

Electronically Filed
Jul 11 2019 03:16 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

NOAS

AARON R. MAURICE, ESQ.

Nevada Bar No. 006412

BRITTANY WOOD, ESQ.

Nevada Bar No. 007562

KOLESAR & LEATHAM

400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

Telephone: (702) 362-7800

Facsimile: (702) 362-9472

E-Mail: amaurice@klnevada.com

bwood@klnevada.com

Attorneys for Defendants

JAMES R. BLAHA and NOBLE HOME

LOANS, INC. formerly known as FCH

FUNDING, INC.

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.

ALL RELATED CLAIMS

CASE NO. A-15-715532-C

DEPT NO. XXX

**JAMES R. BLAHA AND NOBLE
HOME LOANS, INC.'S NOTICE OF
CROSS-APPEAL**

COME NOW, Defendants JAMES R. BLAHA and NOBLE HOME LOANS, INC.
formerly known as FCH FUNDING, INC. (collectively "the Blaha Defendants"), by and through

1 their attorneys of record, the law firm of Kolesar & Leatham, and hereby appeal to the Supreme
2 Court of Nevada from the Order Granting James R. Blaha and Noble Home Loans, Inc.'s Motion
3 for Summary Judgment and All Joinders Thereto ("Order") filed on May 24, 2019, in the above-
4 entitled Court only to the extent that the Order disposed of the Blaha Defendants' equitable
5 defenses.

6 The Blaha Defendants believe that the Order entered by the District Court is well
7 grounded in fact and law and should be affirmed by the Nevada Supreme Court with respect to
8 the Judgment entered in favor of the Defendants, concluding that the NRS Chapter 116 HOA
9 Foreclosure Sale did not extinguish the bank's Deed of Trust. If, however, the Nevada Supreme
10 Court should disagree, the Court should review the District Court's Order as it relates to the
11 rejection of the Blaha Defendants' equitable defenses.

12 A copy of the Findings of Fact and Conclusions of Law is attached hereto as Exhibit 1.

13 This Notice is filed in accordance with NRAP 3(a) and (c).

14 DATED this 2nd day of July, 2019.

15 **KOLESAR & LEATHAM**

16 By 

17 AARON R. MAURICE, ESQ.

18 Nevada Bar No. 006412

19 BRITTANY WOOD, ESQ.

20 Nevada Bar No. 007562

21 400 South Rampart Boulevard, Suite 400

22 Las Vegas, Nevada 89145

23 Attorneys for Defendants

24 JAMES R. BLAHA and NOBLE HOME

25 LOANS, INC. formerly known as FCH

26 FUNDING, INC.

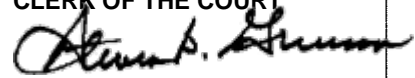
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Kolesar & Leatham, and that on the 2nd day of
3 July, 2019, I caused to be served a true and correct copy of foregoing JAMES R. BLAHA AND
4 NOBLE HOME LOANS, INC.'S NOTICE OF CROSS-APPEAL in the following manner:

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

9
10 /s/ Susan Owens
11 An Employee of KOLESAR & LEATHAM

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



ASTA

AARON R. MAURICE, ESQ.

Nevada Bar No. 006412

BRITTANY WOOD, ESQ.

Nevada Bar No. 007562

KOLESAR & LEATHAM

400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

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bwood@klnevada.com

Attorneys for Defendants

JAMES R. BLAHA and NOBLE HOME

LOANS, INC. formerly known as FCH

FUNDING, INC.

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.

ALL RELATED CLAIMS

CASE NO. A-15-715532-C

DEPT NO. XXX

**JAMES R. BLAHA AND NOBLE
HOME LOANS, INC.'S CASE
APPEAL STATEMENT RELATED
TO NOTICE OF CROSS-APPEAL**

1. Names of cross-appellants filing the case appeal statement:

James R. Blaha and Noble Homes Loans, Inc. fka FCH Funding Inc.

2. Identify the judge issuing the decisions, judgment, and orders appealed from:
The Honorable Jerry A. Wiese II

3. Identify each cross-appellant and the name and address of counsel for each cross-appellant:

KOLESAR & LEATHAM
AARON R. MAURICE, ESQ.
BRITTANY WOOD, ESQ.
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Attorneys for Respondent/Cross-Appellant James R. Blaha and Noble Home Loans, Inc.

4. Identify each cross-respondent and the name and address of appellate counsel, if known, for each cross-respondent (if the name of a cross-respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

ROGER P. CROTEAU, ESQ.
TIMOTHY E. RHODA, ESQ.
9120 West Post Road, Suite 100
Las Vegas, Nevada 89148
Attorney for Appellant/Cross-Respondent Las Vegas Development Group LLC

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

To the best of the undersigned's knowledge, all of the attorneys identified above are licensed to practice law in Nevada.

6. Indicate whether the cross-appellant was represented by appointed counsel in the district court, and whether the cross-appellant is represented by appointed counsel on appeal:

James R. Blaha and Noble Home Loans, Inc. were represented by retained counsel in the district court and will be represented by retained counsel on appeal.

7. Indicate whether the district court granted the cross-appellant leave to proceed in forma pauperis, and if so, the date of the district court's order granting that leave:

The district court did not grant leave to James R. Blaha or Noble Home Loans,

1 Inc. to proceed in forma pauperis.

2 8. Indicate the date that the proceedings commenced in the district court:

3 The Complaint was filed March 19, 2015.

4 9. Provide a brief description of the nature of the action and result in the district
5 court, including the type of judgment or order being appealed and the relief granted by the
6 district court:

