

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

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Apr 15 2021 02:14 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

From the Eighth Judicial District Court
The Honorable Gloria Sturman

SUPPLEMENTAL EXCERPTS OF RECORD

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CERTIFICATE OF SERVICE

I hereby certify that on this date, April 15, 2021, I submitted the foregoing
RESPONDENT SPANISH TRAIL MASTER ASSOCIATION'S
SUPPLEMENTAL EXCERPTS OF RECORD for filing and service through
the Court's eFlex electronic filing service. According to the system, electronic
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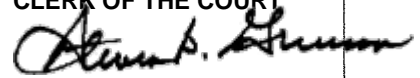
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/s/ Yalonda Dekle

An Employee of LEACH KERN
GRUCHOW ANDERSON SONG

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SUPPLEMENTAL EXCERPTS OF RECORD**

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DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLS SERIES 34
INNISBROOK,

Plaintiff,

vs.

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

Defendants.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3,

Counterclaimant

vs.

SATICOY BAY LLC SERIES 34
INNISBROOK, a Nevada limited-liability
company; SPANISH TRAIL MASTER
ASSOCIATION, a Nevada Non-Profit
Corporation; RED ROCK FINANCIAL
SERVICES, an unknown entity; FRANK
TIMPA, an individual; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Counter-Defendants.

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

**COUNTER-DEFENDANT
SPANISH TRAIL MASTER
ASSOCIATION'S MOTION TO
DISMISS DEFENDANT/COUNTER-
CLAIMANT THORNBURG
MORTGAGE SECURITIES TRUST
2007-3'S THIRD AMENDED
COUNTERCLAIMS**

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SER001

1 RED ROCK FINANCIAL SERVICES,

2 Counterclaimant

3 vs.

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

15 Counter-Defendants.

16 Counter-Defendant Spanish Trail Master Association (the “Association”), by and through
17 its counsel, Leach Johnson Song & Gruchow, respectfully submits its Motion to Dismiss
18 Defendant/Counter-Claimant Thornburg Mortgage Securities Trust 2007-3’s Third Amended
19 Counterclaims.

20 This Motion is made pursuant to Nev. R. Civ. P. 12(b) and the attached Memorandum of
21 Points and Authorities, together with such other and further evidence and argument as may be
22 presented and considered by this Court at any hearing of this Motion.

23 DATED this 8th day of August, 2017.

24 LEACH JOHNSON SONG & GRUCHOW

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26 Nevada Bar No. 7259
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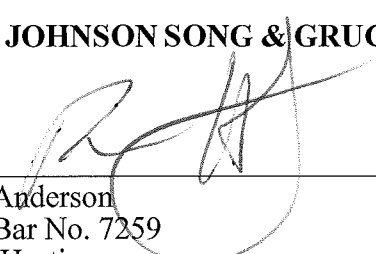
NOTICE OF MOTION

TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing, **COUNTER-DEFENDANT SPANISH TRAIL MASTER ASSOCIATION'S MOTION TO DISMISS DEFENDANT/COUNTER-CLAIMANT THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S THIRD AMENDED COUNTERCLAIMS** on for hearing before the above-entitled Court in Department XXVI on the **19** day of **Sept.**, 2017, at the hour of **9:30 am**

DATED this ^{9th} 8th day of August, 2017.

LEACH JOHNSON SONG & GRUCHOW


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*Attorneys for Counter-Defendant
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND RELEVANT FACTS

This action emanates from the Association's foreclosure of a delinquent assessment lien against the property located at 34 Innisbrook Ave., Las Vegas, NV 89113; APN: 163-28-614-00 (the "Property"). Saticoy Bay, LLC Series 34 Innisbrook ("Saticoy") was the successful bidder at the foreclosure sale, taking title to the Property by virtue of a foreclosure deed.

On or about May 30, 2017, the Bank filed its Third Amended Answer and Counterclaim alleging several causes of action against the Association for purported violations of Nevada law with respect to the actions leading up to the Association's foreclosure sale. Specifically, the Bank brings the following claims against the Association: wrongful foreclosure, negligence, negligence per se, breach of contract, misrepresentation, unjust enrichment, and breach of

covenant of fair dealing. *See* Third Am. Ans. and Countercl. at 18-25. However, for the reasons that follow, the claims asserted by the Bank against the Association should be dismissed.

II. ARGUMENTS

A. Nevada Statutory Law Supersedes All of Plaintiff's Common Law Causes of Action.

This case deals with the applicability and validity of Nevada's HOA lien statutes, which confer liens to HOAs on homeowners' units for unpaid assessments, construction penalties, and fines imposed against the owners of those units. *See* NRS 116.3116. NRS Chapter 116 extensively details the procedures with which an HOA must comply to initiate and complete a foreclosure on its lien. *See* NRS 116.31162-116.31168. The statutory process, in effect during the time frame giving rise to this action, was as follows:

- a. The Association mails by certified or registered mail, return receipt requested, to the unit's owner, at his or her address, if known, and at the address of the unit, a ***notice of delinquent assessment***. *See* NRS 116.31162(1)(a).
- b. Not less than 30 days after mailing the notice of delinquent assessment, the association or other person conducting the sale executes and causes to be recorded in the county where the Association is located a ***notice of default and election to sell*** and then mails this notice to the unit's owner by certified or registered mail, return receipt requested, at his or her address, if known, and at the address of the unit. *See* NRS 116.31162(1)(b) and (3)(b).
- c. Within 10 days after recording the notice of default and election to sell, the Association mails a copy of the notice to various entities who have requested interest. *See* NRS 116.31163.
- d. The Association waits 90 days following the recording of the notice of default and election to sell, with the 90 day period beginning on either the date the notice is recorded or mailed certified, return receipt requested, whichever is later. *See* NRS 116.31162(3).
- e. If after 90 days, the unit's owner has not paid the amount of the lien, including costs, fees and expenses incident to its enforcement, the Association may record a

notice of sale against the unit owner and give notice of the time and place of the sale by mailing a copy of the notice of sale by certified or registered mail, return receipt requested, to the unit's owner ... at his or her address, if known, and to the address of the unit and either personally serving the occupant of the unit or posting the notice of sale conspicuously on the unit. *See* NRS §§ 116.31162(1)(c) and .311635(1). A certificate of mailing which evidences that the notice was mailed through the United States Postal Service is proof of service for the notice of sale. *See* NRS 116.311635(4).

- f. In other words, "[i]f the lien is not paid off, then the HOA may proceed to foreclosure sale." *SFR Inv. Pool 1*, 334 P.3d at 411 (citing NRS 116.31162). "Before doing so, the HOA must give notice of the sale to the owner and to the holder of a recorded security interest if the security interest holder 'has notified the association, before the mailing of the notice of sale of the existence of the security interest.'" *Id.* (citing §§ 116.311635(1)(b)(2), 107.090(3)(b), (4)).
- g. The Association, its agent or its attorney, or a title insurance company or escrow agent may conduct the foreclosure sale. *See* NRS 116.31164(1). The Association or other person conducting the sale *may from time to time postpone the sale* by such advertisement and notice as it considers reasonable *or, without further advertisement or notice*, by proclamation made to the persons assembled at the time and place previously set and advertised for the sale. *Id.*

With regard to the process for the actual foreclosure sale, the person conducting the sale may sell the unit at public auction to the **highest cash bidder**. *See* NRS 116.31164(2). "Unless otherwise provided in the declaration or by agreement, the association may purchase the unit and hold, lease, mortgage or convey it." *Id.* "After the sale, the person conducting the sale shall: (a) Make, execute and, after payment is made, deliver to the purchaser, or his or her successor or assign, **a deed without warranty** which conveys to the grantee all title of the unit's owner to the unit; (b) Deliver a copy of the deed to the Ombudsman; and (c) Apply the proceeds of the sale in the manner prescribed by law." *See* NRS 116.31164(3).

1 “[G]eneral and comprehensive legislation, where course of conduct, parties, things
2 affected, limitations and exceptions are minutely described, indicates a legislative intent that the
3 statute should totally supersede and replace the common law dealing with the subject matter.”
4 *Verdugo v. Target Corp.*, 770 F.3d 1203, 1219 (9th Cir. 2014). State foreclosure statutes should
5 not be second guessed or usurped, otherwise “every piece of realty purchased at foreclosure”
6 would be challenged and title would be clouded in contravention of the very policies underlying
7 non-judicial foreclosure sales. *BFP v. Resolution Trust Company*, 511 U.S. 531, 539-40, 544,
8 144 S.Ct. 1757, 128 L.Ed.2d 556 (1994); *Golden v. Tomiyasu*, 79 Nev. 503, 387 P.2d 989, 997
9 (1969).

10 NRS 116.31162-31168 is a perfect example of the type of legislation described in
11 *Verdugo*. The Association’s “course of conduct” is described “minutely” in paragraphs “a-g”
12 above. Additionally the “parties, things affected [and] limitations” of the HOA foreclosure
13 process is set forth in NRS 116.31162-31168. Because NRS 116.31162-31168 completely
14 governs the actions of the Association during the foreclosure process, the statute “indicates a
15 legislative intent that [NRS 116.31162-116.31168] should totally supersede and replace the
16 common law dealing with the subject matter.” *Verdugo v. Target Corp.*, 770 F.3d 1203, 1219
17 (9th Cir. 2014).

18 Based on the discussion above, each of the Bank’s common law based claims (i.e.
19 wrongful foreclosure, negligence, negligence per se, breach of contract, misrepresentation, unjust
20 enrichment, and breach of covenant of fair dealing) fail because these claims have been
21 “supersede[d]” by the “course of conduct” described “minutely” in NRS 116.31162-116.31168.

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Even if the Bank Could Allege Common Law Violations, The Bank's Counterclaims are Still Subject to Dismissal Pursuant to Nev. R. Civ. P. 12(b).

Nev. R. Civ. P. 12(b) provides, in relevant part, as follows:

Every defense, in law or fact, to a claim for relief in any pleading ... shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may ... be made by motion: ... (5) failure to state a claim upon which relief can be granted.

When considering a motion to dismiss, this Court must determine “whether or not the challenged pleading sets forth allegations sufficient to make out the *elements* of a right to relief.” *Edgar v. Wager*, 101 Nev. 226, 227, 699 P.2d 110, 111 (1985) (emphasis added). Thus, the focus is on the allegations in the Bank’s Counterclaim.

1. The Bank’s claim for quiet title fails as a matter of law.

a. *The Bank did not allege that it paid any and all debts and encumbrances owed on the Property.*

As this Court is aware, the elements of a quiet title claim are: (1) “the party seeking to have another party's right to property extinguished, must overcome the ‘presumption in favor of the record titleholder,’¹ and (2) “to allege that he has paid any debt owed on the property.” *Nebab*, 2012 WL 2860660, at *5 (citing *Ferguson v. Avelo Mortgage, LLC*, No. B223447, 2011 WL 2139143, at *2 (Cal.App.2d June 1, 2011)). In *Nebab*, the court dismissed the quiet title claim when the plaintiff failed to pay the debt owed on the property. *Nebab*, 2012 WL 2860660, at *5 (“[p]laintiff has not alleged that he can prove good title in himself and he does not dispute his failure to pay the debt owed on the property... accordingly, the Motion to Dismiss this cause of action [is] granted”).

As a matter of Nevada law, in order to maintain a claim for quiet title the Bank is required to allege that it paid **any and all** debts and encumbrances owed on the Property. The Bank’s Complaint is devoid of any such allegations. Accordingly, the Bank’s quiet title claim should be dismissed.

¹ See *Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 918 P.2d 314, 318 (Nev.1996).

1 **b. The Bank cannot prove good title in itself.**

2 “In a quiet title action, the burden of proof rests with the plaintiff to prove good title in
3 himself.” *Breliant v. Preferred Equities Corp.*, 918 P.2d 314, 318 (Nev.1996). In Nevada, the
4 deed of trust such as the one held by the Bank does not convey title so as to allow the beneficiary
5 to obtain the property without foreclosure and sale, but is considered merely a lien on the
6 property as security for the debt subject to the laws on foreclosure and sale. *Edelstein v. Bank of*
7 *New York Mellon*, 128 Nev. Adv. Op. 48, 286 P.3d 249, 254-55 (2012) (citing to *Hamm v.*
8 *Arrowcreek Homeowners' Ass'n*, 124 Nev. 290, 298–99, 183 P.3d 895, 901–02 (2008); *Orr v.*
9 *Ulyatt*, 23 Nev. 134, 140, 43 P. 916, 917–18 (1896)). Here, the Bank has not foreclosed on the
10 Property. In the absence of foreclosure, the Bank cannot hold title to the Property. *Edelstein v.*
11 *Bank of New York Mellon*, 128 Nev. Adv. Op. 48, 286 P.3d 249, 254-55 (2012). As such, the
12 Bank cannot prove good and clear title to the Property. Accordingly, this claim fails as a matter
13 of law.

