

IN THE SUPREME COURT OF NEVADA

SATICOY BAY, LLC 34
INNISBROOK,

Appellant,

vs.

THORNBURG MORTGAGE
SECURITIES TRUST 2007-3;
FRANK TIMPA; MADELAINE
TIMPA; TIMPA TRUST; RED ROCK
FINANCIAL SERVICES, LLC;
SPANISH TRAIL MASTER
ASSOCIATION; REPUBLIC
SERVICES; AND LAS VEGAS
VALLEY WATER DISTRICT,

Respondents.

Electronically Filed
Oct 15 2020 06:48 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**OPPOSITION TO RESPONDENT
SPANISH TRAIL MASTER
ASSOCIATION'S RENEWED
MOTION TO DISMISS APPEAL**

COMES NOW Appellant Saticoy Bay, LLC Series 34 Innisbrook
("Saticoy"), by and through its counsel of record, Roger P. Croteau & Associates,
Ltd., and hereby presents its Opposition to Spanish Trail Master Association's
("HOA") Motion to Dismiss Appeal (the "**Motion**").¹

FACTUAL BACKGROUND

In addition to the background contained in HOA's Motion, the following are
highly relevant and important facts:

¹ Capitalized terms are given the same meaning as in the Motion unless otherwise
stated herein.

1. On April 10, 2015, Thornburg filed its Answer and Counter-Claims, which added Red Rock as a party. *See* Ex. 1 (sans exhibits).

2. On May 21, 2015, Red Rock filed its Answer and Counterclaim for Interpleader (NRCP 22) (the “**Interpleader Counterclaim**”) against Thornburg, Frank Timpa, Madeline (sic) Timpa, Timpa Trust, Countrywide Home Loans, Inc., Estates West at Spanish Trail, Mortgage Electronic Registration Systems, Inc., Republic Services, and Las Vegas Valley Water District. *See* Ex. 2 at pp. 11-12.

3. The Interpleader Counterclaim alleged that Red Rock was holding **\$1,168,865.05 in excess proceeds**. *See id.* at p. 13.

4. Madelaine Timpa and Timpa Trust did not even answer the Interpleader Counterclaim until January 31, 2019, *see* Ex. 3, despite HOA’s apparent argument that all claims were resolved by the FFCL in 2018. Mot. at 2.

5. Saticoy filed a Motion for Reconsideration Under NRCP 59(e) and 60(b) (“**Motion for Reconsideration**”) on September 24, 2019, pursuant to which it very specifically sought to “have the sale of the Property set aside or rescinded. *See* Ex. 4, at p. 6-7, 15. This was in keeping with its earlier pleadings.

LEGAL ARGUMENT

I. THE FFCL WAS NOT A FINAL JUDGMENT BECAUSE IT DID NOT RESOLVE ALL CLAIMS AGAINST ALL PARTIES

In its Motion, HOA seems to argue that this appeal was untimely filed, because the FFCL was a final, appealable order and any appeal thereof should have

been filed by no later than January 4, 2019. Mot. at 3-4. Specifically, HOA argues that the FFCL was a final order, because the “district court also dismissed all remaining claims, whether specifically mentioned in the FFCL or not, including all claims against (sic) the Association.” *Id.* at 2. However, HOA’s argument is faulty and does not take into account the district court’s later acknowledgment that the FFCL did not address or resolve the Interpleader Counterclaim filed by Red Rock.

Reading the FFCL in the context of the case posture is critical since the FFCL set forth the district court’s order regarding only the motions for summary judgment filed by Saticoy, HOA, and Thornburg. *See* Mot. at 2. The FFCL did *not* respond to, nor address, the Interpleader Counterclaim, because that issue was *not* before the district court. *See id.*; *see also* Mot. at Ex. D (FFCL, which does not address Red Rock’s interpleader claim). *See Brown v. MHC Stagecoach, LLC*, 129 Nev. 343, 345 (2013) (“The finality of an order or judgment depends on ‘what the order or judgment actually does, not what it is called.’ To be final, an order or judgment must ‘dispose [] of all the issues presented in the case, *and leave[] nothing for the future consideration of the court*, except for post-judgment issues such as attorney’s fees and costs.’”) (emphasis added) (citations omitted).

The fact that the FFCL did not resolve *all* issues against *all* parties is demonstrated beyond any doubt by the district court’s Order dated June 19, 2019 (the “**Order**”), which granted Saticoy’s Motion to Reinstate Statistically Closed

Case (“**Motion to Reinstate**”). *See* Mot. at Ex. F. Based on the district court’s Order, the litigation continued to proceed for many months, *see* Ex. 5, Register of Actions, with the Interpleader Counterclaim ultimately being adjudicated in favor of Timpa Trust on August 20, 2019. *See* Mot. at Ex. H (granting Timpa Trust ***over \$1,100,000 in excess proceeds***). Comparing the Order to the FFCL, it is clear that the FFCL was not a final, appealable order. The distinction lies in the plain wording of NRCP 54(b).

To the extent that HOA is arguing that the order statistically closing the case made the FFCL a final judgment, that argument is inaccurate. *See Brown*, 129 Nev. at 347 n.1 (“Because the order only serves to direct the statistical closure of a case rather than to resolve any claims pending in that case, our conclusion would be the same had the district court checked the box indicating that the basis for the statistical closure was a voluntary, involuntary, or stipulated dismissal or a default or summary judgment.”); *Matz v. W. Progressive-Nevada, Inc.*, 445 P.3d 220 (Nev. 2019) (unpublished disposition) (“form orders statistically closing a case are not final and appealable.”); *see also* Ex. 6 (“***COURT FINDS ... that the case was closed in error.***”) (emphasis added).

The simple fact that additional motion practice and hearings were held and adjudicated subsequent to the FFCL proves without doubt that the FFCL was not a final, appealable judgment. To the extent that it could have been deemed to be

such, this error was remedied after Saticoy's Motion to Reinstate was granted. Indeed, Timpa Trust did not file its motion for summary judgment until June 25, 2019. *See* Mot. at Ex. G. This Motion was not adjudicated until it was granted pursuant to the Order entered on September 11, 2019. *See* Mot. at Ex. H. Quite simply, it is patently clear that the FFCL did not adjudicate all issues between all parties *because issues and claims were later adjudicated.*

II. THE FFCL WAS NOT CERTIFIED AS FINAL PURSUANT TO NRCP 54(B)

As noted above, NRCP 54 allows a district court to certify that an order adjudicating fewer than all claims against fewer than all parties as a final judgment. *See* NRCP 54(b). Here, it is undisputed that the FFCL does not include any language certifying the FFCL as a final judgment, nor does the FFCL include any language expressly finding no just reason for delay and no party sought 54(b) relief. *See* Mot. at Ex. D. Therefore, the FFCL was not a final, appealable judgment.

III. NO BASIS EXISTS TO LIMIT SATICOY'S APPEAL

The HOA's second argument suggests that Saticoy should for some reason be precluded from appealing the remedy that was ultimately granted by the district court based upon its factual findings. Specifically, HOA argues that Saticoy "argued against" setting aside the foreclosure sale. At best, HOA's argument is

flawed and tells only a small part of the story. Pursuant to NRCP 54(b), Saticoy was entitled to move the court to review its prior orders and it did so in this case.

HOA argues that Saticoy “should be judicially estopped from arguing on appeal that the district court committed error in not setting aside the foreclosure sale in this case because Saticoy Bay specifically argued against such a remedy in its summary judgment briefing before the district court.” Mot. at p. 6. Specifically, HOA states that in its Motion filed on May 4, 2018, Saticoy argued that “that there was no evidence in this case that would support setting aside the foreclosure sale on equitable grounds.” Mot. at p. 7 (citing Saticoy Motion for Summary Judgment, Ex. O, p. 15-16). However, HOA ignores those parts of the record where Saticoy explicitly sought rescission as a remedy. Moreover, HOA takes Saticoy’s affirmative motion for summary judgment out of context and without consideration of the totality of the pleadings.

A. Both Saticoy and Thornburg Proposed Rescission as a Potential Remedy Throughout this Litigation

Contrary to the claims of HOA, both Saticoy and Thornburg proposed the rescission of the HOA Sale as potential remedy throughout the district court litigation. Indeed, once Saticoy was advised during the course of discovery that Thornburg alleged that the superpriority portion of the HOA Lien had been satisfied prior to the HOA Foreclosure Sale, Saticoy amended its complaint to allege in pertinent part as follows:

27. If the Court finds that the HOA assessment lien did not contain a super-priority portion, then Plaintiff's high bid for the Property should be rescinded due to the misrepresentations made by the HOA and RRFS in the foreclosure documents, and all monies paid by Plaintiff should be refunded to Plaintiff.

See Ex. 7, Third Amended Complaint. Saticoy's Third Amended Complaint went on to request relief as follows:

6. If the Court finds that the assessment lien did not include a superpriority portion, for a judgment against the HOA and RRFS rescinding Plaintiff's purchase of the Property and requiring all monies paid by Plaintiff to be refunded or in the alternative, for damages in an amount in excess of \$10,000.00;

Id. It is apparent that Saticoy's pleadings claimed rescission as a potential remedy. Similarly, Thornburg sought rescission as a potential remedy.

Pursuant to Thornburg's Answer to Third Amended Complaint and Counterclaims, Thornburg alleged as follows:

78. In the alternative, for all the reason set forth above and in the General Allegations, the Trust is entitled to a determination from this Court, pursuant to NRS 30.010 and NRS 40.010, that the HOA Sale is unlawful and void.

See Ex. 8, Answer to Third Amended Complaint (sans exhibits). Thornburg's Answer and Counterclaim went on to aver that the HOA Foreclosure Sale "was wrongfully conducted and should be set aside." *Id.*, paragraphs 90, 91, 92, 93.

Thornburg further prayed for relief as follows:

3. In the alternative, for a declaration and determination that the HOA Sale was invalid and conveyed no legitimate interest to the Buyer.

Id.

Aside from the foregoing, long after the filing of Saticoy's Motion for Summary Judgment on May 4, 2018, which the HOA seizes upon, Saticoy filed its Motion for Reconsideration on September 24, 2019. *See* Ex. 4. Pursuant to the Motion for Reconsideration, Saticoy very specifically asked the district court to set aside the HOA Foreclosure Sale based upon the then-newly issued decision in the matter of *Bank of America v. Thomas Jessup, LLC*, 435 P.3d 1217 (Nev. 2019), coupled with the relevant facts of this case. *Id.*

It is clear that rescission was contemplated by not only by Saticoy but also by Thornburg. In fact, rescission is the only remedy conceivable in this case given the grossly inequitable outcome. It is unclear why the HOA so desperately seeks to preempt this Court from properly examining the equities at play.

B. HOA Takes Saticoy's Arguments out of Context

HOA asserts that Saticoy has taken conflicting positions before this Court and the district court regarding whether rescission is an appropriate remedy. As discussed above, it is very clear that both Saticoy and Thornburg claimed rescission as a potential remedy. It is true that Saticoy argued at the district court that Thornburg's tender of the superpriority portion of the HOA Lien was ineffective and that the HOA Sale therefore extinguished Thornburg's security

interest, but this was but one of its arguments. Saticoy also took a very specific alternative position IF the district court found that this was not the case. See Ex. 7.

HOA's Motion asserts that Saticoy "argue[d] that there was no evidence in this case that would support setting aside the foreclosure sale on equitable grounds." Mot. at 7, citing Saticoy Motion for Summary Judgment, p. 15-16. Nowhere within the cited pages did Saticoy make this statement. The closest words provide that "the bank's answers to interrogatories do not set forth any evidence or contentions of any defect in the sale that would constitute fraud, oppression or unfairness." Mot. at Ex. O, p. 16. Notably, this statement sought to rebut any claim that the foreclosure sale should be set aside based upon inadequate sale price and was made in support of Saticoy's arguments that the HOA Foreclosure Sale served to extinguish Thornburg's deed of trust. *Id.* Saticoy simply did not make the alleged blanket statement that HOA misrepresents.

Throughout the district court litigation, Saticoy claimed that the HOA Foreclosure Sale extinguished Thornburg's deed of trust. When it was advised for the first time during discovery that Thornburg claimed to have satisfied the superpriority portion of the HOA Lien, Saticoy amended its complaint to make an alternative claim for rescission. Because the district court ultimately determined that Thornburg did satisfy the superpriority portion of the HOA Lien, Saticoy contends that the HOA Sale should have been rescinded on equitable grounds.

Saticoy repeatedly sought such relief, including in its Motion for Reconsideration. *See* Ex. 4.

Saticoy's Motion for Summary Judgment sought "summary judgment against the defendant bank and the granting of quiet title to the plaintiff." *See* Mot. at Ex. O. This Motion was filed long before this case was finally adjudicated. Obviously, Saticoy argued that the bank's purported tender was ineffective and that its deed of trust was thus extinguished. In this scenario, and for purposes of its Motion for Summary Judgment, Saticoy did not assert that the HOA Foreclosure Sale was void. However, this did not serve to waive its alternative arguments if the deed of trust was deemed to survive.

C. Saticoy was Entitled to Make Alternative and Even Inconsistent Arguments

NRCP 8 very specifically authorizes litigants to allege alternative and even inconsistent claims. In this case, Saticoy did exactly that, primarily claiming that the HOA Foreclosure Sale served to extinguish Thornburg's deed of trust. However, once advised that Thornburg claimed the superpriority portion of the HOA Lien to have been satisfied prior to the HOA Foreclosure Sale, Saticoy claimed alternatively that if this was not the case, then the sale should be rescinded and its purchase price should be refunded based upon equitable grounds. Saticoy was absolutely entitled to make these alternative arguments and cannot be deemed to have waived one or the other based upon the clear and specific provisions of

NRCP 8, which allows not only alternative claims but also inconsistent claims. Indeed, pursuant to its Motion for Reconsideration, Saticoy very specifically asked that the HOA Foreclosure Sale be set aside. This request was ultimately denied by the district court. However, Saticoy was and is entitled to appeal this decision.

The district court ultimately found that the superpriority portion of the HOA Lien was satisfied prior to the HOA Foreclosure Sale and that Thornburg's deed of trust thus survived the sale. However, the district court erred by applying the incorrect remedy and refusing to set aside the sale. Saticoy paid over One Million Two Hundred Thousand Dollars (\$1,200,000.00) to purchase the Property at the HOA Foreclosure Sale with no knowledge that Thornburg had paid or attempted to pay any portion of the HOA Lien and when the Property as collateral undersecured Thornburg's deed of trust by over Three Million Dollars. Given the vast inequity at hand, the district court erred by not setting aside the foreclosure sale as very specifically requested by Saticoy.

CONCLUSION

Simply put, the HOA's argument is misfounded and must be denied. The FFCL did not resolve all claims as to all parties and was not certified as final. Therefore, the FFCL was not a final, appealable judgment. As to HOA's second argument, Saticoy sought rescission as an alternative remedy throughout this matter. The district court did not ultimately grant this remedy although it was the

most appropriate and necessary based upon the factual record that was developed. The HOA has presented no sound basis to disallow Saticoy to appeal the district court's decision.

Dated this 15th day of October, 2020.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Roger P. Croteau
Roger P. Croteau, Esq.
Nevada Bar No. 4958
2810 West Charleston Blvd., Suite 75
Las Vegas, Nevada 89102
Attorneys for Appellant

Certificate of Service

In accordance with NRAP 25, I hereby certify that on October 15, 2020, I caused a copy of the **OPPOSITION TO RESPONDENT SPANISH TRAIL MASTER ASSOCIATION’S RENEWED MOTION TO DISMISS APPEAL** to be filed and served electronically via the Court’s E-Flex System to the following:

David R. Koch Daniel G. Scow Steven B. Scow Brody R. Wight Koch & Scow, LLC 11500 S. Eastern Ave., Suite 210 Henderson, NV 89052	Drew J. Starbuck Donald H. Williams Williams Starbuck 612 10th St. Las Vegas, NV 89101
Travis D. Akin The Law Office of Travis Akin 8275 S. Eastern Ave., Suite 200 Las Vegas, NV 89123	Bryan Naddafi Elena Nutenko Avalon Legal Group LLC 9480 S. Eastern Ave., Suite 257 Las Vegas, NV 89123
Thera A. Cooper Melanie D. Morgan Ariel E. Stern Akerman LLP 1635 Village Center Circle, Suite 200 Las Vegas, NV 89134	Sean L. Anderson Nevada Bar No. 7259 Ryan D. Hastings Nevada Bar No. 12394 Leach Kern Gruchow Anderson Song 2525 Box Canyon Drive Las Vegas, Nevada 89128

/s/ Timothy E. Rhoda

An Employee or agent of ROGER P. CROTEAU
& ASSOCIATES

EXHIBIT 1

EXHIBIT 1


CLERK OF THE COURT

AACC
WRIGHT, FINLAY & ZAK, LLP
Dana Jonathon Nitz, Esq.
Nevada Bar No. 0050
Shadd A. Wade, Esq.
Nevada Bar No. 11310
7785 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
(702) 475-7964; Fax: (702) 946-1345
dnitz@wrightlegal.net
swade@wrightlegal.net
Attorneys for Defendant, Thornburg Mortgage Securities Trust 2007-3

DISTRICT COURT
CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3; RECONTRUST COMPANY,
N.A. a division of BANK OF AMERICA;
FRANK TIMPA and MADELAINE TIMPA,
individually and as trustees of the TIMPA
TRUST,

Defendants.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3,

Counterclaimant

vs.

SATICOY BAY LLC SERIES 34
INNISBROOK, a Nevada limited-liability
company; SPANISH TRAIL MASTER
ASSOCIATION, a Nevada Non-Profit
Corporation; RED ROCK FINANCIAL
SERVICES, an unknown entity; FRANK

Case No.: A-14-710161-C
DEPT No.: XXXI

THORNBURG MORTGAGE
SECURITIES TRUST 2007-3'S ANSWER
AND COUNTER-CLAIMS

1 TIMPA, an individual; DOES I through X; and
2 ROE CORPORATIONS I through X, inclusive,

3 Counter-defendants.

4 COMES NOW Defendant/Counterclaimant, THORNBURG MORTGAGE SECURITIES
5 TRUST 2007-3, (hereinafter "THORNBURG" or "Defendant"), by and through its attorney of
6 record, the law firm of Wright, Finlay & Zak, LLP, and hereby submits its Answer to the
7 Plaintiff/Counterdefendant SATICOY BAY LLC SERIES 34 INNISBROOK's (hereinafter
8 "SATICOY") Complaint.

9 PARTIES

10 1. Defendant admits that a Foreclosure Deed was recorded in the Clark County
11 Recorder's Office as Book and Instrument Number 20141110-0002475 and Plaintiff is stated as
12 Grantee; however, Defendant denies the other allegations in paragraph 1 of the Complaint.

13 2. Defendant admits that a Foreclosure Deed was recorded in the Clark County
14 Recorder's Office as Book and Instrument Number 20141110-0002475, which refers to a
15 foreclosure sale held on November 7, 2014, and Plaintiff is stated as Grantee; however,
16 Defendant denies the other allegations in paragraph 2 of the Complaint.

17 3. Defendant admits that a Foreclosure Deed was recorded in the Clark County
18 Recorder's Office as Book and Instrument Number 20141110-0002475 and Plaintiff is stated as
19 Grantee; however, Defendant denies the other allegations in paragraph 3 of the Complaint.

20 4. Defendant admits the allegations contained in paragraph 4 of the Complaint.

21 5. Defendant denies the allegations contained in paragraph 5 of the Complaint.

22 6. Defendant does not possess enough information to admit or deny the allegations
23 contained in paragraph 6 of the Complaint; therefore, Defendant denies said allegations.

24 7. Defendant denies the allegations contained in paragraph 7 of the Complaint.

25 8. Defendant denies the allegations contained in paragraph 8 of the Complaint.

26 9. Defendant denies the allegations contained in paragraph 9 of the Complaint.

27
28 //

1 **SECOND CLAIM FOR RELIEF**

2 10. Answering paragraph 10, Defendant hereby repeats, re-alleges and incorporates
3 each of its admissions, denials, or other responses to all the paragraphs referenced hereinabove as
4 if set forth at length and in full.

5 11. Defendant avers that paragraph 11 states a request for relief to which no response
6 is required. To whatever extent a response is required, Defendant denies the remaining
7 allegations contained therein.

8 12. Defendant denies the allegations contained in paragraph 12 of the Complaint.

9 **THIRD CLAIM FOR RELIEF**

10 13. Answering paragraph 13, Defendant hereby repeats, re-alleges and incorporates
11 each of its admissions, denials, or other responses to all the paragraphs referenced hereinabove as
12 if set forth at length and in full.

13 14. Defendant does not possess enough information to admit or deny the allegations
14 contained in paragraph 14 of the Complaint; therefore, Defendant denies said allegations.

15 15. Defendant does not possess enough information to admit or deny the allegations
16 contained in paragraph 15 of the Complaint; therefore, Defendant denies said allegations.

17 16. Defendant does not possess enough information to admit or deny the allegations
18 contained in paragraph 16 of the Complaint; therefore, Defendant denies said allegations.

19 17. Defendant does not possess enough information to admit or deny the allegations
20 contained in paragraph 17 of the Complaint; therefore, Defendant denies said allegations.

21 18. Defendant denies the allegations contained in paragraph 18 of the Complaint.

22
23 **DEFENDANT ASSERTS THE FOLLOWING AFFIRMATIVE DEFENSES:**

24 **FIRST AFFIRMATIVE DEFENSE**

25 **(Failure to State a Claim)**

26 Plaintiff's Complaint fails to state a claim against Defendant upon which relief can be
27 granted.
28

1 **SEVENTH AFFIRMATIVE DEFENSE**

2 **(Waiver and Estoppel)**

3 Defendant asserts that by reason of Plaintiff's acts and omissions, Plaintiff has waived its
4 rights and is estopped from asserting the claims against Defendants.

5 **EIGHTH AFFIRMATIVE DEFENSE**

6 **(Void for Vagueness and Ambiguity)**

7 To the extent that Plaintiffs' interpretation of NRS 116.3116 is accurate, the statute and
8 Chapter 116 as a whole are void for vagueness and ambiguity.

9 **NINTH AFFIRMATIVE DEFENSE**

10 **(Due Process Violations)**

11 A senior deed of trust beneficiary cannot be deprived of its property interest in violation
12 of the Procedural Due Process Clause of the 14 Amendment of the United States Constitution
13 and Article 1, Sec. 8, of the Nevada Constitution.

14 **TENTH AFFIRMATIVE DEFENSE**

15 **(Violation of Procedural Due Process)**

16 The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust
17 pursuant to the Due Process Clause of the Nevada Constitution and United States Constitution.

18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 **(Supremacy Clause)**

20 The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust
21 pursuant to the Supremacy Clause of the United States Constitution.

22 **TWELFTH AFFIRMATIVE DEFENSE**

23 **(Property Clause)**

24 The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust
25 pursuant to the Property Clause of the United States Constitution.

1 **THIRTEENTH AFFIRMATIVE DEFENSE**

2 **(Failure to Mitigate Damages)**

3 Defendant alleges that the Plaintiff's claims are barred in whole or in part because of the
4 Plaintiff's failure to take reasonable steps to mitigate the damages, if any, in this case.

5 **FOURTEENTH AFFIRMATIVE DEFENSE**

6 **(Tender of Super-priority Lien)**

7 Defendant alleges that it tendered payment of the super-priority portion of the HOA liens
8 to the HOA and/or its agents.

9 **FIFTEENTH AFFIRMATIVE DEFENSE**

10 **(Contracts Clause)**

11 The HOA Sale is void or otherwise does not operate to extinguish the first Deed of Trust
12 pursuant to the Contracts Clause of both the United States Constitution and the Nevada
13 Constitution.

14 **SIXTEENTH AFFIRMATIVE DEFENSE**

15 **(Additional Affirmative Defenses)**

16 Defendant reserves the right to assert additional affirmative defenses in the event
17 discovery and/or investigation indicates that additional affirmative defenses are applicable.

18 **PRAYER**

19 WHEREFORE, Defendant prays for judgment as follows:

- 20 1. That the Court make a judicial determination that Defendant's Deed of Trust is
21 superior to Plaintiff's claim of title to the Subject Property;
- 22 2. That the Court make a judicial determination that Defendant's Deed of Trust
23 survived the HOA Sale for Subject Property;
- 24 3. That the Court make a judicial determination that Plaintiff took title subject to
25 Defendant's Deed of Trust on the Subject Property;
- 26 4. That Plaintiff recover nothing on account of the claims made in the Complaint
27 and each of its purported claims;
- 28 5. For reasonable attorney's fees and costs; and

1 6. For any such other and further relief as the Court may deem just and proper in the
2 case.

3
4 **THORNBURG MORTGAGE SECURITIES TRUST 2007-3's COUNTERCLAIM**

5 COMES NOW Defendant/Counterclaimant THORNBURG MORTGAGE SECURITIES
6 TRUST 2007-3, (hereinafter "THORNBURG"), by and through its attorneys of record, the law
7 firm of Wright, Finlay & Zak, LLP, and hereby submits its Counterclaim against SATICOY
8 BAY LLC SERIES 34 INNISBROOK; SPANISH TRAIL MASTER ASSOCIATION; RED
9 ROCK FINANCIAL SERVICES; FRANK TIMPA; DOES I through X; and ROE
10 CORPORATIONS I through X, inclusive (collectively, "Counterdefendants").

11 **I.**

12 **PARTIES**

13 1. THORNBURG is a foreign corporation conducting business in the State of
14 Nevada.

15 2. THORNBURG is the assigned Beneficiary under the Deed of Trust signed by
16 FRANK TIMPA ("Borrower"), recorded on June 12, 2006 as Instrument 20060612-0001581,
17 (hereinafter "Deed of Trust"), which encumbers the Property and secures a promissory note.

18 3. Upon information and belief, Counterdefendant SATICOY BAY LLC SERIES 34
19 INNISBROOK (hereinafter "SATICOY" or "Buyer"), is a Nevada limited-liability company.

20 4. Upon information and belief, Counterdefendant, SPANISH TRAIL MASTER
21 ASSOCIATION (hereinafter "HOA"), is a Nevada non-profit corporation, licensed to do
22 business in the State of Nevada.

23 5. Upon information and belief, Counterdefendant RED ROCK FINANCIAL
24 SERVICES. (hereinafter "RRFS" or "HOA Trustee") is a company licensed to do business in the
25 State of Nevada.

26 6. Upon information and belief, Counterdefendant, FRANK TIMPA (hereinafter
27 "TIMPA"), is a Nevada resident and the former titleholder of the Property.

7. THORNBURG does not know the true names, capacities or bases of liability of fictitious defendants sued as DOES I through X, ROE CORPORATIONS I through X, inclusive (collectively "fictitious Defendants"). Each fictitiously named defendant is in some way liable to THORNBURG or claims some rights, title, or interest in the Subject Property that is subsequent to or subject to the interests of THORNBURG. THORNBURG will amend this Counterclaim to reflect the true names of said defendants when the same have been ascertained.

8. Upon information and belief, the HOA Trustee and one or more fictitious defendants are the agents of the HOA, and the HOA is responsible for their acts and omissions under the doctrine of respondeat superior.

II.

JURISDICTION AND VENUE

9. Venue is proper in this judicial district because the property that is the subject of this action is situated in this county.

10. The Court has personal jurisdiction over SATICOY because this lawsuit arises out of and is connected with SATICOY's purposeful purchase of an interest in real property situated in the County of Clark, State of Nevada.

11. The Court has personal jurisdiction over HOA Trustee because this lawsuit arises out of and is connected with HOA Trustee's role in a foreclosure upon real property located in the County of Clark, State of Nevada. Additionally, upon information and belief, HOA Trustee is a Nevada corporation conducting business in Clark County, Nevada.

12. The Court has personal jurisdiction over HOA because this lawsuit arises out of and is connected with HOA's foreclosure of real property located in the County of Clark, State of Nevada and, upon information and belief, HOA is a Nevada non-profit corporation conducting business in Clark County, Nevada.

III.

FACTUAL BACKGROUND

13. On or about December 21, 2006, Borrower Frank Timpa obtained a secured loan against the Property known as 34 Innisbrook Avenue, Las Vegas, NV 89113 ("Property").

1 14. The Deed of Trust executed by Borrower on June 2, 2006 identifies Countrywide
2 Home Loans, Inc., as the Lender, Mortgage Electronic Registration Systems, Inc. (MERS), as
3 nominee for Lender and Lender's assigns, as Beneficiary, and Recontrust Company, N.A. as the
4 Trustee, securing a loan in the amount of \$3,780,000.00 (hereinafter the "Borrower's Loan").¹

5 15. The Borrower became delinquent on his payment obligations under the Deed of
6 Trust on or about February 1, 2008.

7 16. On June 9, 2010, original lender assigned all beneficial interest in the Deed of
8 Trust to Thornburg Mortgage Securities Trust 2007-3.²

9 17. On January 21, 2015, THORNBURG's agents substituted Veriprise Processing
10 Solutions LLC as the Trustee under the Deed of Trust.³

11 18. On August 4, 2011, a Lien For Delinquent Assessments was recorded against the
12 Property by RRFS for HOA.⁴

13 19. On December 6, 2011 a Notice of Default and Election to Sell Pursuant to The
14 Lien For Delinquent Assessments was recorded against the Property by RRFS for HOA.⁵

15 20. On September 15, 2014 a Notice of Foreclosure Sale was recorded against the
16 Property by RRFS on behalf of HOA.⁶

17 21. Upon information and belief, pursuant to that Notice of Sale, a non-judicial
18 foreclosure sale occurred on November 7, 2014 (hereinafter the "HOA Sale"), whereby
19 SATICOY acquired her interest in the Property, if any, for \$1,201,000.00.

20
21 ¹ A true and correct copy of the Deed of Trust recorded as Book and Instrument Numbers
22 20060612-0001581 is attached hereto as **Exhibit 1**.

23 ² A true and correct copy of the Assignment of Deed of Trust recorded as Book and Instrument
24 Numbers 20100609-0003189 is attached hereto as **Exhibit 2**.

25 ³ A true and correct copy of the Substitution of Trustee recorded as Book and Instrument
26 Numbers 20150121-0000855 is attached hereto as **Exhibit 3**.

27 ⁴ A true and correct copy of the Lien For Delinquent Assessments (HOA) recorded as Book and
28 Instrument Number 20110804-0002324 is attached hereto as **Exhibit 4**.

⁵ A true and correct copy of the Notice of Default (HOA) recorded as Book and Instrument
Number 20111206-0001106 is attached hereto as **Exhibit 5**.

⁶ A true and correct copy of the Notice of Foreclosure Sale (HOA) recorded as Book and
Instrument Number 20140915-0001527 is attached hereto as **Exhibit 6**.

1 22. On November 10, 2014, a Foreclosure Deed was recorded by which SATICOY
2 claimed its interest.⁷

3 23. A homeowner's association sale conducted pursuant to NRS Chapter 116 must
4 comply with all notice provisions as stated in NRS 116.31162 through NRS 116.31168 and NRS
5 107.090.

6 24. A lender or holder, such as THORNBURG and/or its predecessors, has a right to
7 cure a delinquent homeowner's association lien in order to protect their security interest.

8 25. Upon information and belief, the HOA and its agent, the HOA Trustee, did not
9 comply with all mailing and noticing requirements stated in NRS 116.31162 through NRS
10 116.31168 and the CC&Rs.

11 26. A recorded notice of default must "describe the deficiency in payment."

12 27. The Notice of Lien, Notice of Default, and Notice of Sale (collectively "HOA
13 Foreclosure Notices") failed to identify what proportion of the claimed lien were for alleged
14 assessments, late fees, interest, fines/violations, or collection fees/costs.

15 28. Prior to the HOA Sale, THORNBURG and its predecessors demanded an
16 accounting of the HOA liens(s), including what portion of said lien(s) constituted the super-
17 priority amount.