7 This is a quiet title action in which Las Vegas Development Group, LLC seeks to
8 remove the current record title holder, James R. Blaha, from title to the Property by
9 rescinding two sales of the property. The Nevada Supreme Court has determined that
10 Absolute Collection Services, LLC's ("ACS") statement that "a 9 month Statement of
11 Account is not valid" is subject to only one reasonable construction – ACS would
12 reject a superpriority tender. See Bank of America v. Thomas Jessup, LLC Series VII,
13 135 Nev. Adv. Op. 7, 435 P.3d. 1217, 1220 (Nev. Mar. 7, 2019). The exact same
14 correspondence analyzed by the Nevada Supreme Court in Jessup was exchanged
15 between Miles, Bauer, Bergstrom & Winters, LLP and ACS in this case. As in Jessup,
16 BAC's counsel's offer to pay the superpriority portion of the lien, combined with
17 ACS's rejection of that offer, operated to cure the default as to the superpriority
18 portion of the lien such that the HOA Foreclosure Sale did not extinguish BAC's first
19 Deed of Trust. As a result, BAC's foreclosure of its Deed of Trust – a Deed of Trust
20 which survived the HOA Foreclosure Sale – terminated any interest LVDG acquired
21 as a result of its \$5,200.01 bid at the HOA Foreclosure Sale. Even if such were not the
22 case (which it is), LVDG's claims are barred by the doctrine of laches and the doctrine
23 of equitable estoppel as LVDG waited nearly four years (during which time the
24 Property was sold twice) before filing its Complaint in this action.

25 The Blaha Defendants believe that the Order entered by the District Court is well
26 grounded in fact and law and should be affirmed by the Nevada Supreme Court with
27 respect to the Judgment entered in favor of the Defendants concluding that the NRS
28 Chapter 116 HOA Foreclosure Sale did not extinguish the BAC's first Deed of Trust.

1 If, however, the Nevada Supreme Court should disagree, the Court should review the
2 District Court's Order as it relates to the rejection of the Blaha Defendants' equitable
3 defenses.

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

7 One prior appeal was filed in this matter by Las Vegas Development Group, LLC
8 as Case No. 71875.

9 11. Indicate whether the appeal involves child custody or visitation:

10 The appeal does not involve child custody or visitation.

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

13 Doubtful.

14 DATED this 2nd day of July, 2019.

15 KOLESAR & LEATHAM

16 By 

17 AARON R. MAURICE, ESQ.

18 Nevada Bar No. 006412

19 BRITTANY WOOD, ESQ.

20 Nevada Bar No. 007562

21 400 South Rampart Boulevard, Suite 400

22 Las Vegas, Nevada 89145

23 Attorneys for Defendants

24 JAMES R. BLAHA and NOBLE HOME

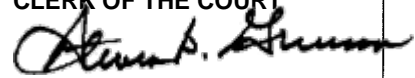
25 LOANS, INC. formerly known as FCH

26 FUNDING, INC.
27
28

KOLESAR & LEATHAM
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 891a45
Tel: (702) 362-7800 / Fax: (702) 362-9472

(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 the Court's facilities to those parties listed on the Court's Master Service List.

An Employee of KOLESAR & LEATHAM



NPNR

AARON R. MAURICE, ESQ.

Nevada Bar No. 006412

BRITTANY WOOD, ESQ.

Nevada Bar No. 007562

KOLESAR & LEATHAM

400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

Telephone: (702) 362-7800

Facsimile: (702) 362-9472

E-Mail: amaurice@klnevada.com

bwood@klnevada.com

Attorneys for Defendants

JAMES R. BLAHA and NOBLE HOME

LOANS, INC. formerly known as FCH

FUNDING, INC.

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.

ALL RELATED CLAIMS

CASE NO. A-15-715532-C

DEPT NO. XXX

**JAMES R. BLAHA AND NOBLE
HOME LOANS, INC.'S NOTICE OF
POSTING COST BOND**

PLEASE TAKE NOTICE that on July 2, 2019, Defendants James R. Blaha and Noble
Home Loans, Inc. posted the required \$500 bond securing costs on appeal.

1 A copy of the official receipt is attached hereto.

2 DATED this 2nd day of July, 2019.

3
4 **KOLESAR & LEATHAM**

5 By 

6 AARON R. MAURICE, ESQ.

7 Nevada Bar No. 006412

8 BRITTANY WOOD, ESQ.

9 Nevada Bar No. 007562

10 400 South Rampart Boulevard, Suite 400

11 Las Vegas, Nevada 89145

12 Attorneys for Defendants

13 JAMES R. BLAHA and NOBLE HOME

14 LOANS, INC. formerly known as FCH

15 FUNDING, INC.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Kolesar & Leatham, and that on the 2nd day of July, 2019, I caused to be served a true and correct copy of JAMES R. BLAHA AND NOBLE HOME LOANS, INC.'S NOTICE OF POSTING COST BOND 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 the Court's facilities to those parties listed on the Court's Master Service List.

/s/ Susan Owens

An Employee of KOLESAR & LEATHAM

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

OFFICIAL RECEIPT

District Court Clerk of the Court 200 Lewis Ave, 3rd Floor Las Vegas, NV 89101

Payor
Kolesar & Leatham, CHTD

Receipt No.
2019-40303-CCCLK

Transaction Date
07/2/2019

Description	Amount Paid
-------------	-------------

On Behalf Of Blaha, James R
A-15-715532-C
Las Vegas Development Group LLC, Plaintiff(s) vs. James Blaha, Defendant(s)
Appeal Bond

Appeal Bond
SUBTOTAL

500.00

500.00

PAYMENT TOTAL

500.00

Check (Ref #5813) Tendered

500.00

Total Tendered

500.00

Change

0.00

Notice of Appeal filed 7/2/19

07/02/2019
11:21 AM

Cashier
Station AIKO

Audit
36494662

OFFICIAL RECEIPT

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-15-715532-C

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

§
§
§
§
§
§
§

Location: **Department 30**
 Judicial Officer: **Wiese, Jerry A.**
 Filed on: **03/19/2015**
 Case Number History:
 Cross-Reference Case Number: **A715532**
 Supreme Court No.: **71875**
79055

CASE INFORMATION

Statistical Closures

06/18/2019 Summary Judgment

Case Type: **Other Title to Property**

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

DATE

CASE ASSIGNMENT

Current Case Assignment

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

PARTY INFORMATION

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

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











702-254-7775(W)