14 **c. The Bank failed to join a necessary party.**

15 Even if the Bank could bring a proper quiet title claim, it would be untenable here for the
16 Bank’s failure to name a necessary party. Under Nevada Rule of Civil Procedure 19(a)(1): “A
17 person who is subject to service of process and whose joinder will not deprive the court of
18 subject-matter jurisdiction must be joined as a party if ... (2) the person claims an interest relating
19 to the subject of the action and is so situated that disposing of the action in the person's absence
20 may: (i) as a practical matter impair or impede the person's ability to protect the interest; or (ii)
21 leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise
22 inconsistent obligations because of the interest.”

23 Here, the Bank is not the record owner of the Property and has failed to name the prior
24 owner of the Property in its quiet title claim. *See Schwob v. Hemsath*, 98 Nev. 293, 294, 646
25 P.2d 1212, 1212 (1982)(holding that the legal owner of a property was a necessary party to an
26 action adjudicating title to the property.) The Bank’s Complaint is devoid of any allegation that
27 it has foreclosed upon the prior homeowner, thus extinguishing any interest the prior homeowner
28 had in the Property. As such, this Court cannot quiet title in favor of the Bank because the Bank

1 has failed to name a necessary and indispensable party whose interests in the Property most
2 certainly would be affected by an order of this Court quieting title in the Bank's favor.

3 **2. The Bank's claim for declaratory relief fails as a matter of law.**

4 The Bank's claim for declaratory judgment also fails for numerous reasons. First, a claim
5 for declaratory judgment are redundant with its quiet title claim. *Kress v. Corey*, 65 Nev. 1, 189
6 P.2d 352, 364 (1948) (Declaratory relief claims are "redundant with the quiet title claim, as a
7 quiet title action is simply a request for a court to declare the rights of the parties as to the title to
8 a piece of real estate."). Upon review of the Bank's claim for quiet title, it is clear that the Bank
9 is seeking the exact same remedy. As such, the Bank's claim for declaratory relief is redundant
10 and constitutes a duplicative cause of action. Accordingly, this claim must be dismissed.

11 Second, "[d]eclaratory relief is designed to resolve uncertainties or disputes that may
12 result in future litigation. It operates prospectively and is not intended to redress past
13 wrongs.'" *League to Save Lake Tahoe v. Tahoe Reg'l Planning Agency*, No. 3:09-CV-478-RCJ-
14 RAM, 2013 WL 3463192, at *3 (D. Nev. July 9, 2013) (citation omitted). Here, the Bank's
15 claim for declaratory relief is seeking to redress a purported wrong that occurred years ago. As
16 such, the Bank's claim for declaratory judgment is legally untenable and must be dismissed.

17 Finally, the Association does not claim an interest in the Property and the Bank does not
18 allege that the HOA has or claims any present interest in this Property. *See* NRS 116.31164.
19 The Nevada Uniform Declaratory Judgments Act provides that any person interested under a
20 deed or other contract or legal instrument may seek a court's determination of any question of
21 construction or validity arising under the instrument, and obtain a declaration of rights, status or
22 other legal relations. *Turpin v. Bank of Am., N.A.*, No. 2:12-CV-01694-GMN, 2013 WL
23 5308244, at *2 (D. Nev. Sept. 19, 2013) (citing to NRS 30.040(1)). The Supreme Court of
24 Nevada defines the term justiciable controversy as follows:

25 (1) there must exist a justiciable controversy; that is to say, a
26 controversy in which a claim of right is asserted against one who
27 has an interest in contesting it; (2) the controversy must be
28 between persons whose interests are adverse; (3) the party seeking
declaratory relief must have a legal interest in the controversy, that
is to say, a legally protectable interest; and (4) the issue involved in
the controversy must be ripe for judicial determination.

1 *Id.* (quoting *Kress v. Corey*, 189 P.2d 352, 364 (Nev.1948)).

2 In order to show that a justiciable controversy exists, the Bank must assert a claim against
3 the Association, and any interest the Association has in that claim must be adverse to the Bank.
4 *See Am. Realty Investors, Inc.*, 2013 WL 5947190 at 1 (quoting
5 *Kress v. Corey*, 189 P.2d 352, 364 (Nev.1948)). Here, the Bank seeks a declaration from this
6 Court that the Association's sale did not extinguish the Deed of Trust. *See Am. Ans. and*
7 *Countercl.* at 26: 19-22. Any allegation based on the legal effect of the Association's foreclosure
8 sale conducted is only properly brought against the party that purchased the Property at the
9 Association's foreclosure sale. Unlike Saticoy, the Association does not have an adverse interest
10 in the Property that would establish a justiciable controversy between the Bank and the
11 Association. Moreover, even if the Bank could show that the Association has an interest in the
12 claims made in this matter, the Bank must also show that the Association has an interest in the
13 claims that is **adverse** to the Bank's interest. The Association foreclosed its lien pursuant to
14 Nevada law thereby extinguishing its interest in the Property. As such, the Bank cannot show
15 that the Association has an interest adverse to its own interest.

16 **3. The Bank lacks standing to prosecute a claim for wrongful foreclosure.**

17 "An action for the tort of wrongful foreclosure will lie if the **trustor or mortgagor** can
18 establish that at the time the power of sale was exercised or the foreclosure occurred, no breach
19 of condition or failure of performance existed on the mortgagor's or trustor's part which would
20 have authorized the foreclosure or exercise of the power of sale." *Larson v. Homecomings Fin.,*
21 *LLC*, 680 F. Supp. 2d 1230, 1237 (D. Nev. 2009)(citing *Collins v. Union Federal Sav. & Loan*
22 *Ass'n*, 99 Nev. 284, 662 P.2d 610, 623 (1983)). "The material issue of fact in a wrongful
23 foreclosure claim is whether the **trustor** was in default when the power of sale was exercised."
24 *Id.*

25 The Bank's claim for wrongful foreclosure fails because the Bank is not a trustor or
26 mortgagor in the context of this dispute. If the Bank is neither a trustor nor mortgagor, clearly
27 the Bank cannot affirmatively allege on behalf of another that there was no default or breach of
28 condition at the time of the foreclosure sale to prohibit the act of foreclosure. *Larson v.*

1 *Homecoming Financial, LLC*, 680 F.Supp.2d 1230, 1237 (D. Nev. 2009); *Collins v. Union Fed.*
2 *Sav. & Loan Ass'n*, 99 Nev. 284, 304, 662 P.2d 610, 623 (1983); *see also Village Pointe, LLC v.*
3 *Resort Funding, LLC*, 2011 WL 5844289, 5 (Nev. 2011). Indeed, a claim for wrongful
4 foreclosure is a tort that is personal to either a trustor or mortgagors, not a Bank as the holder of
5 a security interest.

6 It is clear that the Bank lacks standing to assert this claim. When a party lacks standing
7 to assert a claim, the Court lacks subject matter jurisdiction over such a claim. *See, e.g., Miller*
8 *v. Redwood Toxicology Laboratory, Inc.*, 688 F.3d 928, 934 (8th Cir.2012) (if a plaintiff lacks
9 standing, “a federal court has no subject-matter jurisdiction over the claim”). Moreover, the
10 Bank’s Counterclaim is devoid of any allegation that the prior homeowner was not in default at
11 the time of the Association’s foreclosure sale. Accordingly, the Court should dismiss the Bank’s
12 alleged claim for wrongful foreclosure.

13 Finally, the Bank cites to the content of the information provided to it as alleged proof of
14 a wrongful foreclosure. *See* Am. Ans. and Countercl. ¶¶ 90-95. However, this variety of
15 argument has been rejected by the *SFR* Court. As the *SFR* Court explained:

16 U.S. Bank further complains about the content of the notice it
17 received. **It argues that due process requires specific notice**
18 **indicating the amount of the superpriority piece of the lien** and
19 explaining how the beneficiary of the first deed of trust can prevent
20 the superpriority foreclosure sale. But it appears from the record
21 that specific lien amounts were stated in the notices, ranging from
22 \$1,149.24 when the notice of delinquency was recorded to
23 \$4,542.06 when the notice of sale was sent. The notices went to
24 the homeowner and other junior lienholders, not just U.S. Bank, so
25 it was appropriate to state the total amount of the lien.

26 *See SFR*, 334 P.3d at 418 (emphasis added).

27 Like *SFR*, based on the recorded documents cited to the complaint, the specific lien
28 amounts were stated in the notices. The Nevada Supreme Court has already ruled that it was
appropriate to state the total amount of the lien which comports with NRS 116.31162(1)(b)(1),
which merely requires that the notice of default “describe the deficiency in payment.” NRS
116.31162(1)(b)(1). The 2010-11 statutes did not require an Association to break down its
statement of the lien amount into superpriority and subpriority categories. In 2015, the Nevada

1 legislature amended NRS 116.31162 to require that an HOA separately state the amount of the
2 superpriority portion of the lien. The amendment suggests that this requirement did not exist in
3 previous versions of the statute. *See In re Estate of Thomas*, 116 Nev. 492, 998 P.2d 560, 562
4 (2000) (noting that an amendment to a statute is persuasive evidence of the legislature's intent in
5 enacting the first statute). And importantly, the Bank cannot argue that the Association
6 prevented it from paying off the lien. Therefore, the Association notice to the Bank was not
7 deficient on this basis and the claim for wrongful foreclosure should be dismissed. *See SFR*, 334
8 P.3d at 418.

9 **4. The Bank's Negligence Based Claims Fail under the Economic Loss Doctrine**
10 **and because No Statute Sets forth a Duty.**

11 **a. The Economic Loss Doctrine Bars the Bank's Negligence Based**
12 **Claims.**

13 The economic loss doctrine prohibits unintentional tort actions in which the plaintiff
14 seeks to recover purely economic losses. *Terracon Consultants W., Inc. v. Mandalay Resort*
15 *Group*, Nev. 206 P.3d 81, 86 (2009) (en bane). The Nevada Supreme Court applied the
16 economic loss doctrine to bar all negligence-based claims *Id.* at 83; *see also Giles v. Gen. Motors*
17 *Acceptance Corp.*, 494 F.3d 865, 879 (9th Cir. 2007) (citing Nevada cases). The first step in
18 determining whether the doctrine prohibits recovery is to ascertain if damages are purely
19 economic in nature. *Terracon Consultants W., Inc.*, 206 P.3d at 86. A purely economic loss
20 generally is "the loss of the benefit of the user's bargain including pecuniary damage for
21 inadequate value, the cost of repair and replacement of the defective product, or consequent loss
22 of profits, without any claim of personal injury or damage to other property." *Calloway v. City*
23 *of Reno*, 116 Nev. 250, 257, 993 P.2d 1259, 1263 (2000) (alterations and quotation omitted),
overruled on other grounds by Olson v. Richard, 120 Nev. 240, 89 P.3d 31 (2004).

24 Here, the Bank's negligence claim fails as a matter of law because the Bank seeks to
25 recover only economic losses as it relates to the Association. *See Am. Ans. and Countercl.* ¶¶
26 96-112. In other words, he Bank is seeking only damages and do not make any claims for
27 personal injury or damage to others. The Nevada Supreme Court has concluded such claims
28 fail under the economic loss doctrine. *See, e.g., ARCO Prods. Co. v. May*, 113 Nev. 1295,

1 1298-99, 948 P.2d 263, 265-66 (1997). As such, the Bank's negligence claim should be
2 dismissed.

3 **b. The Bank's has not Alleged a Viable Breach of a Duty**
4 **Contemplated by NRS 116.**

5 In the Counterclaim, the Bank alleges that the Association breached the statutory duties
6 imposed by NRS Chapter 116 by: (1) proceeding with the HOA foreclosure sale; and (2) by
7 proceeding with the sale without notice that the successful bidder would take title subject to the
8 Deed of Trust. *See* Am. Ans. and Countercl. 21-22. These allegations in the context of a
9 statutory non-judicial foreclosure sale are not plausible on their face. Nevada law affords
10 Nevada homeowners' associations the authority to collect unpaid assessments by non-judicial
11 foreclosure of the delinquent assessment lien. *See* NRS 116.3116-116.3118. Here, the
12 Association availed itself of its statutory right to foreclosure and the Property. Proceeding to
13 foreclosure when this conduct is specifically authorized by the statutory scheme cannot
14 constitute a breach of duty.

