

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.

Supreme Court Case No. 80111

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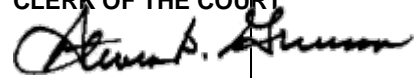
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

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

Defendants.

Case No.: A-14-710161-C

Department No.: XXVI

**TIMPA TRUST'S REPLY TO SATICOY
BAY LLC SERIES 34 INNISBROOK'S
OPPOSITION TO TIMPA TRUST'S
MOTION FOR SUMMARY JUDGMENT**

AND ALL RELATED ACTIONS

1 **POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 TIMPA TRUST U/T/D MARCH 3, 1999 (hereafter “Timpa Trust”), the former owner of 34
4 Innisbrook Ave., Las Vegas, NV 89113 (hereafter “Subject Property”), filed its Motion for
5 Summary Judgment (hereafter “MSJ”) making a claim pursuant to NRS 116.31164(7)(b) to the
6 proceeds remaining after the sale of the Subject Property (hereafter “Surplus Proceeds”).
7 SATICOY BAY LLC SERIES 34 INNISBROOK (hereafter “Saticoy”) filed an opposition to
8 the MSJ. In its opposition, Saticoy does not argue that it is entitled to the Surplus Proceeds.
9 Rather, Saticoy puts forth a theory that the lender in this matter, THORNBURG MORTGAGE
10 SECURITIES TRUST 2007-3 (hereafter “Thornburg”), is entitled to the Surplus Proceeds.
11 Putting aside the fact that Saticoy does not have standing to make a claim to the Surplus Proceeds
12 on behalf of another party (Thornburg would need to make a claim to the Surplus Proceeds,
13 which it has not), Saticoy is simply ignorant of the law. The theory put forth by Saticoy has
14 already been addressed and dismissed by the Supreme Court of Nevada in the unpublished
15 decision *Nevada Association Services Inc., v. Las Vegas Rental & Repair, LLC Series 78*, 2018
16 WL 6829004, No. 73157 (Dec. 27, 2018). In that case, the Supreme Court of Nevada held that
17 when a lender’s deed of trust survives the NRS 116 sale (as Thornburg’s did in the instant matter),
18 the lender is not entitled to receive the Surplus Proceeds left over from the foreclosure sale.
19
20
21

22 Saticoy concedes that, “There is little, if any, dispute regarding the facts at hand.”
23 Saticoy’s Opposition to Timpa Trust’s Motion for Summary Judgment (hereafter “Saticoy’s
24 Opposition”) at p. 8, l. 19. All that is left to do here is for the Court to apply the clear and
25 unambiguous language of NRS 116.31164(7)(b) to determine which party is entitled to the
26 \$1,168,865.05 in Surplus Proceeds deposited with the Court. The homeowner’s association
27
28

1 SPANISH TRAIL MASTER ASSOCIATION (hereafter “Spanish Trail”) has already been paid.
2 Timpa Trust recently filed a Reply stating that it does not object to RED ROCK FINANCIAL
3 SERVICES’ (hereafter “Red Rock”) request for a payment of \$29,161.69 for fees and costs
4 related to the instant litigation. Thornburg has not submitted any opposition to the MSJ making
5 a claim to the proceeds. Finally, Saticoy’s claim is without proper standing and is legally
6 unsound. Accordingly, Timpa Trust requests that this Court order that Red Rock receive
7 \$29,161.69 of the Surplus Proceeds and Timpa Trust receive the remaining \$1,139,703.36.
8

9 **II. LEGAL ARGUMENT**

10 **A. SATICOY HAS ALREADY CONCEDED THAT TIMPA TRUST IS**
11 **ENTITLED TO THE SURPLUS PROCEEDS**
12

13 One of the primary arguments in Timpa Trusts MSJ is that Saticoy has already conceded that
14 Timpa Trust is entitled to the Surplus Proceeds. As discussed at length in the MSJ, Saticoy stated
15 in the Joint Pre-Trial Memorandum filed on July 24, 2018 that if the Court finds that Thornburg’s
16 deed of trust survived the foreclosure sale (which the Court held it did) then the Surplus Proceeds
17 should go to Timpa Trust:
18

19 **8. What Party should receive the excess proceeds of the foreclosure sale that are**
20 **now being held by RRFS in its counsel’s client trust account.**

21 a. Should the Court hold that the foreclosure sale extinguished Thornburg’s
22 Deed of Trust, the excess proceeds of the sale should be paid to Thornburg.
23 On the other hand, if the Court holds that Thornburg’s Deed of Trust
24 survived the foreclosure sale, the excess proceeds should be paid to the
25 previous homeowners on the Property.

26 Timpa Trust MSJ, Exhibit 9. Saticoy’s Opposition completely ignores this argument and fails to
27 provide any response to it. Saticoy has effectively conceded this argument by failing to address
28

1 it in its opposition. *See Walsh v. Nev. Dep't of Human Res.*, 471 F.3d 1033, 1037 (9th Cir. 2006)
2 (failure to address issue in opposition deemed waiver). Saticoy had no response to Timpa Trust's
3 argument – and indeed there is none it could give – because it knows Timpa Trust is right.
4 Saticoy has already conceded that Timpa Trust is entitled to the Surplus Proceeds, and the Court
5 can grant the MSJ on that basis alone.
6

7 The Supreme Court of Nevada has elaborated that “one of [judicial estoppel’s] purposes
8 is to prevent parties from deliberately shifting their position to suit the requirements of another
9 case concerning the same subject matter.” *Vaile v. Eighth Judicial Dist. Court*, 118 Nev. 262,
10 273, 44 P.3d 506, 514 (2002). Indeed, judicial estoppel is designed “not only to prevent a party
11 from gaining an advantage by taking inconsistent positions, but also because of ‘general
12 consideration[s] of the orderly administration of justice and regard for the dignity of judicial
13 proceedings,’ and to ‘protect against a litigant playing fast and loose with the courts.’” *Hamilton*
14 *v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782 (9th Cir. 2001) (quoting *Russell v. Rolfs*, 893
15 F.2d 1033, 1037 (9th Cir. 1990)).
16

17 Saticoy fails to explain why it is suddenly contradicting its prior position. Clearly, its
18 tactic is to completely ignore the fact that it already conceded that Timpa Trust is entitled to the
19 Surplus Proceeds and hope that the Court will somehow forget this fact.
20

21 In sum, when the facts are viewed in the light most favorable to Saticoy, it has conceded
22 this issue, and Timpa Trust is entitled to the sale proceeds as a matter of law.

23 **B. THORNBURG IS NOT ENTITLED TO ANY SURPLUS PROCEEDS**

24 NRS 116.31164(7)(b) is a clear and unambiguous statute. It reads that after the
25 requirements of NRS 116.31164(7)(b)(1)-(4) are met, the remainder of the Surplus Proceeds
26 remaining after a foreclosure sale go to the owner of the real property at the time the foreclosure
27
28

1 sale took place. Timpa Trust and Saticoy are in agreement that NRS 116.31164(7)(b)(5) does
2 not read that the buyer of the foreclosure auction (in this case, Saticoy) should get the Surplus
3 Proceeds. Such an argument would be completely ridiculous, and Saticoy does not make such
4 an argument. However, it does argue that Thornburg should receive the Surplus Proceeds, even
5 though Thornburg's deed of trust survived the foreclosure sale.
6

7 Saticoy's argument, in sum, is:

8 Pursuant to the Order, the Court determined that Plaintiff
9 purchased its interest in the Property subject to the First Deed of
10 Trust held by Lender. Therefore, Plaintiff contends that the Excess
11 Proceeds in this matter should go to the Lender to be applied
towards paying off the First Deed of Trust that secures the
Property.

12 Saticoy's Opposition at p. 13, l. 13-16.

13 Not only does Saticoy lack standing to make such a claim on Thornburg's behalf, but,
14 even if Saticoy did have such standing, Saticoy's theory as to why Thornburg is entitled to the
15 Surplus Proceeds fails as a matter of law.
16

17 **i. SATICOY HAS NO STANDING TO MAKE A CLAIM ON**
18 **THORNBURG'S BEHALF**

19 Saticoy's argument that Thornburg is the proper party entitled to receive the Surplus
20 Proceeds that have been interplead with the Court is a non-starter because "[i]nterpleader is an
21 equitable proceeding to determine the rights of rival claimants to property held by a third person
22 having no interest therein" and "each claimant is treated as a plaintiff and must recover on the
23 strength of his own right or title and not upon the weakness of his adversary's." *Balish v.*
24 *Farnham*, 92 Nev. 133, 137, 546 P.2d 1297, 1299 (1976). Accordingly, Saticoy only has
25 standing to make a claim to the Surplus Proceeds on behalf of itself. Saticoy has no standing to
26 make a claim to the Surplus Proceeds on behalf of any other party, including on behalf of
27
28

1 Thornburg. The Court should reject the arguments in Saticoy’s Opposition on this basis alone.
2 Indeed, Saticoy’s attempts to assert claims for surplus proceeds on behalf of other parties have
3 already been roundly rejected by the Supreme Court of Nevada in other matters. On July 3, 2019,
4 the Supreme Court of Nevada observed:

5
6 [O]nce Saticoy Bay received the certificate of sale, it received all
7 it was entitled to at that time under the redemption statute—an
8 interest in the property. Therefore, whether the proceeds of the sale
9 must be distributed toward a subordinate claim of record pursuant
10 to subsection 4, such as that of [the lender] here, or to [the unit
owner] as remittance of any excess proceeds pursuant to
subsection 5, is not for Saticoy Bay to assert because those funds
no longer belong to Saticoy Bay.

11 ...

Rather, that argument is for [the lender] to make.

12 *Saticoy Bay LLC v. Nev. Ass’n Servs.*, 135 Nev., Adv. Op. 23 (2019).¹

13 In sum, when the facts are viewed in the light most favorable to Saticoy, it has no standing
14 to make a claim for Thornburg, and Timpa Trust is entitled to the sale proceeds as a matter of
15 law.

16
17 **ii. SATICOY’S THEORY AS TO WHY THORNBURG IS**
18 **ENTITLED TO THE SURPLUS PROCEEDS FAILS AS A**
19 **MATTER OF LAW**

20 Saticoy argues that Thornburg, not Timpa Trust, is entitled to the Surplus Proceeds under
21 NRS 116.31164(7)(b). Saticoy makes this argument by attempting to muddle a clear and
22 unambiguous statute, parsing wording that makes no sense, failing to cite any cases for its
23 position, and repeating the word “absurd” many times.

24
25
26
27 ¹ This recent Supreme Court of Nevada decision involved a post-sale redemption by the unit owner, not
28 the Miles Bauer tender issue central to the instant matter.

1 Saticoy makes an argument for Thornburg getting the Surplus Proceeds, a position that
2 Thornburg itself does not take as it did not respond to the MSJ. Thornburg, a sophisticated
3 institution, would have certainly made a claim to the Surplus Proceeds had it believed it was
4 legally entitled to them.

5
6 In an unpublished opinion, the Supreme Court of Nevada recently held:

7 Here, given the district court's conclusion that Bank of America's
8 deed of transfer survived the foreclosure sale, Bank of America is
9 in the same position it would have been had NAS accepted Bank
10 of America's tender; whether LVR or the HOA or the homeowner
11 own the property is irrelevant from Bank of America's perspective,
12 so long as its deed of trust survives. Additionally, because the sale
13 did not extinguish Bank of America's deed of trust, it was not
14 entitled to any of the sale proceeds and NAS was therefore not
15 unjustly enriched by retaining those proceeds.

16 *Nevada Association Services Inc., v. Las Vegas Rental & Repair, LLC Series 78*, 2018 WL
17 6829004, No. 73157 (Dec. 27, 2018) (emphasis added).

18 Saticoy asks this Court to interpret NRS 116.31164(7)(b) in a way that is directly
19 contradicted by the plain and unambiguous language of that statute, by the holding in *Nevada*
20 *Association Services Inc., v. Las Vegas Rental & Repair, LLC Series 78*, and by fundamental and
21 well-established principles of property law in all jurisdictions throughout the United States.
22 Saticoy erroneously claims that NRS 116.31164(7)(b) mandates that the proceeds from a junior
23 lienholder foreclosure sale should be paid to senior lienholders. This is wrong. A foreclosure
24 only affects the mortgages junior to the foreclosing mortgagee and has no effect upon the interest
25 of senior mortgagees; only the foreclosing mortgagee and the junior mortgagees have any interest
26 in the proceeds of a foreclosure, and once those parties are paid, any remaining proceeds go to
27 the homeowner. *See, e.g., U.S. v. Sage*, 566 F.2d 1114, 1114–15 (9th Cir. 1977). This principle
28 is black-letter law and is foundational enough that it is rarely, if ever, challenged in any published

1 decisions. This principle has been reaffirmed by the Supreme Court of Nevada,² by various
2 relevant federal courts,³ by state courts across the country,⁴ and is emphasized in practically all
3 secondary sources on the topic.⁵

4 Despite Saticoy's (entirely unsupported) claims, NRS 116 does not change the principal
5 that senior lienholders have no interest in the proceeds following a foreclosure. Indeed, NRS
6 116 unambiguously adopts this fundamental rule. NRS 116.31164(7)(b) lists the order in which
7 the proceeds of an HOA foreclosure sale are to be applied. Saticoy is essentially asking the Court
8 to read the statute as applying the proceeds of the sale to all parties with a claim of record, even
9 those claims that are superior and not subordinate to the HOA. The Court cannot interpret NRS
10 116.31164(7) in this manner as it disregards both the plain language of the statute and a long
11 history of precedent. Again, because the sale did not extinguish Thornburg's deed of trust,
12 Thornburg is not entitled to any of the Surplus Proceeds. This is plain and simple black letter
13 law. The analysis ends here.
14
15
16
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18

19 ² See, e.g., *Citibank Nevada, N.A. v. Wood*, 753 P.2d 341, 342 (Nev. 1988).

20 ³ See, e.g., *Theo. H. Davies & Co., Ltd. v. Long & Melone Escrow, Ltd.*, 876 F. Supp. 230, 234 (D. Haw.
21 1995) ("It is well established that a decree of foreclosure in a mortgage foreclosure action extinguishes
22 the liens of junior lienors who are parties to the action. Thus, the state court adjudicating the foreclosure
23 action must decide how the surplus proceeds will be disbursed to the junior lienors."); *In re Capital
24 Mortg. & Loan, Inc.*, 35 B.R. 967, 971 (Bankr. E.D. Cal. 1983).

25 ⁴ For a list of various state cases verifying the legal principle behind the distribution of surplus proceeds,
26 see *Garcia v. Stewart*, 906 So. 2d 1117, 1121 (Fla. 4th Dist. App. 2005) (holding that "[b]ecause senior
27 lienors' rights are unaffected by foreclosure, holders of liens which are senior in priority have no right to
28 share in a surplus produced by the foreclosure of a junior mortgage").

⁵ See, e.g., 59A C.J.S. Mortgages § 1331 ("Where senior lienors' rights are unaffected by foreclosure,
holders of liens that are senior in priority do not have the right to share in a surplus produced by the
foreclosure of a junior mortgage; thus, for instance, a condominium association with a senior lien for
unpaid assessments is not entitled to any portion of the surplus, since the association retains the right to
enforce its lien."); Restatement (Third) of Prop.: Mortgages § 7.4 (1997) ("When the foreclosure sale
price exceeds the amount of the mortgage obligation, the surplus is applied to liens and other interests
terminated by the foreclosure in order of their priority and the remaining balance, if any, is distributed to
the holder of the equity of redemption.").

1 In sum, when the facts are viewed in the light most favorable to Saticoy, Thornburg is
2 not entitled to any of the sale proceeds, and Timpa Trust is entitled to the sale proceeds as a
3 matter of law.

4 **III. CONCLUSION**

5
6 When the facts are viewed in the light most favorable to all opposing parties, Timpa Trust
7 is entitled the Surplus Proceeds as a matter of law. Timpa Trust respectfully requests that this
8 Court summarily adjudicate the claims to the Surplus Proceeds pursuant to NRCP 22 and NRS
9 116.31164, finding that neither Thornburg nor Saticoy are entitled to receive any portion of the
10 Surplus Proceeds and to rule that Timpa Trust is entitled to receive the Surplus Proceeds pursuant
11 to NRS 116.31164(7)(b)(5) as the “unit’s owner” at the time of the Foreclosure Sale. The Court
12 should distribute the remaining Surplus Proceeds to the two parties which have made a claim to
13 and are entitled to the Surplus Funds: Timpa Trust and Red Rock. Accordingly, Timpa Trust
14 requests the Court enter an Order directing the Clerk of the Court to immediately issue a check
15 made out to Red Rock in the amount of for \$29,161.69 and a check made out to Timpa Trust in
16 the amount of the remaining \$1,139,703.36.
17

18 Dated this 6th day of August 2019

19 **AVALON LEGAL GROUP LLC**

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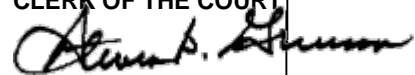
Attorneys for TIMPA TRUST
U/T/D MARCH 3, 1999

CERTIFICATE OF SERVICE

The undersigned hereby certifies on August 6, 2019, a true and correct copy of TIMPA TRUST'S REPLY TO SATICOY BAY LLC SERIES 34 INNISBROOK'S OPPOSITION TO TIMPA TRUST'S MOTION FOR SUMMARY JUDGMENT was served to the following at their last known address(es), facsimile numbers and/or e-mail/other electronic means, pursuant to: **E-MAIL AND/OR ELECTRONIC MEANS:** N.R.C.P. 5(b)(2)(D) and addresses(s) having consented to electronic service, via e-mail or other electronic means to the e-mail address(es) of the addressee(s).

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

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

Defendants.

Case No.: A-14-710161-C

Department No.: XXVI

AND ALL RELATED ACTIONS

ORDER

A hearing having been held on the 20th day of August 2019 at 9:30 a.m., on Timpa Trust
U/T/D March 3, 1999's (hereafter "Timpa Trust") Motion for Summary Judgment. Appearances

1 by Bryan Naddafi, Travis Akin, and Elena Nutenko on behalf of Timpa Trust, Melanie Morgan
2 on behalf of Thornburg Mortgage Securities Trust 2007-3 (hereafter "Thornburg"), Roger
3 Croteau on behalf of Saticoy Bay LLC, Series 34 Innisbrook (hereafter "Saticoy"), and Brody
4 Wight on behalf of Red Rock Financial Services LLC (hereafter "Red Rock"). There having
5 been no appearance by Spanish Trail Master Association (hereafter "Spanish Trail"). The Court,
6 having considered the moving papers, and the representations of counsel present at the hearing,
7 makes the following findings of fact and conclusions of law:
8

9 **I. Findings of Fact**

- 10 1. The property located at 34 Innisbrook Ave., Las Vegas, Nevada (hereafter "Subject
11 Property") was sold via non-judicial foreclosure sale on November 7, 2014 as a result
12 of homeowners' association delinquencies under NRS 116 (hereafter "HOA
13 Foreclosure Sale").
14
- 15 2. At the time of the HOA Foreclosure Sale, Timpa Trust was the record holder of title
16 of the Subject Property.
17
- 18 3. Saticoy purchased the Subject Property at the HOA Foreclosure Sale for
19 \$1,201,000.00.
20
- 21 4. Saticoy's purchase of the Subject Property at the HOA Foreclosure Sale resulted in
22 Saticoy owning the Subject Property subject to a deed of trust securing a loan in the
23 original amount of \$3,780,000.00, of which Thornburg is the current beneficiary
24 (hereafter "Thornburg Deed of Trust"). This finding was the result of a previously
25 granted Summary Judgment Motion in favor of Thornburg.
26
27
28

- 1 5. Red Rock, the party which conducted the HOA Foreclosure Sale, deposited funds in
2 the amount of \$1,168,865.05 with this Court on June 20, 2019 (hereafter "HOA
3 Excess Proceeds").
- 4 6. The HOA Excess Proceeds are the result of the money tendered by Saticoy at the
5 HOA Foreclosure Sale minus the amount Spanish Trail was owed by Timpa Trust.
- 6 7. On June 25, 2019, Timpa Trust filed a Motion for Summary Judgment seeking
7 adjudication of the order of the disbursement of the HOA Excess Proceeds.
- 8 8. On July 9, 2019, Red Rock filed a Limited Response to Timpa Trust's Motion for
9 Summary Judgment seeking a portion of the HOA Excess Proceeds.
- 10 9. On July 9, 2019, Timpa Trust filed a Reply to Red Rock's Limited Response.
- 11 10. On July 26, 2019, Saticoy filed an Opposition to Timpa Trust's Motion for Summary
12 Judgement stating that the HOA Excess Proceeds were to go directly to Thornburg
13 as a result of the HOA Foreclosure Sale.
- 14 11. On August 6, 2019, Timpa Trust filed a Reply to Saticoy's Opposition.
- 15 12. No other parties filed responsive pleadings to Timpa Trust's Motion for Summary
16 Judgment.
- 17 13. Thornburg has not foreclosed on the Subject Property via the Thornburg Deed of
18 Trust.
- 19 14. It appears likely that if Thornburg forecloses on the Thornburg Deed of Trust,
20 Thornburg will establish a substantial deficiency between what is owed to Thornburg
21 and how much Thornburg will receive from the sale.
- 22 15. Thornburg has not attempted to interfere with the deposit of the HOA Excess
23 Proceeds in recognition of Nevada's one-action rule and its relation to pursuit of a
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1 deficiency judgment. Accordingly, Thornburg has waived its claim to receive the
2 HOA Excess Proceeds. However, Thornburg has not waived any claim to a
3 deficiency balance after it forecloses on the Thornburg Deed of Trust, if it chooses to
4 do so. Moreover, Thornburg has not waived a claim that the HOA Excess Proceeds
5 could potentially satisfy such a deficiency.

6 16. Despite Thornburg's waiver of its claim to receive the HOA Excess Proceeds, Saticoy
7 has standing to assert where or how the HOA Excess Proceeds are to be utilized
8 because there will arguably be a substantial deficiency on the Subject Property if
9 Thornburg seeks to foreclose the Subject Property on the Thornburg Deed of Trust
10 and because Saticoy holds the Subject Property subject to the Thornburg Deed of
11 Trust.
12
13

14 17. Red Rock, as the trustee who conducted the HOA Foreclosure Sale, submitted a claim
15 to receive \$29,161.69 in attorney fees and costs from the HOA Excess Proceeds.

16 18. No party objected to Red Rock's request for \$29,161.69 of the HOA Excess Proceeds.

17 19. Moreover, considering this matter has lasted approximately five (5) years, Red
18 Rock's request for \$29,161.69 is reasonable.
19

20 20. Thornburg is not a subordinate interest holder in the HOA Foreclosure Sale.

21 21. The original borrowers are deceased the property was
22 held in trust and the Successor Co-Trustees are
Todd Timpa and Stuart Timpa. *TT*

23 II. Conclusions of Law

24 1. When there is no genuine issue of material fact and the moving party is entitled to
25 judgment as a matter of law, summary judgment is proper. See, *Charlie Brown*
26 *Constr. Co. v. Boulder City*, 106 Nev. 497, 499, 797 P.2d 946, 947 (1990) (citing
27 *Witsie v. Baby Grand Corp.*, 105 Nev. 291, 774 P.2d 432, 433 (1989)).
28

- 1 2. "Interpleader is an equitable proceeding to determine the rights of rival claimants to
2 property held by a third person having no interest therein" and "each claimant is
3 treated as a plaintiff and must recover on the strength of his own right or title and not
4 upon the weakness of his adversary's." *Balish v. Farnham*, 92 Nev. 133, 137, 546
5 P.2d 1297, 1299 (1976).
- 6 3. NRS 116.31164 governs the disbursement of the proceeds recovered from sales made
7 in accordance with NRS 116 such as Red Rock's HOA Foreclosure Sale.
- 8 4. NRS 116.31164 is clear and "the way the statute reads is the way the statute reads."
9 Typically, this Court will dispense remaining excess proceeds from NRS 116 sales
10 to the former homeowner.
11
- 12 5. What makes this matter somewhat unique is that the amount in question is larger than
13 other matters this Court has previously handled.
- 14 6. When there is a potential, albeit speculative, deficiency judgment for a future sale by
15 the lender that has yet to take place (as we have here), how shall the Court rule to
16 dispense excess foreclosure proceeds from an NRS 116 sale? The answer is to strictly
17 apply the statutory scheme.
18
- 19 7. Accordingly, Red Rock is entitled to receive the fees and costs it has submitted to be
20 paid from a portion of the HOA Excess Proceeds under NRS 116.31164.
- 21 8. Moreover, because there are no subordinate lienholders after Red Rock, the
22 remainder of the HOA Excess Proceeds, after payment to Red Rock, shall go to the
23 former homeowners Timpa Trust.
24
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1 9. Saticoy has not conceded any argument regarding the utilization of the HOA Excess
2 Proceeds under the doctrine of judicial estoppel based on previous filings in this
3 matter.

4 10. Although the Court accepted Saticoy's Opposition as late filed, no such arguments
5 presented by Saticoy in its Opposition are deemed waived by this Court.
6

7 11. The thirty (30) day automatic stay enumerated in NRCP 62(a) is applicable to a
8 decision regarding disbursement of interpleader funds.

9 **JUDGMENT**

10 The Court having made its Findings of Fact and Conclusions of Law:

11 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Timpa Trust's
12 Motion for Summary Judgment is GRANTED.
13

14 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Clerk of the
15 Court is to issue a check in the amount of \$29,161.69 from the funds previously deposited with
16 this Court on June 20, 2019, written payable to "Koch & Scow LLC" as payment for the attorney
17 fees and costs Red Rock is due under NRS 116.31164.
18

19 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Clerk of the
20 Court is to issue a check in the amount of \$1,139,703.36 from the funds previously deposited
21 with this Court on June 20, 2019, written payable to "Bryan Naddafi and Travis Akin" as
22 collection of the portion of HOA Excess Proceeds due and owing to Timpa Trust under NRS
23 116.31164.
24

25 *"Todd Timpa and Stewart Timpa successors co-trustees
26 of the Timpa Trust, and Bryan Naddafi and
27 Travis Akin, their attorneys.
28*

1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** issuance of any
2 checks by the Clerk of the Court can only be made until thirty (30) days have passed after service
3 of written notice of entry of this Order as required under NRCP 62(a).

4 DATED this 9th day of September 2019

6
7 
8 **HON. JUDGE GLORIA STURMAN**
9 **DISTRICT COURT JUDGE**

10 Respectfully submitted by:

11 **AVALON LEGAL GROUP LLC**

12 /s/ Bryan Naddafi

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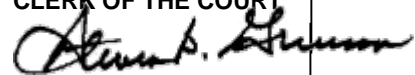
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

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

Defendants.