18 29. HOA Trustee responded with an accounting of the claimed lien, but did not
19 specify what portion of the lien constituted the super-priority lien.⁸

20 30. HOA Trustee demanded payment of the full lien, including amounts not legally
21 included in the super-priority lien.

22 31. Prior to the HOA Sale, THORNBURG and its predecessors tendered payment of
23 9 months of assessments to HOA and its agents, thus satisfying the super-priority lien prior to
24 HOA's foreclosure of the remaining lien amount.⁹

25 _____
26 ⁷ A true and correct copy of the Foreclosure Deed recorded as Book and Instrument Number
27 20141110-0002475 attached hereto as **Exhibit 7**.

28 ⁸ HOA Trustee Letter and Ledger dated January 26, 2012 attached hereto as **Exhibit 8**.

⁹ Tender letter and tender check dated February 9 and February 6, 2012, respectively, attached
hereto as **Exhibit 9**.

1 32. THORNBURG's satisfaction of the HOA super-priority lien prevented
2 extinguishment of its First Deed of Trust, thereby preserving its first lien position and security
3 interest in the Property.

4 33. The HOA Sale violated THORNBURG's rights and harmed it because the HOA
5 Trustee failed to inform potential buyers at the lien sale that actual tender of the HOA super-
6 priority lien had been made prior to the sale.

7 34. The HOA Sale was an invalid sale and could not have extinguished
8 THORNBURG's secured interest because THORNBURG had in fact tendered the 9-month
9 super-priority lien prior to the HOA Sale.

10 35. The HOA Sale occurred without notice to THORNBURG, or its predecessors,
11 agents, servicers or trustees what portion of the lien, if any, that the HOA and HOA Trustee
12 claimed constituted a "super-priority" lien.

13 36. The HOA Sale occurred without notice to THORNBURG, or its predecessors,
14 agents, servicers or trustees, whether HOA was foreclosing on the "super-priority" portion of its
15 lien, if any, or under the non-super-priority portion of the lien.

16 37. The HOA Sale occurred without notice to THORNBURG, or its predecessors,
17 agents, servicers or trustees, of a right to cure the delinquent assessment and the super-priority
18 lien, if any.

19 38. The HOA Sale violated THORNBURG's and/or its predecessors' rights to due
20 process because it was not given proper, adequate notice and the opportunity to cure the
21 deficiency or default in the payment of the HOA's assessments and the super-priority lien, if any.

22 39. The HOA Sale was an invalid sale and could not have extinguished
23 THORNBURG's secured interest because of defects in the notices given to THORNBURG, or
24 its predecessors, agents, servicers or trustees, if any.

25 40. Extinguishment of THORNBURG's Deed of Trust would deprive it of its right to
26 due process because, upon information and belief, the HOA included amounts in its super-
27 priority lien, such as fines, late fees, interest, dues, and costs of collection that are not allowed to
28 be included in its super-priority lien, if any, under Nevada law.

1 **41.** Extinguishment of THORNBURG's Deed of Trust would deprive it of its right to
2 due process because the HOA Trustee and/or the HOA failed to describe the deficiency in
3 payment as required by Nevada law and failed to give The Trust or its predecessors, agents,
4 servicers or trustees any reasonable opportunity to satisfy the super-priority lien, if any.

5 **42.** Under NRS Chapter 116, a lien under NRS 116.3116(1) can only include costs
6 and fees that are specifically enumerated in the statute.

7 **43.** A homeowner's association may only collect as a part of the super priority lien (a)
8 nuisance abatement charges incurred by the association pursuant to NRS 116.310312 and (b)
9 nine months of common assessments which became due prior to the institution of an action to
10 enforce the lien (unless Fannie Mae and Freddie Mac regulations require a shorter period of not
11 less than six months).

12 **44.** Upon information and belief, the HOA Foreclosure Notices included improper
13 fees and costs in the amount demanded.

14 **45.** The attorney's fees and the costs of collecting on a homeowner's association lien
15 cannot be included in the super-priority lien.

16 **46.** Upon information and belief, the HOA assessment lien and foreclosure notices
17 included fines, interest, late fees, dues, attorney's fees, and costs of collection that are not
18 properly included in a super-priority lien under Nevada law and that are not permissible under
19 NRS 116.3102 et seq.

20 **47.** The HOA Sale is unlawful and void under NRS 116.3102 et seq.

21 **48.** The HOA Sale deprived THORNBURG and/or its predecessors of their right to
22 due process because the foreclosure notices failed to identify the super-priority amount, to
23 adequately describe the deficiency in payment, to provide THORNBURG and/or its
24 predecessors, notice of the correct super-priority amount, and to provide a reasonable
25 opportunity to satisfy that amount.

26 **49.** A homeowner's association sale must be done in a commercially reasonable
27 manner and in good faith.

28 **50.** A homeowner's association may not foreclose a lien by sale if (a) the unit is

1 owner-occupied, (b) the beneficiary under the deed of trust has recorded a notice of default and
2 election to sell, and (c) the trustee has not recorded the certificate of the administrator of the
3 Foreclosure Mediation Program.

4 51. At the time of the HOA Sale, the amount owed on the Borrowers' Loan exceeded
5 \$4,000,000.00.

6 52. Upon information and belief, at the time of the HOA Sale, the fair market value
7 of the Property exceeded \$3,000,000.00.

8 53. Upon information and belief, the amount paid by SATICOY at the HOA Sale
9 allegedly totaled \$1,021,000.00.

10 54. The sales price at the HOA Sale is not commercially reasonable, and not done in
11 good faith, when compared to the debt owed to THORNBURG on the Borrowers' Loan and the
12 fair market value of the Property, which demonstrates that the HOA Sale was not commercially
13 reasonable or conducted in good faith as a matter of law.

14 55. The HOA Sale was commercially unreasonable if it extinguished
15 THORNBURG's Deed of Trust.

16 56. In the alternative, the HOA Sale was an invalid sale and could not have
17 extinguished THORNBURG's secured interest because it was not a commercially reasonable
18 sale.

19 57. Without providing THORNBURG, or its predecessors, agents, servicers or
20 trustees, notice of the correct super-priority amount and a reasonable opportunity to satisfy that
21 amount, including its failure to identify the super-priority amount, its failure to adequately
22 describe the deficiency in payment as required by Nevada law, and failure to properly apply
23 actual tender of 9 months of assessments to the lien account balance, the HOA Sale is
24 commercially unreasonable and deprived THORNBURG and/or its predecessors of their rights
25 to due process.

26 58. The CC&Rs for the HOA provide in Sections 10.7 and 11.3, that no action taken
27 by the HOA shall impair, defeat, or render invalid THORNBURG's Deed of Trust.

28 59. Because the CC&Rs contain a Mortgagee Protection Clause in Sections 10.7 and

1 11.3, and because THORNBURG, or its predecessors, agents, servicers or trustees were not
2 given proper notice that the HOA intended to foreclose on the super-priority portion of the dues
3 owing, THORNBURG or its predecessors, agents, servicers or trustees did not know that it had
4 to attend the HOA Sale to protect its security interest.

5 60. Because the CC&Rs contained a Mortgagee Protection Clause, and because
6 proper notice that the HOA intended to foreclose on the super-priority portion of the dues owing
7 was not given, prospective bidders did not appear for the HOA Sale, making the HOA Sale
8 commercially unreasonable.

9 61. The Buyer, HOA, and HOA Trustee knew that THORNBURG would rely on the
10 Mortgagee Protection Clause contained in the recorded CC&Rs, and knew that THORNBURG
11 or its predecessors, agents, servicers or trustees would not know that the HOA was foreclosing
12 on super-priority amounts because of the failure of the HOA and HOA Trustee to provide such
13 notice. THORNBURG or its predecessors, agents, servicers or trustees' absence from the HOA
14 Sale allowed the Buyer to appear at the HOA Sale and purchase the Property for a fraction of
15 market value, making the HOA Sale commercially unreasonable.

16 62. The Buyer, HOA, and HOA Trustee knew that prospective bidders would be less
17 likely to attend the HOA Sale because the public at large believed that THORNBURG was
18 protected under the Mortgagee Protection Clause in the CC&Rs of public record, and that the
19 public at large did not receive notice, constructive or actual, that the HOA was foreclosing on a
20 super-priority portion of its lien because HOA and HOA Trustee improperly failed to provide
21 such notice. The general public's belief therefore was that a buyer at the HOA Sale would take
22 title to the Property subject to THORNBURG's Deed of Trust. This general belief resulted in
23 the absence of prospective bidders at the HOA Sale, which allowed the Buyer to appear at the
24 HOA Sale and purchase the Property for a fraction of market value, making the HOA Sale
25 commercially unreasonable.

26 63. The circumstances of the HOA Sale of the Property breached the HOA's and the
27 HOA Trustee's obligations of good faith under NRS 116.1113 and their duty to act in a
28 commercially reasonable manner.

1 64. THORNBURG is informed and believes that SATICOY is a professional property
2 purchaser.

3 65. The circumstances of the HOA Sale of the Property and the status as a
4 professional property purchaser prevent SATICOY from being deemed a bona fide purchaser for
5 value.

6 66. Upon information and belief, SATICOY had actual, constructive or inquiry notice
7 of THORNBURG's first Deed of Trust, which prevents SATICOY from being deemed a bona
8 fide purchaser for value.

9 67. In the event THORNBURG's interest in the Property is not reaffirmed or
10 restored, THORNBURG suffered damages in the amount of the fair market value of the Property
11 or the unpaid balance of the Borrower's Loan and Deed of Trust, at the time of the HOA Sale,
12 whichever is greater, as a proximate result of HOA's and HOA Trustee's acts and omissions.

13 **FIRST CAUSE OF ACTION**

14 **(Quiet Title/Declaratory Relief Pursuant to NRS 30.010 et seq. and NRS 40.010 et seq.
15 versus SATICOY, HOA, and all fictitious Defendants)**

16 68. THORNBURG incorporates and re-alleges all previous paragraphs, as if fully set
17 forth herein.

18 69. Pursuant to NRS 30.010 et seq. and NRS 40.010, this Court has the power and
19 authority to declare THORNBURG's rights and interests in the Property and to resolve Counter-
20 Defendants' adverse claims in the Property.

21 70. Further, pursuant to NRS 30.010 et seq., this Court has the power and authority to
22 declare the rights and interest of the parties following the acts and omissions of the HOA and
23 HOA Trustee in foreclosing the Property.

24 71. THORNBURG's Deed of Trust is a first secured interest on the Property as
25 intended by NRS 116.3116(2)(b).

26 72. As the current beneficiary under the Deed of Trust and Borrower's Loan,
27 THORNBURG's interest still encumbers the Property and retains its first position status in the
28 chain of title for the Property after the HOA Sale and is superior to the interest, if any, acquired
by SATICOY, or held or claimed by any other party.

1 73. The Buyer claims an interest in the Property through a Foreclosure Deed recorded
2 in the Clark County Recorder's Office that is adverse to THORNBURG's interest.

3 74. Upon information and belief, the HOA, the HOA Trustee and the fictitious
4 Defendants failed to provide proper, adequate notices required by Nevada statutes, the CC&R's
5 and due process to THORNBURG and/or its predecessors, and therefore the HOA Sale is void
6 and should be set aside or rescinded.

7 75. Based on the adverse claims being asserted and conduct by the parties,
8 THORNBURG is entitled to a judicial determination regarding the rights and interests of the
9 respective parties to the case.

10 76. For all the reasons set forth above and in the Factual Background, THORNBURG
11 is entitled to a determination from this Court, pursuant to NRS 30.010 and NRS 40.010, that
12 THORNBURG is the beneficiary of a first position Deed of Trust which still encumbers the
13 Property and is superior to the interest, if any, acquired by the Buyer.

14 77. In the alternative, for all the reasons set forth above and in the Factual
15 Background, THORNBURG is entitled to a determination from this Court, pursuant to NRS
16 30.010 and NRS 40.010, that the HOA Sale is unlawful and void.

17 78. THORNBURG has been required to retain counsel and is entitled to recover
18 reasonable attorney's fees and costs to prosecute this action.

19 **SECOND CAUSE OF ACTION**

20 **(Permanent and Preliminary Injunction versus SATICOY)**

21 79. THORNBURG incorporates by reference the allegations of all previous
22 paragraphs, as if fully set forth herein.

23 80. As set forth above, the Buyer may claim an ownership interest in the Property that
24 is adverse to THORNBURG.

25 81. Any sale or transfer of the Property, prior to a judicial determination concerning
26 the respective rights and interests of the parties to the case, may be rendered invalid if
27 THORNBURG's Deed of Trust still encumbered the Property in first position and was not
28 extinguished by the HOA Sale.

1 82. THORNBURG has a reasonable probability of success on the merits of the
2 complaint, for which compensatory damages will not compensate THORNBURG for the
3 irreparable harm of the loss of title to a bona fide purchaser or loss of the first position priority
4 status secured by the Property.

5 83. THORNBURG has no adequate remedy at law due to the uniqueness of the
6 Property involved in the case.

7 84. THORNBURG is entitled to a preliminary and permanent injunction prohibiting
8 the Buyer, their successors, assigns, and agents from conducting a sale, transfer or encumbrance
9 of the Property if it is claimed to be superior to THORNBURG's Deed of Trust or not subject to
10 that Deed of Trust.

11 85. THORNBURG is entitled to a preliminary injunction requiring the Buyer to pay
12 all taxes, insurance and homeowner's association dues during the pendency of this action.

13 86. THORNBURG is entitled to a preliminary injunction requiring the Buyer to
14 segregate and deposit all rents with the Court or a Court-approved trust account over which the
15 Buyer has no control during the pendency of this action.

16 87. THORNBURG has been required to retain counsel to prosecute this action and is
17 entitled to recover reasonable attorney's fees to prosecute this action.

18 **THIRD CAUSE OF ACTION**

19 **(Wrongful Foreclosure versus the HOA, the HOA Trustee, and fictitious Defendants)**

20 88. THORNBURG incorporates by reference the allegations of all previous
21 paragraphs, as if fully set forth herein.

22 89. Upon information and belief, the HOA, the HOA Trustee, and all fictitious
23 Defendants did not comply with all mailing and noticing requirements stated in NRS 116.31162
24 through NRS 116.31168.

25 90. The HOA, the HOA Trustee, and all fictitious Defendants failed to provide notice
26 pursuant to the CC&Rs.

27 91. Because the HOA Sale was wrongfully conducted and violated applicable law, the
28 Court should set it aside to the extent that it purports to have extinguished THORNBURG's first

1 Deed of Trust and delivered free and clear title to SATICOY.

2 92. Because the HOA Sale was not commercially reasonable, it was invalid, wrongful
3 and should be set aside.

4 93. Because the HOA, HOA Trustee, and fictitious Defendants' did not give
5 THORNBURG, or its predecessors, agents, servicers or trustees the proper, adequate notice and
6 the opportunity to cure the deficiency or default in the payment of the HOA's assessments and
7 super-priority lien (if any) required by Nevada statutes, the CC&Rs and due process, the HOA
8 Sale was wrongfully conducted and should be set aside.

9 94. Because the HOA Sale was not done in accordance with Nevada statutes and the
10 CC&Rs, the HOA Sale was wrongfully conducted and should be set aside.

11 95. Because, upon information and belief, the HOA Foreclosure Notices included
12 improper fees and costs in the amount demanded, the HOA Sale was wrongfully conducted and
13 should be set aside.

14 96. Because the HOA, HOA Trustee, and fictitious Defendants' refused and/or mis-
15 applied actual tender of 9 months of assessments, constituting the super-priority lien amount, the
16 HOA Sale was wrongfully conducted and should be set aside.

17 97. As a proximate result of the HOA's, HOA Trustee's, and the fictitious
18 Defendants' wrongful foreclosure of the Property by the HOA Sale, as more particularly set forth
19 above and in the Factual Background, THORNBURG has suffered general and special damages
20 in an amount in excess of \$10,000.00. THORNBURG will seek leave of court to assert said
21 amounts when they are determined.

22 98. If it is determined that THORNBURG's Deed of Trust has been extinguished by
23 the HOA Sale, as a proximate result of HOA, HOA Trustee, and fictitious Defendants' wrongful
24 foreclosure of the Property by the HOA Sale, THORNBURG has suffered special damages in the
25 amount equal to the fair market value of the Property or the unpaid balance of the Borrower's
26 Loan, plus interest, at the time of the HOA Sale, whichever is greater, in an amount not presently
27 known. THORNBURG will seek leave of court to assert said amounts when they are
28 determined.

1 99. THORNBURG has been required to retain counsel to prosecute this action and is
2 entitled to recover reasonable attorney's fees to prosecute this action.

3 **FOURTH CAUSE OF ACTION**

4 **(Negligence versus HOA, HOA Trustee, and the fictitious Defendants)**

5 100. THORNBURG incorporates by reference the allegations of all previous
6 paragraphs, as if fully set forth herein.

7 101. The HOA, the HOA Trustee, and fictitious Defendants owed a duty to
8 THORNBURG or its predecessors and subordinate lienholders to conduct the HOA foreclosure
9 sale at issue in this case properly and in a manner that would fairly allow them an opportunity to
10 protect their interest and cure the super-priority lien threatening their security interests.

11 102. The HOA, the HOA Trustee, and fictitious Defendants breached their duty for all
12 the reasons set forth above and in the Factual Background including without limitation, by
13 failing to disclose the amount of the super-priority lien, if any, by failing to specify that it was
14 foreclosing on the super-priority portion of its lien as opposed to the non-super-priority portion,
15 by failing to accept and apply tender of the super-priority amount, and by failing to provide
16 notice that THORNBURG or its predecessors and subordinate lienholders had an opportunity to
17 cure.

18 103. As a proximate result of the HOA's, HOA Trustee's, and fictitious Defendants'
19 breaches of their duties, THORNBURG or its predecessors' tender of a pay-off of the super-
20 priority lien was wrongfully refused and/or not applied to the super-priority lien balance.

21 104. As a proximate result of the HOA's, HOA Trustee's, and fictitious Defendants'
22 breaches of their duties, THORNBURG has incurred general and special damages in an amount
23 in excess of \$10,000.00.

24 105. If THORNBURG is found to have lost its first secured interest in the Property, it
25 was the proximate result of the HOA's, HOA Trustee's, and fictitious Defendants' breaches of
26 their duties, and THORNBURG has thereby suffered general and special damages in an amount
27 in excess of \$10,000.00.

28 106. THORNBURG has been required to retain counsel to prosecute this action and is

1 entitled to recover reasonable attorney's fees to prosecute this action.

2 **FIFTH CAUSE OF ACTION**

3 **(Negligence Per Se versus HOA, HOA Trustee, and the fictitious Defendants)**

4 **107.** THORNBURG incorporates by reference the allegations of all previous
5 paragraphs, as if fully set forth herein.

6 **108.** NRS Chapter 116 imposes a duty on homeowner's associations and their agents to
7 conduct their foreclosure sales in a manner that is consistent with its provisions and, by
8 reference, the provisions of NRS 107.090.

9 **109.** HOA, HOA Trustee, and fictitious Defendants breached the statutory duties
10 imposed by NRS Chapter 116 concerning notice.

11 **110.** HOA, HOA Trustee, and fictitious Defendants violated NRS Chapter 116 by
12 failing to provide the proper, adequate notice and the opportunity to cure the deficiency or
13 default in the payment of the HOA's assessments and super-priority lien (if any) required by
14 Nevada statutes, including without limitation, NRS 116.31162(1)(b)(1) by failing to properly and
15 adequately describe the deficiency in payment of a super-priority lien, and by failing to properly
16 apply actual payment of same.

17 **111.** THORNBURG is a member of the class of persons whom NRS Chapter 116 is
18 intended to protect.

19 **112.** The injury that THORNBURG faces—extinguishment of its first-position Deed
20 of Trust—is the type against which NRS Chapter 116 is intended to protect.

21 **113.** As a proximate result of HOA's, HOA Trustee's, and the fictitious Defendants'
22 breaches of their statutory duties, THORNBURG's had not actual notice of the claimed super-
23 priority lien amount, if any, and actual tender of a pay-off of the super-priority lien amount
24 threatening its security interest was wrongfully refused and/or mis-applied by HOA and/or HOA
25 Trustee.

26 **114.** As a proximate result of HOA's, HOA Trustee's, and the fictitious Defendants'
27 breaches of their duties, THORNBURG has incurred general and special damages in an amount
28 in excess of \$10,000.00.

115. If THORNBURG is found to have lost its first secured interest in the Property, it was the proximate result of HOA's, HOA Trustee's and the fictitious Defendants' breaches of their statutory duties, and THORNBURG has thereby suffered general and special damages in an amount in excess of \$10,000.00.

116. THORNBURG has been required to retain counsel to prosecute this action and is entitled to recover reasonable attorney's fees to prosecute this action.

SIXTH CAUSE OF ACTION

(Breach of Contract versus the HOA and HOA Trustee, and the fictitious Defendants)

117. THORNBURG incorporates by reference the allegations of all previous paragraphs, as if fully set forth herein.

118. THORNBURG was an intended beneficiary of the HOA's CC&Rs.

119. The HOA, the HOA Trustee, and fictitious Defendants breached the obligations, promises, covenants and conditions of the CC&Rs owed to THORNBURG by the circumstances under which they conducted the HOA Sale of the Property.

120. The HOA, the HOA Trustee, and fictitious Defendants' breaches of the obligations, promises, covenants and conditions of the CC&Rs proximately caused THORNBURG general and special damages in an amount in excess of \$10,000.00.

121. THORNBURG has been required to retain counsel to prosecute this action and is entitled to recover reasonable attorney's fees to prosecute this action.

SEVENTH CAUSE OF ACTION

(Misrepresentation versus the HOA)

122. THORNBURG incorporates by reference the allegations of all previous paragraphs, as if fully set forth herein.

123. THORNBURG is within the class or persons or entities the HOA intended or had reason to expect to act or to refrain from action in reliance upon the provisions of the CC&Rs, including without limitation, the Mortgagee Protection Clause.

124. THORNBURG, and its predecessors in interest, justifiably relied upon the provisions of the CC&Rs and NRS 116.3116(2)(b) in giving consideration for the Deed of Trust, and the Loan it secures, and the HOA intended or had reason to expect their conduct would be

1 influenced.

2 125. The HOA's representations in the provisions of the CC&Rs, including without
3 limitation, the Mortgagee Protection Clause, were false.

4 126. The HOA had knowledge or a belief that the representations in the provisions of
5 the CC&Rs, including without limitation, the Mortgagee Protection Clause, were false or it had
6 an insufficient basis for making the representations.

7 127. The HOA had a pecuniary interest in having THORNBURG and its predecessors
8 in interest rely on the provisions of the CC&Rs, including without limitation, the Mortgagee
9 Protection Clause.

10 128. The HOA failed to exercise reasonable care or competence in communicating the
11 information within the provisions of the CC&Rs, including without limitation, the Mortgagee
12 Protection Clause, which was false or it had an insufficient basis for making.

13 129. The HOA, the HOA Trustee, and fictitious Defendants acted in contravention to
14 the provisions of the CC&Rs, including without limitation, the Mortgagee Protection Clause,
15 when it conducted the HOA Sale in a manner that could extinguish THORNBURG's Deed of
16 Trust.

17 130. THORNBURG suffered general and special damages in an amount in excess of
18 \$10,000.00 as a proximate result of its reliance.

19 131. THORNBURG has been required to retain counsel to prosecute this action and is
20 entitled to recover reasonable attorney's fees to prosecute this action.

21 **EIGHTH CAUSE OF ACTION**

22 **(Unjust Enrichment versus SATICOY, HOA, HOA Trustee, and fictitious Defendants)**

23 132. THORNBURG incorporates and re-alleges all previous paragraphs, as if fully set
24 forth herein.

25 133. THORNBURG has been deprived of the benefit of the Deed of Trust by the
26 actions of SATICOY, HOA, the HOA Trustee, and fictitious Defendants.

27 134. SATICOY, HOA, the HOA Trustee, and fictitious Defendants have benefitted
28 from the unlawful HOA Sale and nature of the real property.

1 **135.** SATICOY, HOA, the HOA Trustee, and fictitious Defendants have benefitted
2 from THORNBURG's payment of taxes, insurance or homeowner's association assessments
3 since the time of the HOA Sale.

4 **136.** Should THORNBURG's Complaint be successful in quieting title against
5 SATICOY, HOA, the HOA Trustee, and fictitious Defendants and setting aside the HOA Sale,
6 SATICOY, HOA, the HOA Trustee, and fictitious Defendants will have been unjustly enriched
7 by the HOA Sale and usage of the Property.

8 **137.** THORNBURG will have suffered damages if SATICOY, HOA, the HOA
9 Trustee, and fictitious Defendants are allowed to retain their interests in the Property and the
10 funds received from the HOA Sale.

11 **138.** THORNBURG will have suffered damages if SATICOY, HOA, the HOA
12 Trustee, and fictitious Defendants are allowed to retain their interests in the Property and
13 THORNBURG's payment of taxes, insurance or homeowner's association assessments since the
14 time of the HOA Sale.

15 **139.** THORNBURG is entitled to general and special damages in excess of
16 \$10,000.00.

17 **140.** THORNBURG has furthermore been required to retain counsel and is entitled to
18 recover reasonable attorney's fees for having brought the underlying action.

19 **NINTH CAUSE OF ACTION**

20 **(Breach of the Covenant of Good Faith and Fair Dealing versus the HOA and HOA**
21 **Trustee, and the fictitious Defendants)**

22 **141.** THORNBURG incorporates by reference the allegations of all previous
23 paragraphs, as if fully set forth herein.

24 **142.** Implicit in every contract in the state of Nevada is an implied covenant of good
25 faith and fair dealing.

26 **143.** THORNBURG was an intended beneficiary of the HOA's CC&Rs.

27 **144.** The HOA, the HOA Trustee, and fictitious Defendants breached the duties,
28 obligations, promises, covenants and conditions, express and implied, in the CC&Rs owed to
THORNBURG by the circumstances under which they conducted the HOA Sale of the Property.

145. The HOA, the HOA Trustee, and fictitious Defendants took affirmative action to re-convey the Property to a third party, in direct contravention of the HOA's duties to THORNBURG as promised in the CC&Rs.

146. The HOA, the HOA Trustee, and fictitious Defendants' breaches of the obligations, promises, covenants and conditions of the CC&Rs, and to act in good faith regarding same, proximately caused THORNBURG general and special damages in an amount in excess of \$10,000.00.

147. THORNBURG has been required to retain counsel to prosecute this action and is entitled to recover reasonable attorney's fees to prosecute this action.

TENTH CAUSE OF ACTION

(In the Alternative - Application for Deficiency Judgment/Breach of Contract versus TIMPA)

148. THORNBURG incorporates by reference the allegations of all previous paragraphs, as if fully set forth herein.

149. Pursuant to the terms of the TIMPA Loan and Deed of Trust, TIMPA promised and agreed to make minimum monthly payments to THORNBURG, or its predecessors.

150. TIMPA is in default per the terms of the TIMPA Loan in that payment was not made as agreed. TIMPA failed, neglected, or refused to make payment of the amounts due and owing under the terms of the TIMPA Loan and Deed of Trust.

151. Pursuant to the terms of the TIMPA Loan and Deed of Trust, TIMPA promised and agreed, if any action or proceeding was commenced which materially affected THORNBURG's interest in the Property, he would take such action as necessary to protect THORNBURG's interest.

152. TIMPA failed, neglected, or refused to cure the alleged delinquent assessment and prevent the HOA Sale. TIMPA is in default per the terms of the TIMPA Loan in that the HOA and HOA Trustee foreclosed on the Property and Buyer now claims to have an interest superior to THORNBURG's Deed of Trust.

153. THORNBURG has duly performed all conditions precedent on its part, which are

required to be performed under the terms of the TIMPA Loan and Deed of Trust.

154. Demand has been made of TIMPA, but TIMPA has failed or refused to make payment and cure the defaults pursuant to the terms of the TIMPA Loan and Deed of Trust.

155. TIMPA has failed to abide by the terms of the TIMPA Loan and Deed of Trust.

156. The current amount owing on the TIMPA Loan is in excess of \$4,000,000.00.

157. THORNBURG has been required to retain counsel and incur attorneys' fees as a proximate result of TIMPA's defaults and breaches of the TIMPA Loan and Deed of Trust.

158. Should THORNBURG be unsuccessful in quieting title against Defendants, and setting aside the HOA Sale, THORNBURG will suffer general and special damages from the loss of its secured interest in the Property.

159. THORNBURG has general and special damages in excess of \$10,000.00, as a proximate result of TIMPA's defaults and breaches of the TIMPA Loan and Deed of Trust.

160. THORNBURG has been required to retain counsel to prosecute this action and is entitled to recover reasonable attorney's fees to prosecute this action.

PRAYER

Wherefore, THORNBURG prays for judgment against the Counterdefendants, jointly and severally, as follows:

1. For a declaration and determination that THORNBURG's interest is secured against the Property, and that THORNBURG's first Deed of Trust was not extinguished by the HOA Sale;
2. For a declaration and determination that THORNBURG's interest is superior to the interest of SATICOY, HOA, the HOA Trustee, and fictitious Defendants;
3. For a declaration and determination that the HOA Sale was invalid to the extent it purports to convey the Property free and clear to SATICOY;
4. In the alternative, for a declaration and determination that the HOA Sale was invalid and conveyed no legitimate interest to SATICOY;
5. For a preliminary injunction that SATICOY, its successors, assigns, and agents

are prohibited from conducting a sale, transfer or encumbrance of the Property during the pendency of this action;

6. For a preliminary injunction requiring SATICOY, its successors, assigns, and agents pay all taxes, insurance and homeowner's association dues during the pendency of this action.

7. For a preliminary injunction that SATICOY, his successors, assigns, and agents be required to segregate and deposit all rents with the Court or a Court-approved trust account over which SATICOY has no control during the pendency of this action.

8. If it is determined that THORNBURG's Deed of Trust has been extinguished by the HOA Sale, for special damages in the amount equal to the fair market value of the Property or the unpaid balance of the Borrower's Loan and Deed of Trust, at the time of the HOA Sale, whichever is greater;

9. For general and special damages in an amount in excess of \$10,000.00;

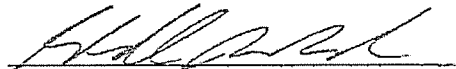
10. For attorney's fees;

11. For costs incurred herein, including post-judgment costs;

12. For any and all further relief deemed appropriate by this Court.

DATED this 10 day of April, 2015.

WRIGHT, FINLAY & ZAK, LLP



Dana Jonathon Nitz, Esq.

Nevada Bar No. 0050

Shadd A. Wade, Esq.

Nevada Bar No. 11310

7785 W. Sahara Ave., Suite 200

Las Vegas, NV 89117

*Attorney for Attorneys for Defendant, Thornburg
Mortgage Securities Trust 2007-3*

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

The undersigned does hereby affirm that the preceding **THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S ANSWER AND COUNTER-CLAIMS** filed in Case No. A-14-710161-C **does not** contain the social security number of any person.

DATED this 10 day of April, 2015.

Handwritten signature

*Attorneys for Defendant, Thornburg Mortgage
Securities Trust 2007-3*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 10 day of April, 2015, I did cause a true copy of
DEFENDANT/COUNTERCLAIMANT THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S ANSWER AND COUNTER-CLAIMS to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFR 9:

Akerman LLP

Contact

Email

Akerman Las Vegas Office

akermanlas@akerman.com

Allison R. Schmidt, Esq.

allison.schmidt@akerman.com

Darren T. Brenner, Esq.

darren.brenner@akerman.com

Law Offices of Michael F. Bohn, Esq.