15 In addition, NRS Chapter 116 does not permit the Association to make any kind of
16 representations related to "title," as the Bank alleges. Indeed, in this case, the Property was sold
17 at public auction to the highest cash bidder as set forth in NRS 116.31164(2). "After the sale,
18 the person conducting the sale shall: (a) Make, execute and, after payment is made, deliver to the
19 purchaser, or his or her successor or assign, a deed without warranty," which is precisely what
20 occurred. *See* NRS 116.31164(3)(emphasis added.) The Bank's efforts to assert a breach of duty
21 in light of the plain language of a Foreclosure Deed conveyed without warranty lacks merit.

22 Notwithstanding the Bank's protests, state foreclosure statutes should not be second
23 guessed or usurped, otherwise "every piece of realty purchased at foreclosure" would be
24 challenged and title would be clouded in contravention of the very policies underlying non-
25 judicial foreclosure sales. *BFP v. Resolution Trust Company*, 511 U.S. 531, 539-40, 544, 144
26 S.Ct. 1757, 128 L.Ed.2d 556 (1994); *Golden v. Tomiyasu*, 79 Nev. 503, 387 P.2d 989, 997
27 (1969). Nevada has followed this same line, *i.e.* *Charmicor Inc. v. Bradshaw Finance Co.*, 550
28 P.2d 413, 92 Nev. 310 (1976) (Court did not abuse its discretion in denying an injunction of the

1 foreclosure procedure under the theory that non-judicial foreclosure sales violate the principles
2 of due process and equal protection). Based on the discussion above, the Association was simply
3 not required or permitted under the statutes to disclose anything related to whether “title” to the
4 Property would be subject to the Bank’s Deed of Trust. The Bank’s efforts to interpolate
5 additional “duties” or “obligations” upon the Association that are not contemplated by statute
6 should not be entertained by this Court.

7 **c. The Association Owes No Duty to the Bank under NRS Chapter 116.**

8 To bring a negligence claim in Nevada, a plaintiff must show that (1) defendant owed a
9 duty of care to plaintiff; (2) defendant breached that duty; (3) defendant's breach was the actual
10 and proximate cause of the plaintiff's injuries; and (4) plaintiff was injured. *Larson v.*
11 *Homecomings Fin., LLC*, 680 F. Supp. 2d 1230, 1235 (D. Nev. 2009)(citing to *Scialabba v.*
12 *Brandise Constr.*, 112 Nev. 965, 921 P.2d 928, 930 (1996). Liability based on negligence does
13 not exist without a breach of a duty. *Id.* (citing to *Bradshaw v. Blystone Equip. Co. of Nev.*, 79
14 Nev. 441, 386 P.2d 396, 397 (1963).

15 Here, the Bank’s negligence claim fails as a matter of law because none of the statutes
16 relied upon set forth standards of care nor are they intended to protect any specific group. The
17 Bank bases its negligence claim on NRS Chapter 116. *See* Am. Ans. and Contercl. at 21-22.
18 Whether a particular statute establishes a standard of care in a negligence action is a question of
19 law. *Larson v. Homecomings Fin., LLC*, 680 F. Supp. 2d 1230, 1236 (D. Nev. 2009). As should
20 be readily evident, NRS Chapter 116, and specifically NRS 116.3116 merely establishes priority
21 of liens--nothing more. These statutes do not set forth any standard of care. Moreover, NRS
22 Chapter 116 is intended to protect the general public and, as such, is not designed to protect a
23 certain class of persons. Further, NRS 116 does not create private rights of action and, therefore,
24 there is no class of persons the statutes are intended to protect.

25 Because the statutes cited by the Bank do not set forth standards of care, do not
26 designed to protect any class of persons other than the general public, and/or do not create
27 private rights of action, the Bank’s negligence based claims fail as a matter of law.

28 ///

1 **5. The Bank's claim for breach of contract, misrepresentation and breach of**
2 **the covenant of good faith and fair dealing must be dismissed because there**
3 **was no contract between the Bank and the Association.**

4 The Bank's claims for breach of contract, misrepresentation and breach of the covenant
5 of good faith and fair dealing must be dismissed for the most basic reason: there was no contract
6 between the Bank and the Association.

7 “Basic contract principles require, for an enforceable contract, an offer and acceptance,
8 meeting of the minds, and consideration.” *May v. Anderson*, 121 Nev. 668, 672 (2005).
9 However, it is clear from reviewing the Bank's purported “counterclaim,” that none of the
10 elements necessary to establish a contract is present in this case. The Association did not enter
11 into negotiations with the Bank to purchase the Property, and the Bank's purported
12 “counterclaim” fails to even allege such facts. Moreover, homeowners associations cannot enter
13 into contracts to sell property where they merely have a lien interest, as was the case here.
14 Instead, both Nevada law and the Association's governing documents (“CC&Rs”) authorize the
15 association to foreclose on property in which the association has a lien and convey a Trustees
16 Deed Upon Sale to the highest bidder. *See* NRS 116.31162-116.31168. Because there was no
17 contract between the Bank and the Association, the Bank's claim for breach of contract must be
18 dismissed pursuant to Nev. R. Civ. P. 12(b)(5).

19 Even assuming the existence of a contract between the Bank and the Association, the
20 Bank's claims for breach of contract, misrepresentation and breach of the covenant of good faith
21 and fair dealing fail. The Bank relies on the “mortgagee protection clause” in support of these
22 claims. *See* Am. Ans. and Countercl. at 23-25. However, in *SFR Investments Pool 1 v. U.S.*
23 *Bank*, 334 P.3d 408 (2014), U.S. Bank similarly argued that it relied on a purported mortgagee
24 protection clause. In *SFR*, the Court held that NRS 116.1104 defeats this argument. Indeed, the
25 Court held:

26 NRS 116.1104 defeats this argument. It states that Chapter 116's
27 “provisions may not be varied by agreement, and rights conferred
28 by it may not be waived ... [e]xcept as expressly provided in”
 Chapter 116. (Emphasis added.) “Nothing in [NRS] 116.3116
 expressly provides for a waiver of the HOA's right to a priority
 position for the HOA's super priority lien.” *See 7912 Limbwood*
 Court Trust, 979 F.Supp.2d at 1153: The mortgage savings clause

thus does not affect NRS 116.3116(2)'s application in this case. *See Boulder Oaks Cmty. Ass'n v. B & J Andrews Enters., LLC*, 125 Nev. 397, 407, 215 P.3d 27, 34 (2009) (holding that a CC & Rs clause that created a statutorily prohibited voting class was void and unenforceable).

SFR, 334 P.3d 408, 419 (2014). As such, the Bank's arguments concerning the "mortgagee protection clause" fail as a matter of law and its claims for breach of contract, misrepresentation and breach of the covenant of good faith and fair dealing must be dismissed.

6. The Bank's claim for unjust enrichment fails because it is incapable of alleging that the Association obtained any monies that in equity or good conscience belong to another.

"Unjust enrichment exists when the plaintiff confers a benefit on the defendant, the defendant appreciates such benefit, and there is 'acceptance and retention by the defendant of such benefit under circumstances such that it would be inequitable for him to retain the benefit without payment of the value thereof.'" *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. Adv. Op. 35, 283 P.3d 250, 257 (2012) (quoting *Unionamerica Mtg. v. McDonald*, 97 Nev. 210, 212, 626 P.2d 1272, 1273 (1981)).

Nevada law affords Nevada homeowners' associations the authority to collect unpaid assessments by non-judicial foreclosure of the delinquent assessment lien. *See* NRS 116.3116-116.3118. In the present case, the Association availed itself of its right to foreclose on its delinquent assessment lien and Plaintiff purchased the Property at the Association's sale.

Here, the Bank argues that the Association and others would be unjustly enriched if Saticoy is successful in quieting title. *See* Third Am. Ans. and Countercl. at 25. However, the Court can only quiet title in Saticoy's name if the sale was done in accordance with Nevada law. *SFR*, 334 P.3d at 418. If the Association's sale was done in accordance with Nevada law, it cannot be found to have been unjustly enriched. As such, the Bank's claim for unjust enrichment is subject to dismissal.

C. NRS Chapter 116 does not Violate Due Process.

On January 26, 2017, the Supreme Court of Nevada issued its opinion in *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage, a Division of Wells Fargo Bank*, 133 Nev., Advance Opinion 5 (Jan. 26, 2017) wherein it holds "that neither the HOA's

1 nonjudicial foreclosure, nor the Legislature's enactment of the statutes, constitute state action.
2 Therefore, the statutes do not implicate due process. Additionally, we consider whether the
3 extinguishment of a subordinate deed of trust through an HOA's nonjudicial foreclosure violates
4 the Takings Clauses of the United States and Nevada Constitutions. We hold it does not, and we
5 therefore reverse the district court's order and remand for further proceedings consistent with this
6 opinion.”

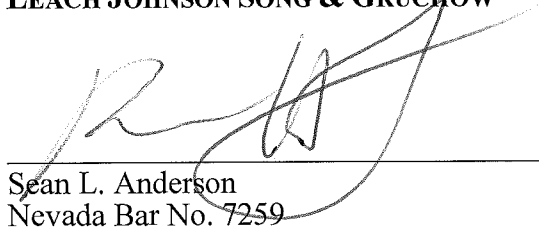
7 In *Saticoy Bay*, the Supreme Court of Nevada expressly rejects the Ninth Circuit Court of
8 Appeal's decision in *Bourne Valley Court Tr. v. Wells Fargo Bank, N.A.*, 832 F.3d 1154 (9th Cir.
9 2016) as cited to by the Bank. 133 Nev., Advance Opinion 5 fn. 5. *Saticoy Bay* is dispositive of
10 the Bank's arguments regarding the constitutionality of NRS Chapter 116. Therefore, any and
11 all claims, and allegations as set forth in the Bank's Counterclaim, based upon the
12 constitutionality of NRS 116, must be dismissed.

13 IV. CONCLUSION

14 For the reasons set forth above, the Association respectfully requests that the
15 Association's Motion be granted in its entirety.

16 DATED this, ^{9th}8th day of August, 2017.

17 LEACH JOHNSON SONG & GRUCHOW

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24 8945 W. Russell Road, Suite 330
25 Las Vegas, Nevada 89148
26 Attorneys for Counter-Defendant Spanish Trail
27 Master Association
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), the undersigned, an employee of LEACH JOHNSON SONG & GRUCHOW, hereby certified that on the 9th day of August, 2017, she caused to be served via the electronic filing system (if the intended recipients are registered users) a true and correct copy of the foregoing, **COUNTER-DEFENDANTSPANISH TRAIL MASTER ASSOCIATION'S MOTION TO DISMISS DEFENDANT/COUNTER-CLAIMANT THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S THIRD AMENDED COUNTERCLAIMS** addressed as follows:

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Attorneys for Counter-Defendant
Spanish Trail Master Association

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLS SERIES 34
INNISBROOK,

Plaintiff,

vs.

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

Defendants.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3,

Counterclaimant

vs.

SATICOY BAY LLC SERIES 34
INNISBROOK, a Nevada limited-liability
company; SPANISH TRAIL MASTER
ASSOCIATION, a Nevada Non-Profit
Corporation; RED ROCK FINANCIAL
SERVICES, an unknown entity; FRANK
TIMPA, an individual; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Counter-Defendants.

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

ORDER GRANTING IN PART AND
DENYING IN PART COUNTER-
DEFENDANT SPANISH TRAIL
MASTER ASSOCIATION'S MOTION
TO DISMISS DEFENDANT/COUNTER-
CLAIMANT THORNBURG
MORTGAGE SECURITIES TRUST
2007-3'S THIRD AMENDED
COUNTERCLAIMS AND RED ROCK
FINANCIAL SERVICES' JOINDER

PLEASE NOTE
DEPARTMENT CHANGE

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8945 West Russell Road, Suite 330, Las Vegas, Nevada 89148
Telephone: (702) 538-9074 - Facsimile (702) 538-9113

1 RED ROCK FINANCIAL SERVICES,

2 Counterclaimant

3 vs.

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

10 Counter-Defendants.
11

12 On August 9, 2017, Counter-Defendant Spanish Trail Master Association, (the
13 "Association"), by and through its attorneys of record, Leach Johnson Song & Gruchow, filed its
14 Motion to Dismiss Defendant/Counter-Claimant Thornburg Mortgage Securities Trust 2007-3's
15 Third Amended Complaint ("Motion"). On August 15, 2017 Counter-Defendant Red Rock
16 Financial Services filed its Joinder to the Association's Motion to Dismiss. On August 28, 2017,
17 Defendant/Counterclaimant/Counter-Defendant, Thornburg Mortgage Securities Trust 2007-3
18 Nationstar Mortgage LLC ("Bank") by and through its attorneys of record, Wright, Finlay &
19 Zak, LLP, filed its Opposition to Spanish Trail's Motion to Dismiss Counterclaim
20 ("Opposition"). On September 12, 2017, the Association filed its Reply in Support of Motion to
21 Dismiss Defendant/Counter-Claimant Thornburg Mortgage Securities Trust 2007-3's Third
22 Amended Complaint ("Reply"). The Motion came on for hearing on September 19, 2017, the
23 Honorable Gloria Sturman presiding. The Court, having considered all of the pleadings and
24 papers on file, and orders as follows:

25 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Association's
26 Motion to Dismiss Defendant/Counter-Claimant Thornburg Mortgage Securities Trust 2007-3's
27 Third Amended Complaint GRANTED in part and DENIED in part.