Case No.: A-14-710161-C

Department No.: XXVI

AND ALL RELATED ACTIONS

NOTICE OF ENTRY OF ORDER

1 PLEASE TAKE NOTICE that an Order was entered by the Court on the 11th day
2 of September 2019 in the instant action. A copy of said Order is attached hereto.

3 DATED this 11th day of September 2019

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Trustees of TIMPA TRUST U/T/D
MARCH 3, 1999*

CERTIFICATE OF SERVICE

The undersigned hereby certifies on September 11, 2019 a true and correct copy of the ORDER AND NOTICE OF ENTRY OF ORDER was served to the following at their last known address(es), facsimile numbers and/or e-mail/other electronic means, pursuant to:

E-MAIL AND/OR ELECTRONIC MEANS: N.R.C.P. 5(b)(2)(D) and addresses(s) having consented to electronic service, via e-mail or other electronic means to the e-mail address(es) of the addressee(s).

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the Timpa Trust*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

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

Defendants.

Case No.: A-14-710161-C

Department No.: XXVI

AND ALL RELATED ACTIONS

ORDER

A hearing having been held on the 20th day of August 2019 at 9:30 a.m., on Timpa Trust
U/T/D March 3, 1999's (hereafter "Timpa Trust") Motion for Summary Judgment. Appearances

<input checked="" type="checkbox"/> Summary Judgment	<input type="checkbox"/> Motion to Dismiss by Def(s)
<input type="checkbox"/> Stipulated Judgment	<input type="checkbox"/> Stipulated Dismissal
<input type="checkbox"/> Default Judgment	<input type="checkbox"/> Involuntary Dismissal
<input type="checkbox"/> Judgment of Arbitration	<input type="checkbox"/> Motion to Dismiss by Def(s)

1 by Bryan Naddafi, Travis Akin, and Elena Nutenko on behalf of Timpa Trust, Melanie Morgan
2 on behalf of Thornburg Mortgage Securities Trust 2007-3 (hereafter "Thornburg"), Roger
3 Croteau on behalf of Saticoy Bay LLC, Series 34 Innisbrook (hereafter "Saticoy"), and Brody
4 Wight on behalf of Red Rock Financial Services LLC (hereafter "Red Rock"). There having
5 been no appearance by Spanish Trail Master Association (hereafter "Spanish Trail"). The Court,
6 having considered the moving papers, and the representations of counsel present at the hearing,
7 makes the following findings of fact and conclusions of law:
8

9 **I. Findings of Fact**

- 10 1. The property located at 34 Innisbrook Ave., Las Vegas, Nevada (hereafter "Subject
11 Property") was sold via non-judicial foreclosure sale on November 7, 2014 as a result
12 of homeowners' association delinquencies under NRS 116 (hereafter "HOA
13 Foreclosure Sale").
14
15 2. At the time of the HOA Foreclosure Sale, Timpa Trust was the record holder of title
16 of the Subject Property.
17
18 3. Saticoy purchased the Subject Property at the HOA Foreclosure Sale for
19 \$1,201,000.00.
20
21 4. Saticoy's purchase of the Subject Property at the HOA Foreclosure Sale resulted in
22 Saticoy owning the Subject Property subject to a deed of trust securing a loan in the
23 original amount of \$3,780,000.00, of which Thornburg is the current beneficiary
24 (hereafter "Thornburg Deed of Trust"). This finding was the result of a previously
25 granted Summary Judgment Motion in favor of Thornburg.
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- 1 5. Red Rock, the party which conducted the HOA Foreclosure Sale, deposited funds in
2 the amount of \$1,168,865.05 with this Court on June 20, 2019 (hereafter "HOA
3 Excess Proceeds").
- 4 6. The HOA Excess Proceeds are the result of the money tendered by Saticoy at the
5 HOA Foreclosure Sale minus the amount Spanish Trail was owed by Timpa Trust.
- 6 7. On June 25, 2019, Timpa Trust filed a Motion for Summary Judgment seeking
7 adjudication of the order of the disbursement of the HOA Excess Proceeds.
- 8 8. On July 9, 2019, Red Rock filed a Limited Response to Timpa Trust's Motion for
9 Summary Judgment seeking a portion of the HOA Excess Proceeds.
- 10 9. On July 9, 2019, Timpa Trust filed a Reply to Red Rock's Limited Response.
- 11 10. On July 26, 2019, Saticoy filed an Opposition to Timpa Trust's Motion for Summary
12 Judgement stating that the HOA Excess Proceeds were to go directly to Thornburg
13 as a result of the HOA Foreclosure Sale.
- 14 11. On August 6, 2019, Timpa Trust filed a Reply to Saticoy's Opposition.
- 15 12. No other parties filed responsive pleadings to Timpa Trust's Motion for Summary
16 Judgment.
- 17 13. Thornburg has not foreclosed on the Subject Property via the Thornburg Deed of
18 Trust.
- 19 14. It appears likely that if Thornburg forecloses on the Thornburg Deed of Trust,
20 Thornburg will establish a substantial deficiency between what is owed to Thornburg
21 and how much Thornburg will receive from the sale.
- 22 15. Thornburg has not attempted to interfere with the deposit of the HOA Excess
23 Proceeds in recognition of Nevada's one-action rule and its relation to pursuit of a
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1 deficiency judgment. Accordingly, Thornburg has waived its claim to receive the
2 HOA Excess Proceeds. However, Thornburg has not waived any claim to a
3 deficiency balance after it forecloses on the Thornburg Deed of Trust, if it chooses to
4 do so. Moreover, Thornburg has not waived a claim that the HOA Excess Proceeds
5 could potentially satisfy such a deficiency.

6 *pending establishment of a deficiency*
7 16. Despite Thornburg's waiver of its claim to receive the HOA Excess Proceeds, Saticoy
8 has standing to assert where or how the HOA Excess Proceeds are to be utilized
9 because there will arguably be a substantial deficiency on the Subject Property if
10 Thornburg seeks to foreclose the Subject Property on the Thornburg Deed of Trust
11 and because Saticoy holds the Subject Property subject to the Thornburg Deed of
12 Trust.
13

14 17. Red Rock, as the trustee who conducted the HOA Foreclosure Sale, submitted a claim
15 to receive \$29,161.69 in attorney fees and costs from the HOA Excess Proceeds.

16 18. No party objected to Red Rock's request for \$29,161.69 of the HOA Excess Proceeds.

17 19. Moreover, considering this matter has lasted approximately five (5) years, Red
18 Rock's request for \$29,161.69 is reasonable.
19

20 20. Thornburg is not a subordinate interest holder in the HOA Foreclosure Sale.

21 *21. The original borrowers are deceased & the property was*
22 *held in trust and the Successor Co-Trustees are*
23 *Todd Timpa and Stuart Timpa. m*

24 **II. Conclusions of Law**

25 1. When there is no genuine issue of material fact and the moving party is entitled to
26 judgment as a matter of law, summary judgment is proper. See, *Charlie Brown*
27 *Constr. Co. v. Boulder City*, 106 Nev. 497, 499, 797 P.2d 946, 947 (1990) (citing
28 *Witsie v. Baby Grand Corp.*, 105 Nev. 291, 774 P.2d 432, 433 (1989)).

- 1 2. "Interpleader is an equitable proceeding to determine the rights of rival claimants to
2 property held by a third person having no interest therein" and "each claimant is
3 treated as a plaintiff and must recover on the strength of his own right or title and not
4 upon the weakness of his adversary's." *Balish v. Farnham*, 92 Nev. 133, 137, 546
5 P.2d 1297, 1299 (1976).
- 6 3. NRS 116.31164 governs the disbursement of the proceeds recovered from sales made
7 in accordance with NRS 116 such as Red Rock's HOA Foreclosure Sale.
- 8 4. NRS 116.31164 is clear and "the way the statute reads is the way the statute reads."
9 Typically, this Court will dispense remaining excess proceeds from NRS 116 sales
10 to the former homeowner.
11
- 12 5. What makes this matter somewhat unique is that the amount in question is larger than
13 other matters this Court has previously handled.
- 14 6. When there is a potential, albeit speculative, deficiency judgment for a future sale by
15 the lender that has yet to take place (as we have here), how shall the Court rule to
16 dispense excess foreclosure proceeds from an NRS 116 sale? The answer is to strictly
17 apply the statutory scheme.
18
- 19 7. Accordingly, Red Rock is entitled to receive the fees and costs it has submitted to be
20 paid from a portion of the HOA Excess Proceeds under NRS 116.31164.
21
- 22 8. Moreover, because there are no subordinate lienholders after Red Rock, the
23 remainder of the HOA Excess Proceeds, after payment to Red Rock, shall go to the
24 former homeowners Timpa Trust.
25
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1 9. Saticoy has not conceded any argument regarding the utilization of the HOA Excess
2 Proceeds under the doctrine of judicial estoppel based on previous filings in this
3 matter.

4 10. Although the Court accepted Saticoy's Opposition as late filed, no such arguments
5 presented by Saticoy in its Opposition are deemed waived by this Court.
6

7 11. The thirty (30) day automatic stay enumerated in NRCP 62(a) is applicable to a
8 decision regarding disbursement of interpleader funds.

9 **JUDGMENT**

10 The Court having made its Findings of Fact and Conclusions of Law:

11 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Timpa Trust's
12 Motion for Summary Judgment is GRANTED.
13

14 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Clerk of the
15 Court is to issue a check in the amount of \$29,161.69 from the funds previously deposited with
16 this Court on June 20, 2019, written payable to "Koch & Scow LLC" as payment for the attorney
17 fees and costs Red Rock is due under NRS 116.31164.
18

19 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Clerk of the
20 Court is to issue a check in the amount of \$1,139,703.36 from the funds previously deposited
21 with this Court on June 20, 2019, written payable to "Bryan Naddahi and Travis Akin" as
22 collection of the portion of HOA Excess Proceeds due and owing to Timpa Trust under NRS
23 116.31164.
24

25 *"Todd Timpa and Stewart Timpa successor co-trustees
26 of the Timpa Trust, and Bryan Naddahi and
27 Travis Akin, their attorneys.
28*

1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** issuance of any
2 checks by the Clerk of the Court can only be made until thirty (30) days have passed after service
3 of written notice of entry of this Order as required under NRCP 62(a).

4 DATED this 9th day of September 2019

6
7 
8 **HON. JUDGE GLORIA STURMAN**
9 **DISTRICT COURT JUDGE**

10 Respectfully submitted by:

11 **AVALON LEGAL GROUP LLC**

12 /s/ Bryan Naddafi

13

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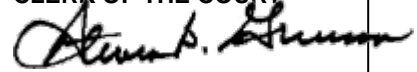
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DISTRICT COURT
CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

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

Defendants.

AND ALL RELATED ACTIONS

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

Hearing Requested

**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

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

Dated this 24th day of September, 2019.

ROGER P. CROTEAU & ASSOCIATES, LTD

By: /s/ *Roger Croteau*

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

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

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

1 Wood’). 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 • 116.31164(3)(c)(4): Satisfaction in the order of priority of any subordinate claim of record
- 20 • 116.31164(7)(b)(4): Satisfaction in the order of priority of any subordinate claim of record¹

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

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
13 The Trust's arguments do not fare any better under equitable principles of Nevada law.
14 Here, the Court sat as a court of equity and impaired Plaintiff's title to the Property based on the
15 Bank's purported tender of the super-priority component of the HOA's super-priority lien prior to
16 the NRS 116 foreclosure sale of the Property by the HOA to Plaintiff. For its part, the Trust would
17 apparently have this Court believe that its exercise of equitable jurisdiction ceases with that result.
18 It does not. Plaintiff respectfully submits that what equity starts, equity must finish, as well.
19 Plaintiff now calls upon the Court to do just that: complete the adjudication of this matter as a court
20 of equity, including its determination regarding the appropriate disposition of the Excess Proceeds.
21 NRS 116.1108 supplements the entirety of NRS 116 with equitable principles of Nevada law,
22 including the distribution statute set forth in NRS 116.3116(4)(7)(b).
23

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

18 **STATEMENT OF RELEVANT FACTS²**

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

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

26 **LEGAL ARGUMENT**

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 Satcoy 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 1, 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 The emphatic command of the Nevada Legislature is, in the words of the Trust, plain, clear, and
14 unambiguous: the Excess Proceeds were required to be distributed to the Bank to pay down the
15 debt secured by the deed of trust, and not to the Trust. For its part, the Trust pretends to pay
16 fidelity to the statutory text set forth in NRS 116.3116(7)(b)(4), but it never contends with the
17 express and mandatory requirement that subordinate claims must be determined by reference to
18 such claims that are “of record.”
19
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.

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
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27
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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 24th 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*

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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

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

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

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

/s/ Jennifer Lee

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

EXHIBIT A

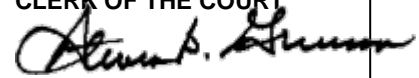
EXHIBIT A

Statement Date: September 12, 2019

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

Statement Date: September 12, 2019

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



MSTE
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DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

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

Defendants.

AND ALL RELATED ACTIONS

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

Hearing Requested

**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)**

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 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) and NRAP 8(a)(1)(A)* (the "*MSTE*"). This *MSTE* is made and based upon the attached Memorandum of Points and Authorities, the papers and pleadings on file herein, and any oral argument that this Honorable Court may entertain at the time of hearing of

1 this matter.

2 Dated this 2nd day of October, 2019.

3 ROGER P. CROTEAU & ASSOCIATES, LTD

4 By: /s/ *Roger Croteau*

5 ROGER P. CROTEAU, ESQ.

6 Nevada Bar No.: 4958

7 2810 W. Charleston Blvd., Ste. 75

8 Las Vegas, Nevada 89102

9 *Attorney for Plaintiff*

10 *Saticoy Bay LLC Series 34 Innisbrook*

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **INTRODUCTION**

13 Plaintiff respectfully submits that the Court should grant the MSTE with respect to the
14 excess proceeds of approximately \$1.2 million (the “*Excess Proceeds*”) that are the subject of the
15 Court’s order of September 11, 2019 concerning the same (the “*Excess Proceeds Order*”).
16 Following immediately on the heels of the Court’s entry of the Excess Proceeds Order, Plaintiff
17 timely and promptly filed and served *Plaintiff’s Motion for Reconsideration Under NRCP 59(e)*
18 *and 60(b) of (I) the Court’s Summary Judgment Order of December 3, 2018 and (II) the Court’s*
19 *Order Concerning the Distribution of Excess Proceeds* (the “*MRCN*”) on September 24, 2019, that
20 seeks substantive changes to the Excess Proceeds Order See *AA Primo Builders, LLC v.*
21 *Washington*, 126 Nev. 578, 245 P.3d 1190, 2010 Nev. LEXIS 55, 126 Nev. Adv. Rep. 53.
22 Immediately thereafter, the Court noticed the MRCN for a hearing scheduled to take place on
23 October 29, 2019 at 9:00 a.m. (PT) before this Court. Clearly, these matters are moving quickly.

24 NRCP 62(b) expressly authorizes the Court to issue a stay of both execution on the Excess
25 Proceeds Order and either the commencement or continuation of any proceeding(s) to enforce that
26 order. *See* NRCP 62(b). The only express stipulation is that the Court may impose such a stay
27 only “[o]n appropriate terms for the opposing [Timpa Trust’s] security...” *See id.* (emphasis
28 added). NRCP 62(b)’s use of the term “security” in the context of the MRCN is highly

1 illuminating and, indeed, dispositive of the Court’s analysis here as the Court’s maintenance of the
2 status quo more than adequately provides for the Timpa Trust’s security. In accordance with the
3 requirements of NRCP 62(b), appropriate terms are already in place for the security of the Timpa
4 Trust as the Excess Proceeds are presently held in this Court’s registry and are not in any real
5 danger of being dissipated or becoming the subject of a defalcation. The continued accrual of
6 interest on the Excess Proceeds provides additional protection against any alleged injury or injuries
7 the Timpa Trust may claim, even in the event that the Court is willing to entertain arguments from
8 the Timpa Trust that extend beyond the concept of security—which, of course, the Court should not
9 do.
10

11 Failing all of that, Plaintiff respectfully submits and represents to the Court that it stands
12 ready to post a limited, reasonable bond—if, and only if, the Court conditions any grant of
13 Plaintiff’s MSTE upon Plaintiff posting such a bond. If a bond is posted, Plaintiff’s requested stay
14 must issue in accordance with NRCP 62(d), and Nevada courts possess the inherent authority to
15 grant a stay, even under NRCP 62(d), even in the absence of the posting of a bond in the full
16 judgment amount—an outcome that should not occur here as Plaintiff’s request for relief in the
17 MRCN is expressly predicated upon NRCP 62(b) and its express focus on appropriate terms for the
18 opposing party’s security in the specific context of adjudication of post-judgment motions by the
19 Court, rather than a stay granted during the pendency of a full-length appeal. Perhaps most
20 importantly, the Excess Proceeds are presently in the Court’s registry. *See, e.g., Nelson v. Heer*,
21 122 P.3d 1252, 1253 (Nev. 2005) (recognizing the inherent power of Nevada courts to grant a stay
22 under NRCP 62(d) even in the absence of a full bond).
23
24

25 Plaintiff respectfully submits that the Court should grant the MSTE and stay both execution
26 on the Excess Proceeds Order and either the commencement or continuation of any proceeding(s)
27 to enforce that order pending the Court’s adjudication of the MRCN. The demonstrated speed with
28

1 which these matters are moving, and the more-than-adequate safeguards in place as security for the
2 Excess Proceeds both militate in favor of the MSTE being granted. The foregoing coupled with the
3 fact this issue has never been directly addressed by the Nevada Supreme Court should provide
4 additional basis for a conservative approach to the release of the Excess Proceeds pursuant to the
5 Excess Proceeds Order. And that is what the Court should do here as there exists a substantial
6 likelihood that Plaintiff will prevail—at least in some fashion—under the MRCN. The MSTE
7 should, therefore, be granted.
8

9 **STATEMENT OF RELEVANT FACTS¹**

10 1. On September 11, 2019, the Court entered the Excess Proceeds Order. As relevant here, the
11 Excess Proceeds Order provides, “It is further ordered, adjudged, and decreed issuance of any
12 checks by the Clerk of the Court can only be made until thirty (30) days have passed after service
13 of written notice of entry of this Order as required under NRCP 62(a).” *Excess Proceeds Order*,
14 pg. 7 of 8 (emphasis added).

15 2. Notice of entry of the Excess Proceeds Order appears to have been filed and served on
16 September 11, 2019. The automatic stay under NRCP 62(a) enjoining the commencement or
17 continuation of any proceedings with respect to, or efforts to execute on, the Excess Proceeds Order
18 is, therefore, set to expire, and the related injunction will dissolve, on October 11, 2019.

19 3. The Court has scheduled a hearing on the MRCN for October 29, 2019 at 9:00 a.m. (PT).
20 The MRCN is expressly predicated on NRCP 59(e) and 60(b). Given the timing issues involved
21 here, Plaintiff now moves the Court under NRCP 62(b)(3) and (b)(4) for entry of an order
22 continuing the uninterrupted the stay that is already in place with respect to the Excess Proceeds
23 Order under NRCP 62(a) until the Court’s proceedings with respect to the MRCN have run their
24 course.
25
26

27 ¹ As the Court has already been apprised of most of the relevant facts here through prior motion practice, both with
28 respect to the Summary Judgment Order (defined below) and Excess Proceeds Order (defined below), Plaintiff’s
statement of relevant facts is necessarily brief. Again, the relevant factual allegations of the Saticoy Opposition are
incorporated by reference.

1 4. The original counterparties and the borrowers obligated under the Promissory Note secured
2 by the First Deed of Trust representing the outstanding indebtedness claimed by Thornburgh
3 Mortgage Securities Trust 2007-3 (the “*Bank*”) related to both that certain real property located at
4 34 Innisbrook Avenue, Las Vegas, Nevada 89113 (the “*Property*”) and the Timpa Trust are now
5 deceased.

6 5. Upon information and belief, the Timpa Trust does not have the financial wherewithal in
7 the way of cash, cash equivalents, and/or any assets that can be monetized to satisfy a claim in the
8 amount of the Excess Proceeds in the event that either the Court grants the MRCN or the Excess
9 Proceeds Order is otherwise reversed on appeal. Plaintiff also alleges upon information and belief
10 that the Excess Proceeds will be immediately distributed by the Timpa Trust to the beneficiaries of
11 that Trust, leaving Plaintiff and/or the Bank (as otherwise appropriate) to chase after the proceeds
12 and without a meaningful or viable remedy as against the initial recipient of the Excess Proceeds,
13 the Timpa Trust. The Court’s Excess Proceeds Order has created a conundrum for the Plaintiff and
14 the Lender.

15 6. As stated in open court and in Plaintiff’s Motion for Reconsideration, the Lender is in its
16 view prevented from pursuing the Excess Proceeds to be applied to the debt due Lender as the First
17 Trust Deed Holder, as it believed that it is prevented from doing so due to Nevada’s “single action
18 rule”. As of September 12, 2019, the Lender is due \$6,643,306.90, as evidenced by the Payoff
19 Statement Amended attached hereto as Exhibit A. The borrower, obligor on the Promissory Note
20 and First Deed of Trust is Frank A. Timpa. See Exhibit A. Frank A. Timpa was the settler of the
21 Timpa Trust but is now deceased. The Timpa Trust has no contractual priority with Lender pursuant
22 to the Promissory Note and/or the First Deed of Trust. The current market value of the Property
23 located at 34 Innisbrook Ave, Las Vegas, NV that is secured by the First Deed of Trust is
24 approximately \$2,704,961.00. See Exhibit B attached hereto. If the Lender forecloses upon the
25 Property and secures the high amount of \$2,704,961.00 for the Property at its foreclosure sale, the
26 Lender will incur a deficiency of at least \$3,938,645.00, with a deceased borrower, obligor and no
27 reasonable means of any collection of the deficiency judgment. Conversely, the Plaintiff will have
28 reasonable possibility of collecting from the Timpa Trust as it is believed upon information and

1 belief that the Timpa Trust will immediately disburse the Excess Proceeds to its contingent
2 beneficiaries who are not parties to this lawsuit, the Promissory Note and/or the First Deed of
3 Trust. The nearly \$1,200,000.00 windfall upon information and belief is the only asset of the Timpa
4 Trust and/or Frank Timpa, the borrower, obligor. Equity dictates a seasoned, conservative approach
5 to this Motion for Stay and the certain appeal to obtain a ruling from the Nevada Supreme Court on
6 its determination of what a “subordinate lien holder of record” actually means pursuant to NRS 116
7 *et seq.* The MSTE should be granted in order to preserve the status quo.

8 LEGAL ARGUMENT

9 A. STATEMENT OF THE LAW

10 NRCP 62(b) governs MSTE as Plaintiff’s requested relief therein pertains to Plaintiff’s
11 post-judgment MRCN and provides in relevant part as follows:

12 **b) Stay Pending the Disposition of Certain Post-judgment Motions.** *On appropriate terms for*
13 *the opposing party’s security*, the court may stay execution on a judgment — or any proceedings to
enforce it — pending disposition of any of the following motions:

- 14 (1) under Rule 50, for judgment as a matter of law;
- 15 (2) under Rule 52(b), to amend the findings or for additional findings;
- 16 (3) under Rule 59, for a new trial or to alter or amend a judgment; or
- 17 (4) under Rule 60, for relief from a judgment or order.

18 NRCP 62(b) (emphasis added).

19 Plaintiff’s MRCN is expressly predicated upon NRCP 59(e) and 60(b). One of the
20 applicable background legal rules the Court must bear in mind in adjudicating the MSTE is that the
posting of a bond results in the automatic imposition of a stay of a judgment or order. *See* NRCP
21 62(d); *see also Nelson*, 122 P.3d at 1254 (“**The purpose of security for a stay pending appeal is to**
22 **protect the judgment creditor’s ability to collect the judgment if it is affirmed by preserving the**
23 **status quo and preventing prejudice to the creditor arising from the stay.**”) (emphasis added). In
24 *Nelson*, the Supreme Court of Nevada adopted the following five factors to be considered by a
25 reviewing court to grant a stay under NRCP 62(d) in considering whether the posting of a bond
26 may be waived and/or alternate security substituted for a bond:

- 27 (1) The complexity of the collection process;
- 28 (2) The amount of time required to obtain a judgment after it is affirmed on appeal;

1 (3) The degree of confidence that the district court has in the availability of funds to pay the
2 judgment;

3 (4) Whether the defendant's ability to pay the judgment is so plain that the cost of a bond
4 would be a waste of money; and

5 (5) Whether the defendant is in such a precarious financial situation that the requirement to post
6 a bond would place other creditors of the defendant in an insecure position.

Id.

7 As to the second factor, a reviewing court is required to take into consideration how long
8 the matter is likely to take to be resolved on appeal. *See id.* The Court's consideration of these
9 factors is particularly apt in the context of Plaintiff request in the MSTE for a stay under NRCP
10 62(b). The twin purposes for imposing a stay, as well as the Court's application of the
11 aforementioned factors all militate in favor of the Court granting the MSTE. The MSTE should,
12 therefore, be granted.

13 **B. THE COURT SHOULD GRANT THE MSTE AS THE TWIN PURPOSES SERVED**
14 **BY A STAY ARE SATISFIED, AS IS THE FIVE FACTOR TEST FOR**
15 **ALTERNATE SECURITY IN NELSON.**

16 "The purpose of security for a stay pending appeal is to protect the judgment creditor's
17 ability to collect the judgment if it is affirmed by preserving the status quo and preventing prejudice
18 to the creditor arising from the stay." *Nelson*, 122 P.3d at 1254. The Court's ability to stay matters
19 under NRCP 62(b) with respect to post-judgment motions like the MRCN necessarily involves a
20 time horizon far shorter than that associated with a typical appeal. And NRCP 62(b)'s requirement
21 that the Court take into consideration "appropriate terms for the opposing party's security"
22 necessarily includes the shorter time horizon as part of the Court's decision-making calculus. The
23 Court's possession and maintenance of the Excess Proceeds in the Court's registry clearly
24 preserves the status quo, and the Timpa Trust cannot credibly contend otherwise. In a similar vein,
25 given the speed with which matters related to the MRCN are moving before the Court, with a
26 hearing scheduled for the MRCN on October 29, 2019 at 9:00 a.m. (PT), the Timpa Trust also
27 cannot credibly claim that the imposition/continuation of the Court's prior stay of the Excess
28 Proceeds Order prejudices the Timpa Trust—certainly not in any legally significant or cognizable

1 way. Since the twin purposes served by granting a stay pending the Court's consideration of the
2 MRCN are satisfied here, the Court should grant the MSTE.