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

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

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

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

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

CASE SUMMARY

CASE NO. A-15-715532-C

Defendants James R. Blaha and Noble Home Loans, Inc.'s (Formerly Known as FCH Funding Inc.) Answer to Complaint

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

CASE SUMMARY

CASE NO. A-15-715532-C

Notice of Entry of Order

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

CASE SUMMARY

CASE NO. A-15-715532-C

Filed By: Counter Claimant Bank of America NA
Defendant Bank of America's Reply in Support of its Motion to Add Affirmative Defenses and to Add Parties and Assert Claims

10/05/2016



Notice of Entry of Order

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

10/05/2016



Findings of Fact, Conclusions of Law and Judgment

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

10/05/2016



Memorandum of Costs and Disbursements

Filed By: Defendant Blaha, James R
Memorandum of Costs and Disbursements

10/11/2016



Notice of Motion

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

10/11/2016



Motion to Amend Judgment

Filed By: Counter Defendant Las Vegas Development Group LLC
Motion to Alter or Amend Judgment; for Reconsideration; and for Clarification

10/31/2016



Opposition to Motion

Filed By: Counter Claimant Bank of America NA
Defendant Bank Of America, N.A.'S Opposition To Las Vegas Development Group, LLC's Motion To Alter Or Amend Judgment, For Reconsideration, Or For Clarification

10/31/2016



Opposition to Motion

Filed By: Defendant Blaha, James R
James R. Blaha and Noble Homes Loans, Inc.'s Opposition to Plaintiff's Motion to Alter or Amend Judgment; for Reconsideration; and for Clarification

11/01/2016



Joinder

Filed By: Defendant Blaha, James R
James R. Blaha and Noble Home Loans, Inc.'s Joinder to Bank of America, N.A.'s Opposition to Plaintiff's Motion to Alter or Amend Judgment; for Reconsideration; and for Clarification

11/02/2016



Joinder

Filed By: Defendant EZ Properties LLC
Defendants EZ Properties and K&L Baxter Joinder to Defendant Bank of America, NA's Opposition to Plaintiff's Motion to Alter or Amend Judgment, for reconsideration and for clarification.

11/02/2016



Joinder

Filed By: Defendant EZ Properties LLC
Defendants EZ Properties and K&L Baxter Family Limited Partnership Joinder to Defendants James R. Blaha and Noble Home Loans Inc Opposition to Plaintiff's Motion to Alter or Amend Judgment, for Reconsideration; and For Clarification.

11/30/2016









Order Denying Motion

Filed By: Defendant Blaha, James R
Order Denying Plaintiff's Motion to Alter or Amend Judgment; for Reconsideration; and for Clarification

CASE SUMMARY

CASE NO. A-15-715532-C

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

CASE SUMMARY

CASE NO. A-15-715532-C

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

CASE SUMMARY

CASE NO. A-15-715532-C

Notice of Hearing

03/20/2019	 Joinder to Motion For Summary Judgment Filed By: Defendant EZ Properties LLC; Defendant K&L Baxter Family Limited Partnership <i>DEFENDANTS EZ PROPERTIES, LLC AND K&L BAXTER FAMILY LIMITED PARTNERSHIP JOINDER TO DEFENDANTS JAMES R. BLAHA AND NOBLE HOME LOANS, INC'S MOTION FOR SUMMARY JUDGMENT</i>
03/25/2019	 Opposition to Motion For Summary Judgment Filed By: Cross Defendant Nevada Trails II Community Association <i>Nevada Trails II Community Association Limited Opposition to James R. Blaha and Noble Home Loans, Inc.'s Motion for Summary Judgment</i>
03/25/2019	 Joinder To Motion Filed By: Counter Claimant Bank of America NA; Defendant Recontrust Company NA <i>Bank of America, N.A. and Recontrust Company, N.A.'s Joinder to James R. Blaha and Noble Home Loans, Inc.'s Motion for Summary Judgment</i>
04/02/2019	 Motion Filed By: Counter Defendant Las Vegas Development Group LLC <i>Motion to Continue Pursuant to NRCP 56(d)</i>
04/04/2019	 Ex Parte Motion Filed By: Counter Defendant Las Vegas Development Group LLC <i>Ex Parte Motion for Order Shortening Time on Motion to Continue Pursuant to NRCP 56(D)</i>
04/04/2019	 Stipulation and Order for Dismissal Without Prejudice Filed By: Counter Claimant Bank of America NA <i>Stipulation and Order of Dismissal of Bank of America, N.A.'s Claims Against Nevada Trails II Community Association and Absolute Collection Services, LLC Without Prejudice</i>
04/04/2019	 Opposition Filed By: Defendant Blaha, James R <i>Opposition to Plaintiff's Ex Parte Motion for Order Shortening Time on Motion to Continue Pursuant to NRCP 56(d)</i>
04/05/2019	 Notice of Entry of Stipulation & Order for Dismissal Filed By: Counter Claimant Bank of America NA <i>Notice of Entry of Stipulation and Order of Dismissal of Bank of America, N.A.'s Claims Against Nevada Trails II Community Association and Absolute Collection Services, LLC Without Prejudice</i>
04/12/2019	 Opposition Filed By: Defendant Blaha, James R; Defendant FCH Funding Inc <i>Opposition to Plaintiff's Motion to Continue Pursuant to NRCP 56(d)</i>
04/12/2019	 Joinder to Opposition to Motion Filed by: Counter Claimant Bank of America NA; Defendant Recontrust Company NA <i>Bank of America, N.A. and Recontrust Company, N.A.'s Joinder to James R. Blaha and Noble Home Loans, Inc.'s Opposition to Motion to Continue</i>
04/15/2019	 Joinder to Opposition to Motion Filed by: Defendant EZ Properties LLC <i>JOINDER TO OPPOSITION</i>

