IN THE SUPREME COURT OF THE STATE OF NEVADA

SATICOY BAY, LLC SERIES 34 INNISBROOK,

Appellant,

v.

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.

Case No. 80111

TIMPA TRUST'S ANSWERING BRIEF

BRYAN NADDAFI, ESQ.
Nevada Bar No. 13004
ELENA NUTENKO, ESQ.
Nevada Bar No. 14934
AVALON LEGAL GROUP LLC
6030 S. Rainbow Blvd., Suite D1
Las Vegas, Nevada 89118
Telephone No. (702) 522-6450

TRAVIS AKIN, ESQ.
Nevada Bar No. 13059
THE LAW OFFICE OF TRAVIS AKIN
Telephone No. (702) 510-8567

ATTORNEYS FOR RESPONDENT TIMPA TRUST

DISCLOSURE STATEMENT

Pursuant to NRAP 26.1, the undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed.

1. Respondent Timpa Trust is a Nevada living trust. The former trustees of Timpa Trust – Frank Timpa and Madelaine Timpa – have passed away. The current successor co-trustees of Timpa Trust are Todd Timpa and Stuart Timpa.
2. The following law firms had partners or associates who have appeared for Respondent in the case or are expected to appear on his behalf in this Court:

   AVALON LEGAL GROUP LLC
   6030 S. Rainbow Blvd., Suite D1
   Las Vegas, Nevada 89118

   TRAVIS AKIN, ESQ.
   Nevada Bar No. 13059
   THE LAW OFFICE OF TRAVIS AKIN
   Telephone No. (702) 510-8567

Dated: April 15, 2021. AVALON LEGAL GROUP LLC

By: /s/ *Bryan Naddafi*
Bryan Naddafi (NSBN 13004)
Elena Nutenko (NSBN 14934)
Attorneys for Respondent Timpa Trust

DISCLOSURE STATEMENT ……i

TABLE OF CONTENTS ……ii

TABLE OF AUTHORITIES ……v

STATEMENT OF THE CASE ……1

I. November 2014: Saticoy Files Initial Complaint Followed by Three Amended Complaints. ……1

II. July 2018: Saticoy's MSJ Is Denied. ……3

III. July 2018: Thornburg's MSJ Is Initially Denied. ……4

IV. July 2018: Saticoy Files Joint Pre-Trial Memorandum on Behalf of All Parties……6

V. December 2018: Thornburg's MSJ is Granted Upon a Motion for Reconsideration. ……7

VI. 2019: The District Court turns Its Attention to Only Remaining Issue: Interpleader of Excess Proceeds. ……10

VII. September 2019: Timpa Trust's MSJ for Excess Proceeds is Granted……10

VIII. September 2019: Saticoy files Motion for Reconsideration of December 2018 Thornburg MSJ Order and September 2019 Timpa Trust MSJ Order. ……16

IX. October 2019: Saticoy files Motion to Amend Its 2017 Third Amended Complaint. ……19

X. November 2019: Saticoy's Motion for Reconsideration and Motion to Amend Are Denied, Reference to *Jessup* is Added to December 2018 Thornburg MSJ Order. 21

STATEMENT OF FACTS 22

I. 2006: The Subject Property is Purchased 22

II. 2011: HOA Records Lien for Delinquent Assessments.....23

III. 2014: Saticoy Purchases the Subject Property.....24

SUMMARY OF THE ARGUMENT 26

ARGUMENT 30

I. Introduction.....30

II. Standard of Review..... 32

A. Standard of Review on a Motion for Summary Judgment.....32

B. Standard of Review on a Motion for Reconsideration, Motion to Amend, Motion for NRCP 60(b) Relief 34

III. The District Court Properly Awarded Timpa Trust the Excess Proceeds in the 2019 Timpa Trust MSJ Order.....35

A. The District Court Did Not Err as a Matter of Law in its Application of NRS 116.31164 to Determine the Priority of Interest Holders to the Excess Proceeds. 36

B. Saticoy is Not and Never Was a Proper Party to Assert a Claim to the Excess Proceeds, Whether on Behalf of Itself or on Behalf of Thornburg.....41

C. Interpleader Actions Require a Claimant to Make a Claim to Excess Proceeds on Its Own Behalf, and Both Saticoy and Thornburg Failed To Make Such a Claim. 42

IV. The District Court Did Not Abuse Its Discretion in Denying Saticoy's Motion for Reconsideration and Motion to Amend. 45

A. Saticoy's Reliance on Jessup for Purposes of Reconsideration of the 2018 Thornburg MSJ Order and NRCP 60(B) Relief Is Wrong.....45

B. The District Court Correctly Denied Saticoy's Request to Reconsider the 2019 Timpa Trust MSJ Order.....49

C. The District Court Lacked Jurisdiction to Grant Saticoy's Request to Amend Its Complaint Because Final Judgment Was Already Entered. 51

D. The District Court Could Not Allow Amendment of The Complaint Under NRCP 15(B)(2) Because Setting Aside the Foreclosure Sale Was Not a New Issue.....52

V. The Balance of Equities Favors Timpa Trust, Not Saticoy or Thornburg 53

VI. Conclusion 54

TABLE OF AUTHORITIES

Cases

AA Primo Builders LLC v. Washington,
126 Nev. 578, 245 P.3d 1190 (2010) 34

Achrem v. Expressway Plaza Ltd.,
112 Nev. 737, 917 P.2d 447 (1996).....18, 28, 50

Adamson v. Bowker,
85 Nev. 115, 450 P. 2d 796 (1969).....34

American Sterling Bank v. Johnny Management LV,
245 P.3d 539 (Nev. 2010).....50

Arnold v. Kip,
123 Nev. 410, 168 P.3d 1050 (2007).....34

Balish v. Farnham,
92 Nev. 133, 546 P.2d 1297 (1976).....42

Bank of Am., N.A. v. Thomas Jessup, LLC Series VII,
435 P.3d 1217 (Nev. 2019).....17, 19, 20, 21, 26, 28, 45-49

Bank of America, N.A. v. Thomas Jessup, LLC Series VII,
462 P.3d 255 (Nev. 2020) (en banc) (unpublished).....48, 49

Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, LP, f/k/a Countrywide Home Loans Servicing, LP v. SFR Investments Pool 1, LLC, a Nevada Limited Liability Company,
134 Nev. Adv. Op. 72, *2 (Nev. Sept. 13, 2018).....7, 8

Bank of New York Mellon v. Laws,
Case No. 2:17-cv-01032-APG-CWH (D. Nev. July 19, 2019).....47

Bulbman, Inc. v. Nevada Bell,
108 Nev. 105 (1992).....33

Celotex Corp. v. Catrett,
477 U.S 317 (1986).....33

Citibank Nevada, N.A. v. Wood,
753 P.2d 341 (Nev. 1988).....37

Collins v. Union Fed. Savings & Loan,
99 Nev. 284 (1983).....33

Cook v. Cook,
112 Nev. 179, 912 P.2d 264 (1996).....34

Cuzze v. Univ. & Cmty. College Sys.,
123 Nev. 598 (2007).....33

Garcia v. Stewart,
906 So. 2d 1117 (Fla. 4th Dist. App. 2005).....37

Garvey v. Clark County,
91 Nev. 127, 532 P. 2d 269 (1978).....33, 34

Greene v. Eighth Judicial Dist. Court,
115 Nev. 391, 990 P.2d 184 (1999).....20, 51

In re Capital Mortg. & Loan, Inc.,
35 B.R. 967 (Bankr. E.D. Cal. 1983).....37

Khan v. Fasano,
194 F.Supp.2d 1134 (S.D. Cal. 2001).....46

Lee v. GNLV Corp.,
116 Nev. 424, 996 P.2d 416 (2000).....51

LJS&G, Ltd. v. Z's,
Case No. 2:16-cv-01150-GMN (D. Nev., Mar. 20, 2019).....39

M & R Investment Co. v. Mandarino,
103 Nev. 711, 748 P.2d 488 (1987).....43, 44

Masonry and Tile Contractors Ass'n of Southern Nevada v. Jolley, Urga & Wirth, Ltd.,
113 Nev. 737, 941 P.2d 486 (1997).....17, 18, 29, 49

May v. Anderson,
121 Nev. 668, 119 P.3d 1254 (2005).....35

Merozoite v. Thorp,
52 F.3d 252 (9th Cir. 1995).....45

Nationstar Mortgage v. Saticoy Bay, LLC Series 2227 Shadow Canyon,
133 Nev. Adv. Op. 91 (Nov. 22, 2017).....3

Nevada Association Services, Inc. v. Las Vegas Rental & Repair, LLC Series 78,
No. 73157 (Dec. 27, 2018) (unpublished disposition).....38

Oregon Natural Res. Council v. Marsh,
52 F.3d 1485 (9th Cir. 1995).....35

Saticoy Bay LLC v. Nev. Ass'n Servs.,
135 Nev., Adv. Op. 23 (2019).....14, 19, 27, 41

Shadow Wood Homeowners Association v. New York Community Bank,
132 Nev. Adv. Op 5, 366 P.3d 1105 (2016).....8