3 The Court's application of the five factor test from *Nelson* also requires the same result. All
4 five factors—to the extent each discrete factor has any immediate relevance here—are satisfied by
5 the Court's continued possession and maintenance of the Excess Proceeds in the Court's registry.
6 This proposition is so plainly obvious. Clearly, factors 1-4 are clearly satisfied by maintaining the
7 status quo—i.e., keeping the Excess Proceeds in the registry of the Court pending the Court's
8 adjudication of the MRCN. The Court's adjudication of the MRCN does not involve a time
9 horizon approaching anything the amount of time typically involved in prosecuting an appeal. So,
10 the factor of time weighs heavily in favor of granting the MSTE and seriously undercuts any claims
11 of potential prejudice. Also, of importance, if the Property is foreclosed and a deficiency judgment
12 is sought by the Lender, the Lender would be able to look to the Excess Proceeds held by the Court
13 for partial satisfaction of its deficiency action.

14 Based on the foregoing, Plaintiff respectfully submits that there exists ample cause and
15 security for granting the stay requested in the MSTE without the need for Plaintiff to post a bond.
16 In the event that a bond is required, Plaintiff respectfully submits that any such bond should be
17 minimal based on all of the facts and circumstances present in this case.

18 CONCLUSION

19 Based upon the foregoing, this Court should grant the MSTE as good cause for such relief
20 exists. The Court should continue its current stay under NRCP 62(a) in the Excess Proceeds Order
21 pursuant to NRCP 62(b) for a period of 30 days following service of notice of entry of an order
22 adjudicating the MRCN.

23 Dated this 2nd day of October, 2019.

ROGER P. CROTEAU & ASSOCIATES, LTD

24 By: /s/ Roger Croteau

25 ROGER P. CROTEAU, ESQ.

26 Nevada Bar No.: 4958

2810 W. Charleston Blvd., Ste. 75

Las Vegas, Nevada 89102

Attorney for Plaintiff

Saticoy Bay LLC Series 34 Innisbrook

CERTIFICATE OF SERVICE

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

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

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Travis Akin travisakin8@gmail.com

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

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

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

/s/ Jennifer Lee

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

EXHIBIT A

EXHIBIT A

Statement Date: September 12, 2019

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

Statement Date: September 12, 2019

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
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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 estimated 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 B

EXHIBIT B

- Zestimate®

\$2,704,961

Estimated sales range: \$2.27M - \$3.19M

Zestimate history

No data available at this time.

•Price and tax history

Price history

Date	Event	Price
7/25/2018	Listing removed	\$7,000
6/5/2018	Listed for rent	\$7,000(+7.7%)
11/4/2016	Listing removed	\$6,500(-18.8%)
6/7/2016	Listing removed	\$8,000
6/26/2008	Listing removed	\$5,250,000
3/28/2008	Price change	\$5,250,000(-8.7%)
8/15/2007	Listed for sale	\$5,750,000(+1696.9%)

See more price history

Tax history

Year	Property Taxes	Tax Assessment
2019	\$19,288(+6.9%)	\$848,972
2018	\$18,050	\$848,972(+0.7%)
2017	\$18,050	\$843,315(+15.5%)

See more tax history

Find assessor info on the county website

- Monthly cost

\$12,988

Estimated monthly cost

Principal & interest\$9,749/mo

Mortgage insurance\$0/mo

Property taxes\$2,184/mo

Home insurance\$899/mo

HOA fees\$155/mo

UtilitiesNot included

All calculations are estimates and provided for informational purposes only. Actual amounts may vary.

Don't miss out on this home, or any other on your list.Get pre-qualified

- **Nearby schools in Las Vegas**

GreatSchools rating

9/10

Lucille S Rogers Elementary School

- Grades:PK-5
- Distance:1.1 mi

5/10

Grant Sawyer Middle School

- Grades:6-8
- Distance:1.8 mi

5/10

Durango High School

- Grades:9-12

- Distance:1.3 mi

About GreatSchools

GreatSchools ratings based on test scores and additional metrics when available.

About the ratings: Historically, GreatSchools ratings have been based solely on a comparison of standardized test results for all schools in a given state. As of September 2017, the GreatSchools ratings also incorporate additional information, when available, such as college readiness, academic progress, advanced courses, equity, discipline and attendance data. GreatSchools ratings are designed to be a starting point to help parents compare schools, and should not be the only factor used in selecting the right school for your family. [Learn more](#)

Disclaimer: School attendance zone boundaries are provided by a third party and subject to change. Check with the applicable school district prior to making a decision based on these boundaries. In addition, school data is obtained from a third party vendor and not guaranteed to be accurate, up to date or complete.

[Read more](#)

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.Commute time

Commute features are unavailable. Please try again later.

.Neighborhood: Spring Valley

This is a buyer's market

There are more homes for sale than potential buyers.

Neighborhood home value

Spring Valley home values have risen **3.3 %** over the past 12 months.

One-year prediction

Zillow predicts the home values in Spring Valley will rise **2.2%** in the next year.

Median home comparison

This home is valued **835.5%** higher than the median home in Spring Valley

Median Zestimate®

\$274,000

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-
-
-

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-
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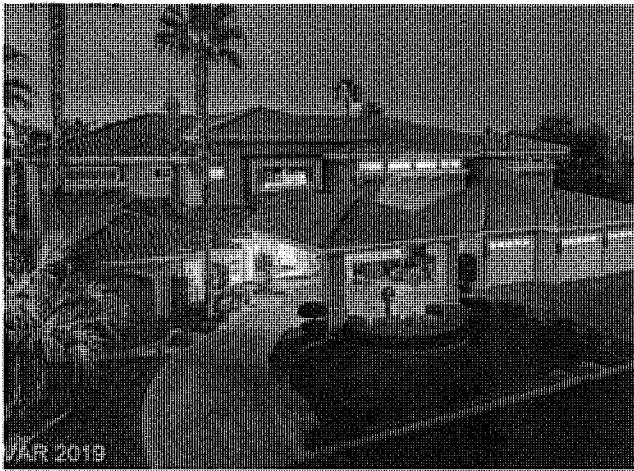
\$2,750,000

42 Sawgrass Ct, Las Vegas, NV 89113

4 bd

6 ba

7.7k sqft



\$2,999,999

82 Innisbrook Ave, Las Vegas, NV 89113

6 bd

7 ba

9.6k sqft



\$1,999,990

76 Innisbrook Ave, Las Vegas, NV 89113

5 bd

7 ba

8.1k sqft

- Report problem with listing
- Nevada
- Las Vegas
- 89113
- Spring Valley
- 34 Innisbrook Ave

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- North Las Vegas Real estate

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Roger Croteau

From: Zillow <shared-home@mail.zillow.com>
Sent: Wednesday, October 2, 2019 12:27 PM
To: Roger Croteau
Subject: Thanks for sharing a home with rcroteau@croteaulaw.com



Your message below was successfully sent to rcroteau@croteaulaw.com.

"Check out this home I found on Zillow."

Shared by
rcroteau@croteaulaw.com



5 bd | 8 ba | 11,354 sqft

34 Innisbrook Ave, Las Vegas, NV

● Pre-foreclosure (auction)

Nearby homes similar to the one you shared

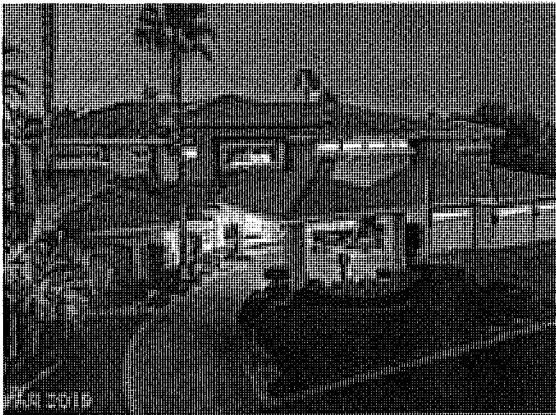


\$2,750,000

4 bd | 6.0 ba | 7713 sqft

42 Sawgrass Ct, Las Vegas, NV 89113

● For Sale

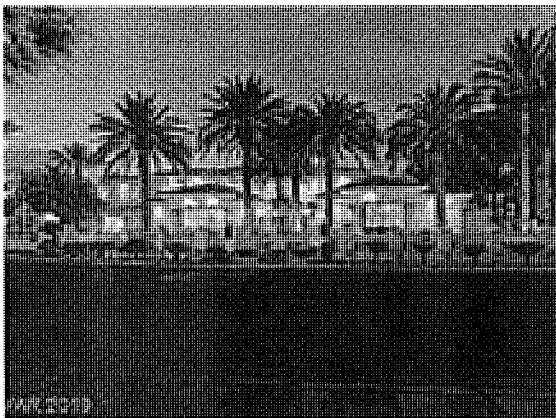


\$2,999,999

6 bd | 7.0 ba | 9603 sqft

82 Innisbrook Ave, Las Vegas, NV
89113

● For Sale



\$1,999,990

5 bd | 7.0 ba | 8165 sqft

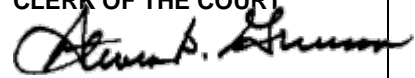
76 Innisbrook Ave, Las Vegas, NV
89113

● For Sale

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OPPM

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Email: jared.sechrist@akerman.com

*Attorneys for defendant, counterclaimant, and counter-
defendant Thornburg Mortgage Securities Trust 2007-3*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

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

Defendants.

Case No.: A-14-710161-C

Division: XXVI

**THORNBURG MORTGAGE
SECURITIES TRUST 2007-3'S
LIMITED OPPOSITION TO
PLAINTIFF'S MOTION FOR
RECONSIDERATION**

AND ALL RELATED ACTIONS

Defendant, counterclaimant, and counter-defendant Thornburg Mortgage Securities Trust 2007-3 files this limited opposition to plaintiff Saticoy Bay LLC Series 34 Innisbrook's motion for reconsideration under NRCPC 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.

I. INTRODUCTION

The first sentence of Saticoy's motion for reconsideration states this court's December 3, 2018 order granting summary judgment in Thornburg's favor "should be vacated." However, Saticoy does not take issue with the finding that Thornburg's deed of trust remains in a first lien

JA2117

1 position due to presale tender of the superpriority portion of the HOA's lien. Rather, it appears
2 Saticoy seeks a modification of the parties' positions resulting from that determination. As the order
3 currently stands, Saticoy's title interest is subject to Thornburg's deed of trust. In light of the
4 significant excess proceeds at issue, Saticoy now advocates that the HOA sale should be unwound
5 and the parties placed into the positions they were in prior to the November 7, 2014 sale.

6 **II. RELEVANT FACTS AND PROCEDURAL HISTORY**

7 Frank Timpa executed a deed of trust securing a \$3,780,000 loan to purchase the subject
8 property. The loan went into default and is due for its February 1, 2008 payment. (**Ex. A**, payoff).
9 The current balance due on the loan is \$6,648,316.68. *Id.*

10 Saticoy filed suit seeking to quiet title after purchasing its interest at a November 7, 2014
11 HOA foreclosure sale. On December 5, 2018, this court entered its findings of fact, conclusions of
12 law and order granting Thornburg's motion for summary judgment and holding the HOA foreclosed
13 on its subpriority lien due to presale tender of the superpriority portion of the HOA's lien. The order
14 went on to state Thornburg's deed of trust remains in first position, and Saticoy purchased the
15 property subject to Thornburg's lien. (**Ex. B**, Notice of Entry of FOF/COL).

16 **III. STATEMENT OF LIMITED OPPOSITION**

17 To the extent Saticoy simply seeks to modify the outcome of the court's findings from (1)
18 Saticoy taking its title subject to the deed of trust to (2) an outcome whereby the sale is unwound,
19 Thornburg does not object given the unique circumstances of this case. However, should any party
20 seek to argue that the findings in the court's December 3, 2018 order be vacated in their entirety,
21 Thornburg objects. The effect of the presale tender has not been impacted in any way by subsequent
22 briefing on the distribution of excess proceeds. There is no basis for any order vacating or
23 modifying the order insofar as it determined Thornburg's deed of trust remained in a first lien
24 position following the HOA foreclosure. Thornburg does not interpret Saticoy's motion as seeking
25 to disturb the court's finding in that regard, but nevertheless submits this limited opposition out of an
26 abundance of caution.

27 ///

28 ///

1 **IV. CONCLUSION**

2 Thornburg opposes Saticoy's motion to the extent it requests that the order granting summary
3 judgment in Thornburg's favor is vacated in its entirety or modified in a manner impacting the
4 finding that presale tender preserved Thornburg's first lien position.

5 Dated: October 4, 2019

6 **AKERMAN LLP**

7 /s/ Melanie D. Morgan

8 MELANIE D. MORGAN, ESQ.

9 Nevada Bar No. 8215

JARED M. SECHRIST, ESQ.

Nevada Bar No. 10439

10 1635 Village Center Circle, Ste. 200

11 Las Vegas, Nevada 89134

12 *Attorneys for Thornburg Mortgage Securities Trust*
13 *2007-3*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 4th day of October, 2019, I caused to be served a true and correct copy of the foregoing **THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S LIMITED OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION**, in the following manner:

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

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-------------	-----------------------

ROGER P. CROTEAU & ASSOCIATES, LTD.

Roger P. Croteau	croteaulaw@croteaulaw.com
------------------	---------------------------

/s/ Erin Surguy

An employee of AKERMAN LLP

EXHIBIT A

Statement Date: September 12, 2019

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 # 121000248, for credit to Mr. Cooper Payment Clearing Account# 40590000617940200. 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 estimated 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

Statement Date: September 12, 2019

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 B

Inst #: 20190103-0001238

Fees: \$40.00

01/03/2019 10:45:21 AM

Receipt #: 3600802

Requestor:

AKERMAN, LLP - LAS VEGAS

Recorded By: RYUD Pgs: 15

DEBBIE CONWAY

CLARK COUNTY RECORDER

Src: ERECORD

Ofc: ERECORD

RECORDING COVER PAGE

(Must be typed or printed clearly in BLACK ink only
and avoid printing in the 1" margins of document)

APN# 163-28-614-007

(11 digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrrealprop/owner.aspx>)

TITLE OF DOCUMENT

(DO NOT Abbreviate)

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

Document Title on cover page must appear EXACTLY as the first page of the document
to be recorded.

RECORDING REQUESTED BY:

Akerman LLP

RETURN TO: Name Akerman LLP

Address 1635 Village Center Circle, Suite 200

City/State/Zip Las Vegas, NV 89134

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name _____

Address _____

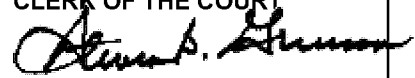
City/State/Zip _____

This page provides additional information required by NRS 111.312 Sections 1-2.

To print this document properly, do not use page scaling.

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JA2127



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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

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

Defendants.

Case No.: A-14-710161-C

Division: XXVI

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
ORDER GRANTING THORNBURG
MORTGAGE SECURITIES TRUST
2007-3'S MOTION FOR SUMMARY
JUDGMENT**

AND ALL RELATED ACTIONS

///

///

///

///

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AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 – FAX: (702) 380-8572

JA2128

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that a **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND**
3 **ORDER GRANTING THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S**
4 **MOTION FOR SUMMARY JUDGMENT** has been entered by this Court on the 3rd day of
5 December, 2018, in the above-captioned matter. A copy of said Order is attached hereto as
6 **Exhibit A.**

7
8 DATED: DECEMBER 5, 2018
9

10 **AKERMAN LLP**

11 /s/ Thera A. Cooper

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18
19 *Attorneys for Thornburg Mortgage Securities*
20 *Trust 2007-3*
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 5th day of December, 2018, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S MOTION FOR SUMMARY JUDGMENT**, in the following manner:

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

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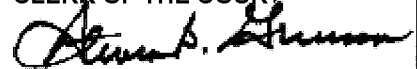
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/s/ Christine Weiss

An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A



1 **ORD**

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13 *Attorneys for defendant, counterclaimant, and counter-*
14 *defendant Thornburg Mortgage Securities Trust 2007-3*

15 **EIGHTH JUDICIAL DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 SATICOY BAY LLC SERIES 34
18 INNISBROOK,

19 Plaintiff,

20 vs.

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

23 Defendants.

Case No.: A-14-710161-C

Division: XXVI

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER GRANTING
THORNBURG MORTGAGE
SECURITIES TRUST 2007-3'S
MOTION FOR SUMMARY
JUDGMENT**

24 AND ALL RELATED ACTIONS

25 The court having considered Thornburg Mortgage Securities Trust 2007-3 (**Thornburg**)'s
26 motion for reconsideration, the opposition thereto, and the argument of counsel converts the motion
27 into a motion for summary judgment and makes the following findings of fact, conclusion of law
28 and order **GRANTING** summary judgment in Thornburg's favor.¹

¹ The Court denied the parties' competing motions for summary judgment by oral order on July 3, 2018. The order denying the motions for summary judgment had not been entered when Thornburg moved to reconsider based on *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 427 P.3d 113, 134 Nev. Adv. Op. 72, *2 (Nev. Sept. 13, 2018).

JA2132

1 **I. FINDINGS OF FACT**

2 1. Frank Timpa executed a deed of trust securing a \$3,780,000 loan to purchase the
3 property located at 34 Innisbrook Ave, Las Vegas, Nevada on June 2, 2006. The deed of trust lists
4 Countrywide Home Loans, Inc. as the lender and Mortgage Electronic Registration System, Inc.
5 (**MERS**) as beneficiary and lender's nominee and was recorded on June 6, 2006. *Id.*

6 2. Section 9 of the deed of trust provides if "there is a...lien which may attain priority
7 over the [deed of trust]...then Lender may do and pay for whatever is reasonable or appropriate to
8 protect Lender's interest in the property." *Id.* The deed of trust's planned unit development rider
9 (**PUD rider**) provides "[i]f Borrower does not pay PUD dues and assessments when due, then
10 Lender may pay them." *Id.* The loan securing the deed of trust matures on July 1, 2046 and has an
11 unpaid balance of \$6,279,233.20.

12 3. On June 9, 2010, a corporate assignment of deed of trust was recorded assigning the
13 beneficial interest in the deed of trust to Thornburg.

14 4. The property is within the Spanish Trail Master Association (the **HOA**) and is subject
15 to its declaration of covenants, conditions, and restrictions recorded March 7, 1984 (the **CC&Rs**).

16 5. Art. IV, Section 6, "Subordination to First Mortgages," provides:

17
18 The lien of the assessments provided for herein shall be prior to all other liens recorded
19 subsequent to the recordation of the Notice of delinquent Assessment, except that the lien of
20 the assessment provided for herein, shall be subordinate to the lien of any first Mortgage
21 given for value, and the sale or transfer of any Lot pursuant to the first Mortgage foreclosure
22 shall extinguish the lien of such assessments as to payments which became due prior to such
23 sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments
24 thereafter becoming due or from the lien thereon.

25 6. Art. IX Section 1, permits "Mortgagees [to], jointly or severally, pay taxes or other
26 charges which are in default and which may or have become a charge against the Association
27 property, unless such taxes or other charges are separately assessed against the Owners, in which
28 case, the rights of Mortgages shall be governed by the provisions of their Mortgages..."

...

...

1 7. Art. X Section 3, provides:

2
3 A breach of any of the covenants, conditions, restrictions or other provisions of this
4 Declaration shall not affect or impair the lien or charge of any bona fide Mortgage made in
5 good faith and for value on any lot provided however, that any subsequent owner of the lot
6 shall be bound by the provisions of this Declaration, whether such Owner's title was acquired
7 by foreclosure or by a trustee's sale or otherwise.

8 8. On August 4, 2011, Red Rock Financial Services (**Red Rock**), on behalf of the HOA,
9 recorded a lien for delinquent assessments indicating borrower owed \$5,543.92 (the **Lien**). The Lien
10 indicated it was recorded "in accordance with" the CC&Rs.

11 9. At the time the Lien was recorded, the HOA's assessments were \$225.00 per month.
12 There were no nuisance abatement charges. The superpriority amount of the HOA's lien was \$2,025
13 (\$225.00 x 9) for the assessments coming due December 1, 2010 through August 1, 2011.

14 10. From July 9, 2013 through December 13, 2013, borrower made payments totaling
15 \$2,350. Red Rock accepted the payments and applied the payments to the delinquent assessments
16 coming due December 1, 2010 through August 1, 201.²

17 11. On December 6, 2011, Red Rock recorded a notice of default and election to sell
18 pursuant to the lien for delinquent assessments asserting the HOA was owed \$8,312.52.

19 12. On December 23, 2011, BAC Home Loan Servicing (**BANA**), then the loan servicer,
20 through its counsel Miles, Bauer, Bergstorm & Winters (**Miles Bauer**) sent correspondence to Red
21 Rock seeking to determine the superpriority amount and offered to "pay that sum upon adequate
22 proof." Red Rock received the letter on December 27, 2011.

23 13. On January 26, 2012, Red Rock responded with a ledger indicating the total amount
24 due was \$9,255.44.

25 14. On February 10, 2012, Miles Bauer, by courier sent correspondence to Red Rock
26 enclosing a \$2,025 check. Red Rock received the check on February 10, 2012. Red Rock rejected the
27 payment without explanation at the time of the rejection.

28 ...

² Throughout the collection process Timpa paid in excess of \$10,000 toward the HOA's lien. Timpa's final payment of \$500.00 occurred on October 14, 2014, mere weeks before the HOA's sale.

1 15. Then on February 12, 2012, after rejecting BANA's payment, Red Rock sent
2 correspondence to Thornburg asserting the Red Rock's belief that the HOA's lien was junior to the
3 deed of trust.

4 16. Red Rock recorded a notice of foreclosure sale on September 15, 2014 stating the
5 HOA would sell the property on October 8, 2014 and the amount then due was \$20,309.95. The
6 notice asserted the sale would "be made without covenant or warrant, express or implied
7 regarding...title or possession, encumbrance, obligations to satisfy any secured or unsecured liens."

8 17. On November 10, 2014, a foreclosure deed recorded indicating the HOA sold the
9 property to Saticoy Bay LLC Series 34 Innisbrook on November 7, 2014 for \$1,201,000.

10 18. At the time of the HOA's sale the property was worth \$2,000,000.

11 19. Since the sale Saticoy has leased the property and obtained rental income.

12 **II. CONCLUSIONS OF LAW**

13 1. "Summary judgment is appropriate...when the pleadings, depositions, answers to
14 interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that
15 no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter
16 of law." *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1031 (Nev. 2005). "While the pleadings and other
17 evidence must be construed in the light most favorable to the nonmoving party, that party has the
18 burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts
19 to defeat a motion for summary judgment." *Id.* at 1031 (*quoting Matsushita Elec. Indus. Co. v.*
20 *Zenith Radio*, 475 U.S. 574, 586 (1986)). The governing law determines which "factual disputes are
21 material and will preclude summary judgment; other factual disputes are irrelevant." *Id.* Nevada
22 courts follow the federal summary judgment standard, not the "slightest doubt" standard previously
23 applicable before *Wood*. *Id.* at 1031, 1037.

24 2. Parties must prove their claims and affirmative defenses by a preponderance of the
25 evidence. *See Nev. J.I. 2EV.1.* Under Nevada law, "[t]he term 'preponderance of the evidence'
26 means such evidence as, when weighed with that opposed to it, has more convincing force, and from
27 which it appears that the greater probability of truth lies therein." *Nev. J.I. 2EV.1; Corbin v. State*,
28 111 Nev. 378, 892 P.2d 580 (1995) (regarding entrapment, "[p]reponderance of the evidence means

1 such evidence as, when weighed with that opposed to it, has more convincing force and the greater
2 probability of truth.").

3 3. Nevada law draws no distinction between circumstantial and direct evidence.
4 *Deveroux v. State*, 96 Nev. 388, 391 (1980); Nev. J.I. 2EV.3 ("The law makes no distinction
5 between the weight to be given to either direct or circumstantial evidence. Therefore, all of the
6 evidence in the case, including circumstantial evidence, should be considered . . .").

7 4. *Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, LP, f/k/a*
8 *Countrywide Home Loans Servicing, LP v. SFR Investments Pool 1, LLC*, 427 P.3d 113, 134 Nev.
9 Adv. Op. 72, *2 (Nev. Sept. 13, 2018) confirms Thornburg is entitled to summary judgment.
10 Thornburg submitted admissible evidence BANA tendered the full super-priority amount before the
11 sale. Pursuant to *Bank of America's* binding precedent, Saticoy's interest, if any, is subject to the
12 deed of trust.

13 5. "[T]he superpriority lien granted by NRS 116.3116(2) does not include an amount for
14 collection fees and foreclosure costs incurred; rather it is limited to an amount equal to the common
15 expense assessments due during the nine months before foreclosure." *Horizon at Seven Hills*
16 *Homeowners Association, Inc. v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35, at 13, 2016 WL
17 1704199 at *6 ; *See Bank of America*, *4.

18 6. A mortgagee's pre-foreclosure tender of the superpriority amount protects the deed of
19 trust. *SFR Investments*, 334 P.3d 408, 414 ("[A]s junior lienholder, [the holder of the first deed of
20 trust] could have paid off the [HOA] lien to avert loss of its security[.]"); *id.*, at 413 ("[S]ecured
21 lenders will most likely pay the [9] months' assessments demanded by the association rather than
22 having the association foreclose on the unit.") (emphasis added).

23 7. BANA's tender is evidenced in Miles Bauer's (Thornburg's Motion at Ex. I) and Red
24 Rock's business records (Thornburg's Motion at Ex. G) eliminating any question of fact regarding
25 delivery of the check. The records were properly authenticated by affidavits.

26 8. *Bank of America* concluded BANA's check and letter – like the check and letter here
27 – were not impermissibly conditional. *Bank of America* at * 7. BANA was not required to record the
28 tender (*id.* at * 10) or "keep the tender good" (*id.* at * 11). Sending a check for the full super-priority

1 amount extinguished the super-priority lien. *Id.* * 2. SFR's purported *bona fide* purchaser status was
2 irrelevant. *Id.* at * 13. SFR purchased the property subject to the deed of trust. *Id.* * 14.