CASE SUMMARY

CASE NO. A-15-715532-C

04/19/2019	 Opposition to Motion For Summary Judgment Filed By: Counter Defendant Las Vegas Development Group LLC <i>Opposition to Motion for Summary Judgment</i>
04/22/2019	 Reply to Opposition Filed by: Defendant Blaha, James R <i>James R. Blaha and Noble Home Loans, Inc.'s Reply to: (1) Nevada Trails II Community Association's Limited Opposition; and (2) Plaintiff's Opposition to the Blaha Defendants' Motion for Summary Judgment</i>
04/23/2019	 Joinder Filed By: Counter Claimant Bank of America NA; Defendant Recontrust Company NA <i>Bank of America, N.A. and Recontrust Company, N.A.'s Joinder to James R. Blaha and Nobel Home Loans, Inc.'s Reply to (1) Nevada Trails II Community Association's Limited Opposition; and (2) Plaintiff's Opposition to the Blaha Defendants' Motion for Summary Judgment</i>
05/24/2019	 Findings of Fact, Conclusions of Law and Judgment Filed by: Defendant Blaha, James R <i>Order Granting James R. Blaha and Noble Home Loans, Inc.'s Motion for Summary Judgment and All Joinders Thereto</i>
05/24/2019	 Notice of Entry of Order Filed By: Defendant Blaha, James R <i>Notice of Entry of Order</i>
05/28/2019	 Notice of Entry of Order Filed By: Defendant Blaha, James R; Defendant FCH Funding Inc <i>Notice of Entry of Order</i>
06/18/2019	 Order to Statistically Close Case <i>Civil Order to Statistically Close Case</i>
06/18/2019	 Notice of Appeal Filed By: Counter Defendant Las Vegas Development Group LLC <i>Notice of Appeal</i>
06/18/2019	 Case Appeal Statement Filed By: Counter Defendant Las Vegas Development Group LLC <i>Case Appeal Statement</i>
07/02/2019	 Notice of Appeal Filed By: Defendant Blaha, James R <i>James R. Blaha and Noble Home Loans, Inc.'s Notice of Cross-Appeal</i>
07/02/2019	 Case Appeal Statement Filed By: Defendant Blaha, James R <i>James R. Blaha and Noble Home Loans, Inc.'s Case Appeal Statement Related to Notice of Cross-Appeal</i>
07/02/2019	 Notice of Posting of Cost Bond Filed By: Defendant Blaha, James R <i>James R. Blaha and Noble Home Loans, Inc.'s Notice of Posting Cost Bond</i>


CASE SUMMARY

CASE NO. A-15-715532-C

DISPOSITIONS

- 10/05/2016 **Summary Judgment** (Judicial Officer: Wiese, Jerry A.)
Debtors: Las Vegas Development Group LLC (Plaintiff)
Creditors: James R Blaha (Defendant), Bank of America NA (Defendant), Recontrust Company NA (Defendant), Jose Perez, Jr. (Defendant), EZ Properties LLC (Defendant), K&L Baxter Family Limited Partnership (Defendant), FCH Funding Inc (Defendant)
Judgment: 10/05/2016, Docketed: 10/12/2016
- 04/04/2019 **Order of Dismissal Without Prejudice** (Judicial Officer: Wiese, Jerry A.)
Debtors: Absolute Collection Services, LLC (Cross Defendant), Nevada Trails II Community Association (Cross Defendant)
Creditors: Bank of America NA (Cross Claimant)
Judgment: 04/04/2019, Docketed: 04/05/2019
- 05/24/2019 **Summary Judgment** (Judicial Officer: Wiese, Jerry A.)
Debtors: Las Vegas Development Group LLC (Plaintiff)
Creditors: James R Blaha (Defendant), Bank of America NA (Defendant), Recontrust Company NA (Defendant), EZ Properties LLC (Defendant), K&L Baxter Family Limited Partnership (Defendant), FCH Funding Inc (Defendant)
Judgment: 05/24/2019, Docketed: 05/24/2019

HEARINGS

- 02/02/2016  **Discovery Conference** (9:30 AM) (Judicial Officer: Bulla, Bonnie)
Scheduling Order Will Issue;
Journal Entry Details:
Counsel anticipate 3 - 5 days for trial re: Quiet Title. No settlement conference requested. COMMISSIONER RECOMMENDED, discovery cutoff is 11/09/16; adding parties, amended pleadings, and initial expert disclosures DUE 08/11/16; rebuttal expert disclosures DUE 09/09/16; dispositive motions TO BE FILED BY 12/09/16. Scheduling Order will issue.;
- 09/13/2016 **Motion** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)
Defendant Bank of America, N.A.'s Motion to Add Affirmative Defenses and to Add Parties and Assert Claims
Moot;
- 09/13/2016 **Motion for Summary Judgment** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)
Granted;
- 09/13/2016 **Joinder** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)
Defendants Ez Properties, Llc And K&L Baxter Family Limited Partnership Joinder To Defendant Bank Of America, N.A.'S Motion To Add Affirmative Defenses And To Add Parties And Assert Claims.
Moot;
- 09/13/2016 **Joinder** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)
Defendants EZ Properties LLC and K&L Baxter Family Limited Partnership Joinder to Defendants James R Blaha and Noble Home Loans Inc's Motion for Summary Judgment
Moot;
- 09/13/2016 **Joinder** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)
Defendant Bank Of America, N.A.'S Joinder To Defendants James R. Blaha And Noble Home Loans, Inc.'s Motion For Summary Judgment
Moot;
- 09/13/2016  **All Pending Motions** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)
Matter Heard;
Journal Entry Details:
Defendants Ez Properties, Llc And K&L Baxter Family Limited Partnership Joinder To Defendant Bank Of America, N.A.'S Motion To Add Affirmative Defenses And To Add Parties

CASE SUMMARY

CASE NO. A-15-715532-C

And Assert Claims. Defendant Bank Of America, N.A.'S Motion To Add Affirmative Defenses And To Add Parties And Assert Claims. Deft Blaha Motion for Summary Judgment Defendants Ez Properties, Llc And K&L Baxter Family Limited Partnership Joinder To Defendant Bank Of America, N.A.'S Motion for Summary Judgment Mr. Morris argued this was a deed of trust foreclosure sale; Plaintiff did not have an interest in the property; and could not seek action due to the statute of limitations. Opposition by Mr. Croteau and argument regarding the sale being illegitimate and the chain of title. Court considered NRS 107.090. COURT ORDERED, motion for summary judgment GRANTED; pending motions are hereby MOOT.;

11/15/2016



Motion to Amend Judgment (9:00 AM) (Judicial Officer: Wiese, Jerry A.)

