

Electronically Filed  
Oct 20 2020 09:50 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

1 **NOAS**  
2 ROGER P. CROTEAU, ESQ.  
3 Nevada Bar No. 4958  
4 TIMOTHY E. RHODA, ESQ.  
5 Nevada Bar No. 7878  
6 ROGER P. CROTEAU & ASSOCIATES, LTD.  
7 2810 W. Charleston Blvd., #75  
8 Las Vegas, Nevada 89102  
9 (702) 254-7775  
10 (702) 228-7719 (facsimile)  
11 [croteaulaw@croteaulaw.com](mailto:croteaulaw@croteaulaw.com)  
12 *Attorney for Plaintiff*  
13 **LAS VEGAS DEVELOPMENT GROUP, LLC**

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 \*\*\*

11 LAS VEGAS DEVELOPMENT GROUP, LLC, )  
12 a Nevada limited liability company, )

13 Plaintiff, )

14 vs. )

15 DANIA V. HERNANDEZ, an individual; THE )  
16 BANK OF NEW YORK MELLON f/k/a THE )  
17 BANK OF NEW YORK, AS TRUSTEE FOR )  
18 THE CERTIFICATEHOLDERS OF CWABS, )  
19 INC., ASSET-BACKED CERTIFICATES, )  
20 SERIES 2006-7, a national banking association; )  
21 DOE individuals I through XX; and ROE )  
22 CORPORATIONS I through XX, )

23 Defendants. )

24 THE BANK OF NEW YORK MELLON f/k/a )  
25 THE BANK OF NEW YORK, AS TRUSTEE )  
26 FOR THE CERTIFICATEHOLDERS OF )  
27 CWABS, INC., ASSET-BACKED )  
28 CERTIFICATES, SERIES 2006-7, )

29 Counterclaimant, )

30 vs. )

31 LAS VEGAS DEVELOPMENT GROUP, LLC, )  
32 a Nevada limited liability company, )

33 Counterdefendant. )

Case No. A-17-756215-C  
Dept. No. XIII

**NOTICE OF APPEAL**

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DATED this 15<sup>th</sup> day of October, 2020.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Timothy E. Rhoda  
 ROGER P. CROTEAU, ESQ.  
 Nevada Bar No. 4958  
 TIMOTHY E. RHODA, ESQ.  
 Nevada Bar No. 7878  
 2810 W. Charleston Blvd., #75  
 Las Vegas, Nevada 89102  
 (702) 254-7775  
***Attorney for Plaintiff***  
**LAS VEGAS DEVELOPMENT GROUP, LLC**

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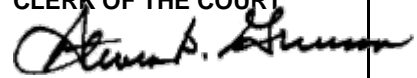
  X   VIA ELECTRONIC SERVICE: through the Eighth Judicial District Court's Odyssey e-file and serve system.

       VIA U.S. MAIL: by placing a true copy thereof 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.

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1 **ASTA**  
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7 2810 West Charleston Boulevard, #75  
8 Las Vegas, Nevada 89102  
9 (702) 254-7775  
10 (702) 228-7719 (facsimile)  
11 [croteaulaw@croteaulaw.com](mailto:croteaulaw@croteaulaw.com)  
12 *Attorney for Plaintiff*  
13 **LAS VEGAS DEVELOPMENT GROUP, LLC**

14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 \*\*\*

17 LAS VEGAS DEVELOPMENT GROUP, LLC, )  
18 a Nevada limited liability company, )

19 Plaintiff, )

20 vs. )

Case No. A-17-756215-C  
Dept. No. XIII

21 DANIA V. HERNANDEZ, an individual; THE )  
22 BANK OF NEW YORK MELLON f/k/a THE )  
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30 THE BANK OF NEW YORK, AS TRUSTEE )  
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33 CERTIFICATES, SERIES 2006-7, )

Counterclaimant, )

34 vs. )

35 LAS VEGAS DEVELOPMENT GROUP, LLC, )  
36 a Nevada limited liability company, )

Counterdefendant. )

**CASE APPEAL STATEMENT**

**CASE APPEAL STATEMENT**

COMES NOW, Plaintiff/Counter-Defendant, LAS VEGAS DEVELOPMENT GROUP, LLC, by and through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby submits its Case Appeal Statement.

**1. Name of appellant filing this case appeal statement:**

Las Vegas Development Group, LLC

**2. Identify the judge issuing the decision, judgment, or order appealed from:**

The Honorable Mark R. Denton

**3. Set forth the name, law firm, address, and telephone number of all counsel on appeal and identify the party or parties whom they represent:**

a. Las Vegas Development Group, LLC

Roger P. Croteau, Esq.  
Timothy E. Rhoda, Esq.  
Roger P. Croteau & Associates, Ltd.  
2810 West Charleston Boulevard, #75  
Las Vegas, Nevada 89102  
(702) 254-7775

**4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel:**

a. Dania V. Hernandez

This party did not appear in the action and is not a Respondent on appeal.

b. The Bank of New York Mellon f/k/a the Bank of New York, as Trustee for the Certificateholders of CWABS, Inc., Asset-backed Certificates, Series 2006-7

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Respondent's appellate counsel is unknown at this time but will  
presumably be Respondent's trial counsel:

Ariel E. Stern, Esq.  
Natalie L. Winslow, Esq.  
Nicholas E. Belay, Esq.  
Akerman, LLP  
1635 Village Center Circle, Suite 200  
Las Vegas, Nevada 89134  
(702) 634-5000

- 5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):**

N/A

- 6. Indicate whether appellant was represented by appointed or retained counsel in the district court:**

Retained counsel

- 7. Indicate whether appellant is represented by appointed or retained counsel on appeal:**

Retained counsel

- 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:**

N/A

- 9. Indicate the date the proceedings commenced in the district court, e.g., date complaint, indictment, information, or petition was filed:**

The original Complaint in this matter was filed on May 31, 2017, in the Eighth Judicial District Court of the State of Nevada in and for Clark County, Nevada.

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1           **10. Provide a brief description of the nature of the action and result in the**  
2           **district court, including the type of judgment or order being appealed and**  
3           **the relief granted by the district court:**

4           The action is a primarily a quiet title and declaratory judgment action  
5           related to real property that was the subject of a HOA lien foreclosure sale  
6           pursuant to NRS Chapter 116. The matter proceeded to a non-jury trial on July 28  
7           and 29, 2020. Subsequent to the conclusion of trial, the district court entered its  
8           Findings of Fact, Conclusions of Law, and Judgment in favor of the  
9           Defendant/Counterclaimant, finding that the bank's deed of trust was not  
10          extinguished by the HOA Foreclosure Sale. Appellant asserts that the district  
11          court erred in various respects. Of particular importance was the fact that there  
12          was little or no dispute that although the bank or its agent had tendered a payment  
13          towards the superpriority portion of the HOA Lien, said payment was insufficient  
14          to satisfy the entirety of the superpriority amount, which was an annual  
15          assessment. See *Anthony S. Noonan IRA, LLC, et al. v. U.S. Bank National*  
16          *Association EE, et al.*, 136 Nev. \_\_\_, Advanced Opinion 41 (July 9, 2000). The  
17          district court also failed to appropriately apply the statute of limitations to the  
18          bank's claims among other errors.

19           **11. Indicate whether the case has previously been the subject of an appeal or an**  
20           **original writ proceeding in the Supreme Court and, if so, the caption and**  
21           **Supreme Court docket number of the prior proceeding:**

22           N/A

23           **12. Indicate whether this appeal involves child custody or visitation:**

24           N/A

25          //

26          //

27          //

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**13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:**

Appellant believes that a settlement conference may be beneficial and that the possibility of settlement exists.

DATED this 15<sup>th</sup> day of October, 2020.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Timothy E. Rhoda  
 ROGER P. CROTEAU, ESQ.  
 Nevada Bar No. 4958  
 TIMOTHY E. RHODA, ESQ.  
 Nevada Bar No. 7878  
 2810 West Charleston Boulevard, #75  
 Las Vegas, Nevada 89102  
 (702) 254-7775  
*Attorney for Plaintiff*  
**LAS VEGAS DEVELOPMENT GROUP, LLC**

**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 15<sup>th</sup> day of October, 2020, 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 Eighth Judicial District Court's Odyssey e-file and serve system.
- \_\_\_\_\_ VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on service list below in the United States mail at Las Vegas, Nevada.
- \_\_\_\_\_ VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated on the service list below.
- \_\_\_\_\_ VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this date to the addressee(s) at the address(es) set forth on the service list below.

/s/ Timothy E. Rhoda  
An employee of ROGER P. CROTEAU &  
ASSOCIATES, LTD.

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-17-756215-C**

**Las Vegas Development Group LLC, Plaintiff(s)**  
**vs.**  
**Dania Hernandez, Defendant(s)**

§  
§  
§  
§  
§

Location: **Department 13**  
Judicial Officer: **Denton, Mark R.**  
Filed on: **05/31/2017**  
Cross-Reference Case Number: **A756215**

CASE INFORMATION

Case Type: **Other Title to Property**

Case Flags: **Appealed to Supreme Court  
Automatically Exempt from Arbitration**

DATE

CASE ASSIGNMENT

**Current Case Assignment**

Case Number           A-17-756215-C  
Court                   Department 13  
Date Assigned         05/31/2017  
Judicial Officer       Denton, Mark R.




PARTY INFORMATION

|                          |   |   |
|--------------------------|---|---|
| <b>Plaintiff</b>         | <b>Las Vegas Development Group LLC</b>                                    | <i>Lead Attorneys</i><br><b>Croteau, Roger P, ESQ</b><br><i>Retained</i><br>702-254-7775(W) |
| <b>Defendant</b>         | <b>Bank of New York Mellon</b>  | <b>Stern, Ariel E.</b><br><i>Retained</i><br>702-634-5000(W)                                |
|                          | <b>Hernandez, Dania V</b>   |   |
|                          | <b>Specialized Loan Servicing, LLC</b><br>Removed: 06/08/2017<br>Inactive |   |
| <b>Counter Claimant</b>  | <b>Bank of New York Mellon</b>  | <b>Stern, Ariel E.</b><br><i>Retained</i><br>702-634-5000(W)                                |
| <b>Counter Defendant</b> | <b>Las Vegas Development Group LLC</b>                                    | <b>Croteau, Roger P, ESQ</b><br><i>Retained</i><br>702-254-7775(W)                          |

DATE

EVENTS & ORDERS OF THE COURT

INDEX

|            |   |
|------------|---|
| 05/31/2017 |  <b>Complaint</b><br>Filed By: Counter Defendant Las Vegas Development Group LLC<br><i>Complaint</i>                             |
| 05/31/2017 |  <b>Initial Appearance Fee Disclosure</b><br><i>Initial Appearance Fee Disclosure</i>  |
| 06/08/2017 |  <b>First Amended Complaint</b><br>Filed By: Counter Defendant Las Vegas Development Group LLC<br><i>First Amended Complaint</i> |




DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-17-756215-C**

|            |  |
|------------|--|
| 06/09/2017 |  Acceptance of Service<br>Filed By: Counter Defendant Las Vegas Development Group LLC<br><i>Acceptance of Service - Bank of New York Mellon</i>   |
| 06/15/2017 |  Answer and Counterclaim<br>Filed By: Counter Claimant Bank of New York Mellon<br><i>The Bank of New York Mellon as Trustee's Answer to Plaintiff's Complaint and Counterclaims</i>   |
| 06/16/2017 |  Initial Appearance Fee Disclosure<br>Filed By: Counter Claimant Bank of New York Mellon<br><i>Initial Appearance Fee Disclosure</i>  |
| 06/16/2017 |  Motion To Dismiss - Alternative Motion For Summary Judgment<br>Filed By: Counter Defendant Las Vegas Development Group LLC<br><i>Motion to Dismiss Counterclaim and Motion for Summary Judgment</i>                                    |
| 07/06/2017 |  Stipulation and Order<br>Filed by: Counter Claimant Bank of New York Mellon<br><i>Stipulation and Order to Extend Briefing Schedule and to Continue Hearing on Motion to Dismiss COunterclaim and for Summary Judgment</i>             |
| 07/07/2017 |  Notice of Entry<br>Filed By: Counter Claimant Bank of New York Mellon<br><i>Notice Of Entry Of Stipulation And Order To Extend Briefing Schedule And Continue Hearing On Motion To Dismiss Counterclaim And For Summary Judgment</i>   |
| 07/25/2017 |  Opposition to Motion<br>Filed By: Counter Claimant Bank of New York Mellon<br><i>The Bank Of New York Mellon, As Trustee's Opposition To Las Vegas Development Group, Llc's Motion To Dismiss And Motion For Summary Judgment</i>    |
| 08/07/2017 |  Reply to Opposition<br>Filed by: Counter Defendant Las Vegas Development Group LLC<br><i>Reply to Opposition to Motion to Dismiss Counterclaim and Motion for Summary Judgment</i>   |
| 08/10/2017 |  <b>Motion for Summary Judgment (9:00 AM)</b> (Judicial Officer: Denton, Mark R.)<br><i>Plaintif's Motion to Dismiss Counterclaim and Motion for Summary Judgment</i><br>Denied Without Prejudice;<br><i>Denied Without Prejudice</i> |
| 01/26/2018 |  Notice<br>Filed By: Counter Claimant Bank of New York Mellon<br><i>Notice of Completion of NRED Mediation</i>  |
| 04/02/2018 |  Joint Case Conference Report<br>Filed By: Counter Defendant Las Vegas Development Group LLC  |
| 05/14/2018 |  Scheduling Order<br><i>Scheduling Order</i>  |
| 05/29/2018 |  Order Setting Civil Non-Jury Trial<br><i>Order Setting Civil Non-Jury Trial and Calendar Call</i>  |
| 01/22/2019 |  Notice of Lis Pendens  |










DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-17-756215-C**

|            |   |
|------------|---|
|            | Filed by: Counter Claimant Bank of New York Mellon<br><i>Notice of Lis Pendens</i>  |
| 03/18/2019 |  Motion for Summary Judgment<br>Filed By: Counter Claimant Bank of New York Mellon<br><i>Motion for Summary Judgment</i>   |
| 03/26/2019 |  Clerk's Notice of Hearing<br><i>Notice of Hearing</i>   |
| 04/04/2019 |  Opposition to Motion For Summary Judgment<br>Filed By: Counter Defendant Las Vegas Development Group LLC<br><i>Opposition to Motion for Summary Judgment</i>  |
| 04/12/2019 |  Stipulation and Order<br>Filed by: Counter Defendant Las Vegas Development Group LLC<br><i>Stipulation and Order to Extend Briefing Schedule and Continue Hearing on Motion for Summary Judgment, and Continue Trial</i>            |
| 04/22/2019 |  Order Setting Civil Bench Trial<br><i>Order Setting Civil Non-Jury Trial and Calendar Call</i>  |
| 04/29/2019 | <b>CANCELED Calendar Call</b> (2:00 PM) (Judicial Officer: Denton, Mark R.)<br><i>Vacated - per Stipulation and Order</i>   |
| 05/07/2019 | <b>CANCELED Bench Trial</b> (9:00 AM) (Judicial Officer: Denton, Mark R.)<br><i>Vacated - per Stipulation and Order</i>   |
| 05/08/2019 |  Stipulation and Order<br>Filed by: Counter Claimant Bank of New York Mellon<br><i>Stipulation and Order to Extend Briefing Schedule and Continue Hearing on Motion for Summary Judgment</i>                                       |
| 05/14/2019 |  Notice of Entry of Stipulation and Order<br>Filed By: Counter Claimant Bank of New York Mellon<br><i>Notice Of Entry Of Stipulation And Order To Extend Briefing Schedule And Continue Hearing On Motion For Summary Judgment</i> |
| 05/30/2019 |  Stipulation and Order<br>Filed by: Counter Claimant Bank of New York Mellon<br><i>Stipulation and Order to Continue Hearing on Motion for Summary Judgment</i>  |
| 05/31/2019 |  Notice of Entry<br><i>Notice of Entry of Order to Continue Hearing on Motion for Summary Judgment</i>   |
| 06/05/2019 |  Order<br><i>Order Rescheduling Calendar Call</i>  |
| 06/21/2019 |  Stipulation and Order<br>Filed by: Counter Defendant Las Vegas Development Group LLC<br><i>Stipulation and Order to Continue Hearing on Motion for Summary Judgment, Calendar Call and Trial</i>                                  |
| 06/24/2019 | <b>CANCELED Calendar Call</b> (1:30 PM) (Judicial Officer: Denton, Mark R.)<br><i>Vacated - per Stipulation and Order</i>   |

