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Elizabeth A. Brown
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9 IN THE SUPREME COURT OF THE STATE OF NEVADA

10 ***

11 LAS VEGAS DEVELOPMENT GROUP, LLC,)
a Nevada limited liability company,)
12)
Appellant,)
13 vs.)
14 JAMES R. BLAHA, an individual; BANK OF)
AMERICA, NA, a National Banking)
15 Association, as successor by merger to BAC)
HOME LOANS SERVICING, LP;)
16 RECONTRUST COMPANY NA, a Texas)
corporation; EZ PROPERTIES, LLC, a Nevada)
17 limited liability company; K&L BAXTER)
FAMILY LIMITED PARTNERSHIP, a Nevada)
18 limited partnership; FCH FUNDING, INC, an)
unknown corporate entity,)
19 Respondents.)
20

Supreme Court No. 79055

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

21 **STATUS REPORT**

22 COMES NOW, Appellant, LAS VEGAS DEVELOPMENT GROUP, LLC, by and
23 through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby presents its
24 Status Report pursuant to this Court's Order dated April 15, 2020, stating as follows:

- 25 1. On or about May 24, 2019, the district court entered an Order granting Summary
26 Judgment in favor of the Defendants/Appellees herein. Pursuant to its Order, the
27 district court found summary judgment to be appropriate pursuant to this Court's
28 prior decision in the matter of *Bank of Am., N.A. v. Thomas Jessup, LLC Series*

VII, 135 Nev. 42, 435 P.3d 1217 (2019) (“*Jessup 1*”). This was the case although the record contained undisputed evidence in the form of the testimony of Absolute Collection Services, LLC (“*ACS*”) that had Bank of America, N.A. (“*BANA*”) or Miles Bauer Bergstrom & Winters (“*Miles Bauer*”) remitted to it any check in relation to the real property at issue, ACS would have accepted such check regardless of its amount. Thus, the record of this case unequivocally demonstrates that it was not futile for BANA or Miles Bauer to remit a check in relation to the subject property in order to protect the bank’s interest. The district court completely ignored this unrefuted factual testimony and held that “[e]ven if this court does not completely agree with Nevada Supreme Court’s reasoning in *Jessup*, *Jessup* is binding precedent and this court is not allowed to ignore binding precedent.” Thus, the district court’s decision was nearly wholly premised upon *Jessup 1*.

2. On October 25, 2019, Appellant filed a Motion to Stay Appeal and to Hold all Deadlines in Abeyance herein. Said Motion asserted a stay of this appeal to be appropriate pending the resolution of the pending petition for rehearing in the matter of *Jessup 1*.
3. An Order granting the Motion to Stay was entered on December 5, 2019.
4. Subsequent to December 5, 2019, pursuant to Orders from this Court, Appellant filed status reports on February 3, 2020 and April 10, 2020, regarding the state of the proceedings in *Jessup 1*.
5. On April 15, 2020, this Court issued an Order continuing the stay of proceedings herein and directing that the Appellant file an additional status report regarding the state of proceedings in *Jessup 1* within 60 days.
6. On May 7, 2020, this Court issued an Order vacating its prior Order in *Jessup 1* and replacing it with an Order Affirming in Part, Reversing in Part and Remanding to the district court. *Bank of Am. v. Jessup*, No. 73785, 2020 Nev. Unpub. LEXIS 471 (May 7, 2020) (“*Jessup 2*”). Pursuant to *Jessup 2*, the *en*

banc Court wholly reversed the Panel’s decision in *Jessup 1*, holding the district court’s original determination that the homeowners association lien foreclosure sale at issue extinguished BANA’s first deed of trust to be correct. This is opposed to *Jessup 1*, wherein the Panel determined that BANA was excused from making a payment based upon correspondence between ACS and Miles Bauer and that BANA’s first deed of trust was thus unaffected by the homeowners association lien foreclosure sale. *Jessup 1*, 435 P.3d at 1220.

7. The district court's Order appealed from herein was based almost entirely upon *Jessup 1*. Because *Jessup 1* is no longer good law, the Order appealed from herein is clearly erroneous. At the very least, questions of material fact existed which precluded summary judgment as a result of ACS's unrebutted testimony that it would have accepted any check that BANA or Miles Bauer might have remitted (but did not).

8. Based upon the foregoing, Appellant respectfully suggests that briefing of this appeal may now move forward and that the entry of a new briefing schedule is appropriate. Alternatively, the Court may take such other action as it deems appropriate and necessary.

DATED this 14th day of May, 2020.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Timothy E. Rhoda

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee or agent of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 14th day of May, 2020, I caused a true and correct copy of the foregoing document to be served on all parties as follows:

X VIA ELECTRONIC SERVICE: through the Nevada Supreme Court's efile and serve system.

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

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

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

/s/ Timothy E. Rhoda
An employee or agent of ROGER P. CROTEAU & ASSOCIATES, LTD.