Contact

Email

Eserve Contact

office@bohnlawfirm.com

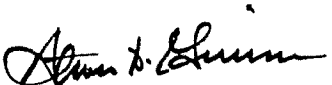
Michael F Bohn Esq

mbohn@bohnlawfirm.com

Kathy Maasry
An Employee of WRIGHT, FINLAY & ZAK, LLP

EXHIBIT 2

EXHIBIT 2


CLERK OF THE COURT

CCAN
DAVID R. KOCH
Nevada Bar No. 8830
STEVEN B. SCOW
Nevada Bar No. 9906
ROBERT L. ENGLISH
Nevada Bar No. 3504
KOCH & SCOW LLC
11500 S. Eastern Ave., Suite 210
Henderson, NV 89052
dkoch@kochscow.com
sscow@kochscow.com
renglish@kochscow.com
Telephone: (702) 318-5040
Facsimile: (702) 318-5039

Attorneys for Counter-Defendant/Counterclaimant
Red Rock Financial Services

EIGHTH DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34 INNISBROOK,

Plaintiff,

vs.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3; RECONSTRUCT COMPANY,
N.A. a division of BANK OF AMERICA;
FRANK TIMPA and MADELAINE TIMPA,
individually and as trustees of the TIMPA
TRUST,

Defendants.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3,

Counterclaimant,

vs.

SATICOY BAY LLC SERIES 34 INNISBROOK,
a Nevada Limited-liability company; SPANISH
TRAIL MASTER ASSOCIATION, a Nevada
Non-Profit Corporation; RED ROCK
FINANCIAL SERVICES, LLC, an unknown

Case No.: A-14-710161-C
Dept.: XXXI

**RED ROCK FINANCIAL
SERVICES' ANSWER TO
THORNBURG MORTGAGE
SECURITIES TRUST 2007-3
COUNTERCLAIM; AND RED
ROCK FINANCIAL SERVICES'
COUNTERCLAIM FOR
INTERPLEADER (NRCP 22)**

1 through X; and ROE CORPORATIONS I
2 through X, inclusive,

3 Counter-Defendants.

4 RED ROCK FINANCIAL SERVICES,

5 Counterclaimant,

6 vs.

7 THORNBURG MORTGAGE SECURITIES
8 TRUST 2007-3; COUNTRYWIDE HOME
9 LOANS, INC.; ESTATES WEST AT SPANISH
10 TRAILS; MORTGAGE ELECTRONIC
11 REGISTRATION SYSTEM, INC.; REPUBLIC
12 SERVICES; LAS VEGAS VALLEY WATER
DISTRICT; FRANK TIMPA and MADELAINE
TIMPA, individually and as trustees of the
TIMPA TRUST U/T/D March 3, 1999; and
DOES 1-100, inclusive,

13 Counter-Defendants.

14
15 RED ROCK FINANCIAL SERVICES ("Red Rock") answers the Counterclaim filed
16 by Thornburg Mortgage Securities Trust 2007-3 ("Thornburg"), and admits, denies, and
17 alleges as follows:

18 I.

19 PARTIES

20 1. In response to paragraphs 1, 3 and 7, Red Rock is without sufficient
21 information to form a belief as to the truth of the allegations of these paragraphs and on
22 that basis denies the allegations.

23 2. In response to paragraph 2, Red Rock states the document referenced
24 speaks for itself, and Red Rock is without sufficient information or knowledge to for a
25 belief as to the remaining allegations in this paragraph and on that basis denies the
26 allegations.

27 3. Red Rock admits the allegations of paragraphs 4 through 6.
28

4. In response to paragraph 8, Red Rock states this paragraph sets forth a legal conclusion to which no response is necessary. To the extent a response is required, Red Rock denies the allegations of this paragraph.

II.

JURISDICTION AND VENUE

5. In response to paragraphs 9 through 12, Red Rock states these paragraphs constitute a legal conclusion to which no response is required.

III.

FACTUAL BACKGROUND

6. In response to paragraphs 13 and 15, Red Rock is without sufficient information to form a belief as to the truth of the allegations of these paragraphs and on that basis Red Rock denies the allegations.

7. In response to paragraphs 14, 16, 17, 18, 19, 20, and 22, Red Rock states the documents referenced therein speak for themselves, and Red Rock is without sufficient information or knowledge to for a belief as to the remaining allegations in these paragraphs and on that basis Red Rock denies the allegations.

8. In response to paragraph 21, Red Rock admits that there was a foreclosure sale on November 7, 2014. Red Rock is without sufficient information or knowledge to form a belief as to the remaining allegations in this paragraph and on that basis Red Rock denies the allegations.

9. In response to paragraphs 23 and 24, Red Rock states these paragraphs set forth legal conclusions to which no responses are necessary. To the extent responses are required, Red Rock denies the allegations of these paragraphs.

10. Red Rock denies the allegations of paragraph 25.

11. In response to paragraph 26, Red Rock states this paragraph sets forth legal conclusions to which no responses are necessary. To the extent a response is required, Red Rock denies the allegations.

12. Red Rock denies the allegations of paragraph 27.

1 13. In response to paragraph 28, Red Rock is without sufficient information to
2 form a belief as to the truth of the allegations of this paragraph and on that basis Red
3 Rock denies the allegations.

4 14. In response to paragraphs 29 and 30, Red Rock states the documents
5 referenced therein speak for themselves, and Red Rock denies any further allegations in
6 these paragraphs.

7 15. In response to paragraph 31, Red Rock admits that it received the letter
8 attached as Exhibit 9 and denies the remaining allegations in the paragraph.

9 16. In response to paragraph 32, Red Rock states this paragraph sets forth
10 legal conclusions to which no responses are necessary. To the extent a response is
11 required, Red Rock denies the allegations.

12 17. Red Rock denies the allegations of paragraphs 33 through 41.

13 18. In response to paragraphs 42 and 43, Red Rock states these paragraphs set
14 forth legal conclusions to which no responses are necessary. To the extent a response is
15 required, Red Rock denies the allegations.

16 19. Red Rock denies the allegations of paragraphs 44 and 45.

17 20. In response to paragraph 46, Red Rock states this paragraph sets forth
18 legal conclusions to which no responses are necessary. To the extent a response is
19 required, Red Rock denies the allegations.

20 21. Red Rock denies the allegations of paragraphs 47 and 48.

21 22. In response to paragraphs 49 and 50, Red Rock states these paragraphs set
22 forth legal conclusions to which no responses are necessary. To the extent a response is
23 required, Red Rock denies the allegations.

24 23. In response to paragraphs 51 and 52, Red Rock is without sufficient
25 information to form a belief as to the truth of the allegations of these paragraphs and on
26 that basis Red Rock denies the allegations.

27 24. Red Rock denies the allegations of paragraphs 53, 54, 55, 56, and 57.
28

1 25. In response to paragraph 58, Red Rock states the content of the CC&Rs
2 speak for themselves, and no response is required.

3 26. In response to paragraphs 59 and 61, Red Rock states that Mortgage
4 Protection Clauses do not circumvent the Nevada Statutes, and Red Rock denies the
5 allegations contain in theses paragraphs.

6 27. In response to paragraph 60, Red Rock is without sufficient information to
7 form a belief as to the truth of the allegations of this paragraph and on that basis Red
8 Rock denies the allegations.

9 28. Red Rock denies the allegations of paragraphs 61, 62, and 63.

10 29. In response to paragraphs 64, 65, and 66, Red Rock is without sufficient
11 information to form a belief as to the truth of the allegations of these paragraphs and on
12 that basis Red Rock denies the allegations.

13 30. Red Rock denies the allegations of paragraph 67.

14 **FIRST CAUSE OF ACTION**

15 **(Quiet Title/Declaratory Relief Pursuant to NRS 30.010 et seq. and NRS 40.010 et seq.**
16 **versus SATICOY, HOA, and all fictitious Defendants)**

17 31. In response to paragraph 68, Red Rock repeats and reasserts its responses
18 to paragraphs 1 through 67 of the Counterclaim as though fully set forth herein.

19 32. In response to paragraphs 69, 70, 71, and 72, Red Rock states these
20 paragraphs set forth legal conclusions to which no response is necessary. To the extent
21 responses are required, Red Rock is without sufficient knowledge or information to form
22 a belief and on that basis denies the allegations in these paragraphs.

23 33. In response to paragraphs 73, Red Rock is without sufficient information to
24 form a belief as to the truth of the allegations of this paragraph and on that basis denies
25 the allegations.

26 34. Red Rock denies the allegations of paragraphs 74, 75, 76, 77, and 78.
27
28

1 **SECOND CAUSE OF ACTION**

2 **(Permanent and Preliminary Injunction versus SATICOY)**

3 35. Red Rock states that this Second Cause of Action, paragraphs 79 through
4 87, is not applicable to it, therefore, no response is required to these allegations.

5 **THIRD CAUSE OF ACTION**

6 **(Wrongful Foreclosure versus the HOA, the HOA Trustee, and fictitious Defendants)**

7 36. In response to paragraph 88, Red Rock repeats and reasserts its responses
8 to paragraph 1 through 87 of the Counterclaim as though fully set forth herein.

9 37. Red Rock denies the allegations of paragraphs 89 through 99.

10 **FOURTH CAUSE OF ACTION**

11 **(Negligence versus HOA, the HOA Trustee, and fictitious Defendants)**

12 38. In response to paragraph 100, Red Rock repeats and reasserts its responses
13 to paragraph 1 through 99 of the Counterclaim as though fully set forth herein.

14 39. In response to paragraph 101, Red Rock states this paragraph states legal
15 conclusions to which no response is necessary. To the extent a response is required, Red
16 Rock is without sufficient knowledge or information to form a belief and on that basis
17 denies the allegations in this paragraph.

18 40. Red Rock denies the allegations of paragraphs 102 through 106.

19 **FIFTH CAUSE OF ACTION**

20 **(Negligence Pro Se versus HOA, the HOA Trustee, and fictitious Defendants)**

21 41. In response to paragraph 107, Red Rock repeats and reasserts its responses
22 to paragraph 1 through 106 of the Counterclaim as though fully set forth herein.

23 42. In response to paragraph 108, Red Rock states the Chapter and statutes
24 reference speak for themselves and no response is necessary. To the extent a response is
25 required, Red Rock denies the allegations of this paragraph.

26 43. Red Rock denies the allegations of paragraphs 109 and 110.

27 44. In response to paragraphs 111 and 112, Red Rock states this paragraph
28 states legal conclusions to which no response is necessary. To the extent a response is

1 required, Red Rock is without sufficient knowledge or information to form a belief and
2 on that basis denies the allegations in this paragraph.

3 45. Red Rock denies the allegations of paragraphs 113 through 116.

4 **SIXTH CAUSE OF ACTION**

5 **(Breach of Contract versus HOA, the HOA Trustee, and fictitious Defendants)**

6 46. In response to paragraph 117, Red Rock repeats and reasserts its responses
7 to paragraph 1 through 116 of the Counterclaim as though fully set forth herein.

8 47. In response to paragraph 118, Red Rock is without sufficient knowledge or
9 information to form a belief and on that basis denies the allegations in this paragraph.

10 48. Red Rock denies the allegations of paragraphs 119 through 121.

11 **SEVENTH CAUSE OF ACTION**

12 **(Misrepresentation versus HOA)**

13 49. In response to paragraph 122, Red Rock repeats and reasserts its responses
14 to paragraphs 1 through 121 of the Counterclaim as though fully set forth in full herein.

15 50. In response to paragraph 123, Red Rock states this paragraph states legal
16 conclusions to which no response is necessary. To the extent a response is required, Red
17 Rock is without sufficient knowledge or information to form a belief and on that basis
18 denies the allegations in this paragraph.

19 51. In response to paragraph 124, Red Rock is without sufficient knowledge or
20 information to form a belief and on that basis denies the allegations in this paragraph.

21 52. Red Rock denies the allegations of paragraphs 125 through 131.

22 **EIGHTH CAUSE OF ACTION**

23 **(Unjust Enrichment versus SATICOY, HOA, HOA Trustee, and fictitious Defendants)**

24 53. In response to paragraph 132, Red Rock repeats and reasserts its responses
25 to paragraphs 1 through 131 of the Counterclaim as though fully set forth in full herein.

26 54. Red Rock denies the allegations of paragraphs 133 through 140.

1 **NINTH CAUSE OF ACTION**

2 **(Breach of the Covenant of Good Faith and Fair Dealing versus the HOA and HOA**
3 **Trustee, and the fictitious Defendants)**

4 55. In response to paragraph 141, Red Rock repeats and reasserts its responses
5 to paragraphs 1 through 140 of the Counterclaim as though fully set forth in full herein.

6 56. In response to paragraphs 142 and 143, Red Rock states these paragraphs
7 state legal conclusions to which no responses are necessary. To the extent responses are
8 required, Red Rock is without sufficient knowledge or information to form a belief and
9 on that basis denies the allegations in these paragraphs.

10 57. Red Rock denies the allegations of paragraphs 144 through 147.

11 **TENTH CAUSE OF ACTION**

12 **(In the Alternative-Application for Deficiency Judgment/Breach of**
13 **Contract versus Timpa)**

14 58. Red Rock states that this cause of action, paragraphs 148 through 160, is not
15 applicable to it, therefore, no response is required.

16 **AFFIRMATIVE DEFENSES**

17 **FIRST AFFIRMATIVE DEFENSE**

18 Counterclaimant Thornburg Mortgage Securities Trust 2007-3's counterclaim fails
19 to state a claim for which relief can be granted.

20 **SECOND AFFIRMATIVE DEFENSE**

21 Counterclaimant Thornburg Mortgage Securities Trust 2007-3's unclean hands
22 preclude any of the relief requested.

23 **THIRD AFFIRMATIVE DEFENSE**

24 Counterclaimant Thornburg Mortgage Securities Trust 2007-3's claims are barred
25 by the doctrines of estoppel, laches, and waiver.
26
27
28

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

FOURTH AFFIRMATIVE DEFENSE

Counterclaimant Thornburg Mortgage Securities Trust 2007-3's claims are barred by the applicable statute of limitations.

FIFTH AFFIRMATIVE DEFENSE

Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has acquiesced to any of the conduct and usage alleged in its Counterclaim.

SIXTH AFFIRMATIVE DEFENSE

Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has failed to mitigate its damages, if any.

SEVENTH AFFIRMATIVE DEFENSE

Counterclaimant Thornburg Mortgage Securities Trust 2007-3's damages, if any, are caused by its own actions or from the acts of others not parties to this action.

EIGHTH AFFIRMATIVE DEFENSE

Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has failed to join an indispensable party, in that other parties are wholly or at least partly caused Counterclaimant's harm and complete relief may not be granted in their absence.

NINTH AFFIRMATIVE DEFENSE

Counterclaimant Thornburg Mortgage Securities Trust 2007-3's claims are barred by the voluntary payment doctrine.

TENTH AFFIRMATIVE DEFENSE

Counterclaimant Thornburg Mortgage Securities Trust 2007-3 knowingly and voluntarily waived its rights to obtain any or all of the relief sought in its Counterclaim.

ELEVENTH AFFIRMATIVE DEFENSE

Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has no contract with this answering counter-defendant.

TWELFTH AFFIRMATIVE DEFENSE

Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has no fiduciary relationship with this answering counter-defendant.

1 **THIRTEENTH AFFIRMATIVE DEFENSE**

2 Counterclaimant Thornburg Mortgage Securities Trust 2007-3's claims are barred
3 by the economic loss doctrine.

4 **FOURTEENTH AFFIRMATIVE DEFENSE**

5 Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has no special
6 relationship with this answering counter-defendant.

7 **FIFTEENTH AFFIRMATIVE DEFENSE**

8 This answering counter-defendant has limited facts available at this time and thus
9 some of the foregoing Affirmative Defenses may have been plead in accordance to NRCP
10 8, for purposes of non-waiver. Furthermore, pursuant to NRCP 11, this answering
11 counter-defendant has or may have more affirmative defenses or counterclaims that are
12 not known at this time but may be uncovered through further discovery wherefore, this
13 answering counter-defendant reserves the right to assert any such affirmative defenses or
14 Counterclaims so ascertained at a later date.

15 WHEREFORE, as to the Thornburg Mortgage Securities Trust 2007-3's
16 Counterclaim, Red Rock prays as follows:

- 17 1. That Counterclaimant Thornburg Mortgage Securities Trust 2007-3 take
18 nothing by way of its Counterclaim.
- 19 2. That judgment be rendered in favor of Red Rock;
- 20 3. That Counterclaimant Thornburg Mortgage Securities Trust 2007-3
21 compensate Red Rock for reasonable fees and costs incurred in defending this action; and
- 22 4. For any other such relief that the Court deems just and proper.

23
24 Dated: May 21, 2015.

KOCH & SCOW, LLC

25 By: /s/Steven B. Scow
26 Steven B. Scow
27 Attorneys for Red Rock Financial Services
28

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

COMES NOW Counterclaimant RED ROCK FINANCIAL SERVICES (hereinafter sometimes "Red Rock"), and pleads as follows:

PARTIES

1. Counterclaimant Red Rock Financial Services is a licensed collection company, and at all times material herein was and is doing business in Clark County, Nevada. Red Rock was hired by Spanish Trail Master Association (the "Master Association") as its agent to manage and collect assessments charged to homeowners within the Association.

2. Counter-defendant Thornburg Mortgage Securities Trust 2007-3 (“Thornburg”), is an unknown business entity, which at all times material herein, was doing business in Clark County, Nevada.

3. Counter-defendant Frank Timpa ("Frank") is individual who, on information and belief resides in Clark County, Nevada and is a co-trustee of the Timpa Trust U/T/D March 3, 1999 ("Timpa Trust").

4. Counter-defendant Madeline Timpa ("Madeline") is individual who, on information and belief resides in Clark County, Nevada and is a co-trustee of the Timpa Trust.

5. Counter-defendant Countrywide Home Loans, Inc. (“Countrywide”), is an unknown business entity, which at all times, material herein, was doing business in Clark County, Nevada.

6. Counter-defendant Estates West at Spanish Trail ("Sub HOA") is a Nevada corporation, which at all times material herein, was doing business in Clark County, Nevada.

7. Counter-defendant Mortgage Electronic Registration Systems, Inc. ("MERS") is an unknown business entity, which at all times material herein, was doing business in Clark County, Nevada.

1 8. Counter-Defendant Republic Services, ("Republic") is an unknown entity,
2 which at all times material herein, was doing business in Clark County, Nevada.

3 9. Counter-defendant Las Vegas Valley Water District ("LVVWD") is a
4 political subdivision of the State of Nevada, which at all times material herein, was doing
5 business in Clark County, Nevada.

6 10. Countrywide, MERS, Sub HOA, Republic, and LVVWD are joined to this
7 proceeding as Counterclaim defendants pursuant to *Lund v. Eighth Jud. Dist. Ct.*, 255 P.3d
8 280 (2011) and NRCP 13(h).

9 11. Red Rock is unaware currently of the true names and capacities of those
10 defendants sued herein as DOES 1-100 and therefore sues said counter-defendants by
11 such fictitious names. Plaintiff will seek leave of the court to amend this Counterclaim to
12 allege the true names and capacities of said defendants when the same have been
13 ascertained.

14 12. Red Rock is informed and believes, and thereon alleges, that each of the
15 cross-defendants sued herein, including those named as DOES, are the agents, servants,
16 employees, predecessor entities, successor entities, parent entities, totally owned or
17 controlled entities, or had some legal relationship of responsibility for, the other cross-
18 defendants, and in doing the things herein alleged, acted within the course and scope
19 and authority of such agency, employment, ownership or other relationship and with the
20 full knowledge and consent of the other defendants, or are in some other manner legally
21 responsible for the acts as alleged herein. Additionally, with respect to all corporate
22 entity cross-defendants, the officers and directors of such entities ratified and affirmed all
23 contracts of its employees, agents, directors and/or officers.

24 **GENERAL ALLEGATIONS**

25 13. Red Rock is a debt collection company, which works on behalf of
26 homeowner associations to collect debts secured by real property, including delinquent
27 homeowner assessments. When a property owner becomes delinquent to the
28 homeowners association, Red Rock is contracted to collect the debt. These efforts include

1 attempts to collect the debt directly from the property owner, but when the property
2 owner does not pay after an extended period, the process leads to a non-judicial
3 foreclosure action pursuant to Nevada law.

4 14. Here, Red Rock was contracted by the Master Association to collect debts
5 for unpaid homeowners assessments owed to the Master Association by counter-
6 defendants Frank Timpa and Madeline Timpa individually and as trustees of the Timpa
7 Trust for the property located at 34 Innisbrook Avenue, Las Vegas, NV 89113 ("the
8 Subject property"). Red Rock's efforts resulted in a foreclosure sale of the Subject
9 Property on November 7, 2014.

10 15. In connection with the foreclosure sale, the Master Association was paid the
11 money it was owed, and Red Rock was paid its fees and costs incurred in collecting the
12 debt as allowed by contract and Nevada law. After paying these costs, Red Rock was left
13 with funds of \$1,168,865.05. Red Rock has no further direct interest in such funds. These
14 funds have been deposited into counsel's attorney-client trust account and \$5,000 has
15 been withheld for costs, expenses, and fees to commence this interpleader action. The
16 remainder will be deposited into Court or disbursed as ordered by this Court.

17 **CAUSE OF ACTION**

18 **(Interpleader Against All Cross-Defendants [NRCP 22])**

19 16. Red Rock repeats and realleges all previous allegations as if fully set forth
20 herein.

21 17. Public records in Clark County, Nevada indicate that there are several liens
22 and other debts secured by the subject property in this action. These debts exceed the
23 amount to be deposited with the Court. Red Rock does not know the current status of
24 such debts, nor does it have knowledge how the funds should be distributed to the
25 various cross-defendants. Red Rock is therefore faced with potential for multiple
26 liability.

27 18. Red Rock requests that the Court determine how such funds should be
28 distributed.

19. Red Rock has incurred attorneys' fees and costs in preparing, filing and prosecuting this action and will apply and account for those attorneys' fees and costs through the amount withheld, and will seek any further reimbursement from the amount to be deposited with the Court per Nevada law, including NRS 116.31164(3)(c).

20. Red Rock requests that, after the parties have been served or at such other appropriate time, that it be dismissed from this interpleader action, as it has no direct interest in the interpleaded funds other than payment of its costs and fees for bringing the instant action.

PRAYER

WHEREFORE, Red Rock prays for relief as follows:

1. That the court determine how the deposited funds should be distributed and order distribution of said funds;

2. That Red Rock be reimbursed out of said deposited funds its attorneys fees and costs in bringing this interpleader action;

3. That Red Rock be dismissed from this action with prejudice following payment of the excess proceeds as directed by the Court; and

4. For such other and further relief as the court determines proper.

Dated: May 21, 2015.

KOCH & SCOW, LLC

By: /s/ Steven B. Scow
David R. Koch (Nevada Bar No. 8830)
Steven B. Scow (Nevada Bar No. 9906)
Robert L. English (Nevada Bar No. 3504)
11500 S. Eastern Ave., Suite 210
Henderson, Nevada 89052
Attorneys for Red Rock Financial Services

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. I certify that on May 21, 2015, I caused the foregoing document entitled: **RED ROCK FINANCIAL SERVICES' ANSWER to BANK OF AMERICA'S COUNTERCLAIM and RED ROCK FINANCIAL SERVICES' FIRST AMENDED COUNTERCLAIM FOR INTERPLEADER** to be served by as follows:

- ☒ Pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in in the mail; and/or;
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Henderson, Nevada; and/or
- ☐ Pursuant to EDCR 7.26, to be sent via facsimile; and/or
- ☐ hand-delivered to the attorney(s) listed below at the address indicated below;
- ☐ to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee (s); and or;
- ☐ by electronic mailing to:

Akerman LLP

Contact	Email
Akerman Las Vegas Office	akermanlas@akerman.com
Allison R. Schmidt, Esq.	allison.schmidt@akerman.com

Law Offices of Michael F. Bohn, Esq.

Contact	Email
Eserve Contact	office@bohnlawfirm.com
Michael F Bohn Esq	mbohn@bohnlawfirm.com

Wright, Finlay & Zak, LLP

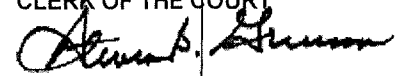
Contact	Email
Brandon Lopipero	blopipero@wrightlegal.net
Erica Baker	ebaker@wrightlegal.net
Marissa Resnick	mresnick@wrightlegal.net
Shadd Wade, Esq.	swade@wrightlegal.net

Executed on May 21, 2015 at Henderson, Nevada.

/s/ Andrea W. Eshenbaugh
An Employee of Koch & Scow LLC

EXHIBIT 3

EXHIBIT 3



1 ANS
2 TRAVIS AKIN, ESQ.
3 Nevada Bar No. 13059
4 **THE LAW OFFICE OF TRAVIS AKIN**
5 9480 S. Eastern Ave., Suite 257
6 Las Vegas, NV 89123
7 Telephone: (702) 510-8567
8 Email: travisakin8@gmail.com
9 *Attorneys for Madelaine Timpa, individually*
10 *and as trustee of the Timpa Trust*

11
12 **EIGHTH JUDICIAL DISTRICT COURT**
13
14 **CLARK COUNTY, NEVADA**

15 SATICOY BAY LLC SERIES 34
16 INNISBROOK,

17 Plaintiff,

18 vs.

19 THORNBURG MORTGAGE SECURITIES
20 TRUST 2007-3, *et al.*,

21 Defendants.

Case No.: A-14-710161-C

Division: XXVI

**MADELAINE TIMPA AND TIMPA
TRUST'S VERIFIED ANSWER TO RED
ROCK FINANCIAL SERVICES'
COUNTERCLAIM FOR INTERPLEADER
AND MADELAINE TIMPA'S CLAIM TO
SURPLUS FUNDS**

22 AND ALL RELATED ACTIONS

23 **I. VERIFIED ANSWER OF MADELAINE TIMPA AND TIMPA TRUST TO RED**
24 **ROCK FINANCIAL SERVICES' COUNTERCLAIM FOR INTERPLEADER**

25 Madelaine Timpa, individually and as trustee of the Timpa Trust (collectively, "Answering
26 Defendant")¹ answers the Counterclaim for Interpleader filed by counter-

27 ¹Madelaine Timpa's husband Frank Timpa -- both individually and as trustee of the Timpa Trust
28 -- was also named as a defendant and counter-defendant in this action. Frank Timpa is deceased.

1 defendant/counterclaimant Red Rock Financial Services, LLC ("Red Rock"), and admits, denies,
2 and alleges as follows:

- 3
- 4 1. In response to paragraphs 11, 12, and 16, Answering Defendant does not have sufficient
5 knowledge or information upon which to base a belief as to the truth of the allegations
6 contained therein and therefore Answering Defendant denies each and every allegation
7 contained therein.
- 8 2. In response to paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 18, 19, and 20, Answering
9 Defendant ADMITS each and every allegation contained therein.
- 10 3. In response to paragraph 17, Answering Defendant DENIES each and every allegation
11 contained therein.
- 12 4. Answering Defendant denies each and every allegation not specifically admitted, denied,
13 or otherwise qualified herein.
14

15 **AFFIRMATIVE DEFENSES**

16 **FIRST AFFIRMATIVE DEFENSE**

- 17 1. Under Nevada Revised Statute §40.462(2(d), Madelaine Timpa is entitled to receive the
18 excess proceeds remaining after the foreclosure sale of the real property located at 34
19 Innisbrook Avenue, Las Vegas, NV 89113.
20

21 **SECOND AFFIRMATIVE DEFENSE**

- 22 2. Under Nevada Revised Statute §40.462, Saticoy Bay LLC Series 34 Innisbrook is not
23 entitled to receive the excess proceeds remaining after the foreclosure sale of the real
24 property located at 34 Innisbrook Avenue, Las Vegas, NV 89113.
25

26 / / /

27 / / /

1 **THIRD AFFIRMATIVE DEFENSE**

- 2 3. Other than Madelaine Timpa, Timpa Trust, Republic Services Inc., and Thornburg
3 Mortgage Securities Trust 2007-3, no other parties have filed an answer to Red Rock's
4 Counterclaim for Interpleader.
5

6 **FOURTH AFFIRMATIVE DEFENSE**

- 7 4. Other than Madelaine Timpa, no other parties have filed a claim to the excess proceeds
8 remaining after the foreclosure sale of the real property located at 34 Innisbrook Avenue,
9 Las Vegas, NV 89113.
10

11 **FIFTH AFFIRMATIVE DEFENSE**

- 12 5. All other parties, including but not limited to Saticoy Bay LLC Series 34 Innisbrook,
13 have knowingly and voluntarily waived their rights to receive the excess proceeds
14 remaining after the foreclosure sale of the real property located at 34 Innisbrook Avenue,
15 Las Vegas, NV 89113.
16

17 **SIXTH AFFIRMATIVE DEFENSE**

- 18 6. Madelaine Timpa, Timpa Trust, and Frank Timpa were never served with Red Rock's
19 Counterclaim for Interpleader.
20

21 **SEVENTH AFFIRMATIVE DEFENSE**

- 22 7. Madelaine Timpa, Timpa Trust, and Frank Timpa were never defaulted for having failed
23 to file an answer to Red Rock's Counterclaim for Interpleader.
24

25 **EIGHTH AFFIRMATIVE DEFENSE**

- 26 8. This Answering Defendant has limited facts available at this time and thus some of the
27 foregoing Affirmative Defenses may have been plead in accordance with NRCP 8, for
28 purposes of non-waiver. Furthermore, pursuant to NRCP 11, this Answering Defendant

1 has or may have more affirmative defenses or counterclaims that are not known at this
2 time or may be uncovered through further discovery wherefore this Answering
3 Defendant reserves the right to assert any such affirmative defenses or counterclaims so
4 ascertained at a later date.

5
6 WHEREFORE, as to Red Rock's Counterclaim for Interpleader, Answering Defendant
7 prays as follows:

- 8 1. That the Court distribute the excess proceeds to Madelaine Timpa;
9 2. That Red Rock be reimbursed out of said deposited fund its attorney's fees and
10 costs in bringing this interpleader action;
11 3. That Red Rock be dismissed from this action with prejudice following the payment
12 of the excess proceeds as directed by the Court;
13 4. For such other and further relief as the Court determines proper.
14

15 Dated this 31st day of January, 2019.

16
17 Respectfully submitted,

18 /s/ Travis Akin

19 TRAVIS AKIN, ESQ.
20 Nevada Bar No. 13059
21 **THE LAW OFFICE OF TRAVIS AKIN**
22 9480 S. Eastern Ave., Suite 257
23 Las Vegas, NV 89123
24 Telephone: (702) 510-8567
25 Email: travisakin8@gmail.com
26 *Attorneys for Madelaine Timpa, individually*
27 *and as trustee of the Timpa Trust*
28

1
2 **II. VERIFIED CLAIM OF MADELAINE TIMPA TO SURPLUS FUNDS**

- 3 1. Madelaine Timpa is making a claim to the excess proceeds remaining after the
4 foreclosure sale of the real property located at 34 Innisbrook Avenue, Las Vegas,
5 NV 89113 (hereinafter "Subject Property").
- 6 2. On or about November 7, 2014, the Subject Property was sold via a foreclosure
7 sale.
- 8 3. After all claims and expenses were deducted, sale of the Subject Property resulted
9 in excess proceeds in the amount of \$1,168,865.05 (hereinafter "Surplus Funds").
- 10 4. The priority order of the distribution of excess sales proceeds following a non-
11 judicial foreclosure trustee's sale is governed by Nevada Revised Statute §40.462,
12 which reads in pertinent part:

14 2. The proceeds of a foreclosure sale must be distributed in the
15 following order of priority:

16 (a) Payment of the reasonable expenses of taking possession,
17 maintaining, protecting and leasing the property, the costs and fees
18 of the foreclosure sale, including reasonable trustee's fees,
19 applicable taxes and the cost of title insurance and, to the extent
20 provided in the legally enforceable terms of the mortgage or lien,
21 any advances, reasonable attorney's fees and other legal expenses
22 incurred by the foreclosing creditor and the person conducting the
23 foreclosure sale.

24 (b) Satisfaction of the obligation being enforced by the
25 foreclosure sale.

26 (c) Satisfaction of obligations secured by any junior mortgages
27 or liens on the property, in their order of priority.

28 (d) **Payment of the balance of the proceeds, if any, to the
debtor or the debtor's successor in interest.** (Emphasis added.)