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-17-756215-C**

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|------------|--|
| 06/25/2019 |  Order Setting Civil Non-Jury Trial and Calendar Call<br><i>Order Setting Civil Non-Jury Trial and Calendar Call</i>  |
| 07/01/2019 | <b>CANCELED Calendar Call</b> (2:00 PM) (Judicial Officer: Denton, Mark R.)<br><i>Vacated - Superseding Order</i>  |
| 07/05/2019 |  Reply in Support<br>Filed By: Counter Claimant Bank of New York Mellon<br><i>Reply Supporting Motion for Summary Judgment</i>                                      |
| 07/09/2019 | <b>CANCELED Bench Trial</b> (9:00 AM) (Judicial Officer: Denton, Mark R.)<br><i>Vacated - per Stipulation and Order</i>  |
| 07/11/2019 |  <b>Motion for Summary Judgment</b> (9:00 AM) (Judicial Officer: Denton, Mark R.)<br><i>Defendant's Motion for Summary Judgment</i><br>Denied;<br><i>Denied</i>     |
| 08/02/2019 |  Order Denying Motion<br>Filed By: Counter Defendant Las Vegas Development Group LLC<br><i>Order Denying Defendant's Motion for Summary Judgement</i>               |
| 08/02/2019 |  Notice of Entry<br>Filed By: Counter Defendant Las Vegas Development Group LLC<br><i>Notice of Entry of Order Denying Defendant's Motion for Summary Judgement</i> |
| 11/25/2019 |  <b>Calendar Call</b> (2:00 PM) (Judicial Officer: Denton, Mark R.)<br>Matter Heard;<br><i>Matter Heard</i>   |
| 12/02/2019 |  Order Setting Civil Bench Trial<br><i>Order Setting Civil Non-Jury Trial and Calendar Call</i>   |
| 12/03/2019 | <b>CANCELED Bench Trial</b> (9:00 AM) (Judicial Officer: Denton, Mark R.)<br><i>Vacated</i>  |
| 01/27/2020 |  Answer to Counterclaim<br>Filed By: Counter Defendant Las Vegas Development Group LLC<br><i>Answer to Counterclaim</i>   |
| 02/24/2020 |  Pre-trial Memorandum<br>Filed by: Counter Claimant Bank of New York Mellon<br><i>Individual Pre-Trial Memorandum</i>   |
| 02/25/2020 |  Joint Pre-Trial Memorandum<br>Filed By: Counter Claimant Bank of New York Mellon<br><i>Amended joint Pretrial Memorandum</i>                                     |
| 02/27/2020 |  Stipulation<br>Filed by: Counter Claimant Bank of New York Mellon<br><i>Stipulated Facts for Trial</i>   |
| 03/02/2020 |  <b>Calendar Call</b> (2:00 PM) (Judicial Officer: Denton, Mark R.)   |

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-17-756215-C**

|            |   |
|------------|---|
|            | Trial Date Set;<br><i>Trial Date Set</i>  |
| 03/10/2020 | <b>CANCELED Bench Trial</b> (9:00 AM) (Judicial Officer: Denton, Mark R.)<br><i>Vacated</i>   |
| 03/18/2020 |  <b>Minute Order</b> (1:00 PM) (Judicial Officer: Denton, Mark R.)<br><i>Re: Bench Trial</i><br>Minute Order - No Hearing Held;<br><i>Minute Order - No Hearing Held</i>   |
| 03/23/2020 |  Order Setting Civil Non-Jury Trial<br><i>Order Setting Civil Non-Jury Trial and Calendar Call</i>   |
| 03/31/2020 | <b>CANCELED Non-Jury Trial</b> (9:00 AM) (Judicial Officer: Denton, Mark R.)<br><i>Vacated - per Judge</i>  |
| 06/23/2020 |  Notice of Intent<br>Filed By: Counter Claimant Bank of New York Mellon<br><i>Notice of Intent to Present Records by Certificate of Custodian of Records and Notice of Intent to Present Witnesses by Phone</i>                              |
| 06/24/2020 |  <b>Minute Order</b> (2:00 PM) (Judicial Officer: Denton, Mark R.)<br><i>Re: BlueJeans Appearance</i><br>Minute Order - No Hearing Held;<br><i>Minute Order - No Hearing Held</i>  |
| 06/29/2020 |  <b>Calendar Call</b> (2:00 PM) (Judicial Officer: Denton, Mark R.)<br>Trial Date Set;<br><i>Trial Date Set</i>  |
| 07/07/2020 | <b>CANCELED Non-Jury Trial</b> (9:00 AM) (Judicial Officer: Denton, Mark R.)<br><i>Vacated</i>  |
| 07/21/2020 |  <b>Minute Order</b> (8:30 AM) (Judicial Officer: Denton, Mark R.)<br><i>Re: Trial Procedures</i><br>Minute Order - No Hearing Held;<br><i>Minute Order - No Hearing Held</i>  |
| 07/28/2020 |  <b>Non-Jury Trial</b> (1:30 PM) (Judicial Officer: Denton, Mark R.)<br><b>07/28/2020-07/29/2020</b><br>Trial Continues;<br>Court Finds for Defendant;<br><br>Trial Continues;<br>Court Finds for Defendant;<br><br><i>Trial Continues</i> |
| 07/28/2020 |  Trial Brief<br>Filed By: Counter Defendant Las Vegas Development Group LLC<br><i>Plaintiff's Trial Brief</i>  |
| 07/28/2020 |  Trial Brief<br>Filed By: Counter Defendant Las Vegas Development Group LLC<br><i>Plaintiff's Amended Trial Brief</i>  |

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-17-756215-C**

|            |   |
|------------|---|
| 07/29/2020 |  Trial Brief<br>Filed By: Counter Claimant Bank of New York Mellon<br><i>The Bank of New York Mellon, as Trustee's Trial Brief</i>   |
| 08/17/2020 |  Notice<br>Filed By: Counter Claimant Bank of New York Mellon<br><i>Notice of Filing of Proposed Findings of Fact, Conclusions of Law, and Judgment</i>  |
| 08/18/2020 |  Findings of Fact, Conclusions of Law and Judgment<br>Filed by: Counter Defendant Las Vegas Development Group LLC<br><i>Plaintiff's Proposed Findings of Fact, Conclusions of Law and Judgment</i>   |
| 09/17/2020 |  Findings of Fact, Conclusions of Law and Judgment<br><i>Findings of Fact, Conclusions of Law, and Judgment</i>  |
| 09/17/2020 | <b>Judgment</b> (Judicial Officer: Denton, Mark R.)<br>Debtors: Bank of New York Mellon (Defendant)<br>Creditors: Las Vegas Development Group LLC (Plaintiff)<br>Judgment: 09/17/2020, Docketed: 09/18/2020<br>Comment: Certain Claims  |
| 09/23/2020 |  Memorandum of Costs and Disbursements<br>Filed By: Counter Claimant Bank of New York Mellon<br><i>The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2006-7'S Memorandum of Costs and Disbursements</i>                                      |
| 10/01/2020 |  Notice of Entry of Judgment<br>Filed By: Counter Claimant Bank of New York Mellon<br><i>Notice of Entry of Findings of Fact, Conclusion of Law and Judgment</i>   |
| 10/15/2020 |  Notice of Appeal<br>Filed By: Counter Defendant Las Vegas Development Group LLC<br><i>Notice of Appeal</i>  |
| 10/15/2020 |  Case Appeal Statement<br>Filed By: Counter Defendant Las Vegas Development Group LLC<br><i>Case Appeal Statement</i>  |
| 10/15/2020 |  Motion for Attorney Fees and Costs<br>Filed By: Counter Claimant Bank of New York Mellon<br><i>The Bank o New York Mellon f/k/a The Bank of New York, as Trustee for the Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2006-7's Motion for Attorneys' Fees and Costs Pursuant to NRCP 68 (Hearing Requested)</i> |
| 10/15/2020 |  Notice of Voluntary Dismissal<br>Filed By: Counter Defendant Las Vegas Development Group LLC<br><i>Voluntary Dismissal (Dania V. Hernandez)</i>   |
| 10/16/2020 |  Clerk's Notice of Hearing<br><i>Notice of Hearing</i>   |
| 11/16/2020 | <b>Motion for Attorney Fees and Costs (9:00 AM)</b> (Judicial Officer: Denton, Mark R.)<br><i>The Bank o New York Mellon f/k/a The Bank of New York, as Trustee for the Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2006-7's Motion for Attorneys' Fees and Costs Pursuant to NRCP 68</i>  |

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-17-756215-C**

| DATE | FINANCIAL INFORMATION                                    |             |
|------|--|-------------|
|      | <b>Counter Claimant</b> Bank of New York Mellon          |             |
|      | Total Charges  | 423.00      |
|      | Total Payments and Credits                               | 423.00      |
|      | <b>Balance Due as of 10/19/2020</b>                      | <b>0.00</b> |
|      | <b>Counter Defendant</b> Las Vegas Development Group LLC |             |
|      | Total Charges  | 497.00      |
|      | Total Payments and Credits                               | 497.00      |
|      | <b>Balance Due as of 10/19/2020</b>                      | <b>0.00</b> |

## DISTRICT COURT CIVIL COVER SHEET

County, Nevada

A-17-756215-C

Case No. \_\_\_\_\_

Department 13

(Assigned by Clerk's Office)

**I. Party Information** (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

LAS VEGAS DEVELOPMENT GROUP, LLC, a Nevada limited liability company,

Defendant(s) (name/address/phone):

DANIA V. HERNANDEZ, an individual; THE BANK OF  
NEW YORK MELLON f/k/a THE BANK OF NEW YORK,  
AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF  
CWABS, INC., ASSET-BACKED CERTIFICATES, INC.

Attorney (name/address/phone):

TIMOTHY E RHODA, ESQ.

Attorney (name/address/phone):

ROGER P. CROTEAU &amp; ASSOCIATES, LTD.

9120 WEST POST ROAD, SUITE 100

LAS VEGAS, NEVADA 89148 (702) 254-7775

**II. Nature of Controversy** (please select the one most applicable filing type below)**Civil Case Filing Types**

|  |  |  |  |  |
|--|--|--|--|--|
| <b>Real Property</b><br><b>Landlord/Tenant</b><br><input type="checkbox"/> Unlawful Detainer<br><input type="checkbox"/> Other Landlord/Tenant<br><b>Title to Property</b><br><input type="checkbox"/> Judicial Foreclosure<br><input checked="" type="checkbox"/> Other Title to Property<br><b>Other Real Property</b><br><input type="checkbox"/> Condemnation/Eminent Domain<br><input type="checkbox"/> Other Real Property   |  | <b>Torts</b><br><b>Negligence</b><br><input type="checkbox"/> Auto<br><input type="checkbox"/> Premises Liability<br><input type="checkbox"/> Other Negligence<br><b>Malpractice</b><br><input type="checkbox"/> Medical/Dental<br><input type="checkbox"/> Legal<br><input type="checkbox"/> Accounting<br><input type="checkbox"/> Other Malpractice   |  | <b>Other Torts</b><br><input type="checkbox"/> Product Liability<br><input type="checkbox"/> Intentional Misconduct<br><input type="checkbox"/> Employment Tort<br><input type="checkbox"/> Insurance Tort<br><input type="checkbox"/> Other Tort  |
| <b>Probate</b><br><b>Probate</b> (select case type and estate value)<br><input type="checkbox"/> Summary Administration<br><input type="checkbox"/> General Administration<br><input type="checkbox"/> Special Administration<br><input type="checkbox"/> Set Aside<br><input type="checkbox"/> Trust/Conservatorship<br><input type="checkbox"/> Other Probate<br><b>Estate Value</b><br><input type="checkbox"/> Over \$200,000<br><input type="checkbox"/> Between \$100,000 and \$200,000<br><input type="checkbox"/> Under \$100,000 or Unknown<br><input type="checkbox"/> Under \$2,500 |  | <b>Construction Defect &amp; Contract</b><br><b>Construction Defect</b><br><input type="checkbox"/> Chapter 40<br><input type="checkbox"/> Other Construction Defect<br><b>Contract Case</b><br><input type="checkbox"/> Uniform Commercial Code<br><input type="checkbox"/> Building and Construction<br><input type="checkbox"/> Insurance Carrier<br><input type="checkbox"/> Commercial Instrument<br><input type="checkbox"/> Collection of Accounts<br><input type="checkbox"/> Employment Contract<br><input type="checkbox"/> Other Contract |  | <b>Judicial Review/Appeal</b><br><b>Judicial Review</b><br><input type="checkbox"/> Foreclosure Mediation Case<br><input type="checkbox"/> Petition to Seal Records<br><input type="checkbox"/> Mental Competency<br><b>Nevada State Agency Appeal</b><br><input type="checkbox"/> Department of Motor Vehicle<br><input type="checkbox"/> Worker's Compensation<br><input type="checkbox"/> Other Nevada State Agency<br><b>Appeal Other</b><br><input type="checkbox"/> Appeal from Lower Court<br><input type="checkbox"/> Other Judicial Review/Appeal |
| <b>Civil Writ</b><br><b>Civil Writ</b><br><input type="checkbox"/> Writ of Habeas Corpus<br><input type="checkbox"/> Writ of Mandamus<br><input type="checkbox"/> Writ of Quo Warrant<br><input type="checkbox"/> Writ of Prohibition<br><input type="checkbox"/> Other Civil Writ   |  |  |  | <b>Other Civil Filing</b><br><input type="checkbox"/> Compromise of Minor's Claim<br><input type="checkbox"/> Foreign Judgment<br><input type="checkbox"/> Other Civil Matters   |

Business Court filings should be filed using the Business Court civil coversheet.

5/30/2017

Date

Signature of initiating party or representative

See other side for family-related case filings.

*Heaven & Sun*

CLERK OF THE COURT

1 FFCL

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 LAS VEGAS DEVELOPMENT GROUP,  
5 LLC, a Nevada limited liability company,

Case No.: A-17-756215-C  
Dept. No.: XIII

6 Plaintiff,

7 vs.

8 DANIA V. HERNANDEZ, an individual;  
9 THE BANK OF NEW YORK MELLON  
F/K/A THE BANK OF NEW YORK, AS  
10 TRUSTEE FOR THE  
CERTIFICATEHOLDERS OF CWABS,  
11 INC., ASSET-BACKED CERTIFICATES,  
SERIES 2006-7, a national banking  
12 association; DOE individuals I through XX;  
and ROE CORPORATIONS I through XX,

FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND JUDGMENT

13 Defendants.

14 THE BANK OF NEW YORK MELLON  
F/K/A THE BANK OF NEW YORK, AS  
15 TRUSTEE FOR THE  
CERTIFICATEHOLDERS OF CWABS,  
16 INC., ASSET-BACKED CERTIFICATES,  
SERIES 2006-7,

17 Counterclaimant,

18 vs.

19 LAS VEGAS DEVELOPMENT GROUP,  
20 LLC, a Nevada limited liability company,

21 Counterdefendant.

22 THIS MATTER having come on for non-jury trial on July 28 and 29, 2020, Plaintiff  
23 appearing by and through Roger P. Croteau, Esq. of the firm of Roger P. Croteau &  
24 Associates, Ltd., and the entity Defendants appearing by and through Rex D. Garner, Esq. of  
25 the firm of Akerman LLP;

26 AND, the Court having heard the testimony of witnesses and received other evidence  
27 and heard the argument of counsel and having taken the matter under advisement pending  
28

1 submission of proposed findings of fact and conclusions of law and judgment, and being now  
2 fully advised in the premises;

3 NOW, THEREFORE the Court hereby makes the following

4 **FINDINGS OF FACT**

5 ***The Subject Property, Note, and Deed of Trust***

6 1. On April 10, 2006 Dania Hernandez purchased the property located at 1524  
7 Highfield Court, Las Vegas, Nevada, financed with a loan from Countrywide Home Loans,  
8 Inc. in the amount of \$208,000.00. The loan was evidenced by a note and secured by a deed  
9 of trust recorded against the property on April 19, 2006. **Trial Ex. 26; Stipulated Facts, ¶**  
10 **1.**<sup>1</sup>

11 2. The deed of trust was assigned to BoNYM in 2011 via a recorded assignment  
12 of deed of trust. **Trial Ex. 32; Stipulated Facts, ¶ 2.**

13 ***The HOA Foreclosure and the Tender***

14 3. The property is located in the Hidden Canyon Owners Association (HOA) and  
15 is subject to the HOA's covenants, conditions, and restrictions (CC&Rs). **Stipulated Facts, ¶**  
16 **3.**

17 4. Hernandez failed to pay the HOA all amounts due to it, so the HOA, through  
18 its agent, Alessi & Koenig, LLC (Alessi), recorded a notice of delinquent assessment lien on  
19 June 3, 2009. Per the notice, the amount due to HOA was \$571.85. **Trial Ex. 27; Stipulated**  
20 **Facts, ¶ 4.**

21 5. The HOA, through its agent Alessi, recorded a notice of default on September  
22 2, 2009.<sup>2</sup> The notice states the amount due to HOA was \$1,404.49. **Trial Ex. 28; Stipulated**  
23 **Facts, ¶ 5.**

24  
25 <sup>1</sup> The stipulated facts were filed February 27, 2020.

26 <sup>2</sup> Assembly Bill 204 in the 2009 legislative session amended NRS 116.3116, increasing the  
27 superpriority from 6 months to 9 months. This bill took effect October 1, 2009. The action to  
28 enforce the lien in this case, having started before October 1, 2009, means the HOA's  
superpriority lien in this case was limited to 6 months. *See Saticoy Bay LLC Series 2021*  
*Gray Eagle Way v. JPMorgan Chase Bank, N.A.*, 388 P.3d 226, 231, 133 Nev. Adv. Op. 3  
(2017) (serving a notice of delinquent assessments constitutes institution of an action to  
enforce the lien) ("As such, a party has instituted "proceedings to enforce the lien" for

1           6.       On October 20, 2009, Miles Bauer Bergstrom & Winters LLP (**Miles Bauer**),  
2 as the attorneys of MERS, as nominee for BAC Home Loans Servicing, LP, as then-servicer  
3 of the loan, requested a breakdown of the HOA arrears from Alessi, and the identification of  
4 the superpriority amount owed to HOA. **Stipulated Facts, ¶ 6.**

5           7.       On or about December 17, 2009, Alessi provided a facsimile cover letter and  
6 Resident Transaction Detail, which revealed the HOA charged assessments for common  
7 expenses of \$118.00 annually, and showing the account had no charges for nuisance  
8 abatement or exterior maintenance. **Stipulated Facts, ¶¶ 7–9.** Such item did not give a  
9 monthly breakdown, but such a breakdown would amount to \$9.83 monthly.