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

Journal Entry Details:

Plaintiff's Motion to Alter or Amend Judgment; for Reconsideration; and for Clarification Mr. Croteau argued for reconsideration of the order regarding the statute of limitation to file Complaint as to the legal findings reached by the Court. Opposition by Mr. Maurice. Court finds the order an accurate reflection. COURT ORDERED motion DENIED.;

01/09/2017

CANCELED Pre Trial Conference (9:00 AM) (Judicial Officer: Wiese, Jerry A.)
Vacated

01/30/2017

CANCELED Calendar Call (9:00 AM) (Judicial Officer: Wiese, Jerry A.)
Vacated

02/06/2017

CANCELED Jury Trial (1:30 PM) (Judicial Officer: Wiese, Jerry A.)
Vacated

07/18/2018



Status Check (9:00 AM) (Judicial Officer: Wiese, Jerry A.)

Status Check: Supreme Court Return

Trial Date Set;

Journal Entry Details:

Jamie Combs, Esq., present on behalf of Defendant. Ms. Wood advised matter was resolved by the application of the statute of limitations, however, there were other issues that were briefed as part of the Motion for Summary Judgment. Counsel added, one claim was resolved. Upon Court's inquiry, Counsel stated discovery and depository deadlines had passed. COURT ORDERED, a Trial date SET; Counsel can file any new pleading and motions that need to be ruled on. 07/01/19 9:00 AM PRE TRIAL CONFERENCE 07/22/19 9:00 AM CALENDAR CALL 07/29/19 10:30 AM JURY TRIAL ;

01/02/2019



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

Defendant Bank of America's Re-Notice of Motion to Add Affirmative Defenses, and to Add Parties and Assert Claims

Motion Granted;

Journal Entry Details:

Natalie Winslow, Esq. on behalf of Bank of America NA, also present. Upon Court's inquiry, Ms. Winslow advised matter was handled by another attorney, however, it was her understanding the Motion was unopposed. COURT ORDERED, Motion to Add Affirmative Defenses GRANTED.;

03/27/2019

CANCELED Motion to Dismiss (9:00 AM) (Judicial Officer: Wiese, Jerry A.)
Vacated - Moot

Nevada Trails II Community Association Motion to Dismiss and to Amend Caption

03/27/2019

CANCELED Joinder (9:00 AM) (Judicial Officer: Wiese, Jerry A.)
Vacated - Moot

Cross Defendant Absolute Collection Services LLC's Joinder to KB Silverado Homeowners Association's Motion to Dismiss

04/17/2019



Motion to Continue (9:00 AM) (Judicial Officer: Wiese, Jerry A.)

Events: 04/04/2019 Ex Parte Motion

CASE SUMMARY

CASE NO. A-15-715532-C

MINUTES



Ex Parte Motion

Filed By: Counter Defendant Las Vegas Development Group LLC

Ex Parte Motion for Order Shortening Time on Motion to Continue Pursuant to NRCP 56 (D)

Motion Denied;

Journal Entry Details:

Kelley Blatnik, on behalf of Nevada Trails II Community, also present. Ms. Blatnik advised Nevada Trails was dismissed, therefore, would not be making an argument. Mr. Maurice argued there was no reason to take the depositions again and discovery closes on April 30. Argument by Mr. Croteau. Upon Court's inquiry, Mr. Croteau indicated with the deposition, he anticipates on expanding the relationship between what happened over the year leading up to the letter. Court NOTED deposition was taken before with Plaintiff's participation, and ORDERED, Motion DENIED. Upon Court's further inquiry regarding an opposition, Mr. Croteau indicated he would file a response by the end of this week.;

04/24/2019

Motion for Summary Judgment (9:00 AM) (Judicial Officer: Wiese, Jerry A.)

Events: 03/19/2019 Motion for Summary Judgment

James R. Blaha and Noble Home Loans, Inc.'s Motion for Summary Judgment

Motion Granted;

04/24/2019

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

Events: 03/25/2019 Joinder To Motion

Bank of America, N.A. and Recontrust Company, N.A.'s Joinder to James R. Blaha and Noble Home Loans, Inc.'s Motion for Summary Judgment

Motion Granted;

04/24/2019



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

Matter Heard;

Journal Entry Details:

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

04/24/2019



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

Minute Order - No Hearing Held;

Journal Entry Details:

