first security interest on the unit recorded before the date on which the assessment
21 sought to be enforced became delinquent."
- 22 14. While this statutory subordination applies to the majority of the lien perfected by the
23 Declaration, pursuant to N.R.S. 116.3116(2)(c), it does not subordinate the lien to two
24 specific charges incurred under it.
- 25 15. The charges which are specifically NOT subordinated to the first security interest include:
26 (1) any charges incurred by the association on a unit pursuant to N.R.S. 116.310312 and;
27 (2) that portion of the assessments for common expenses based on the periodic budget
28 adopted by the association pursuant to N.R.S. 116.3115 which would have become due in

- 1 the absence of acceleration during the 9 months immediately preceding institution of an
2 action to enforce the lien.
- 3 16. On or about March 23, 2006, Defendant, JOSE PEREZ, JR. ("*Former Owner*"), acquired
4 title to and ownership of the Property.
- 5 17. Between approximately March 23, 2006, and April 13, 2011, Former Owner held title to
6 and ownership of the Property either jointly or in an individual capacity.
- 7 18. Upon information and belief, Former Owner obtained one or more mortgages and/or lines
8 of credit secured by the Property.
- 9 19. On or about March 28, 2007, Countrywide FSB recorded a deed of trust against the
10 Property in the Official Records of the Clark County Recorder as Instrument No.
11 200703280002128 ("*First Deed of Trust*").
- 12 20. Upon information and belief, BAC Home Loans subsequently became the holder and/or
13 owner of the First Deed of Trust through an assignment recorded in the Official Records
14 of the Clark County Recorder on or about April 4, 2011 as Instrument No.
15 201104040003342.
- 16 21. The Property is and was subject to certain Covenants, Conditions and Restrictions
17 ("*CC&Rs*") of HOA.
- 18 22. By virtue of his ownership of the Property, Former Owner was a member of the HOA and
19 accordingly was obligated to pay HOA assessments pursuant to the terms of the CC&Rs.
- 20 23. At some point in time during his ownership of the Property, Former Owner failed to pay
21 the HOA assessments related to the Property.
- 22 24. As a result of the failure of Former Owner to pay the HOA assessments, HOA recorded a
23 Notice of Delinquent Assessment Lien ("*HOA Lien*") with the Office of the Recorder of
24 Clark County, Nevada.
- 25 25. Thereafter, HOA recorded a Notice of Default and Election to Sell with the Office of the
26 Recorder of Clark County, Nevada.
- 27 26. Upon information and belief, the Notice of Default and Election to Sell was served upon
28 the Former Owner, as well as all interested parties holding a security interest in the

- 1 Property.
- 2 27. After the expiration of 90 days from the recording and mailing of the Notice of Default,
- 3 HOA caused a Notice of Trustee's Sale to be recorded with the Office of the Recorder of
- 4 Clark County, Nevada.
- 5 28. Upon information and belief, the Notice of Trustee's Sale was served upon the Former
- 6 Owner, as well as all interested parties holding a security interest in the Property.
- 7 29. On or about April 12, 2011, HOA caused a foreclosure sale ("*HOA Foreclosure Sale*") to
- 8 be conducted pursuant to the powers conferred by the Nevada Revised Statutes 116.3116,
- 9 116.31162, 116.31163 and 116.31164; the CC&Rs; the Notice of Delinquent Assessment
- 10 Lien; and the Notice of Default and Election to Sell.
- 11 30. Plaintiff purchased the Property by successfully bidding at the HOA Foreclosure Sale in
- 12 accordance with N.R.S. 116.3116, et seq.
- 13 31. On or about April 13, 2011, a Trustee's Deed Upon Sale ("*HOA Foreclosure Deed*") was
- 14 recorded in the Official Records of the Clark County Recorder as Instrument No.
- 15 201104130000979, vesting title to the Property in the Plaintiff.
- 16 32. The HOA Foreclosure Sale complied with all requirements of law, including but not
- 17 limited to, the recording and mailing of copies of the Notice of Delinquent Assessment
- 18 and Notice of Default, and the recording, posting and publication of the Notice of Sale.
- 19 33. Upon information and belief, Defendants had actual and/or constructive notice of the
- 20 HOA foreclosure proceedings.
- 21 34. N.R.S. 116.3116(2) provides that an HOA Lien has priority over all other liens and
- 22 encumbrances except:
- 23 (a) Liens and encumbrances recorded before the recordation of the declaration
- 24 and, in a cooperative, liens and encumbrances which the association creates,
- 25 assumes or takes subject to;
- 26 (b) A first security interest on the unit recorded before the date on which the
- 27 assessment sought to be enforced became delinquent or, in a cooperative, the first
- 28 security interest encumbering only the unit's owner's interest and perfected before
- the date on which the assessment sought to be enforced became delinquent; and
- (c) Liens for real estate taxes and other governmental assessments or charges
- against the unit or cooperative.
35. N.R.S. 116.3116(2) further provides that a portion of the HOA Lien has priority over