Sphouris v. Aurora Loan Services,
2011 WL 5007300 (D. Nev. Oct. 20, 2011).....45, 46

Theo. H. Davies & Co., Ltd. v. Long & Melone Escrow, Ltd.,
876 F. Supp. 230, 234 (D. Haw. 1995).....37

United States v. Sage,
566 F.2d 1114 (9th Cir. 1977).....27, 36, 39

Wood v. Safeway, Inc.,
121 P.3d 1026 (2005).....23

Statutes

NRS 116.....15, 30, 37, 40, 47

NRS 116.3116.....11, 13, 39

NRS 116.31164.....11, 15, 16, 27, 30, 36, 40, 50

NRS 116.31164(7).....27, 40

NRS 116.31164(7)(b).....11, 14, 27, 36, 38

NRS 116.31164(7)(b)(2).....30

NRS 116.31164(7)(b)(4).....11, 39

NRS 116.31164(7)(b)(5).....12, 30

NRS 116.31166.....11

Rules

EDCR 2.30.....19

EDCR 2.67.....6

NRCP 8(c).....4

NRCP 15(b)(2) 19, 20, 29, 52

NRCP 56(c).....33

NRCP 59(e).....16, 34

NRCP 60(b).....16, 19, 20, 28, 34, 45, 46

Other

59A C.J.S. Mortgages § 1331.....37, 39

Restatement (Third) of Prop.: Mortgages § 7.4 (1997) 37

STATEMENT OF CASE[1]

I. November 2014: Saticoy Files Initial Complaint Followed by Three Amended Complaints

On November 20, 2014, Appellant Saticoy Bay LLC Series 34 Innisbrook ("Saticoy") filed its initial Complaint in district court regarding its right to real property commonly known as 34 Innisbrook Ave., Las Vegas, NV 89113 ("Subject Property"). JA0001. The initial Complaint named two defendants: 1) Thornburg Mortgage Securities Trust 2007-3 ("Thornburg") (as the beneficiary of the June 12, 2006 deed of trust ("Deed of Trust") recorded as an encumbrance on the Subject Property) and 2) Recontrust Company, N.A. a division of Bank of America ("Reconstruct") (the substituted trustee on the Deed of Trust). Saticoy asked the district court for a determination that it was the rightful holder of Subject Property free and clear of all liens, encumbrances, and claims of Thornburg and Recontrust; for a determination that Thornburg and Recontrust had no estate, right title, interest or claim to the Subject

[1] Timpa Trust believes it is important to provide this Court with a thorough recitation of the course of proceedings in the district court – particularly the arguments made by Saticoy at each step of the litigation – because throughout this litigation Saticoy has taken dramatically different and inconsistent positions.

Property; and for a judgment enjoining Thornburg and Recontrust from ever asserting any estate, right title, interest or claim in the Subject Property. JA0003. Saticoy filed an Amended Complaint on November 25, 2014 (JA 0005), a Second Amended Complaint on June 11, 2015 (JA 109), and a Third Amended Complaint (JA 0139) on February 10, 2017.

The 2017 Third Amended Complaint, which is the operative complaint, named four defendants: Thornburg, Recontrust, Frank and Madelaine Timpa individually and as trustees of the Timpa Trust U/T/D March 3, 1999 ("Timpa Trust") as the former owners of the Subject Property, Spanish Trail Master Association (the "HOA"), and Red Rock Financial Services, LLC ("Red Rock") as the collection agent and foreclosure agent acting on behalf of the HOA. JA0139. Saticoy asked the district court for a determination that it was the rightful holder of title to the Subject Property free and clear of all liens, encumbrances, and claims of defendants; for a determination that defendants had no estate, right title, interest or claim to the Subject Property; for a judgment enjoining defendants from ever asserting any estate, right title, interest or claim in the Subject Property; and, if the district court found the HOA lien did not include a superpriority position, for a judgment against the

HOA and Red Rock rescinding Saticoy's purchase of the Subject Property and requiring all monies paid by Saticoy to be refunded or, in the alternative, damages. JA0143.

II. July 2018: Saticoy's MSJ Is Denied

On May 4, 2018, Saticoy moved for summary judgment ("Saticoy MSJ"). JA 0278. That same day, Thornburg moved for summary judgment as well (hereinafter "Thornburg MSJ"). JA0478.

In the Saticoy MSJ, Saticoy asked the district court to grant Saticoy summary judgment against Thornburg and to grant Saticoy quiet title. JA 0279. Saticoy argued against setting aside the sale of the Subject Property, arguing that it would be improper for the district court to set aside the sale because "[t]here is no defect with the sales process and fore (sic), if the purchaser is a bona fide purchaser, the sale cannot be set aside." JA0286. Saticoy argued that pursuant to *Nationstar Mortgage v. Saticoy Bay, LLC Series 2227 Shadow Canyon*, 133 Nev. Adv. Op. 91 (Nov. 22, 2017), "the standard to set aside a sale is inadequate sales price, inadequacy of price, and additional proof of some fraud, oppression or unfairness that accounts for and brings about the inadequacy of price." JA0292-0293. Saticoy argued none of these

conditions existed in the present case, and the sale should not be set aside. JA292-293. Saticoy also argued that equitable relief was not available to Thornburg because Thornburg was on notice of the sale and failed to take any steps to protect its interests (JA0284), because Thornburg had an adequate remedy at law (JA0284), and because of the bona fide purchaser doctrine (JA0287). Saticoy's MSJ (as well as Thornburg's MSJ) was denied by the district court at a hearing on July 3, 2018. JA1719.

III. July 2018: Thornburg's MSJ Is Initially Denied

Thornburg had filed its own MSJ on the same day that Saticoy had filed its MSJ. JA0478. In its opposition to Thornburg's MSJ, Saticoy argued that the HOA lien included a super priority amount that was foreclosed by the HOA and that extinguished Thornburg's subordinate Deed of Trust (JA0999), that Thornburg had not proved that the HOA or its foreclosure agent wrongfully rejected Thornburg's conditional tender by Miles Bauer on February 10, 2012 (JA1005), and that, even if accepted by the HOA, Miles Bauer's offer to pay could never discharge the HOA's superpriority lien (JA1008). Saticoy also argued that "NRCP 8 (c) provides that 'payment' is an affirmative defense that must be 'set forth

affirmatively' in a party's answer. Defendant's answer to plaintiff's third amended complaint, filed on March 19, 2017, does not allege that the superpriority portion of the lien was paid prior to the foreclosure sale held on November 7, 2014." JA1004. Additionally, Saticoy argued that Thornburg's claim of tender was void because it was not recorded before the foreclosure deed was recorded (JA 1010), Thornburg had not proved that it kept the alleged tender good (JA 1012), Thornburg had not produced any admissible evidence that contradicted the conclusive recitals or the affidavit by Eddie Haddad (JA1013), that the language in the CC&Rs could not alter or impair the HOA's superpriority lien rights (JA 1013), and that Thornburg was not entitled to equitable relief against Saticoy that altered the legal effect of the HOA foreclosure sale (JA 1017). Thereafter, Saticoy filed a Supplement to its opposition to Thornburg's MSJ. JA1271. In its supplement, Saticoy argued that the conditional tender of $2,025.00 made by Miles Bauer on February 9, 2012 did not relate to the assessment lien that was foreclosed on November 7, 2014 (JA1272). Thornburg's MSJ was denied at the hearing on July 3, 2018. JA1719.

IV. July 2018: Saticoy Files Joint Pre-Trial Memorandum on Behalf of All Parties

On July 24, 2018, Saticoy filed a Joint Pre-Trial Memorandum pursuant to EDCR 2.67 on behalf of all the parties setting out the issues to be tried. JA1823. In one section of the Joint Pre-Trial Memorandum, the parties laid out each issue of law to be contested at the time of trial and the position of each party on each of those issues. One of those issues was whether or not the HOA foreclosure sale could be set aside. Saticoy's stated position was that the sale could not be set aside. "It is [Saticoy's] position that the sale was conducted in good faith and that there was no fraud, oppression or unfairness which brough about or accounted for the low purchase price [paid by Saticoy]." JA1845. Thornburg's stated position was that the sale should be set aside based on the price Saticoy paid for the Subject Property combined with evidence of unfairness and oppression. JA1845. Thornburg's position regarding Saticoy's alleged bona fide purchaser status was that such status was irrelevant for purposes of lien extinguishment. JA1845.

Another issue of law addressed in the Joint Pre-Trial Memorandum was which party would be entitled to receive the excess proceeds remaining after the sale of the Subject Property ("Excess Proceeds").

JA1847. All of the parties agreed that if the district court ultimately held that Thornburg's Deed of Trust survived the foreclosure sale, then the previous homeowner (Timpa Trust) was entitled to the Excess Proceeds. JA1847. Saticoy's position – as well as that of all of the other parties – was stated as follows: "Should the Court hold that the foreclosure sale extinguished Thornburg's Deed of Trust, the excess proceeds of the sale should be paid to Thornburg. On the other hand, if the Court holds that Thornburg's Deed of Trust survived the foreclosure sale, the excess proceeds should be paid to the previous homeowners on the Property." JA1847.