10           8.       On January 21, 2010, Miles Bauer sent a letter, together with a check payable  
11 to Alessi in the amount of \$88.50 to Alessi, purporting to represent 9 months of assessments,  
12 *i.e.* nine-twelfths of the HOA annual assessment of \$118.00. **Trial Ex. 41; Stipulated Facts,**  
13 **¶ 10.**

14           9.       Alessi refused Miles Bauer's payment. **Trial Ex. 41; Stipulated Facts, ¶ 11.**

15           10.      At the time Alessi rejected Miles Bauer's payment, it explained its reasoning  
16 for doing so in a letter found within Alessi's file for this property's foreclosure, which had  
17 nothing to do with a 9-month versus 12-month difference, but instead with Alessi's  
18 understanding and belief that the superpriority included its fees and costs in addition to  
19 assessments owed:

20                   ". . . we are unable to accept the partial payments offered by your clients as  
21 payment in full. . . . case authority exists which provides that the association's lien  
22 also includes the reasonable cost of collection of those assessments.

23                   If the association were to accept your offer that only includes assessments, Alessi  
24 & Koenig would be left with a lien against the association for our substantial out-  
of-pocket expenses and fees generated. . . ."

**Trial Ex. 41 at 41-069; see also Trial Ex. 40.**

25  
26  
27                   purposes of NRS 116.3116(6) when it provides the notice of delinquent assessment. This  
28 interpretation conforms to our decision in *SFR*, where we stated that "[t]o initiate foreclosure  
under NRS 116.31162 through NRS 116.31168, a Nevada HOA must notify the owner of the  
delinquent assessments.").

1           11. Alessi & Koenig's letter did not identify a different dollar amount that it  
2 believed was the superpriority. **Trial Ex. 41** at 41-069.

3           12. Alessi & Koenig reiterated their policy two years later in another letter to  
4 Miles Bauer:

5           ". . . In the opinion, the Commission concluded that associations may collect, as  
6 part of the super priority lien, the costs of collecting as authorized by NRS  
7 116.310313.

8           Furthermore, the nine-month super-priority is not triggered until the beneficiary  
under the first deed of trust forecloses."

9 **Trial Ex. 39.**

10           13. The HOA, through its agent Alessi, recorded a notice of sale on August 9,  
11 2010. The notice states the amount due to HOA was \$2,862.23. **Trial Ex. 29; Stipulated**  
12 **Facts, ¶ 12.**

13           14. Alessi, on behalf of the HOA, auctioned the property on March 2, 2011, and  
14 the HOA won the bidding with a credit bid for all amounts owed to it. **Testimony of Yvette**  
15 **Sauceda** (HOA representative). A foreclosure deed in favor of the HOA was recorded March  
16 3, 2011. **Trial Ex. 30; Stipulated Facts, ¶ 13.**

17           15. Because the HOA credit bid, no money changed hands as a consequence of the  
18 auction, and the assessment balance to the HOA remained unpaid. **Testimony of Yvette**  
19 **Sauceda** (HOA representative); *see also* **Trial Ex. 46** at 46-029.

20           16. Not until weeks later through a non-NRS-116 sale to LVDG did the HOA get  
21 funds and apply them to the assessments that comprised the superpriority. **Testimony of**  
22 **Yvette Saucedo.**

23           17. On March 30, 2011, the HOA quitclaimed its interest to LVDG in exchange  
24 for \$4,500.00. **Trial Ex. 31; Stipulated Facts, ¶ 14.**

25           18. At the time of the HOA's foreclosure sale, the property's fair market value was  
26 \$76,000.00, meaning both the auction price and the amount LVDG paid were less than 6% of  
27 the fair market value. **Stipulated Facts, ¶ 15.**

1 Any of the foregoing Findings of Fact that are more appropriately to be considered  
2 Conclusions of Law shall be so deemed.

3 FROM the foregoing Findings of Fact, the Court hereby makes the following

4 **CONCLUSIONS OF LAW**

5 ***Burdens of Proof***

6 1. As explained by the Nevada Supreme Court, "the burden of proof rests with  
7 the party seeking to quiet title in its favor." *Shadow Wood Homeowners Ass'n, Inc. v. N.Y.*  
8 *Cnty. Bancorp.*, 132 Nev. 49, 366 P.3d 1105 (2016) (citing *Breliant v. Preferred Equities*  
9 *Corp.*, 112 Nev. 663, 669, 918 P.2d 314, 318 (1996)); *see also Res. Grp., LLC as Tr. of E.*  
10 *Sunset Rd. Tr. v. Nevada Ass'n Servs., Inc.*, 135 Nev. Adv. Op. 8, 437 P.3d 154, 156 (2019)  
11 ("each party to a quiet title action has the burden of demonstrating superior title in himself or  
12 herself").

13 2. LVDG bears the burden of proof on all its claims against defendants, and  
14 BoNYM bears the burden of proof on its counterclaims and defenses.

15 3. Further, deed recitals are not conclusive. *See Shadow Wood, supra*. To the  
16 extent there is any evidentiary value found in deed recitals, it is limited only to "default,  
17 notice, and publication," and statutory prerequisites to the sale. *Id.* The recitals do not  
18 address the issues in this case, including tender and the equities of the sale. *Shadow Wood*,  
19 132 Nev., Adv. Op. 5, 366 P.3d at 1110 (explaining deed recitals do not eliminate equitable  
20 relief).

21 ***Bank of America's tender did not itself preserve the deed of trust***

22 4. Under NRS 116.3116(2), an association's lien is split "into two pieces, a  
23 superpriority piece and a sub-priority piece." *SFR Investments Pool 1, LLC v. U.S. Bank,*  
24 *N.A.*, 130 Nev. 742, 745, 334 P.3d 408, 411 (2014). If a senior deed of trust holder pays or  
25 tenders payment of the superpriority before the HOA's sale, the superpriority piece is  
26 satisfied, meaning the HOA's auction cannot affect the senior deed of trust. *Bank of America,*  
27 *N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. Adv. Op. 72, 427 P.3d 113 (2018) (*Diamond Spur*)  
28

1 ("Bank of America's tender cured the default and prevented foreclosure as to the superpriority  
2 portion of the HOA's lien by operation of law.").

3 5. Just as it did in *Diamond Spur*, here Miles Bauer sent a letter to the HOA's  
4 collection agent, seeking to determine the superpriority amount of the HOA's lien and  
5 "offer[ing] to pay that sum upon presentation of adequate proof of the same by the HOA."  
6 **Trial Ex. 41; Stip. Facts**, at ¶ 6. In response, Alessi provided a ledger. **Trial Ex. 41; Stip.**  
7 **Facts**, at ¶ ¶ 7–9.

8 6. Based on the ledger, which showed the account had no nuisance or  
9 maintenance charges under NRS 116.310312, but which did not identify a superpriority  
10 amount, Miles Bauer sent a check purporting to represent 9 months of assessments. *See*  
11 *Finding of Fact No. 8, supra*. **Trial Ex. 41; Stipulated Facts, ¶ 10.**

12 7. Alessi rejected the payment. *See id.*; **Stip. Facts**, at ¶ 11. The Nevada  
13 Supreme Court has recently held that if an HOA makes assessments payable annually, the  
14 entire assessment amount can have superpriority status if it becomes due within the nine  
15 months preceding the notice of delinquent assessments, which is the case here. *Anthony S.*  
16 *Noonan IRA, LLC v. U.S. Bank Nat'l Ass'n EE*, 136 Nev. Adv. Op. 41, 466 P.3d 1276 (2020).

17 8. The Nevada Supreme Court has confirmed that Miles Bauer could rely on the  
18 information provided by an association's collection agent in calculating their superpriority  
19 tenders in *Diamond Spur*, explaining:

20  
21 The record establishes that Bank of America tendered the correct amount to  
22 satisfy the superpriority portion of the lien on the property. **Pursuant to the**  
23 **HOA's accounting**, nine months' worth of assessment fees totaled \$720, **and**  
24 **the HOA did not indicate that the property had any charges for**  
25 **maintenance or nuisance abatement**. Bank of America sent the HOA a  
26 check for \$720 in June 2012. On the record presented, this was the full  
27 superpriority amount.

28 134 Nev. at 607 (emphasis added). Earlier in the opinion, the Court stated that Miles Bauer  
tendered the correct superpriority amount "based on the HOA's representations" to Miles  
Bauer. *See id.*, at 605; *see also* 74 AM. JUR. 2d *Tender* § 4 (explaining that offering to pay a  
specific amount is "excused" if "the amount depends on the balance shown by accounts that  
are inaccessible to the party from whom the tender would otherwise be required . . . and such

1 information is ascertainable only from the accounts of the creditor, who does not disclose the  
2 required information to the debtor"). Miles Bauer had a right to rely on the document  
3 provided to them by Alessi to calculate the superpriority amount, and Alessi never suggested  
4 a different dollar amount. Moreover, the Supreme Court's use of the term "worth" supports  
5 the notion that the yearly assessment in this case could be properly apportioned to determine  
6 the monetary amount represented by nine months. However, the Nevada Supreme Court has  
7 otherwise ruled in *Noonan, supra*.

8 9. However, Alessi rejected the tender check not because Miles Bauer's  
9 superpriority calculation was off by a few dollars—Alessi rejected the check because it was  
10 not for the full amount secured by the HOA's **entire** lien (both subpriority and superpriority  
11 portions), just as its letter to Miles Bauer said. **Trial Ex. 41** at 41-069.

12 10. The Nevada Supreme Court has held that "... an offer to pay the superpriority  
13 amount in the future, once that amount is determined, does not constitute a tender sufficient to  
14 preserve the first deed of trust." *7510 Perla Del Mar Ave. Tr. v. Bank of America, N.A.*, 136  
15 Nev. Adv. Op. 6, 458 P.3d 348, 349 (2020). (*Perla*)

16 *Alternatively, Miles Bauer was excused from tendering a superpriority payment because it*  
17 *would have been futile*

18 11. However, a tendering party can also establish excuse from formal  
19 tender/delivery of money. *Perla, supra*, at 349 ("formal tender is excused when the evidence  
20 shows that the party entitled to payment had a known policy of rejecting [superpriority]  
21 payments.").

22 12. The *Perla* decision confirms long-standing law that delivery of payment is *not*  
23 always necessary to effectuate a legal tender.<sup>3</sup> To be sure, a creditor like an HOA and its  
24

25 <sup>3</sup> See, e.g., *Guthrie v. Curnutt*, 417 F.2d 764, 765–66 (10th Cir. 1969) ("[W]hen a party, able  
26 and willing to do so, offers to pay another a sum of money and is told that it will not be  
27 accepted, the offer is a tender without the money being produced."); *In re Pickel*, 493 B.R.  
28 258, 271 (Bankr. D.N.M. 2013) ("Tender is unnecessary if the other party has stated that the  
amount due would not be accepted."); *Mark Turner Props., Inc. v. Evans*, 554 S.E.2d 492,  
495 (Ga. 2001) ("Tender of an amount due is waived when the party entitled to payment, by  
declaration or by conduct, proclaims that, if tender of the amount due is made, an acceptance  
of 'it will be refused.' (internal quotation marks and alterations omitted)); 74 Am. Jur. 2d  
Tender § 4 (2012) ("A tender of an amount due is waived when the party entitled to payment,

1 collection agent can waive or excuse payment, and they can do this by words or by conduct.  
2  
3 *Id.*

4 13. In addition to waiver, a creditor's words or actions—like Alessi's ordinary  
5 course of business to reject payments—can render payment futile, in which case the law will  
6 not require a payor to perform a useless or futile act.<sup>4</sup>

7 14. Here, Alessi had a well-known policy of rejecting Miles Bauer's payments, as  
8 its letter acknowledges:

9 ". . . we are unable to accept the partial payments offered by your clients as  
10 payment in full . . . case authority exists which provides that the association's  
11 lien also includes the reasonable cost of collection of those assessments.

12 If the association were to accept your offer that only includes assessments,  
13 Alessi & Koenig would be left with a lien against the association for our  
14 substantial out-of-pocket expenses and fees generated. . . ."

15 **Trial Ex. 41** at 069; *see also* **Trial Ex. 39** ("Furthermore, the nine-month super-priority is not  
16 triggered until the beneficiary under the first deed of trust forecloses.").

17 by declaration or by conduct, proclaims that, if tender of the amount due is made, it will not  
18 be accepted."); 86 C.J.S. Tender § 5 (2017) (tender "is waived when the party entitled to  
19 payment, by declaration or conduct . . . makes clear that they will not perform, or they have  
20 evaded tender, or in any other way obstructs or prevents a tender"); *cf. Cladianos v. Friedhoff*,  
21 69 Nev. 41, 45, 240 P.2d 208, 210 (1952) ("The law is clear . . . that any affirmative tender of  
22 performance is excused when performance has in effect been prevented by the other party to  
23 the contract."); *see also Perla*, 2020 WL 966026, \*3 (citing multiple cases on waiver, excuse,  
24 and futility).

25 <sup>4</sup> *See, e.g., Telemark Dev. Grp., Inc. v. Mengelt*, 313 F.3d 972, 978 (7th Cir. 2002) ("tender  
26 may be excused when the conduct of the creditor makes it 'reasonably clear that such [tender]  
27 would be a vain, idle, or useless act.'"); *Quality Motors v. Hays*, 225 S.W.2d 326 (Ark. 1949)  
28 (tender is immaterial when it would be vain and useless); *Donnellan v. Rocks*, 22 Cal. App. 3d  
925, 929 (1st Dist. 1972) ("it is equally well established that the law does not require the  
performance of an idle act and a formal tender of performance is excused by the refusal in  
advance of the party to accept the performance."); *Fox Run Properties, LLC v. Murray*, 654  
S.E.2d 676 (Ga. App. 2007) ("tender is excused or waived where the seller, by conduct or  
declaration, proclaims that if a tender should be made, acceptance would be refused" because  
"the law does not require a futile tender or other useless act."); *Chapman v. Olbrich*, 217  
S.W.3d 482, 491 (Tex. App. 2006) ("Tender of performance is excused under certain  
circumstances, such as when a tender would be futile"); *Roundville Partners, L.L.C. v. Jones*,  
118 S.W.3d 73, 79 (Tex. App. 2003) ("when actual tender would have been a useless act, an  
idle ceremony, or wholly nugatory, constructive tender will suffice."); *Schmitt v. Sapp*, 71  
Ariz. 48, 223 P.2d 403, 406–07 (1950) ("An actual tender is unnecessary where it is apparent  
the other party will not accept it. The law does not require one to do a vain and futile thing.").

1           15. Alessi's known policy of rejecting Miles Bauer tenders because it believed the  
2 tender letter had conditional language has been acknowledged by at least one other court.  
3 *Bank of America, N.A. v. Bernini Dr Trust*, Case No. 2:16-cv-00474-APG-BNW, 2020 WL  
4 1044005 (D. Nev. 2020).

5           16. By its word and by its conduct in rejecting payments, Alessi had the same  
6 policy under which the Nevada Supreme Court held delivering payment was excused entirely,  
7 so the deed holder was excused from sending payment at all. But here, Miles Bauer actually  
8 delivered payment, so the first deed of trust should fare no worse than in *Perla*.

9           17. Based on Alessi's words and conduct, Alessi would have also rejected payment  
10 for a full annual assessment, so the deed holder was excused from sending such payment  
11 under *Perla*.

12 ***Alternatively, Bank of America substantially complied with its payment obligations***

13           18. The doctrine of "[s]ubstantial compliance may be sufficient to avoid harsh,  
14 unfair[,] or absurd consequences." *Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. 470,  
15 475–76, 255 P.3d 1275, 1278 (2011) (internal quotation omitted); *see also Fondren v. K/L*  
16 *Complex Ltd.*, 106 Nev. 705, 713, 800 P.2d 719 (1990) ("[i]t is not realistic to become so  
17 technical that such errors defeat an otherwise valid lien for a large amount.") (citing *Hayes v.*  
18 *Pigg*, 267 Or. 143, 515 P.2d 924 (1973)); *see also Nevada Equities v. Willard Pease Drilling*  
19 *Co.*, 84 Nev. 300, 303, 440 P.2d 122, 123 (1968) ("We shall not condone a forfeiture in the  
20 absence of any ascertainable public policy requiring us to do so."); *Claybaugh v. Gancarz*, 81  
21 Nev. 64, 78, 398 P.2d 695, 703 (1965) ("[e]very reasonable doubt will be resolved in favor of  
22 the validity of a mining claim as against the assertion of a forfeiture.") (internal citations  
23 omitted).