1 even a first security interest in the Property, stating as follows:

2 The lien is also prior to all security interests described in paragraph (b) to the
3 extent of any charges incurred by the association on a unit pursuant to NRS
4 116.310312 and to the extent of the assessments for common expenses based on
5 the periodic budget adopted by the association pursuant to NRS 116.3115 which
6 would have become due in the absence of acceleration during the 9 months
7 immediately preceding institution of an action to enforce the lien[.]

8 36. Upon information and belief, the HOA incurred charges within the 9 months immediately
9 preceding the initiation of the HOA foreclosure action that constituted super priority
10 amounts.

11 37. Upon information and belief, no party still claiming an interest in the Property recorded a
12 lien or encumbrance prior to the declaration creating the HOA.

13 38. Upon information and belief, Plaintiff's bid at the HOA Foreclosure Sale was equal to or
14 in excess of the amount necessary to satisfy the costs of sale and the super-priority portion
15 of the HOA Lien.

16 39. Upon information and belief, the HOA or its agent distributed or should have distributed
17 any excess funds to lien holders in order of priority pursuant to N.R.S. 116.3114(c).

18 40. Upon information and belief, Defendants had actual and/or constructive notice of the
19 requirement to pay assessments to the HOA and of the HOA Lien.

20 41. Upon information and belief, prior to the HOA Foreclosure Sale, BAC Home Loans had
21 not assigned the First Deed of Trust to the Secretary of Housing and Urban Development
22 ("HUD"), the Federal National Mortgage Association ("FNMA"), the Federal Home
23 Loan Mortgage Corporation ("Freddie Mac") or any governmental agency or
24 instrumentality.

25 42. Upon information and belief, at the time of the HOA Foreclosure Sale, neither the United
26 States nor any of its agencies or instrumentalities possessed any interest in the First Deed
27 of Trust or the Property.

28 43. Upon information and belief, prior to the HOA Foreclosure Sale, no individual or entity
paid the full amount of delinquent assessments described in the Notice of Default.

44. Upon information and belief, prior to the HOA Foreclosure Sale, no individual or entity

- 1 paid the super priority portion of the delinquent assessments described in the Notice of
2 Default.
- 3 45. Upon information and belief, Defendants had actual and/or constructive notice of the
4 super priority portion of the HOA Lien.
- 5 46. Upon information and belief, BAC Home Loans knew or should have known that any
6 security interest that it may have possessed pursuant to the First Deed of Trust would be
7 extinguished through foreclosure if it failed to cure the super-priority portion of the HOA
8 Lien representing 9 months of assessments for common expenses based upon the periodic
9 budget adopted by the HOA which would have become due in the absence of acceleration
10 for the relevant time period.
- 11 47. Pursuant to N.R.S. 116.31166, the HOA Foreclosure Sale vested title in Plaintiff "without
12 equity or right of redemption."
- 13 48. Pursuant to N.R.S. 116.31166, the HOA Foreclosure Deed is conclusive against the
14 Property's "former owner, his or her heirs and assigns, and all other persons."
- 15 49. Former Owner's ownership interest in the Property was extinguished by the foreclosure
16 of the HOA Lien.
- 17 50. BAC Home Loan's security interest in the Property, if any, was extinguished by the
18 foreclosure of the HOA Lien and the First Deed of Trust was rendered null, void and
19 unenforceable.
- 20 51. Any other existing security interests in the Property, if any, were likewise extinguished by
21 the foreclosure of the HOA Lien and rendered null, void and unenforceable.
- 22 52. By virtue of its purchase of the Property at the HOA Foreclosure Sale, Plaintiff became
23 the sole owner of all right, title and interest in the Property free and clear of any
24 encumbrances of the Defendants.
- 25 53. On or about April 14, 2011, BANA and/or Recontrust caused a Notice of Default and
26 Election to Sell to be recorded in the Official Records of the Clark County Recorder as
27 Instrument No. 201104140003343.
- 28 54. On or about August 9, 2011, BANA and/or Recontrust caused a Notice of Trustee's Sale