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

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

case, and consequently, this Court is compelled to follow the Supreme Court's lead and must conclude that the ACS correspondence indicated an intention to reject any tender, and combined with Miles Bauer's offer to pay the superpriority portion of the lien, it operated "to cure the default as to that portion of the lien, such that the ensuing foreclosure sale did not extinguish the first deed of trust." Based upon this finding, the Court finds that no genuine issue of material fact remains, and Summary Judgment is appropriate in favor of the Defendant. The parties requested that the Court rule also on the issues of equitable relief and the statute of limitations, and as the Court had not seen those as determinative issues, they had not previously been considered. The Court took those matters under advisement, and now renders the following decision: With regard to the statute of limitations issue, defense counsel made a compelling argument that the decisions which have come from the Federal District Courts in Nevada relating to the statute of limitations, being either 4 or 5 years, seem to be applied to banks which have asserted claims for quiet title. In the present case, the bank's claims, and the other Defendants claims, were asserted as defenses when Las Vegas Development Group brought suit. If a plaintiff were to wait until the last day before the statute of limitations ran to file a lawsuit for quiet title, and thereafter serves the action on the Defendants, and the Defendants position is that they are entitled to title in a piece of property, how can it be fair to prevent the Defendants from defending the case and asserting those claims, when arguably they had no reason to believe it was a disputed issue until suit was filed? Even though the parties to these HOA foreclosure matters must know at the time of the foreclosure sales, that they are potentially buying into a litigated issue, until one party asserts a claim, they may not feel a need to. If the Bank believed all along, that it had preserved its property interest, by offering to pay for 9 months of assessments, why would it need to file suit? This Court finds that whether the statute of limitations is 4 years, 5 years, or some other time period, the Defendant in a case has the right to defend and assert as one of its defenses, that it is entitled to the property, or that it has an interest in the subject property. Consequently, the Court does not find that the Defendants in this case are precluded from asserting the defenses that they have asserted. Similarly, with regard to the issue of "equitable estoppel, the Court does not find that the evidence supports the claim that the Plaintiff's claims are barred by this doctrine. This Court finds that the Plaintiff's claims were timely filed, and that the Defendants have the right to defend claims against them, as they have asserted in this action. Based upon the foregoing, and the Court's obligation to follow Jessup, the Court finds that there are no genuine issues of material fact that remain, and Summary Judgment is GRANTED in favor of the Defendants, Blaha, and Noble Home Loans, as well as the other Defendants. The Court concludes that the HOA foreclosure sale did not extinguish the bank's deed of trust. Counsel for Blaha and Noble Home Loans is to prepare an Order consistent with the foregoing, and with the Court's oral pronouncements at the time of the hearing on this matter, have it reviewed by all parties as to form and content, and submit it to the Court for signature within 10 days. CLERK'S NOTE: The above minute order has been distributed to: Roger Croteau, Esq., (croteaulaw@croteaulaw.com), Darren Brenner, Esq., (darren.brenner@akerman.com), William Habdas, Esq., (william.habdas@akerman.com), Aaron Maurice, Esq., (amaurice@klnevada.com), Kevin Hansen, Esq., (kevin@kevinrhansen.com), and Brittany Wood, Esq., (bwood@klnevada.com). //04/25/19 vm;

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

DATE**FINANCIAL INFORMATION****Cross Defendant** Absolute Collection Services, LLC

Total Charges	223.00
Total Payments and Credits	223.00
Balance Due as of 7/8/2019	0.00

Cross Defendant Nevada Trails II Community Association

Total Charges	223.00
Total Payments and Credits	223.00
Balance Due as of 7/8/2019	0.00

Counter Claimant Bank of America NA

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

Total Charges	423.00
Total Payments and Credits	423.00
Balance Due as of 7/8/2019	0.00
Defendant Blaha, James R	
Total Charges	1,097.00
Total Payments and Credits	1,097.00
Balance Due as of 7/8/2019	0.00
Defendant EZ Properties LLC	
Total Charges	623.00
Total Payments and Credits	623.00
Balance Due as of 7/8/2019	0.00
Defendant FCH Funding Inc	
Total Charges	30.00
Total Payments and Credits	30.00
Balance Due as of 7/8/2019	0.00
Defendant K&L Baxter Family Limited Partnership	
Total Charges	30.00
Total Payments and Credits	30.00
Balance Due as of 7/8/2019	0.00
Defendant Recontrust Company NA	
Total Charges	30.00
Total Payments and Credits	30.00
Balance Due as of 7/8/2019	0.00
Counter Defendant Las Vegas Development Group LLC	
Total Charges	326.00
Total Payments and Credits	326.00
Balance Due as of 7/8/2019	0.00
Defendant Blaha, James R	
Appeal Bond Balance as of 7/8/2019	500.00
Counter Defendant Las Vegas Development Group LLC	
Appeal Bond Balance as of 7/8/2019	1,000.00

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

Clark County Nevada

Case No. _____
(Assigned by Clerk's Office)

V I I I

I. Party InformationPlaintiff(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) 254-7775Defendant(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	
Probate (<i>select case type and estate value</i>) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate 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/Appeal 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

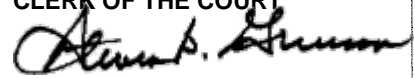
Business Court Filings should be filed using the Business Court civil coversheet

March 19, 2015

Date

/s/ Timothy E. Rhoda

Sig nature of initiating party or representative



1 **FFCL**

AARON R. MAURICE, ESQ.

2 Nevada Bar No. 006412

BRITTANY WOOD, ESQ.

3 Nevada Bar No. 007562

KOLESAR & LEATHAM

4 400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

5 Telephone: (702) 362-7800

Facsimile: (702) 362-9472

6 E-Mail: amaurice@klnevada.com

bwood@klnevada.com

7 Attorneys for Defendants

8 JAMES R. BLAHA and NOBLE HOME

LOANS, INC. formerly known as FCH

9 FUNDING, INC.

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 * * *

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

15 Plaintiff,

16 vs.

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

23 Defendants.

24 **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**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STANDARD OF REVIEW

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

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

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

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

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

III.

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **NOW THEREFORE:**

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

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

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

3 DATED this 20 day of May, 2019

4 
5 DISTRICT COURT JUDGE

6 Submitted by:

7 **KOLESAR & LEATHAM**

8 By 

AARON R. MAURICE, ESQ.

Nevada Bar No. 006412

9 BRITTANY WOOD, ESQ.

Nevada Bar No. 007562

10 400 South Rampart Boulevard, Suite 400

11 Las Vegas, Nevada 89145

Attorneys for Defendants JAMES R. BLAHA

12 and NOBLE HOME LOANS, INC.

13 formerly known as FCH FUNDING, INC.

14 Approved as to form:

ROGER P. CROTEAU & ASSOC., LTD.

15 [Did not sign]

16 ROGER P. CROTEAU, ESQ.

Nevada Bar No. 4958

17 TIMOTHY E. RHODA, ESQ.

Nevada Bar No. 7878

18 9120 West Post Road, Suite 100

19 Las Vegas, Nevada 89148

Attorney for Plaintiff

20 LAS VEGAS DEVELOPMENT GROUP

21 Approved as to form:

LAW OFFICES OF KEVIN R. HANSEN

23 Signed in counterpart

24 KEVIN R. HANSEN, ESQ.

Nevada Bar No. 6336

25 AMY WILSON, ESQ.

Nevada Bar No. 13421

26 5440 West Sahara Ave., Suite 206

Las Vegas, Nevada 89146

27 *Attorney for Defendants*

EZ PROPERTIES, LLC & K&L

28 BAXTER FAMILY LIMITED PARTNERSHIP

Approved as to form:

AKERMAN, LLP

29 
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.