24           19. The Nevada Supreme Court has applied the substantial compliance doctrine to  
25 various requirements under NRS 116. *See, e.g., Saticoy Bay 9050 W Warm Springs 2079 v.*  
26 *NAS*, 444 P.3d 428, 135 Nev. Adv. Op. 23 (2019) (applying substantial compliance standard  
27 to homeowner's redemption under NRS 116.31166(4)); *U.S. Bank, N.A. v. Resources Grp.*,  
28 444 P.3d 442, 448, 135 Nev. Adv. Op. 26 (2019) (remanding for analysis of HOA trustee's

1 substantial compliance NRS 116 notice requirements); *Black's Law Dictionary* 524 (10th ed.  
2 2014) (*de minimis non curat lex*, meaning the law does not concern itself with trifles).

3 20. If lenders have the right to pay the superpriority amount, then lenders must  
4 also have the right to know what that amount is. *See U.S. Bank ND, N.A. v. Resources Group,*  
5 *LLC*, 135 Nev. Adv. Op. 26, 444 P.3d 442, 447 (2019) (explaining that the "Legislature has  
6 mandated [that] the deed of trust holder [have] time to cure" a superpriority lien).

7 21. Alessi rejected the superpriority tender, without telling Miles Bauer anything  
8 about paying an annual assessment or any other specified amount. Even if Miles Bauer had  
9 sent a check in the amount of twelve months and not just nine months of assessments, Alessi's  
10 consistent policy of rejecting Miles Bauer's superpriority tenders leaves no doubt the result  
11 would have been the same—Alessi would have rejected the payment.

12 22. If homeowners and HOAs are entitled to the doctrine of substantial compliance  
13 under NRS 116, so are BoNYM and Miles Bauer. Otherwise, the result is "harsh, unfair, and  
14 absurd" in light of Miles Bauer's tender of its best estimate of the superpriority amount and  
15 Alessi's rejection of that tender for reasons wholly unrelated to any *de minimis* miscalculation  
16 of the superpriority amount.

17 23. A 3-month shortage (here, \$29.50) should not, under the substantial  
18 compliance doctrine, eliminate a deed securing repayment of a loan in the original amount of  
19 \$208,000.00—well over 7,000 times greater than the alleged deficiency in Miles Bauer's  
20 check.

21 *Alternatively, the deed of trust survived the HOA's sale as a matter of equity*

22 24. The Nevada Supreme Court confirmed an HOA foreclosure sale is void where  
23 the party challenging the sale can show an inadequate sales price and additional "proof of  
24 some element of fraud, unfairness, or oppression [that] accounts for and brings about the  
25 inadequacy of price." *Nationstar Mortg. LLC v. Saticoy Bay LLC Series 2227 Shadow*  
26 *Canyon*, 133 Nev. 740, 405 P.3d 641 (Nev. 2017) (*Shadow Canyon*).

27 25. In *Shadow Canyon*, the court rejected an argument that a sales price of under  
28 20% of the fair market value renders the sale *per se* void, instead finding the court should

1 engage in more of a sliding scale analysis. *Id.* at 643 (quoting *Golden v. Tomiyasu*, 387 P.2d  
2 989, 995 (1963) ("While mere inadequacy of price has rarely been held sufficient in itself to  
3 justify setting aside a judicial sale of property, courts are not slow to seize upon other  
4 circumstances impeaching the fairness of the transaction as a cause for vacating it, especially  
5 if the inadequacy be so gross as to shock the conscience.")). Specifically, where there is a  
6 wide disparity in price, a party challenging the sale "may require less evidence of fraud,  
7 unfairness, or oppression to justify setting aside the sale." *Id.* at 643–44 (citing *Golden v.*  
8 *Tomiyasu*, 79 Nev. at 515–16.)

9 ***The auction price was inadequate***

10 26. A price below 20% of fair market value is "obviously inadequate." *See*  
11 *Shadow Wood Homeowners Ass'n, Inc. v. N.Y. Cmty. Bancorp, Inc.*, 132 Nev. 49, 60, 366  
12 P.3d 1105, 1112 (2016).

13 27. The undisputed evidence here shows the property had a fair market value of  
14 \$76,000.00 as of the date of the foreclosure. Stipulated Fact # 15. The HOA's credit bid was  
15 \$4,310.82. Trial Ex. 30. LVDG purchased the property for \$4,500.00. Trial Ex. 31. The  
16 sales price at auction and paid by LVDG were each approximately 6% of the fair market  
17 value and were, therefore, grossly inadequate prices.

18 28. The lower the price, the less fraud and unfairness is required to set aside the  
19 sale or to declare, under equity, this sale did harm a senior lienholder's interest. *See*  
20 *Ballentyne v. Smith*, 205 U.S. 285, 290 (1907) ("if there be great inadequacy, slight  
21 circumstances of unfairness in the conduct of the party benefitted by the sale will be sufficient  
22 to justify setting it aside. It is difficult to formulate any rule more definite than this, and each  
23 case must stand on its own particular facts."); *Shadow Canyon*, 405 P.3d at 648–49 (quoting  
24 *Golden v. Tomiyasu*, 387 P.2d 989, 995 (1963) ("While mere inadequacy of price has rarely  
25 been held sufficient in itself to justify setting aside a judicial sale of property, courts are not  
26 slow to seize upon other circumstances impeaching the fairness of the transaction as a cause  
27 for vacating it, especially if the inadequacy be so gross as to shock the conscience."); *see also*  
28 *U.S. Bank ND, N.A. v. Resources Group, LLC*, 135 Nev. Adv. Op. 26, 444 P.3d 442, 448

1 (2019) ("The relationship is hydraulic: where the inadequacy is palpable and great, very slight  
2 additional evidence of unfairness or irregularity is sufficient to authorize the granting of the  
3 relief sought.") (quoting *Shadow Canyon*, 133 Nev. at 749).

4 ***The HOA's foreclosure involved unfairness and oppression***

5 29. In *Shadow Canyon*, the Nevada Supreme Court indicated that whether a lender  
6 "tried to tender payment" before the sale is "significant[]" to determine whether the lender's  
7 deed of trust survived as an equitable matter. 405 P.3d at 650.

8 30. As described above, Miles Bauer tendered nine months of assessments on a  
9 lien for which, based on the statute when initiated, limited the superpriority to six months.<sup>5</sup>  
10 To the extent there was any deficiency with the tender, it was inequitable for Alessi to reject it  
11 without identifying an alternative superpriority. And Alessi's blanket policy of rejecting  
12 payments the senior lender was entitled to make is also unfair and oppressive.

13 31. The credit bid and lack of distribution of auction proceeds also establish  
14 unfairness if this HOA sale is construed as a superpriority sale.

15 32. In an unpublished decision, the Nevada Supreme Court reversed a lower court  
16 decision under unfairness, saying genuine issues of material fact existed concerning both the  
17 opening bid amount and how the funds from sale were distributed. *JPMorgan Chase Bank,*  
18 *N.A. v. 1209 Village Walk Trust, LLC*, 424 P.3d 813 (table), No. 69784, 2018 WL 1448805  
19 (Nev. Mar. 20, 2018). First, the court expressed concern that "if the HOA trustee set the sale  
20 price for the entire lien amount rather than the superpriority portion, it may have chilled  
21 bidding on the property." *Id.* at 6. Next, the court opined about distribution of sale proceeds,  
22 saying, "The HOA may have owed JPMorgan any amount beyond the superpriority portion of  
23 the assessment lien, as JPMorgan's interest as the holder of the first deed of trust was superior  
24 to the subpriority portion of the assessment lien."<sup>6</sup>

25  
26 <sup>5</sup> See footnote 2, *supra*.

27 <sup>6</sup> The 2013 JEB Report, often cited and relied upon in Nevada Supreme Court opinions,  
28 explains through illustration that if an HOA forecloses on a superpriority lien, the HOA must  
pay the first mortgage holder before paying itself the subpriority portion of HOA's lien  
(Example 2).

1           33.     Here, the HOA credit bid its entire lien, and it distributed zero dollars to the  
2 first deed holder after sale and again after selling the property to LVDG. The HOA should  
3 have had to pay the senior lender before paying itself the subpriority portion of the lien, as  
4 explained in *Village Walk Trust* and the 2013 JEB Report, Example 2, unless the HOA  
5 foreclosure did not contain a superpriority, in which case the HOA could keep all sale  
6 proceeds without affecting BoNYM's deed of trust.

7           34.     In fact, because no money was paid at the NRS 116 sale, and the full  
8 assessment balance owed to the HOA remained outstanding after the HOA's sale, no one  
9 satisfied the superpriority. Testimony of Yvette Saucedo (HOA representative). The HOA  
10 could not have sold a lien containing a superpriority if all the amounts that could have  
11 comprised the superpriority portion of the lien remained unpaid after the auction.

12           *The balance of equities shows no harm to LVDG*

13           35.     In balancing the equities, LVDG has offered no evidence of harm.

14           36.     Moreover, it is not harmed by a finding that the deed of trust survived the sale.  
15 LVDG purchased the property knowing all title risks, including the certainty it could not get  
16 title insurance without litigation. Testimony of Charles Schmidt. LVDG offered no proof its  
17 predecessor, the HOA, was a bona fide purchaser, which was its burden to do. *See, e.g.,*  
18 *Berge v. Fredericks*, 95 Nev. 183, 185, 591 P.2d 246, 248 (1979) (explaining that the  
19 **putative bona fide purchaser "was required to show** that legal title had been transferred to  
20 her before she had notice of the prior conveyance to appellant") (emphasis added); *see also*  
21 *RLP-Ampus Place, LLC v. U.S. Bank, N.A.*, 408 P.3d 557 (table), 2017 WL 6597148, at \*1  
22 (Nev. Dec. 22, 2017) (unpublished) ("[A] putative BFP must introduce some evidence to  
23 support its BFP status beyond simply claiming that status.").

24           37.     The HOA took no position on what effect its foreclosure had on the senior  
25 deed, and no evidence was presented it believed it was getting clear title. The HOA's own  
26 notice of sale warned bidders the sale came with no covenants or warranties, and the  
27 foreclosure deed to the HOA similarly disclaimed any warranty. Trial Exs. 29 and 30.

1           38. In addition, *Thompson on Real Property* (often cited by the Nevada Supreme  
2 Court) instructs: "In applying the equitable doctrine of bona fide purchaser, some courts have  
3 held that one who takes by quitclaim deed cannot be a bona fide purchaser because the deed  
4 purports to convey only such right, title or interest as the grantor may have, and thus the deed  
5 carries notice of every defect in the grantor's title." 11 David A. Thomas, *Thompson on Real*  
6 *Property*, § 92.09(c), at 191 (2008); *see also* 6A C.J.S. Deeds § 327 ("It is well established  
7 that a quitclaim deed only conveys such title or interest as possessed by the grantor at the time  
8 of the making of the deed . . . and 'one who accepts a quitclaim deed is conclusively presumed  
9 to have agreed to take the title subject to all risks as to defects and [e]ncumbrances'").<sup>7</sup>

10           39. LVDG accepted a quitclaim deed from the HOA. Trial Ex. 31.

11           40. To the extent the actual payment did not satisfy the superpriority, and to the  
12 extent Alessi's policy did not excuse delivery of payment, the equities balance in favor of  
13 setting aside any superpriority portion of the HOA's sale here.

14 ***There is no presumption the deed of trust was extinguished, and BoNYM had no obligation***  
15 ***to file a lawsuit to confirm what the tender automatically accomplished***

16           41. There is nothing in NRS 116, the text or commentary to the Uniform Common  
17 Interest Ownership Act, or the Nevada Supreme Court's published decisions creating a  
18 presumption that an HOA foreclosure extinguishes a senior mortgage.

19           42. No statute of limitation applies to BoNYM's affirmative defenses based on the  
20 tender facts. Decades ago, the Nevada Supreme Court examined the issue of applying statutes  
21 of limitations to defenses and concluded: "Limitations do not run against defenses." *Dredge*  
22 *Corp. v. Wells Cargo, Inc.*, 80 Nev. 99, 101, 389 P.2d 394, 396 (Nev. 1964).

23  
24           <sup>7</sup> *See also Bright v. Johnson*, 302 S.W.3d 483, 492 (Tex. App. 2009) ("[A] subsequent  
25 purchaser is not a bona fide purchaser if the conveyance is made without warranty."); *Fla. E.*  
26 *Coast Ry v. Patterson*, 539 So.2d 575, 577 (Fla. 3rd DCA 1992) (quoting *St. Clair v. City*  
27 *Bank & Trust Co.*, 175 So.2d 791, 792 (Fla. 2d DCA 1965)) ("It is well established that a  
quitclaim deed only conveys such title or interest as possessed by the grantor . . . and 'one  
who accepts a quitclaim deed is conclusively presumed to have agreed to take the title subject  
to all risks as to defenses and incumbrances [sic]."); *Crump v. Knight*, 56 So.2d 625, 628  
(Ala. 1952) ("One who takes under a quitclaim deed acquires only such title and interest as  
his grantor had, and is not within the protection of a bona fide purchaser.").

1           43.     The reasoning behind this statement follows in the next sentence of the  
2 opinion: "The statute is available only as a shield, not a sword." *Id.*; *see also City of Saint*  
3 *Paul, Alaska v. Evans*, 344 F.3d 1029, 1033–34 (9th Cir. 2003) (examining "the interplay  
4 between statutes of limitations and defenses" and concluding that such limitations do not  
5 apply to defenses because "[w]ithout this exception, potential plaintiffs could simply wait  
6 until all available defenses are time barred and then pounce on the helpless defendant").

7           44.     *Dredge*, in turn, cited to a Second Circuit case called *Luckenbach Steamship*  
8 *Co. v. United States*, 312 F.2d 545, 548 (2d Cir. 1963), which held that "[l]imitations statutes  
9 do not apply to declaratory judgments as such. Declaratory relief is a mere procedural device  
10 by which various types of substantive claims may be vindicated. There are no statutes which  
11 provide that declaratory relief will be barred after a certain period of time."

12           45.     Here, LVDG filed suit seeking a declaration that when it purchased the  
13 property from the HOA, which had purchased the property at its own foreclosure sale—an  
14 auction which came with pre-sale warnings disclaiming any guarantee or covenant concerning  
15 the quality of title or the sale's effect on other liens—it purchased title free of the deed of  
16 trust.

17           46.     BoNYM asserted several defenses to LVDG's requested relief, including  
18 tender and inequities of the sale. As defenses, no limitations period can apply to defeat them  
19 as time barred.

20 *If LVDG's claims are timely, BoNYM's compulsory counterclaims on the same operative*  
21 *facts must be as well*

22           47.     Although the court can rule on the tender as a *defense* without examining the  
23 same argument as a *counterclaim* that may be subject to a limitations period, the  
24 counterclaims are timely because they are compulsory under NRCP 13.

25           48.     If a counterclaim "arises out of the transaction or occurrence that is the subject  
26 matter of the opposing party's claim and does not require for its adjudication the presence of  
27 third parties of whom the court cannot acquire jurisdiction," then it qualifies as a compulsory  
28 counterclaim. NRCP 13(a); *see also Yates v. Washoe Cty. Sch. Dist.*, No. 03:07-CV-00200-

1 LRH-RJJ, 2007 WL 3256576, at \*2 (D. Nev. Oct. 31, 2007) ("a plaintiff's institution of a suit  
2 tolls or suspends the running of the statute of limitations governing a compulsory  
3 counterclaim." ).<sup>8</sup>

4 49. BoNYM's counterclaims arise out of the same occurrence—the HOA's  
5 foreclosure—as LVDG claims, and they also seek the kind of declaratory relief that  
6 *Luckenbach*, cited in *Dredge*, said has no applicable statute of limitations because declaratory  
7 relief is not a claim that seeks a judgment for money or to coerce an adversary to take some  
8 action, but merely requests a declaration of non-liability—here, non-extinguishment of a lien.  
9 312 F.2d at 548. *Cf. Bull v. United States*, 295 U.S. 247, 262, 55 S.Ct. 695, 700–01, 79 L.Ed.  
10 142 (1935).

11 50. For this reason, too, LVDG's arguments about BoNYM's counterclaim being  
12 time-barred fail.

13 If any of the foregoing Conclusions of Law are more appropriately to be considered  
14 Findings of Fact, they shall be so deemed.

### 15 JUDGMENT

16 For the foregoing reasons, the Court ORDERS, ADJUDGES, AND DECREES:

- 17 1. The March 2, 2011 HOA foreclosure sale did not extinguish the subject deed  
18 of trust.  
19 2. The deed of trust, recorded as instrument number 20060419-0000609, remains  
20 an encumbrance against the property located at 1524 Highfield Court, Las Vegas, Nevada  
21 89032, APN 139-09-410-021.  
22

23  
24  
25 <sup>8</sup> To determine whether a claim is a compulsory counterclaim, courts look to "(1) whether the  
26 issues of fact and law raised by the claim and counterclaim largely are the same; (2) whether  
27 *res judicata* would bar a subsequent suit on defendant's claim absent the compulsory  
28 counterclaim rule; (3) whether substantially the same evidence will support or refute  
plaintiff's claim as well as defendant's counterclaim; and (4) whether there is any logical  
relationship between the claim and the counterclaim." *Tank Insulation Int'l, Inc. v.*  
*Insultherm, Inc.*, 104 F.3d 83, 85–86 (5th Cir. 1997). There can be no doubt that BoNYM's  
counterclaims are simply the mirror of LVDG's similar claims, thus meeting all these factors.

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3. Title is quieted in LVDG's name, but LVDG's title remains subject to the deed of trust.