If there are conflicting claims to any portion of the proceeds, the
person conducting the foreclosure sale is not required to distribute
that portion of the proceeds until the validity of the conflicting
claims is determined through interpleader or otherwise to the
person's satisfaction.

(Nevada Revised Statute §40.462)

- 1 5. Frank and Madelaine Timpa individually and as trustees of the Timpa Trust are the
- 2 formers owners of the Subject Property.
- 3
- 4 6. Frank Timpa is deceased. At the time of his death, Frank Timpa was married to
- 5 Madelaine Timpa.
- 6
- 7 7. Madelaine Timpa is Frank Timpa's successor-in-interest.
- 8
- 9 8. Saticoy Bay LLC Series 34 Innisbrook ("Saticoy") obtained title to the Subject
- 10 Property by the foreclosure sale conducted on November 7, 2014. Under Nevada
- 11 Revised Statute §40.462, Saticoy is not entitled to receive the Surplus Funds.
- 12
- 13 9. Under Nevada Revised Statute §40.462(2)(c), Republic Services is entitled to
- 14 receive the Surplus Funds to satisfy its lien.
- 15
- 16 10. Under Nevada Revised Statute §40.462(2)(d), Madelaine Timpa is entitled to
- 17 receive the Surplus Funds.
- 18
- 19 11. Madelaine Timpa is the only party entitled to receive the Surplus Funds.
- 20
- 21 12. As of this date, no other party has filed a claim to the Surplus Funds with this
- 22 Court.
- 23
- 24 13. Based on the foregoing, Madelaine Timpa respectfully requests that this Court
- 25 disburse the Surplus Funds to Republic Services in the amount necessary to satisfy
- 26
- 27
- 28

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

1 its lien and the balance to Madelaine Timpa.

2 Dated this 31st day of January, 2019

3 Respectfully submitted,

4 /s/ Travis Akin

5 TRAVIS AKIN, ESQ.

6 Nevada Bar No. 13059

7 **THE LAW OFFICE OF TRAVIS AKIN**

8 9480 S. Eastern Ave., Suite 257

9 Las Vegas, NV 89123

10 Telephone: (702) 510-8567

11 Email: travisakin8@gmail.com

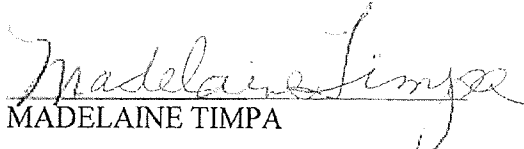
12 *Attorneys for Madelaine Timpa, individually*
13 *and as trustee of the Timpa Trust*

14 **VERIFICATION OF MADELAINE TIMPA**

15 The undersigned declares, under penalty of perjury under the laws of the State of Nevada:

- 16 1. That I have read the foregoing VERIFIED ANSWER TO COUNTERCLAIM FOR
17 INTERPLEADER AND CLAIM TO SURPLUS FUNDS and that the same is true of my
18 own knowledge, except for matters stated therein on information and belief, and as for
19 those matters, I believe them to be true.

20 Dated this 31st day of January, 2019

21 
22 MADELAINE TIMPA
23
24
25
26
27
28

[illegible]

1 **KOCH & SCOW LLC**

2 David R. Koch dkoch@kochscow.com

3 Staff aeshenbaugh@kochscow.com

4 Steven B. Scow sscow@kochscow.com

5 **LAW OFFICES OF MICHAEL F. BOHN, ESQ., LTD.**

6 Eserve Contact office@bohnlawfirm.com

7 Michael F. Bohn Esq mbohn@bohnlawfirm.com

8 **LEGAL AID CENTER OF SOUTHERN NEVADA**

9 Venicia Considine vconsidine@lacs.org

10 **LAW OFFICES OF GREGORY J. WALCH**

11 Gregory Walch greg.walch@lvvwd.com

12 **AKERMAN LLP**

13 MELANIE D. MORGAN, ESQ. melanie.morgan@akerman.com

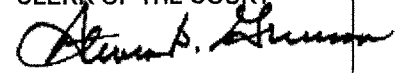
14 THERA A. COOPER, ESQ. thera.cooper@akerman.com

17 /s/ Travis Akin

18 An employee of The Law Office of Travis Akin, LLC

EXHIBIT 4

EXHIBIT 4



MRCN
ROGER P. CROTEAU, ESQ.
Nevada Bar No.: 4958
TIMOTHY E. RHODA, ESQ.
Nevada Bar No. 7878
ROGER P. CROTEAU & ASSOCIATES, LTD
2810 W. Charleston Blvd., Ste. 75
Las Vegas, Nevada 89102
(702) 254-7775
(702) 228-7719 (facsimile)
croteaulaw@croteaulaw.com
Attorneys for Plaintiff
Saticoy Bay LLC Series 34 Innisbrook

DISTRICT COURT
CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Case No.: A-14-710161-C
Dept.: XXVI

Plaintiff,

Hearing Requested

vs.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3 *et al.*,

Defendants.

AND ALL RELATED ACTIONS

**PLAINTIFF'S MOTION FOR RECONSIDERATION UNDER NRCP 59(e) AND 60(b) OF
(I) THE COURT'S SUMMARY JUDGMENT ORDER OF DECEMBER 3, 2018 AND (II)
THE COURT'S ORDER CONCERNING THE DISTRIBUTION OF EXCESS PROCEEDS**

COMES NOW, Plaintiff, SATICOY BAY LLC SERIES 34 INNISBROOK ("*Plaintiff*" or "*Saticoy*"), by and through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby presents the *Plaintiff's Motion for Reconsideration Under NRCP 59(e) and 60(b) of (I) the Court's Summary Judgment Order of December 3, 2018 and (II) the Court's Order Concerning the Distribution of Excess Proceeds* (the "*MRCN*"). This MRCN is made and based upon the attached

1 Memorandum of Points and Authorities, the papers and pleadings on file herein, and any oral
2 argument that this Honorable Court may entertain at the time of hearing of this matter.

3 Dated this 24 th day of September, 2019.

4 ROGER P. CROTEAU & ASSOCIATES, LTD

5 By: /s/ Roger Croteau

6 ROGER P. CROTEAU, ESQ.

7 Nevada Bar No.: 4958

8 2810 W. Charleston Blvd., Ste. 75

9 Las Vegas, Nevada 89102

10 *Attorney for Plaintiff*

11 *Saticoy Bay LLC Series 34 Innisbrook*

12 MEMORANDUM OF POINTS AND AUTHORITIES

13 INTRODUCTION

14 The Court's order of December 3, 2018 granting summary judgment (the "*Summary*
15 *Judgment Order*") to Thornburgh Mortgage Securities Trust 2007-3 (the "*Bank*") should be
16 vacated by this Court. The same holds true for the Court's order of September 11, 2019 governing
17 the distribution of excess sale proceeds at issue here (the "*Excess Proceeds Order*"), directing that
18 almost \$1.2 million in excess sale proceeds (the "*Excess Proceeds*") be paid to the Timpa Trust (the
19 "*Trust*"). NRCP's 59(e) and 60(b) authorize the Court to grant such relief to Plaintiff, and the
20 Court should do so.

21 Throughout its adjudication of the Bank's efforts to impair Plaintiff's title to that certain
22 real property located at 34 Innisbrook Avenue, Las Vegas, Nevada 89113 (the "*Property*"), the
23 Court sat as a court of equity. *See, e.g., Shadow Wood Homeowners Assoc. v. New York Cmty.*
24 *Bancorp, Inc.*, 366 P.3d 1105, 1112 (Nev. 2016) ("The long-standing and broad inherent power of a
25 court to sit in equity and quiet title, including setting aside a foreclosure sale if the circumstances
26 support such action...lead us to the conclusion that the Legislature, through NRS 116.3116's
27 enactment, did not eliminate the equitable authority of the courts to consider quiet title actions
28 when an HOA's foreclosure deed contains conclusive recitals.") (emphasis added) ("*Shadow*

1 *Wood*¹). To date, the exercise of that jurisdiction has culminated in the Court's entry of the
2 Summary Judgment Order and the Excess Proceeds Order. These two results, however, should be
3 reversed and the MRCN should be granted because neither the Summary Judgment Order nor the
4 Excess Proceeds Order can be reconciled with governing principles of either law or equity. First
5 the law, as equity is generally said to follow the law.
6

7 The Court clearly erred under the law in entering the Excess Proceeds Order. The Trust's
8 statutory arguments in its motion practice related to the issue of the Excess Proceeds only purported
9 to pay fidelity to the governing and, indeed, dispositive statutory text at issue here. Indeed, given
10 the confidence reposed by the Trust in what it characterizes in its motion practice on the issue of
11 Excess Proceeds as the plain, clear, and unambiguous meaning of NRS 116.31164(7)(b) (codified
12 at NRS 116.31164(3)(c) under the governing version of the statute in place at the time of the
13 foreclosure sale of the property), one would have expected the actual text of that statute to have
14 been featured repeatedly and prominently throughout the Trust's motion practice with respect to the
15 Excess Proceeds. But it was not. Perhaps this was an oversight on the Trust's part. No matter.
16 Plaintiff now places the statutory text of both NRS 116.31164(3)(c) and NRS 116.31164(7)(b) front
17 and center:
18

- 19
- 20 • 116.31164(3)(c)(4): Satisfaction in the order of priority of any subordinate claim of record
 - 21 • 116.31164(7)(b)(4): Satisfaction in the order of priority of any subordinate claim of record¹

22 By command of the Nevada Legislature, the determination of the priority of subordinate
23 claims by a reviewing court for purposes of distributing the proceeds of the NRS 116 foreclosure
24 sale must be made by reference to the claim priorities set forth in the publicly recorded documents.

25 A critical fact overlooked by the Trust is that, under governing Nevada law, a bank's purported
26

27 ¹ For present purposes, these two statutes are virtually the same in all material respects, so Plaintiff shall simply refer to
28 them using the current version of the statute solely in the interests of simplifying the discussion.

1 tender of the super-priority component of an association's statutory lien under NRS 116.3116(2)
2 does not have to be recorded to have the legally operative effect of discharging the super-priority
3 component of an association's statutory lien—nor was such a tender recorded in this case. Thus,
4 by reference to the priority of subordinate claims as determined by the publicly recorded
5 documents with respect to the Property, the HOA's lien remains in the first position as a matter of
6 public record, and the deed of trust on the Property remained a subordinate claim of record with
7 respect to the Property. Thus, the Excess Proceeds should have been awarded to the Bank as a pay
8 down of the First Deed of Trust as Plaintiff previously advocated before this Court. The MRCN
9 should, therefore, be granted, the Excess Proceeds Order should be vacated, and the Court should
10 award the Excess Proceeds to the Bank in this case.
11

12 The Trust's arguments do not fare any better under equitable principles of Nevada law.
13 Here, the Court sat as a court of equity and impaired Plaintiff's title to the Property based on the
14 Bank's purported tender of the super-priority component of the HOA's super-priority lien prior to
15 the NRS 116 foreclosure sale of the Property by the HOA to Plaintiff. For its part, the Trust would
16 apparently have this Court believe that its exercise of equitable jurisdiction ceases with that result.
17 It does not. Plaintiff respectfully submits that what equity starts, equity must finish, as well.
18 Plaintiff now calls upon the Court to do just that: complete the adjudication of this matter as a court
19 of equity, including its determination regarding the appropriate disposition of the Excess Proceeds.
20 NRS 116.1108 supplements the entirety of NRS 116 with equitable principles of Nevada law,
21 including the distribution statute set forth in NRS 116.3116(4)(7)(b).
22

23 The Court's application of equitable principles here is urgently needed as the Court's
24 Excess Proceeds Order achieves two results that are abhorrent to, and shock the conscience of, a
25 court of equity. First, the Excess Proceeds Order visits forfeiture upon Plaintiff because its
26 payment of sale consideration does not result in any corresponding reduction in debt owed against
27
28

1 the Property. Second and relatedly, the Excess Proceeds Order bestows an unwarranted and,
2 indeed, unconscionable windfall upon the Trust. The Trust never stood to receive any money—let
3 alone the Excess Proceeds—from the Property. By mere happenstance of the tender at issue here,
4 the Trust now seeks to benefit from an unconscionable windfall at Plaintiff's expense. This Court
5 sitting as a court of equity cannot and should not allow this to happen. Fortunately, there are
6 established principles of equity in Nevada that the Court should employ here to avoid such an
7 unconscionable result: namely, the law of equitable subrogation. Under established principles of
8 equitable subrogation, the Excess Proceeds should be awarded to the Plaintiff to avoid windfall
9 upon the Trust.
10

11 Unfortunately, the inequitable results flowing from the Court's Excess Proceeds Order do
12 not stop there; indeed, they adversely affect the Bank's interests, as well. The Excess Proceeds
13 Order effectively works a kind of *de facto* forfeiture with respect to the Bank by leaving the Bank
14 without a meaningful remedy. The Bank's position with respect to the Excess Proceeds Order is
15 complicated by public policy considerations raised by the specter of Nevada's one-action rule. The
16 Court's order states in error with respect to the one-action rule and its purported—albeit
17 incorrect—application to the Bank that, “Thornburgh has not attempted to interfere with the deposit
18 of the HOA Excess Proceeds in recognition of Nevada's one-action rule and its relation to the
19 pursuit of a deficiency judgment. Accordingly, Thornburgh has waived its claim to receive the
20 Excess Proceeds. *See Excess Proceeds Order* at pgs. 3-4 of 8, ¶15. If the Bank pursues the Excess
21 Proceeds, it runs the risk of running afoul of the one-action rule. On the other hand, if the Bank
22 does nothing, then it runs the risk of having the Excess Proceeds distributed pursuant to the Excess
23 Proceeds Order distributed to the Trust and, subsequently, to the beneficiaries of the Trust. The
24 near-certain dissipation of the Excess Proceeds will leave the Bank without any meaningful
25 recourse as neither the Trust nor its beneficiaries are counterparties with respect to the Bank's
26
27
28

1 asserted indebtedness with respect to the Property, and the original borrowers are deceased. The
2 reservation of the Bank's rights in the Excess Proceeds Order to pursue those proceeds at a later
3 date to satisfy any foreclosure deficiency is of little solace as the Excess Proceeds—like the snows
4 of yesteryear—will, in all likelihood, disappear from the face of the Earth.

5
6 If the Court is not inclined to award the Excess Proceeds to the Bank, as previously argued
7 by the Plaintiff, then the Court should apply principles of equitable subrogation and award the
8 Excess Proceeds to Plaintiff. Nevada law on equitable subrogation is designed for just such a
9 circumstance as is presented here: namely, preventing a purported junior-interest holder in the
10 Property from receiving an unwarranted windfall at the expense of the Plaintiff. When Plaintiff
11 tendered the sale consideration for the Property, it did so with the legitimate expectation set in
12 place by the publicly recorded documents that the Excess Proceeds would be distributed in
13 accordance with identified subordinate claims against the Property that were of record. Plaintiff
14 did not, however, tender the sale consideration that resulted in the Excess Proceeds in order to
15 bestow a windfall upon the Trust and be saddled with the Property encumbered by the first deed of
16 trust that as of September 12, 2019, totaled \$6,643,306.90 [See Exhibit A] without any
17 corresponding reduction in the outstanding indebtedness claimed by the Bank that should otherwise
18 be reduced through the application of the Excess Proceeds, with Property only be worth
19 approximately \$2,700,000.00. Additionally, the Trust is not a party to the Note and Deed of Trust,
20 and the borrowers are now deceased. This is unjust. But this unconscionable result should be
21 avoided through the application of principles of equitable subrogation. The Court's Excess
22 Proceeds Order should be vacated on this basis, as well.

23
24
25 Finally, Plaintiff maintains that the Supreme Court of Nevada's decision in *Bank of*
26 *America v. Thomas Jessup, LLC*, 435 P.3d 1217, 1221 n.5 (Nev. 2019), represents an intervening
27 change in law within the meaning of NRCP 60(b) that permits Plaintiff to seek to have the sale of
28

1 the Property set aside or rescinded in light of the Court's determination that the Bank's purported
2 tender and alleged deed of trust continue to encumber the Property. *See id.* ("As the Bank's deed
3 of trust was not extinguished, we need not address the viability of the Bank's claims against ACS
4 and Foxfield. Similarly, we need not address the Bank's remaining arguments in support of its
5 deed of trust remaining intact; as neither the Bank nor the Purchaser have expressed whether they
6 would prefer to have the sale set aside or have the Purchaser take title to the property subject to
7 the first deed of trust.") (emphasis added). Here, Plaintiff would prefer to have the sale of the
8 Property rescinded/set aside, rather than take the Property subject to the deed of trust and having to
9 endure the unconscionable windfall resulting from the Excess Proceeds being awarded to the Trust.
10 Plaintiff will move separately under NRCP 15(c)(2) to include a claim seeking to set aside/rescind
11 the sale in light of the intervening change in law brought about by *Jessup*, in addition to the fact
12 that requests to rescind/set aside the sale were made by the Bank as far back as April of 2015.
13 Therefore, no party to these proceedings can claim to have been prejudiced by any such
14 amendment. The MRCN should be granted, and the Summary Judgment Order and the Excess
15 Proceeds Order should be vacated on this basis, as well.

16 **STATEMENT OF RELEVANT FACTS²**

17 1. On April 10, 2015, the Bank filed an answer and counterclaims (the "*Answer*") in this case,
18 including a claim seeking to set aside the foreclosure sale of the Property to Plaintiff. *See Answer*,
19 pgs. 17-18 of 28.

20 2. Based upon the most recent correspondence received from the Bank and upon information
21 and belief, the outstanding indebtedness claimed in the aggregate by the Bank with respect to the
22 Property is in excess of \$6,643,306.90 million as of September 12, 2019.

23 **LEGAL ARGUMENT**

24
25
26
27
28 ² As the Court has already been apprised of most of the relevant facts here through prior motion practice, both with respect to the Summary Judgment Order and Excess Proceeds Order, Plaintiff's statement of relevant facts is necessarily brief. Again, the relevant factual allegations of the Saticoy Opposition are incorporated by reference.

1 **A. STATEMENT OF THE LAW**

2 Plaintiff's requested relief in the MRCN is supported by NRCP 59(a)(1)(G) and 59(e). The
3 MRCN is further predicated on NRCP 60(b)(6) based on the intervening change in law brought
4 about by the Supreme Court of Nevada's decision in *Jessup*.

5 When there is a reasonable probability that the court may have reached an erroneous
6 conclusion, reconsideration and rehearing of a motion is proper and may include re-argument.
7 *Geller v. McCowan*, 64 Nev. 106, 178 P.2d 380 (1947). When a motion has been denied and
8 further hearing is sought, the proper procedure is to ask leave to renew the motion or to receive a
9 rehearing. *Murphy v. Murphy*, 64 Nev. 440, 183 P.2d 632 (1947). Rule 59(e) provides an
10 opportunity, within a limited time, to seek correction at the trial court level of an erroneous order or
11 judgment, thereby initially avoiding the time and expense of an appeal. *Chiara v. Belaustegui*, 86
12 Nev. 856, 859, 477 P.2d 857 (1970). Rule 59(e) provides the remedy that, where the issues have
13 been litigated and resolved, a motion may be made to alter or amend a judgment. The primary
14 purpose of a petition for rehearing is to inform the court that it has overlooked an important
15 argument or fact or misread or misunderstood a statute, case, or fact in the record. *See In re Ross*,
16 99 Nev. 657, 668 P.2d 1089 (1983). In a concise and non-argumentative manner, such a petition
17 should direct attention to some controlling matter which the court has overlooked or
18 misapprehended. *Id.* It is with the utmost respect for this Court that Plaintiff respectfully submits
19 that the Court appears to have overlooked important arguments and/or misunderstood the law
20 and/or the facts in the record. Relief under NRCP 59 and/or 60(b) is therefore warranted here.

21 **B. THE COURT CLEARLY ERRED UNDER NEVADA LAW BY AWARDING THE**
22 **EXCESS PROCEEDS TO THE TRUST.**

23 In its Excess Proceeds Order, the Court's conclusions of law expressly state that the Court
24 was applying the distribution scheme set forth in NRS 116.31164 "strictly." *See Excess Proceeds*
25 *Order*, pg. 5 of 8, ¶ 6. In addition, the Court's conclusions of law state with respect to NRS
26 116.31164, "the way the statute reads is the way the statute reads." *See id.* at ¶ 5. For its part, the
27 Trust's reply in support of its motion for summary judgment with respect to the disposition of the
28

1 Excess Proceeds (the “*Trust Reply*”) made multiple references to the unambiguous, plain, and/or
2 clear nature of NRS 116.31164(7)(b). *See, e.g., Trust Reply* at pg. 2 of 9, lines 25-26 (describing
3 the distribution statute as clear and unambiguous); pg. 4 of 9; line 24 (“NRS 116.3116(7)(b) is a
4 clear and unambiguous statute.”) (emphasis added); pg. 6 of 9, lines 21-24 (mistakenly assigning
5 error to Plaintiff in connection with NRS 116’s statute governing the distribution of sale proceeds
6 and so forth and admitting, once again, that NRS 116.31164(7)(b) is unambiguous); pg. 7 of 9, line
7 16 (referencing plain and unambiguous nature of the NRS 116.31164(7)(b); pg. 8 of 9, lines 11-12
8 (noting the plain language of the statute).

10 Governing principles of statutory construction require this Court to give effect to all parts of
11 this statutory enactment, including, importantly, the language setting forth the mandatory
12 requirement that the determination of subordinate claims with respect to the publicly recorded
13 documents recorded in the County recorder’s office—i.e. the subordinate claims must be of record.
14 *See Pawlik v. Shyang-Fenn Dang*, 412 P.3d 68, 76 (Nev. 2018) (“The only reasonable
15 interpretation of the statute is the one that gives full effect to the plain language of ALL of the
16 provisions of a statute...”) (emphasis added). Now, recall the teaching of the Supreme Court of
17 Nevada that tenders do not have to be recorded in order to have the legally operative effect of
18 discharging the super-priority component of an association’s statutory lien under NRS 116.3116(2).
19 *Bank of America, N.A. v. SFR Invs. Pool I, LLC*, 427 P.3d 113, 119-120 (Nev. 2018) (“*Diamond*
20 *Spur*”). And, the Bank’s alleged tender at issue here was not recorded.

23 Now, the Court has no doubt noticed the insurmountable problem with the Trust’s
24 arguments with respect to the disposition of the Excess Proceeds under a plain meaning/strict
25 construction of the distribution statute. Paying fidelity to the statutory text set forth in NRS
26 116.31164(7)(b)(4) requires the Court to give effect to the critical statutory language requiring
27 subordinate claims to be “of record.” Since the Bank’s alleged tender at issue here was not “of
28

1 record,” the statutory scheme incorporates—as Plaintiff argued in its opposition to the Trust’s
2 motion for summary judgment (the “*Saticoy Opposition*”)³—the subordinate claims that were of
3 record at the time of the Property’s foreclosure by the Spanish Trail Master Association (the
4 “*HOA*”). Simply put, given that (i) the Bank’s alleged tender did not have to be recorded—and, in
5 fact, was not recorded—and (ii) what the Trust admits repeatedly in the Trust Reply is the plain,
6 clear, and unambiguous command that the distribution scheme under NRS 116.3116(7)(b)(4) must
7 be determined by reference to subordinate claims that are “of record,” the Plaintiff’s position in the
8 *Saticoy Opposition* was and is emphatically correct. The Bank’s claim “of record” was
9 subordinate to the claims of the HOA at the time of filing of the Notice of Delinquent Assessment
10 and at the HOA’s NRS 116 foreclosure sale of the Property, and the Bank’s alleged tender and its
11 subsequent adjudication by this Court does not change the priority of subordinate claims under
12 NRS 116.3116(7)(b)(4) as they existed on the date of the HOA’s foreclosure sale of the Property.
13
14 The emphatic command of the Nevada Legislature is, in the words of the Trust, plain, clear, and
15 unambiguous: the Excess Proceeds were required to be distributed to the Bank to pay down the
16 debt secured by the deed of trust, and not to the Trust. For its part, the Trust pretends to pay
17 fidelity to the statutory text set forth in NRS 116.3116(7)(b)(4), but it never contends with the
18 express and mandatory requirement that subordinate claims must be determined by reference to
19 such claims that are “of record.”
20

21
22 And, the question of which date—the notice of delinquent assessment lien was filed by the
23 HOA, the date of the HOA’s foreclosure sale of the Property, or the date of the Court’s entry of the
24 Summary Judgment Order—is of no help to the Trust, either. If the Court selects either the date of
25 the HOA’s filing of its notice of delinquent assessment lien or the foreclosure date, then the Bank’s
26 claims “of record” were subordinate to those of the HOA. *See, e.g., SFR Invs. Pool 1, LLC v. U.S.*
27

28 ³ The *Saticoy Opposition* filed by Plaintiff on July 26, 2019 is expressly incorporated herein by this reference.

1 *Bank., N.A.*, 334 P.3d 408, 409 (authoritatively construing NRS 116.3116(2) and stating, “We must
2 decide whether this [NRS 116.3116(2)] is a true priority lien such that its foreclosure extinguishes a
3 first deed of trust on the property and, if so, whether it can be foreclosed non-judicially. We
4 answer both questions in the affirmative and reverse.”). If the Court selects, in the alternative, the
5 date of either the entry of the Summary Judgment or the Excess Proceeds Orders, then Plaintiff, not
6 the Trust, was the owner of Property on each of those respective dates and, under the very analysis
7 advanced here by the Trust, would be the entity entitled to receive the Excess Proceeds pursuant to
8 NRS 116.31164(7)(b)(4). The issue of timing, therefore, places the Trust on the horns of a
9 dilemma traversing life’s difficult acre—east of the rock, and west of the hard place.
10

11 Clearly, the Trust is seeking to have it both ways. This is not a result that should be
12 countenanced by any court, let alone a court sitting in equity. On the one hand, the Trust wants to
13 have its position fixed as the former owner of the Property on the date of the HOA’s foreclosure of
14 the Property for purposes of the distribution statute; on the other hand, the Trust wants to use the
15 Court’s Summary Judgment Order on the Bank’s alleged tender to change the priority of
16 distribution scheme that was “of record” on the date of the HOA’s foreclosure of the Property to
17 essentially elevate the Bank impermissibly out of the distribution position that is actually “of
18 record” on that date in order to clear the path for the Trust to receive an impermissible windfall and
19 visit an impermissible forfeiture upon Plaintiff. In a recurring theme, this Court as a court of equity
20 should not countenance a state of affairs that gives the Trust a windfall and visits a forfeiture upon
21 Plaintiff in express derogation of the requirement that subordinate claims under NRS
22 116.31164(7)(b)(4) must be of record. The Trust’s whiplash-inducing display of equivocation on
23 this critical statutory language, and its head-spinning lines of argument on the issue of timing as a
24 factor, demonstrates just how utterly meritless and irreconcilable the Trust’s position is with
25 respect to—to, once again, borrow the Trust’s own description of NRS 116.31164(7)(b)(4)—the
26
27
28

1 plain, clear, and unambiguous requirement that subordinate claims must be of record. Under
2 governing Nevada law, therefore, the Excess Proceeds should have been paid to the Bank, not the
3 Trust. The MRCN should be granted on this basis alone. Unfortunately for the Trust, its
4 arguments in support of the Court's Excess Proceeds Order do not fare any better under equitable
5 principles of Nevada law.

6
7 **C. ALTERNATIVELY, THE EXCESS PROCEEDS SHOULD BE AWARDED TO
8 PLAINTIFF UNDER NRS 116.1108 AND PRINCIPLES OF EQUITABLE SUBROGATION**

9 Nevada law recognizes as a maxim the proposition that equity abhors a forfeiture. *See, e.g.,*
10 *International Indus., Inc. v. United Mortg. Co.*, 606 P.2d 163, 167 (Nev. 1980). Similarly, the
11 Supreme Court of Nevada has recognized the fundamentally irreconcilable nature of a litigant's
12 receipt of a windfall with the concept of equity. *See, e.g., Home Savings Assoc. v. Bigelow*, 779
13 P.2d 85, 86 (Nev. 1989) ("Further, rather than doing equity, in our view, the dismissal of the third-
14 party complaint grants Bigelow a windfall." (emphasis added). As Plaintiff noted at the outset of
15 the MRCN, this Court sat as a court of equity under Nevada law in entertaining the Bank's
16 arguments that Plaintiff's Property continued to be encumbered by a deed of trust notwithstanding
17 the HOA's NRS 116 foreclosure sale. Stated plainly, Plaintiff respectfully submits that what equity
18 starts, equity must finish. It is simply inconsistent with traditional notions of fair play and
19 substantial justice to impair Plaintiff's title to the Property in equity only to then pull a complete
20 180-degree turn and rely—albeit in legal error discussed and established both immediately above
21 and below—upon what the Court viewed in the Excess Proceeds Order as a strict application of the
22 distribution scheme set forth in NRS 116.31164(7)(b)(4) to visit a forfeiture on Plaintiff and a
23 windfall upon the Trust. Equity simply cannot tolerate this result, and neither should this Court.

24
25
26 The Court's continued exercise of its equity jurisdiction, and the related ability to apply
27 equitable principles to avoid such unjust results as those visited upon Plaintiff by both the
28 Summary Judgment and Excess Proceeds Orders, has been authorized expressly by the Nevada

1 Legislature in NRS 116.1108. The Court’s application of the distribution scheme set forth in the
2 Excess Proceeds Order also fails to take into consideration this statute. Specifically, NRS 116.1108
3 supplements the provisions of NRS 116 with, among other general bodies of established Nevada
4 law, Nevada’s law on equity. *See, e.g., Shadow Wood*, 366 P.3d at 1112 (authoritatively construing
5 NRS 116.1108 as a legislative mandate to apply both principles of law and equity to NRS 116
6 cases). The operation of equitable principles does not stop at the doorstep of NRS 116 distribution
7 scheme set forth in NRS 116.31164(7)(b)(4), and the Trust’s motion practice to this point did not
8 give this Court sufficient reason—let alone legally valid justification—to refuse to avoid the
9 windfall to the Trust and the forfeiture visited upon Plaintiff, even if such a result was compelled
10 by the law—which, of course, the Plaintiff has already established is clearly not the case.
11

12
13 In addition to the legal arguments above that direct the Excess Proceeds be distributed to the
14 Bank as the holder of a subordinate claim of record to the HOA’s Lien consistent with Plaintiff’s
15 position in the Saticoy Opposition, the Court can also apply principles of established principles of
16 equity in connection with its continued exercise of its jurisdiction in equity to avoid the
17 windfall/forfeiture scenario contemplated by the Excess Proceeds Order—at least to the extent the
18 MRCN is not granted or the Excess Proceeds Order is not reversed on appeal. For instance,
19 Plaintiff calls upon the Court as a court of equity and pursuant to NRS 116.1108 to apply
20 established and on-point principles of equitable subrogation vigorously to avoid both the unjust
21 forfeiture visited upon Plaintiff through the Excess Proceeds Order and the unconscionable
22 windfall that will inure to the unjust benefit of the Trust.

23 “Nevada recognizes the doctrine of equitable subrogation as formulated in section 7.6 of the
24 Restatement (Third) of Property: Mortgages (1997).” *Recontrust Co., N.A. v. Zhang*, 317 P.3d 814,
25 817 (Nev. 2014); *see also Am. Sterling Bank v. Johnny Mgmt. LV, Inc.*, 245 P.3d 535, 539 (Nev.
26 2010). The doctrine of equitable subrogation “is a remedy to avoid receiving an unearned
27 windfall at the expense of another. If there were no subrogation, a junior lien holder would be
28 promoted in priority, giving that creditor/lien holder an unwarranted and unjust windfall. Neither

1 negligence nor constructive notice is relevant as to whether the junior lienholder will be unjustly
2 enriched.” *Houston v. Bank of America, N.A.*, 78 P.3d 71, 74 (Nev. 2003) (emphasis added)
3 (citations omitted). The two elements of an equitable subrogation claim are (i) that the payor
4 reasonably expected to receive a security interest in the real estate with the priority of the mortgage
5 being discharged and (ii) that the subrogation does not materially prejudice the interests of
6 intervening holders in the real estate. *See, e.g., Zhang*, 317 P.3d at 817. The analysis of these
7 element proceeds out of order as the second element is by far and away the easier of the two
8 elements to establish.

