SUPREME COURT OF THE STATE OF NEVADA

SATICOY BAY, LLC SERIES 34 INNISBROOK,

Appellant,

vs.

THORNBURG MORTGAGE SECURITIES TRUST 2007-3, FRANK TIMPA; MADELINE 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

District Court Case No. A-14-710161-C

From the Eighth Judicial District Court
The Honorable Gloria Sturman

RESPONDENT SPANISH TRAIL MASTER ASSOCIATION'S REPLY IN SUPPORT OF RENEWED MOTION TO DISMISS APPEAL

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RESPONDENT'S REPLY IN SUPPORT OF RENEWED MOTION TO DISMISS APPEAL

A. The December 3, 2018 Findings of Fact, Conclusions of Law is A Final Judgment Because It Addressed All Claims Against All Parties.

Appellant argues that the Association has a misunderstanding of the FFCL which Appellant incorrectly argues did not address an interpleader counterclaim filed by Red Rock. As set forth below, it is Appellant who has a misunderstaing of the FFCL.

As set forth in the Association's Motion, the FFCL addressed all claims which were brought in the case, both claims which were addressed with specific analysis, and those which were not, including "all remaining claims not specifically mentioned." *See* Renewed Motion at 2. Red Rock's interpleader claim was a "claim not specifically mentioned," therefore, the FFCL did address and dispose of the interpleader claim.

As acknowledged by Appellant in its Response, "[t]he finality of an order or judgment depends on 'what the order or judgment actually does, not what it is called.'" *See* Opposition at 3 (*quoting Brown V. MHC Stagecoach, LLC*, 129 Nev. 343, 345 (2013)). Here, "what the order or judgment actually does" is dispose of all claims against all parties.

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B. The District Court's June 19, 2019 Order Does Not Supplant the FFCL.

Appellant attempts to change the plain language of the FFCL by citing the district court's June 19, 2019 Order which references one "remaining outstanding issue." *See* Opposition at 3-4. Appellant believes that the June 19, 2019 Order demonstrates that the district court never addressed all claims in the case. However, the June 19, 2019 order was the result of an inappropriate motion to reopen which was unopposed. As such, it cannot supplant the plain language of the Court's FFCL, which was signed by all parties and the district court.

As set forth in the Association's Motion, on May 10, 2019, Appellant filed a motion to reinstate statiscially closed case.[1] *See* Renewed Motion at 2. The motion incorrectly argued that not all claims had been addressed by the FFCL and that the district court committed an error by closing the case when it did. *See* Motion to Reinstate Statistically Closed Case at 2: 2, attached to Association's Motion to Dismiss Appeal as **Exhibit E** ("As such, the order of statistical closure of this case was entered prematurely and this matter should be reopened to allow for the final resolution of the remaining claims and issues not addressed.").

To the extent Appellant believed the district court committed an error in closing the case, the only mechanism to address that perceived error would have been to file a motion under Nevada Rules of Civil Procedure 60(b)(1). *See Bank of*

[1] There is no provision in the Nevada Rules of Civil Procedure that provides for the filing of a "motion to reopen statistically closed case."

Am., N.A. v. Eighth Judicial Dist. of State ex rel. Cty. of Clark, 130 Nev. 1151 (2014)(*citing Lee v. GNLV Corp*., 116 Nev. 424, 996 P.2d 416 (2000); *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 445, 874 P.2d 729, 733 (1994) "[O]nce a final judgment is entered, the district court lacks jurisdiction to reopen it, absent a proper and timely motion under the Nevada Rules of Civil Procedure.") Appellant never filed a motion for reconsideration under Rule 60 in this case, therefore, Appellant did not establish that the district court erred when closing the case and the June 19, 2019 Order does not change the fact that the FFCL disposed of all claims against all parties.