- 1 to be recorded in the Official Records of the Clark County Recorder as Instrument No.
2 201108090003456.
- 3 55. On or about August 29, 2011, Recontrust purported to conduct a foreclosure sale ("*Bank*
4 *Foreclosure Sale*") based upon the First Deed of Trust.
- 5 56. EZ Properties purported to purchase the Property at the Bank Foreclosure Sale and on
6 September 19, 2011, a Trustee's Deed Upon Sale Nevada to be recorded in the Official
7 Records of the Clark County Recorder as Instrument No.201109190002647.
- 8 57. Upon information and belief, EZ Properties purchased the Property at the alleged
9 September 19, 2011 Bank Foreclosure Sale with the aid of a mortgage from the Baxter
10 Family Partnership.
- 11 58. On or about September 19, 2011, the Baxter Family Partnership recorded a deed of trust
12 against the Property in the Official Records of the Clark County Recorder as Instrument
13 No. 201109190002648. ("*Baxter Family Partnership Deed of Trust*").
- 14 59. On or about September 30, 2011, EZ Properties purported to transfer the Property to
15 James R. Blaha by deed recorded in the Official Records of the Clark County Recorder as
16 Instrument No. 201109300001615.
- 17 60. Upon information and belief, James R. Blaha purchased the Property from EZ Properties
18 with the aid of a mortgage loan from FCH Funding.
- 19 61. On or about December 30, 2011, FCH Funding recorded a deed of trust against the
20 Property in the Official Records of the Clark County Recorder as Instrument No.
21 201112300003312 ("*FCH Funding Deed of Trust*").
- 22 62. In the matter of *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 130 Nev. ___, 334 P.3d
23 408, 2014 WL 4656471 (Adv. Op. No. 75, Sept. 18, 2014), the Nevada Supreme Court
24 resolved a split that previously existed in the state and federal courts of the State of
25 Nevada regarding the force, effect and interpretation of N.R.S. §116.3116.
- 26 63. In doing so, the Nevada Supreme Court clarified that the statute provides a homeowners
27 association a true super-priority lien over real property that can and does extinguish a first
28 deed of trust when non-judicially foreclosed. *Id.*

64. In *SFR Investments*, the Nevada Supreme Court also recognized that a foreclosure deed “reciting compliance with notice provisions of NRS 116.31162 through NRS 116.31168 ‘is conclusive’ as to the recitals ‘against the unit’s former owner, his or her heirs and assigns and all other persons.’” *See id.* at 3 (citing NRS 116.3116(2)).

65. Moreover, under Nevada law, the Association foreclosure sale and the resulting foreclosure deed are both presumed valid. NRS 47.250(16)-(18) (stating that disputable presumptions exist “that the law has been obeyed”; “that a trustee or other person, whose duty it was to convey real property to a particular person, has actually conveyed to that person, when such presumption is necessary to perfect the title of such person or a successor in interest”; “that private transactions have been fair and regular”; and “that the ordinary course of business has been followed.”).

66. Based upon the foregoing, the Bank Foreclosure Sale and all subsequent transfers related to the Property were and are invalid, void and unenforceable.

FIRST CAUSE OF ACTION

(Quiet Title against all Defendants)

67. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 66 hereof as if set forth fully herein.

68. Plaintiff properly acquired title and ownership of the Property at the HOA Foreclosure Sale for good and valuable consideration.

69. By virtue of its purchase of the Property at the HOA Foreclosure Sale, Plaintiff became the sole owner of all right, title and interest in the Property free and clear of any encumbrances of the Defendants.

70. Because the HOA Foreclosure Sale extinguished the First Deed of Trust, BAC Home Loans and Recontrust possessed no right to conduct a Trustee’s Sale based upon the First Deed of Trust.

71. The sale of the Property to EZ Properties and all subsequent transfers of the Property were and are null, void and of no effect.

72. Any and all deeds of trust subsequently recorded against the Property and any

1 assignments thereof are unauthorized, null, void and unenforceable, including the Baxter
2 Family Partnership and FCH Funding Deeds of Trust.