9 Here, the Trust cannot credibly claim that it will be prejudiced by the Court equitably
10 subrogating the Plaintiff to the position of the remaining portion of the HOA’s statutory lien in
11 light of the Bank’s elevation—albeit incorrect—out of the distribution statute’s priority scheme.
12 The Trust never stood to receive anything from the sale of the Property—let alone realization of
13 any sale consideration on the order of magnitude of the Excess Proceeds. This is precisely the
14 exact type of windfall the doctrine of equitable subrogation is designed to prevent and should be
15 applied to this analogous context here to avoid an impermissible and unjust windfall from being
16 given to the Trust.

17 Plaintiff also satisfies the first portion of the test, as well, on the discrete facts presented by
18 this analogous context. When Plaintiff tendered the sale consideration for the Property that
19 ultimately resulted in the Excess Proceeds, Plaintiff legitimate expectations were twofold. First and
20 obviously, Plaintiff expected to receive the Property free and clear from any interest claimed by the
21 Bank. To date, that expectation has not been satisfied by virtue of the Court’s entry of the
22 Summary Judgment Order. As second legitimate expectation that Plaintiff reasonably had is that,
23 in the event that the HOA’s sale of the Property were to be set aside for any reason, that the sale
24 consideration paid by the Plaintiff would be impressed with a constructive trust in favor of Plaintiff
25 to prevent the HOA, or anyone else, for that matter from being unjustly enriched at Plaintiff’s
26 expense. This legitimate expectation on the part of the Plaintiff, therefore, has the analogous effect
27 of the Plaintiff expecting to, in effect, be in a secured position vis-à-vis the Property—at least to the
28 extent of the sale consideration paid which would include the Excess Proceeds. Here, Plaintiff only

1 seeks to be equitably subrogated to the extent of the Excess Proceeds, and the Court should apply
2 this doctrine vigorously to the analogous facts presented here in order to serve the purpose for
3 which the doctrine was conceived in the first place: to prevent the unjust enrichment of an alleged
4 junior interest holder in the Property, like the Trust. The MRCN should be granted on this basis, as
5 well.

6 **D. ALTERNATIVELY, THE SALE SHOULD BE SET ASIDE UNDER *JESSUP***

7 Plaintiff maintains that the Supreme Court of Nevada's decision in *Jessup*, 435 P.3d at 1221
8 n.5, represents an intervening change in law within the meaning of NRCP 60(b) that permits
9 Plaintiff to seek to have the sale of the Property set aside or rescinded in light of the Court's
10 determination that the Bank's purported tender and alleged deed of trust continue to encumber the
11 Property. *See id.* ("As the Bank's deed of trust was not extinguished, we need not address the
12 viability of the Bank's claims against ACS and Foxfield. Similarly, we need not address the
13 Bank's remaining arguments in support of its deed of trust remaining intact; as neither the Bank
14 nor the Purchaser have expressed whether they would prefer to have the sale set aside or have the
15 Purchaser take title to the property subject to the first deed of trust.") (emphasis added). Here,
16 Plaintiff would prefer and in fact hereby request to have the sale of the Property rescinded/set aside,
17 rather than take the Property subject to the deed of trust and having to endure the unconscionable
18 windfall resulting from the Excess Proceeds being awarded to the Trust. Plaintiff will move
19 separately under NRCP 15(c)(2) to include a claim seeking to set aside/rescind the sale in light of
20 the intervening change in law brought about by *Jessup*, in addition to the fact that requests to
21 rescind/set aside the sale were made by the Bank as far back as April of 2015. Therefore, no party
22 to these proceedings can claim to have been prejudiced by any such amendment. The MRCN
23 should be granted, and the Summary Judgment Order and the Excess Proceeds Order should be
24 vacated on this basis, as well.

25 **CONCLUSION**

26 Based upon the foregoing, this Court should grant the MRCN as good cause for such relief
27 exists, and, as necessary, vacate either the Excess Proceeds Order, the Summary Judgment Order,
28 or both.

1 Dated this 24 th day of September, 2019.

2 ROGER P. CROTEAU & ASSOCIATES, LTD

3 By: /s/ Roger Croteau

4 ROGER P. CROTEAU, ESQ.

5 Nevada Bar No.: 4958

6 2810 W. Charleston Blvd., Ste. 75

7 Las Vegas, Nevada 89102

8 *Attorney for Plaintiff*

9 *Saticoy Bay LLC Series 34 Innisbrook*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of
3 ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 24th day of September, 2019, I
4 caused a true and correct copy of the foregoing document to be served on all parties as follows:

5 X VIA ELECTRONIC SERVICE: through the Nevada Supreme Court's efile e-file and serve
6 system.

7 Thornburg Mortgage Securities Trust 2007-3 - Defendant

8 Akerman LLP AkermanLAS@akerman.com

9 Melanie Morgan melanie.morgan@akerman.com

10 Jared Sechrist jared.sechrist@akerman.com

11 Spanish Trail Master Association - Counter Defendant

12 Sean L. Anderson sanderson@leachjohnson.com

13 Robin Callaway rcallaway@lkglawfirm.com

14 Patty Gutierrez pgutierrez@lkglawfirm.com

15 Ryan D Hastings rhastings@lkglawfirm.com

16 Gina LaCascia glacascia@leachjohnson.com

17 OTHER SERVICE CONTACTS

18 Luz Garcia nvrec@avalonlg.com

19 Bryan Naddafi bryan@avalonlg.com

20 Kurt Naddafi kurt@avalonlg.com

21 Gregory Walch greg.walch@lvvwd.com

22 Venicia Considine vconsidine@lacs.org

23 Donald H. Williams, Esq. dwilliams@dhwlawlv.com

24 David R. Koch dkoch@kochscow.com

25 Robin Gullo rgullo@dhwlawlv.com

26 Staff aeshenbaugh@kochscow.com

27 Steven B. Scow sscow@kochscow.com

28 Travis Akin travisakin8@gmail.com

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

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

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

36 /s/ Jennifer Lee

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

EXHIBIT A

EXHIBIT A

Mr. Cooper, Attn: Payoff Department
8950 Cypress Waters Blvd
Coppell, TX 75019
1-888-480-2432

Statement Date: September 12, 2019

Payoff Statement
Amended

Send to: FRANK A TIMPA Mortgagor(s) FRANK A TIMPA
 C/O AVALON LEGAL GROUP LLC
 9480 S EASTERN AVE, #257 Property Addr: 34 Innisbrook Ave
 LAS VEGAS, NV 89123 LAS VEGAS, NV 89113
Loan Nbr: [REDACTED] 0200

The following statement reflects the estimated payoff amount required to prepay the above referenced mortgage in full. Interest will be collected up to the date payoff funds are received.

Interest Paid to Date: 1/01/08 Next Payment Due Date: 2/01/08

QUOTE DETAIL

Unpaid Principal	4,032,757.77		
Interest Due	2,130,108.74	Hazard Loss Susp*	5,810.83
(From 1/01/08 to 10/04/19 at 8.250%)			
Late Charges of	5,719.76		
Deferred Late Charges	3,709.58		
Corporate Advance	47,516.50		
Escrow Advance	421,243.32		

		Prin and Interest	12,846.43
		Mthly Escrow Pymt	3,081.46
COUNTY RECORDING FEE	40.00		
3PTY RECON REL FEE	20.00		
LEGAL FEES	2,191.23		

Balance Due	6,643,306.90	Mortgage Payment	15,927.89

If payoff funds are submitted after 10/04/19, the applicable per diem interest of \$ 662.92 must be added for each day thereafter. Continue to make your scheduled mortgage payments. DO NOT PLACE A STOP PAYMENT ON ANY CHECK PREVIOUSLY REMITTED. If any scheduled payment is received after the Late Charge grace period as set forth in the applicable Note, a Late Charge of \$1,112.39 will be assessed.

Estimated Disbursements: Due Date Amount
HAZARD SFR 12/05/19 23,333.00
COUNTY TAX 10/02/19 4,984.78

PAYOFF FUNDS MUST BE REMITTED USING CERTIFIED FUNDS OR BY WIRE TRANSFER ONLY. If using wire transfer, forward to: Wells Fargo Bank, N.A., Routing [REDACTED], for credit to Mr. Cooper Payment Clearing Account# [REDACTED]. If mailing certified funds, make payable to Mr. Cooper and forward to the address listed at the top of page. Funds received after 3:00pm Central Time may be posted on the following business day. Please include the Mortgagor's Loan Number on all correspondence.

We will continue to make disbursements of all escrow items (hazard, flood, PMI/MIP, taxes, etc.) up to the date of payoff. It is the responsibility of the borrower(s) and their closing agent to obtain a refund should a double payment occur.

IMPORTANT NOTICE

We reserve the right to adjust any portion of this statement at any time for one or more of the following reasons, but not limited to: recent advances, returned items, additional fees or charges, disbursements made on your behalf, scheduled payment(s) from an escrow account, transfer of servicing and/or inadvertent clerical errors.

This payoff estimate does not waive our rights to collect any funds which become due on this account as a result of any subsequent adjustments. Additionally, Mr. Cooper will not provide reconveyance or release of the Security Instrument until the account is paid in full. Upon payment in full and within state specified guidelines, the necessary documents will be forwarded to the Trustee and/or County Recorder's Office to release our lien. Any overpayment will be refunded to the mortgagor(s) within 20 Business Days after payment in full.

Nationstar Mortgage LLC d/b/a Mr. Cooper is a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose. However, if you are currently in bankruptcy or have received a discharge in bankruptcy, this communication is not an attempt to collect a debt from you

personally to the extent that it is included in your bankruptcy or has been
discharged, but is provided for informational purposes only.
WP-PAYOFFST-0513

Mr. Cooper, Attn: Payoff Department
8950 Cypress Waters Blvd
Coppell, TX 75019
1-888-480-2432

Statement Date: September 12, 2019

Payoff Statement
Amended

Send to: FRANK A TIMPA Mortgagor(s) FRANK A TIMPA
C/O AVALON LEGAL GROUP LLC
9480 S EASTERN AVE, #257 Property Addr: 34 Innisbrook Ave
LAS VEGAS, NV 89123 LAS VEGAS, NV 89113
Loan Nbr: 0200

The following statement reflects the estimated payoff amount required to prepay the above referenced mortgage in full. Interest will be collected up to the date payoff funds are received.

Interest Paid to Date: 1/01/08 Next Payment Due Date: 2/01/08

QUOTE DETAIL

Unpaid Principal	4,032,757.77		
Interest Due	2,130,108.74	Hazard Loss Susp*	5,810.83
(From 1/01/08 to 10/04/19 at 8.250%)			
Late Charges of	5,719.76		
Deferred Late Charges	3,709.58		
Corporate Advance	47,516.50		
Escrow Advance	421,243.32		

		Prin and Interest	12,846.43
		Mthly Escrow Pymt	3,081.46
COUNTY RECORDING FEE	40.00		
3PTY RECON REL FEE	20.00		
LEGAL FEES	2,191.23		

Balance Due	6,643,306.90	Mortgage Payment	15,927.89

If payoff funds are submitted after 10/04/19, the applicable per diem interest of \$ 662.92 must be added for each day thereafter. Continue to make your scheduled mortgage payments. DO NOT PLACE A STOP PAYMENT ON ANY CHECK PREVIOUSLY REMITTED. If any scheduled payment is received after the Late Charge grace period as set forth in the applicable Note, a Late Charge of \$1,112.39 will be assessed.

Estimated Disbursements: Due Date Amount
HAZARD SFR 12/05/19 23,333.00
COUNTY TAX 10/02/19 4,984.78

PAYOFF FUNDS MUST BE REMITTED USING CERTIFIED FUNDS OR BY WIRE TRANSFER ONLY. If using wire transfer, forward to: Wells Fargo Bank, N.A., Routing # , for credit to Mr. Cooper Payment Clearing Account#. If mailing certified funds, make payable to Mr. Cooper and forward to the address listed at the top of page. Funds received after 3:00pm Central Time may be posted on the following business day. Please include the Mortgagor's Loan Number on all correspondence.

We will continue to make disbursements of all escrow items (hazard, flood, PMI/MIP, taxes, etc.) up to the date of payoff. It is the responsibility of the borrower(s) and their closing agent to obtain a refund should a double payment occur.

IMPORTANT NOTICE

We reserve the right to adjust any portion of this statement at any time for one or more of the following reasons, but not limited to: recent advances, returned items, additional fees or charges, disbursements made on your behalf, scheduled payment(s) from an escrow account, transfer of servicing and/or inadvertent clerical errors.

This payoff estimate does not waive our rights to collect any funds which become due on this account as a result of any subsequent adjustments. Additionally, Mr. Cooper will not provide reconveyance or release of the Security Instrument until the account is paid in full. Upon payment in full and within state specified guidelines, the necessary documents will be forwarded to the Trustee and/or County Recorder's Office to release our lien. Any overpayment will be refunded to the mortgagor(s) within 20 Business Days after payment in full.

Nationstar Mortgage LLC d/b/a Mr. Cooper is a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose. However, if you are currently in bankruptcy or have received a discharge in bankruptcy, this communication is not an attempt to collect a debt from you

personally to the extent that it is included in your bankruptcy or has been
discharged, but is provided for informational purposes only.
WP-PAYOFFST-0513

EXHIBIT 5

EXHIBIT 5

REGISTER OF ACTIONS

CASE NO. A-14-710161-C

Saticoy Bay LLC Series 34 Innisbrook, Plaintiff(s) vs. Thornburg Mortgage
Securities Trust 2007-3, Defendant(s)

§
§
§
§
§
§

Case Type: Other Title to Property
Date Filed: 11/20/2014
Location: Department 26
Cross-Reference Case Number: A710161
Supreme Court No.: 80111

PARTY INFORMATION

Counter Claimant	Red Rock Financial Services	Lead Attorneys David Koch <i>Retained</i> 702-318-5041(W)
Counter Claimant	Thornburg Mortgage Securities Trust 2007-3	Melanie D. Morgan <i>Retained</i> 702-634-5000(W)
Counter Defendant	Countrywide Home Loans Inc	
Counter Defendant	Las Vegas Valley Water District	Gregory J. Walch <i>Retained</i> 702-258-3288(W)
Counter Defendant	Mortgage Electronic Registration System Inc	
Counter Defendant	Red Rock Financial Services	David Koch <i>Retained</i> 702-318-5041(W)
Counter Defendant	Spanish Trail Master Association	Ryan D. Hastings <i>Retained</i> 702-538-9074(W)
Counter Defendant	Thornburg Mortgage Securities Trust 2007-3	Melanie D. Morgan <i>Retained</i> 702-634-5000(W)
Counter Defendant	Timpa Trust	Travis D Akin <i>Retained</i> 702-522-6450(W)
Counter Defendant	Timpa, Frank	Pro Se
Counter Defendant	Timpa, Frank	Travis D Akin <i>Retained</i> 702-522-6450(W)
Counter Defendant	Timpa, Madelaine	Travis D Akin <i>Retained</i> 702-522-6450(W)

Defendant	Bank of America NA	
Defendant	Red Rock Financial Services LLC	David Koch <i>Retained</i> 702-318-5041(W)
Defendant	Spanish Trail Master Association	Ryan D. Hastings <i>Retained</i> 702-538-9074(W)
Defendant	Thornburg Mortgage Securities Trust 2007-3	Melanie D. Morgan <i>Retained</i> 702-634-5000(W)
Defendant	Timpa Trust	Travis D Akin <i>Retained</i> 702-522-6450(W)
Defendant	Timpa, Frank	Travis D Akin <i>Retained</i> 702-522-6450(W)
Defendant	Timpa, Madelaine	Travis D Akin <i>Retained</i> 702-522-6450(W)
Plaintiff	Saticoy Bay LLC Series 34 Innisbrook	Roger P Croteau, ESQ <i>Retained</i> 702-254-7775(W)
Trustee	Timpa, Frank	Travis D Akin <i>Retained</i> 702-522-6450(W)
Trustee	Timpa, Madelaine	Travis D Akin <i>Retained</i> 702-522-6450(W)

EVENTS & ORDERS OF THE COURT

	DISPOSITIONS
03/27/2015	Order of Dismissal Without Prejudice (Judicial Officer: Scotti, Richard F.) Debtors: Saticoy Bay LLC Series 34 Innisbrook (Plaintiff) Creditors: Recontrust Company NA (Defendant) Judgment: 03/27/2015, Docketed: 04/03/2015
04/03/2015	Order of Dismissal With Prejudice (Judicial Officer: Scotti, Richard F.) Debtors: Saticoy Bay LLC Series 34 Innisbrook (Plaintiff) Creditors: Recontrust Company NA (Defendant) Judgment: 04/03/2015, Docketed: 04/07/2015
07/27/2015	Order of Dismissal With Prejudice (Judicial Officer: Hardy, Joe) Debtors: Estates West at Spanish Trails (Counter Defendant) Creditors: Red Rock Financial Services (Counter Claimant) Judgment: 07/27/2015, Docketed: 08/03/2015
10/09/2017	Order of Dismissal Without Prejudice (Judicial Officer: Sturman, Gloria) Debtors: Thornburg Mortgage Securities Trust 2007-3 (Counter Claimant) Creditors: Spanish Trail Master Association (Counter Defendant) Judgment: 10/09/2017, Docketed: 10/10/2017 Comment: Certain Claims
12/03/2018	Order of Dismissal With Prejudice (Judicial Officer: Sturman, Gloria) Debtors: Saticoy Bay LLC Series 34 Innisbrook (Plaintiff) Creditors: Thornburg Mortgage Securities Trust 2007-3 (Counter Claimant) Judgment: 12/03/2018, Docketed: 12/04/2018 Debtors: Saticoy Bay LLC Series 34 Innisbrook (Plaintiff) Creditors: Thornburg Mortgage Securities Trust 2007-3 (Defendant)

Judgment: 12/03/2018, Docketed: 12/04/2018

12/03/2018 **Summary Judgment** (Judicial Officer: Sturman, Gloria)
Debtors: Saticoy Bay LLC Series 34 Innisbrook (Plaintiff)
Creditors: Thornburg Mortgage Securities Trust 2007-3 (Defendant)
Judgment: 12/03/2018, Docketed: 12/06/2018

09/11/2019 **Summary Judgment** (Judicial Officer: Sturman, Gloria)
Debtors: Thornburg Mortgage Securities Trust 2007-3 (Counter Claimant)
Creditors: Timpa Trust (Counter Defendant)
Judgment: 09/11/2019, Docketed: 09/12/2019
Debtors: Saticoy Bay LLC Series 34 Innisbrook (Plaintiff)
Creditors: Thornburg Mortgage Securities Trust 2007-3 (Defendant)
Judgment: 09/11/2019, Docketed: 09/12/2019

02/20/2020 **Order of Dismissal With Prejudice** (Judicial Officer: Sturman, Gloria)
Debtors: Red Rock Financial Services (Counter Claimant)
Creditors: Republic Services (Counter Defendant)
Judgment: 02/20/2020, Docketed: 02/21/2020

OTHER EVENTS AND HEARINGS

11/20/2014 **Case Opened**

11/20/2014 **Complaint**
Complaint

11/25/2014 **Amended Complaint**
Amended Complaint

11/26/2014 **Motion for Order to Show Cause**
Ex Parte Motion for Order to Show Cause Why a Writ of Restitution Should Not Issue

12/09/2014 **Order to Show Cause**
Order to Show Cause

12/30/2014 **Affidavit of Service**
Affidavit of Service - Frank Kalata

12/30/2014 **Affidavit of Service**
Affidavit of Service - Madelaine Timpa

12/30/2014 **Affidavit of Service**
Affidavit of Service- Madelaine Timpa and Timpa Trust

01/05/2015 **Case Reassigned to Department 2**
District Court Case Reassignment 2015

01/07/2015 **Statement of Legal Aid Representation and Fee Waiver**
Statement of Legal Aid Representation

01/07/2015 **Notice of Appearance**
Notice of Appearance of Counsel

01/13/2015 **Show Cause Hearing** (9:00 AM) (Judicial Officer Scotti, Richard F.)
Parties Present
Minutes
01/08/2015 Reset by Court to 01/13/2015

Result: Off Calendar

01/20/2015 **Stipulation and Order**
Stipulation and Order Directing Issuance of Writ of Restitution

01/21/2015 **Notice of Entry of Stipulation and Order**
Notice of Entry of Order

02/02/2015 **Affidavit of Service**
Affidavit of Service - Recontrust Company NA

02/02/2015 **Receipt of Copy**
Receipt of Copy

02/05/2015 **Affidavit of Service**
Affidavit of Service - Thornsbury Mortgage Securities Trust 2007-3

02/19/2015 **Motion to Withdraw As Counsel**
Motion to Withdraw as Counsel

02/23/2015 **Notice of Appearance**
Notice of Appearance of Counsel on behalf of ReconTrust Company, N.A.

02/23/2015 **Initial Appearance Fee Disclosure**
Initial Appearance Fee Disclosure on behalf of ReconTrust Company, N.A.

03/23/2015 **Motion to Withdraw as Counsel** (3:00 AM) (Judicial Officer Scotti, Richard F.)
Minutes
Result: Granted

03/27/2015 **Stipulation and Order for Dismissal With Prejudice**
Disclaimer of Interest and Stipulation and Order For Dismissal With Prejudice as to Recontrust Company, N.A.

03/31/2015 **Order to Withdraw as Attorney of Record**
Order Granting Motion to Withdraw as Counsel

04/01/2015 **Notice of Entry of Order**
Notice of Entry of Order

04/03/2015 **Stipulation and Order for Dismissal With Prejudice**
Disclaimer of Interest and Stipulation and Order for Dismissal with Prejudice as to Recontrust Company, N.A.

04/08/2015 **Notice of Entry of Stipulation & Order for Dismissal**
Notice of Entry of Order

04/10/2015 **Answer and Counterclaim**
Thornburg Mortgage Securities Trust 2007-3's Answer and Counterclaims

04/13/2015 **Initial Appearance Fee Disclosure**
Initial Appearance Fee Disclosure

04/24/2015 **Motion to Amend**

04/27/2015	<i>Motion to Amend Complaint</i> Motion to Dismiss
05/04/2015	<i>Motion to Dismiss Counterclaim</i> Case Reassigned to Department 15 <i>Case reassigned from Judge Richard F Scotti Dept 2</i>
05/15/2015	Summons Issued <i>Summons - Affidavit of Due Diligence - (Spanish Trail Master Association)</i>
05/15/2015	Summons Issued <i>Summons - Affidavit of Due Diligence - (Red Rock Financial Services)</i>
05/15/2015	Summons Issued <i>Summons - Affidavit of Due Diligence - (Frank Timpa)</i>
05/21/2015	Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure</i>
05/21/2015	Answer to Counterclaim <i>Red Rock Financial Services' Answer to Thornburg Mortgage Securities Trust 2007-3 counterclaim; and Red Rock Financial Services' Counterclaim for Interpleader (NRCP 22)</i>
05/26/2015	Motion to Amend Complaint (3:00 AM) (Judicial Officer Hardy, Joe) <i>Plaintiff's Motion to Amend Complaint</i> <u>Minutes</u> Result: Minute Order - No Hearing Held
06/08/2015	Motion to Dismiss (9:00 AM) (Judicial Officer Hardy, Joe) <i>Plaintiff's Motion to Dismiss Counterclaim</i> <u>Parties Present</u> <u>Minutes</u> Result: Off Calendar
06/09/2015	Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure</i>
06/09/2015	Motion to Dismiss <i>Motion to Dismiss Thornburg Mortgage Securities Trust 2007-3's Counter-claims</i>
06/10/2015	Order Granting Motion <i>Order</i>
06/11/2015	Notice of Entry of Order <i>Notice of Entry of Order</i>
06/11/2015	Second Amended Complaint <i>Second Amended Complaint</i>
06/11/2015	Order Denying Motion <i>Order Denying Motion to Dismiss</i>
06/11/2015	Notice of Entry of Order <i>Notice of Entry of Order</i>
06/15/2015	Notice of Lis Pendens <i>Notice of Lis Pendens</i>
06/15/2015	Acceptance of Service <i>Acceptance of Service</i>
06/16/2015	Certificate of Service <i>Certificate of Service</i>
06/23/2015	Reply to Counterclaim <i>Republic Services Reply to Counterclaim</i>
06/23/2015	Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure</i>
06/24/2015	Answer to Counterclaim <i>Thornburg Mortgage Securities Trust 2007-3's Answer to Red Rock Financial Services' Counterclaim for Interpleader (NRCP 22)</i>
06/26/2015	Affidavit of Service <i>Affidavit of Service - Countrywide Home Loans Inc</i>
06/26/2015	Affidavit of Service <i>Affidavit of Service - Republic Services Inc</i>
06/26/2015	Affidavit of Service <i>Affidavit of Service - Estates West at Spanish Trail</i>
07/01/2015	Affidavit of Service <i>Affidavit of Service - Mortgage Electronic Registration System</i>
07/10/2015	Motion to Dismiss (11:00 AM) (Judicial Officer Hardy, Joe) <i>Motion to Dismiss Thornburg Mortgage Securities Trust 2007-3's Counter-claims</i> <u>Minutes</u> <i>07/14/2015 Reset by Court to 07/10/2015</i> Result: Minute Order - No Hearing Held
07/15/2015	Order Denying <i>Order Denying Without Prejudice Defendant Spanish Trail Master Association's Motion to Dismiss Thornburg Mortgage Securities Trust 2007-3's Counterclaim</i>
07/17/2015	Acceptance of Service <i>Acceptance of Service - Frank Timpa and Madelaine Timpa</i>
07/20/2015	Stipulation and Order <i>Stipulation and Order to Dismiss Without Prejudice Defendant Spanish Trail Master Association</i>
07/21/2015	Notice of Entry of Stipulation and Order <i>Notice of Entry of Stipulation and Order to Dismiss Without Prejudice Defendant Spanish Trail Master Association</i>
07/21/2015	Notice of Entry of Order <i>Notice of Entry of Order Denying Without Prejudice Defendant Spanish Trail Master Association's Motion to Dismiss Thornburg Mortgage Securities Trust 2007-3's Counterclaim</i>
07/24/2015	CANCELED Telephonic Conference (10:00 AM) (Judicial Officer Kishner, Joanna S.) <i>Vacated - On in Error</i>
07/27/2015	Affidavit of Service <i>Affidavit of Service - Las Vegas Valley Water District</i>
07/27/2015	Stipulation and Order

Counter-Defendant Estates West at Spanish Trails' Disclaimer of Interest; and Stipulation and Order for Dismissal of Counterclaimant Red Rock Financial Services' Counterclaim Against Estates West at Spanish Trails

07/27/2015 **Disclaimer of Interest**
Disclaimer of Interest

07/27/2015 **Notice of Entry of Stipulation & Order for Dismissal**
Notice of Entry of Stipulation and Order for Dismissal

08/12/2015 **Motion to Dismiss**
Motion to Dismiss Plaintiff's Second Amended Complaint

08/17/2015 **Receipt of Copy**
Receipt of Copy

08/24/2015 **Countermotion For Summary Judgment**
Opposition to Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint; and Countermotion for Summary Judgment

09/15/2015 **Stipulation and Order**
Stipulation and Order

09/16/2015 **Notice of Entry of Stipulation and Order**
Notice of Entry of Stipulation and Order

09/22/2015 **Reply in Support**
Defendant Mortgage Securities Trust 2007-3's Reply in Support of Motion to Dismiss with Prejudice Plaintiff's Second Amended Complaint and Opposition to Plaintiff's Countermotion for Summary Judgment

10/09/2015 **Reply in Support**
Reply in Support of Plaintiff's Countermotion for Summary Judgment

11/03/2015 **Motion to Dismiss** (9:00 AM) (Judicial Officer Hardy, Joe)
11/03/2015, 02/25/2016
Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint
09/29/2015 Reset by Court to 11/03/2015

11/03/2015 **Opposition and Countermotion** (9:00 AM) (Judicial Officer Hardy, Joe)
11/03/2015, 02/25/2016
Plaintiff's Opposition to Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint; and Countermotion for Summary Judgment
09/29/2015 Reset by Court to 11/03/2015

11/03/2015 **Three Day Notice to Plead**
Three Day notice to Plead

11/03/2015 **All Pending Motions** (9:00 AM) (Judicial Officer Hardy, Joe)
Deft's Motion to Dismiss Plaintiff's Second Amended Complaint and Opposition to Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint; and Countermotion for Summary Judgment
Parties Present
Minutes

11/05/2015 **Supplemental**
Notice of Supplemental Authority Regarding Tender of Super-Priority Lien Amount

02/04/2016 **Minute Order** (3:00 AM) (Judicial Officer Hardy, Joe)
Minute Order - Under Advisement Decision: Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint...Opposition to Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint; Countermotion for Summary Judgment
Minutes

02/19/2016 **Supplement**
Defendant Thornburg Mortgage Securities Trust 2007-3's Supplemental Briefing In Support Of Motion To Dismiss With Prejudice Plaintiff's Second Amended Complaint And In Opposition To Plaintiff's Countermotion For Summary Judgment

02/19/2016 **Supplemental**
Supplemental Authorities in Support of Plaintiff's Motion for Summary Judgment

02/25/2016 **All Pending Motions** (9:00 AM) (Judicial Officer Hardy, Joe)
Parties Present
Minutes

03/02/2016 **Order Denying**
Order

03/03/2016 **Notice of Entry**
Notice of Entry of Order

05/23/2016 **Answer to Amended Complaint**
Thornburg Mortgage Securities Trust 2007-3's Answer to Second Amended Complaint

06/17/2016 **Joint Case Conference Report**
Joint Case Conference Report

07/28/2016 **Notice to Appear for Discovery Conference**
Notice to Appear for Discovery Conference

08/03/2016 **Joinder to Case Conference Report**
Notice of Red Rock Financial Services' Joinder in the Joint Case Conference Report

08/10/2016 **Joinder to Case Conference Report**
Defendant, Republic Services, Inc.'s Joinder in the Joint Case Conference Report

08/16/2016 **Discovery Conference** (9:00 AM) (Judicial Officer Bulla, Bonnie)
Parties Present
Minutes

09/16/2016 **Scheduling Order**
Scheduling Order

09/22/2016 **Order Setting Civil Non-Jury Trial**
Order Setting Civil Non-Jury Trial, Pre-Trial Conference, and Calendar Call

12/13/2016 **Motion to Amend**
Plaintiff's Motion for Leave to Amend Complaint and Add Parties

01/05/2017 **Notice**
Notice of Completion of Mediation Pursuant to NRS 38.310

01/17/2017 **Motion for Leave** (3:00 AM) (Judicial Officer Hardy, Joe)
Plaintiff's Motion for Leave to Amend Complaint and Add Parties
Minutes
Result: Minute Order - No Hearing Held

02/09/2017 **Order Granting Motion**
Order Granting Motion to Amend

02/10/2017 **Notice of Entry**
Notice of entry of Order

02/10/2017 **Third Amended Complaint**
Third Amended Complaint

02/15/2017 **Default**
Default

02/24/2017 **Answer to Amended Complaint**
Answer to Third Amended Complaint

03/03/2017 **Answer to Amended Complaint**
Red Rock Financial Services' Answer to Plaintiff's Third Amended Complaint

03/17/2017 **Motion to Amend**
Thornburg Mortgage Securities Trust 2007-3's Motion to Amend Counterclaims and Add Parties

03/19/2017 **Answer**
Thornburg Mortgage Securities Trust 2007-3's Answer to Saticoy Bay LLC Series 34 Innisbrook's Third Amended Complaint

03/19/2017 **Errata**
Thornburg Mortgage Securities Trust 2007-3's Errata to Motion to Amend Counterclaims and Add Parties