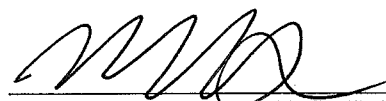
28 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Bank's claims for

LEACH JOHNSON SONG & GRUCHOW
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1 quiet title/declaratory relief, negligence *per se*, breach of contract, and breach of covenant of
2 good faith and fair dealing are DISMISSED without prejudice.

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Association's
4 request to dismiss the Bank's claims for negligence, wrongful foreclosure, misrepresentation and
5 unjust enrichment is DENIED.

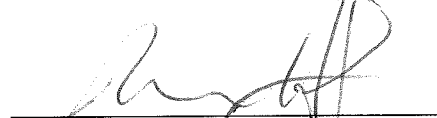
6
7 IT IS SO ORDERED this 5th day of October, 2017.

8
9 

10 HONORABLE GLORIA STURMAN
11 DISTRICT COURT JUDGE


12 Submitted By:

13 LEACH JOHNSON SONG & GRUCHOW

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1 quiet title/declaratory relief, negligence *per se*, breach of contract, and breach of covenant of
2 good faith and fair dealing are DISMISSED without prejudice.

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Association's
4 request to dismiss the Bank's claims for negligence, wrongful foreclosure, misrepresentation and
5 unjust enrichment is DENIED.

6
7 IT IS SO ORDERED this _____ day of _____, 2017.


8
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10 
HONORABLE GLORIA STURMAN
DISTRICT COURT JUDGE


11
12 Submitted By:

13 LEACH JOHNSON SONG & GRUCHOW

Approved As To Form And Content:

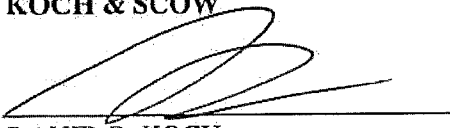
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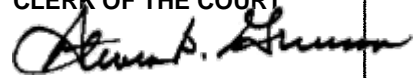
25 Approved As To Form And Content:

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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.

AND ALL RELATED ACTIONS.

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

**MOTION TO REINSTATE
STATISTICALLY CLOSED CASE**

(Hearing Requested)

MOTION TO REINSTATE STATICALLY CLOSED CASE

COMES NOW, Plaintiff, SATICOY BAY LLC, SERIES 34 INNISBROOK, ("*Saticoy*")
by and through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby submits
it Motion to Reinstate Statistically Closed Case as follows:

I. FACTUAL BACKGROUND.

On April 15, 2019, this Court entered an order statistically closing this lengthy and
complicated litigation. That order was apparently issued in response to the March 29, 2019 Status
Memo filed by Madeline Timpa and the Timpa Trust ("*Timpa Trust*"), which incorporated the
Court's Order of December 3, 2018, Granting Defendant Thornburg Mortgage Securities Trust's
("*Thornburg*") Motion for Reconsideration of the denial of its earlier Motion for Summary
Judgment. (Exhibit 1). The case was closed without a hearing or written response from Plaintiff to

1 Timpa's Status Report. The April 15, 2019 Order, however, did not resolve all issues in the case.
2 As such, the order of statistical closure of this case was entered prematurely and this matter should
3 be reopened to allow for the final resolution of the remaining claims and issues not addressed.

4 **II. THE INSTANT ACTION SHOULD BE REOPENED AND REINSTATED.**

5 Despite the Status Reports' claim to the contrary, not all pending matters in this case have
6 been finally adjudicated and resolved. At least one issue remains. That is; the matter of the
7 Interpleader claims to the excess proceeds from the foreclosure sale. Counter-Defendant Red Rock
8 Financial Services' ("*Red Rock*") Counterclaim for Interpleader and Timpa's Trust's Interpleader
9 Claim to Surplus Funds have never been heard or ruled upon by the Court.

10 Red Rock filed its initial Interpleader claim on May 21, 2015 (Exhibit 2), and restated that
11 claim on June 12, 2017. (Exhibit 3). Thornburg filed its Answer to Red Rock's Interpleader on July
12 5, 2017. (Exhibit 4). However, Timpa Trust only recently filed its Answer to Red Rock's
13 Interpleader on January 31, 2019, which included Timpa Trust's own Claim To Surplus Funds.
14 (Exhibit 5). This was well after the Court's ruling on Thornburg's Motion for Summary Judgment,
15 thus leaving the Interpleader claims to the excess funds open and unadjudicated. Counsel for both
16 Red Rock and Thornburg have indicated their agreement that these issues remain. *See*, Declaration
17 of Roger P. Croteau, Esq. attached hereto.

18 Pursuant to the Findings of Fact, Conclusions of Law and Order Granting Thornburg's
19 Motion for Summary Judgment, all of Saticoy's and Thornburg's claims, including counterclaims
20 and crossclaims were dismissed with prejudice. Based upon the Order, Saticoy, Timpa Trust, and
21 Red Rock are remaining parties to this litigation. Saticoy would need to file an amended complaint
22 to assert its claim to Interpleader funds. It is Saticoy's understanding that the Interpleader excess
23 proceed funds have not been deposited into the Court yet.

24 The yet to be determined issues before the Court involve Saticoy, Timpa Trust and Red Rock
25 and the Interpleader claims and the rights to the excess funds. Under these circumstances,

26 / / /

27 / / /

28 / / /

/ / /

ROGER P. CROTEAU & ASSOCIATES, LTD.

• 2810 W. Charleston Blvd., Suite 75 • Las Vegas, Nevada 89102 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

1 Saticoy maintains that this case was closed prematurely, and therefore, respectfully requests that the
2 Court reinstate and reopen this case.

3 DATED this 10th day of May, 2019.

4 ROGER P. CROTEAU & ASSOCIATES, LTD.

5 /s/ Roger P. Croteau

6 ROGER P. CROTEAU, ESQ.

7 Nevada Bar No. 4958

8 9120 West Post Road, Suite 100

9 Las Vegas, Nevada 89148

10 (702) 254-7775

11 ***Attorney for Plaintiff***

12 SATICOY BAY LLC, SERIES 34

13 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 4th day of April, 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 eflex e-file and serve
system.

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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.

Hewes
ROGER P. CROTEAU &

/s/ Kristi L.

An employee of

ASSOCIATES, LTD.

DECL
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TIMOTHY E. RHODA, ESQ.
Nevada Bar No. 7878
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Attorney for Plaintiff
SATICOY BAY LLC, SERIES 34 INNISBROOK

DISTRICT COURT
CLARK COUNTY, NEVADA

SATICOY BAY LLC, SERIES 34)	Case No.: A-14-710161-C
INNISBROOK,)	Dept. No.: XXVI
)	
Plaintiff,)	
)	
vs.)	
)	DECLARATION OF ROGER P.
THORNBURG MORTGAGE SECURITIES)	CROTEAU IN SUPPORT OF
TRUST 2007-3; FRANK TIMPA and)	MOTION TO REINSTATE
MADELAINE TIMPA, individually and as)	STATISTICALLY CLOSED CASE
trustees of the TIMPA TRUST,)	
Defendants.)	
)	
AND ALL RELATED ACTIONS.)	
)	

ROGER P. CROTEAU, ESQ., being first duly sworn, deposes and says, that:

1. I am an attorney licensed to practice law in Nevada, employed by the law office of Roger P. Croteau & Associates, Ltd., attorney for Plaintiff, Las Vegas Development Group, in this action.
2. I make this declaration in support of Plaintiff's Motion to Reinstate Statistically Closed Case ("Motion").
3. Plaintiff's Motion is based on the Plaintiff's position that this matter be reopened because the Order of Statistical Closure was entered prematurely, and the matter

1 should be reopened to allow for the final resolution of the claims and issues not
2 addressed. Specifically, claims for Interpleader regarding excess funds remain
3 open and unjudicated.

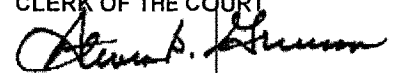
- 4 4. I have spoken telephonically with Steve Scow, Esq., counsel for Defendant Red
5 Rock Financial Services, and Melanie Morgan, Esq., counsel for Defendant
6 Thornburg, who both agree and concur that these issues have not been resolved
7 and this matter should be reopened and reinstated.
- 8 5. A reinstatement of this matter will allow the Plaintiff to file an amended
9 complaint to assert its claim to Interpleader funds that have not been deposited
10 with the Court yet.
- 11 6. Plaintiff respectfully suggests that the Motion states good cause for the
12 reinstatement of this matter and that no party would be adversely affected by the
13 reinstatement.
- 14 8. I declare under penalty of perjury under the laws of the State of Nevada that the
15 foregoing is true and correct to the best of my knowledge.

16 DATED this 10th day of May, 2019.

17 ROGER P. CROTEAU & ASSOCIATES, LTD.

18
19 /s/ Roger Croteau
20 ROGER P. CROTEAU, ESQ.
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27 *Attorney for Plaintiff*
28 **SATICOY BAY LLC, SERIES 34 INNISBROOK**

EXHIBIT 1



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9 *And Timpa Trust*

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 SATICOY BAY LLC SERIES 34
13 INNISBROOK,

14 Plaintiff,

15 vs.

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

18 Defendants.

Case No.: A-14-710161-C

Division: XXVI

STATUS MEMO

Date: April 2, 2019

Time: 9:00 a.m.

Dept.: Dept. XXVI

19 AND ALL RELATED ACTIONS

STATUS MEMO

20 **1. Five Year Rule**

21 The five-year rule runs on November 20, 2014. The Complaint was filed on November
22 20, 2014. There are no bankruptcy stays or ADR stays on the docket.

23 / / /

24 / / /

25 / / /

1 **2. Preferential Trial Setting**

2 Madelaine Timpa ("Madelaine") passed away earlier this month. Our office has been
3 retained by the two successor co-trustees to the Timpa Trust (Madelaine's sons). Because of the
4 ambiguity as to the status of the current litigation, and for purposes of judicial economy, we have
5 not yet filed a motion to substitute in the successor trustees. Due to the passing of Ms. Timpa,
6 preferential trial setting is no longer an issue at this time.
7

8 **3. Trial Readiness**

9 The Timpa Trust is not aware of any remaining claims in this matter. Counsel for Timpa
10 Trust contacted counsel for Saticoy for clarification. Unfortunately, the call did not yield any
11 results as Saticoy's counsel was not even aware that the Court requested the parties to file a status
12 report.
13

14 Timpa Trust believes that the entire matter was summarily adjudicated in this Court's
15 December 3, 2018 Order titled: "FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
16 ORDER GRANTING THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S MOTION
17 FOR SUMMARY JUDGMENT" (hereafter "Order Summarily Adjudicating Matter").

18 The Order Summarily Adjudicating Matter reads in pertinent part:

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

22 Attached hereto as **Exhibit 1** is a true and correct copy of the December 5, 2018 Notice of Entry
23 of Findings of Fact, Conclusions of Law, and Order Granting Thornburg Mortgage Securities
24 Trust 2007-3's Motion for Summary Judgment ("December 5, 2018 Order"), which includes a
25 true and correct copy of the Order Summarily Adjudicating Matter.
26
27
28

1 The Order Summarily Adjudicating Matter was approved and signed by all appearing
2 counsel in the case at the time. Timpa Trust is of the firm belief that all parties signed the order
3 believing it summarily adjudicated the entire matter.¹ Indeed, on December 7, 2018, the Court
4 entered an order to statistically close the case. A true and correct copy of the Order to Statistically
5 Close Case is attached hereto as **Exhibit 2**. Plaintiff was clearly on actual notice that the Court
6 considered the Order Summarily Adjudicating Matter to be a final appealable order. At that time,
7 Plaintiff had the opportunity to file either a Notice of Appeal within thirty days of the December
8 5, 2018 Order or file one of the plethora of tolling motions the Nevada Rules of Civil Procedure
9 affords litigants to seek clarification regarding finality of an order. As of today, no timely Notice
10 of Appeal or timely tolling motion has been filed in the instant matter.
11

12 On January 4, 2019, the Court entered an Order Setting Further Proceedings. Timpa
13 Trust's counsel, which had been waiting for the appeal period to expire, saw the Order and, out
14 of an abundance of caution, filed an Answer to Interpleader and Claim to Surplus Funds on
15 January 31, 2019. A true and correct copy of the Answer to Interpleader and Claim to Surplus
16 Funds is attached hereto as **Exhibit 3**. This was done to give Timpa Trust standing to make oral
17 representations in Court at the February 5, 2019 status check in this matter.
18

19 NRS 40.062 clearly states that excess proceeds go to fees, satisfaction of the obligation
20 being enforced (the HOA lien), junior lienholders, then to the debtor (Timpa Trust was the party
21 who owed the financial obligation at the time of the HOA lien). It is Timpa Trust's position that
22 the Trustee must pay Republic Services what they are owed, then must pay Timpa Trust the
23 remainder. However, Timpa Trust understands that the Trustee is not able to do so until the
24
25

26
27 ¹ It is important to note that the Order Summarily Adjudicating Matter left the issue of attorney fees and costs to be
28 decided later, which would be within the ancillary jurisdiction of the Court, even if a Notice of Appeal was timely
filed.