V. December 2018: Thornburg's MSJ is Granted Upon a Motion for Reconsideration

On September 17, 2018, Thornburg filed a Motion for Reconsideration of Order Denying Summary Judgment ("Thornburg's Motion for Reconsideration"). JA1384. Thornburg asked the district court to reconsider its order denying Thornburg's MSJ in light of the September 13, 2018 decision in *Bank of America v. SFR* in which this Court held "a first deed of trust holder's unconditional tender of the superpriority amount due results in the buyer at foreclosure taking the property subject to the deed of trust." *Bank of America, N.A., Successor*

by Merger to BAC Home Loans Servicing, LP, f/k/a Countrywide Home Loans Servicing, LP v. SFR Investments Pool 1, LLC, a Nevada Limited Liability Company, 134 Nev. Adv. Op. 72, *2 (Nev. Sept. 13, 2018). JA1386.

Saticoy filed its Opposition to Thornburg's Motion for Reconsideration on October 2, 2018. JA1651. In its Opposition, Saticoy discussed the four factors to be considered by the district court in determining an equitable challenge to a foreclosure sale as laid out in *Shadow Wood Homeowners Association v. New York Community Bank, 132 Nev. Adv. Op 5, 366 P.3d 1105 (2016)*: the price paid; the presence of fraud, oppression or unfairness; the failure of the complaining party to act to protect its interest prior to the sale; and the interest of the bona fide purchaser. JA1652. Saticoy argued that equitable relief was not available to Thornburg because Thornburg was on notice of the sale and failed to take any steps to protect its interests (JA1653) and because Thornburg had an adequate remedy at law (JA1654). Saticoy also argued the decision in *Bank of America v. SFR Investments Pool 1* 134 Nev. Adv. Op. 72 (2018) was erroneous and distinguishable from the present case. JA1656. Saticoy wrote, "There is no defect with the sales process. If

there was a defect, and the purchaser is a bona fide purchaser, the sale cannot be set aside. The bank, however, is not without a remedy, providing, of course, that there was a prejudicial defect with the sale (which has not been shown here). It has an (sic) claim for money damages against the HOA for any defect in the sale process." JA1656.

On December 3, 2018, the district court filed its Finding of Fact, Conclusions of Law, and Order Granting Thornburg's Motion for Summary Judgment ("2018 Thornburg MSJ Order") wherein it converted Thornburg's Motion for Reconsideration into a Motion for Summary Judgment, which it granted. JA1719. The 2018 Thornburg MSJ Order included the following findings: the HOA foreclosed on only the sub-priority portion of the lien; Saticoy purchased an interest in the Subject Property subject to the Deed of Trust which remained in a first position encumbrance against the Subject Property; Thornburg's Deed of Trust recorded on June 12, 2006 remained as a first position lien against the Subject Property superior to the interest conveyed in the Foreclosure Deed; and all remaining claims not specifically mentioned, including all claims in Thornburg's counterclaim and crossclaim and Saticoy's complaint, were dismissed with prejudice. JA1724.

VI. 2019: The District Court Turns Its Attention to Only Remaining Issue: Interpleader of the Excess Proceeds

On January 31, 2019, Madelaine Timpa and Timpa Trust answered Red Rock's Counterclaim for Interpleader and made a claim to the Excess Proceeds. JA1743. Frank Timpa was already deceased at the time. JA1748.

Thereafter, on June 19, 2019, the district court issued an Order decreeing that "the remaining outstanding issue on this matter requiring adjudication is the interpleader of the surplus funds remaining from the non-judicial foreclosure sale" of the Subject Property. JA1802. The Order also decreed that "any of the parties/claimants may proceed via written motion for summary adjudication pursuant to N.R.C.P. 56 with regard to their claims in the interpleader of the Surplus Funds." JA1802.

VII. September 2019: Timpa Trust's MSJ for Excess Proceeds is Granted

Thereafter, the only party to file a motion for summary adjudication regarding its claim to the Excess Proceeds was Timpa Trust. On June 25, 2019, Timpa Trust moved for summary judgment on Red Rock's Counterclaim for Interpleader ("Timpa Trust MSJ"). JA1752.

Timpa Trust's MSJ argued that Timpa Trust was entitled to the

Excess Proceeds pursuant to NRS 116.31164(7)(b). JA1754. Timpa Trust argued that because the foreclosure sale took place pursuant to NRS 116.3116, NRS 116.31164 guides the use of the proceeds of the sale. JA1762. Specifically, NRS 116.31164(7)(b) discussed how the party conducting the sale was to utilize the proceeds:

> 7. After the sale, the person conducting the sale shall:
>
> (a) Comply with the provisions of subsection 2 of NRS 116.31166; and
> (b) Apply the proceeds of the sale for the following purposes in the following order:
> (1) The reasonable expenses of sale;
> (2) The reasonable expenses of securing possession before sale, holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by the declaration, reasonable attorney's fees and other legal expenses incurred by the association;
> (3) Satisfaction of the association's lien;
> (4) Satisfaction in the order of priority of any subordinate claim of record; and
> (5) Remittance of any excess to the unit's owner.

JA1762. Timpa Trust argued that both Red Rock and the HOA had already received the benefit of the proceeds of the Foreclosure Sale, in compliance with NRS 116.31164(7)(b)(1-3), and there were no junior encumbrances to pay off as mandated by NRS 116.31164(7)(b)(4). JA1762-63. Timpa Trust argued neither Thornburg or Saticoy could

claim to be a subordinate claimant as the district court had already held that Thornburg's interest in the Subject Property was superior to the interest conveyed in the Foreclosure Deed, and Saticoy – whose interest in the Subject Property stemmed from its purchase of the Subject Property at the Foreclosure Sale – was estopped from making a claim as a subordinate claimant to the HOA's foreclosing lien. JA1763. Timpa Trust argued this left Timpa Trust – the undisputed homeowner at the time of the foreclosure sale – as the recipient of the remainder of the Excess Proceeds pursuant to NRS 116.31164(7)(b)(5). JA1763-64. Timpa Trust also argued that Saticoy, Thornburg, the HOA, and Red Rock had all already acknowledged in the Joint Pre-Trial Memorandum that if Thornburg's Deed of Trust survived the foreclosure sale – as ultimately held by the district court in its December 2018 Thornburg MSJ Order – then under the law the Excess Proceeds should be paid to the former homeowner. JA1764.

The only parties to file a responsive pleading to Timpa Trust's MSJ were Red Rock (JA1853) and Saticoy (JA1904). Red Rock filed a Limited Response to Timpa Trust's MSJ in which it asked the district court to award Red Rock its fees and costs accrued in the interpleader action out

of the interpleaded funds. JA1853. Red Rock stated that it did not oppose Timpa Trust's MSJ and did not claim any interest in the Excess Proceeds. JA1852.

On July 26, 2019, Saticoy filed its Opposition to Timpa Trust's MSJ wherein Saticoy argued that Thornburg, not Timpa Trust, should receive the Excess Proceeds. JA1904. In support of this position, Saticoy argued that "NRS 116.3116 does not determine 'priority' for the distribution of excess proceeds." JA1893. Saticoy also argued that it had the right to assert a claim to the Excess Proceeds on behalf of Thornburg because the distribution of the Excess Proceeds effected Saticoy's interest in the Subject Property. JA1902-03.

Thornburg did not make a claim to the Excess Proceeds and did not file anything in response to Timpa Trust's MSJ.

On August 6, 2019, Timpa Trust filed its Reply to Saticoy's Opposition to Timpa Trust's MSJ. JA2039. Timpa Trust argued that Saticoy's Opposition had failed to address Timpa Trust's argument that Saticoy had already conceded in the Joint Pre-Trial Memorandum that Timpa Trust was legally entitled to the Excess Proceeds. JA2041. Timpa Trust asserted that Saticoy's argument – that Thornburg was entitled to

the Excess Proceeds because NRS 116.31164(7)(b) mandates that the proceeds from a junior lienholder foreclosure sale should be paid to senior lienholders – failed as a matter of law. JA2045-46. Timpa Trust also argued that pursuant to this Court's holding in *Saticoy Bay LLC v. Nev. Ass'n Servs.*, 135 Nev., Adv. Op. 23 (2019), Saticoy lacked standing to make a claim to the Excess Proceeds on behalf of Thornburg. JA2043-44.

On August 29, 2019, Timpa Trust filed a Notice of Change of Trustee naming Frank and Madelaine Timpa's sons Todd Timpa and Stuart Timpa as successor co-trustees of Timpa Trust succeeding their deceased mother Madelaine Timpa. *See* Doc. No. 19-48647, Case Summary within Notice of Appeal, Amended Notice of Change of Trustee of Plaintiff Timpa Trust filed August 29, 2019.

On August 20, 2019, the district court held a hearing on Timpa Trust's MSJ. At this hearing, Thornburg's counsel "waived a request for the excess proceeds." *See* Doc. No. 19-48647, Case Summary within Notice of Appeal, August 20, 2019 Minute Order as seen on page 31 of Case Summary included in Filed Notice of Appeal (page 42 of the PDF).[2]

[2] Saticoy failed to request the transcript of the August 20, 2019 hearing at which the district court granted Timpa Trust's MSJ.