04/17/2017 **Motion to Amend** (3:00 AM) (Judicial Officer Hardy, Joe)
Thornburg Mortgage Securities Trust 2007-3's Motion to Amend Counterclaims and Add Parties
Minutes
Result: Minute Order - No Hearing Held

05/15/2017 **Order Granting Motion**
Order Granting Thornburg Mortgage Securities Trust 2007-3's Motion to Amend Counterclaims and Add Parties

05/17/2017 **Notice of Entry of Order**
Notice of Entry of Order Granting Thornburg Mortgage Securities Trust 2007-3's Motion to Amend Counterclaims and Add Parties

05/30/2017 **Amended Answer**
Thornburg Mortgage Securities Trust 2007-3's Answer to Saticoy Bay LLC Series 34 Innisbrook's Third Amended Complaint and Counterclaims

06/02/2017 **Order Setting Civil Non-Jury Trial**
Amended Order Setting Civil Non-Jury Trial, Pre-Trial Conference, and Calendar Call

06/02/2017 **Stipulation and Order**
Stipulation and Order to Extend Discovery and Continue Trial (First Request)

06/05/2017 **Notice of Entry of Stipulation and Order**
Notice of Entry of Stipulation and Order to Extend Discovery and Continue Trial

06/12/2017 **Answer and Counterclaim**
Red Rock Financial Services' Answer to Thornburg Mortgage Securities Trust 2007-3 Counterclaim; and Red rock Financial Services' Counterclaim for Interpleader (NRCP 22)

06/14/2017 **Motion to Dismiss**
Motion to Dismiss Counterclaim

06/28/2017 **Opposition to Motion to Dismiss**
Red Rock Financial Services, LLC's Limited Opposition to Motion to Dismiss Counterclaim

06/30/2017 **Opposition**
Opposition to Saticoy Bay's Motion to Dismiss Counterclaim

07/05/2017 **Answer to Counterclaim**
Defendant Thornburg Mortgage Securities Trust 2007-3's Answer to Red Rock Financial Services' Counterclaim

07/10/2017 **CANCELED Status Check** (9:30 AM) (Judicial Officer Hardy, Joe)
Vacated - per Stipulation and Order

07/11/2017 **Affidavit of Service**
Affidavit of Service

07/11/2017 **Reply in Support**
Reply to Red Rock Financial Services, LLC's Limited Opposition to Motion to Dismiss Counterclaim

07/11/2017 **Reply in Support**
Reply in Support of Motion to Dismiss Counterclaim

07/17/2017 **Minute Order** (3:00 AM) (Judicial Officer Hardy, Joe)
Minute Order Re: Recusal and Reassignment
Minutes
Result: Minute Order - No Hearing Held

07/17/2017 **Notice of Department Reassignment**
Notice of Department Reassignment

07/25/2017 **Motion to Dismiss** (9:30 AM) (Judicial Officer Sturman, Gloria)
Plaintiff's Motion to Dismiss Counterclaim
Parties Present
Minutes
07/18/2017 Reset by Court to 07/25/2017
Result: Denied Without Prejudice

08/09/2017 **Motion to Dismiss**
Counter-Defendant Spanish Trail Master Association's Motion to Dismiss Defenan/Counter-Claimaint Thornburg Mortgage Securities Trust 2007-3's Third Amended Counterclaims

08/10/2017 **Three Day Notice of Intent to Default**
Three Day Notice of Intent to Take Default Against Spanish Trail Master Association

08/14/2017 **CANCELED Pre Trial Conference** (8:30 AM) (Judicial Officer Hardy, Joe)
Vacated - per Stipulation and Order

08/15/2017 **Joinder To Motion**
Red Rock Financial Services' Joinder to Counter-Defendant Spanish Trail Master Association's Motion to Dismiss Defendant/Counter-Claimant Thornburg Mortgage Securities Trust 2007-3's Third Amended Complaint

08/18/2017 **Motion to Extend Discovery**
Motion to Extend Discovery and Continue Trial on Order Shortening Time

08/22/2017 **Order Denying Motion**
Order Denying Motion to Dismiss Counterclaim Without Prejudice

08/24/2017 **Notice of Entry of Order**
Notice of Entry of Order Denying Plaintiff's Motion to Dismiss Counterclaim Without Prejudice

08/28/2017 **Opposition to Motion**
Opposition to Spanish Trail's Motion to Dismiss Counterclaim

08/29/2017 **CANCELED Motion to Extend Discovery** (9:00 AM) (Judicial Officer Sturman, Gloria)
Vacated - On In Error
Motion to Extend Discovery and Continue Trial on Order Shortening Time

08/29/2017 **Motion to Extend Discovery** (9:30 AM) (Judicial Officer Sturman, Gloria)
Motion to Extend Discovery and Continue Trial on Order Shortening Time
Parties Present
Minutes
Result: Granted

08/30/2017 **CANCELED Calendar Call** (8:30 AM) (Judicial Officer Hardy, Joe)
Vacated - per Stipulation and Order

09/05/2017 **CANCELED Jury Trial** (10:30 AM) (Judicial Officer Hardy, Joe)
Vacated - per Stipulation and Order

09/05/2017 **Substitution of Attorney**
Substitution of Counsel

09/07/2017 **Answer to Counterclaim**
Answer to Thornburg Mortgage Securities Trust 2007-3's Counterclaims

09/12/2017 **Reply in Support**
Counter-Defendant Spanish Trail Master Association's Reply in Support of Its Motion to Dismiss Defendant/Counter-Claimant Thornburg Mortgage Securities Trust 2007-3's Third Amended Counterclaim

09/19/2017 **Motion to Dismiss** (9:30 AM) (Judicial Officer Sturman, Gloria)
Counter-Defendant Spanish Trail Master Association's Motion to Dismiss Defendant/Counter-Claimant Thornburg Mortgage Securities Trust 2007-3's Third Amended Counterclaims
Result: Granted in Part

09/19/2017 **Joinder** (9:30 AM) (Judicial Officer Sturman, Gloria)
Red Rock Financial Services' Joinder to Counter-Defendant Spanish Trail Master Association's Motion to Dismiss Defendant/Counter-Claimant Thornburg Mortgage Securities Trust 2007-3's Third Amended Complaint
Result: Granted in Part

09/19/2017 **All Pending Motions** (9:30 AM) (Judicial Officer Sturman, Gloria)
Parties Present
Minutes
Result: Granted in Part

10/09/2017 **Order**
Order Granting in Part and Denying in Part Counter-Defendant Spanish Trail Master Association's Motion to Dismiss Defendant/Counter-Claimant Thornburg Mortgage Securities Trust 2007-3's Third Amended Counterclaims and Red Rock Financial Services' Joinder

11/03/2017 **Notice of Entry**
Notice of Entry of Order Granting in Part and Denying in Part

11/06/2017 **Status Check** (9:30 AM) (Judicial Officer Sturman, Gloria)
Parties Present
Minutes
Result: Matter Heard

11/06/2017 **Order Granting Motion**
Order Granting Motion to Extend Discovery and Continue Trial on Order Shortening Time

11/14/2017 **Order Setting Civil Bench Trial**
Order Setting Bench Trial

11/14/2017 **Notice of Entry of Order**
Notice of Entry of Order Granting Motion to Extend Discovery and Continue Trial on Order Shortening Time

11/17/2017 **Order Granting Motion**
Amended Order Granting Motion to Extend Discovery and Continue Trial on Order Shortening Time

11/20/2017 **Notice of Entry of Order**
Notice of Entry of Amended Order Granting Motion to Extend Discovery and Continue Trial on Order Shortening Time

12/11/2017 **CANCELED Pre Trial Conference** (8:30 AM) (Judicial Officer Sturman, Gloria)
Vacated - Judge Not Available

12/15/2017 **Order Setting Civil Bench Trial**
Order Setting Bench Trial

01/04/2018 **Minute Order** (3:00 AM) (Judicial Officer Sturman, Gloria)
Minutes
Result: Minute Order - No Hearing Held

01/09/2018 **CANCELED Status Check** (9:00 AM) (Judicial Officer Sturman, Gloria)
Vacated - per Judge

01/12/2018 **Motion to Extend Discovery**
Motion to Extend Discovery and Continue Trial (Third Request)

01/18/2018 **Notice of Change of Address**
Notice Of Change Of Address

01/31/2018 **Opposition**
Opposition to Motion to Continue Discovery

02/12/2018 **Reply in Support**
Reply in Support of Motion to Extend Discovery and Continue Trial

02/20/2018 **Motion to Extend Discovery** (9:00 AM) (Judicial Officer Sturman, Gloria)
Motion to Extend Discovery and Continue Trial (Third Request)
Parties Present
Minutes

03/02/2018 Result: Trial Date Set
Order Granting Motion
Order Granting Motion to Extend Discovery and Continue Trial

03/07/2018 **Notice of Entry of Order**
Notice of Entry of Order Granting Motion to Extend Discovery and Continue Trial

03/08/2018 **Receipt of Copy**
Receipt of Copy

05/03/2018 **CANCELED Calendar Call** (9:00 AM) (Judicial Officer Sturman, Gloria)
Vacated - per Attorney or Pro Per
12/27/2017 Reset by Court to 05/03/2018

05/04/2018 **Notice of Change of Address**
Notice of Change of Address

05/04/2018 **Motion for Summary Judgment**
Thornburg Mortgage Securities Trust 2007-3's Motion for Summary Judgment

05/04/2018 **Motion for Summary Judgment**
Motion for Summary Judgment

05/10/2018 **Notice of Change of Address**
Amended Notice of Change of Address

05/14/2018 **Opposition**
Republic Services, Inc. s Partial Opposition To Plaintiff Saticoy Bay, LLC Series 43 Innisbrook s Motion For Summary Judgment

05/21/2018 **Opposition to Motion For Summary Judgment**
Thornburg Mortgage Securities Turst 2007-3's Opposition to Saticoy Bay LLC's Series 34 Innisbrook's Motion for Summary Judgment

05/22/2018 **Opposition**
Plaintiff's Opposition to Defendant Thornburg Mortgage Securities Trust 2007-3's Motion for Summary Judgment

05/22/2018 **Opposition and Countermotion**
Counter-Defendant Spanish Trail Master Association's Opposition to Thornburg Mortgage's Motion for Summary Judgment and Countermotion for Summary Judgment

05/23/2018 **Initial Appearance Fee Disclosure**
Initial Appearance Fee Disclosure

05/29/2018 **CANCELED Bench Trial** (9:00 AM) (Judicial Officer Sturman, Gloria)
Vacated - per Attorney or Pro Per
01/02/2018 Reset by Court to 05/29/2018

05/29/2018 **Opposition to Motion For Summary Judgment**
Thornburg Mortgage Securities Trust 2007-3's Reply Supporting Its Motion For Summary Judgment And Opposition To Spanish Trials Master Association's Countermotion For Summary Judgment

05/30/2018 **Opposition to Motion**
Republic Services, Inc.'s Partial Opposition to Counterdefendant, Spanish Trail Master Association's Countermotion for Summary Judgment

05/30/2018 **Joinder to Motion For Summary Judgment**
Red Rock Financial Services' Joinder to Counter-Defendant Spanish Trail Master Association's Countermotion for Summary Judgment

06/01/2018 **Decision** (9:00 AM) (Judicial Officer Sturman, Gloria)
Minutes

Result: Vacate

06/04/2018 **Reply in Support**
Reply in Support of Plaintiff's Motion for Summary Judgment

06/05/2018 **Stipulation and Order**
Stipulation and Order to Consolidate Hearing Dates and Continue Status Check (First Request)

06/05/2018 **Notice of Entry**
Notice of Entry of Stipulation and Order Consolidating Hearing Dates and Continue Status Check

06/12/2018 **Status Check: Trial Readiness** (9:30 AM) (Judicial Officer Sturman, Gloria)
06/12/2018, 07/03/2018
06/05/2018 Reset by Court to 06/12/2018

Result: Matter Continued

06/12/2018 **Motion for Summary Judgment** (9:30 AM) (Judicial Officer Sturman, Gloria)
06/12/2018, 07/03/2018
Thornburg Mortgage Securities Trust 2007-3's Motion for Summary Judgment
06/05/2018 Reset by Court to 06/12/2018

Result: Matter Continued

06/12/2018 **Motion for Summary Judgment** (9:30 AM) (Judicial Officer Sturman, Gloria)
06/12/2018, 07/03/2018
Motion for Summary Judgment

Result: Matter Continued

06/12/2018 **Opposition and Countermotion** (9:30 AM) (Judicial Officer Sturman, Gloria)
06/12/2018, 07/03/2018
Counter-Defendant Spanish Trail Master Association's Opposition to Thornburg Mortgage's Motion for Summary Judgment and Countermotion for Summary Judgment
06/05/2018 Reset by Court to 06/12/2018
07/03/2018 Reset by Court to 07/03/2018

Result: Matter Continued

06/12/2018 **Motion for Summary Judgment** (9:30 AM) (Judicial Officer Sturman, Gloria)
06/12/2018, 07/03/2018
Red Rock Financial Services' Joinder to Counter-Defendant Spanish Trail Master Association's Countermotion for Summary Judgment
06/05/2018 Reset by Court to 06/12/2018

Result: Matter Continued

06/12/2018 **All Pending Motions** (9:30 AM) (Judicial Officer Sturman, Gloria)
Minutes

Result: Matter Continued

06/15/2018 **Stipulation and Order**
Stipulation and Order to Continue Hearing on the Parties' Motions for Summary Judgment

06/19/2018 **Notice of Entry of Stipulation and Order**

06/26/2018 **Notice of Entry of Stipulation and Order to Continue Hearing on the Parties' Motions for Summary Judgment**
Reply in Support
Counter-Defendant Spanish Trail Master Association's Reply in Support of its Countermotion for Summary Judgment

06/27/2018 **Supplement**
Supplement to Plaintiff's Opposition to Defendant Thornburg Mortgage Securities Trust 2007-3's Motion for Summary Judgment

06/28/2018 **Errata**
Errata to Thornburg Mortgage Securities Trust 2007-3's Motion for Summary Judgment

06/29/2018 **Reply in Support**
Thornbur Mortgage Securities Trust 2007-3's Reply Supporting It's Motion for Summary Judgment or, in The Alternative Surreply Supporting Summary Judgment

07/02/2018 **Errata**
Errata to Thornburg Mortgage Securities Trust 2007-3's Reply Supporting its Motion to Strike Plaintiffs Supplemental Opposition to its Motion for Summary Judgment or in the Alternative, Surreply Supporting Summay Judgment

07/03/2018 **All Pending Motions** (9:30 AM) (Judicial Officer Sturman, Gloria)
Parties Present
Minutes
Result: Matter Heard

07/06/2018 **Pre-Trial Disclosure**
Spanish Trail Master Association's PreTrial Disclosures

07/12/2018 **Calendar Call** (9:00 AM) (Judicial Officer Sturman, Gloria)
Parties Present
Minutes
Result: Matter Heard

07/19/2018 **Answer**
Spanish Trail Master Association's Answer to Thornburg Mortgage's Counterclaims

07/19/2018 **Answer**
Spanish Trail Master Association's Answer to Satcoy Bay's Third Amended Complaint

07/24/2018 **Joint Pre-Trial Memorandum**
Joint Pre-Trial Memorandum

08/16/2018 **Calendar Call** (9:00 AM) (Judicial Officer Sturman, Gloria)
Parties Present
Minutes
Result: Matter Continued

09/06/2018 **Order Setting Civil Bench Trial**
Order Resetting Bench Trial

09/11/2018 **Stipulation and Order**
Stipulation and Order Continuing Trial Date

09/12/2018 **Notice of Entry**
Notice of Entry of Order

09/17/2018 **Motion to Reconsider**
Thornburg Mortgage Securities Trust 2007-3's Motion For Reconsideration Of Order Denying Summary Judgment

09/20/2018 **CANCELED Pre Trial Conference** (10:30 AM) (Judicial Officer Sturman, Gloria)
Vacated - per Stipulation and Order

09/24/2018 **CANCELED Bench Trial** (9:00 AM) (Judicial Officer Sturman, Gloria)
Vacated - per Stipulation and Order
08/06/2018 Reset by Court to 09/10/2018
09/10/2018 Reset by Court to 09/24/2018

09/27/2018 **Notice of Change of Address**
Notice of Change of Address and Notice of Firm Name Change

10/02/2018 **Opposition**
Plaintiff's Opposition to Motion for Reconsideration

10/26/2018 **Reply in Support**
Thornburg Mortgage Securities Trust 2007-3's Reply Supporting its Motion for Reconsideration

11/06/2018 **Motion For Reconsideration** (9:00 AM) (Judicial Officer Sturman, Gloria)
Thornburg Mortgage Securities Trust 2007-3's Motion For Reconsideration Of Order Denying Summary Judgment
Parties Present
Minutes
Result: Granted

12/03/2018 **Findings of Fact, Conclusions of Law and Order**
Findings of Fact, Conclusions of Law and Order Granting Thornburg Mortgage Securities Trust 2007-3's Motion for Summary Judgment

12/04/2018 **Memorandum of Costs and Disbursements**
Thornburg Mortgage Securities Trust 2007-3's Memorandum of Costs

12/05/2018 **Notice of Entry of Findings of Fact, Conclusions of Law**
Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting Thornburg Mortgage Securities Trust 2007-3's Motion for Summary Judgment

12/07/2018 **Order to Statistically Close Case**
Civil Order to Statistically Close Case

12/13/2018 **CANCELED Calendar Call** (9:00 AM) (Judicial Officer Sturman, Gloria)
Vacated - per Stipulation and Order

01/04/2019 **Order**
Order Setting Further Proceedings

01/07/2019 **CANCELED Bench Trial** (9:00 AM) (Judicial Officer Sturman, Gloria)
Vacated - per Stipulation and Order

01/31/2019 **Notice of Appearance**
Notice of Appearance

01/31/2019 **Answer**
Madelaine Timpa and Timpa Trust's Verified Answer To Red Rock Financial Services' Counterclaim For Interpleader And Madelaine Timpa's Claim To Surplus Funds

02/01/2019 **Initial Appearance Fee Disclosure**

Initial Appearance Fee Disclosure

02/05/2019 **Status Check: Settlement/Trial Setting** (9:00 AM) (Judicial Officer Sturman, Gloria)
02/05/2019, 03/01/2019
Parties Present
Minutes
03/05/2019 *03/05/2019 Reset by Court to 03/01/2019*
Result: Matter Continued

03/05/2019 **Substitution of Attorney**
Substitution of Attorney

03/29/2019 **Miscellaneous Filing**
Status Memo

04/04/2019 **Miscellaneous Filing**
Status Memo

04/04/2019 **Joinder**
Thornburg's Joinder to Madelaine Timpa and Timpa Trust's Status Memo

04/15/2019 **Order to Statistically Close Case**
Civil Order to Statistically Close Case

05/10/2019 **Motion**
Motion to Reinstate Statistically Closed Case

05/10/2019 **Ex Parte Motion**
Ex Parte Motion for Order Shortening Time on Motion to Reinstate Statistically Closed Case

05/10/2019 **Clerk's Notice of Hearing**
Notice of Hearing

05/13/2019 **Minute Order** (9:00 AM) (Judicial Officer Sturman, Gloria)
Minutes
Result: Minute Order - No Hearing Held

06/10/2019 **Notice of Association of Counsel**
Notice of Association of Counsel

06/11/2019 **Motion** (9:00 AM) (Judicial Officer Sturman, Gloria)
Motion to Reinstate Statistically Closed Case
Parties Present
Minutes
Result: Trial Date Set

06/11/2019 **Order Setting Civil Bench Trial**
Scheduling Order and Order Setting Civil Non-Jury Trial and Calendar Call

06/19/2019 **Order**
Order

06/20/2019 **Notice of Entry of Order**
Notice of Entry of Order

06/25/2019 **Motion for Summary Judgment**
Timpa Trust's Motion for Summary Judgment

06/26/2019 **Clerk's Notice of Hearing**
Notice of Hearing

07/09/2019 **Notice of Deposit**
Notice of Red Rock Financial Services' Deposit of Interpleaded Funds With the Court

07/09/2019 **Response**
Red Rock Financial Services' Limited Response to Timpa Trust's Motion for Summary Judgment

07/09/2019 **Reply**
TIMPA TRUST'S REPLY TO RED ROCK FINANCIAL SERVICES LIMITED RESPONSE TO TIMPA TRUST S MOTION FOR SUMMARY JUDGMENT

07/09/2019 **Motion**
Motion to Enlarge Time In Which to File Opposition to Timpa Trust's Motion for Summary Judgment

07/09/2019 **Declaration**
Declaration of Roger P. Croteau in Support of Motion

07/10/2019 **Clerk's Notice of Hearing**
Notice of Hearing

07/11/2019 **Motion for Order**
Motion for Order Shortening Time on Motion to Enlarge Time in Which to File Opposition

07/18/2019 **Order Shortening Time**
Order Shortening Time

07/18/2019 **Notice of Entry**
Notice of Entry of Order Shortening Time

07/23/2019 **Opposition to Motion**
Timpa Trust's Opposition to Saticoy Bay LLC Series 34 Innisbrook s Motion To Enlarge Time In Which To File Opposition to Timpa Trust's Motion For Summary Judgment

07/24/2019 **Amended**
Amended Motion to Enlarge Time in Which to File Opposition to Timpa Trust's Motion for Summary Judgment

07/25/2019 **Notice of Non Opposition**
Notice Pursuant to EDCR 2.20(e) of Non-Opposition by Plaintiff to Timpa Trust's Motion for Summary Judgment

07/26/2019 **Opposition to Motion**
Opposition to Timpa Trust's Motion for Summary Judgment and Red Rock Financial Services Limited Response to Timpa Trust's Motion for Summary Judgment

08/06/2019 **Motion** (9:00 AM) (Judicial Officer Sturman, Gloria)
Motion to Enlarge Time In Which to File Opposition to Timpa Trust's Motion for Summary Judgment
Parties Present
Minutes
08/20/2019 *Reset by Court to 08/06/2019*
Result: Moot

08/06/2019 **Reply to Opposition**

08/11/2019 *Timpa Trust's Reply to Satcoy Bay LLC Series 34 Innsbrook's Opposition to Timpa Trust's Motion for Summary Judgment*
Ex Parte Motion
Ex Parte Motion To Continue August 13, 2019 Hearing Date

08/11/2019 **Declaration**
DECLARATION OF ROGER P. CROTEAU IN SUPPORT OF EX PARTE MOTION TO CONTINUE AUGUST 13, 2019 HEARING DATE

08/13/2019 **Motion for Summary Judgment** (9:30 AM) (Judicial Officer Sturman, Gloria)
08/13/2019, 08/20/2019
Timpa Trust's Motion for Summary Judgment
Parties Present
Minutes
Result: Matter Heard

08/13/2019 **CANCELED Motion for Summary Judgment** (9:30 AM) (Judicial Officer Sturman, Gloria)
Vacated - Duplicate Entry
Timpa Trust's Motion for Summary Judgment

08/15/2019 **Order Granting**
Order Granting Ex Parte Motion to Continue August 13, 2019 Hearing Date

08/15/2019 **Notice of Entry**
Notice of Entry of Order

08/29/2019 **Notice of Change**
Notice of Change Of Trustee Of Plaintiff Timpa Trust U/T/D March 3, 1999

08/29/2019 **Amended Notice**
Amended Notice of Change of Trustee of Timpa Trust U/T/D March 3, 1999

09/11/2019 **Order**
Order

09/11/2019 **Notice of Entry of Order**
Notice of Entry of Order

09/19/2019 **CANCELED Calendar Call** (9:00 AM) (Judicial Officer Sturman, Gloria)
Vacated - per Judge

09/24/2019 **Motion to Reconsider**
Plaintiff's Motion For Reconsideration Under NRCP 59(E) and 60(B) of (I) The Court's Summary Judgment Order of December 3, 2018 and (II) The Court's Order Concerning the Distribution of Excess Proceeds

09/25/2019 **Clerk's Notice of Hearing**
Notice of Hearing

10/02/2019 **Motion to Stay**
Plaintiff's Emergency Motion for a Stay of Execution Pending the Court's Adjudication of Plaintiff's Pending Motion for Reconsideration of the Court's Excess Proceeds Order Pursuant to NRCP 62(b)(3) & (4)

10/02/2019 **Ex Parte Motion**
Ex Parte Motion for Entry of an Order Shortening Time for Hearing on Plaintiff's Emergency Motion for a Stay of Execution Pending the Court's Adjudication of Plaintiff's Pending Motion for Reconsideration of the Court's Excess Proceeds Order Pursuant to NRCP 62(b)(3) & (4)

10/03/2019 **Clerk's Notice of Hearing**
Notice of Hearing

10/04/2019 **Opposition to Motion**
Thornburg's Mortgage Securities Trust 2007-3's Limited Opposition to Plaintiff's Motion for Reconsideration

10/04/2019 **Joinder To Motion**
Thornburg Mortgage Securities Trust 2007-3's Limited Joinder to Plaintiff's Emergency Motion for Stay of Execution Pending the Court's Adjudication of Plaintiff's Pending Motion for Reconsideration of the Court's Excess Proceeds Order Pursuant to 62(b)(3)&(4)

10/08/2019 **Order Shortening Time**
Order Shortening Time For Hearing On Plaintiff's Emergency Motion For A Stay Of Execution Pending The Court's Adjudication Of Plaintiff's Pending Motion For Reconsideration Of The Court's Excess Proceeds Order Pursuant To NRCP 62(b)(3) & (4)

10/08/2019 **Notice of Entry of Order**
Notice of Entry of Order Shortening Time For Hearing

10/08/2019 **Opposition to Motion**
Opposition to Plaintiff's Motion for Reconsideration Under NRCP 59(E) and 60(B) of (I) the Court's Summary Judgment Order of December 3, 2018 and (II) the Court's Order Concerning the Distribution of Excess Proceeds

10/10/2019 **Motion For Stay** (10:45 AM) (Judicial Officer Sturman, Gloria)
Plaintiff's Emergency Motion for a Stay of Execution Pending the Court's Adjudication of Plaintiff's Pending Motion for Reconsideration of the Court's Excess Proceeds Order Pursuant to NRCP 62(b)(3) & (4)
Parties Present
Minutes
11/05/2019 Reset by Court to 10/10/2019
Result: Granted in Part

10/14/2019 **CANCELED Bench Trial** (9:00 AM) (Judicial Officer Sturman, Gloria)
Vacated - per Judge

10/14/2019 **Notice of Posting Bond**
Notice of Posting Security Costs

10/14/2019 **Order Granting**
Order Granting Plaintiff's Emergency Motion for a Stay of Execution

10/16/2019 **Motion to Amend Complaint**
Plaintiff's Motion to Amend Complaint Pursuant NRCP 15(b)(2) and 60(b), the Supreme Court of Nevada's Decision in Jessup, and EDCR 2.30 to Set Aside/Rescind NRS 116 Foreclosure Sale

10/17/2019 **Clerk's Notice of Hearing**
Notice of Hearing

10/18/2019 **Reply in Support**
Plaintiff's Reply to Thornburg Mortgage Securities Trust 2007 - 3's Limited Opposition to Plaintiff's Motion for Reconsideration

10/18/2019 **Ex Parte Motion**
Ex Parte Motion for Entry of an Order Shortening Time for Hearing on Plaintiff's Motion to Amend Complaint Pursuant to NRCP 15(b)(2) and 60(b), the Supreme Court of Nevada's Decision in JESSUP, and EDCR 2.30 to Set Aside/Rescind NRS 116 Foreclosure Sale

10/21/2019 **Clerk's Notice of Hearing**
Notice of Hearing

10/23/2019 **Order Shortening Time**

ORDER SHORTENING TIME FOR HEARING ON PLAINTIFF'S MOTION TO AMEND COMPLAINT PURSUANT TO NRCP 15(b)(2) AND 60(b), THE SUPREME COURT OF NEV ADA'S DECISION IN JESSUP, AND EDCR 2.30 TO SET ASIDE/RESCIND NRS 116 FORECLOSURE SALE

10/23/2019 **Notice of Entry of Order**
Notice of Entry of Order Shortening Time

10/23/2019 **Ex Parte Motion for Enlargement of Time**
Ex Parte Motion to Enlarge Time in Which to File a Reply to Timpa Trust's Opposition to Plaintiff's Motion for Reconsideration

10/25/2019 **Opposition to Motion**
Thornburg Mortgage Securities Trust 2007-3's Limited Opposition to Plaintiff's Motion to Amend Complaint Pursuant To NRCP 15(B)(2) and 60(B)

10/25/2019 **Reply in Support**
Plaintiff's Reply in Support of Its Motion for Reconsideration

10/27/2019 **Opposition to Motion**
Opposition to Plaintiff's Motion to Amend Complaint Pursuant to NRCP 15(b)(2) and 60(b), the Supreme Court of Nevada's Decision in Jessup, and EDCR 2.30 to Set Aside/Rescind NRS 116 Foreclosure Sale

10/28/2019 **Order Granting**
Order Granting Ex Parte Motion to Enlarge Time in Which to File a Reply to Timpa Trust's Opposition to Plaintiff's Motion for Reconsideration

10/28/2019 **Opposition to Motion**
Red Rock Financial Services' Opposition to Plaintiff's Motion to Amend Complaint

10/29/2019 **Motion For Reconsideration** (9:00 AM) (Judicial Officer Sturman, Gloria)
Plaintiff's Motion For Reconsideration Under NRCP 59(E) and 60(B) of (I) The Court's Summary Judgment Order of December 3, 2018 and (II) The Court's Order Concerning the Distribution of Excess Proceeds
 Result: Granted in Part

10/29/2019 **Motion to Amend Complaint** (9:00 AM) (Judicial Officer Sturman, Gloria)
Plaintiff's Motion to Amend Complaint Pursuant NRCP 15(b)(2) and 60(b), the Supreme Court of Nevada's Decision in Jessup, and EDCR 2.30 to Set Aside/Rescind NRS 116 Foreclosure Sale
 11/19/2019 Reset by Court to 10/29/2019
 Result: Denied

10/29/2019 **Motion** (9:00 AM) (Judicial Officer Sturman, Gloria)
Ex Parte Motion for Entry of an Order Shortening Time for Hearing on Plaintiff's Motion to Amend Complaint Pursuant to NRCP 15(b)(2) and 60(b), the Supreme Court of Nevada's Decision in JESSUP, and EDCR 2.30 to Set Aside/Rescind NRS 116 Foreclosure Sale
 10/29/2019 Reset by Court to 11/26/2019
 11/26/2019 Reset by Court to 10/29/2019
 11/26/2019 Reset by Court to 10/29/2019
 Result: Denied

10/29/2019 **All Pending Motions** (9:00 AM) (Judicial Officer Sturman, Gloria)
Parties Present
Minutes
 Result: Granted in Part

11/01/2019 **CANCELED Status Check: Settlement Documents** (3:00 AM) (Judicial Officer Sturman, Gloria)
Vacated - per Stipulation and Order
 FFCL

11/05/2019 **CANCELED Motion** (9:00 AM) (Judicial Officer Sturman, Gloria)
Vacated
Ex Parte Motion for Entry of an Order Shortening Time for Hearing on Plaintiff's Emergency Motion for a Stay of Execution Pending the Court's Adjudication of Plaintiff's Pending Motion for Reconsideration of the Court's Excess Proceeds Order Pursuant to NRCP 62(b)(3) & (4)

11/05/2019 **CANCELED Joinder** (9:00 AM) (Judicial Officer Sturman, Gloria)
Vacated
Thornburg Mortgage Securities Trust 2007-3's Limited Joinder to Plaintiff's Emergency Motion for Stay of Execution Pending the Court's Adjudication of Plaintiff's Pending Motion for Reconsideration of the Court's Excess Proceeds Order Pursuant to 62(b)(3)&(4)

11/18/2019 **Order Granting**
Order

11/19/2019 **Notice of Entry of Order**
Notice of Entry of Order

11/19/2019 **Notice of Appeal**
Notice of Appeal

11/19/2019 **Case Appeal Statement**
Case Appeal Statement

12/11/2019 **Joinder To Motion**
Thornburg Mortgage Securities Trust 2007-3's Joinder To Satcoy Bay Llc, Series 34 Innisbrook's Motion For Injunction Pending Appeal