C. NRCP 54(b) Is Inapplicable In This Case.

Appellant argues that the FFCL does not contain any language "certifying the FFCL as final" or "finding no just reason for delay," therefore, this Court should not find that the FFCL represents an appealable order. *See* Opposition at 5. However, Rule 54(b) by its own terms is only applicable when the court is entereing final judgment as to "one or more, but fewer than all, claims." Here, in entering the FFCL, the district court disposed of all claims, therefore, Rule 54(b) and its required language is irrelevant and does not provide a basis on which to deny the Association's Motion.

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D. Saticoy Cannot Pursue an Appeal Related to Unwinding the Foreclosure Sale on Equity Grounds.

In its Renewed Motion, the Association argued that Saticoy should be judicially estopped from arguing on appeal that the district court committed error in failing to set aside the foreclosure sale because Saticoy specifically argued against such a remedy at the summary judgment stage below. *See* Renewed Motion to Dismiss at 6. Specifically, the Association set forth the critera for when a party should be judicially estopped and applied those critirea to the facts in this case. *Id*. Instead of arguing how or why the estoppel criterea have not been met in this case, Saticoy argues that because it pleaded in the alternative to set aside the foreclosure sale, it should be allowed to pursue an appeal of the district court's failure to employ that remedy now. *See* Opposition at 6-7. Additionally, Saticoy incorrectly argues that the Association took its summary judgment argumetns out of context. Finally, Saticoy argues it should be able to pursue its appeal because it was permitted to plead alternative or inconsistent claims. As set forth in more detail below, each of Saticoy's arguments is incorrect and/or irrelevant and this Court should grant the Association's Renewed Motion.

As an initial matter, there is no authority to support Saticoy's argument here. Simply put, it is irrelevant that Saticoy originally pleaded in the alternative that the Court could/should set aside the foreclosure sale under certain circumstances.

Judicial estoppel applies because at summary judgment, Saticoy argued against this very remedy.

Saticoy's argument that its position in its motion for summary judgment was taken out of context by the Association is also unsupported. *See* Opposition at 9. Specifically, Saticoy acknowledges that the portion of its motion for summary judgment referenced by the Association "sought to rebut any claim that the foreclosure sale should be set aside based upon inadequate sale price and was made in support of Saticoy's arguments that the HOA Foreclosure Sale served to extinguish Thornburg's deed of trust." That is exactly what the Association argued in its Renewed Motion and exactly why Saticoy's appeal should be dismissed. Saticoy cannot "rebut" the Bank's attempt to set aside the foreclosure sale at the summary judgment stage below, only to then criticize the district court claiming it committed clear error when the Court did not set aside the sale.

Finally, Saticoy argues that the rules of civil procedure allow it is to make alternative, even inconsistent arguments. *See* Opposition at 10. Saticoy cites NRCP 8 for this proposition. *Id*. However, Saticoy's citation to NRCP 8 is inapplicable here as NRCP 8 governs the general rules of pleading. The Association did not argue that Saticoy could not plead alternative claims. Rather, the Association argued that Saticoy could not argue at summary judgment that setting aside the foreclosure sale was not an available remedy in this case only to

reverse course on appeal and claim that the district court erred by failing to set aside the sale. Clearly, if Saticoy's argument were correct, the doctrine of judicial estoppel would be subsumed by NRCP 8 in any situation where alternative or inconsistent claims were pleaded. As such, Saticoy's argument should be rejected and its appeal should be dismissed.

CONCLUSION

Saticoy failed to file a timely appeal of the district court's November 30, 2018 FFCL. Moreover, Saticoy should be judicially estopped from pursuing the remedy of setting aside the foreclosure sale. The Associaion's motion to dismiss Saticoy's appeal should be granted.

DATED this 7th day of December, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on this date, December 7, 2020, I submitted the foregoing **RESPONDENT SPANISH TRAIL MASTER ASSOCIATION'S REPLY IN SUPPORT OF RENEWED MOTION TO DISMISS APPEAL** for filing and service through the Court's eFlex electronic filing service. According to the system, electronic notification will be automatically sent to the following:

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