On September 11, 2019, the district court filed its order granting Timpa Trust's MSJ ("2019 Timpa Trust MSJ Order"). JA2050. The 2019 Timpa Trust MSJ Order distributed the Excess Proceeds as follows: attorney's fees and costs to Red Rock pursuant to NRS 116.31164 and the remainder of the Excess Proceeds to Timpa Trust pursuant to NRS 116.31164. JA2055.

The 2019 Timpa Trust MSJ Order included the following findings of fact: "Thornburg has waived its claim to receive the HOA Excess Proceeds" and "Saticoy has standing to assert where or how the HOA Excess Proceeds are to be utilized." JA2053. The 2019 Timpa Trust MSJ Order further found that "Thornburg is not a subordinate interest holder in the HOA Foreclosure Sale." JA2052-53. The 2019 Timpa Trust MSJ Order also found that "NRS 116.31164 governs distribution of the proceeds recovered from sales made in accordance with NRS 116 such as Red Rock's HOA Foreclosure Sale" of the Subject Property and "NRS 116.31164 is clear and 'the way the statute reads is the way the statute reads.' Typically, this Court will dispense remaining excess proceeds from NRS 116 sales to the former homeowner." JA2054. The district court acknowledged the somewhat unique nature of the matter

considering the size of the Excess Proceeds but ruled that the district court had to "strictly apply the statutory scheme." *Id*. Accordingly, "because there are no subordinate lienholders after Red Rock, the remainder of the HOA Excess Proceeds, after payment to Red Rock, shall go to the former homeowners Timpa Trust." *Id*.

VIII. September 2019: Saticoy files Motion for Reconsideration of December 2018 Thornburg MSJ Order and September 2019 Timpa Trust MSJ Order

On September 24, 2019, Saticoy filed a Motion for Reconsideration under NRCP 59(e) and 60(b) ("Motion for Reconsideration") in which it asked for reconsideration of 1) the 2018 Thornburg MSJ Order and 2) the 2019 Timpa Trust MSJ Order. JA2069. Saticoy argued that the district court erred under Nevada law when it awarded the Excess Proceeds to Timpa Trust and that the Excess Proceeds should have been paid to Thornburg. JA2076-80. Saticoy also introduced a new argument that it had not previously made – that the Excess Proceeds should be awarded to Saticoy itself. JA2080.

Saticoy introduced a second new argument that under the principle of "equitable subrogation" the district court should disregard NRS 116.31164 and refuse to give Timpa Trust the Excess Proceeds because

equity "simply cannot tolerate this result." JA2080. Saticoy asked the district court to also apply these same "equitable principles" to undo the 2018 Thornburg MSJ Order that favored Thornburg. JA2080.

Saticoy introduced a third new argument that – pursuant to a footnote in the March 2019 case *Bank of Am., N.A. v. Thomas Jessup, LLC Series VII* – Saticoy had the right to request that the sale of the Subject Property be set aside. *Bank of Am., N.A. v. Thomas Jessup, LLC Series VII*, 435 P.3d 1217, 1221 n.5 (Nev. 2019). JA2083. Saticoy argued that the sale should be set aside and both the 2018 Thornburg MSJ Order and 2019 Timpa Trust MSJ Order should be vacated. JA2083.

On October 4, 2018, Thornburg filed a limited opposition to Saticoy's Motion for Reconsideration in which it took the position that "[t]here is no basis for any order vacating or modifying the [September 3, 2018] order insofar as it determined Thornburg's deed of trust remained in a first lien position following the HOA foreclosure." JA2118. Thornburg stated it did not object to unwinding of the sale. JA2118.

On October 8, 2019, Timpa Trust filed its Opposition to Saticoy's Motion for Reconsideration. JA2145. Timpa Trust argued that Saticoy's Motion for Reconsideration was improper because pursuant to *Masonry*

and Tile Contractors Ass'n of Southern Nevada v. Jolley, Urga & Wirth, Ltd., 113 Nev. 737, 941 P.2d 486, 489 (1997) a motion for reconsideration may only be brought in circumstances where either substantially different evidence is subsequently introduced or the court's decision is clearly erroneous. JA2147. Timpa Trust argued that Saticoy's equitable subrogation argument was improper because points or contentions not raised in the original hearing could not be maintained or considered on rehearing pursuant to *Achrem v. Expressway Plaza Ltd.*, 112 Nev. 737, 742, 917 P.2d 447, 450 (1996). JA2154. Timpa Trust pointed out that Saticoy had failed to raise equitable subrogation in its Opposition to Timpa Trust's MSJ. JA2154. Timpa Trust further argued that Saticoy's equitable subrogation argument failed because the equitable subrogation doctrine – which only permits a person who pays off an encumbrance to take advantage of this equitable remedy and subrogate the holder of the previous encumbrance – did not apply to Saticoy because Saticoy did not pay off the lien owed to Thornburg. JA2155. Timpa Trust also argued that Saticoy's arguments regarding equity were disingenuous as Saticoy had taken possession of the Subject Property following the 2014 sale and had leased the Subject Property and obtained income from doing so for

years. JA2155-56. Finally, Timpa Trust – citing *Saticoy Bay LLC v. Nev. Ass'n Servs.*, 135 Nev., Adv. Op. 23 (2019) – again argued that Saticoy did not have standing to make a claim to the Excess Proceeds on behalf of Thornburg. JA2159-60.

In its reply, filed on October 25, 2019, Saticoy did not address Timpa Trust's argument that Saticoy lacked standing pursuant to *Saticoy Bay LLC v. Nev. Ass'n Servs.*, 135 Nev., Adv. Op. 23 (2019). JA2199. Saticoy asked the district court to apply equitable principles to award the Excess Proceeds to Thornburg, or, alternatively, to apply equitable subrogation to award the excess proceeds to Saticoy, or alternatively, to apply *Jessup* to unwind the sale entirely. JA2205-09.

IX. October 2019: Saticoy Files Motion to Amend Its 2017 Third Amended Complaint

On October 26, 2019, about a month after it filed its Motion for Reconsideration, Saticoy filed a Motion to Amend its Third Amended Complaint Pursuant to NRCP 15(b)(2) and 60(b), the Supreme Court of Nevada's Decision in *Jessup*, and EDCR 2.30 ("Motion to Amend"). JA2167. At that point, Saticoy's Third Amended Complaint had been filed two and a half years prior on February 10, 2017. JA0139. Saticoy asked the district court to allow it to file a proposed Fourth Amended

Complaint to include a request "to unwind, set aside, rescind, and /or void the sale and, thereby, lay independent claim to the excess proceeds." JA2176.

On October 27, 2019, Timpa Trust filed an opposition to the Motion to Amend. JA2212. Timpa Trust argued, among other things, that pursuant to *Greene v. Eighth Judicial Dist. Court*, 115 Nev. 391, 396, 990 P.2d 184, 187 (1999) the district court lacked jurisdiction to allow amendment of the Third Amended Complaint because a final judgment had already been entered in the case. JA2214-15. Red Rock also filed an opposition to the Motion in which it too argued that Saticoy's Motion to Amend was procedurally improper pursuant to *Greene v. Eighth Jud. Dist. Ct. of Nevada ex rel. County of Clark*, 990 P.2d 184, 185 (Nev. 1999) JA2222-23. It also argued that none of the alleged authority cited by Saticoy – NRCP 15(b)(2), NRCP 60(b), the Nevada Supreme Court's decision in *Jessup* – allowed Saticoy to file such a late motion to amend. JA2222-23.

X. November 2019: Saticoy's Motion for Reconsideration and Motion to Amend Are Denied, Reference to *Jessup* Is Added to December 2018 Thornburg MSJ Order

On November 18, 2019, the district court entered an order denying both Saticoy's Motion for Reconsideration and Motion to Amend. JA2225. The district court issued a judgment that the Motion to Amend was denied because the district court "does not see the request as an appropriate approach, that there is a separate final order and the case is final and as a result the request is procedurally untimely." JA2226. The district court denied the Motion for Reconsideration. However, it did allow Saticoy to amend the 2018 Thornburg MSJ Order to affirmatively state that the March 2019 decision in *Jessup* had not yet been published in December 2018 when the district court granted Thornburg's MSJ and thus *Jessup* was not discussed or considered in the 2018 Thornburg MSJ Order. JA2226.

Thereafter, Saticoy filed the instant appeal.

STATEMENT OF FACTS

I. 2006: The Subject Property is Purchased

1. On June 2, 2006, Frank Timpa executed the Deed of Trust securing a loan to purchase the Subject Property. JA1720. The Deed of Trust, recorded on June 6, 2006, was later assigned to Thornburg. JA1720.
2. On July 18, 2006, Timpa Trust became the record holder of title to the Subject Property. JA1755, JA1767-73. Husband and wife Frank and Madelaine Timpa were the trustees of the Timpa Trust. JA1748. After Frank Timpa passed away, Madelaine Timpa remained trustee of the Timpa Trust. JA1748. Upon her death in 2019, Frank and Madelaine Timpa's sons Todd Timpa and Stuart Timpa became successor co-trustees of the Timpa Trust. JA2064; *See also* Doc. No. 19-48647, Case Summary within Notice of Appeal, Amended Notice of Change of Trustee of Plaintiff Timpa Trust filed August 29, 2019.
3. The Subject Property is within the HOA. JA1720.