3 73. Plaintiff remains the sole owner of the Property free and clear of any and all
4 encumbrances.

5 74. One or more of the Defendants may claim some right, title and/or interest in the Property.

6 75. A justiciable controversy exists regarding the right, title and interest held by Plaintiff and
7 Defendants in the Property.

8 76. The interests of Plaintiff and Defendants are adverse in this justiciable controversy.

9 77. The Plaintiff has a legally protectible interest in the Property.

10 78. The controversy between Plaintiff and Defendants is ripe for judicial determination.

11 79. This Court should enter an Order which determines all and every claim, estate or interest
12 of the parties in the Property.

13 80. The Plaintiff is entitled to a declaratory judgment finding that: (1) Plaintiff is the title
14 owner of the Property; (2) the HOA Foreclosure Deed is valid and enforceable; (3) the
15 HOA Foreclosure Sale extinguished the applicable Defendants' ownership and security
16 interests in the Property; (4) the subsequent transfers of the Property were null, void and
17 of no effect; and (5) Plaintiff's rights and interest in the Property are superior to any
18 interest claimed by the Defendants.

19 81. Title to the Property should be quieted solely in the name of Plaintiff.

20 82. As a direct and proximate result of the actions of the Defendants, it has become necessary
21 for Plaintiff to retain the services of an attorney to protect its rights and prosecute this
22 Claim.

23 83. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil
24 Procedure as further facts become known.

25 **SECOND CAUSE OF ACTION**

26 **(Unjust Enrichment against BANA [BAC Home Loans], Recontrust and EZ Properties)**

27 84. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1
28 through 83 hereof as if set forth fully herein.

1 85. Plaintiff expended significant funds and resources in connection with the acquisition and
2 maintenance of the Property.

3 86. In the event that the Plaintiff does not maintain sole and exclusive title to and possession
4 of the Property, the Defendants will obtain substantial benefits from the funds and
5 resources expended by the Plaintiff.

6 87. Upon information and belief, Defendants sold the Property for significant monetary gain.

7 88. All proceeds received by the Defendants from the sale of the Property rightfully belong to
8 the Plaintiff as the rightful owner of the Property.

9 89. It would be unjust for the Defendants to accept and retain such benefits without
10 compensating Plaintiff for the value of the benefits which they received.

11 90. As a direct and proximate result of the actions of the Defendants, it has become necessary
12 for Plaintiff to retain the services of an attorney to protect its rights and prosecute this
13 Claim.

14 91. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil
15 Procedure as further facts become known.

THIRD CAUSE OF ACTION

(Equitable Mortgage against all Defendants)

16
17
18 92. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through
19 91 hereof as if set forth fully herein.

20 93. Plaintiff has expended significant funds and resources in connection with the acquisition
21 and maintenance of the Property.

22 94. In the event that the Plaintiff does not maintain sole and exclusive title to and possession
23 of the Property, the Defendants will obtain substantial benefits from the funds and
24 resources expended by the Plaintiff.

25 95. Upon information and belief, Defendants sold the Property for significant monetary gain.

26 96. All proceeds received by the Defendants from the sale of the Property rightfully belong to
27 the Plaintiff as the rightful owner of the Property.

28 97. It would be unjust for the Defendants to accept and retain such benefits without

1 compensating Plaintiff for the value of the benefits which they received.

2 98. In the event that the Plaintiff does not maintain sole and exclusive title to and possession
3 of the Property, the existence of an equitable mortgage is essential to the effectuation of
4 justice and to protect the interests of Plaintiff.

5 99. In the event that Plaintiff is divested of title to the Property for any reason, an equitable
6 mortgage should be imposed against the Property in favor of Plaintiff to secure the
7 payment of all sums rightfully owed to the Plaintiff in connection with the Property.

8 100. As a direct and proximate result of the actions of the Defendants, it has become necessary
9 for Plaintiff to retain the services of an attorney to protect its rights and prosecute this
10 Claim.

11 101. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil
12 Procedure as further facts become known.

13 **FOURTH CAUSE OF ACTION**

14 **(Slander of Title against all Defendants)**

15 102. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1
16 through 101 hereof as if set forth fully herein.

17 103. Plaintiff properly acquired title and ownership of the Property at the HOA Foreclosure
18 Sale.