3 9. The court finds Saticoy is a *bona fide* purchaser, but that status is "irrelevant when a
4 defect in the foreclosure proceedings renders the sale void." *Id.*, citing *Henke v. First S. Props, Inc.*,
5 586 S.W.2d 617, 620 (Tex. App. 1979). "[A]fter a valid tender of the superpriority portion of an
6 HOA lien, a foreclosure sale on the entire lien is void as to the superpriority portion, because it
7 cannot extinguish the first deed of trust." *Id.*

8 JUDGMENT

9 The Court having made its Findings of Fact and Conclusions of Law:

10 **IT IS ORDERED, ADJUDGED, and DECREED** the HOA foreclosed on only the sub-
11 priority portion of its lien;

12 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED**, Saticoy purchased an
13 interest in the Property, located at 34 Innisbrook Ave, Las Vegas, Nevada subject to the deed of trust
14 which remains a first position encumbrance against the Property;

15 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that the deed of trust
16 recorded on June 12, 2006 remains a first position lien against the Property and is superior to the
17 interest conveyed in the Foreclosure Deed;

18 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that all remaining claims
19 not specifically mentioned, including all claims in Thornburg's counterclaim and crossclaims and
20 Saticoy's complaint, are dismissed with prejudice; and

21 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that the lis pendens
22 recorded June 16, 2015, as Instrument No. 20150616-0000991 is hereby expunged;

23 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that any party may record
24 this Findings of Fact, Conclusions of Law, and Judgment in the Property's records; and

25 ...

26 ...

27 ...

28 ...

1 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that Thornburg shall have
2 its cost of suit, any issues regarding attorneys' fees to be deferred pending motion practice.

3 DATED November 30 2018.

4 
DISTRICT COURT JUDGE

5 Respectfully submitted by:

6 **AKERMAN LLP**

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Attorneys for Spanish Trail Master Association

WILLIAMS STARBUCK

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612 So. Tenth Street

Las Vegas, NV 89101

Attorneys for Republic Services, Inc.


1 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that Thornburg shall have
2 its cost of suit, any issues regarding attorneys' fees to be deferred pending motion practice.

3 DATED _____, 2018.

4 
DISTRICT COURT JUDGE

5 Respectfully submitted by:

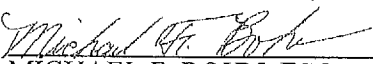
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50 *Attorneys for Republic Services, Inc.*

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Thornburg shall have its cost of suit, any issues regarding attorneys' fees to be deferred pending motion practice.

DATED _____, 2018.

DISTRICT COURT JUDGE

Respectfully submitted by:

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Approved as to form and content:

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1 IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Thornburg shall have
2 its cost of suit, any issues regarding attorneys' fees to be deferred pending motion practice.

3 DATED _____, 2018.

4 
DISTRICT COURT JUDGE

5 Respectfully submitted by:


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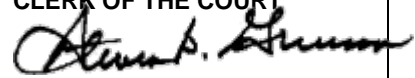
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

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

Defendants.

Case No.: A-14-710161-C

Division: XXVI

**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)**

AND ALL RELATED ACTIONS

///

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JA2142

PLEASE TAKE NOTICE Thornburg Mortgage Securities Trust 2007-3 joins Saticoy Bay LLC Series 34 Innisbrook's emergency motion for stay of execution to the extent that it requests a preservation of the status quo in relation to the excess proceeds at issue.

Dated: October 4, 2019

AKERMAN LLP

/s/ Melanie D. Morgan

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 4th day of October, 2019, I caused to be served a true and correct copy of the foregoing **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)**, in the following manner:

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

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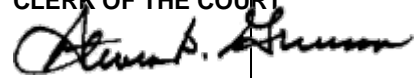
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U/T/D MARCH 3, 1999

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

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

Defendants.

AND ALL RELATED ACTIONS

Case No.: A-14-710161-C

Department No.: XXVI

**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**

COMES NOW, TIMPA TRUST U/T/D MARCH 3, 1999, by and through its attorneys
Bryan Naddafi, Esq. and Travis Akin, Esq., and hereby opposes SATICOY BAY LLC SERIES

1 34 INNISBROOK'S Motion for Reconsideration Under NRCP 59(e) and 60(b) of (I) the Court's
2 Summary Judgment Order of December 3, 2018 and (II) the Court's Order Concerning the
3 Distribution of Excess Proceeds (hereafter "Motion").

4
5 This Opposition is based upon the pleadings and papers on file herein, the attached
6 exhibits, the attached Points and Authorities, and any oral arguments the Court may wish to
7 entertain at a hearing on this matter.

8 DATED this 8th day of October 2019.

9 **AVALON LEGAL GROUP LLC**

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1 POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 A court's ruling cannot be overturned simply because a party does not agree with the
4 court's interpretation of a statute or feels the result is unfair to it. The party on the losing end of
5 a court's decision always feels that the court got the wrong result. A motion for reconsideration
6 is not an opportunity for the losing party to polish up and reiterate its arguments or to present
7 new ones, an automatic second bite at the apple so to speak. Rather, a motion for reconsideration
8 serves a very specific and narrow purpose. A motion for reconsideration may only be brought in
9 circumstances where **either substantially different evidence is subsequently introduced or**
10 **the court's decision is clearly erroneous.** *See Masonry and Tile Contractors Ass'n of Southern*
11 *Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 941 P.2d 486, 489 (1997). There is a high
12 burden on the party bringing the motion for reconsideration, and such motions are rarely granted
13 by courts.
14

15
16 Here, SATICOY BAY LLC SERIES 34 INNISBROOK (hereafter "Saticoy") is asking
17 the Court to completely overturn its September 2019 order which grants TIMPA TRUST U/T/D
18 MARCH 3, 1999's (hereafter "Timpa Trust") summary judgment motion and awards it excess
19 proceeds under NRS 116. For good measure, Saticoy has also decided to throw in the Court's
20 December 2018 Order granting summary judgment to THORNBURG MORTGAGE
21 SECURITIES TRUST 2007-3 (hereafter "Thornburg") and is also asking the Court to completely
22 overturn this decision as well. This case was filed in November 2014. Next month will be five
23 years since that this case has been before this Court, and, as of a few weeks ago, it looked as if
24 all of the outstanding issues had finally been resolved. However, Saticoy, in a Hail Mary play,
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1 is now attempting to undue five years of briefings, hearings, and decisions because it is unhappy
2 with the end result.

3 This is not a novel case or a matter of first impression. This is a standard foreclosure
4 matter in which an NRS 116 foreclosure sale resulted in excess proceeds. This Court and district
5 courts throughout this state have adjudicated many such cases. The courts routinely apply NRS
6 116.31164, which governs the disbursement of the proceeds recovered from sales made in
7 accordance with NRS 116. NRS 116.31164 is a clear statute and reads that, once all subordinate
8 lien holders are paid off, the court is to disburse any remaining excess proceeds from NRS 116
9 sales to the former homeowner.
10

11 In the instant matter, the amount of excess proceeds happens to be large, but it is still a
12 routine NRS 116 foreclosure. What is unusual here is that the only party to file an objection to
13 the former homeowner's claim to excess proceeds has demanded that the Court distribute the
14 excess proceeds to another party – a party that never made a claim to the proceeds. Saticoy's
15 Opposition to Timpa Trust's Motion for Summary Judgment argued that Timpa Trust should not
16 be awarded the excess proceeds and argued instead that the rightful claimant to all of the excess
17 proceeds is Thornburg. Curiously, Thornburg itself filed no opposition to Timpa Trust's Motion
18 for Summary Judgment nor did it make a claim to the excess proceeds. (There are legitimate
19 questions to be raised as to Saticoy's motivation for spending thousands of dollars in attorney's
20 fees to argue on behalf of Thornburg that Thornburg should get the money.) What is known for
21 certain is that Saticoy has tried – and failed – before to dictate how the money it tenders at a
22 foreclosure sale is distributed under NRS 116. In *Saticoy Bay LLC v. Nev. Ass'n Servs.*, Saticoy
23 Bay demanded that the proceeds from an NRS 116 foreclosure be distributed to another party.
24 In its opinion, the Supreme Court of Nevada pointedly said that Saticoy Bay "lacks standing" to
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28

1 make such an argument regarding the distribution of proceeds to another party. *Saticoy Bay LLC*
2 *v. Nev. Ass 'n Servs.*, 135 Nev., Adv. Op. 23 (2019). Putting aside the fact that Saticoy's argument
3 that Thornburg should receive the excess proceeds is wrong (which it clearly is), the lesson from
4 *Saticoy Bay LLC v. Nev. Ass 'n Servs.* is that Saticoy does not even have standing to put forth this
5 argument.
6

7 Nevertheless, after considering the moving papers of Timpa Trust and Saticoy and
8 hearing extensive oral argument on the matter, the Court considered and rightfully rejected
9 Saticoy's convoluted and confused arguments. Saticoy is an experienced player in the
10 foreclosure arena and has litigated many matters involving NRS 116 foreclosure sales resulting
11 in excess proceeds. It knows that this is a straightforward matter. However, because there
12 happens to be a lot of money at stake in the instant matter, Saticoy is throwing any arguments it
13 can at the proverbial wall to see if something will stick. Nothing has stuck. Therefore, in a last-
14 ditch attempt to challenge the Court's two most important rulings in this case, Saticoy has brought
15 its Motion to rehash its same old arguments and to throw in some new ones for good
16 measure. The arguments in Saticoy's Motion are muddled, at best, and misleading, at worst. The
17 Motion should be denied in its entirety.
18

19 **II. STATEMENT OF FACTS**¹

20

21 The instant action involved the non-judicial foreclosure sale of real property commonly
22 known as 34 Innisbrook Ave., Las Vegas, NV 89113 (hereafter "Subject Property") which was
23 sold pursuant to Nevada Revised Statute (hereafter "NRS") 116.3116. At the time of the sale,
24 the Subject Property belonged to claimant Timpa Trust. In November 2014 Saticoy purchased
25

26
27 ¹ The relevant factual allegations of Timpa Trust's Motion for Summary Judgment are
28 incorporated by reference.

1 the Subject Property at an NRS 116.3116 nonjudicial foreclosure sale (“hereafter “Foreclosure
2 Sale”). RED ROCK FINANCIAL SERVICES (hereafter “Trustee”) conducted the Foreclosure
3 Sale for the benefit of homeowner association SPANISH TRAIL MASTER ASSOCIATION
4 (hereafter “HOA”), which was owed dues by Timpa Trust. At the Foreclosure Sale, Saticoy
5 tendered an amount in excess of the lien. The proceeds from the Foreclosure Sale (hereafter
6 “Excess Proceeds”) have been deposited by the Trustee with this Court. In its Summary
7 Judgment Order of December 3, 2018 (hereafter “December 2018 Order”), this Court determined
8 that, as a result of the Foreclosure Sale, Saticoy purchased and now owns the Subject Property
9 subject to a deed of trust held for the benefit of Thornburg. Thereafter, in its September 11, 2019
10 Order (hereafter “September 2019 Order”), the Court determined that Timpa Trust, as the
11 homeowner of the Subject Property at the time of the Foreclosure Sale, is entitled to receive the
12 Excess Proceeds pursuant to NRS 116.3116(7). In its Order, the Court strictly applied the
13 statutory scheme and ordered that, because there are no subordinate lienholders after Red Rock,
14 the remainder of the HOA Excess Proceeds, after payment to Red Rock, shall go to the former
15 homeowners Timpa Trust.

18 **III. ARGUMENT**

19 **A. LEGAL STANDARD**

20 A party seeking reconsideration of a ruling by the court has the burden of establishing
21 good cause for said reconsideration by demonstrating to the court that either (a) substantially
22 different evidence has subsequently been introduced or (b) the court’s decision is clearly
23 erroneous. This burden was articulated by the Nevada Supreme Court in *Masonry and Tile*
24 *Contractors Ass’n of Southern Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 941 P.2d
25 486 (1997), in which the Court stated the following:
26
27
28

1 A district court may reconsider a previously decided issue **if**
2 **substantially different evidence is subsequently introduced or**
3 **the decision is clearly erroneous.** *See Little Earth of United*
4 *Tribes v. Department of Housing*, 807 F.2d 1433, 1441 (8th
5 Cir.1986)”

6 *Id.* at 741, 489 (Emphasis added). “Only in **very rare instances** in which new issues of fact or
7 law are raised supporting a ruling contrary to the ruling already reached should a motion for
8 rehearing be granted.” *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976)
(emphasis added).

9 A motion for reconsideration is not a “vehicle permitting the unsuccessful party to
10 reiterate arguments previously presented.” *See, e.g. Merozoite v. Thorp*, 52 F.3d 252, 255 (9th
11 Cir. 1995); *Sphouris v. Aurora Loan Services*, 2011 WL 5007300, *2 (D. Nev. Oct. 20, 2011)
12 (denying Rule 60(b) motion based on alleged mistake and fraud where party merely “reargue[d]
13 previous assertions that were rejected by the [c]ourt”); *see also, e.g. Khan v. Fasano*, 194
14 F.Supp.2d 1134, 1136 (S.D. Cal. 2001) (“A party cannot have relief under [Rule 60(b)] merely
15 because he or she is unhappy with the judgment”).

17 Furthermore, “[p]oints or contentions not raised in the original hearing cannot be
18 maintained or considered on rehearing.” *Achrem v. Expressway Plaza Ltd.*, 112 Nev. 737, 742,
19 917 P.2d 447, 450 (1996).

21 **B. SATICOY’S REQUEST TO VACATE THE SEPTEMBER 2019 ORDER**
22 **AWARDING EXCESS PROCEEDS TO TIMPA TRUST SHOULD BE**
23 **DENIED**

24 In order to have a chance at overturning the Court’s September 2019 Order, Saticoy must
25 **first** demonstrate that there is either (a) substantially different evidence that has subsequently
26 been introduced or (b) that the Court’s decision is clearly erroneous. *See, supra, Masonry and*
27 *Tile Contractors Ass’n of Southern Nevada* at 489. In its Motion, Saticoy has not produced any
28

1 new evidence, nor has it met its burden to show that the Court's September 2019 Order was
2 "clearly erroneous." Furthermore, Saticoy presents new arguments regarding equitable
3 subordination, which is not allowed in a motion for reconsideration. *See Achrem v. Expressway*
4 *Plaza Ltd.*, 112 Nev. 737, 742, 917 P.2d 447, 450 (1996) ("Points or contentions not raised in the
5 original hearing cannot be maintained or considered on rehearing.") Even if Saticoy were
6 allowed to bring up new arguments (which it is not), those new arguments fail.
7

8
9 **i. SATICOY HAS FAILED TO DEMONSTRATE THAT THERE IS**
10 **SUBSTANTIALLY DIFFERENT EVIDENCE THAT WAS**
11 **SUBSEQUENTLY INTRODUCED**

12 One basis for bringing a motion for reconsideration is if there is substantially different
13 evidence that has subsequently been introduced. *See, supra, Masonry and Tile Contractors Ass'n*
14 *of Southern Nevada* at 489. Saticoy does not present any new evidence in its Motion nor does it
15 make the argument that the Court should reconsider its decisions on the basis that there is
16 substantially different evidence to introduce. As a result, any such arguments by Saticoy have
17 been ceded and cannot be a basis on which to reconsider the September 2019 Order.
18

19 **ii. SATICOY HAS FAILED TO DEMONSTRATE THAT THE**
20 **COURT'S SEPTEMBER 2019 ORDER WAS CLEARLY**
21 **ERRONEOUS**

22 The only other basis on which Saticoy may bring a motion for reconsideration is if it can
23 demonstrate that the Court's decision was clearly erroneous. *See, supra, Masonry and Tile*
24 *Contractors Ass'n of Southern Nevada* at 489. This is a high bar. Just as it did in its Opposition
25 to Timpa Trust's Summary Judgment Motion and during oral argument thereon, Saticoy once
26 again attempts to muddy the waters in what is a simple reading and application of NRS
27 116.31164.
28

1 Saticoy’s Motion advances the following argument: a strict interpretation of NRS
2 116.31164 requires the foreclosing trustee to pay out the Excess Proceeds to any recorded lien
3 holder regardless of the merits of the lienholder’s claim. To be clear, at the time of the HOA
4 foreclosure in the instant matter, the Trustee sold the Subject Property subject to the deed of trust
5 held by Thornburg or its predecessor in interest. The Court made this finding in the December
6 2018 Order. This was the correct finding, and the *Jessup* decision does not change the analysis
7 (see Section III, C herein for full argument regarding *Jessup*).
8

9 Inexplicably, Saticoy’s Motion argues that Thornburg is a senior lienholder for purposes
10 of title while also a junior lienholder for purposes of collection of the proceeds from the HOA
11 foreclosure sale. How does Saticoy attempt to support this alternate reality? By making
12 unintelligible arguments without reference to any supporting caselaw. In fact, case law already
13 exists thoroughly rejecting Saticoy’s argument. In the United States District Court, District of
14 Nevada’s March 20, 2019 decision, Chief Judge Gloria M. Navarro wrote:
15

16 Because the Property’s foreclosure sale occurred under NRS
17 116.3116, proceeds from the sale are divided “in the order of
18 priority of any *subordinate* claim of record.” NRS
19 116.3116(7)(b)(4) [emphasis in original]. Consequently, were
20 LLVMA’s [subordinate lien] to be equal to SSRCA’s [HOA
21 foreclosing] lien, the Government has not provided any authority
22 that allows it to override the process outlined in NRS 116.3116 *et*
23 *seq.* so that it could simultaneously be **superior to the foreclosing**
24 **party yet capable of receiving LLVMA’s [subordinate lien]**
25 **proceeds from the sale.** Indeed, general authorities show
26 otherwise. *See* 59A C.J.S. Mortgages § 1331 (“Where senior
27 lienors’ rights are unaffected by foreclosure, holders of liens that
28 are senior in priority do not have the right to share in a surplus
produced by the foreclosure of a junior mortgage.”); *United States*
v. Sage, 566 F.2d 1114, 1114-15 (9th Cir. 1977) (“Foreclosure
affects the rights of all mortgagees junior to the foreclosing
mortgagee and requires them to look to the proceeds for
satisfaction, **but it has no effect whatsoever** upon the interest of
senior mortgagees . . .”).

1 *LJS&G, Ltd. v. Z's*, Case No. 2:16-cv-01150-GMN, at 6 n.1 (D. Nev., Mar. 20, 2019) (emphasis
2 added). Considering the plain language of NRS 116.31164 and the fact that other courts readily
3 make the same assessment that superior lien holders have no place in making a request for
4 foreclosure funds, this Court made the correct ruling in its September 2019 Order. Indeed,
5 Thornburg, the party Saticoy claims must receive the Excess Proceeds, itself admitted that it
6 “waived its claim to receive the HOA Excess Proceeds.” *See* September 2019 Order, Findings of
7 Fact ¶ 15.

9 Moreover, Saticoy’s new claim that it should receive the funds as the owner at the time
10 of the December 2018 Order is not only unintelligible but has no common law support.
11 Ultimately, the Court has done what is proper and what is always done when there are remaining
12 proceeds from NRS 116 sales – it has applied NRS 116.31164 and dispensed the remaining
13 proceeds to the former homeowner. The Court’s decision is not “clearly erroneous.”
14

15 **iii. SATICOY’S NEW EQUITABLE SUBROGATION ARGUMENT**

16 **FAILS**

17 Saticoy’s Motion raises the new argument that equitable subrogation should be applied
18 to award it the Excess Proceeds. “Points or contentions not raised in the original hearing cannot
19 be maintained or considered on rehearing.” *Achrem v. Expressway Plaza Ltd.*, 112 Nev. 737,
20 742, 917 P.2d 447, 450 (1996). Saticoy failed to raise equitable subrogation in its Opposition to
21 Timpa Trust’s Motion for Summary Judgment. Accordingly, this Court must ignore Saticoy’s
22 entire argument regarding equitable subrogation. However, even if the Court were to consider
23 Saticoy’s argument regarding equitable subrogation (which would be improper because this is a
24 brand-new argument not previously raised by Saticoy), Saticoy’s equitable subrogation argument
25 fails.
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1 Saticoy either misunderstands the doctrine of equitable subrogation or intentionally
2 attempts to mislead the Court. It is crystal clear that the doctrine of equitable subrogation is **not**
3 applicable to Saticoy in the instant matter.

4 The Supreme Court of Nevada explained the doctrine of equitable subrogation as follows:

5 Ordinarily, when a senior deed of trust is satisfied, the junior
6 lienholders remain in their respective order of priority and are
7 consequently elevated up the priority line. *Hicks*, 125 P.3d at 456.
8 Equitable subrogation interrupts this procedure and “**permits `a**
9 **person who pays off an encumbrance** to assume the same
10 priority position as the holder of the previous encumbrance.”
11 *Houston v. Bank of America*, 119 Nev. 485, 488, 78 P.3d 71, 73
(2003) (quoting *Mort v. U.S.*, 86 F.3d 890, 893 (9th Cir.1996)).

12 *American Sterling Bank v. Johnny Management LV*, 245 P.3d 539 (Nev. 2010) (emphasis added).

13 The Supreme Court of Nevada is absolutely clear: equitable subrogation permits parties that
14 have **paid off an encumbrance** to step into the same priority position as **the holder of the**
15 **previous encumbrance**. Simply put, Saticoy did not pay off Thornburg’s encumbrance. Saticoy
16 purchased the property at a foreclosure auction for HOA arrears. (Curiously, while Saticoy cites
17 both *American Sterling Bank v. Johnny Management* and *Houston v. Bank of America*
18 (Motion,13:25-14;3), it fails to inform the Court that equitable subrogation only applies to those
19 who have paid off an encumbrance.) As made clear in both *American Sterling Bank v. Johnny*
20 *Management* and *Houston v. Bank of America*, the equitable subrogation doctrine only permits a
21 person who pays off an encumbrance to take advantage of this equitable remedy and subrogate
22 the holder of the previous encumbrance. The doctrine of equitable subrogation does not apply
23 to Saticoy, who did not pay off the lien owned by Thornburg.

24 Additionally, the arguments put forward by Saticoy regarding equity are disingenuous.
25 Saticoy has been in possession of the Subject Property since February 9, 2015, which is well over
26 four and a half years. (Saticoy gained possession of the Subject Property pursuant to the
27
28

1 Stipulation and Order Directing Issuance of Writ of Restitution filed in this case on January 20,
2 2015.) Furthermore, Saticoy has leased the Subject Property and obtained income from doing so
3 since the HOA sale. *See* December 2018 Order Findings of Fact ¶ 19. Additionally, the much-
4 threatened “upcoming” foreclosure sale of the Subject Property by Thornburg has been
5 postponed indefinitely, likely due to some backroom deal between Saticoy and Thornburg.
6 Indeed, the interest and penalties keep accruing on the underlying promissory note while Saticoy
7 and Thornburg unduly prolong the instant litigation and choose not to sell the Subject Property.
8 This begs the question: How can this Court decide if Thornburg should receive any of the Excess
9 Proceeds due to a speculative deficiency when Thornburg absolutely refuses to sell the Subject
10 Property?
11

12 Meanwhile, during the course of this prolonged litigation, the trustors of the Timpa Trust
13 (Frank and Madelaine Timpa) have passed away while waiting for collection of the Excess
14 Proceeds. The Excess Proceeds have been the rightful property of Timpa Trust since at least
15 December 2018, when the Court determined that Saticoy took the Subject Property subject to
16 Thornburg’s interest. However, almost a year later, after multiple delays caused by Saticoy and
17 the dishonest tactics of both Saticoy and Thornburg (e.g.: reneging on their own stipulations in
18 the filed Joint Pre-Trial memorandum), Timpa Trust is finally close to realizing the rights
19 bestowed to it by the Nevada Legislature. Yet, throughout all this, Saticoy makes the argument
20 that equity falls in its favor. Saticoy’s arguments for equity are simply preposterous and the
21 September 2019 Order was proper on both legal and equitable grounds.
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1 **C. THE DECEMBER 2018 ORDER ON BEHALF OF THORNBURG**
2 **CANNOT BE SET ASIDE UNDER NRCP 60(b)**

3 Saticoy further argues that the December 2018 Order must be set aside under NRCP 60(b)
4 due to an alleged intervening change in law. According to Saticoy, the Supreme Court of
5 Nevada's decision in *Bank of Am., N.A. v. Thomas Jessup, LLC Series VII*, which was decided in
6 March 2019, operates as an intervening change in law. NRCP 60 provides three grounds for
7 filing a motion for relief **after** six months: judgment is void; judgment has been satisfied; or
8 "any other reason that justifies relief." See NRCP 60. Presumably, Saticoy believes that the
9 *Jessup* decision falls under the third category: "any other reason that justifies relief." NRCP
10 60(b).
11

12 Saticoy makes the frivolous argument that *Jessup* allows this Court to set aside or rescind
13 the sale of the Subject Property. However, Saticoy is wrong for several reasons. First, although
14 *Jessup* is a published decision, it is currently set for reconsideration with oral argument scheduled
15 to be held on November 4, 2019. Attached hereto as **Exhibit 1** please find a true and correct
16 copy of the Order Granting En Banc Reconsideration and Scheduling Oral Argument. As the
17 Court can see, the *Jessup* decision may be changed. Roger Croteau, counsel for Saticoy, received
18 notice of this Reconsideration. Exhibit 1, page 3. Roger Croteau, and by extension Saticoy, fails
19 to apprise the Court that *Jessup* is under reconsideration.
20
21

22 Second, even if the decision in *Jessup* is upheld, it does not stand for the proposition that
23 the foreclosure sale in the instant matter must be set aside and does not change the December
24 2018 Order. The Supreme Court of Nevada in *Jessup* wrote:

25 As the Bank's deed of trust was not extinguished, **we need not**
26 **address** the viability of the Bank's claims against ACS and
27 Foxfield. Similarly, **we need not address** the Bank's remaining
28 arguments in support of its deed of trust remaining intact, as

1 neither the Bank nor the Purchaser have expressed whether they
2 would prefer to have the sale set aside or have the Purchaser take
3 title to the property subject to the first deed of trust.

4 *Bank of Am., N.A. v. Thomas Jessup, LLC Series VII*, 435 P.3d 1217, 1221 n.5 (Nev. 2019)
5 (emphasis added). The Supreme Court of Nevada explicitly stated that it has not made any
6 determination regarding setting aside an NRS 116 foreclosure sale. Accordingly, *Jessup* offers
7 zero guidance and is another instance of Saticoy grasping at straws.

8 If anything, *Jessup* provides lenders such as Thornburg **additional** protections to
9 safeguard their secured interests. *Jessup* stands for the proposition that “an offer to pay the
10 superpriority amount coupled with a rejection of that offer discharges the superpriority portion
11 of the HOA’s lien, even if no money changed hands.” *Bank of New York Mellon V. Khosh*, Case
12 No. 2:17-cv-00957-MMD-PAL (D. Nev. May 30, 2019). Thornburg’s interest in the Subject
13 Property is in no way implicated or effected by *Jessup*. Had the December 2018 Order
14 extinguished Thornburg’s interest, then *Jessup* could be new law that would favor Thornburg.
15 However, Thornburg is a winner even without assistance from *Jessup*.