1 current action is considered final. Once this matter is considered final, and because the deadline
2 to file an appeal has expired, Timpa Trust can come to a simple resolution with the foreclosing
3 trustee, the home owners' association and the bank, which is considered a senior lienholder
4 (pursuant to the Order Summarily Adjudicating Matter).
5

6 Accordingly, Timpa Trust respectfully requests that this Court file a new order to
7 statistically close this matter as there is nothing left to adjudicate at this time. This action would
8 be consistent with this Court's previous Order Summarily Adjudicating Matter.

9 DATED this 29th day of March, 2019.

10 **THE LAW OFFICE OF TRAVIS AKIN**

11 /s/ Travis Akin

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1
2 **CERTIFICATE OF SERVICE**

3 The undersigned hereby certifies on March 29, 2019, a true and correct copy of the above
4 and foregoing STATUS MEMO was served to the following at their last known address(es).
5 facsimile numbers and/or e-mail/other electronic means, pursuant to:

6 _____ **BY MAIL:** N.R.C.P. 5(b), I deposited by first class United States
7 mailing, postage prepaid at Henderson Nevada;

8 _____ **BY FAX:** E.D.C.R. 7.26(a), I served via facsimile at the
9 telephone number provided for such transmissions.

10 _____ **BY MAIL AND FAX:** N.R.C.P 5(b), I deposited by first class
11 United States mail, postage prepaid in Henderson, Nevada; and via
facsimile pursuant to E.D.C.R. 7.26(a)

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

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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

NOTICE OF ENTRY OF 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 ///

26 ///

27 ///

28 ///

///

///

///

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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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17 Las Vegas, Nevada 89134

18
19 *Attorneys for Thornburg Mortgage Securities*
20 *Trust 2007-3*
21
22
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25
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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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EXHIBIT A

EXHIBIT A

Steven D. Grierson

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15 **EIGHTH JUDICIAL DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 SATICOY BAY LLC SERIES 34
18 INNISBROOK,

Case No.: A-14-710161-C

Division: XXVI

19 vs. Plaintiff,

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

22 Defendants.

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

23 AND ALL RELATED ACTIONS

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

28 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).

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.

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

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

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

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

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

II. CONCLUSIONS OF LAW

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

2. Parties must prove their claims and affirmative defenses by a preponderance of the evidence. *See Nev. J.I. 2EV.1.* Under Nevada law, "[t]he term 'preponderance of the evidence' means such evidence as, when weighed with that opposed to it, has more convincing force, and from which it appears that the greater probability of truth lies therein." *Nev. J.I. 2EV.1; Corbin v. State*, 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 ...


AKERMAN LLP

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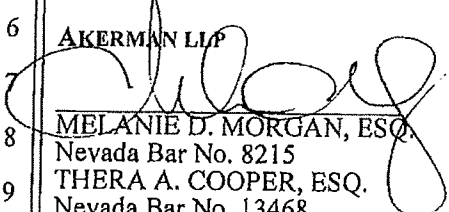
IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Thornburg shall have its cost of suit, any issues regarding attorneys' fees to be deferred pending motion practice.

DATED November 30 2018.


DISTRICT COURT JUDGE

Respectfully submitted by:

AKERMAN LLP

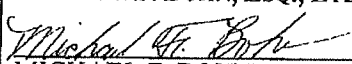

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Las Vegas, Nevada 89134

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Reviewed by::

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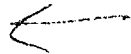
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Attorneys for Republic Services, Inc.


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:

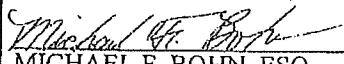
6 AKERMAN LLP

7 
8 MELANIE D. MORGAN, ESQ.
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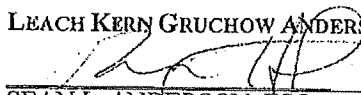
14 *Attorneys for Thornburg Mortgage Securities Trust 2007-3*

15 Reviewed by::

16 MICHAEL F. BOHN, ESQ., LTD.

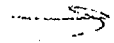
17 
18 MICHAEL F. BOHN, ESQ.
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20 *Innisbrook*

21 KOCH & SCOW LLC

22 
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21 WILLIAMS STARBUCK

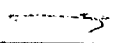
22 
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26 Nevada Bar No. 13964
27 612 So. Tenth Street
28 Las Vegas, NV 89101
Attorneys for Republic Services, Inc.

EXHIBIT 2

Steven D. Grierson

OSCC

DISTRICT COURT
CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK, PLAINTIFF(S)
VS.
THORNBURG MORTGAGE
SECURITIES TRUST 2007-3,
DEFENDANT(S)

CASE NO.: A-14-710161-C

DEPARTMENT 26

CIVIL ORDER TO STATISTICALLY CLOSE CASE

Upon review of this matter and good cause appearing,
IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to
statistically close this case for the following reason:

DISPOSITIONS:

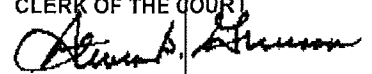
- ☐ Default Judgment
- ☐ Judgment on Arbitration
- ☐ Stipulated Judgment
- ☒ Summary Judgment
- ☐ Involuntary Dismissal
- ☐ Motion to Dismiss by Defendant(s)
- ☐ Stipulated Dismissal
- ☐ Voluntary Dismissal
- ☐ Transferred (before trial)
- ☐ Non-Jury – Disposed After Trial Starts
- ☐ Non-Jury – Judgment Reached
- ☐ Jury – Disposed After Trial Starts
- ☐ Jury – Verdict Reached
- ☐ Other Manner of Disposition

DATED this 7th day of December, 2018.

Gloria Sturman

GLORIA STURMAN
DISTRICT COURT JUDGE

EXHIBIT 3



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

11
12 **EIGHTH JUDICIAL DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 SATICOY BAY LLC SERIES 34
15 INNISBROOK,

16 Plaintiff,

17 vs.

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

20 Defendants.

Case No.: A-14-710161-C

Division: XXVI

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

21
22 AND ALL RELATED ACTIONS

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

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

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

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

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

15 **AFFIRMATIVE DEFENSES**

16 **FIRST AFFIRMATIVE DEFENSE**

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

21 **SECOND AFFIRMATIVE DEFENSE**

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

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THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

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

1 has or may have more affirmative defenses or counterclaims that are not known at this
2 time or may be uncovered through further discovery wherefore this Answering
3 Defendant reserves the right to assert any such affirmative defenses or counterclaims so
4 ascertained at a later date.
5

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

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

15 Dated this 31st day of January, 2019.
16

17 Respectfully submitted,

18 /s/ Travis Akin

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

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

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

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

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

20 (b) Satisfaction of the obligation being enforced by the
21 foreclosure sale.

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

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

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

27 (Nevada Revised Statute §40.462)
28

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

///

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///

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///

1 its lien and the balance to Madelaine Timpa.

2 Dated this 31st day of January, 2019

3 Respectfully submitted,

4 /s/ Travis Akin

5 TRAVIS AKIN, ESQ.

6 Nevada Bar No. 13059

7 THE LAW OFFICE OF TRAVIS AKIN

8 9480 S. Eastern Ave., Suite 257

9 Las Vegas, NV 89123

10 Telephone: (702) 510-8567

11 Email: travisakin8@gmail.com

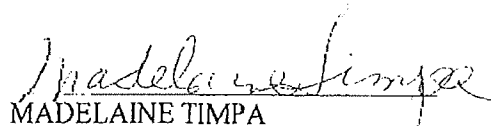
12 *Attorneys for Madelaine Timpa, individually*
13 *and as trustee of the Timpa Trust*

14 **VERIFICATION OF MADELAINE TIMPA**

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

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

20 Dated this 31st day of January, 2019

21 
22 MADELAINE TIMPA

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CERTIFICATE OF SERVICE

The undersigned hereby certifies on January 31, 2019, a true and correct copy of the above and foregoing MADELAINE TIMPA AND TIMPA TRUST'S VERIFIED ANSWER TO RED ROCK FINANCIAL SERVICES' COUNTERCLAIM FOR INTERPLEADER AND MADELAINE TIMPA'S CLAIM TO SURPLUS FUNDS was served to the following at their last known address(es), facsimile numbers and/or e-mail/other electronic means, pursuant to:

_____ **BY MAIL:** N.R.C.P. 5(b), I deposited by first class United States mailing, postage prepaid at Henderson Nevada;

_____ **BY FAX:** E.D.C.R. 7.26(a), I served via facsimile at the telephone number provided for such transmissions.

_____ **BY MAIL AND FAX:** N.R.C.P. 5(b), I deposited by first class United States mail, postage prepaid in Henderson, Nevada; and via facsimile pursuant to E.D.C.R. 7.26(a)

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

LEACH JOHNSON SONG & GRUCHOW

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

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

17 /s/ Travis Akin
18 An employee of The Law Office of Travis Akin, LLC

EXHIBIT 2


CLERK OF THE COURT

CCAN
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STEVEN B. SCOW
Nevada Bar No. 9906
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Attorneys for Counter-Defendant/Counterclaimant
Red Rock Financial Services

EIGHTH DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34 INNISBROOK,
Plaintiff,

vs.

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

Defendants.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3,

Counterclaimant,

vs.

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

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

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

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

3 Counter-Defendants.

4 RED ROCK FINANCIAL SERVICES,

5 Counterclaimant,

6 vs.

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

13 Counter-Defendants.

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

18 I.

19 PARTIES

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

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

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

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

II.

JURISDICTION AND VENUE

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

III.

FACTUAL BACKGROUND

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

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

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

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

10. Red Rock denies the allegations of paragraph 25.

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

12. Red Rock denies the allegations of paragraph 27.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 **FIRST CAUSE OF ACTION**

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

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

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

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

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

1 **SECOND CAUSE OF ACTION**

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

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

5 **THIRD CAUSE OF ACTION**

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

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

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

10 **FOURTH CAUSE OF ACTION**

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

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

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

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

19 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

4 **SIXTH CAUSE OF ACTION**

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

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

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

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

11 **SEVENTH CAUSE OF ACTION**

12 **(Misrepresentation versus HOA)**

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

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

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

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

22 **EIGHTH CAUSE OF ACTION**

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

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

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

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FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

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

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THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

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

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

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

Dated: May 21, 2015.

KOCH & SCOW, LLC

By: /s/Steven B. Scow
Steven B. Scow
Attorneys for Red Rock Financial Services

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

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

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

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

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

24 **GENERAL ALLEGATIONS**

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

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

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

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

17 CAUSE OF ACTION

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

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

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

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

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

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

PRAYER

WHEREFORE, Red Rock prays for relief as follows:

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

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

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

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

Dated: May 21, 2015.

KOCH & SCOW, LLC

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

CERTIFICATE OF SERVICE

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

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

Akerman LLP

Contact	Email
Akerman Las Vegas Office	akermanlas@akerman.com
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Law Offices of Michael F. Bohn, Esq.

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

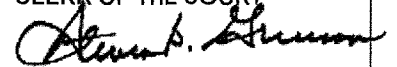
Wright, Finlay & Zak, LLP

Contact	Email
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Marissa Resnick	mresnick@wrightlegal.net
Shadd Wade, Esq.	swade@wrightlegal.net

Executed on May 21, 2015 at Henderson, Nevada.

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

EXHIBIT 3



1 CCAN
2 DAVID R. KOCH
3 Nevada Bar No. 8830
4 STEVEN B. SCOW
5 Nevada Bar No. 9906
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7 Nevada Bar No. 3504
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14 Telephone: (702) 318-5040
15 Facsimile: (702) 318-5039

16 Attorneys for Counter-Defendant/Counterclaimant
17 Red Rock Financial Services

18 **EIGHTH DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

20 SATICOY BAY LLC SERIES 34 INNISBROOK,

21 Plaintiff,

22 vs.