KOLESAR & LEATHAM
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
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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.**

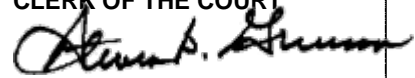
20 Approved as to form:
21 **AKERMAN, LLP**

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
29 *Attorney for Plaintiff*
30 LAS VEGAS DEVELOPMENT GROUP

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

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

43 _____
44 KEVIN R. HANSEN, ESQ.
45 Nevada Bar No. 6336
46 AMY WILSON, ESQ.
47 Nevada Bar No. 13421
48 5440 West Sahara Ave., Suite 206
49 Las Vegas, Nevada 89146
50 *Attorney for Defendants*
51 EZ PROPERTIES, LLC & K&L
52 BAXTER FAMILY LIMITED PARTNERSHIP



1 **NEOJ**

AARON R. MAURICE, ESQ.

2 Nevada Bar No. 006412

BRITTANY WOOD, ESQ.

3 Nevada Bar No. 007562

KOLESAR & LEATHAM

4 400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

5 Telephone: (702) 362-7800

Facsimile: (702) 362-9472

6 E-Mail: amaurice@klnevada.com

bwood@klnevada.com

7 Attorneys for Defendants,

8 JAMES R. BLAHA and NOBLE HOME

LOANS, INC. formerly known as FCH

9 FUNDING, INC.

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 * * *

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

15 Plaintiff,

16 vs.

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

Defendants.

ALL RELATED CLAIMS

CASE NO. A-15-715532-C


DEPT NO. XXX

NOTICE OF ENTRY OF ORDER

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

KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
TEL: (702) 362-7800 / FAX: (702) 362-9444

DATED this 24th day of May, 2019.

By 

Nevada Bar No. 006412

BRITTANY WOOD, ESQ.

Nevada Bar No. 007562

400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

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

1 **CERTIFICATE OF SERVICE**

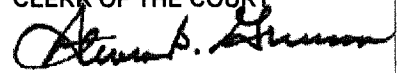
2 I hereby certify that I am an employee of Kolesar & Leatham, and that on the 24th day of
3 May, 2019, I caused to be served a true and correct copy of foregoing NOTICE OF ENTRY OF
4 ORDER in the following manner:

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

9
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An Employee of KOLESAR & LEATHAM

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



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

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

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

12 * * *

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

15 Plaintiff,

16 vs.

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

23 Defendants.

24 **ALL RELATED CLAIMS**
25

CASE NO. A-15-715532-C

DEPT NO. XXX

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

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

1 Properties, LLC and K&L Baxter Limited Partnership's (collectively "EZ Defendants") Joinders
2 thereto having come on for hearing on the 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. Haddas, of the law firm
8 of Akerman, LLP; and the EZ Defendants having appeared through their attorney of record,
9 Kevin R. Hansen, of the Law Offices of Kevin R. Hansen; the Court having reviewed the papers
10 and pleadings on file herein and having carefully considered the same; the Court having heard
11 the oral arguments of counsel; the Court being fully advised in the premises, and good cause
12 appearing therefore:

13 I.

14 **UNDISPUTED MATERIAL FACTS**

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

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

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

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

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

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

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

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

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

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

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

(last three emphasis added).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 A. Okay.

7 Q For \$32?

8 A. Right.

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

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

20 Q. Right.

21 A. I don't know.

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

24 A. No.

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

28 A. Yep. That looks right.

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

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

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

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

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

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

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

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

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

(emphasis added).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II.

STANDARD OF REVIEW

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

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

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

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

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

III.

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **NOW THEREFORE:**

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

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

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

3 DATED this 20 day of May, 2019

4 
5 DISTRICT COURT JUDGE

6 Submitted by:

7 **KOLESAR & LEATHAM**

8 By 

9 AARON R. MAURICE, ESQ.

10 Nevada Bar No. 006412

11 BRITTANY WOOD, ESQ.

12 Nevada Bar No. 007562

13 400 South Rampart Boulevard, Suite 400

14 Las Vegas, Nevada 89145

15 Attorneys for Defendants JAMES R. BLAHA

16 and NOBLE HOME LOANS, INC.

17 formerly known as FCH FUNDING, INC.

18 Approved as to form:

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

20 [Did not Sign]

21 ROGER P. CROTEAU, ESQ.

22 Nevada Bar No. 4958

23 TIMOTHY E. RHODA, ESQ.

24 Nevada Bar No. 7878

25 9120 West Post Road, Suite 100

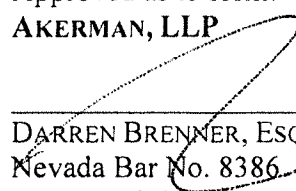
26 Las Vegas, Nevada 89148

27 *Attorney for Plaintiff*

28 LAS VEGAS DEVELOPMENT GROUP

Approved as to form:

AKERMAN, LLP


DARREN BRENNER, ESQ.

Nevada Bar No. 8386

WILLIAM S. HABDAS, ESQ.

Nevada Bar No. 13138

1160 Town Center Drive, Suite 330

Las Vegas, NV 89144

Attorney for Defendants

BANK OF AMERICA, N.A. and

RECONTRUST COMPANY, N.A.

Approved as to form:

LAW OFFICES OF KEVIN R. HANSEN

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 _____
6 DISTRICT COURT JUDGE

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

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

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

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

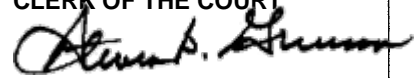
23 _____
24 ROGER P. CROTEAU, ESQ.
25 Nevada Bar No. 4958
26 TIMOTHY E. RHODA, ESQ.
27 Nevada Bar No. 7878
28 9120 West Post Road, Suite 100
Las Vegas, Nevada 89148
Attorney for Plaintiff
LAS VEGAS DEVELOPMENT GROUP

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

_____ 5/1/2017

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



1 **NEOJ**

AARON R. MAURICE, ESQ.

