

**NEVADA SUPREME COURT**

U.S. BANK TRUST, Trustee for LSF9  
Master Participation Trust,

Appellant,

v.

DANIEL LAKES,

Respondent.

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Clerk of Supreme Court

**DANIEL LAKES' RESPONSE TO PETITION FOR REVIEW**

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Appellant,

v.

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**Docket No. 79324-COA**

**NRAP 26.1 DISCLOSURE**

The undersigned counsel of record certifies that there are no persons and/or entities as described in NRAP 26.1(a) that must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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## **QUESTION PRESENTED**

Whether the Court of Appeals properly reversed the district court for failing to consider whether U.S. Bank's unrecorded interest in the first deed of trust was enforceable against Respondent Daniel Lakes, a subsequent bona fide purchaser without notice of US Bank's unrecorded interest.

## **FACTS**

Daniel Lakes brought a quiet title action relating to the real property located at 548 Primrose Hill Ave., Las Vegas, NV, 89138 (the "Property") which he purchased on January 20, 2016, without actual or constructive knowledge of U.S. Bank Trust's alleged security interest in same. [JA0001, JA0428 and JA0402-06.] Mr. Lakes learned of the Property from his son who saw a for sale by owner advertisement on Zillow listing the Property for \$115,000. [JA0427.] The Property was originally purchased in 2007 by Roger Cedillo. [JA0175-185.] Countrywide sold the loan secured by a deed of trust to Freddie Mac in May 2007. [JA0188.] At some point, Mr. Cedillo abandoned the Property and Liberty at Huntington Homeowners' Association (the "HOA") conducted a foreclosure sale on August 25, 2015. [JA0383-86.] Parcelnomics purchased the Property at the HOA foreclosure sale. [JA0383-86.] Parcelnomics transferred title to the Property to one of its subsidiaries, Investment Deals, who then sold the property to Noune Graeff on October 23, 2015. [JA0396-400.]

On November 12, 2015, U.S. Bank purchased the Cedillo Loan secured by a Deed of Trust on the Property from Freddie Mac's agent, Ocwen Loan Servicing. [JA0408, JA0413.] Ocwen completed the transfer of the 11/12/15 loan purchase on December 6, 2015. [JA0408, JA0413.] US Bank Trust then waited over six months before recording the Assignment of its interest on May 27, 2016. [JA0365-367.]

In January 2016, Lakes learned of the Subject Property from his son who saw a Zillow advertisement for sale by the owner, Nouné Graeff. [JA0427.] The house was vacant and had appeared to have been for some years. [JA0427.] After meeting with Ms. Graeff, Lakes went to the Clark County Recorder's Office to verify Nouné Graeff's ownership of the Property. [JA0427-28.] The clerk at the Recorder's Office informed Lakes that Graeff owned the Subject Property outright based on the recorded documents. *Id.*

Lakes returned to the Clark County Recorder's Office prior to purchasing the Property with questions about the language contained in the Grant, Bargain Sale Deed. [JA0428.] After performing the search for liens and encumbrances, the clerk informed Mr. Lakes that Republic Services had a trash lien and provided Mr. Lakes with the outstanding amount. [*Id.*] Lakes purchased the Property for \$112,000 cash and paid off all of the outstanding liens. [JA0431-32, JA0402-06.] Lakes immediately began repairs on the Property and moved into the house in February 2016. [JA0427-28.]

On May 27, 2016, U.S. Bank Trust recorded its 11/12/15 Assignment of Deed of Trust that was drafted and signed by U.S. Bank's loan servicing company Caliber Homes as attorney in fact for Ocwen. [JA0369; JA0187- 91.] In July 2016, U.S. Bank Trust sent a Notice of Default and Intent to Sell addressed to Mr. Lakes stating that over \$213,000 was past due and owing on the original promissory note to Mr. Cedillo that was secured by the Property. [JA0477-79.]

Meanwhile, Mr. Lakes had brought all outstanding HOA dues current, remedied all of the HOA maintenance violations, and had made substantial repairs to the Property using the remainder of his savings. [JA0427-28.] Mr. Lakes purchased the Property in good faith with the intent to live in the house throughout his retirement. [Id. at ¶¶ 23-24]

On July 27, 2017, Mr. Lakes brought this quiet title claim seeking a declaration from the court that U.S. Bank is forever enjoined from asserting any right, title or interest in the Property. [JA0001-9.]

### **SUMMARY OF ARGUMENTS**

Petitioner U.S. Bank argues that Mr. Lakes' status as a bona fide purchaser is irrelevant to this quiet title action based on the *Diamond Spur* line of cases and the Court of Appeals deviated from the *Diamond Spur*'s rules. Petition at pp. 5-6. However, U.S. Bank ignores the Court of Appeal's ruling which applied *Diamond Spur* to U.S. Bank's superpriority lien arguments consistent with this Court's



prior rulings. However, the issue before the Court of Appeals was whether *U.S. Bank's unrecorded prior assignment* of the first deed of trust was enforceable *against Lakes*, a subsequent bona fide purchaser for value and without notice of U.S. Bank's interest. [Opening Brief at p. 10] Unlike the *Diamond Spur* line of cases relied on by U.S. Bank, this quiet title action arises from the failure to record its newly acquired interest in the Property as required by N.R.S. §111.325 in order to protect subsequent bona fide purchasers just like Mr. Lakes. The Court of Appeals was correct in holding that *Diamond Spur* “does not extend” to the facts of this case. [Court of Appeals Opinion at p. 6.]