19 104. By virtue of its purchase of the Property at the HOA Foreclosure Sale, Plaintiff became
20 the sole owner of all right, title and interest in the Property free and clear of any
21 encumbrances of the Defendants.

22 105. On or about April 14, 2011, BAC Home Loans and/or Recontrust caused a Notice of
23 Default and Election to Sell to be recorded in the Official Records of the Clark County
24 Recorder as Instrument No. 201104140003343.

25 106. On or about August 9, 2011, BAC Home Loans and/or Recontrust caused a Notice of
26 Trustee's Sale to be recorded in the Official Records of the Clark County Recorder as
27 Instrument No. 201108090003456.

28 107. On or about September 19, 2011, a Trustee's Deed Upon Sale ("*Bank Foreclosure*

• 9120 West Post Road, Suite 100 • Las Vegas, Nevada 89148 •

Telephone: (702) 254-7775 • Facsimile (702) 228-7719

Deed”) was recorded in the Official Records of the Clark County Recorder as Instrument No. 201109190002648.

108. The Notice of Default and Election to Sell, Notice of Trustee's Sale, Bank Foreclosure Deed and/or other documents recorded by Defendants since the time that Plaintiff purchased the Property have impugned Plaintiff's title to the Property.

109. Plaintiff's title to the Property has been disparaged and slandered, and there is a cloud on Plaintiff's title.

110. The actions of the Defendants were done with the intent to cause Plaintiff harm, or in conscious disregard for its rights, or were done with conscious disregard for the consequences of their actions, and were therefore done with either express or implied malice.

111. As a direct and proximate result of the actions of the Defendants, it has become necessary for Plaintiff to retain the services of an attorney to protect its rights and prosecute this Claim.

112. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil Procedure as further facts become known.

FIFTH CAUSE OF ACTION

(Conversion against BOA [BAC Home Loans] and Recontrust)

1113. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 112 hercof as if set forth fully herein.

114. Plaintiff properly acquired title and ownership of the Property at the HOA Foreclosure Sale.

115. By virtue of its purchase of the Property at the HOA Foreclosure Sale, Plaintiff became the sole owner of all right, title and interest in the Property free and clear of any encumbrances of the Defendants.

116. BAC Home Loans and Recontrust knew or should have known that the First Deed of Trust was extinguished as a result of the HOA Foreclosure Sale.

117. BAC Home Loans and Recontrust purported to foreclose upon the First Deed of Trust

1 despite their knowledge that the First Deed of Trust was void and unenforceable.

2 118. Defendants exercised dominion and control over the property of Plaintiff to the exclusion
3 of Plaintiff's rights in said property by purportedly selling the Property pursuant to the
4 extinguished First Trust Deed.

5 119. Defendants have received and maintained control of monies that rightfully belong to the
6 Plaintiff.

7 120. The actions of the Defendants were done with the intent to cause Plaintiff harm, or in
8 conscious disregard for Plaintiff's rights, or were done with conscious disregard for the
9 consequences of their actions, and were therefore done with either express or implied
10 malice.

11 121. As a direct and proximate result of the actions of the Defendants, it has become necessary
12 for Plaintiff to retain the services of an attorney to protect its rights and prosecute this
13 Claim.

14 122. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil
15 Procedure as further facts become known.

16 **SIXTH CAUSE OF ACTION**

17 **(Equitable Relief – Wrongful Foreclosure)**

18 123. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1
19 through 122 hereof as if set forth fully herein.

20 124. Plaintiff properly acquired title and ownership of the Property at the HOA Foreclosure
21 Sale in exchange for good and valuable consideration.

22 125. By virtue of its purchase of the Property at the HOA Foreclosure Sale, Plaintiff became
23 the sole owner of all right, title and interest in the Property free and clear of any
24 encumbrances of the Defendants.

25 126. The purported foreclosure sale based upon the First Deed of Trust was invalid and
26 ineffective because the First Deed of Trust was extinguished by virtue of the HOA
27 Foreclosure Sale.

28 127. At the time that BAC Home Loans and/or Recontrust purportedly foreclosed upon the

1 First Deed of Trust, BAC Home Loans lacked any valid security interest in the Property
2 and therefore lacked any right or power to foreclose.

3 128. The purported foreclosure sale by BAC Home Loans and/or Recontrust was wrongful and
4 void.