II. 2011: HOA Records Lien for Delinquent Assessments

4. On August 4, 2011, Red Rock, on behalf of the HOA, recorded a lien for delinquent assessments ("HOA Lien"). JA1755, JA1774-76, JA1721. The HOA Lien specifically referenced Timpa Trust as the owner of the Subject Property. JA1756, JA1774-76.

5. Frank Timpa made payments to Red Rock which Red Rock applied to the payments of delinquent assessments. JA1721. Throughout the collection process, Frank Timpa paid in excess of $10,000.00 toward the HOA's Lien. JA1721. Frank Timpa's final payment of $500.00 occurred on October 14, 2014, mere weeks before the HOA's sale of the Subject Property. JA1721

6. On December 6, 2011, Red Rock recorded a Notice of Default and Election to Sell Pursuant to the Lien for Delinquent Assessments ("HOA Notice of Default") in the amount of $8,312.52. JA1777-79, JA1721. The HOA Notice of Default made specific reference to the HOA Lien and to the fact that Timpa Trust was the record owner of title of the Subject Property. JA1756, JA1777-79.

7. On September 15, 2014, Red Rock recorded a Notice of Foreclosure Sale Under the Lien for Delinquent Assessments

("Notice of HOA Sale") stating it would sell the Subject Property and the amount due was $20,309.95. JA1756, JA1780-83, JA1722. The Notice of HOA Sale 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." JA1780-83, JA1722. The Notice of HOA Sale made specific reference to the HOA Lien, the HOA Notice of Default, and to the fact that Timpa Trust was the record owner of title of the Subject Property. JA1757, JA1784-88.

8. Thereafter, the Subject Property was sold at a non-judicial foreclosure sale as a result of the dues owed by Timpa Trust to HOA, as reflected in the HOA Lien, the HOA Notice of Default, and the Notice of HOA Sale. JA1757, JA1784-88.

III. 2014: Saticoy Purchases the Subject Property

9. On November 10, 2014, the Foreclosure Deed was recorded by Red Rock indicating that the HOA had sold the Subject Property to Saticoy on November 7, 2014 for $1,201,000. JA1722, JA1757, JA1784-88. Pursuant to the Foreclosure Deed, Saticoy became

the record holder of title to the Subject Property on November 10, 2014. JA1757, JA1784-88.

10. At the time of the HOA's sale in 2014, the Subject Property was worth $2,000,000. JA1722.

11. Since Saticoy took possession of the Subject Property following the 2014 sale, Saticoy has leased the Subject Property and has obtained rental income. JA1722.

12. After all sums due to the HOA and to Red Rock were deducted from the $1,201,000 sale price, $1,168,865.05 remained in excess proceeds ("Excess Proceeds"). JA2052.

SUMMARY OF THE ARGUMENT

Saticoy's appeal is premised on the central argument that the district court erred when it granted Timpa's MSJ resulting in the 2019 Timpa Trust MSJ Order, and that the district court erred when it thereafter denied Saticoy's Motion for Reconsideration of the 2018 Thornburg MSJ Order and the 2019 Timpa Trust MSJ Order and Saticoy's Motion to Amend Complaint. Opening Brief at 12. Saticoy seeks to appeal or undo the 2019 Timpa Trust MSJ Order as a matter of law. However, it is important to point out that Saticoy does not appeal or seek to undo the 2018 Thornburg MSJ Order as a matter of law. Instead, Saticoy argues that because of an alleged intervening change in law (the *Jessup* case), the district court should have granted Saticoy's Motion for Reconsideration or Motion to Amend in order to allow Saticoy to litigate its claims against Red Rock and the HOA for monetary remedies and/or unwind the sale. *See* Opening Brief at 12, 16-17, 21-24, 56-57.

To begin with, Saticoy argues that the district court erred in its 2019 Timpa Trust MSJ Order in which it awarded Timpa Trust the Excess Proceeds, and that the district court should have awarded the

Excess Proceeds to Saticoy or Thornburg. Saticoy is wrong for the following reasons. First, the district court correctly applied NRS 116.31164 to determine the priority of interest holders to the Excess Proceeds. Saticoy's claim that NRS 116.31164(7)(b) mandates that proceeds from a junior lienholder foreclosure sale should be paid to senior lienholders is wrong. Opening Brief at 28-31. Only the foreclosing party and the junior lienholders have any interest in the proceeds of a foreclosure, and once those parties are paid, any remaining proceeds go to the homeowner. *See*, *e.g.*, *U.S. v. Sage*, 566 F.2d 1114, 1114–15 (9th Cir. 1977). Saticoy creates a "flipping interest theory" which is a confused and muddled concept that the district court was correct to disregard. Saticoy asked the district court and is now asking this Court to interpret NRS 116.31164(7) in a manner that disregards the plain language of the statute, a long history of precedent, and common sense. Second, Saticoy lacks standing to assert any claim to the Excess Proceeds for itself or on behalf of any other party. See *Saticoy Bay LLC v. Nev. Ass'n Servs.*, 135 Nev., Adv. Op. 23 (2019). Third, interpleader actions require a claimant to make a claim to excess proceeds for itself. Saticoy failed to make a timely claim to the Excess Proceeds and

Thornburg unambiguously waived a claim to the Excess Proceeds. Timpa Trust made a claim to the Excess Proceeds, and the district court correctly determined in its 2019 Timpa Trust MSJ Order that Timpa Trust was entitled to the Excess Proceeds as a matter of law.

Next, Saticoy argues that the district court erred in denying Saticoy's Motion for Reconsideration of the 2018 Thornburg MSJ Order and the 2019 Timpa Trust MSJ Order as well as in denying Saticoy's Motion to Amend its Third Amended Complaint. Saticoy is wrong. First, Saticoy relies on the *Jessup* case to argue for reconsideration of the 2018 Thornburg MSJ Order and for NRCP 60(b) relief. Saticoy fundamentally misunderstands *Jessup*. *Jessup* does not mandate reversal of the foreclosure sale of the Subject Property in the instant matter and does not represent an intervening change of law. Second, in its request to reconsider the 2019 Timpa Trust MSJ Order, Saticoy failed to introduce any new evidence. Additionally, the district court was correct to reject Saticoy's argument regarding equitable subrogation as Saticoy had failed to raise it previously. "Points or contentions not raised in the original hearing cannot be maintained or considered on rehearing." *Achrem v. Expressway Plaza Ltd.*, 112 Nev. 737, 742, 917 P.2d 447, 450

(1996). Third, Saticoy improperly sought to amend the Third Amended Complaint after the final judgment – the 2019 Timpa Trust MSJ Order – had already been entered. Fourth, the district court validly denied Saticoy's request to amend its Third Amended Complaint because Saticoy's request under NRCP 15(b)(2) was procedurally invalid as setting aside the foreclosure sale was not a new issue. Fourth, the district court correctly denied Saticoy's request to reconsider the 2019 Timpa Trust MSJ Order. A motion for reconsideration may only be brought in circumstances where either substantially different evidence is subsequently introduced, or the court's decision is clearly erroneous. *See Masonry and Tile Contractors Ass'n of Southern Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 941 P.2d 486, 489 (1997).

Lastly, from an equity standpoint – contrary to Saticoy's arguments – the balance of equities favors Timpa Trust, not Saticoy or Thornburg. Additionally, Saticoy's request to pursue further claims against Red Rock and the HOA would be inequitable to Timpa Trust.

ARGUMENT

I. Introduction

In this matter, the district court was tasked with, among other things, determining the recipient of excess proceeds remaining after an HOA foreclosure sale. This is not a novel issue, and in fact the district court noted in its 2019 Timpa Trust MSJ Order that it routinely handles matters in which it must dispense remaining excess proceeds from HOA foreclosure sales in accordance with NRS 116. JA2054. The district court further noted that "[t]ypically this Court ends up dispensing remaining excess proceeds from NRS 116 sales to the former homeowner." *Id*. The district court applied NRS 116.31164 to determine the order of distribution of the Excess Proceeds and correctly determined that Red Rock was entitled to its attorney's fees and costs pursuant to NRS 116.31164(7)(b)(2) and Timpa Trust, as the former owner of the real property sold at the HOA foreclosure, was entitled to the remainder of the Excess Proceeds pursuant to NRS 116.31164(7)(b)(5).

NRS 116.31164 is clear that Timpa Trust is entitled to the Excess Proceeds. Saticoy believes this is an unfair outcome because such an outcome does not benefit Saticoy. The most beneficial outcome for

Saticoy – and thus the outcome it argues for under the guise of equity – is for either Saticoy or Thornburg to receive the Excess Proceeds.[3] Neither position is supported by the law. Likewise, neither position is supported by equity. Saticoy is a sophisticated real property purchaser that purchased the Subject Property in 2014 fully knowing that it was purchasing the property subject to Thornburg's Deed of Trust, which could result in a potential foreclosure. Since Saticoy took possession of the Subject Property following the 2014 sale, Saticoy has leased the Subject Property and has obtained rental income.