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

Defendants.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3,

Counterclaimant,

vs.

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

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

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

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

3 Counter-Defendants.

4 RED ROCK FINANCIAL SERVICES,

5 Counterclaimant,

6 vs.

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

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

19 **INTRODUCTION**

20 1. In response to paragraph 1 of the Counterclaim, Red Rock states this
21 paragraph constitutes a legal conclusion to which no response is required.

22 2. Admit the allegations in paragraph 2 of the Counterclaim.

23 **JURISDICTION AND VENUE**

24 3. In response to paragraph 3 of the Counterclaim, Red Rock states this
25 paragraph constitutes a legal conclusion to which no response is required.

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1 **PARTIES**

2 1. In response to paragraphs 4 through 6 and 9 of the Counterclaim, Red
3 Rock is without sufficient information to form a belief as to the truth of the allegations of
4 these paragraphs and on that basis denies the allegations.

5 2. In response to Paragraph 7 of the Counterclaim, Red Rock admits that it is
6 doing business in Nevada and that it foreclosed on the property that is the subject of this
7 litigation but denies that it is a Nevada limited liability company.

8 3. In response to paragraph 8 of the Counterclaim, Red Rock states this
9 paragraph constitutes a legal conclusion to which no response is required.

10 **GENERAL ALLEGATIONS**

11 4. In response to paragraphs 1 through 5, 33, 50, and 56 of the Counterclaim,
12 Red Rock is without sufficient information to form a belief as to the truth of the
13 allegations of these paragraphs and on that basis Red Rock denies the allegations.

14 5. In response to paragraphs 6 through 10, 12, 14 through 17, 19 through 22,
15 30 through 32, 35, 36, and 51 of the Counterclaim, Red Rock states the documents
16 referenced therein speak for themselves and no response from Red Rock is required.
17 Insomuch as the documents do not speak for themselves, the allegations in these
18 paragraphs constitute legal conclusions and no response is required.

19 6. In response to paragraphs 11, 13, 18, 23 through 29, 34, 37 through 46, 48,
20 49, 53 through 55, 57 through 60, 62 through 63, and 65 through 66 of the Counterclaim,
21 Red Rock states the allegations in these paragraphs constitutes legal conclusions to which
22 no response is required. To the extent the paragraphs do not state legal conclusions, Red
23 Rock denies the allegations contained therein.

24 7. In response to the allegations of paragraphs 14, 47, 52, 61 and 64 Red Rock
25 is without sufficient information to form a belief as to the truth of the allegations of these
26 paragraphs regarding "The Trust" and on that basis denies the allegations.
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FIRST CAUSE OF ACTION

**(Quiet Title/Declaratory Relief Pursuant to NRS 30.010 et seq. and NRS 40.010 et seq.
versus and all Parties)**

8. In response to paragraph 67, Red Rock repeats and reasserts its responses to paragraphs 1 through 66 of the Counterclaim as though fully set forth herein.

9. In response to paragraphs 68 through 79 of the Counterclaim, Red Rock states these paragraphs set forth legal conclusions to which no response is necessary. To the extent responses are required, Red Rock is without sufficient knowledge or information to form a belief and on that basis denies the allegations in these paragraphs.

SECOND CAUSE OF ACTION

(Permanent and Preliminary Injunction versus the Buyer)

10. Red Rock states that this Second Cause of Action, paragraphs 80 through 88, is not applicable to it, therefore, no response is required to these allegations.

THIRD CAUSE OF ACTION

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

11. In response to paragraph 89, Red Rock repeats and reasserts its responses to paragraph 1 through 88 of the Counterclaim as though fully set forth herein.

12. In response to paragraphs 90 through 95 of the Counterclaim, Red Rock states these paragraphs set forth legal conclusions to which no response is necessary. To the extent responses are required, Red Rock denies the allegations in these paragraphs.

FOURTH CAUSE OF ACTION

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

13. In response to paragraph 96, Red Rock repeats and reasserts its responses to paragraph 1 through 96 of the Counterclaim as though fully set forth herein.

14. In response to paragraphs 97 through 102 of the Counterclaim, Red Rock states these paragraphs set forth legal conclusions to which no response is necessary. To the extent responses are required, Red Rock denies the allegations in these paragraphs.

1 **FIFTH CAUSE OF ACTION**

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

3 15. In response to paragraph 103, Red Rock repeats and reasserts its responses
4 to paragraph 1 through 102 of the Counterclaim as though fully set forth herein.

5 16. In response to paragraphs 104 through 112 of the Counterclaim, Red Rock
6 states these paragraphs set forth legal conclusions to which no response is necessary. To
7 the extent responses are required, Red Rock denies the allegations in these paragraphs.

8 **SIXTH CAUSE OF ACTION**

9 **(Breach of Contract versus HOA and the HOA Trustee)**

10 17. In response to paragraph 113, Red Rock repeats and reasserts its responses
11 to paragraph 1 through 112 of the Counterclaim as though fully set forth herein.

12 18. In response to paragraphs 114 through 117 of the Counterclaim, Red Rock
13 states these paragraphs set forth legal conclusions to which no response is necessary. To
14 the extent responses are required, Red Rock denies the allegations in these paragraphs.

15 **SEVENTH CAUSE OF ACTION**

16 **(Misrepresentation versus HOA, HOA Trustee and Fictitious Defendants)**

17 19. In response to paragraph 118, Red Rock repeats and reasserts its responses
18 to paragraphs 1 through 117 of the Counterclaim as though fully set forth in full herein.

19 20. In response to paragraphs 119, 120, and 125 through 127 of the
20 Counterclaim, Red Rock states these paragraphs set forth legal conclusions to which no
21 response is necessary. To the extent responses are required, Red Rock denies the
22 allegations in these paragraphs.

23 21. Red Rock is without knowledge or information sufficient to respond to the
24 allegations in paragraphs 121 through 124 of the Counterclaim.

25 **EIGHTH CAUSE OF ACTION**

26 **(Unjust Enrichment versus the Buyer, HOA, HOA Trustee, and fictitious Defendants)**

27 22. In response to paragraph 128, Red Rock repeats and reasserts its responses
28 to paragraphs 1 through 127 of the Counterclaim as though fully set forth in full herein.

1 23. In response to paragraphs 129 through 135 of the Counterclaim, Red Rock
2 states these paragraphs set forth legal conclusions to which no response is necessary. To
3 the extent responses are required, Red Rock denies the allegations in these paragraphs.

4 **NINTH CAUSE OF ACTION**

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

7 24. In response to paragraph 136, Red Rock repeats and reasserts its responses
8 to paragraphs 1 through 135 of the Counterclaim as though fully set forth in full herein.

9 25. In response to paragraphs 137 through 142 of the Counterclaim, Red Rock
10 states these paragraphs set forth legal conclusions to which no response is necessary. To
11 the extent responses are required, Red Rock denies the allegations in these paragraphs

12 **AFFIRMATIVE DEFENSES**

13 **FIRST AFFIRMATIVE DEFENSE**

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

16 **SECOND AFFIRMATIVE DEFENSE**

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

19 **THIRD AFFIRMATIVE DEFENSE**

20 Counterclaimant Thornburg Mortgage Securities Trust 2007-3's claims are barred
21 by the doctrines of estoppel, laches, and waiver.

22 **FOURTH AFFIRMATIVE DEFENSE**

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

25 **FIFTH AFFIRMATIVE DEFENSE**

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

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH AFFIRMATIVE DEFENSE

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

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FIFTEENTH AFFIRMATIVE DEFENSE

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

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

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

Dated: June 12, 2017. **KOCH & SCOW, LLC**

By: /s/Steven B. Scow
Steven B. Scow
Attorneys for Red Rock Financial Services

COUNTERCLAIM FOR INTERPLEADER

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

PARTIES

- 1. Counterclaimant Red Rock Financial Services is a licensed collection company, and at all times material herein was and is doing business in Clark County,

1 Nevada. Red Rock was hired by Spanish Trail Master Association (the "Master
2 Association") as its agent to manage and collect assessments charged to homeowners
3 within the Association.

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

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

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

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

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

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

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

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

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

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

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

19 **GENERAL ALLEGATIONS**

20 13. Red Rock is a debt collection company, which works on behalf of
21 homeowner associations to collect debts secured by real property, including delinquent
22 homeowner assessments. When a property owner becomes delinquent to the
23 homeowners association, Red Rock is contracted to collect the debt. These efforts include
24 attempts to collect the debt directly from the property owner, but when the property
25 owner does not pay after an extended period, the process leads to a non-judicial
26 foreclosure action pursuant to Nevada law.

27 14. Here, Red Rock was contracted by the Master Association to collect debts
28 for unpaid homeowners assessments owed to the Master Association by counter-

1 defendants Frank Timpa and Madeline Timpa individually and as trustees of the Timpa
2 Trust for the property located at 34 Innisbrook Avenue, Las Vegas, NV 89113 ("the
3 Subject property"). Red Rock's efforts resulted in a foreclosure sale of the Subject
4 Property on November 7, 2014.

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

12 **CAUSE OF ACTION**

13 **(Interpleader Against All Cross-Defendants [NRCp 22])**

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

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

22 18. Red Rock requests that the Court determine how such funds should be
23 distributed.

24 19. Red Rock has incurred attorneys' fees and costs in preparing, filing and
25 prosecuting this action and will apply and account for those attorneys' fees and costs
26 through the amount withheld, and will seek any further reimbursement from the amount
27 to be deposited with the Court per Nevada law, including NRS 116.31164(3)(c).
28

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

PRA YER

WHEREFORE, Red Rock prays for relief as follows:

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

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

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

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

Dated: June 12, 2017.

KOCH & SCOW, LLC

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

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. I certify that on June 12, 2017, I caused the foregoing document entitled: **RED ROCK FINANCIAL SERVICES' ANSWER to BANK OF AMERICA'S COUNTERCLAIM and RED ROCK FINANCIAL SERVICES' FIRST AMENDED COUNTERCLAIM FOR INTERPLEADER** to be served by as follows:

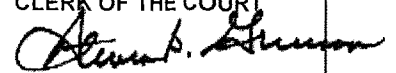
- ☒ Pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and / or;
- ☐ by placing same to be deposited for mailing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

"Bryan Naddafi, Esq." . (bryan@olympialawpc.com)
"Donald H. Williams, Esq." . (dwilliams@dhwlawlv.com)
David R. Koch . (dkoch@kochscow.com)
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Michael Kelley (mkelley@wrightlegal.net)
Jason Craig (jcraig@wrightlegal.net)

Executed on June 12, 2017 at Henderson, Nevada.

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

EXHIBIT 4



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Attorneys for Defendant/Counterclaimant/Counter-Defendant, Thornburg Mortgage Securities Trust 2007-3

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

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

Defendants.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3,

Counterclaimant,

vs.

SATICOY BAY LLC SERIES 34
INNISBROOK, a Nevada limited-liability
company; SPANISH TRAIL MASTER
ASSOCIATION, a Nevada Non-Profit
Corporation; RED ROCK FINANCIAL
SERVICES, an unknown entity; FRANK
TIMP A, an individual; DOES I through X; and
ROE CORPORATIONS I through X, inclusive,

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

**DEFENDANT THORNBURG
MORTGAGE SECURITIES TRUST
2007-3'S ANSWER TO RED ROCK
FINANCIAL SERVICES'
COUNTERCLAIM**

ANSWER TO COUNTERCLAIM

Saticoy Bay v. Thornburg Mortgage. et al., Court Case No. A-14-710161-C

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Counter-Defendants.
RED ROCK FINANCIAL SERVICES,
Counterclaimant,
vs.
THORNBURG MORTGAGE SERCURITIES TRUST 2007-3; COUNTRYWIDE HOME LOANS, INC.; ESTATES WEST AT SPANISH TRAILS; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; REPUBLIC SERVICES; LAS VEGAS VALLEY WATER DISTRICT; FRANK TIMPA and MADELAINE TIMPA, individually and as trustees of the TIMP A TRUS U/T/D March 3,1999; and DOES 1-100, inclusive,
Counter-Defendants.

Defendant/Counterclaimant/Counter-Defendant, Thornburg Mortgage Securities Trust 2007-3 (“Thornburg”), hereby responds to the Counterclaim of Red Rock Financial Services (“Red Rock”) as follows:

PARTIES

1. Answering Paragraph 1 of the Counterclaim, Thornburg admits that Red Rock is a collection company doing business in Clark County, Nevada. With respect to the remaining allegations in this Paragraph, Thornburg lacks sufficient information and belief as to the allegations in said paragraph and, on that basis, Thornburg denies the allegations thereof.
2. Answering Paragraph 2 of the Counterclaim, Thornburg admits the allegations thereof.
3. Answering Paragraph 3 of the Counterclaim, Thornburg lacks sufficient information and belief as to the allegations in said paragraph and, on that basis, Thornburg denies the allegations thereof.