Dated this 17th day of September, 2020



CB8 052 DB14 DD74  
Mark R. Denton  
District Court Judge

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Las Vegas Development Group  
7 LLC, Plaintiff(s)

CASE NO: A-17-756215-C

8 vs.

DEPT. NO. Department 13

9 Dania Hernandez, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the  
14 court's electronic eFile system to all recipients registered for e-Service on the above entitled  
15 case as listed below:

Service Date: 9/17/2020

16 Natalie Winslow natalie.winslow@akerman.com

17 Ariel Stern ariel.stern@akerman.com

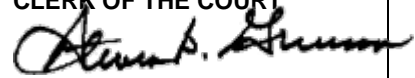
18 Rex Garner rex.garner@akerman.com

19 Akerman LLP AkermanLAS@akerman.com

20 Roger Croteau croteaulaw@croteaulaw.com

21 Croteau Admin receptionist@croteaulaw.com

22  
23  
24  
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26  
27  
28



**NJUD**  
ARIEL E. STERN, ESQ.  
Nevada Bar No. 8276  
NATALIE L. WINSLOW, ESQ.  
Nevada Bar No. 12125  
REX D. GARNER, ESQ.  
Nevada Bar No. 9401  
AKERMAN LLP  
1635 Village Center Circle, Suite 200  
Las Vegas, Nevada 89134  
Telephone: (702) 634-5000  
Facsimile: (702) 380-8572  
Email: ariel.stern@akerman.com  
Email: natalie.winslow@akerman.com  
Email: rex.garner@akerman.com

*Attorneys for The Bank of New York Mellon f/k/a  
The Bank of New York, as Trustee for the  
Certificateholders of CWABS, Inc., Asset-Backed  
Certificates, Series 2006-7*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

LAS VEGAS DEVELOPMENT GROUP, LLC, a  
Nevada limited liability company,

Plaintiff,

vs.

DANIA V. HERNANDEZ, an individual; THE  
BANK OF NEW YORK MELLON F/K/A THE  
BANK OF NEW YORK, AS TRUSTEE FOR  
THE CERTIFICATEHOLDERS OF CWABS,  
INC., ASSET-BACKED CERTIFICATES,  
SERIES 2006-7, a national banking association;  
DOE individuals I through XX; and ROE  
CORPORATIONS I through XX,

Defendants.

Case No.: A-17-756215-C

Dept. No.: XIII

**NOTICE OF ENTRY OF FINDINGS OF  
FACT, CONCLUSIONS OF LAW, AND  
JUDGMENT**

1 THE BANK OF NEW YORK MELLON F/K/A  
2 THE BANK OF NEW YORK, AS TRUSTEE  
3 FOR THE CERTIFICATEHOLDERS OF  
4 CWABS, INC., ASSET-BACKED  
5 CERTIFICATES, SERIES 2006-7,

6 Counterclaimant,

7 vs.

8 LAS VEGAS DEVELOPMENT GROUP, LLC, a  
9 Nevada limited liability company,

10 Counterdefendant.

11 **TO: ALL PARTIES OF RECORD AND THEIR COUNSEL:**

12 PLEASE TAKE NOTICE that the Findings of Fact, Conclusions of Law, and Judgment has  
13 been entered on September 17, 2020, a copy of which is attached hereto.

14 DATED October 1, 2020.

15 **AKERMAN LLP**

16 /s/ Rex D. Garner, Esq.

17 ARIEL E. STERN, ESQ.

18 Nevada Bar No. 8276

19 NATALIE L. WINSLOW, ESQ.

20 Nevada Bar No. 12125

21 REX D. GARNER, ESQ.

22 Nevada Bar No. 9401

23 1635 Village Center Circle, Suite 200

24 Las Vegas, Nevada 89134

25 *Attorneys for The Bank of New York Mellon f/k/a The*  
26 *Bank of New York, as Trustee for the Certificateholders*  
27 *of CWABS, Inc., Asset-Backed Certificates, Series 2006-*  
28 *7*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 1<sup>st</sup> day of October, 2020 and pursuant to NRCP 5(b), I served via the Clark County electronic filing system a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**, addressed to:

Roger P. Croteau & Associates, Ltd.

Roger P. Croteau                      croteaulaw@croteaulaw.com

Croteau Admin                      receptionist@croteaulaw.com

*/s/ Patricia Larsen*

\_\_\_\_\_  
An employee of AKERMAN LLP

**EXHIBIT A**

**EXHIBIT A**

*Heather S. Hume*  
CLERK OF THE COURT

1 **FFCL**

2 **DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

4 LAS VEGAS DEVELOPMENT GROUP,  
5 LLC, a Nevada limited liability company,

Case No.: A-17-756215-C  
Dept. No.: XIII

6 Plaintiff,

7 vs.

8 DANIA V. HERNANDEZ, an individual;  
9 THE BANK OF NEW YORK MELLON  
F/K/A THE BANK OF NEW YORK, AS  
10 TRUSTEE FOR THE  
CERTIFICATEHOLDERS OF CWABS,  
11 INC., ASSET-BACKED CERTIFICATES,  
SERIES 2006-7, a national banking  
12 association; DOE individuals I through XX;  
and ROE CORPORATIONS I through XX,

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND JUDGMENT**

13 Defendants.

14 THE BANK OF NEW YORK MELLON  
F/K/A THE BANK OF NEW YORK, AS  
15 TRUSTEE FOR THE  
CERTIFICATEHOLDERS OF CWABS,  
16 INC., ASSET-BACKED CERTIFICATES,  
SERIES 2006-7,

17 Counterclaimant,

18 vs.

19 LAS VEGAS DEVELOPMENT GROUP,  
20 LLC, a Nevada limited liability company,

21 Counterdefendant.

22 THIS MATTER having come on for non-jury trial on July 28 and 29, 2020, Plaintiff  
23 appearing by and through Roger P. Croteau, Esq. of the firm of Roger P. Croteau &  
24 Associates, Ltd., and the entity Defendants appearing by and through Rex D. Garner, Esq. of  
25 the firm of Akerman LLP;

26 AND, the Court having heard the testimony of witnesses and received other evidence  
27 and heard the argument of counsel and having taken the matter under advisement pending  
28

1 submission of proposed findings of fact and conclusions of law and judgment, and being now  
2 fully advised in the premises;

3 NOW, THEREFORE the Court hereby makes the following

4 **FINDINGS OF FACT**

5 ***The Subject Property, Note, and Deed of Trust***

6 1. On April 10, 2006 Dania Hernandez purchased the property located at 1524  
7 Highfield Court, Las Vegas, Nevada, financed with a loan from Countrywide Home Loans,  
8 Inc. in the amount of \$208,000.00. The loan was evidenced by a note and secured by a deed  
9 of trust recorded against the property on April 19, 2006. **Trial Ex. 26; Stipulated Facts, ¶**

10 **1.**<sup>1</sup>

11 2. The deed of trust was assigned to BoNYM in 2011 via a recorded assignment  
12 of deed of trust. **Trial Ex. 32; Stipulated Facts, ¶ 2.**

13 ***The HOA Foreclosure and the Tender***

14 3. The property is located in the Hidden Canyon Owners Association (HOA) and  
15 is subject to the HOA's covenants, conditions, and restrictions (CC&Rs). **Stipulated Facts, ¶**  
16 **3.**

17 4. Hernandez failed to pay the HOA all amounts due to it, so the HOA, through  
18 its agent, Alessi & Koenig, LLC (Alessi), recorded a notice of delinquent assessment lien on  
19 June 3, 2009. Per the notice, the amount due to HOA was \$571.85. **Trial Ex. 27; Stipulated**  
20 **Facts, ¶ 4.**

21 5. The HOA, through its agent Alessi, recorded a notice of default on September  
22 2, 2009.<sup>2</sup> The notice states the amount due to HOA was \$1,404.49. **Trial Ex. 28; Stipulated**  
23 **Facts, ¶ 5.**

24  
25 <sup>1</sup> The stipulated facts were filed February 27, 2020.

26 <sup>2</sup> Assembly Bill 204 in the 2009 legislative session amended NRS 116.3116, increasing the  
27 superpriority from 6 months to 9 months. This bill took effect October 1, 2009. The action to  
28 enforce the lien in this case, having started before October 1, 2009, means the HOA's  
superpriority lien in this case was limited to 6 months. *See Saticoy Bay LLC Series 2021*  
*Gray Eagle Way v. JPMorgan Chase Bank, N.A.*, 388 P.3d 226, 231, 133 Nev. Adv. Op. 3  
(2017) (serving a notice of delinquent assessments constitutes institution of an action to  
enforce the lien) ("As such, a party has instituted "proceedings to enforce the lien" for

1           6.       On October 20, 2009, Miles Bauer Bergstrom & Winters LLP (**Miles Bauer**),  
2 as the attorneys of MERS, as nominee for BAC Home Loans Servicing, LP, as then-servicer  
3 of the loan, requested a breakdown of the HOA arrears from Alessi, and the identification of  
4 the superpriority amount owed to HOA. **Stipulated Facts, ¶ 6.**

5           7.       On or about December 17, 2009, Alessi provided a facsimile cover letter and  
6 Resident Transaction Detail, which revealed the HOA charged assessments for common  
7 expenses of \$118.00 annually, and showing the account had no charges for nuisance  
8 abatement or exterior maintenance. **Stipulated Facts, ¶¶ 7–9.** Such item did not give a  
9 monthly breakdown, but such a breakdown would amount to \$9.83 monthly.

10           8.       On January 21, 2010, Miles Bauer sent a letter, together with a check payable  
11 to Alessi in the amount of \$88.50 to Alessi, purporting to represent 9 months of assessments,  
12 *i.e.* nine-twelfths of the HOA annual assessment of \$118.00. **Trial Ex. 41; Stipulated Facts,**  
13 **¶ 10.**

14           9.       Alessi refused Miles Bauer's payment. **Trial Ex. 41; Stipulated Facts, ¶ 11.**

15           10.      At the time Alessi rejected Miles Bauer's payment, it explained its reasoning  
16 for doing so in a letter found within Alessi's file for this property's foreclosure, which had  
17 nothing to do with a 9-month versus 12-month difference, but instead with Alessi's  
18 understanding and belief that the superpriority included its fees and costs in addition to  
19 assessments owed:

20                   ". . . we are unable to accept the partial payments offered by your clients as  
21 payment in full. . . . case authority exists which provides that the association's lien  
22 also includes the reasonable cost of collection of those assessments.

23                   If the association were to accept your offer that only includes assessments, Alessi  
24 & Koenig would be left with a lien against the association for our substantial out-  
of-pocket expenses and fees generated. . . ."

**Trial Ex. 41 at 41-069; see also Trial Ex. 40.**

25  
26  
27                   purposes of NRS 116.3116(6) when it provides the notice of delinquent assessment. This  
28 interpretation conforms to our decision in *SFR*, where we stated that "[t]o initiate foreclosure  
under NRS 116.31162 through NRS 116.31168, a Nevada HOA must notify the owner of the  
delinquent assessments.").

1           11. Alessi & Koenig's letter did not identify a different dollar amount that it  
2 believed was the superpriority. **Trial Ex. 41** at 41-069.

3           12. Alessi & Koenig reiterated their policy two years later in another letter to  
4 Miles Bauer:

5           ". . . In the opinion, the Commission concluded that associations may collect, as  
6 part of the super priority lien, the costs of collecting as authorized by NRS  
7 116.310313.

8           Furthermore, the nine-month super-priority is not triggered until the beneficiary  
under the first deed of trust forecloses."

9 **Trial Ex. 39.**

10           13. The HOA, through its agent Alessi, recorded a notice of sale on August 9,  
11 2010. The notice states the amount due to HOA was \$2,862.23. **Trial Ex. 29; Stipulated**  
12 **Facts, ¶ 12.**

13           14. Alessi, on behalf of the HOA, auctioned the property on March 2, 2011, and  
14 the HOA won the bidding with a credit bid for all amounts owed to it. **Testimony of Yvette**  
15 **Sauceda** (HOA representative). A foreclosure deed in favor of the HOA was recorded March  
16 3, 2011. **Trial Ex. 30; Stipulated Facts, ¶ 13.**

17           15. Because the HOA credit bid, no money changed hands as a consequence of the  
18 auction, and the assessment balance to the HOA remained unpaid. **Testimony of Yvette**  
19 **Sauceda** (HOA representative); *see also* **Trial Ex. 46** at 46-029.

20           16. Not until weeks later through a non-NRS-116 sale to LVDG did the HOA get  
21 funds and apply them to the assessments that comprised the superpriority. **Testimony of**  
22 **Yvette Saucedo.**

23           17. On March 30, 2011, the HOA quitclaimed its interest to LVDG in exchange  
24 for \$4,500.00. **Trial Ex. 31; Stipulated Facts, ¶ 14.**

25           18. At the time of the HOA's foreclosure sale, the property's fair market value was  
26 \$76,000.00, meaning both the auction price and the amount LVDG paid were less than 6% of  
27 the fair market value. **Stipulated Facts, ¶ 15.**

1 Any of the foregoing Findings of Fact that are more appropriately to be considered  
2 Conclusions of Law shall be so deemed.

3 FROM the foregoing Findings of Fact, the Court hereby makes the following

4 **CONCLUSIONS OF LAW**

5 ***Burdens of Proof***

6 1. As explained by the Nevada Supreme Court, "the burden of proof rests with  
7 the party seeking to quiet title in its favor." *Shadow Wood Homeowners Ass'n, Inc. v. N.Y.*  
8 *Cnty. Bancorp.*, 132 Nev. 49, 366 P.3d 1105 (2016) (citing *Breliant v. Preferred Equities*  
9 *Corp.*, 112 Nev. 663, 669, 918 P.2d 314, 318 (1996)); *see also Res. Grp., LLC as Tr. of E.*  
10 *Sunset Rd. Tr. v. Nevada Ass'n Servs., Inc.*, 135 Nev. Adv. Op. 8, 437 P.3d 154, 156 (2019)  
11 ("each party to a quiet title action has the burden of demonstrating superior title in himself or  
12 herself").

13 2. LVDG bears the burden of proof on all its claims against defendants, and  
14 BoNYM bears the burden of proof on its counterclaims and defenses.

15 3. Further, deed recitals are not conclusive. *See Shadow Wood, supra*. To the  
16 extent there is any evidentiary value found in deed recitals, it is limited only to "default,  
17 notice, and publication," and statutory prerequisites to the sale. *Id.* The recitals do not  
18 address the issues in this case, including tender and the equities of the sale. *Shadow Wood*,  
19 132 Nev., Adv. Op. 5, 366 P.3d at 1110 (explaining deed recitals do not eliminate equitable  
20 relief).

21 ***Bank of America's tender did not itself preserve the deed of trust***

22 4. Under NRS 116.3116(2), an association's lien is split "into two pieces, a  
23 superpriority piece and a sub-priority piece." *SFR Investments Pool 1, LLC v. U.S. Bank,*  
24 *N.A.*, 130 Nev. 742, 745, 334 P.3d 408, 411 (2014). If a senior deed of trust holder pays or  
25 tenders payment of the superpriority before the HOA's sale, the superpriority piece is  
26 satisfied, meaning the HOA's auction cannot affect the senior deed of trust. *Bank of America,*  
27 *N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. Adv. Op. 72, 427 P.3d 113 (2018) (*Diamond Spur*)  
28

1 ("Bank of America's tender cured the default and prevented foreclosure as to the superpriority  
2 portion of the HOA's lien by operation of law.").

3 5. Just as it did in *Diamond Spur*, here Miles Bauer sent a letter to the HOA's  
4 collection agent, seeking to determine the superpriority amount of the HOA's lien and  
5 "offer[ing] to pay that sum upon presentation of adequate proof of the same by the HOA."  
6 **Trial Ex. 41; Stip. Facts**, at ¶ 6. In response, Alessi provided a ledger. **Trial Ex. 41; Stip.**  
7 **Facts**, at ¶ ¶ 7–9.

8 6. Based on the ledger, which showed the account had no nuisance or  
9 maintenance charges under NRS 116.310312, but which did not identify a superpriority  
10 amount, Miles Bauer sent a check purporting to represent 9 months of assessments. *See*  
11 *Finding of Fact No. 8, supra*. **Trial Ex. 41; Stipulated Facts, ¶ 10.**

12 7. Alessi rejected the payment. *See id.*; **Stip. Facts**, at ¶ 11. The Nevada  
13 Supreme Court has recently held that if an HOA makes assessments payable annually, the  
14 entire assessment amount can have superpriority status if it becomes due within the nine  
15 months preceding the notice of delinquent assessments, which is the case here. *Anthony S.*  
16 *Noonan IRA, LLC v. U.S. Bank Nat'l Ass'n EE*, 136 Nev. Adv. Op. 41, 466 P.3d 1276 (2020).

17 8. The Nevada Supreme Court has confirmed that Miles Bauer could rely on the  
18 information provided by an association's collection agent in calculating their superpriority  
19 tenders in *Diamond Spur*, explaining:

20  
21 The record establishes that Bank of America tendered the correct amount to  
22 satisfy the superpriority portion of the lien on the property. **Pursuant to the**  
23 **HOA's accounting**, nine months' worth of assessment fees totaled \$720, **and**  
24 **the HOA did not indicate that the property had any charges for**  
25 **maintenance or nuisance abatement**. Bank of America sent the HOA a  
26 check for \$720 in June 2012. On the record presented, this was the full  
27 superpriority amount.