16 Any argument by Saticoy or Thornburg that the sale should be set aside under *Jessup* is
17 a non-starter. The United States District Court, District of Nevada has written multiple decisions
18 since *Jessup* that discuss the impediments for lenders such as Thornburg to set aside an NRS 116
19 sale. In one matter the United States District Court, District of Nevada explained:
20

21 BONY’s [lender’s] complaint does not plausibly allege a basis to
22 set aside the [HOA foreclosure] sale. First, Chapter 116 as it
23 existed at the time of this sale did not violate BONY’s [lender’s]
24 due process rights. *See Bank of Am., N.A. v. Arlington W. Twilight*
25 *Homeowners Ass’n*, 920 F.3d 620, 623-24 (9th Cir. 2019) (citing
26 *SFR Invs. Pool I, LLC v. Bank of N.Y. Mellon*, 422 P.3d 1248 (Nev.
27 2018) (en banc)); *Nationstar Mortg. LLC v. Amber Hills II*
28 *Homeowners Ass’n*, No. 2:15-cv-01433-APG-CWH, 2016 WL
 1298108, at *6-9 (D. Nev. Mar. 31, 2016). Second, the HOA "was
 not required to identify that it was foreclosing on a superpriority

lien or the amount of the superpriority lien." *U.S. Bank Nat'l Ass'n for GSAA Home Equity Tr. 2007-3 Asset-Backed Certificates Series 2007-3 v. Saticoy Bay LLC Series 3930 Swenson*, No. 2:17-cv-00463-APG-GWF, 2018 WL 3231245, at *3 (D. Nev. July 2, 2018) (citing *SFR Investments Pool 1 v. U.S. Bank*, 334 P.3d 408, 418 (Nev. 2014) (en banc)). Finally, the Supreme Court of Nevada has rejected the notion that an HOA has a duty to obtain the highest price it could when conducting an HOA foreclosure sale. *Nationstar Mortg., LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 405 P.3d 641, 644-45 (Nev. 2017).

Bank of New York Mellon v. Laws, Case No. 2:17-cv-01032-APG-CWH (D. Nev. July 19, 2019).

Furthermore, the federal court analyzed the holding of *Jessup* as follows: "an offer to pay the superpriority lien, 'combined with [a] rejection of that offer, operated to cure the default as to that portion of the lien such that the ensuing foreclosure sale did not extinguish the first deed of trust'). *Id.* The federal court made no reference to the footnote on which Saticoy now hinges its Motion. In fact, after referencing *Jessup*, the federal court concluded: "Because BONY [lender] has not plausibly alleged a basis to set aside the foreclosure sale, I dismiss its declaratory relief claim." *Id.* Clearly a footnote in *Jessup* which states that the court will **not** analyze an argument regarding a set aside cannot be the basis for setting aside the NRS 116 foreclosure sale in the instant matter.

Accordingly, because *Jessup* does not change the applicable law, Saticoy's NRCP 60(b) request is procedurally barred (under the six-month rule as the December 2018 Order was ten months ago) and is barred for substantive reasons.

**D. SATICOY STILL HAS NO STANDING TO MAKE ANY CLAIMS AS TO
THE EXCESS PROCEEDS AWARDED TO TIMPA TRUST**

While this Court's ultimate decision to grant the excess proceeds to Timpa Trust was sound, Saticoy did not have standing to make a claim to the Excess Proceeds on behalf of Thornburg in the first place. The Court now has an opportunity to correct this finding. In its

1 Opposition to Timpa Trust’s Summary Judgment Motion, Saticoy made a claim to the funds on
2 behalf of Thornburg. In the Motion, it now takes this a step further by not only re-arguing its
3 claim on behalf of Thornburg but now making a claim on its own behalf as well.

4
5 In its September 2019 Order, the Court found that Saticoy “has standing to assert where
6 or how the HOA Excess Proceeds are to be utilized because there will arguably be a substantial
7 deficiency on the Subject Property if Thornburg seeks to foreclose the Subject Property on the
8 Thornburg Deed of Trust and because Saticoy holds the Subject Property subject to the
9 Thornburg Deed of Trust.” *See* September 2019 Order, Findings of Fact ¶ 16.

10 On July 3, 2019, the Supreme Court of Nevada admonished Saticoy Bay for attempting
11 to direct how the funds it tendered in an NRS 116 sale are to be utilized – exactly what it is once
12 again trying to do in the instant matter. The Supreme Court of Nevada stated:

13
14 [O]nce Saticoy Bay received the certificate of sale, it received all
15 it was entitled to at that time under the redemption statute—an
16 interest in the property. Therefore, whether the proceeds of the sale
17 must be distributed toward a subordinate claim of record pursuant
18 to subsection 4, such as that of Ditech [lender] here, or to Markey
[former owner] as remittance of any excess proceeds pursuant to
subsection 5, is not for Saticoy Bay to assert because those funds
no longer belong to Saticoy Bay..

19 ...

Rather, that argument is for Ditech [the lender] to make.

20 *Saticoy Bay LLC v. Nev. Ass’n Servs.*, 135 Nev., Adv. Op. 23 (2019). Indeed, the Supreme Court
21 of Nevada wanted to be clear that Saticoy Bay had no standing and reiterated this point again in
22 a footnote: “Saticoy Bay **lacks standing to assert** its alternative argument that NAS [trustee]
23 was required to release the proceeds of the sale to Markey [former owner] after the sale...” *Id.* n.
24 6 (emphasis added).

25
26 Saticoy’s lack of standing was addressed in detail in Timpa Trust’s Motion for Summary
27 Judgment and its Reply Brief to Saticoy’s Opposition to its Motion for Summary Judgment.

1 Timpa Trust has presented the Court with a case which is directly on point in which the Supreme
2 Court of Nevada told Saticoy Bay that it does not have standing to assert claims as to how funds
3 it tendered in an NRS 116 sale are to be utilized. Timpa Trust has no doubt that if this issue were
4 brought up before the Supreme Court of Nevada, it would take the opportunity to once again
5 admonish Saticoy and hold that it does not have standing. This Court can now take the
6 opportunity to correct just this part of its ruling and apply *Saticoy Bay LLC v. Nev. Ass'n Servs.*
7 to determine that Saticoy did not have standing to assert a claim on behalf of Thornburg nor
8 itself.

9
10 **IV. CONCLUSION**

11 For the foregoing reasons, Timpa Trust respectfully requests that this Court deny
12 Saticoy's request to vacate the December 2018 Order and the September 2019 Order.
13

14 Dated this 8th day of October 2019

15 **AVALON LEGAL GROUP LLC**

16 By: /s/ Bryan Naddafi

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Attorneys for TIMPA TRUST

U/T/D MARCH 3, 1999

CERTIFICATE OF SERVICE

The undersigned hereby certifies on October 8, 2019, a true and correct copy of the 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 was served to the following at their last known address(es), facsimile numbers and/or e-mail/other electronic means, pursuant to: **E-MAIL AND/OR ELECTRONIC MEANS:** N.R.C.P. 5(b)(2)(D) and addresses(s) having consented to electronic service, via e-mail or other electronic means to the e-mail address(es) of the addressee(s).

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/s/ Luz Garcia

An employee of Avalon Legal Group LLC

EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

BANK OF AMERICA, N.A.; THE BANK
OF NEW YORK MELLON, F/K/A THE
BANK OF NEW YORK AS TRUSTEE
FOR THE CERTIFICATEHOLDERS OF
THE CWABS, INC., ASSET-BACKED
CERTIFICATES, SERIES 2005-17; AND
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.,
Appellants,

vs.

THOMAS JESSUP, LLC SERIES VII;
FOXFELD COMMUNITY
ASSOCIATION; AND ABSOLUTE
COLLECTION SERVICES, LLC,
Respondents.

No. 73785

FILED

SEP 24 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

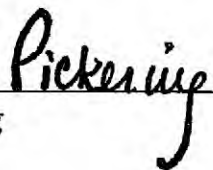
*ORDER GRANTING EN BANC RECONSIDERATION AND
SCHEDULING ORAL ARGUMENT*

Having considered the petition for en banc reconsideration in this matter, we have determined that reconsideration is warranted. *See* NRAP 40A(a). Accordingly, the petition for en banc reconsideration is granted. *See* NRAP 40A(f) (providing that “[a]ny two justices may compel the court to grant a petition for en banc reconsideration”); *see also* IOP Rule 13. Further, we conclude that oral argument would be of assistance in resolving this matter. Therefore, this matter is scheduled for oral argument

on November 4, 2019, at 1:30 p.m. in Carson City. Argument shall be limited to 30 minutes.

It is so ORDERED.

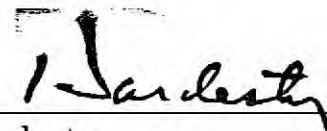
 C. J.
Gibbons

, J.
Pickering


, J.
Cadish

HARDESTY, J., with whom PARRAGUIRRE, J., STIGLICH, J., and SILVER, J., agree, dissenting:

While I recognize that NRAP40A(f) and IOP Rule 13 provide that two justices may compel the grant of a petition for en banc reconsideration, in my view, appellant has not demonstrated that en banc reconsideration is warranted. Therefore, I dissent.

, J.
Hardesty

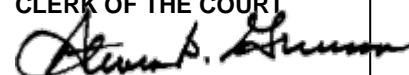
We concur:

, J.
Parraguirre

, J.
Stiglich

, J.
Silver

cc: Hon. Linda Marie Bell, Chief Judge
Akerman LLP/Las Vegas
Law Office of Richard L. Tobler, Ltd.
Cox Law, LLC
Anthony S. Noonan
Kim Gilbert Ebron
The Law Office of Mike Beede, PLLC
Roger P. Croteau & Associates, Ltd.
Eighth District Court Clerk



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DISTRICT COURT
CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

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

Defendants.

AND ALL RELATED ACTIONS

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

Hearing Requested

**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**

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 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* (the "*MAMC*"). This MAMC is made and based upon the attached Memorandum of Points and Authorities, the papers and pleadings on file herein, and any oral argument that this Honorable Court may entertain at the time

1 of hearing of this matter.

2 Dated this 16th day of October, 2019.

3 ROGER P. CROTEAU & ASSOCIATES, LTD

4 By: /s/ *Roger Croteau*

5 ROGER P. CROTEAU, ESQ.

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7 2810 W. Charleston Blvd., Ste. 75

8 Las Vegas, Nevada 89102

9 *Attorney for Plaintiff*

10 *Saticoy Bay LLC Series 34 Innisbrook*

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **INTRODUCTION**

13 Throughout nearly the entire duration of this litigation, a request was pending before this
14 Court to have the NRS 116 foreclosure sale of the real property located at 34 Innisbrook Avenue,
15 Las Vegas, Nevada 89113, APN 163-28-614-007 (the “*Property*”) set aside/rescinded on various
16 grounds. On April 10, 2015, Defendant/Counterclaim Plaintiff Thornburg Mortgage Securities
17 Trust 2007-3 (the “*Bank*”) filed *Thornburg Mortgage Securities Trust 2007-3’s Answer and*
18 *Counter-Claims* (the “*Bank’s Counterclaims*”). In addition to requesting relief specific to the
19 Bank, the Bank’s Counterclaims included multiple factual allegations and requests for relief that
20 the NRS 116 foreclosure sale of the Property conducted by Red Rock Financial Services (the “*HOA*
21 *Trustee*”) on behalf of the Spanish Trail Master Association (the “*HOA*”) should be set aside
22 generally as having been undertaken in violation of the requirements of NRS 116. The Bank’s
23 requested remedy in this regard was to have the sale set aside and/or rescinded in its entirety as a
24 general matter and not solely with respect to the Bank.

25 On March 7, 2019, the Supreme Court of Nevada issued its decision in *Bank of America,*
26 *N.A. v. Thomas Jessup, LLC Series VII*, 435 P.3d 1217 (Nev. 2019) (“*Jessup*”). There, the
27 Supreme Court of Nevada expressly recognized that a purchaser, like Plaintiff here, had standing to
28 request that a foreclosure sale be set aside based upon claims, causes of action, and/or legal theories

1 previously advanced by the bank in that litigation in the event that the purchaser's title to property
2 was impaired as a result of a bank's deed of trust surviving an NRS 116 foreclosure sale by way of
3 judicial determination after the fact as a result of a previously undisclosed tender. *See id.* at 1221
4 n.5 ("Similarly, we need not address the Bank's remaining arguments in support of its deed of trust
5 remaining intact, as neither the Bank nor the Purchaser have expressed whether they would prefer
6 to have the sale set aside or have the Purchaser take title to the property subject to the first deed of
7 trust.") (emphasis added). For the first time, *Jessup* expressly confers upon Plaintiff the right to
8 seek the relief it seeks through the MAMC, and Plaintiff's MAMC should be granted on this basis
9 alone.
10

11 Plaintiff now seeks leave of the Court to amend its previously filed complaint, post-
12 judgment, pursuant to NRCP 15(b)(2) to place before the Court its preference to have the NRS 116
13 sale of the Property set aside and/or rescinded. To be clear and subject to its express reservation of
14 rights vis-à-vis the Bank in other contexts (including on appeal), Plaintiff's requested relief in the
15 MAMC does not seek to disturb the Court's previous determination of December 3, 2018 that the
16 deed of trust asserted by the Bank with respect to the Property survived the NRS 116 foreclosure
17 sale of the Property to Plaintiff; rather, Plaintiff simply seeks to place before this Court, as
18 contemplated by the *Jessup* Court, Plaintiff's request that the sale of the Property be set aside, and
19 that the purchase money tendered by Plaintiff as sale consideration for the Property—net of any
20 fees paid or previously awarded to the HOA Trustee—be returned to Plaintiff. For the reasons
21 stated in greater detail below, such relief is needed to avoid an unjust windfall being bestowed upon
22 the Timpa Trust and an unconscionable windfall being visited upon Plaintiff as a result of the
23 Court's previous Excess Proceeds Order of September 11, 2019.
24

25 For the reasons set forth below, Plaintiff respectfully submits that the MAMC should be
26 granted. Plaintiff should be granted leave to file the amended complaint attached hereto as Exhibit
27
28

1 A pursuant to EDCR 2.30.

2 **STATEMENT OF FACTS**

3 *Relevant Pleadings Filed by Plaintiff and the Bank*

4
5 1. On November 20, 2014, Plaintiff commenced the captioned civil action by filing a
6 complaint against, among other entities, the Bank.

7 2. Immediately thereafter, on November 25, 2014, Plaintiff filed an amended complaint
8 naming as additional named defendants in the case caption Frank Timpa (“*Defendant Frank*”) and
9 Madelaine Timpa (“*Defendant Madelaine*”), individually and as trustees of the Timpa Trust (the
10 “*Timpa Trust*”).

11 3. On June 11, 2015, Plaintiff, with leave of the Court, filed a second amended complaint
12 against named Defendants Frank and Madelaine, both individually and in their respective capacities
13 as trustees of the Timpa Trust as named defendants in the caption of the second amended
14 complaint.

15 4. On February 10, 2017, Plaintiff, with leave of the Court, filed a third amended complaint
16 against named Defendants Frank and Madelaine, both individually and in their respective capacities
17 as trustees of the Timpa Trust as named defendants in the caption of the second amended
18 complaint.

19 5. On April 10, 2015, the Bank filed the Bank’s Counterclaims.

20 6. On May 23, 2016, the Bank filed the *Thornburg Mortgage Securities Trust 2007-3’s*
21 *Answer to Second Amended Complaint* (the “*Bank’s Second Answer*”). Importantly, the Bank
22 acknowledged in the Bank’s Second Answer that, “Nothing in this Answer to Second Amended
23 Complaint is intended to disturb Thornburg’s previously filed Counterclaims filed on April 10,
24 2015.” *See Bank’s Second Answer*, pg. 2 of 10, lines 18-20.

25 7. On May 30, 2017, the Bank filed, with leave of the Court, the *Thornburg Mortgage*
26 *Securities Trust 2007-3’s Answer to Saticoy Bay LLC Series 34 Innisbrook’s Third Amended*
27 *Complaint and Counterclaims* (the “*Bank’s Third Answer*”). Importantly, the Bank acknowledged
28 in the Bank’s Third Answer, “Nothing in this Answer to Third Amended Complaint is intended to

1 disturb Thornburg's previously filed Counterclaim filed on April 10, 2015." *See Bank's Third*
2 *Answer*, pg. 2 of 27, lines 26-28.

3 8. Until the Court's order disposed of the Bank's Counterclaims on December 3, 2018, the
4 Bank maintained the Bank's Counterclaims throughout these proceedings. *See Docket.*
5 *Bank Counterclaim Factual Allegations and Claims for Relief Equally Inclusive of Plaintiff*

6 9. The Bank's Counterclaims list Defendant Frank as a named counter-defendant.

7 10. Paragraph 33 of the Bank's Counterclaims alleged, "The HOA Sale violated
8 THORNBURG's rights and harmed it because the HOA Trustee *failed to inform potential buyers*
9 *at the lien sale that actual tender of the HOA super-priority had been made prior to the sale.*" *See*
10 *Bank's Counterclaims* at pg. 11 of 28, ¶ 33 (emphasis added).

11 11. Paragraph 34 of the Bank's Counterclaims alleged, "*The HOA Sale was an invalid sale* and
12 could not have extinguished THORNBURG's secured interest because THORNBURG had in fact
13 tendered the 9-month super-priority lien prior to the HOA Sale. *See id.* at ¶ 34 (emphasis added).

14 12. Paragraph 39 of the Bank's Counterclaims alleged, "*The HOA Sale was an invalid sale* and
15 could not have extinguished THORNBURG's secured interest because of defects in the notices
16 given to THORNBURG, or its predecessors, agents, servicers or trustees, if any. *See id.* at ¶ 39
17 (emphasis added).

18 13. Paragraph 47 of the Bank's Counterclaims alleged quite broadly and generally, "*The*
19 *HOA's Sale is unlawful and void under NRS 116.3102 et seq.*" *See id.* at pg. 12 of 28, ¶ 47
20 (emphasis added.).

21 14. Paragraph 56 of the Bank's Counterclaims alleged, "In the alternative, *the HOA Sale was*
22 *an invalid sale* and could not have extinguished THORNBURG's secured interest because it was
23 not a commercially reasonable sale." *See id.* at pg. 13 of 28, ¶ 56 (emphasis added.).

24 15. Paragraph 62 of the Bank's Counterclaims is grounded upon alleged effects upon
25 prospective bidders, like the Plaintiff, flowing from the mortgage protection clause in the HOA's
26 CC&R's. *See id.* at pg. 14 of 28, ¶ 62.

27 16. Paragraph 77 of the Bank's Counterclaims alleged quite broadly and generally, "*In the*
28 *alternative, for all the reasons set forth above and in the Factual Background, THORNBURG is*

1 entitled to a determination from this Court, pursuant to NRS 30.010 and 40.010, that the HOA
2 Sale is unlawful and void.” See *id.* at pg. 16 of 28, ¶ 77 (emphasis added.).

3 17. Paragraph 92 of the Bank’s Counterclaims alleged quite broadly and generally, “**Because**
4 **the HOA Sale was not commercially reasonable, it was invalid, wrongful AND SHOULD BE**
5 **SET ASIDE.**” See *id.* at pg. 18 of 28, ¶ 92 (emphasis added.).

6 18. Paragraph 94 of the Bank’s Counterclaims alleged quite broadly and generally, “**Because**
7 **the HOA Sale was not done in accordance with Nevada statutes and the CC&R’s, the HOA Sale**
8 **was wrongfully conducted AND SHOULD BE SET ASIDE.**” See *id.* at ¶ 94 (emphasis added.).

9 19. Paragraph 96, as part of the Bank’s third cause of action alleging wrongful foreclosure,
10 incorporated each of the aforementioned factual averments and alleged quite broadly and generally
11 as follows, “Because the HOA, HOA Trustee, and fictitious Defendants’ refused and/or mis-
12 applied actual tender of 9 months of assessments, constituting the super-priority lien amount, **the**
13 **HOA Sale was wrongfully conducted and should be set aside.**” See *id.* at pg. 17-18 of 28, ¶¶ 88
14 and 96 (emphasis added.).

15 20. Paragraph 111 of the Bank’s Counterclaims alleged, “THORNBURG is a member of the
16 class of persons whom NRS Chapter 116 is intended to protect.” See *id.* at pg. 20 of 28, ¶ 111.
17 Plaintiff is also a member of the class of persons whose rights NRS 116 is designed to protect.

18 21. Again, and to be clear, the Bank’s Counterclaims including the aforementioned factual
19 allegations and claims for relief were asserted on April 10, 2015 and were undisturbed by any of
20 the Bank’s subsequent answers and/or counterclaims until they were ultimately disposed of by the
21 Court through its order of December 3, 2018.

22 The Status Memo Filed on March 29, 2019 by the Timpa Trust

23 22. In its *Status Memo* of March 29, 2019 (the “*Timpa Memo*”), the Timpa Trust states,
24 “Because of the ambiguity as to the status of the current litigation, and for purposes of judicial
25 economy, we have not yet filed a motion to substitute in the successor trustees.” See *Timpa Memo*,
26 pg. 2 of 4, lines 3-6. Whatever may be the legal merits underlying any of these assertions, the point
27 remains that the Timpa Memo disclosed a decision consciously made by the Timpa Trust to refrain
28 from substituting the alleged successor trustees of the Timpa Trust into this litigation.

1 23. Despite its prior claims of ambiguity, the Timpa Trust goes on to state in the Timpa Memo,
2 “Timpa Trust believes that the entire matter was summarily adjudicated in this Court’s December
3 3, 2018 Order titled: “FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
4 GRANTING THORNBURG MORTGAGE SECURITIES TRUST 2007-3’S MOTION FOR
5 SUMMARY JUDGMENT...” *See id.* at lines 14-17.

6 24. The Timpa Memo then goes on to describe as the pertinent part of the Court’s December 3,
7 2018 order as the portion including the Court’s disposition of the Bank’s Counterclaims. *See id.* at
8 lines 18-21.

9 25. The Timpa Memo goes on to state, “The Order Summarily Adjudicating Matter was
10 approved and signed by all appearing counsel in the case at the time.” *See id.* at pg. 3 of 4, lines 1-
11 2 (emphasis added). Notably, the Timpa Trust was not a signatory to the Court’s summary
12 judgment order of December 3, 2018.

13 *Plaintiff’s Status Memo and Motion to Reinstate Statistically Closed Case*

14 26. In Plaintiff’s status memo filed with the Court on or about April 3, 2019 (the “*Plaintiff’s*
15 *Memo*”), Plaintiff apprised the Court as follows, “For reasons unique to this Case, Plaintiff’s
16 counsel has agreed with Lender’s counsel to effectively ‘unwind’ the NRS 116 foreclosure sale of
17 the real property and place all of the parties to this litigation in the position they respectively held
18 before the NRS 116 foreclosure sale that occurred on November 7, 2014.” *See Plaintiff’s Memo* at
19 pg. 2 of 5, lines 17-20.

20 27. Plaintiff’s Memo goes on to state, “Effectively, if the parties were to unwind the NRS 116
21 foreclosure sale, the Timpa Trust would be deemed to be the owner of the real property. The
22 Lender would proceed with its NRS 107 foreclosure sale against the real property and the Excess
23 Proceeds held by Red Rock would be refunded to the Plaintiff in global terms.” *See id.* at lines 20-
24 23.

25 28. The Plaintiff’s Memo goes on to state in relevant part:

26 Obviously, the Timpa Trust cannot prevent the Lender, Red Rock
27 and the Plaintiff from unwinding the HOA foreclosure sale, but it is
28 anticipated they will attempted (*sic*) to do so which may require court
intervention. If the Court is unwilling to allow the parties to unwind
the HOA foreclosure sale, the court will have to address the issue

1 raised in the interpleader action related to the distribution of the
2 Excess Proceeds and the Timpa Trust's claim to the Excess Proceeds.

3 *See id.* pg. 3 of 5, lines 1-5.

4 29. Plaintiff's *Motion to Reinstate Statistically Closed Case* (the "*Reinstatement Motion*") and
5 the *Declaration of Roger P. Croteau in Support of Motion to Reinstate Statistically Closed Case*
6 (the "*Croteau Declaration*") further reflect what has been—to this point—the cooperative tone and
7 disposition of the Bank and the HOA Trustee in certain respects vis-à-vis Plaintiff regarding,
8 among other things, the then-current posture of this litigation, what remained to be done in the
9 litigation and so forth.

10 30. Given the well-developed settlement discussions, and cooperative posture, referenced in
11 Plaintiff's Memo, the Reinstatement Motion, and the Croteau Declaration, as well as the lack of
12 participation of the Timpa Trust in the underlying litigation by conscious choice, Plaintiff
13 respectfully submits that it is not clear why any party that may even arguably be affected by the
14 MAMC would object to the relief requested in the MAMC, and Plaintiff does not anticipate any
15 such objection(s) at the present time. To the extent any such objection(s) is/are forthcoming,
16 Plaintiff will attempt to resolve any such objections—especially to the extent they are based on
17 misunderstandings—in advance of any hearing on the MAMC.

18 **LEGAL ARGUMENT**

19 **A. STATEMENT OF THE LAW**

20 By its terms, NRCP 15(b)(2) provides in relevant part as follows:

21 When an issue not raised by the pleadings is tried by the parties'
22 express or implied consent, it must be treated in all respects as if
23 raised in the pleadings. A party may move — at any time, even after
24 judgment — to amend the pleadings to conform them to the evidence
and to raise an unpleaded issue. But failure to amend does not affect
the result of the trial of that issue.

25 *See* NRCP 15(b)(2) (emphasis added).

26 Nevada's policy of over a half century that leave to amend a complaint should be granted
27 freely under NRCP 15 applies with even greater force in the context of amendments made post-
28 judgment pursuant to NRCP 15(b). *See, e.g., Marschall v. City of Carson*, 464 P.2d 494, 498 (Nev.

1 1970) (“...and leave to amend should be freely given when justice requires. NRCP 15(a). We must
2 apply the same rule to NRCP 15(b) where there is even greater liberality of amendment.”) (citations and internal quotation marks omitted) (emphasis added); *see also Good v. District Court*,
3 279 P.2d 467, 469 (Nev. 1955) (“Otherwise a party may amend his pleading only by leave of the
4 court or by written consent of the adverse party; and leave shall be freely given when justice so
5 requires. Subdivisions [71 Nev. 43] (b), (c), and (d) of this rule evidence even greater liberality of
6 amendment.” (internal quotation marks omitted). Since Plaintiff’s request for relief in the MAMC
7 comes post-judgment under NRCP 15(b)(2), Plaintiff’s request benefits from a series of directions
8 from the Supreme Court of Nevada spanning more than half a century that such requests benefit
9 from, and must be reviewed under, the heightened liberality standard discussed above..