1 4. Answering Paragraph 4 of the Counterclaim, Thornburg lacks sufficient
2 information and belief as to the allegations in said paragraph and, on that basis, Thornburg
3 denies the allegations thereof.

4 5. Answering Paragraph 5 of the Counterclaim, Thornburg lacks sufficient
5 information and belief as to the allegations in said paragraph and, on that basis, Thornburg
6 denies the allegations thereof.

7 6. Answering Paragraph 6 of the Counterclaim, Thornburg lacks sufficient
8 information and belief as to the allegations in said paragraph and, on that basis, Thornburg
9 denies the allegations thereof.

10 7. Answering Paragraph 7 of the Counterclaim, Thornburg lacks sufficient
11 information and belief as to the allegations in said paragraph and, on that basis, Thornburg
12 denies the allegations thereof.

13 8. Answering Paragraph 8 of the Counterclaim, Thornburg lacks sufficient
14 information and belief as to the allegations in said paragraph and, on that basis, Thornburg
15 denies the allegations thereof.

16 9. Answering Paragraph 9 of the Counterclaim, Thornburg lacks sufficient
17 information and belief as to the allegations in said paragraph and, on that basis, Thornburg
18 denies the allegations thereof.

19 10. Answering Paragraph 10 of the Counterclaim, this paragraph does not require a
20 response. To the extent that a response is required, Thornburg lacks sufficient information and
21 belief as to the allegations in said paragraph and, on that basis, Thornburg deny the allegations
22 thereof.

23 11. Answering Paragraph 11 of the Counterclaim, this paragraph does not require a
24 response. To the extent that a response is required, Thornburg lacks sufficient information and
25 belief as to the allegations in said paragraph and, on that basis, Thornburg deny the allegations
26 thereof.

27 12. Answering Paragraph 12 of the Counterclaim, this paragraph does not require a
28 response. To the extent that a response is required, Thornburg lacks sufficient information and

1 belief as to the allegations in said paragraph and, on that basis, Thornburg deny the allegations
2 thereof.

3 **GENERAL ALLEGATIONS**

4 13. Answering Paragraph 13 of the Counterclaim, Thornburg lacks sufficient
5 information and belief as to the allegations in said paragraph and, on that basis, Thornburg
6 denies the allegations thereof.

7 14. Answering Paragraph 14 of the Counterclaim, Thornburg lacks sufficient
8 information and belief as to the allegations in said paragraph and, on that basis, Thornburg
9 denies the allegations thereof.

10 15. Answering Paragraph 15 of the Counterclaim, Thornburg lacks sufficient
11 information and belief as to the allegations in said paragraph and, on that basis, Thornburg
12 denies the allegations thereof.

13 **CAUSE OF ACTION**

14 **(Interpleader Against All Cross-Defendants [NRC 22])**

15 16. Answering Paragraph 16 of the Counterclaim, Thornburg hereby repeats, re-
16 alleges and incorporates each of its admissions, denials, or other responses to all the paragraphs
17 referenced hereinabove as if set forth at length and in full.

18 17. Answering Paragraph 17 of the Counterclaim, this paragraph does not require a
19 response. To the extent that a response is required, Thornburg lacks sufficient information and
20 belief as to the allegations in said paragraph and, on that basis, Thornburg deny the allegations
21 thereof.

22 18. Answering Paragraph 18 of the Counterclaim, this paragraph does not require a
23 response. To the extent that a response is required, Thornburg lacks sufficient information and
24 belief as to the allegations in said paragraph and, on that basis, Thornburg deny the allegations
25 thereof.

26 19. Answering Paragraph 19 of the Counterclaim, this paragraph does not require a
27 response. To the extent that a response is required, Thornburg lacks sufficient information and
28

1 belief as to the allegations in said paragraph and, on that basis, Thornburg deny the allegations
2 thereof.

3 20. Answering Paragraph 20 of the Counterclaim, this paragraph does not require a
4 response. To the extent that a response is required, Thornburg lacks sufficient information and
5 belief as to the allegations in said paragraph and, on that basis, Thornburg deny the allegations
6 thereof.

7 **AFFIRMATIVE DEFENSES**

8 Thornburg's investigation of these claims is continuing. By this Answer, Thornburg
9 waives no affirmative defenses and reserves its right to amend the Answer to insert any
10 subsequently discovered affirmative defenses.

11 **First Affirmative Defense**

12 The Counterclaim fails to state facts sufficient to constitute a claim upon which relief can
13 be granted.

14 **Second Affirmative Defense**

15 The acts alleged in the Counterclaim were the acts of third parties over whom Thornburg
16 has no control or responsibility.

17 **Third Affirmative Defense**

18 A senior deed of trust beneficiary cannot be deprived of its property interest in violation
19 of the Procedural Due Process Clause of the 14th Amendment of the United States Constitution
20 and Article 1, Section 8 of the Nevada Constitution.

21 **Fourth Affirmative Defense**

22 The homeowner's association foreclosure sale purportedly occurring on November 7,
23 2014, ("HOA Sale") is void or otherwise insufficient to extinguish the Deed of Trust based on
24 the failure to provide proper notice of the "super-priority" assessment amounts in accordance
25 with the requirements of NRS Chapter 116, federal, and constitutional law.

26 **Fifth Affirmative Defense**

27 The HOA Sale was not commercially reasonable, and the circumstances of the sale of the
28 property violated the HOA's obligation of good faith under NRS 116.1113 and duty to act in a

1 commercially reasonable manner.

2 **Sixth Affirmative Defense**

3 The purchaser of the property at the HOA Sale purchased the property with record notice
4 of the interest of the senior deed of trust recorded against the property and is not a bona fide
5 purchaser for value.

6 **Seventh Affirmative Defense**

7 Upon information and belief, Thornburg's deed of trust, secured against the property, is
8 outstanding and due, which entitles it to satisfaction of its lien from whatever source, before any
9 other party is entitled to the proceeds of the HOA Sale.

10 **Eighth Affirmative Defense**

11 The buyer under the Foreclosure Deed took title to the property subject to the first
12 priority deed of trust, thereby forestalling any enjoinder/extinguishment of the Thornburg's
13 interest in the property.

14 **Ninth Affirmative Defense**

15 If Thornburg's interest in the property is found to have been extinguished by or
16 subordinate to that of the purchaser at the HOA Sale Defendant is entitled to the entirety of the
17 excess proceeds, pursuant to N.R.S. 116.3116 et seq.

18 **Tenth Affirmative Defense**

19 Thornburg asserts that any acceptance of any portion of the excess proceeds does not
20 "satisfy" the amount due and owing on the loan and would not constitute a waiver of its rights
21 under the loan and deed of trust, or statute.

22 **Eleventh Affirmative Defense**

23 Thornburg alleges that the Red Rock's claims are barred by the equitable doctrines of
24 laches, unclean hands, and failure to do equity.

25 **PRAYER**

26 WHEREFORE, Thornburg prays for judgment as follows:

- 27 1. That the Court make a judicial determination that the Deed of Trust held by Thornburg
28 is superior to all other interests and encumbrances, including the HOA lien subject of

- 1 the foreclosure sale resulting in the “excess proceeds” and remained the superior
2 encumbrance after the sale;
- 3 2. That the Court make a judicial determination that Thornburg’s Deed of Trust was not a
4 “subordinate lien” under NRS 116.3116 and NRS 116.31164;
- 5 3. That, in the alternative, if the Court determines that Thornburg’s Deed of Trust was in
6 fact a “subordinate lien” under NRS 116.3116 and NRS 116.31164, that the Court
7 make a judicial determination regarding the priority in payment of the excess
8 proceeds that Thornburg’s Deed of Trust has priority over all other interests and
9 encumbrances and is entitled to all the excess proceeds up to the unpaid balance of
10 the Deed of Trust and the Note it secures;
- 11 4. That, in the alternative, if the Court determines that Thornburg’s Deed of Trust was in
12 fact a “subordinate lien” under NRS 116.3116 and NRS 116.31164, that the Court
13 make a judicial determination that amounts charged or retained by Red Rock and
14 Spanish Trail Master Association were excessive and cannot include attorney’s fees
15 and collection costs in their HOA lien amounts after the first deed of trust foreclosure
16 sale;
- 17 5. That the Court make a judicial determination regarding what amounts were properly
18 withheld and whether the amount Red Rock intends to interplead is sufficient and
19 includes all amounts required to be interplead under the relevant statutes; and
- 20 6. That the Court make a judicial determination regarding the priority in payment of the
21 excess proceeds;
- 22 7. That Red Rock take nothing by way of the Complaint;
- 23 8. For reasonable attorney’s fees and costs; and

24 ///
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28 ///

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

DATED this 5th day of July, 2017.

WRIGHT, FINLAY & ZAK, LLP

/s/ Michael S. Kelley

Dana Jonathon Nitz, Esq.

Nevada Bar No. 0050

Michael S. Kelley, Esq.

Nevada Bar No. 10101

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Attorneys for Defendant/Counterclaimant/Counter-Defendant, Thornburg Mortgage Securities Trust
2007-3

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AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding **DEFENDANT THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S ANSWER TO RED ROCK FINANCIAL SERVICES' COUNTERCLAIM** filed in Case No. A-14-710161-C **does not** contain the social security number of any person.

DATED this 5th day of July, 2017.

WRIGHT, FINLAY & ZAK, LLP

/s/ Michael S. Kelley

Dana Jonathon Nitz, Esq.

Nevada Bar No. 0050

Michael S. Kelley, Esq.

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Attorneys for Defendant/Counterclaimant/Counter-Defendant, Thornburg Mortgage Securities Trust 2007-3

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EXHIBIT 5

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10 *and as trustee of the Timpa Trust*

11
12 **EIGHTH JUDICIAL DISTRICT COURT**
13
14 **CLARK COUNTY, NEVADA**
15

16 SATICOY BAY LLC SERIES 34
17 INNISBROOK,

18 Plaintiff,

19 vs.

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

22 Defendants.

Case No.: A-14-710161-C

Division: XXVI

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

23
24 AND ALL RELATED ACTIONS
25
26

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

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

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

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

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

15 **AFFIRMATIVE DEFENSES**

16 **FIRST AFFIRMATIVE DEFENSE**

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

21 **SECOND AFFIRMATIVE DEFENSE**

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

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THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

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

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

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

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

15 Dated this 31st day of January, 2019.

16
17 Respectfully submitted,

18 /s/ Travis Akin

19 TRAVIS AKIN, ESQ.
20 Nevada Bar No. 13059
21 **THE LAW OFFICE OF TRAVIS AKIN**
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23 Las Vegas, NV 89123
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25 Email: travisakin8@gmail.com
26 *Attorneys for Madelaine Timpa, individually*
27 *and as trustee of the Timpa Trust*
28

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

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

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

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

26 (b) Satisfaction of the obligation being enforced by the
27 foreclosure sale.

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

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

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

(Nevada Revised Statute §40.462)

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

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

1 its lien and the balance to Madelaine Timpa.

2 Dated this 31st day of January, 2019

3 Respectfully submitted,

4 /s/ Travis Akin

5 TRAVIS AKIN, ESQ.

6 Nevada Bar No. 13059

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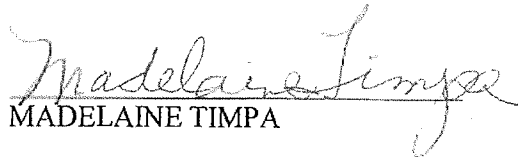
12 *Attorneys for Madelaine Timpa, individually*
13 *and as trustee of the Timpa Trust*

14 **VERIFICATION OF MADELAINE TIMPA**

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

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

20 Dated this 31st day of January, 2019

21 
22 MADELAINE TIMPA
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies on January 31, 2019, a true and correct copy of the above
3 and foregoing MADELAINE TIMPA AND TIMPA TRUST'S VERIFIED ANSWER TO RED
4 ROCK FINANCIAL SERVICES' COUNTERCLAIM FOR INTERPLEADER AND
5 MADELAINE TIMPA'S CLAIM TO SURPLUS FUNDS was served to the following at their last
6 known address(es), facsimile numbers and/or e-mail/other electronic means, pursuant to:
7

8 **BY MAIL:** N.R.C.P. 5(b), I deposited by first class United States
9 mailing, postage prepaid at Henderson Nevada;

10 **BY FAX:** E.D.C.R. 7.26(a), I served via facsimile at the
11 telephone number provided for such transmissions.