5 129. As a direct and proximate result of the actions of the Defendants, it has become necessary
6 for Plaintiff to retain the services of an attorney to protect its rights and prosecute this
7 Claim.

8 130. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil
9 Procedure as further facts become known.

10 SEVENTH CAUSE OF ACTION

11 (Equitable Relief - Recission)

12 131. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through
13 130 hereof as if set forth fully herein.

14 132. Plaintiff properly acquired title and ownership of the Property at the HOA Foreclosure
15 Sale in exchange for good and valuable consideration.

16 133. By virtue of its purchase of the Property at the HOA Foreclosure Sale, Plaintiff became
17 the sole owner of all right, title and interest in the Property free and clear of any
18 encumbrances of the Defendants.

19 134. The purported foreclosure sale based upon the First Deed of Trust was invalid and
20 ineffective because the First Deed of Trust was extinguished by virtue of the HOA
21 Foreclosure Sale.

22 135. At the time that BAC Home Loans and/or Recontrust purportedly foreclosed upon the
23 First Deed of Trust, BAC Home Loans lacked any valid security interest in the Property
24 and therefore lacked any right or power to foreclose.

25 136. It would be unjust for the Defendants to receive the benefit of the foreclosure sale.

26 137. The purported foreclosure sale of the Property based upon the First Deed of Trust should
27 be rescinded and the parties should be returned to the positions they held prior to the
28 conveyance.

1 138. As a direct and proximate result of the actions of the Defendants, it has become necessary
2 for Plaintiff to retain the services of an attorney to protect its rights and prosecute this
3 Claim.

4 139. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil
5 Procedure as further facts become known.

6 WHEREFORE, Plaintiff, LAS VEGAS DEVELOPMENT GROUP, LLC, prays for
7 judgment as follows:

- 8 A. On its First Cause of Action, for an Order which determines all and every claim,
9 estate or interest of the parties in the Property, finding that: (1) Plaintiff is the title
10 owner of the Property; (2) the HOA Foreclosure Deed is valid and enforceable;
11 (3) the HOA Foreclosure Sale extinguished the applicable Defendants' ownership
12 and security interests in the Property; (4) the subsequent transfers of the Property
13 were null, void and of no effect; and (5) Plaintiff's rights and interest in the
14 Property are superior to any interest claimed by the Defendants.
- 15 B. On its Second Cause of Action, for general and special damages in excess of Ten
16 Thousand Dollars (\$10,000.00);
- 17 C. On its Third Cause of Action, in the event that Plaintiff is divested of title to the
18 Property for any reason, for the imposition of an equitable mortgage against the
19 Property in favor of Plaintiff to secure the payment of all sums rightfully owed to
20 the Plaintiff associated with the Property;
- 21 D. On its Fourth Cause of Action, for general and special damages in excess of Ten
22 Thousand Dollars (\$10,000.00) and for exemplary or punitive damages in an
23 amount sufficient to deter Defendants and others from engaging in similar
24 conduct, said amount to adequately express social outrage over Defendants'
25 wrongful actions;
- 26 E. On its Fifth Cause of Action, for general and special damages in excess of Ten
27 Thousand Dollars (\$10,000.00) and for exemplary or punitive damages in an
28 amount sufficient to deter Defendants and others from engaging in similar

1 conduct, said amount to adequately express social outrage over Defendants'
2 wrongful actions;

3 F. On its Sixth Cause of Action, for an Order declaring the sale of the Property to be
4 void;

5 G. On its Seventh Cause of Action, for an Order rescinding and setting aside the sale
6 of the Property based upon the Court's equitable power of rescission;

7 H. For costs and attorneys' fees incurred in bringing this action; and

8 I. For such other and further relief as this Court may deem meet and proper.

9 DATED this 18th day of March, 2015.

10 ROGER P. CROTEAU & ASSOCIATES, LTD.

11
12 /s/ Timothy E. Rhoda
13 ROGER P. CROTEAU, ESQ.
14 Nevada Bar No. 4958
15 TIMOTHY E. RHODA, ESQ.
16 Nevada Bar No. 7878
17 9120 West Post Road, Suite 100
18 Las Vegas, Nevada 89148
19 (702) 254-7775
20 *Attorney for Plaintiff*
21 LAS VEGAS DEVELOPMENT GROUP, LLC
22
23
24
25
26
27
28

ROGER P. CROTEAU & ASSOCIATES, LTD.
• 9120 W. Post Road, Suite 100 • Las Vegas, Nevada 89148 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

1 **IAFD**
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
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 Plaintiff,)

21 vs.)