11 By its terms, NRCP 60(b)(6) also provides that relief may be granted from a final order or
12 judgment for “any other reason that justifies relief.” NRCP 60(b)(6).

13 In addition, the *Jessup* Court expressly recognized that a purchaser, like Plaintiff here, has
14 standing to request that a foreclosure sale be set aside based upon claims, causes of action, and/or
15 legal theories previously advanced by the bank in that litigation in the event that the purchaser’s
16 title to property was impaired as a result of a bank’s deed of trust surviving an NRS 116 foreclosure
17 sale by way of judicial determination after the fact as a result of a previously undisclosed tender.
18 *See id.* 435 P.3d at 1221 n.5 (“Similarly, we need not address the Bank’s remaining arguments in
19 support of its deed of trust remaining intact, as neither the Bank nor the Purchaser have expressed
20 whether they would prefer to have the sale set aside or have the Purchaser take title to the property
21 subject to the first deed of trust.”) (emphasis added).

22 *Jessup* expressly confers upon Plaintiff the right to seek the relief it seeks through the
23 MAMC, and Plaintiff’s MAMC should be granted on this basis alone.

24 **B. GOOD CAUSE EXISTS FOR THE COURT TO GRANT THE MAMC.**

25 The MAMC should be granted. As set forth in significant detail in the factual recitation
26 above, the Bank’s Counterclaims included various broad and general factual allegations, causes of
27 action, and/or legal theories that clearly encompassed rights, claims, and causes of action that
28 Plaintiff can clearly maintain and assert following the Supreme Court of Nevada’s decision in

1 *Jessup*, specifically to unwind, set aside, or void the sale and, thereby, lay independent claim to the
2 excess proceeds generated by the NRS 116 foreclosure sale of the Property. Plaintiff now seeks
3 leave of the Court to amend its complaint to include a request to unwind, set aside, rescind, and /or
4 void the sale as such claims were essentially litigated in Plaintiff's name by consent of the parties
5 that actually participated in the underlying litigation—i.e. not the Timpa Trust. And, as to the
6 Timpa Trust, Plaintiff's Memo and Reinstatement Motion, as well as the related summary
7 judgment practice, apprised the Timpa Trust of Plaintiff's claim to the Excess Proceeds, and the
8 amended complaint simply includes a brief claim to such proceeds. At this stage of the litigation, it
9 is difficult to see how any party can be prejudiced by allowing Plaintiff to file the Amended
10 Complaint attached hereto as Exhibit A. The MAMC should, therefore be granted.

11 **C. THE MAMC SHOULD ALSO BE GRANTED TO AVOID AN UNJUST WINDFALL**
12 **TO THE TIMPA TRUST AND A CORRESPONDING UNJUST FORFEITURE**
13 **BEING VISITED UPON PLAINTIFF.**

14 Here, the Court sat as a court of equity and impaired Plaintiff's title to the Property based
15 on the Bank's purported tender of the super-priority component of the HOA's super-priority lien
16 prior to the NRS 116 foreclosure sale of the Property by the HOA to Plaintiff. For its part, the
17 Timpa Trust would apparently have this Court believe that its exercise of equitable jurisdiction
18 ceases with that result. It does not. Plaintiff respectfully submits that what equity starts, equity
19 must finish, as well. Plaintiff now calls upon the Court to do just that: complete the adjudication of
20 this matter as a court of equity, including its determination regarding the appropriate disposition of
21 the Excess Proceeds by granting the MAMC and, thereby, allowing Plaintiff to file the amended
22 complaint attached hereto as Exhibit A. NRS 116.1108 supplements the entirety of NRS 116 with
23 equitable principles of Nevada law, including the distribution statute set forth in NRS
24 116.3116(4)(7)(b).

25 The Court's application of equitable principles here by granting the MAMC and allowing
26 Plaintiff's proposed amended complaint to be filed with the Court is urgently needed as the Court's
27 Excess Proceeds Order achieves two results that are abhorrent to, and shock the conscience of, a
28

1 court of equity. First, the Excess Proceeds Order visits forfeiture upon Plaintiff because its
2 payment of sale consideration does not result in any corresponding reduction in debt owed against
3 the Property. Second and relatedly, the Excess Proceeds Order bestows an unwarranted and,
4 indeed, unconscionable windfall upon the Timpa Trust.

5
6 The Timpa Trust never stood to receive any money—let alone the Excess Proceeds—from
7 the Property. By mere happenstance of the tender at issue here, the Timpa Trust now seeks to
8 benefit from an unconscionable windfall at Plaintiff’s expense. This Court sitting as a court of
9 equity cannot and should not allow this to happen. Fortunately, there are established principles of
10 equity in Nevada that the Court should employ here to avoid such an unconscionable result:
11 namely, the law of equitable subrogation. Under established principles of equitable subrogation,
12 the Excess Proceeds should be awarded to the Plaintiff to avoid windfall upon the Timpa Trust. By
13 granting the MAMC and allowing Plaintiff’s proposed amended complaint attached hereto as
14 Exhibit A to be filed with the Court, the Court will then be placed in a position to see this matter
15 through to fruition as a court of equity, consistent with NRS 116.1108, and avoid the unjust and,
16 indeed, unconscionable windfall-forfeiture scenario discussed above.

17
18 Unfortunately, as matters presently stand, the inequitable results flowing from the Court’s
19 Excess Proceeds Order do not stop there; indeed, they adversely affect the Bank’s interests, as well.
20 The Excess Proceeds Order effectively works a kind of *de facto* forfeiture with respect to the Bank
21 by leaving the Bank without a meaningful remedy. The Bank’s position with respect to the Excess
22 Proceeds Order is complicated by public policy considerations raised by the specter of Nevada’s
23 one-action rule. The Court’s order states in error with respect to the one-action rule and its
24 purported—albeit incorrect—application to the Bank that, “Thornburgh has not attempted to
25 interfere with the deposit of the HOA Excess Proceeds in recognition of Nevada’s one-action rule
26 and its relation to the pursuit of a deficiency judgment. Accordingly, Thornburgh has waived its
27
28

1 claim to receive the Excess Proceeds. *See Excess Proceeds Order* at pgs. 3-4 of 8, ¶15. If the
2 Bank pursues the Excess Proceeds, it runs the risk of running afoul of the one-action rule. On the
3 other hand, if the Bank does nothing, then it runs the risk of having the Excess Proceeds distributed
4 pursuant to the Excess Proceeds Order distributed to the Timpa Trust and, subsequently, to the
5 beneficiaries of the Timpa Trust. The near-certain dissipation of the Excess Proceeds will leave the
6 Bank without any meaningful recourse as neither the Timpa Trust nor its beneficiaries are
7 counterparties with respect to the Bank's asserted indebtedness with respect to the Property, and the
8 original borrowers are deceased. The reservation of the Bank's rights in the Excess Proceeds Order
9 to pursue those proceeds at a later date to satisfy any foreclosure deficiency is of little solace as the
10 Excess Proceeds—like the snows of yesteryear—will, in all likelihood, disappear from the face of
11 the Earth.
12

13
14 If the Court is not inclined to award the Excess Proceeds to the Bank, as argued by the
15 Plaintiff in its previously filed MRCN, then the Court should apply principles of equitable
16 subrogation and award the Excess Proceeds to Plaintiff. That result can be more easily reached,
17 however, if the Court grants the MAMC and grants Plaintiff leave to file its proposed amended
18 complaint attached hereto as Exhibit A. Nevada law on equitable subrogation is designed for just
19 such a circumstance as is presented in this case with respect to the Excess Proceeds: namely,
20 preventing a purported junior-interest holder in the Property from receiving an unwarranted
21 windfall at the expense of the Plaintiff.

22 When Plaintiff tendered the sale consideration for the Property, it did so with the legitimate
23 expectation set in place by the publicly recorded documents that the Excess Proceeds would be
24 distributed in accordance with identified subordinate claims against the Property that were *of*
25 record. Plaintiff did not, however, tender the sale consideration that resulted in the Excess
26 Proceeds in order to bestow a windfall upon the Timpa Trust and be saddled with the Property
27 encumbered by the first deed of trust that as of September 12, 2019, totaled \$6,643,306.90 [See
28 Exhibit A to the MRCN] without any corresponding reduction in the outstanding indebtedness

1 claimed by the Bank that should otherwise be reduced through the application of the Excess
2 Proceeds, with Property only be worth approximately \$2,700,000.00. Additionally, the Timpa Trust
3 is not a party to the Note and Deed of Trust, and the borrowers are now deceased. This is unjust.
4 But this unconscionable result should be avoided through the application of principles of equitable
5 subrogation. That result can be achieved only by granting the MAMC and permitting Plaintiff to
6 file the proposed amended complaint attached hereto as Exhibit A. The Court should, therefore,
7 grant the MAMC on this basis, as well.

8 **CONCLUSION**

9 Based upon the foregoing, this Court should grant the MAMC.

10 Dated this 16th day of October, 2019.

ROGER P. CROTEAU & ASSOCIATES, LTD

11 By: /s/ Roger Croteau

12 ROGER P. CROTEAU, ESQ.

13 Nevada Bar No.: 4958

2810 W. Charleston Blvd., Ste. 75

14 Las Vegas, Nevada 89102

Attorney for Plaintiff

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 16th day of October, 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

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

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

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

/s/ Jennifer Lee

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

EXHIBIT A

EXHIBIT A

ACOM--PROPOSED

ROGER P. CROTEAU, ESQ.

Nevada Bar No.: 4958

TIMOTHY E. RHODA, ESQ.

Nevada Bar No. 7878

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Attorneys for Plaintiff

Saticoy Bay LLC Series 34 Innisbrook

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3, FRANK TIMPA AND
MADELAINE TIMPA, individually and as
trustees of the TIMPA TRUST

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 NonProfit
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.: XXVI

**PLAINTIFF'S [PROPOSED] FOURTH
AMENDED COMPLAINT ATTACHED AS
EXHIBIT A TO PLAINTIFF'S MAMC**

1
2 RED ROCK FINANCIAL SERVICES

3 Counter-claimant,

4
5 vs

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

12 Counter-Defendants.

13
14 COMES NOW, Plaintiff, SATICOY BAY LLC SERIES 34 INNISBROOK (“*Plaintiff*” or
15 “*Saticoy*”), by and through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and
16 hereby alleges as follows:

17 1. Plaintiff is the owner of the real property commonly known as 34 Innisbrook, Las
18 Vegas, Nevada.

19 2. Plaintiff obtained title by a foreclosure sale conducted on November 7, 2014, as
20 evidenced by foreclosure deed recorded on November 10, 2014.

21 3. The Plaintiff’s title stems from a foreclosure deed arising from a delinquency in
22 assessments due from the former owners, Frank and Madelaine Timpa, to defendant Spanish Trails
23 Master Association, pursuant to NRS Chapter 116.

24 4. Defendant Thornburg Mortgage Securities Trust 2007-3 is the current beneficiary of
25 a deed of trust which was recorded as an encumbrance to the subject property on June 12, 2006.

26 5. Defendants Frank and Madelaine Timpa, individually and as trustees of the Timpa
27 Trust are the former owners of the property.

28 6. Defendant Red Rock Financial Services, LLC was the collection agent and

1 foreclosure agent acting on behalf of defendant Spanish Trails Master Association.

2 7. The interest of each of the defendants has been extinguished by reason of the
3 foreclosure sale, which was properly conducted with adequate notice given to all persons and
4 entities claiming an interest in the subject property, and resulting from a delinquency in
5 assessments due from the former owner to the Spanish Trails Master Association, pursuant to NRS
6 Chapter 116.

7 8. The HOA foreclosure sale complied with all requirements of law, including, but not
8 limited to, recording and mailing of copies of Notice of Delinquent Assessment and Notice of
9 Default, and the recording, posting and publishing of the Notice of Sale.

10 9. Plaintiff is entitled to a determination from this court, pursuant to NRS 40.010 that
11 the plaintiff is the rightful owner of the property, and that the defendants have no right, title,
12 interest or claim to the subject property.

13 10. The Plaintiff is entitled to an award of attorney's fees and costs.

14 **SECOND CLAIM FOR RELIEF**

15 11. Plaintiff repeats the allegations contained in paragraphs 1 through 10.

16 12. Plaintiff seeks a declaration from this court, pursuant to NRS 40.010, that title in the
17 property is vested in plaintiff free and clear of all liens and encumbrances, that the defendants
18 herein have no estate, right, title or interest in the property, and the defendants are forever enjoined
19 from asserting any estate, title, right, interest, or claim to the subject property adverse to the
20 Plaintiff.

21 13. The Plaintiff is entitled to an award of attorney's fees and costs.

22 **THIRD CLAIM FOR RELIEF**

23 14. Plaintiff repeats the allegations contained in paragraphs 1 through 13.

24 15. Defendants Frank and Madelaine Timpa individually and as trustee for the Timpa
25 Trust were served with a 3-day notice to quit.

26 16. The defendants have failed to vacate the premises despite the notices that have been
27 served upon them.

28 17. The defendants have remained in possession of said property up to and including the

1 present time.

2 18. The Plaintiff is entitled to a Writ of Restitution restoring possession of the property
3 to the Plaintiff.

4 19. Plaintiff is entitled to an award of attorney's fees and costs of suit.

5 **FOURTH CLAIM FOR RELIEF**

6 20. Plaintiff repeats the allegations contained in paragraphs 1 through 19.

7 21. Defendant Thornburg Mortgage Securities Trust 2007-3 claims its predecessor-in-
8 interest, Bank of America, N.A., tendered its calculation of the super-priority amount of the HOA
9 lien to defendant Red Rock Financial Services, LLC (hereinafter "RRFS").

10 22. RRFS and Spanish Trails Master Association (the "HOA") had an obligation to
11 inform bidders at the foreclosure sale if the super priority portion of the HOA lien had been
12 tendered prior to the foreclosure sale.

13 23. RRFS and the HOA did not make any statement advising bidders that Bank of
14 America, N.A. tendered the super-priority portion of the lien.

15 24. Plaintiff is informed and believes and thereupon alleges that the HOA and RRFS
16 intended that the buyers at the HOA foreclosure sale held on November 7, 2014, believe that the
17 assessment lien being foreclosed included a super-priority component that would extinguish the
18 first deed of trust recorded against the Property.

19 25. Plaintiff reasonably relied upon the notices and representations of the HOA and
20 RRFS and entered the high bid of \$1,201,000.00 for the Property with the reasonable belief that the
21 HOA's assessment lien being foreclosed by the HOA and RRFS included a super-priority portion
22 that would extinguish the first deed of trust recorded against the Property.

23 26. Plaintiff still believes that the HOA assessment lien contained a super-priority
24 portion, but if the Court finds otherwise, then Plaintiff will have been damaged in an amount in
25 excess of \$10,000.00 by HOA and RRFS failing to disclose that the tender was made by Bank of
26 America at some point prior to the foreclosure sale.

27 27. If the Court finds that the HOA assessment lien did not contain a super-priority
28 portion, then Plaintiff's high bid for the Property should be rescinded due to the misrepresentation

1 made by the HOA and RRFS in the foreclosure documents, and all monies paid by Plaintiff should
2 be refunded to Plaintiff.

3 28. Plaintiff is entitled to an award of attorney's fees and costs.

4 **FIFTH CLAIM FOR RELIEF**

5 29. Plaintiff repeats the allegations contained in paragraphs 1-through 28.

6 30. If the HOA and RRFS had disclosed in the documents recorded with the County
7 Recorder, or at the public auction held on September 25, 2012, that the assessment lien being
8 foreclosed upon did not have a super-priority component, Plaintiff would not have bid and paid
9 \$4,850.00 for the Property.

10 31. If the Court finds that the HOA assessment lien did not contain a super-priority
11 portion, then the HOA and RRFS will have been unjustly enriched by the amount of Plaintiff's bid
12 that would not have been made by Plaintiff if the HOA and RRFS had disclosed that Bank of
13 America claimed to have tendered the super-priority amount of the assessment lien, which is an
14 amount in excess of \$10,000.00.

15 32. Plaintiff is entitled to an award of attorney's fees and costs.

16 **SIXTH CLAIM FOR RELIEF**

17 33. Plaintiff repeats the allegations contained in paragraphs 1 through 32.

18 34. On April 10, 2015, Defendant/Counterclaim Plaintiff Thornburg Mortgage
19 Securities Trust 2007-3 filed *Thornburg Mortgage Securities Trust 2007-3's Answer and Counter-*
20 *Claims* (the "*Bank's Counterclaims*").

21 35. Plaintiff hereby incorporates the general allegations as applicable to Plaintiff and
22 supportive of Plaintiff's requests for relief herein set forth in paragraphs 33, 34, 39, 47, 56, 62, 77,
23 92, 94, 96, and 111 of the Bank's Counterclaims. *See Bank's Counterclaims* at pgs. 11-14, 16-18,
24 and 20 of 28.

25 36. On December 3, 2018, the Court entered its order of summary judgment in which
26 the Court held that the Bank's deed of trust survived the HOA's NRS 116 foreclosure sale of the
27 Property and remains as an encumbrance on Plaintiff's Property.

28 37. On September 11, 2019, the Court entered its order awarding the Excess Proceeds

1 generated by the HOA's sale of the Property to the Timpa Trust through the Excess Proceeds
2 Order.

3 38. On September 24, 2019, Plaintiff timely sought reconsideration of the Excess
4 Proceeds Order (the "MRCN").

5 39. A hearing on the MRCN is scheduled to take place before this Court on October 29,
6 2019.

7 40. On March 7, 2019, the Supreme Court of Nevada issued its decision in *Bank of*
8 *America, N.A. v. Thomas Jessup, LLC Series VII*, 435 P.3d 1217 (Nev. 2019) ("*Jessup*").

9 41. There, the Supreme Court of Nevada expressly recognized that a purchaser, like
10 Plaintiff here, had standing to request that a foreclosure sale be set aside based upon claims, causes
11 of action, and/or legal theories previously advanced by the bank in that litigation in the event that
12 the purchaser's title to property was impaired as a result of a bank's deed of trust surviving an NRS
13 116 foreclosure sale by way of judicial determination after the fact as a result of a previously
14 undisclosed tender. *See id.* at 1221 n.5 ("Similarly, we need not address the Bank's remaining
15 arguments in support of its deed of trust remaining intact, as neither the Bank nor the Purchaser
16 have expressed whether they would prefer to have the sale set aside or have the Purchaser take title
17 to the property subject to the first deed of trust.") (emphasis added). For the first time, *Jessup*
18 expressly confers upon Plaintiff the right to seek the relief it seeks through the MAMC, and
19 Plaintiff's MAMC should be granted on this basis alone.

20 42. The HOA's sale of the Property to Plaintiff under NRS 116 should therefore be
21 rescinded, set aside, and/or voided based on *Jessup*, the incorporated provisions of the Bank's
22 Counterclaims, and/or the Court's entry of its summary judgment order of December 3, 2018 and
23 the Excess Proceeds Order.

24 43. The Excess Proceeds generated by the HOA's NRS 116 sale of the Property to
25 Plaintiff that are the subject of the Excess Proceeds Order rightfully belong, and should be awarded
26 and/or returned, to Plaintiff by way of refund, restitution, damages, and/or pursuant to principles of
27 equitable subrogation as set forth in Plaintiff's MRCN.

28 ...

1 WHEREFORE, Plaintiff prays for Judgment as follows:

- 2 1. For injunctive relief;
- 3 2. For a determination and declaration that the defendants have no estate, right, title, interest or
- 4 claim in the Property;
- 5 3. For a determination and declaration that the defendants have no estate, right, title, interest or
- 6 claim in the Property;
- 7 4. For a judgment forever enjoining the defendants from asserting any estate, right, title,
- 8 interest or claim in the Property;
- 9 5. If the Court finds that the assessment lien did not include a super-priority portion, for a
- 10 judgment against the HOA and RRFS rescinding Plaintiff's purchase of the Property and
- 11 requiring all monies paid by Plaintiff to be refunded, or in the alternative, for damages in an
- 12 amount in excess of \$10,000.00; and
- 13 6. For entry of an order setting aside, voiding, and/or rescinding the HOA's NRS 116
- 14 foreclosure sale of the Property to Plaintiff based on *Jessup*, the incorporated provisions of
- 15 the Bank's Counterclaims, and/or the Court's entry of its summary judgment order of
- 16 December 3, 2018 and the Excess Proceeds Order.
- 17 7. For entry of an order declaring that the Excess Proceeds generated by the HOA's NRS 116
- 18 sale of the Property to Plaintiff that are the subject of the Excess Proceeds Order rightfully
- 19 belong, and should be awarded and/or returned, to Plaintiff by way of refund, restitution,
- 20 damages, and/or pursuant to principles of equitable subrogation as set forth in Plaintiff's
- 21 MRCN.

22 Dated this 16th day of October, 2019.

23 ROGER P. CROTEAU & ASSOCIATES, LTD

24 By: /s/ Roger Croteau

25 ROGER P. CROTEAU, ESQ.

26 Nevada Bar No.: 4958

27 2810 W. Charleston Blvd., Ste. 75

28 Las Vegas, Nevada 89102

Attorney for Plaintiff

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 2nd day of October, 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 eflex 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

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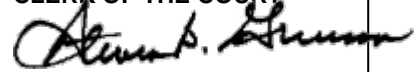
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27 /s/ Jennifer Lee

28 An employee of ROGER P. CROTEAU &
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DISTRICT COURT
CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

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

Defendants.

AND ALL RELATED ACTIONS

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

Hearing Requested

**PLAINTIFF'S REPLY TO THORNBURG
MORTGAGE SECURITIES TRUST 2007-
3'S LIMITED OPPOSITION TO
PLAINTIFF'S MOTION FOR
RECONSIDERATION**

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 Reply to Thornburg Mortgage Securities Trust 2007-3's Limited Opposition to Plaintiff's Motion for Reconsideration* (the "*RIS*"). This RIS is made and based upon the attached Memorandum of Points and Authorities, the papers and pleadings on file herein, and

1 any oral argument that this Honorable Court may entertain at the time of hearing of this matter.

2 Dated this 18th day of October, 2019.

3 ROGER P. CROTEAU & ASSOCIATES, LTD

4 By: /s/ Roger Croteau

5 ROGER P. CROTEAU, ESQ.

6 Nevada Bar No.: 4958

7 2810 W. Charleston Blvd., Ste. 75

8 Las Vegas, Nevada 89102

9 *Attorney for Plaintiff*

10 *Saticoy Bay LLC Series 34 Innisbrook*

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **REPLY**

13 On October 4, 2019, Thornburg Mortgage Securities Trust 2007-3 (the “Bank”) filed the
14 *Thornburg Mortgage Securities Trust 2007-3’s Limited Opposition to Plaintiff’s Motion for*
15 *Reconsideration* (the “OPPM”) to Plaintiff’s Motion for Reconsideration under NRCP 59(e) and
16 *60(b) of (I) the Court’s Summary Judgment Order of December 3, 2018 and (II) the Court’s Order*
17 *Concerning the Distribution of Excess Proceeds* (the “MRCN”). The RIS is brief in that it only
18 seeks to clarify the relief requested in the MRCN to address the Bank’s concerns as raised in the
19 OPPM. Based upon Plaintiff’s understanding of the concerns raised in the Bank’s OPPM, the Bank
20 does not object to the relief actually requested by Plaintiff in the MRCN. To the extent further
21 clarification is necessary for the benefit of either the Bank or the Court, Plaintiff shall provide such
22 further clarification(s) at the MRCN’s scheduled hearing on October 29, 2019 at 9:00 a.m. (PT).

23 To be clear, Plaintiff does not seek to vacate the Court’s December 3, 2018 grant of
24 summary judgment to the Bank in any way that impairs, alters, changes, or modifies the Bank’s
25 lien rights under its deed of trust as to the real property located in 34 Innisbrook Avenue, Las
26 Vegas, Nevada 89113 (the “Property”). Any order vacating the Court’s prior grant of summary
27
28

1 judgment to the Bank pursuant to the MRCN would be addressed to the Excess Proceeds,¹ not the
2 Bank's lien rights as to the Property. In that same vein, the Bank is correct when it states in the
3 OPPM that, "*In light of the significant excess proceeds at issue, Saticoy now advocates that the*
4 *HOA sale should be unwound and the parties placed in the positions they were in prior to the*
5 *November 7, 2014 sale.*" See OPPM, at pg. 2 of 3; lines 3-5 (emphasis added). Indeed, the Bank
6 has accurately assimilated Plaintiff's requested relief in the MRCN when it states in the OPPM:
7

8 To the extent Saticoy simply seeks to modify the outcome of the
9 court's findings from (1) Saticoy taking its title subject to the deed of
10 trust to (2) *an outcome whereby **the sale is unwound**, Thornburg*
11 *does not object given the unique circumstances of this case...*The
effect of the presale tender has not been impacted in any way by
subsequent briefing on the distribution of excess proceeds.

12 See *id.* at lines 17-22 (bold and italic typeface added, underscore in original).

13 The Bank closes the OPPM by stating, "Thornburg opposes [the MRCN] to the extent it
14 requests that the order granting summary judgment in Thornburg's favor is vacated in its entirety
15 or modified in a manner impacting the finding that presale tender preserved Thornburg's first lien
16 position." See *id.* at pg. 3 of 3; lines 2-4 (emphasis added). Again, and to be clear, Plaintiff only
17 seeks through the MRCN to have the NRS 116 sale of the Property unwound and the Excess
18 Proceeds either returned to the Plaintiff or awarded to the Bank as per the terms of the MRCN.
19 Specifically, if the HOA sale were unwound, the Bank's position would be unaffected, and it would
20 remain a first priority deed of trust secured by the Property. Plaintiff does not seek to alter, modify,
21 or disturb in any way the Bank's lien rights under its deed of trust with respect to the Property as
22 determined and/or confirmed by the Court's December 3, 2018 grant of summary judgment to the
23 Bank. The MRCN is addressed to the Excess Proceeds and unwinding the sale.
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26 //

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28 ¹ Capitalized terms not otherwise defined herein shall have the meaning(s) ascribed to such term(s) in the MRCN.

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Based upon the foregoing and the MRCN, this Court should grant the MRCN.

Dated this 18th day of October, 2019. ROGER P. CROTEAU & ASSOCIATES, LTD

By: /s/ Roger Croteau
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2810 W. Charleston Blvd., Ste. 75
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Attorney for Plaintiff
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 18th day of October, 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.