Saticoy's argument that Thornburg faces the greatest inequity of all if Thornburg is not awarded the Excess Proceeds is kneecapped by the fact that Thornburg itself is not making – and has never made – a claim to the Excess Proceeds. Saticoy makes the speculative claim that Thornburg will be faced with a "multi-million-dollar deficiency" if it forecloses on the Subject Property to collect on its Deed of Trust. Opening Brief at 15.

---

[3] It is clear how Saticoy benefits from receipt of the Excess Proceeds, but Saticoy also stands to benefit if Thornburg receives the Excess Proceeds. That is because Saticoy could leverage the Excess Proceeds as a credit to payoff the entirety of the underlying promissory note.

Though it has no bearing under the law, Saticoy's argument that "relative strangers" to the Subject Property are attempting to seek a windfall is patently false. Opening Brief at 15. The co-trustees of Timpa Trust are Todd Timpa and Stuart Timpa – the sons of the original borrowers Frank and Madeline Timpa. Their mother, Madelina Timpa, was involved with this litigation from the very beginning and sadly passed away in 2019 while waiting for the district court to award Timpa Trust the Excess Proceeds to which it is legally entitled. The district court correctly determined that Timpa Trust is entitled to the remainder of the Excess Proceeds.

The district court properly granted Timpa Trust's MSJ. The district court also properly denied Saticoy's Motion for Reconsideration and Motion to Amend. As such, the Court should deny Saticoy's appeal in its entirety.

II. Standard of Review

A. Standard of Review on a Motion for Summary Judgment

"This [C]ourt reviews a district court's grant of summary judgment de novo." *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1029 (2005). A motion for summary judgment should be granted "when the pleadings and other

evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to judgment as a matter of law.'" *Id.*; NRCP 56(c). The party seeking summary judgment bears the initial responsibility of informing the Court of the basis for the motion but need not negate the opposing party's claim. *Celotex Corp. v. Catrett*, 477 U.S 317, 323; (1986). This burden may be met by showing that there is inadequate evidence to support any one or more of the prima facie elements of the non-moving party's case. *Id.* In such cases, the nonmoving party must transcend the pleadings and introduce specific facts that show a genuine issue of material fact. *Cuzze v. Univ. & Cmty. College Sys.*, 123 Nev. 598 (2007).

A party opposing summary judgment must set forth facts demonstrating the existence of a genuine issue for the Court or have summary judgment entered against it. *Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 110 (1992); *Collins v. Union Fed. Savings & Loan*, 99 Nev. 284, 294 (1983). In addition, a party opposing summary judgment cannot simply rest upon allegations in the pleadings; rather, it must affirmatively set forth facts demonstrating the existence of a material issue of fact. *Garvey v. Clark County*, 91 Nev. 127, 130, 532 P. 2d 269,

271 (1978); *Adamson v. Bowker*, 85 Nev. 115, 118-20, 450 P. 2d 796, 799-800 (1969). The summary judgment standard provides that the mere existence of some alleged factual disputes between the parties will not defeat an otherwise properly supported motion for summary judgment. *Wood* at 1030.

B. Standard of Review on a Motion for Reconsideration, Motion to Amend, Motion for NRCP 60(b) Relief

The Nevada Supreme Court will review a district court's disposition of a motion to amend or alter a judgment under NRCP 59(e) for an abuse of discretion, with deference given to a district court's order on the motion to amend. *See AA Primo Builders LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010) (citing 11 C. Wright, A. Miller & M. Kane, Federal Practice and Procedure § 2810.1, at 119 (2d Ed. 1995); *Arnold v. Kip*, 123 Nev. 410, 168 P.3d 1050 (2007)). Likewise, a motion for reconsideration "[a]lthough not separately appealable as a special order after judgment, an order denying an NRCP 59(e) motion is reviewable for abuse of discretion on appeal from the underlying judgment." *Id*. Furthermore, a motion for relief under NRRCP 60(b) "will not be disturbed on appeal absent an abuse of discretion." *Cook v. Cook*, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996).

A court abuses its discretion when the record contains no evidence to support a district court's decision. *Oregon Natural Res. Council v. Marsh*, 52 F.3d 1485, 1492 (9th Cir. 1995). Under abuse of discretion review, courts do "not substitute [their] judgment for that of the district court." *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990). Moreover, when reviewing a district court's stated findings of fact, an abuse of discretion standard of review also applies, meaning that the Supreme Court will defer to the district court's factual findings unless they are clearly erroneous or not based on substantial evidence. *May v. Anderson*, 121 Nev. 668, 672-73, 119 P.3d 1254, 1257 (2005).

III. The District Court Properly Awarded Timpa Trust the Excess Proceeds in the 2019 Timpa Trust MSJ Order

Timpa Trust's Motion for Summary Judgment resolved the final remaining matter in the lawsuit, namely determining the claims for the Excess Proceeds in the interpleader. The district court's 2019 Timpa Trust MSJ Order was correctly decided for a multitude of reasons. On summary judgment, the facts were simple and undisputed: Saticoy purchased the Real Property subject to Thornburg's Deed of Trust, and Timpa Trust was the owner of the Real Property at the time of the sale

to Saticoy. The district court applied these facts to NRS 116.31164 and, unsurprisingly, found in favor of Timpa Trust. The district court applied the law and reached the correct result.

A. The District Court Did Not Err as a Matter of Law in its Application of NRS 116.31164 to Determine the Priority of Interest Holders to the Excess Proceeds

Saticoy asked the district court and now asks this Court to interpret NRS 116.31164(7)(b) in a way that is directly contradicted not only by the plain and unambiguous language of the statute itself but also by fundamental and well-established principles of property law in all jurisdictions throughout the United States. Saticoy erroneously claims that NRS 116.31164(7)(b) mandates that proceeds from a junior lienholder foreclosure sale should be paid to senior lienholders. Opening Brief at 28-31. This is wrong as foreclosures only affect mortgages that are junior to the foreclosing mortgage. The secured interests of senior mortgages are not affected by the foreclosure of junior mortgages. Accordingly, only the foreclosing mortgagee and the junior mortgagees have any interest in the proceeds of a foreclosure, and once those parties are paid, any remaining proceeds go to the homeowner. *See*, *e.g.*, *U.S. v. Sage*, 566 F.2d 1114, 1114–15 (9th Cir. 1977). This principle is black-

letter law and has been reaffirmed by the Supreme Court of Nevada,[4] by various relevant federal courts,[5] by state courts across the country,[6] and is emphasized in practically all secondary sources on the topic.[7]

The district court rightfully did not accept Saticoy's argument that NRS 116 somehow changes the principal that senior lienholders have no interest in the proceeds following a foreclosure. In fact, NRS 116 codified

---

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

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

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

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

this concept – NRS 116.31164(7)(b) lists the order in which the proceeds of an HOA foreclosure sale are to be applied. Moreover, Saticoy's argument is directly contradicted by this Court's decision in a similar matter involving foreclosure proceeds wherein this Court wrote:

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

Nevada Association Services, Inc. v. Las Vegas Rental & Repair, LLC Series 78, No. 73157 (Dec. 27, 2018) (unpublished disposition) (emphasis added).

Indeed, Saticoy's creation of a "flipping interest theory" is a confused and muddled concept that the district court was correct to disregard and that this Court should disregard as well. Saticoy's theory is based on two assumptions: 1) the priority of Spanish Trail's lien is based on the recordation date of the 1984 CC&Rs; and 2) Thornburg's remedies for its Deed of Trust are arbitrarily hindered by tendering the

superpriority amount to Red Rock. Opening Brief at 29, 38, 47. Under Saticoy's analysis, because Thornburg's Deed of Trust was recorded after the CC&R's, Thornburg is entitled to receive the Excess Proceeds as it is technically a junior lien. If this was the case, then the underlying lawsuit would be irrelevant as any lien foreclosed in favor of Spanish Trail would have automatically wiped-out Thornburg's interest.[8] Clearly this is not

---

[8] Likewise, Saticoy's argument that Thornburg was a senior lienholder for purposes of title while also a junior lienholder for purposes of collection of the proceeds from the HOA foreclosure sale was categorically denied in United States District Court, District of Nevada's March 20, 2019 decision, wherein Chief Judge Gloria M. Navarro wrote:

> Because the Property's foreclosure sale occurred under NRS 116.3116, proceeds from the sale are divided "in the order of priority of any subordinate claim of record." NRS 116.31164(7)(b)(4) [emphasis in original]. Consequently, were LLVMA's [subordinate lien] to be equal to SSRCA's [HOA foreclosing] lien, the Government **has not provided any authority that allows it to override the process outlined in NRS 116.3116 et seq. so that it could simultaneously be superior to the foreclosing party yet capable of receiving LLVMA's [subordinate lien] proceeds from the sale.** Indeed, general authorities show otherwise. See 59A C.J.S. Mortgages § 1331 ("Where senior lienors' rights are unaffected by foreclosure, holders of liens that are senior in priority do not have the right to share in a surplus produced by the foreclosure of a junior mortgage."); *United States v. Sage*, 566 F.2d 1114, 1114-15 (9th Cir. 1977) ("Foreclosure affects the rights of all mortgagees junior to the foreclosing mortgagee and requires them to look to the proceeds for satisfaction, **but it has no effect whatsoever** upon the interest of senior mortgagees . . . .").