22 JAMES R. BLAHA, an individual; BANK OF)
23 AMERICA, NA, a National Banking)
24 Association, as successor by merger to BAC)
25 HOME LOANS SERVICING, LP;)
26 RECONTRUST COMPANY NA, a Texas)
27 corporation; JOSE PEREZ, JR. an individual;)
28 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.
Dept. No.

**ARBITRATION EXEMPTION
CLAIMED: (1) TITLE TO REAL
PROPERTY; (2) DECLARATORY
RELIEF**

23 **INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)**

24 Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for

25 //

26 //

27 //

ROGER P. CROTEAU & ASSOCIATES, LTD.
• 9120 West Post Road, Suite 100 • Las Vegas, Nevada 89148 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

1 parties appearing in the above entitled action as indicated below:

2 LAS VEGAS DEVELOPMENT GROUP, LLC \$ 270.00
3 **TOTAL REMITTED:** \$ 270.00

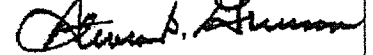
4 DATED this 19th day of March, 2015.

5 ROGER P. CROTEAU & ASSOCIATES, LTD.

6 /s/ Timothy E. Rhoda
7 TIMOTHY E. RHODA, ESQ.
8 Nevada Bar No. 7878
9 9120 West Post Road, Suite 100
10 Las Vegas, Nevada 89148
11 (702) 254-7775
12 *Attorney for Plaintiff*
13 LAS VEGAS DEVELOPMENT GROUP, LLC
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 2

EXHIBIT 2



1 FFCL
2 AARON R. MAURICE, ESQ.
3 Nevada Bar No. 006412
4 BRITTANY WOOD, ESQ.
5 Nevada Bar No. 007562
6 KOLESAR & LEATHAM
7 400 South Rampart Boulevard, Suite 400
8 Las Vegas, Nevada 89145
9 Telephone: (702) 362-7800
10 Facsimile: (702) 362-9472
11 E-Mail: amaurice@klnevada.com
12 bwood@klnevada.com

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

17 DISTRICT COURT
18 CLARK COUNTY, NEVADA

19 * * *

20 LAS VEGAS DEVELOPMENT GROUP, LLC,
21 a Nevada limited liability company,

22 Plaintiff,

23 vs.

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.

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 24th 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.

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

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

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

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

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

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.

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 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.

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

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

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

18 43. On April 24, 2019, this Court heard oral argument on the Blaha Defendants'
19 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. LVDG's Complaint seeks to set aside the NRS Chapter 107 Deed of Trust Foreclosure Sale that took place on August 29, 2011, and all subsequent transfers of the Property – including Blaha's September 30, 2011 purchase of the Property.

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

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

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

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

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

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

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.

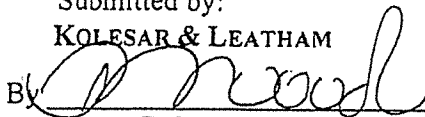
KOLESAR & LEATHAM
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

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

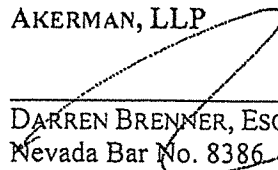
8 By 
9 AARON R. MAURICE, ESQ.
10 Nevada Bar No. 006412
11 BRITTANY WOOD, ESQ.
12 Nevada Bar No. 007562
13 400 South Rampart Boulevard, Suite 400
14 Las Vegas, Nevada 89145
15 Attorneys for Defendants JAMES R. BLAHA
16 and NOBLE HOME LOANS, INC.
17 formerly known as FCH FUNDING, INC.

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 counter part

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

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 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 Approved as to form:
21 AKERMAN, LLP

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

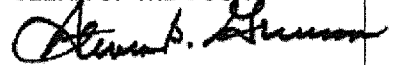
DARREN BRENNER, ESQ.
Nevada Bar No. 8386
WILLIAM S. HABDAS, ESQ.
Nevada Bar No. 13138
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
Attorney for Defendants
BANK OF AMERICA, N.A. and
RECONTRUST COMPANY, N.A.