12/11/2019 **Motion**
Motion for Injunction Pending Appeal on Order Shortening Time

12/16/2019 **Supplement**
Supplemental Authority in Support of Plaintiff's Motion for Injunction Pending Appeal

12/17/2019 **Motion** (9:30 AM) (Judicial Officer Sturman, Gloria)
Plaintiff's Motion for Injunction Pending Appeal on Order Shortening Time
 12/17/2019 Reset by Court to 12/17/2019
 Result: Matter Heard

12/17/2019 **Joinder** (9:30 AM) (Judicial Officer Sturman, Gloria)
Thornburg Mortgage Securities Trust 2007-3's Joinder To Satcoy Bay Llc, Series 34 Innisbrook's Motion For Injunction Pending Appeal
 Result: Matter Heard

12/17/2019 **All Pending Motions** (9:30 AM) (Judicial Officer Sturman, Gloria)
Parties Present
Minutes
 Result: Matter Heard

01/08/2020 **Motion for Distribution**
Motion to Distribute Funds and for Attorney's Fees

01/08/2020 **Memorandum of Costs and Disbursements**
Memorandum of fees and costs

01/08/2020 **Clerk's Notice of Hearing**
Notice of Hearing

01/10/2020 **Status Check** (3:00 AM) (Judicial Officer Sturman, Gloria)

STATUS CHECK: REPUBLIC SERVICE LIEN AMOUNT

Minutes

Result: Decision Made

02/11/2020 CANCELED Motion for Distribution (9:00 AM) (Judicial Officer Sturman, Gloria)

Vacated

Defendant's Motion to Distribute Funds and for Attorney's Fees

02/20/2020 Order Granting

Order Granting Republic Silver State Disposal, Inc., dba Republic Services Motion to Distribute Funds and for Attorney Fees

FINANCIAL INFORMATION

Counter Claimant Red Rock Financial Services

Total Financial Assessment

423.00

Total Payments and Credits

423.00

Balance Due as of 05/14/2020

0.00

05/21/2015 Transaction Assessment

223.00

05/21/2015 Efile Payment

Receipt # 2015-53684-CCCLK

Red Rock Financial Services

(223.00)

05/31/2018 Transaction Assessment

200.00

05/31/2018 Efile Payment

Receipt # 2018-36682-CCCLK

Red Rock Financial Services

(200.00)

Counter Claimant Thornburg Mortgage Securities Trust 2007-3

Total Financial Assessment

423.00

Total Payments and Credits

423.00

Balance Due as of 05/14/2020

0.00

04/13/2015 Transaction Assessment

223.00

04/13/2015 Efile Payment

Receipt # 2015-37994-CCCLK

Thornburg Mortgage Securitie T

(223.00)

05/04/2018 Transaction Assessment

200.00

05/04/2018 Efile Payment

Receipt # 2018-30667-CCCLK

Thornburg Mortgage Securities Trust 2007-3

(200.00)

Counter Defendant Republic Services

Total Financial Assessment

223.00

Total Payments and Credits

223.00

Balance Due as of 05/14/2020

0.00

06/23/2015 Transaction Assessment

223.00

06/23/2015 Efile Payment

Receipt # 2015-65959-CCCLK

Republic Services

(223.00)

Counter Defendant Saticoy Bay LLC Series 34 Innisbrook

Total Financial Assessment

694.00

Total Payments and Credits

694.00

Balance Due as of 05/14/2020

0.00

11/20/2014 Transaction Assessment

270.00

11/20/2014 Efile Payment

Receipt # 2014-130966-CCCLK

Saticoy Bal LLC Series 34 Inni

(270.00)

08/24/2015 Transaction Assessment

200.00

08/24/2015 Efile Payment

Receipt # 2015-89462-CCCLK

Saticoy Bay LLC Series 34 Innisbrook

(200.00)

05/07/2018 Transaction Assessment

200.00

05/07/2018 Efile Payment

Receipt # 2018-30762-CCCLK

Saticoy Bay LLC Series 34 Innisbrook

(200.00)

11/19/2019 Transaction Assessment

24.00

11/19/2019 Efile Payment

Receipt # 2019-70129-CCCLK

Saticoy Bay LLC Series 34 Innisbrook

(24.00)

Counter Defendant Spanish Trail Master Association

Total Financial Assessment

869.00

Total Payments and Credits

869.00

Balance Due as of 05/14/2020

0.00

06/09/2015 Transaction Assessment

223.00

06/09/2015 Efile Payment

Receipt # 2015-60609-CCCLK

Spanish Trail Master Associati

(223.00)

05/24/2018 Transaction Assessment

200.00

05/24/2018 Efile Payment

Receipt # 2018-35255-CCCLK

Spanish Trail Master Association

(200.00)

07/20/2018 Transaction Assessment

223.00

07/20/2018 Efile Payment

Receipt # 2018-48207-CCCLK

Spanish Trail Master Association

(223.00)

07/20/2018 Transaction Assessment

223.00

07/20/2018 Efile Payment

Receipt # 2018-48211-CCCLK

Spanish Trail Master Association

(223.00)

Counter Defendant Timpa Trust

Total Financial Assessment

200.00

Total Payments and Credits

200.00

Balance Due as of 05/14/2020

0.00

06/25/2019	Transaction Assessment			200.00
06/25/2019	Efile Payment	Receipt # 2019-38867-CCCLK	Timpa Trust	(200.00)
	Counter Defendant Timpa, Madelaine			
	Total Financial Assessment			253.00
	Total Payments and Credits			253.00
	Balance Due as of 05/14/2020			0.00
02/06/2019	Transaction Assessment			253.00
	Defendant Recontrust Company NA			
	Total Financial Assessment			223.00
	Total Payments and Credits			223.00
	Balance Due as of 05/14/2020			0.00
02/24/2015	Transaction Assessment			223.00
02/24/2015	Efile Payment	Receipt # 2015-19131-CCCLK	Recontrust Company NA	(223.00)
	Defendant Red Rock Financial Services LLC			
	Total Financial Assessment			0.00
	Total Payments and Credits			0.00
	Balance Due as of 05/14/2020			0.00

EXHIBIT 6

EXHIBIT 6

A-14-710161-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

June 11, 2019

A-14-710161-C Saticoy Bay LLC Series 34 Innisbrook, Plaintiff(s)
vs.
Thornburg Mortgage Securities Trust 2007-3, Defendant(s)

June 11, 2019 09:00 AM Motion to Reinstate Statistically Closed Case

HEARD BY: Sturman, Gloria **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Shell, Lorna

RECORDER: Esparza, Kerry

REPORTER:

PARTIES PRESENT:

Bryan Naddafi	Attorney for Counter Claimant, Counter Defendant, Defendant
Melanie D. Morgan	Attorney for Counter Claimant, Counter Defendant, Defendant
Ryan D. Hastings	Attorney for Counter Defendant, Defendant
Travis D Akin	Attorney for Counter Defendant, Defendant, Trustee

JOURNAL ENTRIES

MATTER TRAILED AND RECALLED at the hour of 9:48 AM with all parties present.

Court stated it appeared the case was procedurally closed as it met the requirements, however it should not have been closed.

Mr. Akin stated the remaining issue was regarding who was to receive the excess proceeds from the foreclosure, that NRS 116.31164(7) lays it out clearly, that Red Rock Financial had the funds, and that he'd like an order that Red Rock deposit the funds with the Court and for a hearing be set to determine who will receive the excess funds so the parties will have time to file motions and set the Evidentiary Hearing.

Ms. Morgan stated Timpa Trust filed a separate lawsuit for the excess proceeds, that it was for \$1.2 million, and they were looking to consolidate the two cases.

Mr. Akin argued they did that as a safety net and he would dismiss it to keep the matter simple if this court would hear it.

Ms. Morgan stated dismissal would be cleaner than consolidation.

Mr. Akin stated he wanted the funds deposited with the court.

COURT FINDS this to be an appropriate action under the Local Rule and that the case was closed in error. COURT ORDERED, Motion to Reinstate GRANTED; Funds to be deposited with the court within 30 days; Trial Date SET.

09/19/19 9:00 AM CALENDAR CALL

10/14/19 9:00 AM BENCH TRIAL

Printed Date: 6/14/2019

Page 2 of 2

Minutes Date:

June 11, 2019

Prepared by: Lorna Shell

EXHIBIT 7

EXHIBIT 7


CLERK OF THE COURT

TAC
MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
ADAM R. TRIPPIEDI, ESQ.
Nevada Bar No. 12294
atrippiedi@bohnlawfirm.com
LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX

Attorney for plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34 INNISBROOK,
Plaintiff,

vs.

THORNBURG MORTGAGE SECURITIES TRUST
2007-3; and RECONTRUST COMPANY, N.A. a
division of BANK OF AMERICA; FRANK TIMPA
and MADELAINE TIMPA, individually and as
trustees of the TIMPA TRUST; SPANISH TRAIL
MASTER ASSOCIATION; and RED ROCK
FINANCIAL SERVICES;

Defendants.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3,

Counter-claimant

vs.

SATICOY BAY LLC SERIES 34 INNISBROOK, a
Nevada limited-liability company; SPANISH
TRAIL MASTER ASSOCIATION, a Nevada Non-
Profit Corporation; RED ROCK FINANCIAL
SERVICES, an unknown entity; FRANK TIMPA,
an individual; DOES I through X and ROE
CORPORATIONS I through X, inclusive,

Counter-defendants

CASE NO.: A-14-710161-C
DEPT NO.: XV

EXEMPTION FROM ARBITRATION:
Title to real property

1 RED ROCK FINANCIAL SERVICES

2 Counter-claimant,

3 vs

4 THORNBURG MORTGAGE SECURITIES
5 TRUST 2007-3; COUNTRYWIDE HOME
6 LOANS, INC.; ESTATES WEST AT SPANISH
7 TRAIL; MORTGAGE ELECTRONIC
8 REGISTRATION SYSTEMS, INC.; REPUBLIC
9 SERVICES; LAS VEGAS VALLEY WATER
DISTRICT; FRANK TIMPA and MADELINE
TIMPA, individually and as trustees of the TIMPA
TRUST U/T/D March 3, 1999; and DOES 1-100,
inclusive,

10 Counter-Defendants.

11 **THIRD AMENDED COMPLAINT**

12 Plaintiff Saticoy Bay LLC Series 34 Innisbrook, by and through its attorney, the Law Offices of
13 Michael F. Bohn, Esq. alleges as follows:

14 1. Plaintiff is the owner of the real property commonly known as 34 Innisbrook, Las Vegas,
15 Nevada.

16 2. Plaintiff obtained title by a foreclosure sale conducted on November 7, 2014, as evidenced by
17 foreclosure deed recorded on November 10, 2014.

18 3. The plaintiff's title stems from a foreclosure deed arising from a delinquency in assessments
19 due from the former owners, Frank and Madelaine Timpa to defendant Spanish Trails Master Association
20 pursuant to NRS Chapter 116.

21 4. Defendant Thornburg Mortgage Securities Trust 2007-3 is the current beneficiary of a deed
22 of trust which was recorded as an encumbrance to the subject property on June 12, 2006, as instrument
23 number 20060612-0001581.

24 5. Defendants Frank and Madelaine Timpa individually and as trustees of the Timpa Trust are
25 the former owners of the property.

26 6. Defendant Red Rock Financial Services, LLC was the collection agent and foreclosure agent
27
28

1 acting on behalf of defendant Spanish Trail Master Association.

2 7. The interest of each of the defendants has been extinguished by reason of the foreclosure sale,
3 which was properly conducted with adequate notice given to all persons and entities claiming an interest
4 in the subject property, and resulting from a delinquency in assessments due from the former owner, to
5 the Spanish Trail Master Association, pursuant to NRS Chapter 116.

6 8. The HOA foreclosure sale complied with all requirements of law, including, but not limited
7 to, recording and mailing of copies of Notice of Delinquent Assessment and Notice of Default, and the
8 recording, posting, and publishing of the Notice of Sale.

9 9. Plaintiff is entitled to a determination from this court, pursuant to NRS 40.010 that the plaintiff
10 is the rightful owner of the property and that the defendants have no right, title, interest or claim to the
11 subject property.

12 10. The plaintiff is entitled to an award of attorneys fees and costs.

13 **SECOND CLAIM FOR RELIEF**

14 11. Plaintiff repeats the allegations contained in paragraphs 1 through 10.

15 12. Plaintiff seeks a declaration from this court, pursuant to NRS 40.010, that title in the property
16 is vested in plaintiff free and clear of all liens and encumbrances, that the defendants herein have no
17 estate, right, title or interest in the property, and that defendants are forever enjoined from asserting any
18 estate, title, right, interest, or claim to the subject property adverse to the plaintiff.

19 13. The plaintiff is entitled to an award of attorneys fees and costs.

20 **THIRD CLAIM FOR RELIEF**

21 14. Plaintiff repeats the allegations contained in paragraphs 1 through 13.

22 15. Defendants Frank and Madelaine Timpa individually and as trustee of the Timpa Trust were
23 served with a 3 day notice to quit.

24 16. The defendants have failed to vacate the premises despite the notice that have been served
25 upon him.

26 17. The defendants have remained in possession of said property up to and including the present
27 time.

1 18. The plaintiff is entitled to a Writ of Restitution of the restoring possession to the plaintiff.

2 19. Plaintiff is entitled to an award of attorneys fees and costs of suit.

3 **FOURTH CLAIM FOR RELIEF**

4 20. Plaintiff repeats the allegations contained in paragraphs 1 through 19.

5 21. Defendant Thornburg Mortgage Securities Trust 2007-3 claims its predecessor-in-interest,
6 Bank of America, N.A., tendered its calculation of the super-priority amount of the HOA lien to
7 defendant Red Rock Financial Services, LLC (hereinafter "RRFS").

8 22. RRFS and Spanish Trail Master Association (the "HOA") had an obligation to inform the
9 bidders at the foreclosure sale if the super priority portion of the HOA lien had been tendered prior to the
10 foreclosure sale.

11 23. RRFS and the HOA did not make any statement advising bidders that Bank of America, N.A.
12 tendered the super-priority portion of the lien.

13 24. Plaintiff is informed and believes and thereupon alleges that the HOA and RRFS intended
14 that the buyers at the HOA foreclosure sale held on November 7, 2014, believe that the assessment lien
15 being foreclosed included a super-priority component that would extinguish the first deed of trust
16 recorded against the Property.

17 25. Plaintiff reasonably relied upon the notices and representations of the HOA and RRFS and
18 entered the high bid of \$1,201,000.00 for the Property with the reasonable belief that the HOA's
19 assessment lien being foreclosed by the HOA and RRFS included a superpriority portion that would
20 extinguish the first deed of trust recorded against the Property.

21 26. Plaintiff still believes that the HOA assessment lien contained a super-priority portion, but
22 if the Court finds otherwise, then Plaintiff will have been damaged in an amount in excess of \$10,000.00
23 by HOA and RRFS failing to disclose that the tender was made by Bank of America at some point prior
24 to the foreclosure sale.

25 27. If the Court finds that the HOA assessment lien did not contain a super-priority portion, then
26 Plaintiff's high bid for the Property should be rescinded due to the misrepresentations made by the HOA
27 and RRFS in the foreclosure documents, and all monies paid by Plaintiff should be refunded to Plaintiff.

1 28. Plaintiff is entitled to an award of attorneys fees and costs.

2 **FIFTH CLAIM FOR RELIEF**

3 29. Plaintiff repeats the allegations contained in paragraphs 1 through 28.

4 30. If the HOA or RRFS had disclosed in the documents recorded with the County Recorder, or
5 at the public auction held on November 7, 2014, that the assessment lien being foreclosed did not have
6 a super priority component, Plaintiff would not have bid and paid \$1,201,000.00 for the Property.

7 31. If the Court finds that the HOA assessment lien did not contain a super-priority portion, then
8 the HOA and RRFS will have been unjustly enriched by the amount of Plaintiff's bid that would not have
9 been made by Plaintiff if the HOA and RRFS had disclosed that Bank of America claimed to have
10 tendered the superpriority amount of the assessment lien, which is an amount in excess of \$10,000.00.

11 32. Plaintiff is entitled to an award of attorneys fees and costs.

12 WHEREFORE, plaintiff prays for Judgment as follows:

13 1. For injunctive relief;

14 2. For a determination and declaration that plaintiff is the rightful holder of title to the property,
15 free and clear of all liens, encumbrances, and claims of the defendants.

16 3. For a determination and declaration that the defendants have no estate, right, title, interest or
17 claim in the property.

18 4. For a judgment forever enjoining the defendants from asserting any estate, right, title, interest
19 or claim in the property;

20 5. If the Court finds that the assessment lien did not include a superpriority portion, for a
21 judgment against the HOA and RRFS rescinding Plaintiff's purchase of the Property and requiring all
22 monies paid by Plaintiff to be refunded, or in the alternative, for damages in an amount in excess of
23 \$10,000.00; and

24 ///

25 ///

26 ///

27

28

1 6. For such other and further relief as the Court may deem just and proper.

2 DATED this 10th day of February 2017.

3 LAW OFFICES OF
4 MICHAEL F. BOHN, ESQ., LTD.

5
6 By: /s/ Adam R. Trippiedi, Esq.
7 Michael F. Bohn, Esq.
8 Adam R. Trippiedi, Esq.
9 376 East Warm Springs Road, Ste. 140
10 Las Vegas, Nevada 89119
11 Attorney for plaintiff

12 **CERTIFICATE OF SERVICE**

13 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of LAW
14 OFFICES OF MICHAEL F. BOHN, ESQ., and on the 10th day of February 2017., an electronic copy
15 of the **THIRD AMENDED COMPLAINT** was served on opposing counsel via the Court's electronic
16 service system to the following:

17 Dana J. Nitz, Esq.
18 Eric Powers, Esq.
19 WRIGHT, FINLAY & ZAK, LLP
20 7785 W. Sahara Ave., Ste. 200
21 Las Vegas, NV 89117
22 Attorneys for Thornburg Mortgage
23 Securities Trust 2007-3

Donald H. Williams
Robin Gullo
Williams & Associates
612 S. 10th Street
Las Vegas, NV 89101
Attorney for Republic Services

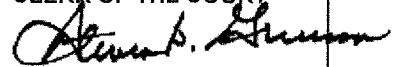
24 Bryan Naddafi, Esq.
25 Olympia Law P.C.
26 292 Francisco St.
27 Henderson, NV 89014
28 Attorney for Frank and Madeline Timpa

David R. Koch, Esq.
Steven B. Scow, Esq.
Robert L. English, Esq.
KOCH & SCOW LLC
11500 S. Eastern Ave., Suite 210
Henderson, NV 89052
Attorneys for Red Rock Financial Services

/s/ Marc Sameroff/
An Employee of the LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

EXHIBIT 8

EXHIBIT 8



1 AANS
2 WRIGHT, FINLAY & ZAK, LLP
3 Dana Jonathon Nitz, Esq.
4 Nevada Bar No. 0050
5 Michael S. Kelley, Esq.
6 Nevada Bar No. 10101
7 7785 W. Sahara Ave, Suite 200
8 Las Vegas, NV 89117
9 (702) 475-7964; Fax: (702) 946-1345
10 dnitz@wrightlegal.net
11 mkelley@wrightlegal.net
12 *Attorneys for Defendant/Counterclaimant/Counter-Defendant, Thornburg Mortgage Securities*
13 *Trust 2007-3*

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 SATICOY BAY LLC SERIES 34
13 INNISBROOK,

14 Plaintiff,

15 vs.

16 THORNBURG MORTGAGE SECURITIES
17 TRUST 2007-3; RECONTRUST COMPANY,
18 N.A. a division of BANK OF AMERICA;
19 FRANK TIMPA and MADELAINE TIMPA,
20 individually and as trustees of the TIMPA
21 TRUST

22 Defendants.

Case No.: A-14-710161-C
Dept. No.: XV

**THORNBURG MORTGAGE
SECURITIES TRUST 2007-3'S
ANSWER TO SATICOY
BAY LLC SERIES 34 INNISBROOK'S
THIRD AMENDED COMPLAINT AND
COUNTERCLAIMS**

1 THORNBURG MORTGAGE SECURITIES
2 TRUST 2007-3,

3 Counterclaimant,

4 vs.

5 SATICOY BAY LLC SERIES 34
6 INNISBROOK, a Nevada limited-liability
7 company; SPANISH TRAIL MASTER
8 ASSOCIATION, a Nevada Non-Profit
9 Corporation; RED ROCK FINANCIAL
SERVICES, an unknown entity; FRANK
TIMP A, an individual; DOES I through X; and
ROE CORPORATIONS I through X, inclusive,

10 Counter-Defendants.

11 RED ROCK FINANCIAL SERVICES,

12 Counterclaimant,

13 vs.

14 THORNBURG MORTGAGE SERCURITIES
15 TRUST 2007-3; COUNTRYWIDE HOME
16 LOANS, INC.; ESTATES WEST AT
17 SPANISH TRAILS; MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
18 INC.; REPUBLIC SERVICES; LAS VEGAS
VALLEY WATER DISTRICT; FRANK
TIMP A and MADELAINE TIMPA,
19 individually and as trustees of the TIMP A
20 TRUS U/T/D March 3,1999; and DOES 1-100,
inclusive,

21 Counter-Defendants.
22

23 Defendant, Thornburg Mortgage Securities Trust 2007-3 ("Thornburg"), by and through
24 its attorneys of record Dana Jonathon Nitz, Esq., and Michael S. Kelley, Esq., of the law firm of
25 Wright, Finlay & Zak, LLP, hereby submits its Answer to Saticoy Bay LLC Series 34
26 Innisbrook's ("Saticoy" or "Plaintiff") Third Amended Complaint. Nothing in this Answer to
27 Third Amended Complaint is intended to disturb Thornburg's previously filed Counterclaims filed
28 on April 10, 2015.

1 **ANSWER TO SECOND AMENDED COMPLAINT**

2 1. Thornburg denies that Plaintiff is the owner of the Property. Thornburg maintains
3 that its interest in the Property is secure and valid.

4 2. Thornburg avers that the allegations contained in Paragraph 3 make reference to
5 recorded documents, quote recorded documents, statutes, or case law, and/or offer opinions or
6 conclusions of law, and therefore cannot be either admitted or denied; however, to the extent a
7 response is necessary to any facts alleged therein, Thornburg admits only that a foreclosure deed
8 recorded November 10, 2014 purports to state that Plaintiff was the highest bidder at a foreclosure
9 sale conducted on November 7, 2014. Thornburg denies that Plaintiff has obtained title to the
10 Property. Thornburg maintains that its interest in the Property is secure and valid.

11 3. Thornburg avers that the allegations contained in Paragraph 3 make reference to
12 recorded documents, quote recorded documents, statutes, or case law, and/or offer opinions or
13 conclusions of law, and therefore cannot be either admitted or denied; however, to the extent a
14 response is necessary to any facts alleged therein, then Thornburg objects to any document
15 referenced in these paragraphs on the ground that the document speaks for itself; and, without
16 waiving the objection, Thornburg otherwise does not possess enough information to admit or deny
17 the allegations in these paragraphs and therefore denies the allegations contained therein on that
18 basis.

19 4. Thornburg admits the allegations contained in Paragraph 4 of the Complaint.

20 5. The allegations contained in Paragraph 5 contain statements directed to entities in
21 which Thornburg is not a party therefore, no response is required. To the extent a response is
22 required; Thornburg admits that Madelaine and Frank Timpa were the former owners of the
23 Property.

24 6. The allegations contained in Paragraph 6 contain statements directed to entities in
25 which Thornburg is not a party therefore, no response is required. To the extent a response is
26 required; Thornburg is without information or knowledge to admit or deny the allegations
27 contained therein, and therefore denies the same.
28

7. Thornburg avers that the allegations contained in Paragraph 7 of the Complaint contain legal conclusions to which no response is required; provided however, to the extent Paragraph 7 does require a response, Thornburg denies the allegations contained therein.

8. Thornburg avers that the allegations contained in Paragraph 8 of the Complaint contain legal conclusions to which no response is required; provided however, to the extent Paragraph 8 does require a response, Thornburg denies the allegations contained therein.

9. Thornburg avers that the allegations contained in Paragraph 9 of the Complaint contain legal conclusions to which no response is required; provided however, to the extent Paragraph 9 does require a response, Thornburg denies the allegations contained therein.

10. Thornburg denies the allegations contained in Paragraph 10 of the Complaint.

SECOND CLAIM FOR RELIEF

11. Answering Paragraph 11, Thornburg hereby repeats, re-alleges and incorporates each of its admissions, denials, or other responses to all the paragraphs referenced hereinabove as if set forth at length and in full.

12. Thornburg avers that the allegations contained in paragraph 12 state legal conclusions for which no response is required; provided however, to the extent paragraph 40 does require a response, Thornburg denies the allegations contained in Paragraph 12 of the Complaint.

13. Thornburg denies the allegations contained in Paragraph 13 of the Complaint.

SECOND CLAIM FOR RELIEF

14. Answering Paragraph 14, Thornburg hereby repeats, re-alleges and incorporates each of its admissions, denials, or other responses to all the paragraphs referenced hereinabove as if set forth length and in full.

15. Thornburg does not have adequate information or knowledge to admit or deny the allegations contained in Paragraph 15; therefore, Thornburg denies said allegations.

16. Thornburg does not have adequate information or knowledge to admit or deny the allegations contained in Paragraph 16; therefore, Thornburg denies said allegations.

17. Thornburg does not have adequate information or knowledge to admit or deny the allegations contained in Paragraph 17; therefore, Thornburg denies said allegations.

1 18. Thornburg denies the allegations contained in Paragraph 18 of the Complaint.

2 19. Thornburg denies the allegations contained in Paragraph 19 of the Complaint.

3 **FOURTH CLAIM FOR RELIEF**

4 20. Answering Paragraph 20, Thornburg hereby repeats, re-alleges and incorporates
5 each of its admissions, denials, or other responses to all the paragraphs referenced hereinabove as
6 if set forth length and in full.

7 21. Thornburg admits the allegations contained in Paragraph 21 of the Complaint.

8 22. The allegations contained in Paragraph 22 are directed towards entities in which
9 THORNBURG is not a party, therefore no response is required. To the extent a response is
10 required, THORNBURG is without information or knowledge to admit or deny the allegations
11 contained therein and therefore denies the same.

12 23. The allegations contained in Paragraph 23 are directed towards entities in which
13 THORNBURG is not a party, therefore no response is required. To the extent a response is
14 required, THORNBURG is without information or knowledge to admit or deny the allegations
15 contained therein and therefore denies the same.

16 24. The allegations contained in Paragraph 24 are directed towards entities in which
17 THORNBURG is not a party, therefore no response is required. To the extent a response is
18 required, THORNBURG is without information or knowledge to admit or deny the allegations
19 contained therein and therefore denies the same.

20 25. The allegations contained in Paragraph 25 are directed towards entities in which
21 THORNBURG is not a party, therefore no response is required. To the extent a response is
22 required, THORNBURG is without information or knowledge to admit or deny the allegations
23 contained therein and therefore denies the same.

24 26. The allegations contained in Paragraph 26 are directed towards entities in which
25 THORNBURG is not a party and contain legal conclusions, therefore no response is required. To
26 the extent a response is required, THORNBURG is without information or knowledge to admit or
27 deny the allegations contained therein and therefore denies the same.

28

27. The allegations contained in Paragraph 27 are directed towards entities in which THORNBURG is not a party, therefore no response is required. To the extent a response is required, THORNBURG is without information or knowledge to admit or deny the allegations contained therein and therefore denies the same.

28. Thornburg denies the allegations contained in Paragraph 28 of the Complaint.

FIFTH CLAIM FOR RELIEF

29. Answering Paragraph 29, Thornburg hereby repeats, re-alleges and incorporates each of its admissions, denials, or other responses to all the paragraphs referenced hereinabove as if set forth length and in full.

30. The allegations contained in Paragraph 30 are directed towards entities in which THORNBURG is not a party, therefore no response is required. To the extent a response is required, THORNBURG is without information or knowledge to admit or deny the allegations contained therein and therefore denies the same.

31. The allegations contained in Paragraph 31 are directed towards entities in which THORNBURG is not a party, therefore no response is required. To the extent a response is required, THORNBURG is without information or knowledge to admit or deny the allegations contained therein and therefore denies the same.

32. Thornburg denies the allegations contained in Paragraph 32 of the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

Plaintiffs Complaint fails to state a claim against Thornburg upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Priority)

Plaintiff took title of the Property subject to Thornburg's first priority Deed of Trust, thereby forestalling any enjoinder/extinguishment of Thornburg's interest in the Property.

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

EIGHTH AFFIRMATIVE DEFENSE

(Void for Vagueness, Ambiguity, Violation of Due Process)

To the extent that Plaintiffs interpretation of NRS 116.3116 is accurate, the statute and Chapter 116 as a whole are void for vagueness, ambiguity, and violation of due process.

NINTH AFFIRMATIVE DEFENSE

(Due Process Violations)

A senior deed of trust beneficiary cannot be deprived of its property interest in violation of the Procedural Due Process Clause of the 14 Amendment of the United States Constitution and Article 1, Sec. 8, of the Nevada Constitution.

TENTH AFFIRMATIVE DEFENSE

(Violation of Procedural Due Process)

The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust pursuant to the Due Process Clause of the Nevada Constitution and United States Constitution.

ELEVENTH AFFIRMATIVE DEFENSE

(Supremacy Clause)

The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust pursuant to the Supremacy Clause of the United States Constitution.

TWELFTH AFFIRMATIVE DEFENSE

(Property Clause)

The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust pursuant to the Property Clause of the United States Constitution.

THIRTEENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

Plaintiff alleges that the PJ's claims are barred in whole or in part because of the Plaintiffs failure to take reasonable steps to mitigate the damages, if any, in this case.

1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 **(Contracts Clause)**

3 The HOA Sale is void or otherwise does not operate to extinguish the first Deed of
4 Trust pursuant to the Contracts Clause of both the United States Constitution and the Nevada
5 Constitution.

6 **FIFTEENTH AFFIRMATIVE DEFENSE**

7 **(Additional Affirmative Defenses)**

8
9 Plaintiff reserves the right to assert additional affirmative defenses in the event
10 discovery and/or investigation indicates that additional affirmative defenses are applicable.

11 WHEREFORE, Thornburg prays as follows:

- 12 1. That the Court make a judicial determination that Thornburg's Deed of Trust is superior
13 to Plaintiff's claim of title;
- 14 2. That the Court make a judicial determination that Thornburg's Deed of Trust survived
15 the HOA Sale;
- 16 3. That the Court make a judicial determination that Plaintiff took title subject to
17 Thornburg's Deed of Trust;
- 18 4. That Plaintiff recovers nothing on account of the claims made in the Second Amended
19 complaint and each of their purported claims;
- 20 5. For reasonable attorney's fees and costs; and
- 21 6. For any such other and further relief as the Court may deem just and proper in the case.

22 **THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S COUNTERCLAIM**

23 Defendant/Counterclaimaint, Thornburg Mortgage Securities Trust 2007-3
24 ("Thornburg") by and through its attorneys of record, Dana Jonathon Nitz, Esq. and Michael S.
25 Kelley, Esq. of the law firm of Wright Finlay & Zak, LLP hereby submits its Counterclaims
26 against Saticoy Bay LLC Series 34 Innisbrook ("Saticoy" or "Buyer"), Spanish Trail Master
27 Association ("HOA"), and Red Rock Financial Services ("HOA Trustee").
28

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

INTRODUCTION

1. This action is within the jurisdictional limits of this Court and this Venue is appropriate because the Property involved is located within the jurisdiction of this Court. Counterclaimant is also authorized to bring this action in the State of Nevada by NRS 40.430.

2. The real property which is the subject of this civil action consists of a residence commonly known as 34 Innisbrook Ave., Las Vegas, Nevada 89113, APN No. 163-28-614-00 (hereinafter "Property").