LJS&G, Ltd. v. Z's, Case No. 2:16-cv-01150-GMN, at 6 n.1 (D. Nev., Mar. 20, 2019) (emphasis added).

the case. Furthermore, the fact that Thornburg preserved its Deed of Trust by paying the superpriority to Red Rock does not mean it "flipped" its interest. NRS 116 allows Spanish Trail to jump in order of priority over Thornburg's Deed of Trust hence the name "superpriority." By making its Miles Bauer tender, Thornburg prevented Spanish Trial from jumping over Thornburg. As a reward for its diligence, Thornburg preserved its secured interest and can foreclose on the Subject Property to collect. What Thornburg cannot do is disregard its obligation to follow the law – namely, the one-action rule – by attempting to collect or otherwise interfere with disbursement of the Excess Proceeds before it forecloses.[9] Indeed, Thornburg understood its obligations when it waived its claims to the Excess Proceeds (discussed infra).

In sum, Saticoy asked the district court and is now asking this Court to interpret NRS 116.31164(7) in a manner that disregards the plain language of the statute, a long history of precedent, and common sense. The district court properly denied Saticoy's arguments and properly applied NRS 116.31164 to determine the priority of interest

[9] Any deficiency Thornburg or Saticoy may claim is purely speculative without an actual foreclosure.

holders to the Excess Proceeds.

B. Saticoy is Not and Never Was a Proper Party to Assert a Claim to the Excess Proceeds, Whether on Behalf of Itself or on Behalf of Thornburg

In the district court, Saticoy argued that Thornburg – and later that Saticoy itself – is entitled to receive the Excess Proceeds. However, Saticoy lacks standing to assert any claim to the Excess Proceeds for itself or on behalf of any other party. On July 3, 2019, in a similar matter which involved a post-sale redemption by a unit-owner, this Court wrote:

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

Saticoy Bay LLC v. Nev. Ass'n Servs., 135 Nev., Adv. Op. 23 (2019). Just like in the July 3, 2019 matter, in the instant matter Saticoy wrongly argued how the funds it expended should be distributed because said funds no longer belonged to Saticoy once Saticoy tendered them to Red

Rock. As stated by this Court, any argument as to how the funds should be expended is for the lender to make (*id.*), which in the instant matter is Thornburg. Thornburg did not make an argument to the district court as to how the funds should be distributed nor did Thornburg pursue any legal claim against Timpa Trust.

C. Interpleader Actions Require a Claimant to Make a Claim to Excess Proceeds on Its Own Behalf, and Both Saticoy and Thornburg Failed To Make Such a Claim

"Interpleader is an equitable proceeding to determine the rights of rival claimants to property held by a third person having no interest therein" and "each claimant is treated as a plaintiff and must recover on the strength of his own right or title and not upon the weakness of his adversary's." *Balish v. Farnham*, 92 Nev. 133, 137, 546 P.2d 1297, 1299 (1976). Accordingly, a claimant must make a claim to the funds for themselves. Saticoy could only make a claim to the Excess Proceeds on behalf of itself, which it did not do. In its June 19, 2019 Order, the district court stated that "any of the parties/claimants may proceed via written motion for summary adjudication pursuant to N.R.C.P. 56 with regard to their claims in the interpleader of the Surplus Funds." JA1802. Thereafter, the only party to file a motion for summary adjudication

regarding its claim to the Excess Proceeds was Timpa Trust. JA1752. Saticoy filed an Opposition to Timpa Trust's MSJ wherein it argued that Thornburg should receive the Excess Proceeds. JA1904. Saticoy itself did not make any claim to the Excess Proceeds. For its part, Thornburg filed no opposition to Timpa Trust's MSJ and, as stated in the 2019 Timpa Trust MSJ Order (JA2053), waived its claim to the Excess Proceeds. These facts alone mandate denial of all of Saticoy's arguments that either Thornburg or Saticoy should receive the Excess Proceeds.

Additionally, at the August 20, 2019 hearing which adjudicated Timpa Trust's MSJ, Thornburg's counsel affirmatively "waived a request for the excess proceeds" as stated in the district court's minute order from that hearing. *See* Doc. No. 19-48647, Case Summary within Notice of Appeal, August 20, 2019 Minute Order as seen on page 31 of Case Summary included in Filed Notice of Appeal (page 42 of the PDF). In this appeal, Saticoy has failed to request a transcript of the August 20, 2019 hearing. Because Saticoy has failed to include the transcript of the relevant hearing, and because only Thornburg could make a claim on behalf of itself (which it did not do), this Court should assume the record supports the district court's finding in favor of Timpa Trust. *See M & R*

Investment Co. v. Mandarino, 103 Nev. 711, 748 P.2d 488 (1987) (where appellant fails to include a relevant hearing transcript in the record on appeal, Supreme Court assumes that the record supports the district court's decision).

In sum, an interpleader action requires a claimant to make a claim to excess proceeds. Saticoy's argument that either Saticoy or Thornburg should receive the Excess Proceeds fails because neither Saticoy nor Thornburg made a claim to the Excess Proceeds for themselves in the district court. Saticoy's Opposition to Timpa Trust's MSJ did not state that Saticoy was making a claim to the Excess Proceeds. JA1904.[10] Thornburg never made a claim to the Excess Proceeds and, in fact, affirmatively waived any claim to the Excess Proceeds. (JA2053). The district court properly adjudged Timpa Trust's claim to the Excess Proceeds and correctly determined in its 2019 Timpa Trust MSJ Order that Timpa Trust was entitled to the Excess Proceeds as a matter of law.

[10] In its later-filed Motion for Reconsideration in which it asked for reconsideration of the 2019 Timpa Trust MSJ Order, Saticoy for the first time raised the new argument that Saticoy itself was entitled to the Excess Proceeds. JA2069. However, Saticoy had failed to make this argument to the district court previously.

IV. The District Court Did Not Abuse Its Discretion in Denying Saticoy's Motion for Reconsideration and Motion to Amend

It is important to point out that Saticoy does not appeal or seek to undo the 2018 Thornburg MSJ Order as a matter of law. Instead, Saticoy argues that because of an alleged intervening change in law (the *Jessup* case), the district court should have granted Saticoy's Motion for Reconsideration or Motion to Amend in order to allow Saticoy to litigate its claims against Red Rock and the HOA for monetary remedies and/or unwind the sale. *See* Opening Brief at 12, 16-17, 21-24, 56-57. The district court did not abuse its discretion by denying Saticoy's Motion for Reconsideration and its Motion to Amend because Saticoy's interpretation of the intervening caselaw (*Jessup*) was incorrect, the district court lacked jurisdiction to allow Saticoy to amend the complaint after final judgment, and Saticoy's requests were procedurally improper.

A. Saticoy's Reliance on *Jessup* for Purposes of Reconsideration of the 2018 Thornburg MSJ Order and NRCP 60(B) Relief Is Wrong

A motion for reconsideration is not a "vehicle permitting the unsuccessful party to reiterate arguments previously presented." *See, e.g, Merozoite v. Thorp*, 52 F.3d 252, 255 (9th Cir. 1995); *Sphouris v. Aurora Loan Services*, 2011 WL 5007300, *2 (D. Nev. Oct. 20, 2011) (denying

Rule 60(b) motion based on alleged mistake and fraud where party merely "reargue[d] previous assertions that were rejected by the [c]ourt"); *see also*, *e.g. Khan v. Fasano*, 194 F.Supp.2d 1134, 1136 (S.D. Cal. 2001) ("A party cannot have relief under [Rule 60(b)] merely because he or she is unhappy with the judgment").

Saticoy argued to the district court that the decision in *Bank of Am., N.A. v. Thomas Jessup, LLC Series VII*, which was decided in March 2019 ("*Jessup 2019*"), was an intervening change in law warranting NRCP 60(b) relief necessitating the district court to vacate the 2018 Thornburg MSJ Order to allow Saticoy to unwind the sale of the Subject Property. This argument to the district court was categorically wrong when Saticoy made it in late 2019 and it remains wrong today. The recent change to the disposition of *Jessup 2019* on May 7, 2020 further illustrates Saticoy's fundamental misunderstanding of *Jessup*.

In March 2019, this Court published its opinion in *Jessup 2019*. In a footnote, this Court wrote:

> As the Bank's deed of trust was not extinguished, we need not address the viability of the Bank's claims against ACS and Foxfield. Similarly, we need not address the Bank's remaining arguments in support of its deed of trust remaining intact as neither the Bank nor the Purchaser have

> expressed whether they would prefer to have the sale set aside or have the Purchaser take title to the property subject to the first deed of trust.

Bank of Am., N.A. v. Thomas Jessup, LLC Series VII, 435 P.3d 1217, 1221 n.5 (Nev. 2019).