28 134 Nev. at 607 (emphasis added). Earlier in the opinion, the Court stated that Miles Bauer  
tendered the correct superpriority amount "based on the HOA's representations" to Miles  
Bauer. *See id.*, at 605; *see also* 74 AM. JUR. 2d *Tender* § 4 (explaining that offering to pay a  
specific amount is "excused" if "the amount depends on the balance shown by accounts that  
are inaccessible to the party from whom the tender would otherwise be required . . . and such

1 information is ascertainable only from the accounts of the creditor, who does not disclose the  
2 required information to the debtor"). Miles Bauer had a right to rely on the document  
3 provided to them by Alessi to calculate the superpriority amount, and Alessi never suggested  
4 a different dollar amount. Moreover, the Supreme Court's use of the term "worth" supports  
5 the notion that the yearly assessment in this case could be properly apportioned to determine  
6 the monetary amount represented by nine months. However, the Nevada Supreme Court has  
7 otherwise ruled in *Noonan, supra*.

8 9. However, Alessi rejected the tender check not because Miles Bauer's  
9 superpriority calculation was off by a few dollars—Alessi rejected the check because it was  
10 not for the full amount secured by the HOA's **entire** lien (both subpriority and superpriority  
11 portions), just as its letter to Miles Bauer said. **Trial Ex. 41** at 41-069.

12 10. The Nevada Supreme Court has held that "... an offer to pay the superpriority  
13 amount in the future, once that amount is determined, does not constitute a tender sufficient to  
14 preserve the first deed of trust." *7510 Perla Del Mar Ave. Tr. v. Bank of America, N.A.*, 136  
15 Nev. Adv. Op. 6, 458 P.3d 348, 349 (2020). (*Perla*)

16 *Alternatively, Miles Bauer was excused from tendering a superpriority payment because it*  
17 *would have been futile*

18 11. However, a tendering party can also establish excuse from formal  
19 tender/delivery of money. *Perla, supra*, at 349 ("formal tender is excused when the evidence  
20 shows that the party entitled to payment had a known policy of rejecting [superpriority]  
21 payments.").

22 12. The *Perla* decision confirms long-standing law that delivery of payment is *not*  
23 always necessary to effectuate a legal tender.<sup>3</sup> To be sure, a creditor like an HOA and its  
24

25 <sup>3</sup> See, e.g., *Guthrie v. Curnutt*, 417 F.2d 764, 765–66 (10th Cir. 1969) ("[W]hen a party, able  
26 and willing to do so, offers to pay another a sum of money and is told that it will not be  
27 accepted, the offer is a tender without the money being produced."); *In re Pickel*, 493 B.R.  
28 258, 271 (Bankr. D.N.M. 2013) ("Tender is unnecessary if the other party has stated that the  
amount due would not be accepted."); *Mark Turner Props., Inc. v. Evans*, 554 S.E.2d 492,  
495 (Ga. 2001) ("Tender of an amount due is waived when the party entitled to payment, by  
declaration or by conduct, proclaims that, if tender of the amount due is made, an acceptance  
of 'it will be refused.' (internal quotation marks and alterations omitted)); 74 Am. Jur. 2d  
Tender § 4 (2012) ("A tender of an amount due is waived when the party entitled to payment,

1 collection agent can waive or excuse payment, and they can do this by words or by conduct.  
2  
3 *Id.*

4 13. In addition to waiver, a creditor's words or actions—like Alessi's ordinary  
5 course of business to reject payments—can render payment futile, in which case the law will  
6 not require a payor to perform a useless or futile act.<sup>4</sup>

7 14. Here, Alessi had a well-known policy of rejecting Miles Bauer's payments, as  
8 its letter acknowledges:

9 ". . . we are unable to accept the partial payments offered by your clients as  
10 payment in full . . . case authority exists which provides that the association's  
11 lien also includes the reasonable cost of collection of those assessments.

12 If the association were to accept your offer that only includes assessments,  
13 Alessi & Koenig would be left with a lien against the association for our  
14 substantial out-of-pocket expenses and fees generated. . . ."

15 **Trial Ex. 41** at 069; *see also* **Trial Ex. 39** ("Furthermore, the nine-month super-priority is not  
16 triggered until the beneficiary under the first deed of trust forecloses.").

17 by declaration or by conduct, proclaims that, if tender of the amount due is made, it will not  
18 be accepted."); 86 C.J.S. Tender § 5 (2017) (tender "is waived when the party entitled to  
19 payment, by declaration or conduct . . . makes clear that they will not perform, or they have  
20 evaded tender, or in any other way obstructs or prevents a tender"); *cf. Cladianos v. Friedhoff*,  
21 69 Nev. 41, 45, 240 P.2d 208, 210 (1952) ("The law is clear . . . that any affirmative tender of  
22 performance is excused when performance has in effect been prevented by the other party to  
23 the contract."); *see also Perla*, 2020 WL 966026, \*3 (citing multiple cases on waiver, excuse,  
24 and futility).

25 <sup>4</sup> *See, e.g., Telemark Dev. Grp., Inc. v. Mengelt*, 313 F.3d 972, 978 (7th Cir. 2002) ("tender  
26 may be excused when the conduct of the creditor makes it 'reasonably clear that such [tender]  
27 would be a vain, idle, or useless act.'"); *Quality Motors v. Hays*, 225 S.W.2d 326 (Ark. 1949)  
28 (tender is immaterial when it would be vain and useless); *Donnellan v. Rocks*, 22 Cal. App. 3d  
925, 929 (1st Dist. 1972) ("it is equally well established that the law does not require the  
performance of an idle act and a formal tender of performance is excused by the refusal in  
advance of the party to accept the performance."); *Fox Run Properties, LLC v. Murray*, 654  
S.E.2d 676 (Ga. App. 2007) ("tender is excused or waived where the seller, by conduct or  
declaration, proclaims that if a tender should be made, acceptance would be refused" because  
"the law does not require a futile tender or other useless act."); *Chapman v. Olbrich*, 217  
S.W.3d 482, 491 (Tex. App. 2006) ("Tender of performance is excused under certain  
circumstances, such as when a tender would be futile"); *Roundville Partners, L.L.C. v. Jones*,  
118 S.W.3d 73, 79 (Tex. App. 2003) ("when actual tender would have been a useless act, an  
idle ceremony, or wholly nugatory, constructive tender will suffice."); *Schmitt v. Sapp*, 71  
Ariz. 48, 223 P.2d 403, 406–07 (1950) ("An actual tender is unnecessary where it is apparent  
the other party will not accept it. The law does not require one to do a vain and futile thing.").

1           15. Alessi's known policy of rejecting Miles Bauer tenders because it believed the  
2 tender letter had conditional language has been acknowledged by at least one other court.  
3 *Bank of America, N.A. v. Bernini Dr Trust*, Case No. 2:16-cv-00474-APG-BNW, 2020 WL  
4 1044005 (D. Nev. 2020).

5           16. By its word and by its conduct in rejecting payments, Alessi had the same  
6 policy under which the Nevada Supreme Court held delivering payment was excused entirely,  
7 so the deed holder was excused from sending payment at all. But here, Miles Bauer actually  
8 delivered payment, so the first deed of trust should fare no worse than in *Perla*.

9           17. Based on Alessi's words and conduct, Alessi would have also rejected payment  
10 for a full annual assessment, so the deed holder was excused from sending such payment  
11 under *Perla*.

12 ***Alternatively, Bank of America substantially complied with its payment obligations***

13           18. The doctrine of "[s]ubstantial compliance may be sufficient to avoid harsh,  
14 unfair[,] or absurd consequences." *Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. 470,  
15 475–76, 255 P.3d 1275, 1278 (2011) (internal quotation omitted); *see also Fondren v. K/L*  
16 *Complex Ltd.*, 106 Nev. 705, 713, 800 P.2d 719 (1990) ("[i]t is not realistic to become so  
17 technical that such errors defeat an otherwise valid lien for a large amount.") (citing *Hayes v.*  
18 *Pigg*, 267 Or. 143, 515 P.2d 924 (1973)); *see also Nevada Equities v. Willard Pease Drilling*  
19 *Co.*, 84 Nev. 300, 303, 440 P.2d 122, 123 (1968) ("We shall not condone a forfeiture in the  
20 absence of any ascertainable public policy requiring us to do so."); *Claybaugh v. Gancarz*, 81  
21 Nev. 64, 78, 398 P.2d 695, 703 (1965) ("[e]very reasonable doubt will be resolved in favor of  
22 the validity of a mining claim as against the assertion of a forfeiture.") (internal citations  
23 omitted).

24           19. The Nevada Supreme Court has applied the substantial compliance doctrine to  
25 various requirements under NRS 116. *See, e.g., Saticoy Bay 9050 W Warm Springs 2079 v.*  
26 *NAS*, 444 P.3d 428, 135 Nev. Adv. Op. 23 (2019) (applying substantial compliance standard  
27 to homeowner's redemption under NRS 116.31166(4)); *U.S. Bank, N.A. v. Resources Grp.*,  
28 444 P.3d 442, 448, 135 Nev. Adv. Op. 26 (2019) (remanding for analysis of HOA trustee's

1 substantial compliance NRS 116 notice requirements); *Black's Law Dictionary* 524 (10th ed.  
2 2014) (*de minimis non curat lex*, meaning the law does not concern itself with trifles).

3 20. If lenders have the right to pay the superpriority amount, then lenders must  
4 also have the right to know what that amount is. See *U.S. Bank ND, N.A. v. Resources Group,*  
5 *LLC*, 135 Nev. Adv. Op. 26, 444 P.3d 442, 447 (2019) (explaining that the "Legislature has  
6 mandated [that] the deed of trust holder [have] time to cure" a superpriority lien).

7 21. Alessi rejected the superpriority tender, without telling Miles Bauer anything  
8 about paying an annual assessment or any other specified amount. Even if Miles Bauer had  
9 sent a check in the amount of twelve months and not just nine months of assessments, Alessi's  
10 consistent policy of rejecting Miles Bauer's superpriority tenders leaves no doubt the result  
11 would have been the same—Alessi would have rejected the payment.

12 22. If homeowners and HOAs are entitled to the doctrine of substantial compliance  
13 under NRS 116, so are BoNYM and Miles Bauer. Otherwise, the result is "harsh, unfair, and  
14 absurd" in light of Miles Bauer's tender of its best estimate of the superpriority amount and  
15 Alessi's rejection of that tender for reasons wholly unrelated to any *de minimis* miscalculation  
16 of the superpriority amount.

17 23. A 3-month shortage (here, \$29.50) should not, under the substantial  
18 compliance doctrine, eliminate a deed securing repayment of a loan in the original amount of  
19 \$208,000.00—well over 7,000 times greater than the alleged deficiency in Miles Bauer's  
20 check.

21 *Alternatively, the deed of trust survived the HOA's sale as a matter of equity*

22 24. The Nevada Supreme Court confirmed an HOA foreclosure sale is void where  
23 the party challenging the sale can show an inadequate sales price and additional "proof of  
24 some element of fraud, unfairness, or oppression [that] accounts for and brings about the  
25 inadequacy of price." *Nationstar Mortg. LLC v. Saticoy Bay LLC Series 2227 Shadow*  
26 *Canyon*, 133 Nev. 740, 405 P.3d 641 (Nev. 2017) (*Shadow Canyon*).

27 25. In *Shadow Canyon*, the court rejected an argument that a sales price of under  
28 20% of the fair market value renders the sale *per se* void, instead finding the court should

1 engage in more of a sliding scale analysis. *Id.* at 643 (quoting *Golden v. Tomiyasu*, 387 P.2d  
2 989, 995 (1963) ("While mere inadequacy of price has rarely been held sufficient in itself to  
3 justify setting aside a judicial sale of property, courts are not slow to seize upon other  
4 circumstances impeaching the fairness of the transaction as a cause for vacating it, especially  
5 if the inadequacy be so gross as to shock the conscience.")). Specifically, where there is a  
6 wide disparity in price, a party challenging the sale "may require less evidence of fraud,  
7 unfairness, or oppression to justify setting aside the sale." *Id.* at 643–44 (citing *Golden v.*  
8 *Tomiyasu*, 79 Nev. at 515–16.)

9 ***The auction price was inadequate***

10 26. A price below 20% of fair market value is "obviously inadequate." *See*  
11 *Shadow Wood Homeowners Ass'n, Inc. v. N.Y. Cmty. Bancorp, Inc.*, 132 Nev. 49, 60, 366  
12 P.3d 1105, 1112 (2016).

13 27. The undisputed evidence here shows the property had a fair market value of  
14 \$76,000.00 as of the date of the foreclosure. Stipulated Fact # 15. The HOA's credit bid was  
15 \$4,310.82. Trial Ex. 30. LVDG purchased the property for \$4,500.00. Trial Ex. 31. The  
16 sales price at auction and paid by LVDG were each approximately 6% of the fair market  
17 value and were, therefore, grossly inadequate prices.

18 28. The lower the price, the less fraud and unfairness is required to set aside the  
19 sale or to declare, under equity, this sale did harm a senior lienholder's interest. *See*  
20 *Ballentyne v. Smith*, 205 U.S. 285, 290 (1907) ("if there be great inadequacy, slight  
21 circumstances of unfairness in the conduct of the party benefitted by the sale will be sufficient  
22 to justify setting it aside. It is difficult to formulate any rule more definite than this, and each  
23 case must stand on its own particular facts."); *Shadow Canyon*, 405 P.3d at 648–49 (quoting  
24 *Golden v. Tomiyasu*, 387 P.2d 989, 995 (1963) ("While mere inadequacy of price has rarely  
25 been held sufficient in itself to justify setting aside a judicial sale of property, courts are not  
26 slow to seize upon other circumstances impeaching the fairness of the transaction as a cause  
27 for vacating it, especially if the inadequacy be so gross as to shock the conscience."); *see also*  
28 *U.S. Bank ND, N.A. v. Resources Group, LLC*, 135 Nev. Adv. Op. 26, 444 P.3d 442, 448

1 (2019) ("The relationship is hydraulic: where the inadequacy is palpable and great, very slight  
2 additional evidence of unfairness or irregularity is sufficient to authorize the granting of the  
3 relief sought.") (quoting *Shadow Canyon*, 133 Nev. at 749).

4 ***The HOA's foreclosure involved unfairness and oppression***

5 29. In *Shadow Canyon*, the Nevada Supreme Court indicated that whether a lender  
6 "tried to tender payment" before the sale is "significant[]" to determine whether the lender's  
7 deed of trust survived as an equitable matter. 405 P.3d at 650.

8 30. As described above, Miles Bauer tendered nine months of assessments on a  
9 lien for which, based on the statute when initiated, limited the superpriority to six months.<sup>5</sup>  
10 To the extent there was any deficiency with the tender, it was inequitable for Alessi to reject it  
11 without identifying an alternative superpriority. And Alessi's blanket policy of rejecting  
12 payments the senior lender was entitled to make is also unfair and oppressive.

13 31. The credit bid and lack of distribution of auction proceeds also establish  
14 unfairness if this HOA sale is construed as a superpriority sale.

15 32. In an unpublished decision, the Nevada Supreme Court reversed a lower court  
16 decision under unfairness, saying genuine issues of material fact existed concerning both the  
17 opening bid amount and how the funds from sale were distributed. *JPMorgan Chase Bank,*  
18 *N.A. v. 1209 Village Walk Trust, LLC*, 424 P.3d 813 (table), No. 69784, 2018 WL 1448805  
19 (Nev. Mar. 20, 2018). First, the court expressed concern that "if the HOA trustee set the sale  
20 price for the entire lien amount rather than the superpriority portion, it may have chilled  
21 bidding on the property." *Id.* at 6. Next, the court opined about distribution of sale proceeds,  
22 saying, "The HOA may have owed JPMorgan any amount beyond the superpriority portion of  
23 the assessment lien, as JPMorgan's interest as the holder of the first deed of trust was superior  
24 to the subpriority portion of the assessment lien."<sup>6</sup>

25  
26 <sup>5</sup> See footnote 2, *supra*.

27 <sup>6</sup> The 2013 JEB Report, often cited and relied upon in Nevada Supreme Court opinions,  
28 explains through illustration that if an HOA forecloses on a superpriority lien, the HOA must  
pay the first mortgage holder before paying itself the subpriority portion of HOA's lien  
(Example 2).

1           33.     Here, the HOA credit bid its entire lien, and it distributed zero dollars to the  
2 first deed holder after sale and again after selling the property to LVDG. The HOA should  
3 have had to pay the senior lender before paying itself the subpriority portion of the lien, as  
4 explained in *Village Walk Trust* and the 2013 JEB Report, Example 2, unless the HOA  
5 foreclosure did not contain a superpriority, in which case the HOA could keep all sale  
6 proceeds without affecting BoNYM's deed of trust.

7           34.     In fact, because no money was paid at the NRS 116 sale, and the full  
8 assessment balance owed to the HOA remained outstanding after the HOA's sale, no one  
9 satisfied the superpriority. Testimony of Yvette Saucedo (HOA representative). The HOA  
10 could not have sold a lien containing a superpriority if all the amounts that could have  
11 comprised the superpriority portion of the lien remained unpaid after the auction.

12           *The balance of equities shows no harm to LVDG*

13           35.     In balancing the equities, LVDG has offered no evidence of harm.