2 Nevada Bar No. 006412

BRITTANY WOOD, ESQ.

3 Nevada Bar No. 007562

KOLESAR & LEATHAM

4 400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

5 Telephone: (702) 362-7800

Facsimile: (702) 362-9472

6 E-Mail: amaurice@klnevada.com

bwood@klnevada.com

7 Attorneys for Defendants,

8 JAMES R. BLAHA and NOBLE HOME

LOANS, INC. formerly known as FCH

9 FUNDING, INC.

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 * * *

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

15 Plaintiff,

16 vs.

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

Defendants.

ALL RELATED CLAIMS

CASE NO. A-15-715532-C

DEPT NO. XXX

NOTICE OF ENTRY OF ORDER

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

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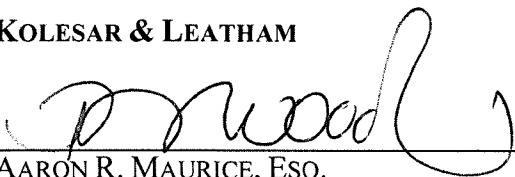
NOTICE OF ENTRY OF ORDER

Please take notice that an Order was entered with the above court on the 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

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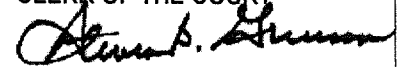
CERTIFICATE OF SERVICE

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

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



1 **FFCL**

AARON R. MAURICE, ESQ.

2 Nevada Bar No. 006412

BRITTANY WOOD, ESQ.

3 Nevada Bar No. 007562

KOLESAR & LEATHAM

4 400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

5 Telephone: (702) 362-7800

Facsimile: (702) 362-9472

6 E-Mail: amaurice@klnevada.com

bwood@klnevada.com

7 Attorneys for Defendants

8 JAMES R. BLAHA and NOBLE HOME

LOANS, INC. formerly known as FCH

9 FUNDING, INC.

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 * * *

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

15 Plaintiff,

16 vs.

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

Defendants.

ALL RELATED CLAIMS

CASE NO. A-15-715532-C

DEPT NO. XXX

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II.

STANDARD OF REVIEW

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

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

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

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

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

III.

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **NOW THEREFORE:**

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

COLESAR & 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:
KOLESAR & LEATHAM

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

13
14 Approved as to form:
ROGER P. CROTEAU & ASSOC., LTD.

Approved as to form:
AKERMAN, LLP

15
16 ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
17 TIMOTHY E. RHODA, ESQ.
Nevada Bar No. 7878
18 9120 West Post Road, Suite 100
Las Vegas, Nevada 89148
19 *Attorney for Plaintiff*
20 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.

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

23 _____ 5/1/2017
24 KEVIN R. HANSEN, ESQ.
Nevada Bar No. 6336
25 AMY WILSON, ESQ.
Nevada Bar No. 13421
26 5440 West Sahara Ave., Suite 206
Las Vegas, Nevada 89146
27 *Attorney for Defendants*
EZ PROPERTIES, LLC & K&L
28 BAXTER FAMILY LIMITED PARTNERSHIP

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

February 02, 2016

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

February 02, 2016 9:30 AM Discovery Conference

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

COURT CLERK: Alan Castle

RECORDER: Francesca Haak

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

September 13, 2016

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

September 13, 2016 9:00 AM

All Pending Motions

HEARD BY: Wiese, Jerry A.

COURTROOM: RJC Courtroom 14A

COURT CLERK: Alice Jacobson

RECORDER:

REPORTER: Amber McClane

PARTIES

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

JOURNAL ENTRIES

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

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

Deft Blaha Motion for Summary Judgment

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

November 15, 2016

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

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

HEARD BY: Wiese, Jerry A.

COURTROOM: RJC Courtroom 14A

COURT CLERK: Alice Jacobson

RECORDER:

REPORTER: Kristy Clark

PARTIES

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

JOURNAL ENTRIES

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

July 18, 2018

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

July 18, 2018 9:00 AM Status Check

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

COURT CLERK: Vanessa Medina

RECORDER:

REPORTER: Kimberly Farkas

PARTIES

PRESENT: Wood, Brittany Attorney

JOURNAL ENTRIES

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

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

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

07/22/19 9:00 AM CALENDAR CALL

07/29/19 10:30 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

January 02, 2019

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

January 02, 2019 9:00 AM Motion

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

COURT CLERK: Vanessa Medina

RECORDER:

REPORTER: Kimberly Farkas

PARTIES

PRESENT: Maurice, Aaron R. Attorney

JOURNAL ENTRIES

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

April 17, 2019

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

April 17, 2019 9:00 AM Motion to Continue

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

COURT CLERK: Vanessa Medina

RECORDER:

REPORTER: Kimberly Farkas

PARTIES

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

JOURNAL ENTRIES

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

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

April 24, 2019

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

April 24, 2019

9:00 AM

All Pending Motions

HEARD BY: Wiese, Jerry A.

COURTROOM: RJC Courtroom 14A

COURT CLERK: Vanessa Medina

RECORDER:

REPORTER: Kimberly Farkas

PARTIES

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

JOURNAL ENTRIES

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

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

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

JOURNAL ENTRIES

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

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

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

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

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

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

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

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

Certification of Copy

State of Nevada }
County of Clark } SS:

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

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

LAS VEGAS DEVELOPMENT GROUP, LLC,

Plaintiff(s),

vs.

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

Defendant(s),

Case No: A-15-715532-C

Dept No: XXX

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 8 day of July 2019.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

KOLESAR & LEATHAM, CHTD.

400 S. Rampart Blvd , Suite #400

Las Vegas, NV, 89145



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90-8578/3222

Two Hundred Fifty and No/100 Dollars

DATE

7/2/2019

AMOUNT

\$250.00

PAY
TO THE
ORDER
OF

Clerk, Nevada Supreme Court

VOID AFTER 60 DAYS



AUTHORIZED SIGNATURE

THE BACK OF THIS DOCUMENT CONTAINS CHECK SECURITY WATERMARK AND COIN REACTIVE INK

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