12 **BY MAIL AND FAX:** N.R.C.P. 5(b), I deposited by first class
13 United States mail, postage prepaid in Henderson, Nevada; and via
14 facsimile pursuant to E.D.C.R. 7.26(a)

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

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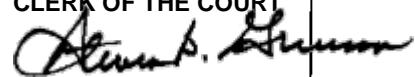
11 Gregory Walch greg.walch@lvvwd.com

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17 /s/ Travis Akin
18 An employee of The Law Office of Travis Akin, LLC



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8 *Attorneys for Todd Timpa and Stuart*
9 *Timpa, Successor Co-Trustees to*
10 *the Timpa Trust*

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

13 SATICOY BAY LLC SERIES 34
14 INNISBROOK,

15 Plaintiff,

16 vs.

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

19 Defendants.

Case No.: A-14-710161-C

Department No.: XXVI

20 AND ALL RELATED ACTIONS

21 **ORDER**

22 A hearing having been held on the 11th day of June, 2019 at 9:00 a.m., on Saticoy Bay
23 LLC, Series 34 Innisbrook's Motion to Reinstate Statistically Closed Case filed on May 10,
24 2019, with appearances by Bryan Naddafi and Travis Akin on behalf of Timpa Trust, Melanie
25 Morgan on behalf of Thornburg Mortgage Securities Trust 2007-3, and Ryan Hastings on
26 behalf of Spanish Trail Master Association. The Court having trailed the matter towards the
27 end of its 9:00 a.m. docket, with there being no appearance by Roger Croteau, the attorney for
28

1 moving party Saticoy Bay LLC, Series 34 Innisbrook, and no appearance by Steven Scow on
2 behalf of Red Rock Financial Services LLC, with the Court being advised that Mr. Scow was
3 appearing on an unrelated matter in another courtroom. The Court, having considered the
4 moving papers, there being no opposition, and the representations of counsel present at the
5 hearing, and for good cause appearing:

6
7 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Saticoy Bay LLC,
8 Series 34 Innisbrook's Motion to Reinstate Statistically Closed Case is GRANTED, and the
9 matter is reinstated.

10 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the remaining
11 outstanding issue on this matter requiring adjudication is the interpleader of the surplus funds
12 remaining from the non-judicial foreclosure sale of real property commonly known as 34
13 Innisbrook Ave., Las Vegas, NV 89113 (hereafter "Surplus Funds").

14
15 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Red Rock
16 Financial Services is directed to deposit the Surplus Funds within thirty (30) days of the date of
17 this hearing with the Clerk of the Court, thereby making the deadline Thursday, July 11, 2019.

18
19 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that an evidentiary
20 hearing on the claims in interpleader of the Surplus Funds is set for this Court's October 14,
21 2019 trial stack.

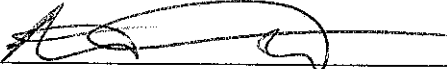
22 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that any of the
23 parties/claimants may proceed via written motion for summary adjudication pursuant to
24 N.R.C.P. 56 with regard to their claims in interpleader of the Surplus Funds.

25
26 DATED this 8th day of June 2019

27
28 
DISTRICT COURT JUDGE

1 Respectfully submitted by:

2 **AVALON LEGAL GROUP LLC**

3 

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20 *Securities Trust 2007-3*

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27 *Attorneys for Spanish Trail Master Association*

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26 *Attorneys for Spanish Trail Master Association*

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Las Vegas, NV 89123

Attorney for Todd Timpa and Stuart Timpa,
Successor Co-Trustees to the Timpa Trust

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

Electronically Filed
Aug 03 2020 03:05 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**STIPULATION REGARDING
SURVIVAL OF THE DEED OF
TRUST AND WITHDRAWAL OF
MOTION TO DISMISS APPEAL**

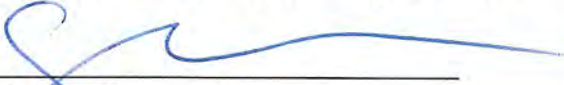
Appellant Saticoy Bay, LLC Series 34 Innisbrook (“**Saticoy**”) and Respondent Thornburg Mortgage Securities Trust 2007-3 (“**Thornburg**”), by and through their respective counsel of record, stipulate and agree as follows:

1. The subject deed of trust survived the homeowners’ association foreclosure sale that is the subject of this appeal and Saticoy is not challenging in this appeal the district court’s ruling on that issue (i.e. the effect of Bank of America, N.A.’s tender).

2. All other assignments of error listed in Saticoy’s Docketing Statement remain the subject of this appeal, including, but not limited to, unwinding the subject homeowners’ association foreclosure on equity grounds.

3. In light of the foregoing, Thornburg withdraws its Motion to Dismiss

Appeal filed on July 16, 2020.

<p>ROGER P. CROTEAU & ASSOCIATES, LTD.</p> <p>Dated this 3rd day of August, 2020.</p> <p><u>/s/ Chet A. Glover</u></p> <p>Roger P. Croteau, Esq. Nevada Bar No. 4958 Chet A. Glover, Esq. Nevada Bar No. 10054 Christopher L. Benner, Esq. Nevada Bar No. 8963 2810 West Charleston Blvd., Suite 75 Las Vegas, Nevada 89102 Attorneys for Saticoy</p>	<p>AKERMAN LLP</p> <p>Dated this <u>3</u> day of August, 2020.</p> <p></p> <p>Ariel E. Stern, Esq. Nevada Bar No. 8276 Melanie D. Morgan, Esq. Nevada Bar No. 8515 Scott R. Lachman, Esq. Nevada Bar No. 12016 1635 Village Center Circle, Suite 200 Las Vegas, Nevada 89134 Attorneys for Thornburg</p>
---	--

CERTIFICATE OF SERVICE

In accordance with NRAP 25, I hereby certify that on August 3, 2020, I caused a copy of the **STIPULATION REGARDING SURVIVAL OF THE DEED OF TRUST AND WITHDRAWAL OF MOTION TO DISMISS APPEAL** to be filed and served electronically via the Court's E-Flex System to the following:

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

/s/ Joe Koehle

An Employee of ROGER P. CROTEAU &
ASSOCIATES

Subject: Saticoy Innisbrook v. Thornburg, et al (Timpa) FFCL and Order Granting MSJ Due 11/20
Date: 11/12/2018 7:44 AM
From: "thera.cooper@akerman.com" <thera.cooper@akerman.com>
"mbohn@bohnlawfirm.com" <mbohn@bohnlawfirm.com>, "atrippiedi@bohnlawfirm.com" <atrippiedi@bohnlawfirm.com>, "sscows@kochscow.com" <sscows@kochscow.com>, "Ryan Hastings" <RHastings@lkglawfirm.com>, "Sean Anderson" <SAnderson@lkglawfirm.com>, "dstarbuck@dhwlawlv.com" <dstarbuck@dhwlawlv.com>
To:
Cc: "melanie.morgan@akerman.com" <melanie.morgan@akerman.com>, "erin.surguy@akerman.com" <erin.surguy@akerman.com>

Greetings all,

Here is the proposed order on our MSJ/ motion for reconsideration. If it is acceptable please sign, scan and mail the original to the VEGAS office. It is due on the 20th.

Thera Cooper

Associate, Consumer Financial Services Practice Group
Akerman LLP | 2001 Ross Avenue, Suite 3600 | Dallas, TX 75201
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ORD

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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

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

AND ALL RELATED ACTIONS

The court having considered Thornburg Mortgage Securities Trust 2007-3 (**Thornburg**)'s motion for reconsideration, the opposition thereto, and the argument of counsel converts the motion into a motion for summary judgment and makes the following findings of fact, conclusion of law 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 no 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).

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..."

...

...

7. Art. X Section 3, provides:

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

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

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

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

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

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

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

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

...

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 HOA's lien was junior to the deed of trust.

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

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

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

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

11 **II. CONCLUSIONS OF LAW**

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

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

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 _____, 2018.

4 _____
DISTRICT COURT JUDGE

5 Respectfully submitted by:

6 **AKERMAN LLP**

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

12
13 Approved as to form and content:

14 **MICHAEL F. BOHN, ESQ., LTD.**

LEACH KERN GRUCHOW ANDERSON SONG

15 /s/
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Subject: RE: Saticoy Innisbrook v. Thornburg, et al (Timpa) FFCL and Order Granting MSJ Due 11/20
 Date: 11/13/2018 10:59 AM
 From: "Ryan Hastings" <rhastings@lkglawfirm.com>
 To: "thera.cooper@akerman.com" <thera.cooper@akerman.com>, "sscows@kochscow.com" <sscows@kochscow.com>
 "mbohn@bohnlawfirm.com" <mbohn@bohnlawfirm.com>, "atrippiedi@bohnlawfirm.com"
 Cc: <atrippiedi@bohnlawfirm.com>, "Sean Anderson" <SAnderson@lkglawfirm.com>, "dstarbuck@dhwlwlv.com"
 <dstarbuck@dhwlwlv.com>, "melanie.morgan@akerman.com" <melanie.morgan@akerman.com>,
 "erin.surguy@akerman.com" <erin.surguy@akerman.com>

I'm fine with this, but need to hear from Mickey regarding whether he wants to resolve his claims against Red Rock and the Association with this order so it can be appealed.

Thanks,



Ryan D. Hastings, Esq.
 Leach Kern Gruchow Anderson Song

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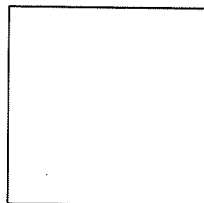
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Sent: Monday, November 12, 2018 12:06 PM
To: sscows@kochscow.com
Cc: mbohn@bohnlawfirm.com; atrippiedi@bohnlawfirm.com; Ryan Hastings; Sean Anderson; dstarbuck@dhwlwlv.com; melanie.morgan@akerman.com; erin.surguy@akerman.com
Subject: RE: Saticoy Innisbrook v. Thornburg, et al (Timpa) FFCL and Order Granting MSJ Due 11/20

Thanks Steve. Any other comments?

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From: Steve Scow <sscow@kochscow.com>

Sent: Monday, November 12, 2018 1:03 PM

To: Cooper, Thera (Assoc-Dal) <thera.cooper@akerman.com>

Cc: mbohn@bohnlawfirm.com; atrippiedi@bohnlawfirm.com; RHastings@leachjohnson.com; SAnderson@leachjohnson.com; dstarbuck@dhwlwlv.com; Morgan, Melanie (Ptrn-Las) <melanie.morgan@akerman.com>; Surguy, Erin (LAA-Dal) <erin.surguy@akerman.com>

Subject: Re: Saticoy Innisbrook v. Thornburg, et al (Timpa) FFCL and Order Granting MSJ Due 11/20

Thanks for circulating this Thera. I had a few semantics changes (see fn 1, and paragraphs 14 and 15).

Thanks.

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Date: 11/15/2018 11:29 AM
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Cc: "melanie.morgan@akerman.com" <melanie.morgan@akerman.com>, "erin.surguy@akerman.com" <erin.surguy@akerman.com>

Please see attached

****PLEASE NOTE WE HAVE RECENTLY MOVED. PLEASE USE THE NEW ADDRESS LISTED BELOW****

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Sent: Monday, November 12, 2018 7:44 AM
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Cc: melanie.morgan@akerman.com; erin.surguy@akerman.com
Subject: Saticoy Innisbrook v. Thornburg, et al (Timpa) FFCL and Order Granting MSJ Due 11/20

Greetings all,

Here is the proposed order on our MSJ/ motion for reconsideration. If it is acceptable please sign, scan and mail the original to the VEGAS office. It is due on the 20th.

Thera Cooper

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ORD

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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

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

AND ALL RELATED ACTIONS

The court having considered Thornburg Mortgage Securities Trust 2007-3 (**Thornburg**)'s motion for reconsideration, the opposition thereto, and the argument of counsel converts the motion into a motion for summary judgment and makes the following findings of fact, conclusion of law 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 no 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).

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..."

...

...

7. Art. X Section 3, provides:

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

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

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

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

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

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

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

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

...

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.

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

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

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

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

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

II. CONCLUSIONS OF LAW

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

2. Parties must prove their claims and affirmative defenses by a preponderance of the evidence. *See Nev. J.I. 2EV.1*. Under Nevada law, "[t]he term 'preponderance of the evidence' means such evidence as, when weighed with that opposed to it, has more convincing force, and from which it appears that the greater probability of truth lies therein." *Nev. J.I. 2EV.1; Corbin v. State*, 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 _____, 2018.

4 _____
DISTRICT COURT JUDGE

5 Respectfully submitted by:

6 **AKERMAN LLP**

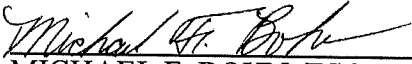
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