14           36.     Moreover, it is not harmed by a finding that the deed of trust survived the sale.  
15 LVDG purchased the property knowing all title risks, including the certainty it could not get  
16 title insurance without litigation. Testimony of Charles Schmidt. LVDG offered no proof its  
17 predecessor, the HOA, was a bona fide purchaser, which was its burden to do. *See, e.g.,*  
18 *Berge v. Fredericks*, 95 Nev. 183, 185, 591 P.2d 246, 248 (1979) (explaining that the  
19 **putative bona fide purchaser "was required to show** that legal title had been transferred to  
20 her before she had notice of the prior conveyance to appellant") (emphasis added); *see also*  
21 *RLP-Ampus Place, LLC v. U.S. Bank, N.A.*, 408 P.3d 557 (table), 2017 WL 6597148, at \*1  
22 (Nev. Dec. 22, 2017) (unpublished) ("[A] putative BFP must introduce some evidence to  
23 support its BFP status beyond simply claiming that status.").

24           37.     The HOA took no position on what effect its foreclosure had on the senior  
25 deed, and no evidence was presented it believed it was getting clear title. The HOA's own  
26 notice of sale warned bidders the sale came with no covenants or warranties, and the  
27 foreclosure deed to the HOA similarly disclaimed any warranty. Trial Exs. 29 and 30.

1           38. In addition, *Thompson on Real Property* (often cited by the Nevada Supreme  
2 Court) instructs: "In applying the equitable doctrine of bona fide purchaser, some courts have  
3 held that one who takes by quitclaim deed cannot be a bona fide purchaser because the deed  
4 purports to convey only such right, title or interest as the grantor may have, and thus the deed  
5 carries notice of every defect in the grantor's title." 11 David A. Thomas, *Thompson on Real*  
6 *Property*, § 92.09(c), at 191 (2008); *see also* 6A C.J.S. Deeds § 327 ("It is well established  
7 that a quitclaim deed only conveys such title or interest as possessed by the grantor at the time  
8 of the making of the deed . . . and 'one who accepts a quitclaim deed is conclusively presumed  
9 to have agreed to take the title subject to all risks as to defects and [e]ncumbrances'").<sup>7</sup>

10           39. LVDG accepted a quitclaim deed from the HOA. Trial Ex. 31.

11           40. To the extent the actual payment did not satisfy the superpriority, and to the  
12 extent Alessi's policy did not excuse delivery of payment, the equities balance in favor of  
13 setting aside any superpriority portion of the HOA's sale here.

14 ***There is no presumption the deed of trust was extinguished, and BoNYM had no obligation***  
15 ***to file a lawsuit to confirm what the tender automatically accomplished***

16           41. There is nothing in NRS 116, the text or commentary to the Uniform Common  
17 Interest Ownership Act, or the Nevada Supreme Court's published decisions creating a  
18 presumption that an HOA foreclosure extinguishes a senior mortgage.

19           42. No statute of limitation applies to BoNYM's affirmative defenses based on the  
20 tender facts. Decades ago, the Nevada Supreme Court examined the issue of applying statutes  
21 of limitations to defenses and concluded: "Limitations do not run against defenses." *Dredge*  
22 *Corp. v. Wells Cargo, Inc.*, 80 Nev. 99, 101, 389 P.2d 394, 396 (Nev. 1964).

23  
24 <sup>7</sup> *See also Bright v. Johnson*, 302 S.W.3d 483, 492 (Tex. App. 2009) ("[A] subsequent  
25 purchaser is not a bona fide purchaser if the conveyance is made without warranty."); *Fla. E.*  
26 *Coast Ry v. Patterson*, 539 So.2d 575, 577 (Fla. 3rd DCA 1992) (quoting *St. Clair v. City*  
27 *Bank & Trust Co.*, 175 So.2d 791, 792 (Fla. 2d DCA 1965)) ("It is well established that a  
quitclaim deed only conveys such title or interest as possessed by the grantor . . . and 'one  
who accepts a quitclaim deed is conclusively presumed to have agreed to take the title subject  
to all risks as to defenses and incumbrances [sic]."); *Crump v. Knight*, 56 So.2d 625, 628  
(Ala. 1952) ("One who takes under a quitclaim deed acquires only such title and interest as  
his grantor had, and is not within the protection of a bona fide purchaser.").

1           43.     The reasoning behind this statement follows in the next sentence of the  
2     opinion: "The statute is available only as a shield, not a sword." *Id.*; *see also City of Saint*  
3     *Paul, Alaska v. Evans*, 344 F.3d 1029, 1033–34 (9th Cir. 2003) (examining "the interplay  
4     between statutes of limitations and defenses" and concluding that such limitations do not  
5     apply to defenses because "[w]ithout this exception, potential plaintiffs could simply wait  
6     until all available defenses are time barred and then pounce on the helpless defendant").

7           44.     *Dredge*, in turn, cited to a Second Circuit case called *Luckenbach Steamship*  
8     *Co. v. United States*, 312 F.2d 545, 548 (2d Cir. 1963), which held that "[l]imitations statutes  
9     do not apply to declaratory judgments as such. Declaratory relief is a mere procedural device  
10    by which various types of substantive claims may be vindicated. There are no statutes which  
11    provide that declaratory relief will be barred after a certain period of time."

12           45.     Here, LVDG filed suit seeking a declaration that when it purchased the  
13    property from the HOA, which had purchased the property at its own foreclosure sale—an  
14    auction which came with pre-sale warnings disclaiming any guarantee or covenant concerning  
15    the quality of title or the sale's effect on other liens—it purchased title free of the deed of  
16    trust.

17           46.     BoNYM asserted several defenses to LVDG's requested relief, including  
18    tender and inequities of the sale. As defenses, no limitations period can apply to defeat them  
19    as time barred.

20    *If LVDG's claims are timely, BoNYM's compulsory counterclaims on the same operative*  
21    *facts must be as well*

22           47.     Although the court can rule on the tender as a *defense* without examining the  
23    same argument as a *counterclaim* that may be subject to a limitations period, the  
24    counterclaims are timely because they are compulsory under NRCP 13.

25           48.     If a counterclaim "arises out of the transaction or occurrence that is the subject  
26    matter of the opposing party's claim and does not require for its adjudication the presence of  
27    third parties of whom the court cannot acquire jurisdiction," then it qualifies as a compulsory  
28    counterclaim. NRCP 13(a); *see also Yates v. Washoe Cty. Sch. Dist.*, No. 03:07-CV-00200-

1 LRH-RJJ, 2007 WL 3256576, at \*2 (D. Nev. Oct. 31, 2007) ("a plaintiff's institution of a suit  
2 tolls or suspends the running of the statute of limitations governing a compulsory  
3 counterclaim." ).<sup>8</sup>

4 49. BoNYM's counterclaims arise out of the same occurrence—the HOA's  
5 foreclosure—as LVDG claims, and they also seek the kind of declaratory relief that  
6 *Luckenbach*, cited in *Dredge*, said has no applicable statute of limitations because declaratory  
7 relief is not a claim that seeks a judgment for money or to coerce an adversary to take some  
8 action, but merely requests a declaration of non-liability—here, non-extinguishment of a lien.  
9 312 F.2d at 548. *Cf. Bull v. United States*, 295 U.S. 247, 262, 55 S.Ct. 695, 700–01, 79 L.Ed.  
10 142 (1935).

11 50. For this reason, too, LVDG's arguments about BoNYM's counterclaim being  
12 time-barred fail.

13 If any of the foregoing Conclusions of Law are more appropriately to be considered  
14 Findings of Fact, they shall be so deemed.

### 15 JUDGMENT

16 For the foregoing reasons, the Court ORDERS, ADJUDGES, AND DECREES:

- 17 1. The March 2, 2011 HOA foreclosure sale did not extinguish the subject deed  
18 of trust.  
19 2. The deed of trust, recorded as instrument number 20060419-0000609, remains  
20 an encumbrance against the property located at 1524 Highfield Court, Las Vegas, Nevada  
21 89032, APN 139-09-410-021.  
22

23  
24  
25 <sup>8</sup> To determine whether a claim is a compulsory counterclaim, courts look to "(1) whether the  
26 issues of fact and law raised by the claim and counterclaim largely are the same; (2) whether  
27 *res judicata* would bar a subsequent suit on defendant's claim absent the compulsory  
28 counterclaim rule; (3) whether substantially the same evidence will support or refute  
plaintiff's claim as well as defendant's counterclaim; and (4) whether there is any logical  
relationship between the claim and the counterclaim." *Tank Insulation Int'l, Inc. v.*  
*Insultherm, Inc.*, 104 F.3d 83, 85–86 (5th Cir. 1997). There can be no doubt that BoNYM's  
counterclaims are simply the mirror of LVDG's similar claims, thus meeting all these factors.

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3. Title is quieted in LVDG's name, but LVDG's title remains subject to the deed of trust.

Dated this 17th day of September, 2020



CB8 052 DB14 DD74  
Mark R. Denton  
District Court Judge

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Las Vegas Development Group  
7 LLC, Plaintiff(s)

CASE NO: A-17-756215-C

8 vs.

DEPT. NO. Department 13

9 Dania Hernandez, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the  
14 court's electronic eFile system to all recipients registered for e-Service on the above entitled  
15 case as listed below:

Service Date: 9/17/2020

16 Natalie Winslow natalie.winslow@akerman.com

17 Ariel Stern ariel.stern@akerman.com

18 Rex Garner rex.garner@akerman.com

19 Akerman LLP AkermanLAS@akerman.com

20 Roger Croteau croteaulaw@croteaulaw.com

21 Croteau Admin receptionist@croteaulaw.com

23

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Title to Property**

**COURT MINUTES**

**August 10, 2017**

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|               |   |
|---------------|---|
| A-17-756215-C | Las Vegas Development Group LLC, Plaintiff(s) |
|               | vs.   |
|               | Dania Hernandez, Defendant(s)                 |

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|                        |                |  |
|------------------------|----------------|--|
| <b>August 10, 2017</b> | <b>9:00 AM</b> | <b>Motion for Summary<br/>Judgment</b> |
|------------------------|----------------|--|

**HEARD BY:** Denton, Mark R.

**COURTROOM:** RJC Courtroom 03D

**COURT CLERK:** Marwanda Knight

**RECORDER:** Jennifer Gerold

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- APPEARANCES: Roger Croteau, Attorney for Pltf  
Thera A. Cooper, Attorney for Deft

At call of case, Court noted the absence of counsel, and ORDERED, MATTER TRAILED.

MATTER RECALLED - Following argument by counsel, Court stated it was not going to treat the Motion as a Motion for Summary Judgment, but as a Motion to Dismiss under Rule 12 (b) 5. Further, Court stated it could not tell from the face of the counterclaim that it fails to state a claim upon which relief can be granted relative to the statute of limitations. Accordingly, COURT ORDERED, Motion DENIED as a Motion to Dismiss WITHOUT PREJUDICE to a Motion for Summary Judgment to be brought after there is an opportunity for some discovery in this case.

Ms. Cooper indicated she would submit the proposed order after passing the same by Mr. Croteau.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Title to Property**

**COURT MINUTES**

**July 11, 2019**

---

A-17-756215-C      Las Vegas Development Group LLC, Plaintiff(s)  
vs.  
Dania Hernandez, Defendant(s)

---

**July 11, 2019**

**9:00 AM**

**Motion for Summary  
Judgment**

**HEARD BY:** Denton, Mark R.

**COURTROOM:** RJC Courtroom 03D

**COURT CLERK:** Madalyn Kearney

**RECORDER:** Jennifer Gerold

**REPORTER:**

**PARTIES**

**PRESENT:**      Croteau, Roger P, ESQ      Attorney  
                         Scaturro, Tenesa S.      Attorney

**JOURNAL ENTRIES**

- Court noted the Motion on calendar is actually Defendant's Motion for Summary Judgment. Following arguments by Ms. Powell and Mr. Croteau, COURT ORDERED, Defendant's Motion for Summary Judgment DENIED; this is a case that has to go to trial. Mr. Croteau to prepare the order.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Title to Property**

**COURT MINUTES**

**November 25, 2019**

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A-17-756215-C      Las Vegas Development Group LLC, Plaintiff(s)  
vs.  
Dania Hernandez, Defendant(s)

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**November 25, 2019      2:00 PM      Calendar Call**

**HEARD BY:** Denton, Mark R.      **COURTROOM:** RJC Courtroom 03D

**COURT CLERK:** Madalyn Kearney

**RECORDER:** Jennifer Gerold

**REPORTER:**

**PARTIES**

**PRESENT:**      Scaturro, Tenesa S.      Attorney

**JOURNAL ENTRIES**

- Ms. Powell noted Mr. Croteau will not be present today. Ms. Powell advised she is not able to go on this stack and Mr. Croteau's office is in agreement to continue. Cause appearing, COURT ORDERED, trial VACATED and RESET on the March stack; new trial order to issue.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Title to Property**

**COURT MINUTES**

**March 02, 2020**

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A-17-756215-C      Las Vegas Development Group LLC, Plaintiff(s)  
vs.  
Dania Hernandez, Defendant(s)

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**March 02, 2020      2:00 PM      Calendar Call**

**HEARD BY:** Denton, Mark R.      **COURTROOM:** RJC Courtroom 03D

**COURT CLERK:** Madalyn Kearney

**RECORDER:** Jennifer Gerold

**REPORTER:**

**PARTIES**

**PRESENT:**      Croteau, Roger P, ESQ      Attorney

**JOURNAL ENTRIES**

- Rex Garner, Esq. present for Defendant.

Upon Court's inquiry, counsel estimated 3 days for trial and provided their availability to the Court.  
MATTER TRAILED.

MATTER RECALLED. COURT ORDERED, trial date SET for March 31, 2020 at 9:00 am, with a standby date of March 27, 2020 at 2:00 pm. If the case ahead of this case is still scheduled to go, then the trial date will be vacated and reset on another stack. Court noted the Pre-Trial Memoranda are already filed.

3/31/20 9:00 AM NON-JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Title to Property**

**COURT MINUTES**

**March 18, 2020**

---

A-17-756215-C      Las Vegas Development Group LLC, Plaintiff(s)  
vs.  
Dania Hernandez, Defendant(s)

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**March 18, 2020**

**1:00 PM**

**Minute Order**

**HEARD BY:** Denton, Mark R.

**COURTROOM:** Chambers

**COURT CLERK:** Madalyn Kearney

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Due to restrictions that have recently been imposed by the Judicial and Executive branches of Nevada's state government, the trial set on March 31, 2020 is vacated. A separate trial order will be issued resetting the trial on the July 7, 2020 stack.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 3/18/20

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Title to Property**

**COURT MINUTES**

**June 24, 2020**

---

A-17-756215-C      Las Vegas Development Group LLC, Plaintiff(s)  
vs.  
Dania Hernandez, Defendant(s)

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**June 24, 2020**

**2:00 PM**

**Minute Order**

**HEARD BY:** Denton, Mark R.

**COURTROOM:** Chambers

**COURT CLERK:** Madalyn Kearney

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Until further notice, Department 13 will be conducting court hearings REMOTELY using the BlueJeans Video Conferencing system. Department 13 has adopted this policy as a precautionary measure in light of public health concerns for Coronavirus COVID-19, and the Court orders that any party intending to appear before Department 13 for law and motion matters do so by BlueJeans only. As a result, your matter scheduled June 29, 2020 in this case will be conducted via BlueJeans. You have the choice to appear either by phone or computer/video.

Dial the following number: 1-408-419-1715

Meeting ID: 823 435 758

URL: [bluejeans.com/823435758](https://bluejeans.com/823435758)

To connect by phone, dial the number provided and enter the meeting ID followed by #.

To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by BlueJeans.

You may also download the BlueJeans app and join the meeting by entering the meeting ID.

PLEASE NOTE the following protocol each participant will be required to follow:

You will be automatically muted upon entry to the meeting. Please remain muted while waiting for your matter to be called. If you are connecting by phone, you can mute/unmute yourself on your phone or by pressing \*4.

Do NOT place the call on hold since some phones may play wait/hold music.

Please do NOT use speaker phone as it causes a loud echo/ringing noise.

Please state your name each time you speak so that the court recorder can capture a clear record.

Please be mindful of rustling papers, background noise, and coughing or loud breathing.

Please be mindful of where your camera is pointing.

We encourage you to visit the Bluejeans.com website to get familiar with the BlueJeans phone/videoconferencing system before your hearing.

If your hearing gets continued to a different date after you have already received this minute order please note a new minute order will issue with a different meeting ID since the ID number changes with each meeting/hearing.

Please be patient if you call in and we are in the middle of oral argument from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 6/24/20

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Title to Property**

**COURT MINUTES**

**June 29, 2020**

---

A-17-756215-C      Las Vegas Development Group LLC, Plaintiff(s)  
vs.  
Dania Hernandez, Defendant(s)

---

**June 29, 2020**

**2:00 PM**

**Calendar Call**

**HEARD BY:** Denton, Mark R.

**COURTROOM:** RJC Courtroom 03D

**COURT CLERK:** Madalyn Kearney

**RECORDER:** Jennifer Gerold

**REPORTER:**

**PARTIES**

**PRESENT:**      Croteau, Roger P, ESQ      Attorney

**JOURNAL ENTRIES**

- Rex Garner, Esq. present for Defendant Bank of New York Mellon. Counsel present via BlueJeans.

Counsel confirmed trial will take 3-4 days and provided their availability to the Court. MATTER TRAILED.