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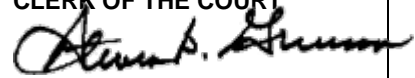
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

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

Defendants.

Case No.: A-14-710161-C

Division: XXVI

**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)**

AND ALL RELATED ACTIONS

Defendant, counterclaimant, and counter-defendant Thornburg Mortgage Securities Trust 2007-3 files this limited opposition to plaintiff Saticoy Bay LLC Series 34 Innisbrook's motion to amend complaint pursuant to NRCP 15(b)(2) and 60(b).

I. INTRODUCTION

Almost a year after Thornburg prevailed on summary judgment, Saticoy now seeks to amend its complaint for the fourth time. Through the amendment, Saticoy claims it does not seek to disturb the court's December 3, 2018 judgment holding Thornburg's first deed of trust survived the HOA sale. Rather, Saticoy states it seeks to set aside the HOA sale. Thornburg does not object the modification of the court's finding from (1) Saticoy taking its title subject to the deed of trust to (2)

1 an outcome whereby the sale is unwound. Thornburg does, however, object to Saticoy's motion to
2 the extent it seeks to reinstate its prior claims (dismissed with prejudice) against Thornburg.

3 **II. RELEVANT FACTS AND PROCEDURAL HISTORY**

4 Frank Timpa executed a deed of trust securing a \$3,780,000 loan to purchase the subject
5 property. Saticoy filed suit seeking to quiet title after purchasing its interest at a November 7, 2014
6 HOA foreclosure sale. Saticoy amended its complaint on November 25, 2014, June 11, 2015, and
7 on February 10, 2017.

8 On December 5, 2018, this court entered its findings of fact, conclusions of law and order
9 granting Thornburg's motion for summary judgment and holding the HOA foreclosed on its
10 subpriority lien due to presale tender of the superpriority portion of the HOA's lien. The order states
11 Thornburg's deed of trust remains in first position, and Saticoy purchased the property subject to
12 Thornburg's lien. The only remaining issue in this case concerns the disposition of excess proceeds.

13 The court granted Timpa Trust U/T/D March 3, 1999's motion for summary judgment on
14 September 11, 2019 finding it entitled to approximately \$1 million in excess proceeds from the sale.
15 Saticoy filed its motion for reconsideration and emergency motion for stay. The court granted
16 Saticoy's emergency motion for stay.

17 **III. ARGUMENT**

18 Saticoy claims it does not seek to disturb this court's December 3, 2018 judgment. *See* mtn.
19 at 3. Notwithstanding, Saticoy's proposed fourth amended complaint seeks to join Thornburg as a
20 party to the litigation and relitigate the claims dismissed by this court with prejudice. It seeks to
21 reassert its previous five claims and add a sixth claim to invalidate the sale and collect the excess
22 proceeds. Saticoy should not be allowed to amend its complaint adding Thornburg as a party and
23 relitigating claims dismissed with prejudice.

24 ///

25 ///

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IV. CONCLUSION

Thornburg opposes Saticoy's motion to the extent it seeks reassert its claims dismissed with prejudice against Thornburg, requests the order granting summary judgment in Thornburg's favor is vacated in its entirety or modified in a manner impacting the finding that presale tender preserved Thornburg's first lien position.

Dated: October 25, 2019

AKERMAN LLP

/s/ Jared M. Sechrist

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*Attorneys for Thornburg Mortgage Securities Trust
2007-3*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 25th day of October, 2019, I caused to be served a true and correct copy of the foregoing **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)**, in the following manner:

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

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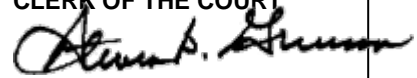
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DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

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

Defendants.

AND ALL RELATED ACTIONS

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

**PLAINTIFF'S REPLY IN SUPPORT OF
ITS MOTION FOR RECONSIDERATION**

HEARING DATE: October 29, 2019
HEARING TIME: 9:00AM

COMES NOW, Plaintiff, SATICOY BAY LLC SERIES 34 INNISBROOK ("*Plaintiff*" or "*Saticoy*"), by and through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby submits its Reply in Support of its Motion for Reconsideration (the "*RIS*"). This *RIS* is made and based upon the attached Memorandum of Points and Authorities, the papers and pleadings on file herein, and any oral argument that this Honorable Court may entertain at the time

1 of hearing of this matter.

2 Dated this 25th day of October, 2019.

3 ROGER P. CROTEAU & ASSOCIATES, LTD

4 By: /s/ Roger Croteau

5 ROGER P. CROTEAU, ESQ.

6 Nevada Bar No.: 4958

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9 2810 W. Charleston Blvd., Ste. 75

10 Las Vegas, Nevada 89102

11 *Attorneys for Plaintiff*

12 *Saticoy Bay LLC Series 34 Innisbrook*

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I. INTRODUCTION**

15 Saticoy does not seek to “overturn” the Court’s rulings dated December 3, 2018 (the
16 “*Summary Judgment Order*”), and September 11, 2019 (the “*Excess Proceeds Order*”) because it
17 simply does not agree. As set forth in the various oppositions filed by Saticoy in this case, Saticoy
18 does disagree with the findings contained in the Summary Judgment Order and the Excess
19 Proceeds Order; however, the Court did not address certain relief requests by Saticoy and
20 Thornburg Mortgage Securities Trust 2007-3 (the “*Bank*”). Specifically, Saticoy’s claims against
21 Spanish Trails Master Association’s (“*HOA*”) and Red Rock Financial Services, Inc. (“*HOA*
22 *Trustee*”) have not been adjudicated.

23 Timpa Trust U/T/D March 3, 1999 (the “*Trust*” and/or “*Timpa Trust*”) asserts that Saticoy
24 is pursuing a “Hail Mary play,” but this could not be further from the truth. Saticoy seeks the
25 reconsideration requested pursuant to NRCP 59(e) and NRCP 60(b) as a result of the Nevada
26 Supreme Court’s ruling in *Bank of America v. Thomas Jessup*, 435 P.3d 1217, 1221 n.5 (Nev.
27 2019), that clearly represents an intervening change in the law within the meaning of NRCP
28 60(b)(6) and NRCP 59(a)(1)(G) and 59(e).

It is undisputed between the parties that the subject property at issue here, 34 Innisbrook

1 Ave, Las Vegas, Nevada (the “*Property*”), was subject to a foreclosure sale conducted on
2 November 7, 2014, pursuant to NRS 116, at which the Property was sold to Plaintiff for the highest
3 bid amount of \$1,201,000.00 (“*HOA Foreclosure Sale*”). It is also undisputed that the excess
4 proceeds created by the HOA Foreclosure Sale after deducting all sums due to the HOA and HOA
5 Trustee was \$1,168,865.05 (the “*Excess Proceeds*”).

6 On October 8, 2019, the Timpa Trust filed its Opposition to Plaintiff’s Motion for
7 Reconsideration Under NRCF 59(E) And 60(B) of (I) The Court’s Summary Judgment Order of
8 December 3, 2018 And (II) The Court’s Order Concerning The Distribution Of Excess Proceeds
9 (the “*Opposition*”). The Trust states in its Opposition that “NRS 116.31164 is a clear statute and
10 reads that, once all subordinate lien holders are paid off, the court is to disperse any remaining
11 excess proceeds from NRS 116 sales to the former homeowner.” Emphasis added. See Opposition,
12 page 4, lines 8-10. The Bank is entitled to the Excess Proceeds from the HOA Foreclosure Sale,
13 because the Bank was a subordinate lienholder at the time that the HOA assessment lien was
14 recorded and remains a subordinate lienholder of record.

15 The issue of Excess Proceeds has not been addressed by the Nevada Supreme Court and the
16 District Courts are currently split on the way Excess Proceeds must be disbursed under
17 circumstances such as those at hand. As has been the case since at least 2010, NRS 116.3116 has
18 confused many courts, attorneys and foreclosure professionals as to its purpose and operation. NRS
19 116 does read plainly and should be enforced as written. Simply stated, NRS 116.3116(7)(2)
20 requires the Court to provide the Excess Proceeds to the holders of subordinate claims of record.
21 Since the HOA lien was perfected at the time of recordation of the CC&Rs, all liens subsequently
22 recorded are subordinate to the HOA lien, including the Bank’s deed of trust. It is of significance
23 that NRS 116.3116 is not included in the NRS 116 foreclosure section that is encompassed in NRS
24 116.31162 through NRS 116.31168.

25 The Bank’s status as a subordinate lienholder remained as such until this Court entered its
26 Summary Judgment Order, wherein this Court changed the Bank’s position from a subordinate
27 lienholder status to a first position status in priority over the HOA Lien for delinquent assessments
28 that remained secured against the Property. Specifically, this Court determined that the Bank,

1 through its predecessor-in-interest, Bank of America, N.A. (“BANA”), tendered the super-priority
2 portion of the HOA’s lien against the Property through its counsel, Miles Bauer Bergstrom &
3 Winters (“Miles Bauer”) on February 10, 2012 as a fact. This Court also determined that the HOA
4 Trustee rejected the tender as a fact. See Summary Judgment Order, pages 3-4, paragraphs 14-15.
5 However, tenders do not have to be recorded in order to have the legally operative effect of
6 discharging the super-priority component of an association’s statutory lien under NRS 116.3116(2).
7 *Bank of America, N.A. v. SFR Invs. Pool 1, LLC*, 427 P.3d 113, 119-120 (Nev. 2018) (“*Diamond*
8 *Spur*”). Therefore, the Bank’s claim “of record” was subordinate to the claims of the HOA at the
9 time of filing of the Notice of Delinquent Assessment (“*HOA Lien*”) and at the time of the HOA’s
10 NRS 116 foreclosure sale of the Property, and the Bank’s alleged tender and its subsequent
11 adjudication by this Court does not change the priority of subordinate claims under NRS
12 116.3116(7)(b)(4) as they existed on the date of the HOA’s Foreclosure Sale of the Property.

13 This Court technically only effectively adjudicated the quiet title/declaratory relief dispute
14 between the parties in the Summary Judgment Order, and subsequently dismissed the remaining
15 claims of the Bank with prejudice. However, the Court did not address all of the claims and
16 disputes between the parties. Thus, the Plaintiff was forced to file a Motion to Reopen a
17 Statistically Closed Case on May 10, 2019 to primarily address the adjudication of the Excess
18 Proceeds. After motion practice and oral arguments presented by counsel for the parties, this Court
19 determined that the Excess Proceeds were to be distributed to the Trust in its Excess Proceeds
20 Order. However, the Summary Judgment Order and the Excess Proceeds Order still do not address
21 all the claims and disputes between the parties. Accordingly, the Plaintiff has filed the instant
22 Motion for Reconsideration and subsequent Motion to Amend Complaint.

23 In Plaintiff’s Fourth Claim For Relief contained in its Third Amended Complaint (“TAC”)
24 that was filed on February 10, 2017, Plaintiff requests that “if the Court finds [that the
25 homeowner’s association lien did not contain a super-priority portion], then Plaintiff will have been
26 damaged in an amount in excess of \$10,000.00 by HOA and [HOA Trustee] failing to disclose that
27 the tender was made by Bank of America at some point prior to the foreclosure sale. If the Court
28 finds that the [homeowner’s association lien] did not contain a super-priority portion, then

1 Plaintiff's high bid for the Property should be rescinded due to the misrepresentations made by the
2 HOA and [HOA Trustee] in the foreclosure documents, and all monies paid by Plaintiff should be
3 refunded to Plaintiff.” Although the Court determined that the Bank’s first deed of trust remains an
4 encumbrance against the Property in the Summary Judgment Order, the Court did not make any
5 determination regarding Plaintiff’s Fourth Claim For Relief contained in the TAC. Similarly,
6 Saticoy made a Fifth Claim for Relief on substantively the same grounds. Simply put, the Plaintiff
7 is respectfully requesting that this Court consider and adjudicate this claim. It is for the foregoing
8 reasons that Saticoy requests the Court’s reconsideration of its Summary Judgment Order and
9 Excess Proceeds Order.

10 **II. STATEMENT OF RELEVANT FACTS**

11 In addition to facts 1 and 2 as set forth in Saticoy’s Motion for Reconsideration, Saticoy
12 offers the following:

13 3. In Saticoy’s TAC dated February 10, 2017, Saticoy asserted the Fourth Claim for Relief:

14 20. Plaintiff repeats the allegations contained in paragraphs 1 through 19.

15 21. [The Bank] claims its predecessor-in-interest, [BANA] tendered its calculation of
16 the super-priority amount of the HOA lien to defendant [HOA Trustee].

17 22. [HOA Trustee and HOA] had an obligation to inform the bidders at the foreclosure
18 sale if the super priority portion of the HOA lien had been tendered prior to the
19 foreclosure sale.

20 23. [HOA Trustee] and the HOA did not make any statement advising bidders that
21 [BANA] tendered the super-priority portion of the lien.

22 24. Plaintiff is informed and believes and thereupon alleges that the HOA and [HOA
23 Trustee] intended that the buyers at the HOA Foreclosure Sale held on November 7,
24 2014, believe that the assessment lien being foreclosed included a super-priority
25 component that would extinguish the first deed of trust recorded against the
26 Property.

27 25. Plaintiff reasonably relied upon the notices and representations of the HOA and
28 [HOA Trustee] and entered the high bid of \$1,201,000.00 for the Property with the

1 reasonable belief that the HOA's assessment lien being foreclosed by the HOA and
2 [HOA Trustee] included a superpriority portion that would extinguish the first deed
3 of trust recorded against the Property.

4 26. Plaintiff still believes that the HOA assessment lien contained a super-priority
5 portion, but if the Court finds otherwise, then Plaintiff will have been damaged in an
6 amount in excess of \$10,000.00 by HOA and [HOA Trustee] failing to disclose that
7 the tender was made by [BANA] at some point prior to the foreclosure sale.

8 27. If the Court finds that the HOA [Lien] did not contain a super-priority portion, then
9 Plaintiff's high bid for the Property should be rescinded due to the
10 misrepresentations made by the HOA and [HOA Trustee] in the foreclosure
11 documents, and all monies paid by Plaintiff should be refunded to Plaintiff.

12 28. Plaintiff is entitled to an award of attorney's fees and costs.

13 4. In Saticoy's TAC dated February 10, 2017, Saticoy asserted the Fifth Claim for Relief:

14 29. Plaintiff repeats the allegations contained in paragraphs 1 through 28.

15 30. If the HOA or [HOA Trustee] had disclosed in the documents recorded with the
16 County Recorder, or at the public auction held on November 7, 2014, that the
17 assessment lien being foreclosed did not have a super priority component, Plaintiff
18 would not have bid and paid \$1,201,000.00 for the Property.

19 31. If the Court finds that the HOA [Lien] did not contain a super-priority portion, then
20 the HOA and [HOA Trustee] will have been unjustly enriched by the amount of
21 Plaintiff's bid that would not have been made by Plaintiff if the HOA and [HOA
22 Trustee] had disclosed that [BANA] claimed to have tendered the superpriority
23 amount of the assessment lien, which is an amount in excess of \$10,000.00.

24 32. Plaintiff is entitled to an award of attorney's fees and costs.

25 5. The Summary Judgment Order simply provided "that all remaining claims not specifically
26 mentioned, including all claims and counterclaims in Thornburg's counterclaim and
27 crossclaims and Saticoy's Complaint, are dismissed with prejudice..."

28 6. The Summary Judgment Order resulted from the Bank's Motion for Summary Judgment on

its claims and counterclaims and not from Saticoy's claims contained in its TAC as provided above in No. 3.

7. In the Excess Proceeds Order, the Court ruled that "Saticoy has standing to assert where or how the HOA Excess Proceeds are to be utilized because there will arguably be a substantial deficiency on the Subject Property if Thornburg seeks to foreclose the Subject Property on the Thornburg Deed of Trust."
8. In the TAC, Saticoy brought claims against the HOA and the HOA Trustee that remain unresolved as no order has dismissed or otherwise adjudicated Saticoy's claims against the HOA and HOA Trustee.
9. The HOA Trustee answered Saticoy's TAC on March 3, 2017.
10. The HOA answered Saticoy's TAC on or about July 19, 2018.
11. The Bank answered Saticoy's TAC on May 30, 2017.

III. LEGAL ARGUMENT

A. THE MOTION FOR RECONSIDERATION SHOULD ALSO BE GRANTED TO AVOID AN UNJUST WINDFALL TO THE TIMPA TRUST AND A CORRESPONDING UNJUST FORFEITURE BEING VISITED UPON PLAINTIFF.

Here, the Court sat as a court of equity and impaired Plaintiff's title to the Property based on the Bank's purported tender of the super-priority component of the HOA's super-priority lien prior to the NRS 116 foreclosure sale of the Property by the HOA to Plaintiff. For its part, the Timpa Trust would apparently have this Court believe that its exercise of equitable jurisdiction ceases with that result. It does not. Plaintiff respectfully submits that what equity starts, equity must finish, as well. Plaintiff now calls upon the Court to do just that: complete the adjudication of this matter as a court of equity, including its determination regarding the appropriate disposition of the Excess Proceeds by granting the instant Motion for Reconsideration ("MRCN"). NRS 116.1108 supplements the entirety of NRS 116 with equitable principles of Nevada law, including the distribution statute set forth in NRS 116.3116(4)(7)(b).

The Court's application of equitable principles here by granting the MRCN and allowing Plaintiff's proposed amended complaint to be filed with the Court is urgently needed as the Court's Excess Proceeds Order achieves two results that are abhorrent to, and shock the conscience of, a

1 court of equity. First, the Excess Proceeds Order visits forfeiture upon Plaintiff because its
2 payment of valuable consideration does not result in any corresponding reduction in debt owed
3 against the Property. Second and relatedly, the Excess Proceeds Order bestows an unwarranted
4 and, indeed, unconscionable windfall upon the Timpa Trust.

5 The Timpa Trust never stood to receive any money—let alone the Excess Proceeds—from
6 the Property. Indeed, the value of the Property undersecures the debt owed to BANA by millions
7 of dollars. By mere happenstance of the tender at issue here, the Timpa Trust now seeks to benefit
8 from an unconscionable windfall at Plaintiff's expense. This Court, sitting as a court of equity
9 cannot and should not allow this to happen. Fortunately, there are established principles of equity
10 in Nevada that the Court should employ here to avoid such an unconscionable result: namely, the
11 law of equitable subrogation. Under established principles of equitable subrogation, the Excess
12 Proceeds should be awarded to the Plaintiff to avoid windfall upon the Timpa Trust. By granting
13 the MRCN, the Court will then be placed in a position to see this matter through to fruition as a
14 court of equity, consistent with NRS 116.1108, and avoid the unjust and, indeed, unconscionable
15 windfall-forfeiture scenario discussed above.

16 Unfortunately, as matters presently stand, the inequitable results flowing from the Court's
17 Excess Proceeds Order do not stop there; indeed, they adversely affect the Bank's interests, as well.
18 The Excess Proceeds Order effectively works a kind of *de facto* forfeiture with respect to the Bank
19 by leaving the Bank without a meaningful remedy. The Bank's position with respect to the Excess
20 Proceeds Order is complicated by public policy considerations raised by the specter of Nevada's
21 one-action rule. The Court's order states in error with respect to the one-action rule and its
22 purported—albeit incorrect—application to the Bank that, “Thornburg has not attempted to
23 interfere with the deposit of the HOA Excess Proceeds in recognition of Nevada's one-action rule
24 and its relation to the pursuit of a deficiency judgment. Accordingly, Thornburg has waived its
25 claim to receive the Excess Proceeds.” See *Excess Proceeds Order* at pgs. 3-4 of 8, ¶15. If the
26 Bank pursues the Excess Proceeds, it runs the risk of running afoul of the one-action rule. On the
27 other hand, if the Bank does nothing, then it runs the risk of having the Excess Proceeds distributed
28 pursuant to the Excess Proceeds Order to the Timpa Trust and, subsequently, to the beneficiaries of

1 the Timpa Trust. The near-certain dissipation of the Excess Proceeds will leave the Bank without
2 any meaningful recourse as neither the Timpa Trust nor its beneficiaries are counterparties with
3 respect to the Bank's asserted indebtedness secured by the Property, and the original borrowers are
4 deceased. The reservation of the Bank's rights in the Excess Proceeds Order to pursue those
5 proceeds at a later date to satisfy any foreclosure deficiency is of little solace as the Excess
6 Proceeds—like the snows of yesteryear—will, in all likelihood, disappear from the face of the
7 Earth.

8 If the Court is not inclined to award the Excess Proceeds to the Bank, as argued by the
9 Plaintiff in its previously filed MRCN, then the Court should apply principles of equitable
10 subrogation and award the Excess Proceeds to Plaintiff. That result can be more easily reached,
11 however, if the Court grants Plaintiff leave to file its proposed amended complaint, or rule on
12 Saticoy's Fourth and Fifth Claims for Relief. Nevada law on equitable subrogation is designed for
13 just such a circumstance as is presented in this case with respect to the Excess Proceeds: namely,
14 preventing a purported junior-interest holder in the Property from receiving an unwarranted
15 windfall at the expense of the Plaintiff.

16 As stated in open court and in Plaintiff's Motion, the Lender is in its view prevented from
17 pursuing the Excess Proceeds to be applied to the debt due Lender as the First Trust Deed Holder,
18 as it believed that it is prevented from doing so due to Nevada's "single action rule". As of
19 September 12, 2019, the Lender is owed \$6,643,306.90, as evidenced by the Payoff Statement
20 Amended. The borrower, obligor on the Promissory Note and First Deed of Trust is Frank A.
21 Timpa. Frank A. Timpa was the settler of the Timpa Trust but is now deceased. The Timpa Trust
22 has no contractual privity with Lender pursuant to the Promissory Note and/or the First Deed of
23 Trust. The current market value of the Property that is secured by the First Deed of Trust is
24 approximately \$2,704,961.00. If the Lender forecloses upon the Property and secures the high
25 amount of \$2,704,961.00 for the Property at its foreclosure sale, the Lender will incur a deficiency
26 of at least \$3,938,645.00, with a deceased borrower, obligor and no reasonable means of any
27 collection of the deficiency judgment. Conversely, absent a writ of attachment, the Bank will have
28 no reasonable possibility of collecting from the Timpa Trust as it is believed upon information and

1 belief that the Timpa Trust will immediately disburse the Excess Proceeds to its contingent
2 beneficiaries who are not parties to this lawsuit, the Promissory Note and/or the First Deed of
3 Trust. The nearly \$1,200,000.00 windfall upon information and belief is the only asset of the Timpa
4 Trust and/or Frank Timpa, the borrower, and obligor. Equity dictates a seasoned, conservative
5 approach to this MRCN and the certain appeal to obtain a ruling from the Nevada Supreme Court
6 on its determination of what a “subordinate lien holder of record” means pursuant to NRS 116 *et*
7 *seq.* The MRCN should be granted in order to preserve the status quo.

8 When Plaintiff tendered the sale consideration for the Property, it did so with the legitimate
9 expectation set in place by the publicly recorded documents that the Excess Proceeds would be
10 distributed in accordance with identified subordinate claims against the Property that were of
11 record. Plaintiff did not, however, tender the sale consideration that resulted in the Excess
12 Proceeds in order to bestow a windfall upon the Timpa Trust and be saddled with the Property
13 encumbered by the first deed of trust securing debt that as of September 12, 2019, totaled
14 \$6,643,306.90 [See Exhibit A to the MRCN] without any corresponding reduction in the
15 outstanding indebtedness claimed by the Bank that should otherwise be reduced through the
16 application of the Excess Proceeds, with Property only be worth approximately \$2,700,000.00.
17 Additionally, the Timpa Trust is not a party to the Note and Deed of Trust, and the borrowers are
18 now deceased. This is unjust. But this unconscionable result should be avoided through the
19 application of principles of equitable subrogation. That result can be achieved only by granting the
20 MRCN. The Court should, therefore, grant the MRCN on this basis, as well.

21 The Bank, in its Limited Opposition to Plaintiff’s Motion for Reconsideration (“LO”),
22 correctly identifies the issues raised in the MRCN. For purposes of this MRCN, Saticoy does not
23 seek to disturb the status of the Bank’s deed of trust to be secured by the Property as a first deed of
24 trust. Saticoy agrees with the Bank that the MRCN only seeks to modify the “outcome of the
25 Court’s findings from (1) Saticoy taking its title subject to the deed of trust to (2) an outcome
26 whereby the sale is unwound. [The Bank] does not object given the unique circumstances of this
27 case.” See the LO at page 2, lines 17-19. Based upon the foregoing, the Bank agrees to unwind the
28 sale and restore all the parties to this litigation to their respective statuses as of November 7, 2014.

1 If the court were to exercise its equity jurisdiction consistent with NRS 116.1108 and
2 *Jessup n. 5* as previously cited, the Court should unwind the sale, return the Excess Proceeds held
3 by the Court to Saticoy, revert the title to the Property to the Timpa Trust and allow the Bank to
4 continue with its foreclosure action. Justice and equity would be served. The issues raised in the
5 Excess Proceeds Order would be moot as the Excess Proceeds would no longer exist. The HOA
6 and/or the HOA Trustee would be unaffected by such a ruling, as neither party has a stake in the
7 Property or the Excess Proceeds. Of note, neither the HOA and/or the HOA Trustee have filed an
8 Opposition to this MRCN.

9 The Timpa Trust misses the focus of the MRCN in its entirety. Saticoy seeks only to alter
10 the outcome of the HOA Foreclosure Sale by placing all the parties effectively where they were
11 before the HOA Foreclosure Sale. Even the Timpa Trust should not be able to dispute the logic and
12 equity of such a determination. The Timpa Trust could still proceed to “save” the Property from
13 foreclosure using various legal or economic means, but it does prevent the Timpa Trust
14 beneficiaries from running with the extreme windfall of the Excess Proceeds. If the HOA
15 Foreclosure Sale were unwound as suggested, the estates of the borrowers - Frank Timpa and
16 Madelaine Timpa would be the only parties immediately affected, by placing all the parties in
17 exactly the same position, yet without the windfall of the Excess Proceeds to the “successor Co-
18 Trustees [of the Timpa Trust] Todd Timpa and Stuart Timpa.” See Excess Proceeds Order Findings
19 of Fact No. 21.

20 **IV. CONCLUSION**

21 Based upon the MRCN, the LO, the guidance provided in the *Jessup* decision, the severe
22 and obvious inequities in this case, Saticoy’s Fourth and Fifth Claims for Relief, this Court should
23 grant Saticoy’s MRCN and unwind the HOA Foreclosure Sale, and effectively place all parties in
24 the place where they each respectively were on November 7, 2014 before the HOA Foreclosure
25 Sale. The Excess Proceeds held by the Court should be refunded to Saticoy and title to the Property
26 should revert in the Timpa Trust.