JURISDICTION AND VENUE

3. Venue and jurisdiction is proper in this judicial district because Counter-Defendants reside in this district; a substantial part of the events or omissions giving rise to Thornburg's claims occurred in this district; and the property that is the subject of this action is situated in this district, in Las Vegas, Clark County, Nevada.

PARTIES

4. Thornburg is an entity authorized to do business in the state of Nevada. THORNBURG is the Beneficiary under the Deed of Trust executed by Frank A. Timpa (hereinafter "Timpa"), recorded on June 12, 2006, (hereinafter "Deed of Trust"), which encumbers the Property and secures a promissory note.

5. Upon information and belief, Saticoy is a Nevada limited liability company, and claims it is the current titleholder of the Property.

6. Upon information and belief, Spanish Trail Master Association (hereinafter "HOA") is a Nevada Non-Profit Corporation and at all times relevant was doing business in the State of Nevada, and is the HOA that foreclosed upon the property that is the subject of this litigation.

7. Upon information and belief, Red Rock Financial Services, LLC (hereinafter "HOA Trustee" or "RRFS") is a Nevada Limited Liability Company and at all times relevant was doing business in the State of Nevada, and is the HOA Trustee that foreclosed upon the property that is the subject of this litigation.

1 8. Public records show that on September 15, 2014, a Notice of Foreclosure Sale
2 was recorded against the Property by the HOA Trustee on behalf of the HOA.⁵

3 9. Upon information and belief, pursuant to that Notice of Foreclosure Sale, a non-
4 judicial foreclosure sale occurred on November 7, 2014 (hereinafter the "HOA Sale"), whereby
5 Saticoy acquired its interest in the Property, if any, for \$1,201,000.00.

6 10. On November 10, 2014, a Foreclosure Deed was recorded by which Saticoy
7 claims its interest.⁶

8 11. A homeowner's association sale conducted pursuant to NRS Chapter 116 must
9 comply with all notice provisions as stated in NRS 116.31162 through NRS 116.31168 and
10 NRS 107.090.

11 12. The documents identified as the HOA's Notice of Delinquent Assessment Lien,
12 Notice of Default, and Notice of Sale (collectively "HOA Foreclosure Notices") failed to
13 identify what proportion of the claimed lien was for alleged assessments, late fees, interest,
14 fines/violations, or collection fees/costs.

15 13. A recorded notice of default must "describe the deficiency in payment."

16 14. The HOA Sale occurred without notice to The Trust or its predecessors, agents,
17 servicers or trustees what portion of the lien, if any, that the HOA and HOA Trustee claimed
18 constituted a "super-priority" lien.

19 15. None of the HOA Foreclosure Notices discloses what portion of the lien, if any,
20 the HOA claimed to be the "super-priority" portion of the HOA lien.

21 16. None of the HOA Foreclosure Notices specified whether HOA was foreclosing
22 on the "super-priority" portion of its lien, if any, or under the non-super-priority portion of the
23 lien.

24
25 ⁴ A true and correct copy of the Notice of Default and Election to Sell Under Homeowners
26 Association Lien recorded as Book and Instrument Number 20111206-0001106 is attached
hereto as **Exhibit 4**.

27 ⁵ A true and correct copy of the Notice of Foreclosure Sale recorded as Book and Instrument
Number 20140915-0001527 is attached hereto as **Exhibit 5**.

28 ⁶ A true and correct copy of the Foreclosure Deed recorded as Book and Instrument Number
20141110-0002475 is attached hereto as **Exhibit 6**.

1 17. None of the HOA Foreclosure Notices provided notice of a right to protect the
2 senior trust deed position by cure or payment of the super priority amount owed.

3 18. A lender or holder, such as The Trust and/or its predecessors ("Lender"), has a
4 right to cure a delinquent homeowner's association lien in order to protect their security interest.

5 19. Prior to the HOA Sale, Thornburg and its predecessors demanded an accounting
6 of the HOA liens, including what portion of said lien(s) constituted the super-priority amount.

7 20. HOA Trustee responded with an accounting of the claimed lien, but did not
8 specify what portion of the lien constituted the super priority lien.⁷

9 21. HOA Trustee demanded payment of the full lien, including amounts not legally
10 included in the super-priority lien.

11 22. Prior to the HOA Sale, Thornburg and its predecessors tendered payment of 9
12 months of assessments to the HOA and its agents, thus satisfying the super-priority lien prior to
13 the HOA's foreclosure of the remaining lien amount.⁸

14 23. Thornburg's satisfaction of the HOA super-priority lien prevented
15 extinguishment of its First Deed of Trust, thereby preserving its first lien position and security
16 interest in the Property.

17 24. The HOA Sale violated Thornburg's rights and harmed it because the HOA
18 Trustee failed to inform potential buyers at the lien sale that actual tender of the HOA super-
19 priority lien had been made prior to the sale.

20 25. The HOA Sale was invalid and could not have extinguished Thornburg's security
21 interest because Thornburg had in fact tendered the 9 month super-priority lien prior to the
22 HOA Sale.

23 26. The HOA Sale occurred without notice to Thornburg, or its predecessors, agents,
24 servicers or trustees what portion of the lien, if any, that the HOA and HOA Trustee claimed
25 constituted a super-priority lien.

26
27 _____
27 ⁷ HOA Trustee Letter and Ledger dated January 26, 2012 is attached hereto as **Exhibit 7**.

28 ⁸ Tender letter and tender check dated February 9, and February 6, 2012 respectively, is
attached hereto as **Exhibit 8**.

1 27. The HOA Sale occurred without notice to Thornburg, or its predecessors, agents,
2 servicers or trustees whether the HOA was foreclosing on the super-priority portion of its lien,
3 if any, or under the non-super priority portion of the lien.

4 28. Extinguishment of Thornburg's Deed of Trust would deprive it of its right to due
5 process because, upon information and belief, the HOA included amounts in its super-priority
6 lien, such as fines, late fees, interest, dues, and costs of collection that are not allowed to be
7 included in its super-priority lien, if any, under Nevada law.

8 29. Extinguishment of Thornburg's Deed of Trust would deprive it of its right to due
9 process because the HOA Trustee and/or the HOA failed to describe the deficiency in payment
10 as required by Nevada law and failed to give the Trust or its predecessors, agents or servicers
11 any reasonable opportunity to satisfy the super-priority lien, if any.

12 30. The Property is located within a common interest community, and is governed
13 by CC&R's that appear of record from and after August 10, 1988.

14 31. The CC&Rs require reasonable notice of delinquency to all lien holders on the
15 Property.

16 32. Further, the CC&Rs provide for the priority of a first mortgage of record made in
17 good faith and for value (Sections 10.7) and 11.3).

18 33. Upon information and belief, the Lender never received copies of the HOA
19 Foreclosure Notices from the HOA or the HOA Trustee.

20 34. Upon information and belief, the HOA and its agent, the HOA Trustee, did not
21 comply with all mailing, curing, and noticing requirements stated in NRS 116.31162 through
22 NRS 116.31168 and the CC&Rs.

23 35. The HOA Sale occurred without notice to Lender whether HOA was foreclosing
24 on the "super-priority" portion of its lien, if any, or under the non-super-priority portion of the
25 lien.

26 36. The HOA Sale occurred without notice to Lender of a right to cure the
27 delinquent assessment and the super-priority lien, if any.

28

1 37. The HOA Sale violated Lender's rights to due process because it was not given
2 proper, adequate notice and the opportunity to cure the deficiency or default in the payment of
3 the HOA's assessments and the super-priority lien, if any.

4 38. The HOA Sale was an invalid sale and could not have extinguished The Trust's
5 secured interest because of defects in the notices given, if any, to Lender.

6 39. Extinguishment of The Trust's Deed of Trust would deprive it of its right to due
7 process because, upon information and belief, the HOA included amounts in its super-priority
8 lien, such as fines, late fees, interest, dues, and costs of collection that are not allowed to be
9 included in its super-priority lien, if any, under Nevada law.

10 40. Extinguishment of The Trust's Deed of Trust would deprive it of its right to due
11 process because the HOA Trustee and/or the HOA failed to describe the deficiency in payment
12 as required by Nevada law and failed to give The Trust or its predecessors, agents, servicers or
13 trustees any reasonable opportunity to satisfy the super-priority lien, if any.

14 41. Under NRS Chapter 116 a lien under NRS 116.3116(1) can only include costs
15 and fees that are specifically enumerated in the statute.

16 42. A homeowner's association may only collect as a part of the super priority lien
17 (a) nuisance abatement charges incurred by the association pursuant to NRS 116.310312 and (b)
18 nine months of common assessments which became due prior to the institution of an action to
19 enforce the lien, unless Fannie Mae and Freddie Mac regulations require a shorter period of not
20 less than six months.

21 43. Upon information and belief, the HOA Foreclosure Notices included improper
22 fees and costs in the amount demanded.

23 44. The attorney's fees and the costs of collecting on a homeowner's association lien
24 cannot be included in the super-priority lien.

25 45. Upon information and belief, the HOA assessment lien and foreclosure notices
26 included fines, interest, late fees, dues, attorney's fees, and costs of collection that are not
27 properly included in a super-priority lien under Nevada law and that are not permissible under
28 NRS116.3102 et seq.

1 46. The HOA Sale is unlawful and void under NRS 116.3102 et seq.

2 47. The HOA Sale deprived The Trust or its predecessor of its right to due process
3 because the Foreclosure Notices failed to identify the super-priority amount, to adequately
4 describe the deficiency in payment, to provide The Trust or its predecessor notice of the correct
5 super-priority amount, and to provide a reasonable opportunity to satisfy that amount.

6 48. A homeowner's association sale must be done in a commercially reasonable
7 manner and in good faith.

8 49. Upon information and belief, at the time of the HOA Sale, the fair market value
9 of the Property exceeded \$3,000,000.

10 50. Upon information and belief, at the time of the HOA Sale, the secured
11 indebtedness against the Property exceeded \$4,000,000.00.

12 51. The amount allegedly paid by Buyer at the HOA Sale was \$1,021,000.00.

13 52. The sale price at the HOA Sale is not commercially reasonable, and not done in
14 good faith, when compared to the debt owed to The Trust on the Venegas Loan and the fair
15 market value of the Property.

16 53. The HOA Sale was commercially unreasonable if it extinguished The Trust's
17 Deed of Trust.

18 54. In the alternative, the HOA Sale was an invalid sale and could not have
19 extinguished The Trust's secured interest because it was not a commercially reasonable sale.

20 55. Without providing Lender notice of the correct super-priority amount and a
21 reasonable opportunity to satisfy that amount, including the failure to identify the super-priority
22 amount and its failure to adequately describe the deficiency in payment as required by Nevada
23 law, the HOA Trustee did not discharge its legal duties, and the HOA Sale is commercially
24 unreasonable and deprived Lender of its right to due process.

25 56. Because Lender was not given proper notice that the HOA intended to foreclose
26 on the super-priority portion of the dues owing, Lender did not know that it had to attend the
27 HOA Sale to protect its security interest.

28

1 57. Because proper notice that the HOA intended to foreclose on the super-priority
2 portion of the dues owing was not given, prospective bidders did not appear for the HOA Sale,
3 making the HOA Sale commercially unreasonable.

4 58. The Buyer, HOA, and HOA Trustee knew that Lender would not know that the
5 HOA was foreclosing on super-priority amounts because of the failure of the HOA and HOA
6 Trustee to provide such notice. Lender's absence from the HOA Sale allowed Buyer to appear at
7 the HOA Sale and purchase the Property for a fraction of market value, making the HOA Sale
8 commercially unreasonable.

9 59. The Buyer, HOA, and HOA Trustee knew that prospective bidders would be less
10 likely to attend the HOA Sale because the public at large did not receive notice, constructive or
11 actual, that the HOA was foreclosing on a super-priority portion of its lien since the HOA
12 improperly failed to provide such notice. The general public's belief therefore was that a buyer
13 at the HOA Sale would take title to the Property subject to The Trust's Deed of Trust. This
14 general belief resulted in the absence of prospective bidders at the HOA Sale, which allowed
15 the Buyer to appear at the HOA Sale and purchase the Property for a fraction of market value,
16 making the HOA Sale commercially unreasonable.

17 60. The circumstances of the HOA Sale of the Property breached the HOA's and
18 HOA Trustee's obligation of good faith under NRS 116.1113 and their duty to act in a
19 commercially reasonable manner.

20 61. The Trust is informed and believes that Buyer is a professional property
21 purchaser.

22 62. The circumstances of the HOA Sale of the Property and the status as a
23 professional property purchaser, prevents Buyer from being deemed a bona fide purchaser or
24 lender for value.

25 63. Upon information and belief, the Buyer had actual, constructive or inquiry notice
26 of The Trust's first Deed of Trust, which prevents Buyer from being deemed a bona fide
27 purchaser or lender for value.

28

64. In the event The Trust's interest in the Property is not reaffirmed or restored, The Trust will have suffered damages in the amount of the fair market value of the Property or the unpaid balance of the Venegas Loan secured by the Deed of Trust, at the time of the HOA Sale, whichever is greater, as a proximate result of the HOA and HOA Trustee's acts and omissions.

65. Because the CC&R's contain a Mortgagee Protection Clause in Sections 10.7 and 11.3 and because proper notice that the HOA intended to foreclose on the super-priority portion of the dues owing was not given, prospective bidders did not appear at the HOA sale, making it commercially unreasonable.

66. The Buyer, HOA, and HOA Trustee knew that Thornburg would rely on the Mortgagee Protection Clause and knew Thornburg or its predecessors, agents, servicers, or trustees would not know that the HOA was foreclosing on the super-priority amount because of failure of the HOA and HOA Trustee to provide such notice. Thornburg's absence from the HOA Sale allowed Saticoy to appear at the HOA Sale and acquire the Property for a fraction of its market value, making the Sale commercially unreasonable.

FIRST CAUSE OF ACTION

**(Quiet Title/Declaratory Relief Pursuant to NRS 30.010 et seq. and NRS 40.010
versus all Parties)**

67. The Trust incorporates by reference the allegations of all previous paragraphs, as if fully set forth herein.

68. Pursuant to NRS 30.010 et seq. and NRS 40.010, this Court has the power and authority to declare The Trust's rights and interests in the Property and to resolve the Buyer's adverse claims in the Property.

69. Further, pursuant to NRS 30.010 et seq., this Court has the power and authority to declare the rights and interests of the parties following the acts and omissions of the HOA and HOA Trustee in foreclosing the Property.

70. The Trust's Deed of Trust is a first secured interest on the Property as intended by NRS 116.3116(2)(b).

71. The Trust is the current beneficiary of the Deed of Trust.

1 72. The Trust's interest still encumbers the Property, retains its first position status in
2 the chain of title for the Property after the HOA Sale and is superior to the interest, if any,
3 acquired by the Buyer, or held or claimed by any other party.

4 73. The Buyer claims an interest in the Property through a Foreclosure Deed
5 recorded in the Clark County Recorder's Office that is adverse to The Trust's interest.

6 74. As alleged, the HOA and HOA Trustee failed to provide proper, adequate notices
7 required by Nevada statutes, the CC&R's and due process to Lender, and therefore the HOA
8 Sale is void and should be set aside or rescinded.

9 75. Further, the CC&R's provide for the priority of a first-position mortgage or deed
10 of trust over the HOA lien, so that Buyer took title subject to the Deed of Trust.

11 76. Based on the adverse claims and conduct by the parties, The Trust is entitled to a
12 judicial determination regarding the rights and interests of the respective parties to the case.

13 77. For all the reasons set forth above and in the General Allegations, The Trust is
14 entitled to a determination from this Court, pursuant to NRS 30.010 and NRS 40.010, that The
15 Trust is the beneficiary of a first position Deed of Trust which still encumbers the Property and
16 which is superior to the interest, if any, acquired by the Buyer.

17 78. In the alternative, for all the reasons set forth above and in the General
18 Allegations, The Trust is entitled to a determination from this Court, pursuant to NRS 30.010
19 and NRS 40.010, that the HOA Sale is unlawful and void.

20 79. The Trust has been required to retain counsel and is entitled to recover
21 reasonable attorney's fees and costs to prosecute this action.

22 **SECOND CAUSE OF ACTION**

23 **(Permanent and Preliminary Injunction versus the Buyer)**

24 80. The Trust incorporates by reference the allegations of all previous paragraphs, as
25 if fully set forth herein.

26 81. As set forth above, the Buyer may claim an ownership interest in the Property
27 that is adverse to The Trust.

28

1 82. Any sale or transfer of the Property, prior to a judicial determination concerning
2 the respective rights and interests of the parties to the case, may be rendered invalid if The
3 Trust's Deed of Trust still encumbered the Property in first position and was not extinguished by
4 the HOA Sale.

5 83. The Trust has a reasonable probability of success on the merits, for which
6 compensatory damages will not compensate The Trust for the irreparable harm of the loss of
7 title to a bona fide purchaser or loss of the first position priority status secured by the Property.

8 84. The Trust has no adequate remedy at law due to the uniqueness of the Property
9 involved in the case.

10 85. The Trust is entitled to a preliminary and permanent injunction prohibiting the
11 Buyer, their successors, assigns, and agents from conducting a sale, transfer or encumbrance of
12 the Property if it is claimed to be superior to The Trust's Deed of Trust or not subject to that
13 Deed of Trust.

14 86. The Trust is entitled to a preliminary injunction requiring the Buyer to pay all
15 taxes, insurance and homeowner's association dues during the pendency of this action.

16 87. The Trust is entitled to a preliminary requiring the Buyer to segregate and
17 deposit with the Court or a Court-approved trust account over which the Buyer has no control
18 during the pendency of this action.

19 88. The Trust has been required to retain counsel to prosecute this action and is
20 entitled to recover reasonable attorney's fees to prosecute this action.

21 **THIRD CAUSE OF ACTION**

22 **(Wrongful Foreclosure versus the HOA, HOA Trustee, and fictitious Defendants)**

23 89. The Trust incorporates by reference the allegations of all previous paragraphs, as
24 if fully set forth herein.

25 90. Because the HOA, HOA Trustee, and fictitious Defendants did not give the Trust
26 or its predecessors, agents, servicers or trustees the proper, adequate notice and the opportunity
27 to cure the deficiency or default in the payment of the HOA's assessments and super-priority
28

1 lien (if any) required by Nevada statutes, the CC&R's and due process, the HOA Sale was
2 wrongfully conducted and should be set aside.

3 91. Because the HOA, HOA Trustee, and fictitious Defendants did not give notice to
4 the bidders that the title conveyed would be subject to the Deed of Trust, the HOA Sale was
5 wrongfully conducted and should be set aside.

6 92. Because the HOA Sale was not done in accordance with Nevada statutes and the
7 CC&R's, the HOA Sale was wrongfully conducted and should be set aside.

8 93. Because, upon information and belief, the HOA Foreclosure Notices included
9 improper fees and costs in the amount demanded, the HOA Sale was wrongfully conducted and
10 should be set aside.

11 94. As a proximate result of the HOA's, HOA Trustee's, and the fictitious
12 Defendants' wrongful foreclosure of the Property by the HOA Sale, The Trust has suffered
13 general and special damages in an amount in excess of \$10,000.00.

14 95. The Trust has been required to retain counsel to prosecute this action and is
15 entitled to recover reasonable attorney's fees to prosecute this action.

16 **FOURTH CAUSE OF ACTION**

17 **(Negligence versus the HOA, HOA Trustee, and fictitious Defendants)**

18 96. The Trust incorporates by reference the allegations of all previous paragraphs, as
19 if fully set forth herein

20 97. The HOA, HOA Trustee, and fictitious Defendants owed a duty to the Trust
21 and/or its predecessors and subordinate lienholders to conduct the HOA foreclosure sale at issue
22 in this case properly and in a manner that would fairly allow them an opportunity to protect
23 their interest and cure the super-priority lien threatening their security interests.

24 98. The HOA, HOA Trustee, and fictitious Defendants breached their duty by failing
25 to disclose the amount of the super-priority lien, if any, by failing to specify that it was f
26 foreclosing on the super-priority portion of its lien as opposed to the non-super-priority portion,
27 by failing to provide notice that The Trust and/or its predecessors and subordinate lienholders
28

1 had an opportunity to cure, and by failing to announce at the sale that the Buyer took title
2 subject to the Deed of Trust.

3 99. As a proximate result of the HOA's, HOA Trustee's, and fictitious Defendants'
4 breach of their duties, The Trust and/or its predecessors were either unable to cure by tendering
5 a pay-off of the super-priority lien threatening its security interest, or the tender was refused, so
6 that the Trust is therefore forced to defend their title in the Property, incurring attorney's fees
7 and costs to do so.

8 100. As an actual and proximate result of the HOA's, HOA Trustee's, and fictitious
9 Defendants' breach of their duties, the Trust has incurred general and special damages in an
10 amount in excess of \$10,000.00.

11 101. If The Trust is found to have lost its first secured interest in the Property, it was
12 the proximate result of the HOA's, HOA Trustee's, and fictitious Defendants' breach of their
13 duties, and The Trust has thereby suffered general and special damages in an amount in excess
14 of \$10,000.00.

15 102. The Trust has been required to retain counsel to prosecute this action and is
16 entitled to recover reasonable attorney's fees to prosecute this action.

17 **FIFTH CAUSE OF ACTION**

18 **(Negligence Per Se versus the HOA, HOA Trustee, and fictitious Defendants)**

19 103. The Trust incorporates by reference the allegations of all previous paragraphs, as
20 if fully set forth herein.

21 104. NRS Chapter 116 imposes a duty on homeowner's associations and their agents
22 to conduct their foreclosure sales in a manner that is consistent with its provisions.

23 105. The HOA, HOA Trustee, and fictitious Defendants breached the duties imposed
24 by NRS Chapter 116.

25 106. The HOA, HOA Trustee, and fictitious Defendants violated NRS
26 116.31162(1)(b)(1) by failing to properly and adequately describe the deficiency in payment of
27 a super-priority lien.

1 107. The Trust is a member of the class of persons whom NRS Chapter 116 is
2 intended to protect.

3 108. The injury that The Trust faces-extinguishment of its first-position deed of trust-
4 is the type against which NRS Chapter 116 is intended to protect.

5 109. As a proximate result of the HOA's, HOA Trustee's, and fictitious Defendants'
6 breach of their statutory duties, The Trust was unable to cure by tendering a pay-off of the
7 super-priority lien threatening its security interest.

8 110. As a proximate result of the HOA's, HOA Trustee's, and fictitious Defendants'
9 breach of their duties, The Trust has incurred general and special damages in an amount
10 in excess of \$10,000.00.

11 111. If The Trust is found to have lost its first secured interest in the Property, it was
12 the proximate result of the HOA's, HOA Trustee's, and fictitious Defendants' breach of their
13 statutory duties, and The Trust has thereby suffered general and special damages in an amount
14 in excess of \$10,000.00.

15 112. The Trust has been required to retain counsel to prosecute this action and is
16 entitled to recover reasonable attorney's fees to prosecute this action.

17 **SIXTH CAUSE OF ACTION**

18 **(Breach of Contract versus the HOA and HOA Trustee)**

19 113. The Trust incorporates by reference the allegations of all previous paragraphs, as
20 if fully set forth herein.

21 114. The Trust was an intended beneficiary of the HOA's CC&Rs.

22 115. The HOA, the HOA Trustee and fictitious Defendants breached the obligations,
23 promises, covenants and conditions of the CC&Rs owed to The Trust by the circumstances
24 under which they conducted the HOA Sale of the Property.

25 116. The HOA, the HOA Trustee and fictitious Defendants' breaches of the
26 obligations, promises, covenants and conditions of the CC&Rs proximately caused The Trust
27 general and special damages in an amount in excess of \$10,000.00.

1 117. The Trust has been required to retain counsel to prosecute this action and is
2 entitled to recover reasonable attorney's fees to prosecute this action.

3 **SEVENTH CAUSE OF ACTION**

4 **(Misrepresentation versus the HOA, HOA Trustee and Fictitious Defendants)**

5 118. The Trust incorporates by reference the allegations of all previous paragraphs, as
6 if fully set forth herein.

7 119. The Trust is within the class or persons or entities the HOA intended or had
8 reason to expect to act or to refrain from action in reliance upon the provisions of the CC&Rs,
9 including without limitation, the Mortgage Protection Clause.

10 120. The Trust and its predecessors in interest, justifiably relied upon the provisions
11 of the CC&Rs and NRS 116.3116(2)(b) in giving consideration for the Deed of Trust, and the
12 promissory note it secures, and the HOA intended or had reason to expect their conduct would
13 be influenced.

14 121. The HOA's representations in the provisions of the CC&Rs, including without
15 limitation, the Mortgage Protection Clause, were false.

16 122. The HOA had knowledge or a belief that the representations in the provisions of
17 the CC&Rs, including without limitation, the Mortgage Protection Clause, were false or it had
18 an insufficient basis for making the representations.

19 123. The HOA had a pecuniary interest in having The Trust and its predecessors in
20 interest rely on the provisions of the CC&Rs, including without limitation, the Mortgage
21 Protection Clause.

22 124. The HOA failed to exercise reasonable care or competence in communicating the
23 information within the provisions of the CC&Rs, including without limitation, the Mortgage
24 Protection Clause, which was false or it had an insufficient basis for making.

25 125. The HOA, the HOA Trustee and fictitious Defendants acted in contravention to
26 the provisions of the CC&Rs, including without limitation, the Mortgage Protection Clause,
27 when it conducted the HOA Sale in a manner that could lead the bidders to believe they would
28 acquire the Property free and clear of The Trust's Deed of Trust.

126. The Trust suffered general and special damages in an amount in excess of \$10,000.00 as a proximate result of its reliance.

127. The Trust has been required to retain counsel to prosecute this action and is entitled to recover reasonable attorney's fees to prosecute this action.

EIGHTH CAUSE OF ACTION

(Unjust Enrichment versus the Buyer, HOA, HOA Trustee, and fictitious Defendants)

128. The Trust incorporates by reference the allegations of all previous paragraphs, as if fully set forth herein.

129. The Trust has been deprived of the benefit of the Deed of Trust by the actions of the Buyer, HOA, and HOA's Trustee.

130. The Buyer, HOA, HOA Trustee, and fictitious Defendants have benefitted from the unlawful HOA Sale and nature of the real property.

131. Should The Trust's action be successful in quieting title and/or obtaining declaratory relief against the Buyer, HOA, HOA Trustee, and fictitious Defendants, and setting aside the HOA Sale; the Buyer, HOA, and HOA Trustee will have been unjustly enriched by the HOA

132. Sale, usage of the Property and advancements by The Trust.

133. The Trust will have suffered damages if the Buyer, HOA, HOA Trustee, and fictitious Defendants are allowed to retain their interests in the Property and the funds received from the HOA Sale.

134. The Trust is entitled to general and special damages in excess of \$10,000.00.

135. The Trust has furthermore been required to retain counsel and is entitled to recover reasonable attorney's fees for having brought the underlying action.

NINTH CAUSE OF ACTION

(Breach of the Covenant of Good Faith and Fair Dealing versus the HOA and HOA Trustee, and the fictitious Defendants)

136. The Trust incorporates by reference the allegations of all previous paragraphs, as if fully set forth herein.

137. Implicit in every contract in the state of Nevada is an implied covenant of good faith and fair dealing.

138. The Trust was an intended beneficiary of the HOA's CC&Rs.

139. The HOA, the HOA Trustee, and fictitious Defendants breached the duties, obligations, promises, covenants and conditions, express and implied, in the CC&Rs owed to The Trust by the circumstances under which they conducted the HOA Sale of the Property.

140. The HOA, the HOA Trustee, and fictitious Defendants took affirmative action to convey the Property a third party without disclosing the sale was subject to The Trust's Deed of Trust, in direct contravention of the HOA's duties to The Trust as promised in the CC&Rs.

141. The HOA, the HOA Trustee, and fictitious Defendants' breaches of the obligations, promises, covenants and conditions of the CC&Rs, and to act in good faith regarding same, proximately caused The Trust general and special damages in an amount in excess of \$10,000.00.

142. The Trust has been required to retain counsel to prosecute this action and is entitled to recover reasonable attorney's fees to prosecute this action.

PRAYER

Wherefore, Thornburg prays for judgment against all Counter-defendants, jointly and severally, as follows:

1. For a declaration and determination that The Trust's interest is secured against the Property, and that the Deed of Trust was not extinguished by the HOA Sale;

2. For a declaration and determination that The Trust's interest is superior to the interest, if any, acquired by the Buyer, or held or claimed by any other Counter-defendant;

3. For a declaration and determination that the HOA Sale was invalid to the extent it purports to convey the Property free and clear to the Buyer;

4. In the alternative, for a declaration and determination that the HOA Sale was invalid and conveyed no legitimate interest to the Buyer;

1 5. For a preliminary and permanent injunction that the Buyer, its successors,
2 assigns, and agents are prohibited from conducting a sale, transfer or encumbrance of the
3 Property;

4 6. For a preliminary injunction that the Buyer, its successors, assigns, and agents
5 pay all taxes, insurance and homeowner's association dues during the pendency of this action.

6 7. For a preliminary injunction that the Buyer be required to segregate and deposit
7 with the Court or a Court-approved trust account over which the Buyer has no control during
8 the pendency of this action.

9 8. If it is determined that The Trust's Deed of Trust has been extinguished by the
10 HOA Sale, for special damages in the amount equal to the fair market value of the Property or
11 the unpaid balance of the Venegas Loan and Deed of Trust, at the time of the HOA Sale,
12 whichever is greater.

13 9. For general and special damages in an amount in excess of \$10,000.00.

14 10. For costs incurred herein, including post-judgment costs;

15 11. For attorney's fees; and

16 12. For any and all further relief deemed appropriate by this Court.

17 DATED this 30th day of May, 2017.

18 WRIGHT, FINLAY & ZAK, LLP

19 /s/ Michael S. Kelley

20 Dana Jonathon Nitz, Esq.

21 Nevada Bar No. 0050

22 Michael S. Kelley, Esq.

23 Nevada Bar No. 10101

24 7785 W. Sahara Ave., Suite 200

25 Las Vegas, Nevada 89117

26 Attorney for Defendant/Counterclaimant/Counter-
27 Defendant, Thornburg Mortgage Securities Trust
28 2007-3

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

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding **THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S ANSWER TO SATICOY BAY LLC SERIES 34 INNISBROOK'S THIRD AMENDED COMPLAINT AND COUNTERCLAIMS** filed in Case No. A-14-710161-C does not contain the social security number of any person.

DATED this 30th day of May, 2017.

WRIGHT, FINLAY & ZAK, LLP

/s/ Michael S. Kelley
Dana Jonathon Nitz, Esq.
Nevada Bar No. 0050
Michael S. Kelley, Esq.
Nevada Bar No. 10101
7785 W. Sahara Ave., Suite 200
Las Vegas, Nevada 89117
Attorney for Defendant/Counterclaimant/Counter-Defendant, Thornburg Mortgage Securities Trust 2007-3

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

CERTIFICATE OF MAILING

I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 30th day of May, 2017, I did cause a true copy of **THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S ANSWER TO SATICOY BAY LLC SERIES 34 INNISBROOK'S THIRD AMENDED COMPLAINT AND COUNTERCLAIMS** to be e-served through the CM/ECF system and/or by depositing a true copy of same in the United States Mail, at Las Vegas, Nevada, addressed as follows:

"Bryan Naddafi, Esq." . bryan@olympialawpc.com
"Donald H. Williams, Esq." . dwilliams@dhwlawlv.com
David R. Koch . dkoch@kochscow.com
Eserve Contact . office@bohnlawfirm.com
Michael F Bohn Esq . mbohn@bohnlawfirm.com
Robin Gullo . rgullo@dhwlawlv.com
Staff . aeshenbaugh@kochscow.com
Steven B. Scow . sscow@kochscow.com

/s/ Jason Craig
An Employee of WRIGHT, FINLAY & ZAK, LLP