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

5/1/2017
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

EXHIBIT 3

EXHIBIT 3



1 **NEOJ**

2 AARON R. MAURICE, ESQ.

3 Nevada Bar No. 006412

4 BRITTANY WOOD, ESQ.

5 Nevada Bar No. 007562

6 **KOLESAR & LEATHAM**

7 400 South Rampart Boulevard, Suite 400

8 Las Vegas, Nevada 89145

9 Telephone: (702) 362-7800

10 Facsimile: (702) 362-9472

11 E-Mail: amaurice@klnevada.com

12 bwood@klnevada.com

13 Attorneys for Defendants,

14 JAMES R. BLAHA and NOBLE HOME

15 LOANS, INC. formerly known as FCH

16 FUNDING, INC.

17 **DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 * * *

20 LAS VEGAS DEVELOPMENT GROUP, LLC,
21 a Nevada limited liability company,

22 Plaintiff,

23 vs.

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.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

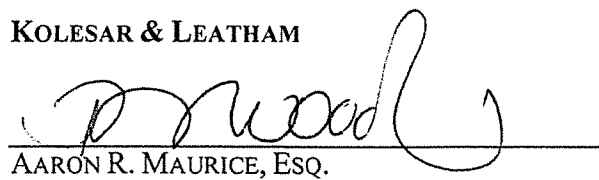
NOTICE OF ENTRY OF ORDER

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

DATED this 28th 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.

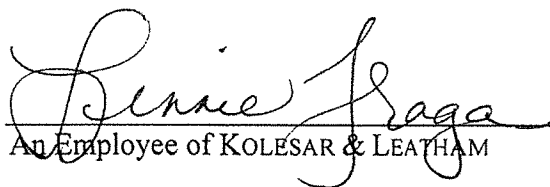
KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
TEL: (702) 362-7800 / FAX: (702) 362-9472

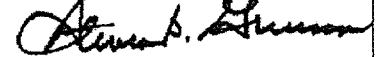
KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
TEL: (702) 362-7800 / FAX: (702) 362-9472

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Kolesar & Leatham, and that on the 28th day of May, 2019, I caused to be served a true and correct copy of foregoing NOTICE OF ENTRY OF ORDER in the following manner:

(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.


An Employee of KOLESAR & LEATHAM



1 **FFCL**

2 AARON R. MAURICE, ESQ.

3 Nevada Bar No. 006412

4 BRITTANY WOOD, ESQ.

5 Nevada Bar No. 007562

6 **KOLESAR & LEATHAM**

7 400 South Rampart Boulevard, Suite 400

8 Las Vegas, Nevada 89145

9 Telephone: (702) 362-7800

10 Facsimile: (702) 362-9472

11 E-Mail: amaurice@klnevada.com

12 bwood@klnevada.com

13 Attorneys for Defendants

14 JAMES R. BLAHA and NOBLE HOME

15 LOANS, INC. formerly known as FCH

16 FUNDING, INC.

17 **DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 * * *

20 LAS VEGAS DEVELOPMENT GROUP, LLC,
21 a Nevada limited liability company,

22 Plaintiff,

23 vs.

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.

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

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

I.

UNDISPUTED MATERIAL FACTS

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

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

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

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:

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

A. I assume because there is a disputed owner and the
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

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

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

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

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

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.

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

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

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

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

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

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

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

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.

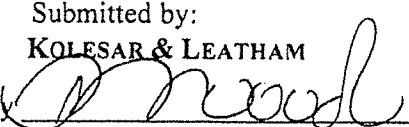
KOLESAR & LEATHAM
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

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

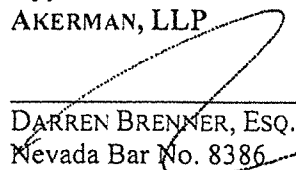
8 By 
9 AARON R. MAURICE, ESQ.
10 Nevada Bar No. 006412
11 BRITTANY WOOD, ESQ.
12 Nevada Bar No. 007562
13 400 South Rampart Boulevard, Suite 400
14 Las Vegas, Nevada 89145
15 Attorneys for Defendants JAMES R. BLAHA
16 and NOBLE HOME LOANS, INC.
17 formerly known as FCH FUNDING, INC.

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

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 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 Approved as to form:
21 AKERMAN, LLP

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

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

_____ 5/1/2019

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