27 //

28 //

1 Effectively, such a ruling will moot any consideration of the Excess Proceeds as by operation of
2 law there would be none for the Court to adjudicate.

3
4 Dated this 25th day of October, 2019.

5 ROGER P. CROTEAU & ASSOCIATES, LTD

6 By: /s/ Roger Croteau

7 ROGER P. CROTEAU, ESQ.

8 Nevada Bar No.: 4958

9 2810 W. Charleston Blvd., Ste. 75

10 Las Vegas, Nevada 89102

11 *Attorney for Plaintiff*

12 *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 25th day of October, 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.

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9 Melanie Morgan melanie.morgan@akerman.com
10 Jared Sechrist jared.sechrist@akerman.com

11 Spanish Trail Master Association - Counter Defendant

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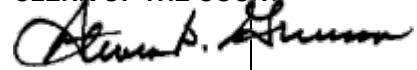
____ VIA U.S. MAIL: by placing a true copy hereof enclosed in a sealed envelope with
postage thereon fully prepaid, addressed as indicated on service list below in the United
States mail at Las Vegas, Nevada.

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

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

/s/ Jennifer Lee

An employee of ROGER P. CROTEAU &
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Attorneys for TIMPA TRUST
U/T/D MARCH 3, 1999

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

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

Defendants.

AND ALL RELATED ACTIONS

Case No.: A-14-710161-C

Department No.: XXVI

**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**

COMES NOW, TIMPA TRUST U/T/D MARCH 3, 1999 (hereafter "Timpa Trust"), by
and through its attorneys Bryan Naddafi, Esq. and Travis Akin, Esq., and hereby opposes

1 SATICOY BAY LLC SERIES 34 INNISBROOK’S (hereafter “Saticoy”) Motion to Amend
2 Complaint Pursuant to NRCP 15(b)(2) and 60(b), the Supreme Court of Nevada’s Decision in
3 Jessup, and EDCR 2.30 to Set Aside/Rescind NRS 116 Foreclosure Sale (hereafter “Motion to
4 Amend”).

5
6 This Opposition is based upon the pleadings and papers on file herein, the attached
7 exhibits, the attached Points and Authorities, and any oral arguments the Court may wish to
8 entertain at a hearing on this matter.

9 DATED this 27th day of October 2019.

10 **AVALON LEGAL GROUP LLC**

11 /s/ Bryan Naddafi

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25 *Attorneys for TIMPA TRUST*

26 *U/T/D MARCH 3, 1999*

1 **POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 On September 11, 2019, the Court handed down a final judgment adjudicating any
4 remaining issues in this case. Saticoy is not happy with this final judgment and is desperate to
5 find a way to undue it. Its latest attempt to do so is a Motion to Amend its complaint. After
6 almost five years of litigation, Saticoy now seeks the Court's permission to amend its complaint,
7 for a fourth time no less. Saticoy makes the specious argument that NRCP 15(b)(2) allows a
8 plaintiff to amend its complaint when a plaintiff does not like a court's final judgment.¹ NRCP
9 15(b)(2) – as well as case law – does not allow this. A party cannot amend its complaint after a
10 final judgment. Saticoy's Motion to Amend must be denied.
11

12 **II. ARGUMENT.**

13 **A. This Court lacks jurisdiction to grant the relief sought by Saticoy.**

14 A "district court **lacks jurisdiction** to allow amendment of a complaint, **once final**
15 **judgment is entered**, unless that judgment is first set aside or vacated pursuant to the Nevada
16 Rules of Civil Procedure." *Greene v. Eighth Judicial Dist. Court*, 115 Nev. 391, 396, 990 P.2d
17 184, 187 (1999) (emphasis added). "[A] final judgment is one that disposes of all the issues
18 presented in the case, and leaves nothing for the future consideration of the court, except for post-
19 judgment issues such as attorney's fees and costs." *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996
20 P.2d 416, 417 (2000).
21
22
23
24
25

26 ¹ Although the title of Saticoy's Motion to Amend makes reference to NRCP 15(b)(2), NRCP 60(b), the Supreme
27 Court of Nevada's decision in the *Jessup* case, and EDCR 2.30, the Motion to Amend only substantively addresses
28 NRCP 15(b)(2). The Motion to Amend also discusses a fictional good cause standard and an equitable standard for
allowing amendment of the complaint. These standards do not apply when determining whether to allow amendment
at this stage in litigation and are not supported by relevant case law or statute.

1 The case law is clear that the Court cannot allow amendment of the complaint in this
2 matter because a final judgment has been entered (and this final judgment has not been set aside
3 or vacated). It is uncontested that a final judgment was entered in this case on September 11,
4 2019. Pursuant to *Greene*, unless or until that final judgment is set aside or vacated, this Court
5 lacks jurisdiction to grant Saticoy's request. Saticoy has not set aside or vacated the September
6 11, 2019 final judgment in the matter and, as a result, this Court lacks jurisdiction under *Greene*
7 to grant Saticoy's request to amend its complaint.² The Motion to Amend must be denied as a
8 matter of law.
9

10
11 **B. Saticoy's request is not allowed under NRCP 15(b)(2).**

12 Saticoy argues that NRCP 15(b)(2) allows it to amend the underlying complaint. (Motion
13 to Amend, 8:20-25.) NRCP 15(b)(2) reads in pertinent part:

14 **When an issue not raised by the pleadings** is tried by the parties'
15 express or implied consent, it must be treated in all respects as if
16 raised in the pleadings. A party may move — at any time, even
17 after judgment — to amend the pleadings to conform them to the
evidence and to raise an **unpleaded issue**. But failure to amend
does not affect the result of the trial of that issue.

18 NRCP 15(b) (emphasis added). Saticoy says it seeks to amend the complaint in order to set aside
19 the underlying NRS 116 foreclosure sale. (Motion to Amend, 3:11-26.) However, the issue of
20 setting aside the sale is not a new issue in this matter. As Saticoy concedes in the Motion to
21 Amend:

22
23 **Throughout nearly the entire duration of this litigation**, a
24 request was pending before this Court to have the NRS 116
foreclosure sale of the real property located at 34 Innisbrook
25 Avenue, Las Vegas, Nevada 89113, APN 163-28-614-007 (the
"Property") set aside/rescinded on various grounds.

26
27 ² The merits (or lack thereof) of Saticoy's request to set aside the September 11, 2019 final judgment (as well as
28 previous judgments it also seeks to set aside) have been addressed in Timpa Trust's opposition motion filed on
October 8, 2019 and are hereby incorporated into the instant pleading.

(Motion to Amend, 2:10-14.) (Emphasis added.) It is simply ludicrous for Saticoy to now seek amendment under NRCP 15(b)(2) – which explicitly requires the amendment raise “an issue not raised by the pleadings” – when Saticoy admits the issue of setting aside has been a part of the pleadings “nearly the entire duration of this litigation.” (Motion to Amend, 2:10-24.) Simply put, Saticoy’s request directly contradicts the language of NRCP 15(b)(2) and is frivolous on its face.

III. CONCLUSION

For the foregoing reasons, Timpa Trust respectfully requests that this Court deny Saticoy’s Motion to Amend.

DATED this 27th day of October 2019.

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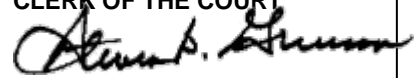
CERTIFICATE OF SERVICE

The undersigned hereby certifies on October 27, 2019, a true and correct copy of the Opposition to 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 was served to the following at their last known address(es), facsimile numbers and/or e-mail/other electronic means, pursuant to:

E-MAIL AND/OR ELECTRONIC MEANS: N.R.C.P. 5(b)(2)(D) and addresses(s) having consented to electronic service, via e-mail or other electronic means to the e-mail address(es) of the addressee(s).

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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

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

**RED ROCK FINANCIAL SERVICES'
OPPOSITION TO PLAINTIFF'S
MOTION TO AMEND COMPLAINT**

JA2218

1 FINANCIAL SERVICES, LLC, an unknown
2 entity; FRANK TIMPA, an individual; DOES I
3 through X; and ROE CORPORATIONS I
4 through X, inclusive,

5 Counter-Defendants.

6 RED ROCK FINANCIAL SERVICES,

7 Counterclaimant,

8 vs.

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

19 Counter-Defendants.

20
21 Red Rock Financial Services ("Red Rock") hereby opposes the motion to amend
22 complaint filed by Plaintiff Saticoy Bay LLC Series 34 Innisbrook ("Plaintiff"). The
23 response is based on the following Memorandum of Points and Authorities, the papers
24 and pleadings on file herein, and any oral arguments that this Court may permit.

25 Dated: October 28, 2019

KOCH & SCOW, LLC

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

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Plaintiff first filed its Complaint in November 2014. In April 2015 Thornburg
4 Mortgage Securities Trust 2007-3 (“Thornburg”) filed a Counterclaim that sought in part
5 to set aside the foreclosure. In December 2018, this Court dismissed with prejudice
6 Thornburg’s claim to set aside the foreclosure in its findings of facts and conclusions of
7 law granting Thornbug’s motion for summary judgment. Finally, on September 11, 2019,
8 this Court entered a final judgment allocating the excess proceeds from the foreclosure
9 sale thereby ordering the clerk of the court to disburse \$29,161.69 to Red Rock for its fees
10 and costs incurred over the last 5 years of this litigation and to issue the remaining excess
11 proceeds of \$1,139,703.36 to the Timpa Trust.

12 Now, after all of that, after this case was finally put to rest, Plaintiff has filed a
13 motion to amend its Complaint *that effectively seeks to reverse everything this Court has*
14 *ordered and relitigate the case anew*. Not surprisingly, Plaintiff cannot point to single
15 rule that would justify its actions, and Plaintiff is precluded from now raising its
16 amended claims, which would improperly overturn this Court’s prior orders on
17 dispositive motions.

18 Plaintiff seems to presume that pushing a reset button is okay because no party
19 has a legitimate reason to oppose setting aside the foreclosure sale. Resetting the case,
20 however, is prejudicial to all defendants, and Red Rock, for example, should not be
21 required to return the fees it collected as the foreclosure agent, nor the costs it was
22 awarded over the last 5 years from litigating this case. Allowing Plaintiff to move
23 forward now is improper and inequitable, and the Court should deny Plaintiff’s motion
24 outright.

25 II. ARGUMENT

26 A. Plaintiff’s Motion to Amend it Procedurally Improper

27 It will be no shock to this Court that in Nevada district courts do not have
28 jurisdiction to permit plaintiffs to amend their complaints after final judgment has been

1 entered. *See, Greene v. Eighth Jud. Dist. Ct. of Nevada ex rel. County of Clark*, 990 P.2d 184, 185
2 (Nev. 1999). “To hold otherwise” the Nevada Supreme Court has reasoned, “would enable
3 the liberal amendment policy of Rule 15(a) to be employed in a way that is contrary to the
4 philosophy favoring finality of judgments and the expeditious termination of litigation.”
5 *Id.* The current motion to amend offers a crystalline example of the *Greene* court’s fears
6 driving its decision not to allow post judgment amendments. Allowing Plaintiff to amend
7 would destroy the finality of the judgment, and would cause litigation to be extended
8 indefinitely, and certainly well past five years.

9 Plaintiff justifies its motion by reference to NRCP 15(b)(2), which it claims provides
10 the authority to amend its complaint at this time. The Court should be immediately suspect
11 of Plaintiff’s interpretation of that statute as it is incompatible with the holding in *Greene*.
12 Indeed, Plaintiff only relies on NRCP 15(b)(2) because it neglects the context and purpose
13 of that rule. The title of NRCP 15(b)(2) is “For Issues Tried by Consent,” which shows it is
14 not relevant here as no issues have been tried in this case only by consent of the parties.
15 The wording of the rule cements the notion that it does not apply here. The rule states:

16 When an issue not raised by the pleadings is tried by the parties’ express or
17 implied consent, it must be treated in all respects as if raised in the
18 pleadings. A party may move — at any time, even after judgment — to
19 amend the pleadings to conform them to the evidence and to raise an
unpleaded issue. But failure to amend does not affect the result of the trial
of that issue.

20 Essentially the rule allows for ministerial amendments to pleadings when
21 the issues tried are not those that were raised in the pleadings. It allows parties to
22 conform their pleadings to the issues actually tried by consent. NRCP 15(b)(2) ***does***
23 ***not allow amendments that would open the case back up to new claims and issues.***
24 ***It does not allow parties to use motions to amend to relitigate cases.*** What
25 Plaintiff is trying to do here is not contemplated by NRCP 15(b)(2). Plaintiff is not
26 attempting to conform its pleadings to the issues that were tried by consent. It is
27 attempting to raise what it considers to be new issues, and it obviously wants to
28 open the case back up on those issues, which it cannot do under NRCP 15(b)(2).

1 Plaintiff also claims in its caption to bring its motion to amend under NRC
2 60(b) and the Nevada Supreme Court's decision in *Jessup*. First, Rule 60(b) does
3 not allow for amendments to pleadings; it creates specific grounds for relief from
4 final judgment, and Plaintiff has not brought a proper motion under any of the
5 grounds mentioned in subsection (b). Second, the *Jessup* decision has nothing to
6 do with amendments to pleadings. Plaintiff mysteriously cites to *Bank of Am., N.A.*
7 *v. Thomas Jessup, LLC Series VII*, 435 P.3d 1217, 1221 n.5 (Nev. 2019) as authority for
8 granting purchasers standing to set aside foreclosure sales for the first time. Even
9 if it did grant such standing, the case is irrelevant as nothing in it justifies a motion
10 to amend after final judgment.¹ Plaintiff fails to mention any authority that allows
11 it to file such a late motion to amend, and the Court should deny the motion.

12 **B. Plaintiff is Precluded From Bringing a Claim to Set Aside the**
13 **Foreclosure Sale**

14 Thornburg already brought a claim to set aside the foreclosure sale in its
15 Counterclaim as Plaintiff openly admits throughout its motion. This Court
16 dismissed that claim with prejudice in its findings of fact and Conclusions of Law
17 granting Thornburg's motion for summary judgment back in December 2018. The
18 issue of whether the foreclosure sale should be set aside has been finally decided
19 in a motion on the merits. The doctrine of issue preclusion, which prevents parties
20 from raising an issue identical to one that has already been settled on the merits
21 between the same parties, applies to prevent Plaintiff from now raising its new
22 claim. *See, Five Star Capital Corp. v. Ruby*, 194 P.3d 709, 713 (Nev. 2008).

23 Similarly, because there has been a final judgment in this case, Plaintiff is
24 precluded from now bringing a new claim under the doctrine of claim preclusion.

25 ¹ Red Rock presumes Plaintiff cited *Jessup* in order to argue that until *Jessup* was
26 heard, Plaintiff could not have brought a claim to set aside the foreclosure sale, but *Jessup*
27 did not grant any standing to purchasers that they did not already have. All the *Jessup*
28 court does is note that the purchaser did not bring a claim to set aside the foreclosure, so
the court did not have to evaluate such a claim. Reliance on *Jessup* for any other issue is
confusing and improper.

1 That doctrine does not allow parties to bring claims against a party that could have
2 been brought against that party in litigation where a final judgment has been
3 reached. *See, Id.* Therefore, under both doctrines, Plaintiff is prevented from
4 bringing its new claim, and its motion to amend should be denied.

5 **C. The Court Cannot Grant Plaintiff's Motion to Amend Without**
6 **Overturning its Previous Order Allocating Excess Proceeds**

7 On September 11, 2019, this Court granted Timpa Trust's motion for
8 summary judgment, which allocated the excess proceeds of the foreclosure sale to
9 Timpa Trust after deducting \$29,161.69 to Red Rock for its fees and costs related to
10 this case. Plaintiff's new claim in its proposed amended complaint would, if
11 granted, overturn this Court's final order in granting Timpa Trust's motion. Timpa
12 Trust would be required to return the excess proceeds granted to it, and Red Rock
13 would potentially be required to return its fees and costs.

14 In reality, Plaintiff's motion appears to be another thinly veiled motion for
15 reconsideration. In fact, at points it reads like a motion for reconsideration. The
16 Court should not under the law and under equity allow Plaintiff to slip through
17 this Court's holdings and redo this entire case and should deny the motion to
18 amend.

19 **III. CONCLUSION**

20 For all of the reasons set forth above, the Court should deny Plaintiff's
21 motion to amend its Complaint.

22 Dated: October 28, 2019

KOCH & SCOW, LLC

23
24 By: /s/Steven B. Scow
25 Steven B. Scow
26 *Attorneys for Red Rock Financial Services*
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28

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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 30, 2018, I caused the foregoing document entitled: **RED ROCK FINANCIAL SERVICES' OPPOSITION TO PLAINTIFF'S MOTION TO AMEND COMPLAINT** to be served by as follows:

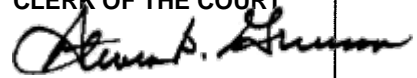
- [X] Pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and / or;
- [] by placing same to be deposited for 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:

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Executed on October 28, 2019 at Henderson, Nevada.

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

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Attorneys for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SATICOY BAY LLC SERIES 34
INNISBROOK,

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

Plaintiff,

vs.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3 et al.,

Defendants.

AND ALL RELATED ACTIONS

ORDER

A hearing having been held on October 29, 2019, on Saticoy Bay LLC Series 34
Innisbrook's ("*Plaintiff*") 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

1 Distribution of Excess Proceeds and Plaintiff's Motion to Amend Complaint Pursuant to NRCP
2 15(b)(2) and 60(b), the Supreme Court of Nevada's Decision in Jessup, and EDCR 2.30 to Set
3 Aside/Rescind, Ex Parte Motion for Entry of an Order Shortening Time for Hearing on Plaintiffs
4 Motion to Amend Complaint pursuant to NRCP 15(b)(2) and 60(b), the Supreme Court of Nevada's
5 Decision in Jessup, and EDCR 2.30 to Set Aside/Rescind NRS 116 Foreclosure Sale. Appearances
6 by Bryan Naddafi, Travis Akin, and Elena Nutenko on behalf of Timpa Trust U/T/D March 3,
7 1999's (hereafter "*Timpa Trust*"), Donna Wittig on behalf of Thornburg Mortgage Securities Trust
8 2007-3 (hereafter "*Thornburg*"), Roger Croteau on behalf of Saticoy Bay LLC, Series 34
9 Innisbrook, and Brody Wight on behalf of Red Rock Financial Services LLC (hereafter "*Red*
10 *Rock*"). There having been no appearance by Spanish Trail Master Association (hereafter "*Spanish*
11 *Trail*"). The Court, having considered the moving papers, and the representations of counsel
12 present at the hearing, and good cause appearing:

13 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiff's Motion to
14 Amend Complaint Pursuant to NRCP 15(b)(2) and 60(b), the Supreme Court of Nevada's Decision
15 in Jessup, and EDCR 2.30 to Set Aside/Rescind NRS 116 Foreclosure Sale is DENIED as the
16 Court does not see the request as an appropriate approach, that there is a separate final order and
17 the case is final and as a result the request is procedurally untimely.

18 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Plaintiff's Motion for
19 Entry is DENIED.

20 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Plaintiff's Motion for
21 Reconsideration under NRCP 59(e) and 60(b) of (I) the Court's Summary Judgment Order of
22 December 3, 2018 and (II) the Court's Order Concerning the Distribution of Excess Proceeds is
23 GRANTED IN PART to amend the Findings of Fact in the December 8, 2019 Summary Judgment
24 Order to now state that at the time of the December 8, 2019 Order, the Supreme Court of Nevada's
25 March 2019 decision in *Bank of Am., N.A. v. Thomas Jessup, LLC Series VII* had not yet been
26 published and any such references regarding the unwinding of the foreclosure sale were not
27 discussed or considered in the Summary Judgment Order of this case and to the extent that the
28 determination in *Jessup* have any bearing to this case, it was not considered by the Court.

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IT IS SO ORDERED.

DATED this 18th day of November, 2019



DISTRICT COURT JUDGE

Respectfully submitted by:

Reviewed by:

ROGER P. CROTEAU & ASSOCIATES, LTD.

AKERMAN LLP

/s/ Roger Croteau

/s/ Melanie Morgan

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**Attorneys for Spanish Trail Master
Association**

TRAVIS AKIN, ESQ.

Nevada Bar No. 13059

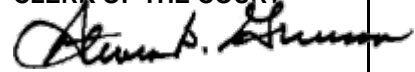
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Attorney for Todd Timpa and Stuart Timpa,

Successor Co-Trustees to the Timpa Trust

A710161 - Order From Oct. 29, 2019 Hearing



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DISTRICT COURT
CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

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

Defendants.

AND ALL RELATED ACTIONS

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

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an **ORDER** has been entered on the 18th day of November,
2019, in the above captioned matter, a copy of which is attached hereto.

DATED this 18th day of November, 2019.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Roger P. Croteau

ROGER P. CROTEAU, ESQ.

Nevada Bar No. 4958

2810 W. Charleston Blvd., Ste. 75

Las Vegas, Nevada 89102

Attorney for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee
3 of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 18th day of November, 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 eflex e-file and
6 serve 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**

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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.

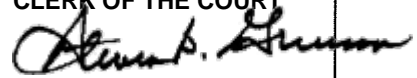
32 _____ VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated
33 on the service list below.

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.

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Attorneys for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SATICOY BAY LLC SERIES 34
INNISBROOK,

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

Plaintiff,

vs.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3 et al.,

Defendants.

AND ALL RELATED ACTIONS

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Innisbrook's ("*Plaintiff*") Motion for Reconsideration under NRCP 59(e) and 60(b) of (I) the
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1 Distribution of Excess Proceeds and Plaintiff's Motion to Amend Complaint Pursuant to NRCP
2 15(b)(2) and 60(b), the Supreme Court of Nevada's Decision in Jessup, and EDCR 2.30 to Set
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6 by Bryan Naddafi, Travis Akin, and Elena Nutenko on behalf of Timpa Trust U/T/D March 3,
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8 2007-3 (hereafter "*Thornburg*"), Roger Croteau on behalf of Saticoy Bay LLC, Series 34
9 Innisbrook, and Brody Wight on behalf of Red Rock Financial Services LLC (hereafter "*Red*
10 *Rock*"). There having been no appearance by Spanish Trail Master Association (hereafter "*Spanish*
11 *Trail*"). The Court, having considered the moving papers, and the representations of counsel
12 present at the hearing, and good cause appearing:

13 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiff's Motion to
14 Amend Complaint Pursuant to NRCP 15(b)(2) and 60(b), the Supreme Court of Nevada's Decision
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24 Order to now state that at the time of the December 8, 2019 Order, the Supreme Court of Nevada's
25 March 2019 decision in *Bank of Am., N.A. v. Thomas Jessup, LLC Series VII* had not yet been
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IT IS SO ORDERED.

DATED this 18th day of November, 2019



DISTRICT COURT JUDGE

Respectfully submitted by:

Reviewed by:

ROGER P. CROTEAU & ASSOCIATES, LTD.

AKERMAN LLP

/s/ Roger Croteau

/s/ Melanie Morgan

ROGER P. CROTEAU, ESQ.

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Attorney for Plaintiff

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

Reviewed by:

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THE LAW OFFICE OF TRAVIS AKIN

**Attorneys for Spanish Trail Master
Association**

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Nevada Bar No. 13059

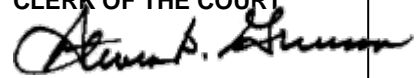
8275 S. Eastern Ave.

Las Vegas, NV 89123

Attorney for Todd Timpa and Stuart Timpa,

Successor Co-Trustees to the Timpa Trust

A710161 - Order From Oct. 29, 2019 Hearing



1 **NOAS**
2 **ROGER P. CROTEAU, ESQ.**
3 Nevada Bar No.: 4958
4 **TIMOTHY E. RHODA, ESQ.**
5 Nevada Bar No. 7878
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12 *Attorneys for Plaintiff*
13 *Saticoy Bay LLC Series 34 Innisbrook*

14 **DISTRICT COURT**
15
16 **CLARK COUNTY, NEVADA**

17 *****

18 **SATICOY BAY LLC SERIES 34**
19 **INNISBROOK,**

20 **Plaintiff,**

21 **vs.**

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

24 **Defendants.**

25 **AND ALL RELATED ACTIONS**

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

NOTICE OF APPEAL

26 Notice is hereby given that Saticoy Bay, LLC Series 34 Innisbrook, Plaintiff above named,
27 hereby appeals to the Supreme Court of the State of Nevada from the Court's *Order* entered in this
28 action on the 18th day of November, 2019, and *Notice of Entry of the Order* entered on the 19th day
November, 2019, and any order made appealable thereby.

The Court's Order entered in this action on the 11th day of September, 2019 and *Notice of*
Entry of the Order entered in this action on the 11th day of September, 2019, and any order made
appealable thereby.

The Court's *Findings of Fact, Conclusions of Law, and Order Granting Thornburg Mortgage Securities Trust 2007-3's Motion for Summary Judgment*, entered on the 3rd day of December, 2018 and *Notice of Entry of Fact, Conclusions of Law, and Order Granting Thornburg Mortgage Securities Trust 2007-3's Motion for Summary Judgment* entered in this action on the 5th day of December, 2018, and any order made appealable thereby.

Dated this 19th day of November, 2019.

ROGER P. CROTEAU & ASSOCIATES, LTD

By: /s/ Roger Croteau

ROGER P. CROTEAU, ESQ.

Nevada Bar No.: 4958

2810 W. Charleston Blvd., Ste. 75

Las Vegas, Nevada 89102

Attorney for Plaintiff

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 19th day of November, 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 Court's e-file and serve system.

6 Thornburg Mortgage Securities Trust 2007-3 - Defendant

7 Akerman LLP AkermanLAS@akerman.com

8 Melanie Morgan melanie.morgan@akerman.com

9 Jared Sechrist jared.sechrist@akerman.com

10 Spanish Trail Master Association - Counter Defendant

11 Sean L. Anderson sanderson@leachjohnson.com

12 Robin Callaway rcallaway@lkglawfirm.com

13 Patty Gutierrez pgutierrez@lkglawfirm.com

14 Ryan D Hastings rhastings@lkglawfirm.com

15 Gina LaCascia glacascia@leachjohnson.com

16 **OTHER SERVICE CONTACTS**

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19 Kurt Naddafi kurt@avalonlg.com

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24 Robin Gullo rgullo@dhwlawlv.com

25 Staff . aeshenbaugh@kochscow.com

26 Steven B. Scow . sscow@kochscow.com

27 Travis Akin travisakin8@gmail.com

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

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

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

26 /s/ Anna Gresl

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