## **ARGUMENT**

### **I. Lakes' Status as a Bona Fide Purchaser Under N.R.S. §111.325 Is the Dispositive Issue in This Matter.**

U.S. Bank argues that the holding in “the *Diamond Spur*” case and its progeny are dispositive of this matter because they stand for the proposition that Lakes' status as a bona fide purchaser is irrelevant. However, all of these cases held that a party's status as a bona fide purchaser is only irrelevant “when a defect in the foreclosure renders the [HOA] sale void.” *See Bank of Am., N.A. v. SFR Inus. Pool 1, LLC*, 134 Nev. Adv. Rep. 72, 427 P.3d 113, 119-20 (2018), (“*Diamond Spur*”); *Noonan v. Bayview Loan Servicing, LLC*, 2019 WL 1552690 (Nev. Apr. 8, 2019) (same fact pattern as *Diamond Spur* holding neither NRS 111.315 nor NRS 106.220 requires recording of the tender of the superpriority portion of the HOA's lien); *Renfro v.*

*Carrington Mortgage Servs., LLC*, 456 P. 3d 1055 (Nev. 2020) (holding the bank's tender is sufficient to discharge superpriority lien, but no recording issues related to 111.325, because BANA assigned its deed of trust to Carrington Mortgage *after* Renfoe purchased the property); *Tyrone & In-Ching, LLC v. Deutsche Bank Nat'l Trust Co.*, 473 P.3d 1047 (Nev. 2020)(unpublished) (affirming lower court finding that first deed of trust not extinguished because the trustee's deed expressly stated that the HOA was conveying only "that portion of its right, title and interest secured by the non-priority portion of its lien"); *U.S. Bank, Nat'l Ass'n ND v. Res. Grp., LLC*, 135 Nev. 199, 205 (2019) (holding a void sale . . . defeats the competing title of even a bona fide purchaser for value when the HOA did not give the first deed of trust holder notice of default required under Nevada law to foreclose a superpriority lien); *Saticoy Bay LLC v. JPMorgan Chase Bank*, 2017 WL 6597154 (Nev. Dec. 2017) (holding involves reversal of a dismissal of a complaint for intervention for failure to prosecute related to HOA superpriority lien dispute); *Saticoy Bay v. Green Tree Servicing*, \_\_ P.3d \_\_, 2020 WL 7866522 (Nev. 2020) (en banc) (holding that Saticoy Bay took title subject to first deed of trust because superpriority lien default had been cured prior to the HOA sale).

Every single case relied upon by U.S. Bank deals with a defective or void HOA foreclosure sale related to a superpriority lien. Neither *Diamond Spur* nor any of the other cases relied upon by U.S. Bank involved the issue of the enforceability

of an *unrecorded transfer of the first deed of trust* against a subsequent bona fide purchaser. The facts of this case are totally distinguishable from the authorities cited by U.S. Bank. The Court of Appeals properly found the district court committed reversible error by refusing to consider Lakes' status as a bona fide purchaser under N.R.S. §111.325. This is a straightforward notice statute case and the Court of Appeals correctly held that N.R.S. §111.325 applies.

## **II. U.S. Bank's Security Interest Is Not Enforceable Against Mr. Lakes Based on N.R.S. §111.325.**

U.S. Bank did not dispute *its obligation* to record its assignment from Ocwen under N.R.S. 111.315, which was the crux of Lakes' argument. Nev. Rev. Stat. §111.315 states:

Every conveyance of real property, and every instrument of writing setting forth an agreement to convey any real property, or whereby any real property may be affected, proved acknowledged and certified in the manner prescribed in this chapter ... shall be recorded...

Ignoring the recording requirements of N.R.S. § 111.315, U.S. Bank argues that Lakes purchased the Property subject to Ocwen's first deed of trust pursuant to *Diamond Spur*. However, the Court of Appeals decision acknowledges the fact that the HOA foreclosure sale did not extinguish Ocwen's first deed of trust. The issue before the Court was whether U.S. Bank's unrecorded purchase of Ocwen's security

interest was enforceable against Mr. Lakes, a downstream subsequent bona fide purchaser without notice of U.S. Bank's interest. Nevada Rev. Stat. § 111.325 states:

Every conveyance of real property within this State hereafter made, which shall not be recorded as provided in this chapter, shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, of the same real property, or any portion thereof, where his or her own conveyance shall be first duly recorded.

Despite the various pitfalls related to HOA foreclosures and the subsequent resale of the foreclosed properties, in this case, had U.S. Bank complied with its statutory recording obligations, Lakes would have been provided with notice of the unextinguished first deed of trust when he had the Clark County recorder perform a title search on his behalf. Had U.S. Bank timely recorded its assignment, the recording would have appeared in the chain of title *after* Nouné Graeff thereby providing Lakes with notice and preventing him from purchasing the Property. It was U.S. Bank's obligation to timely record the purchase of its security interest. It was impossible for Mr. Lakes to have had knowledge of U.S. Bank's security interest prior to the May 2016 recording, which was four months after Lakes' purchase of the Property.

## **V. Conclusion**

The Court of Appeals properly found reversible error and remanded this matter to the district court for a determination of Mr. Lakes' status as a bona fide

purchaser pursuant to N.R.S. §111.325. Mr. Lakes' requests that this Court affirms the Court of Appeals ruling.

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## Certificate of Compliance

1. I hereby 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 Word 2016 in 14 point font Times New Roman.
  
2. I further certify that this brief complies with the type volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 2086 words; and I certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose.
  
3. 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 this 18th day of February 2021.

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## CERTIFICATE OF SERVICE

I certify that on the 18th day of February 2021, I served a copy of Daniel Lakes' Response to Petition for Review upon counsel of record via e-Flex electronic service to the following:

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