The district court correctly denied Saticoy's argument in its Motion for Reconsideration that this footnote in *Jessup 2019* mandated reversal of the foreclosure sale of the Subject Property in the instant matter. This Court's footnote in *Jessup 2019* made no determination regarding a standard to set aside an NRS 116 foreclosure sale after a bank note was found to survive a sale. In fact, other courts such as the United States District Court, District of Nevada likewise did not interpret the *Jessup 2019* footnote to require a set aside of a foreclosure sale. In *Bank of New York Mellon v. Laws*, Case No. 2:17-cv-01032-APG-CWH (D. Nev. July 19, 2019), the federal court summarized the application of *Jessup 2019* as follows: "an offer to pay the superpriority lien, 'combined with [a] rejection of that offer, operated to cure the default as to that portion of the lien such that the ensuing foreclosure sale did not extinguish the first deed of trust'"). *Id.* The federal court made no reference to the footnote on which Saticoy based its Motion for Reconsideration. In sum, *Jessup*

2019 did not identify an affirmative duty for courts to set aside foreclosure sales, the district court did not abuse its discretion when it denied Saticoy's moonshot theory that *Jessup 2019* required the district court to reconsider and vacate the 2018 Thornburg MSJ Order and allow Saticoy to unwind the foreclosure sale.

However, this was not the end of *Jessup*. On May 7, 2020, this Court issued a new order, that among other things, vacated and replaced *Jessup 2019*. *Bank of America, N.A. v. Thomas Jessup, LLC Series VII*, 462 P.3d 255 (Nev. 2020) (en banc) (unpublished). In its May 7, 2020 order, this Court held that the lender's first deed of trust was terminated due to the superpriority foreclosure sale and that the district court did not err in determining that the lender could not set aside the sale under equitable grounds. *Id*. However, this Court held that, because the lender's deed of trust was terminated, the lender "may be entitled…to any excess proceeds from the foreclosure sale…" *Id*. Indeed, this Court's ultimate decision regarding sale proceeds in *Jessup* tracks with Timpa Trust's analysis in the 2019 Timpa Trust MSJ Order regarding the distribution of Excess Proceeds (JA2050) and the parties' Joint Pre-Trial Memorandum (JA1847).

Neither incarnation of *Jessup* supports Saticoy's argument to reconsider the 2018 Thornburg MSJ Order as *Jessup* was not an intervening change of law. Furthermore, Saticoy's request under NRCP 60 was procedurally improper as it was filed well after the mandated six-month deadline. *See* NRCP 60. The district court did not abuse its discretion in denying Saticoy's request to reconsider the 2018 Thornburg MSJ Order.

B. The District Court Correctly Denied Saticoy's Request to Reconsider the 2019 Timpa Trust MSJ Order

In addition to affecting the 2018 Thornburg MSJ Order, Saticoy's Motion for Reconsideration sought to undo the 2019 Timpa Trust MSJ Order. A motion for reconsideration may only be brought in circumstances where either substantially different evidence is subsequently introduced, or the court's decision is clearly erroneous. *See Masonry and Tile Contractors Ass'n of Southern Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 941 P.2d 486, 489 (1997). In its request to reconsider the 2019 Timpa Trust MSJ Order, Saticoy failed to introduce any new evidence. Indeed, the facts the district court needed to consider in ruling on Timpa Trust's MSJ were extremely limited and not in dispute. Accordingly, it was incumbent upon Saticoy to show that the

district court's decision was clearly erroneous for purposes of its Motion for Reconsideration. As discussed *supra*, the district court's reasoning in deciding the 2019 Timpa Trust MSJ Order was not only not clearly erroneous, but its reasoning strictly followed NRS 116.31164 in light of the plain language of the statute, a long history of precedent, and common sense.

Moreover, in Saticoy's Motion for Reconsideration, Saticoy made its argument regarding equitable subrogation for the first time. The district court was under no obligation to hear Saticoy's equitable subrogation argument as "[p]oints or contentions not raised in the original hearing cannot be maintained or considered on rehearing." *Achrem v. Expressway Plaza Ltd.*, 112 Nev. 737, 742, 917 P.2d 447, 450 (1996).

Regardless, Saticoy's analysis of equitable subrogation was inherently wrong. Equitable subrogation "permits 'a person who pays off an encumbrance to assume the same priority position as the holder of the previous encumbrance.'" *American Sterling Bank v. Johnny Management LV*, 245 P.3d 539 (Nev. 2010) (internal citations omitted). Saticoy did not pay off Thornburg's encumbrance. Saticoy purchased property at a foreclosure auction. Simply put, the doctrine of equitable

subrogation did not apply to Saticoy under these circumstances.

In sum, the district court did not abuse its discretion in failing to reconsider the 2019 Timpa Trust MSJ Order as the decision was not clearly erroneous and because equitable subrogation was inapplicable.

C. The District Court Lacked Jurisdiction to Grant Saticoy's Request to Amend Its Complaint Because Final Judgment Was Already Entered

Furthermore, the district court did not abuse its discretion when it denied Saticoy's request to amend the Third Amended Complaint as Saticoy sought such relief after the final judgment – the 2019 Timpa Trust MSJ Order – was entered. A "district court lacks jurisdiction to allow amendment of a complaint, once final judgment is entered, unless that judgment is first set aside or vacated pursuant to the Nevada Rules of Civil Procedure." *Greene v. Eighth Judicial Dist. Court*, 115 Nev. 391, 396, 990 P.2d 184, 187 (1999) (emphasis added). "[A] final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney's fees and costs." *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000). It was uncontested that the 2019 Timpa Trust MSJ Order was a final judgment, and the district court

was correct not to allow amendment of the complaint by Saticoy.

D. The District Court Could Not Allow Amendment of The Complaint Under NRCP 15(B)(2) Because Setting Aside the Foreclosure Sale Was Not a New Issue

The district court validly denied Saticoy's request to amend its complaint because Saticoy's request under NRCP 15(b)(2) was procedurally invalid. Saticoy's attempt to amend the complaint for purposes of relitigating the entire matter was not allowed under NRCP 15(b)(2), which reads:

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

NRCP 15(b)(2). Saticoy's argument in its Motion to Amend that the concept of setting aside the sale was present "nearly the entire duration of this litigation" automatically precluded NRCP 15(b)(2) relief. JA2168. Furthermore, the NRCP 15(b)(2) prohibition of affecting the result of the trial also precluded Saticoy's request. In sum, the district court did not abuse its discretion when it denied Saticoy's request to amend the complaint pursuant to NRCP 15(b)(2).

V. The Balance of Equities Favors Timpa Trust, Not Saticoy Or Thornburg

Saticoy's argument that Timpa Trust stands to obtain a windfall at the expense of Saticoy and Thornburg is without merit. First and foremost, Saticoy has been in possession of the Subject Property and has leased and obtained rental income from the Subject Property since the 2014 foreclosure sale. JA1722. No evidence was introduced by Saticoy that it was either forced or pressured to purchase the Subject Property. Second, Thornburg, through its diligence, was able to preserve its secured interest in the Subject Property. Thornburg has not lost any contractual or statutory right as to the promissory note secured against the Subject Property. Additionally, Thornburg willingly waived its claim to the Excess Proceeds. JA2053.

Conversely, Timpa Trust has been deprived of its personal property – i.e. the Excess Proceeds to which it is statutorily entitled – since 2014, and its original trustees have passed away during the pendency of the district court action. JA2053. Timpa Trust has not acted in an inappropriate manner and has been deprived of its property rights for years. Saticoy's request to potentially unwind or void the foreclosure sale would unfairly prejudice Timpa Trust as it would undo the 2019 Timpa

Trust MSJ Order. If the Court grants Saticoy's request to pursue claims against Red Rock and the HOA (which it should not), Saticoy's remedies should be limited to monetary damages, and the 2019 Timpa Trust MSJ Order should remain undisturbed as to Timpa Trust's receipt of the Excess Proceeds.

VI. Conclusion

For the foregoing reasons, the Court should deny Saticoy's appeal in its entirety.

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Respectfully submitted this 15th day of April 2021.

AVALON LEGAL GROUP LLC

By: /s/ *Bryan Naddafi*

Bryan Naddafi (NSBN 13004)
Elena Nutenko (NSBN 14934)
6030 S. Rainbow Blvd., Suite D1
Las Vegas, Nevada 89118
Tel: (702) 522-6450
bryan@avalonlg.com
elena@avalonlg.com
Attorneys for Respondent Timpa Trust

ATTORNEY'S CERTIFICATE

I certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type-style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 in 14-point font, Century Schoolbook style. I further certify that this brief complies with the type-volume limitations of NRAP 28.1(e)(2) and NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it contains 11,087 words.

I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that

the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated April 16, 2021.

AVALON LEGAL GROUP LLC

By: /s/ *Bryan Naddafi*

Bryan Naddafi (NSBN 13004)
Elena Nutenko (NSBN 14934)
6030 S. Rainbow Blvd, Suite D1
Las Vegas, Nevada 89118
Tel: (702) 522-6450
bryan@avalonlg.com
elena@avalonlg.com
Attorneys for Respondent Timpa Trust

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Avalon Legal Group LLC, and on the 16th day of April 2021, a true and correct copy of the foregoing **TIMPA TRUST'S ANSWERING BRIEF** was filed and served through the Court's eFlex electronic filing service to all counsel of record in this action.

Dated April 16, 2021

/s/ Bryan Naddafi
Employee of Avalon Legal Group LLC