MATTER RECALLED. All parties present as before. COURT ORDERED, trial date SET for July 28, 2020 at 1:30 pm with Pre-Trial Memoranda DUE by close of business July 24, 2020.

7/28/20 1:30 PM NON-JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Title to Property**

**COURT MINUTES**

**July 21, 2020**

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|               |   |
|---------------|---|
| A-17-756215-C | Las Vegas Development Group LLC, Plaintiff(s)<br>vs.<br>Dania Hernandez, Defendant(s) |
|---------------|---|

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**July 21, 2020**

**8:30 AM**

**Minute Order**

**HEARD BY:** Denton, Mark R.

**COURTROOM:** Chambers

**COURT CLERK:** Madalyn Kearney

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- In accordance with AO 20-17, Department 13 will be conducting Non-Jury Trial in this case REMOTELY using the BlueJeans Video Conferencing system. Counsel/ Parties in proper person and witnesses are to appear only by video conferencing and not by telephone. In person appearances by witnesses and counsel/parties in proper person will be permitted only by stipulation of all parties. A notary is NOT required to be present with the witness if the witness is testifying via video conferencing. If for some reason a witness can only appear telephonically, please notify the department immediately as a notary will be required.

The following URL and meeting ID will be used for the entire length of the trial. Please distribute this information to your witnesses as this is the information they will need in order to testify.

Meeting ID: 831 465 126

URL: [bluejeans.com/831465126](https://bluejeans.com/831465126)

To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by

BlueJeans.

You may also download the BlueJeans app and join the meeting by entering the meeting ID.

You are encouraged to visit [bluejeans.com](https://bluejeans.com) to familiarize yourself with the BlueJeans system before trial.

PLEASE NOTE the following protocol for trial:

Please mute yourself when you are not speaking. During examination of a witness, both the witness and person examining can be unmuted in order to prevent delays.

Counsel/ Parties in proper person are required to provide witnesses copies of all exhibits they intend to introduce through the witness. If counsel/ parties in proper person intend to cross-examine a witness with a document or documents, they must provide copies to the witness before cross-examination begins. For ease of reference, ALL exhibits must contain Bates numbers that must be read into the record when discussing the document. If the exhibits are emailed to the witness, these exhibits need to be accessible on a device separate from the device the witness will be using for BlueJeans.

It is incumbent on counsel/ parties in proper person to provide the above BlueJeans meeting information to their witnesses before the start of trial. We recommend counsel/ parties in proper person test with their witnesses at least 24 hours in advance of their testimony to address any technical issues there may be.

Counsel/ Parties in proper person will be contacted by Chambers to set up a BlueJeans test that will occur the day before trial or a time otherwise agreed to.

All exhibits provided to the Court will be handled electronically through Courtroom Clerk Supervisor, Michelle Jones. You will be contacted via email regarding this process. Please respond to these emails as soon as possible. If there are any questions regarding the electronic exhibit process you are to contact Michelle Jones at [Jonesm@clarkcountycourts.us](mailto:Jonesm@clarkcountycourts.us) or Madalyn Kearney at [kearney@clarkcountycourts.us](mailto:kearney@clarkcountycourts.us).

CLERK S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 7/21/20

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Title to Property**

**COURT MINUTES**

**July 28, 2020**

---

A-17-756215-C      Las Vegas Development Group LLC, Plaintiff(s)  
vs.  
Dania Hernandez, Defendant(s)

---

**July 28, 2020**

**1:30 PM**

**Non-Jury Trial**

**HEARD BY:** Denton, Mark R.

**COURTROOM:** RJC Courtroom 03D

**COURT CLERK:** Madalyn Kearney

**RECORDER:** Trisha Garcia

**REPORTER:**

**PARTIES**

**PRESENT:**      Croteau, Roger P, ESQ      Attorney

**JOURNAL ENTRIES**

- Rex Garner, Esq. present for Defendant/ Counterclaimant Bank of New York Mellon. Charles Schmidt, Representative of Las Vegas Development Group LLC, present. Trial conducted via BlueJeans.

All exhibits stipulated to and admitted. Opening statements by Mr. Croteau and Mr. Garner. Court advised the exclusionary rule will be in effect. Testimony and exhibits presented (see worksheets). Plaintiff RESTED. Exhibits presented (see worksheets). Defense RESTED. COURT ORDERED, matter CONTINUED.

CONTINUED TO: 7/29/20 9:15 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Title to Property**

**COURT MINUTES**

**July 29, 2020**

---

A-17-756215-C      Las Vegas Development Group LLC, Plaintiff(s)  
vs.  
Dania Hernandez, Defendant(s)

---

**July 29, 2020**

**9:15 AM**

**Non-Jury Trial**

**HEARD BY:** Denton, Mark R.

**COURTROOM:** RJC Courtroom 03D

**COURT CLERK:** Madalyn Kearney

**RECORDER:** Angie Calvillo

**REPORTER:**

**PARTIES**

**PRESENT:**      Croteau, Roger P, ESQ      Attorney

**JOURNAL ENTRIES**

- Rex Garner, Esq. present for Defendants. Charles Schmidt, Representative for Las Vegas Development Group LLC, present. Trial conducted via BlueJeans.

Court noted the evidence is closed and now is the time for summation. Closing arguments by Mr. Croteau and Mr. Garner. Court directed counsel to file and serve their respective proposed findings of fact and conclusions of law and proposed judgments by end of day August 14, 2020. Court further directed counsel to also email the documents in word format to its Law Clerk and Judicial Executive Assistant (JEA). COURT ORDERED, decision UNDER ADVISEMENT as of August 17, 2020.

CLERK'S NOTE: The Court's Law Clerk's email is: dept13lc@clarkcountycourts.us and the Court's JEA's email is: tashirol@clarkcountycourts.us . /mk 7/29/20

# Exhibit List

CASE NO: A-17-756215-C

DEPT NO: XIII

Las Vegas Development Group, LLC  
PLAINTIFF

Bank of New York Mellon  
DEFENDANT

Admitted on  
the real  
drive

TRIAL DATE: 7/28/20  
JUDGE: Hon. Mark R. Denton  
CLERK: Madalyn Kearney  
REPORTER: Trisha Garcia  
JURY FEES:

COUNSEL FOR PLAINTIFF: Roger P. Croteau, Esq.

COUNSEL FOR DEFENDANT: Rex D. Garner, Esq.

| Exhibit Number | Identif of Device or Traditional (put V) | Description of Exhibit  | Alphanumeric Designation on Exh. | Stipulated Yes / No | Date Offered | Objection | Date Admitted |
|----------------|--|---|----------------------------------|---------------------|--------------|-----------|---------------|
| 1.pdf          | USB drive                                | Plaintiff's Complaint   | PL 0001 -<br>PL0010              | yes                 | 7/28/20      |           | 7/28/20       |
| 2.pdf          | USB drive                                | Plaintiff's First Amended Complaint   | PL 0011 -<br>PL0020              |                     |              |           |               |
| 3.pdf          | USB drive                                | Bank of New York Mellon, as Trustee's Answer to Complaint and Counterclaims | PL 0021 -<br>PL0046              |                     |              |           |               |
| 4.pdf          | USB drive                                | Notice of Delinquent Lien, dated 6/3/09                                     | BoNYM 0018                       |                     |              |           |               |
| 5.pdf          | USB drive                                | Notice of Default (HOA)   | BoNYM 0019 -<br>BoNYM 0120       |                     |              |           |               |
| 6.pdf          | USB drive                                | Notice of Trustee's Sale (HOA)  | BoNYM 0121                       |                     |              |           |               |
| 7.pdf          | USB drive                                | Trustee's Deed Upon Sale (HOA)  | LVDG 0006 -<br>LVDG 0007         |                     |              |           |               |
| 8.pdf          | USB drive                                | Quitclaim Deed (HOA)  | LVDG 0008 -<br>LVDG 0011         |                     |              |           |               |
| 9.pdf          | USB drive                                | Quitclaim Deed, dated 3/31/11   | BoNYM 0125-<br>BoNYM 0127        |                     |              |           |               |
| 10.pdf         | USB drive                                | Quitclaim Deed, dated 4/26/12   | BoNYM 0133-<br>BoNYM 0136        |                     |              |           |               |
| 11.pdf         | USB drive                                | Quitclaim Deed, dated 10/28/13  | BoNYM 0137-<br>BoNYM 0140        | yes                 | 7/28/20      |           | 7/28/20       |

# Exhibit List

| Exhibit Number | Identif of Device or Traditional (put ✓) | Description of Exhibit  | Alphanumeric Designation on Exh. | Stipulated Yes / No | Date Offered | Objection | Date Admitted |
|----------------|--|---|----------------------------------|---------------------|--------------|-----------|---------------|
| 12.pdf         | USB drive                                | Correspondence dated 4/27/06  | LVDG 0022 -<br>LVDG 0034         | yes                 | 7/28/20      |           | 7/28/20       |
| 13.pdf         | USB drive                                | Grant, Bargain and Sale Deed, dated 4/03/06   | LVDG 0001 -<br>LVDG 0005         |                     |              |           |               |
| 14.pdf         | USB drive                                | 1st Deed of Trust, dated 4/19/06 (Former Owner)   | BoNYM 0075 -<br>BoNYM 0099       |                     |              |           |               |
| 15.pdf         | USB drive                                | 2nd Deed of Trust, dated 4/19/06 (Former Owner)   | BoNYM 0100 -<br>BoNYM 0111       |                     |              |           |               |
| 16.pdf         | USB drive                                | Notice of Default under DoT dated 7/29/08   | BoNYM 0115 -<br>BoNYM 0116       |                     |              |           |               |
| 17.pdf         | USB drive                                | Election to Sell the Real Property Under Deed of Trust dated 4/18/16 and related documents (Sables) | LVDG 0012 -<br>LVDG 0021         |                     |              |           |               |
| 18.pdf         | USB drive                                | Restrictions of Cheyenne Ridge Association (Hidden Canyon Owners Association)                       | BoNYM 0155 -<br>BoNYM 0185       |                     |              |           |               |
| 19.pdf         | USB drive                                | First Amended Declaration of CC&Rs of Cheyenne Ridge  | BoNYM 0186 -<br>BoNYM 0230       |                     |              |           |               |
| 20.pdf         | USB drive                                | Second Amended Declaration of CC&Rs of Cheyenne Ridge   | BoNYM 0231 -<br>BoNYM 0250       |                     |              |           |               |
| 21.pdf         | USB drive                                | Alessi & Koenig LLC's Response to Subpoena Duces Tecum  | BoNYM 1701 -<br>BoNYM 1811       |                     |              |           |               |
| 22.pdf         | USB drive                                | Hidden Canyon Owners Association's Response to Subpoena Duces Tecum                                 | BoNYM 1844 -<br>BoNYM 2034       | yes                 | 7/28/20      |           | 7/28/20       |
|                |  |   |                                  |                     |              |           |               |
|                |  |   |                                  |                     |              |           |               |
|                |  |   |                                  |                     |              |           |               |
|                |  |   |                                  |                     |              |           |               |

# Exhibit List

CASE NO: A-17-756215-C

DEPT NO: XIII

TRIAL DATE: 7/28/20  
 JUDGE: Honorable Mark R. Denton  
 CLERK: Madalyn Kearney  
 REPORTER: Trisha Garcia  
 JURY FEES: N/A

Las Vegas Development Group LLC  
 PLAINTIFF

COUNSEL FOR PLAINTIFF: Roger P. Croteau, Esq.

Bank of New York Mellon  
 DEFENDANT

COUNSEL FOR DEFENDANT: Rex D. Garner, Esq.

| Exhibit Number | Identify or Device or Traditional | Description of Exhibit                 | Alphanumeric Designation on Exh. | Stipulated Yes / No | Date Offered | Objection | Date Admitted |
|----------------|-----------------------------------|--|----------------------------------|---------------------|--------------|-----------|---------------|
| 26.pdf         | thumb drive                       | Deed of Trust                          | BoNYM 0075-<br>BoNYM 0099        | yes                 | 7/28/20      |           | 7/28/20       |
| 27.pdf         | thumb drive                       | Notice of Delinquent Lien              | BoNYM 0118                       |                     |              |           |               |
| 28.pdf         | thumb drive                       | Notice of Default (HOA)                | BoNYM 0119-<br>BoNYM 0120        |                     |              |           |               |
| 29.pdf         | thumb drive                       | Notice of Trustee's Sale (HOA)         | BoNYM 0121                       |                     |              |           |               |
| 30.pdf         | thumb drive                       | Trustee's Deed Upon Sale (HOA)         | BoNYM 0123-<br>BoNYM 0124        |                     |              |           |               |
| 31.pdf         | thumb drive                       | Quitclaim Deed                         | BoNYM 0125-<br>BoNYM 0127        |                     |              |           |               |
| 32.pdf         | thumb drive                       | Corporate Assignment of Deed of Trust  | BoNYM 0128                       |                     |              |           |               |
| 33.pdf         | thumb drive                       | Quitclaim Deed                         | BoNYM 0133-<br>BoNYM 0136        |                     |              |           |               |
| 34.pdf         | thumb drive                       | Quitclaim Deed                         | BoNYM 0137-<br>BoNYM 0140        |                     |              |           |               |
| 35.pdf         | thumb drive                       | Corrective Assignment of Deed of Trust | BoNYM 0141                       | yes                 | 7/28/20      |           | 7/28/20       |

# Exhibit List

| Exhibit Number | Exhibit or Device or Traditional | Description of Exhibit   | Alphanumeric Designation on Exh. | Stipulated Yes / No | Date Offered | Objection | Date Admitted |
|----------------|----------------------------------|--|----------------------------------|---------------------|--------------|-----------|---------------|
| 36.pdf         | thumb drive                      | Declaration of Covenants, Conditions and Restrictions of Cheyenne Ridge Association (Hidden Canyon Owners Association) | BoNYM 0155-BoNYM 0185            | yes                 | 7/28/20      |           | 7/28/20       |
| 37.pdf         | thumb drive                      | First Amended Declaration of CC&Rs of Cheyenne Ridge Association   | BoNYM 0186-BoNYM 0230            |                     |              |           |               |
| 38.pdf         | thumb drive                      | Second Amended Declaration of CC&Rs of Cheyenne Ridge  | BoNYM 0231-BoNYM 0250            |                     |              |           |               |
| 39.pdf         | thumb drive                      | February 27, 2012 Letter from Alessi & Koenig, LLC to Miles Bauer  | BoNYM 0251                       |                     |              |           |               |
| 40.pdf         | thumb drive                      | March 23, 2010, Letter from Alessi & Koenig, LLC to Miles Bauer, regarding Rejection of Partial Payments               | BoNYM 0252                       |                     |              |           |               |
| 41.pdf         | thumb drive                      | Alessi & Koenig LLC's Response to Subpoena Duces Tecum   | BoNYM 1701-BoNYM 1811            |                     |              |           |               |
| 42.pdf         | thumb drive                      | Foreclosure Notices  | BoNYM 1815-BoNYM 1825            |                     |              |           |               |
| 43.pdf         | thumb drive                      | Miles Bauer documents  | BoNYM 1826-BoNYM 1830            |                     |              |           |               |
| 44.pdf         | thumb drive                      | LVDP Representation Letter   | BoNYM 1831-BoNYM 1838            |                     |              |           |               |
| 45.pdf         | thumb drive                      | Shellpoint Mortgage - Loan History Summary   | BoNYM 1838-BoNYM 1843            |                     |              |           |               |
| 46.pdf         | thumb drive                      | Hidden Canyon Owners Association's Response to Subpoena Duces Tecum  | BoNYM 1844-BoNYM 2034            |                     |              |           |               |
| 47.pdf         | thumb drive                      | Miles Bauer Letter Affidavit   | BoNYM 2146-BoNYM 2153            |                     |              |           |               |
| 48.pdf         | thumb drive                      | Miles Bauer Affidavit  | BoNYM 2154-BoNYM 2172            | yes                 | 7/28/20      |           | 7/28/20       |
| 49             | traditional                      | recession of election to declare default   |                                  |                     | 7/28/20      | no        | 7/28/20       |
| 50             | traditional                      | notice of recession of notice of default   |                                  |                     | 7/28/20      | no        | 7/28/20       |
|                |                                  |  |                                  |                     |              |           |               |
|                |                                  |  |                                  |                     |              |           |               |



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE  
**NOTICE OF DEFICIENCY**  
ON APPEAL TO NEVADA SUPREME COURT

**ROGER P. CROTEAU, ESQ.**  
**2810 W. CHARLESTON BLVD., #75**  
**LAS VEGAS, NV 89102**

**DATE: October 19, 2020**  
**CASE: A-17-756215-C**

**RE CASE:** LAS VEGAS DEVELOPMENT GROUP, LLC vs. THE BANK OF NEW YORK MELLON fka THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWABS, INC., ASSET-BACKED CERTIFICATES, SERIES 2006-7

NOTICE OF APPEAL FILED: October 15, 2020

**YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.**

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)\*\*
  - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)\*\*
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)\*\*
  - NRAP 7: Bond For Costs On Appeal in Civil Cases
  - *Previously paid Bonds are not transferable between appeals without an order of the court.*
- ☐ Case Appeal Statement
  - NRAP 3 (a)(1), Form 2
- ☒ Written Order *re: Decision on Memorandum of Costs and Disbursements*
- ☒ Notice of Entry of Order *re: Decision on Memorandum of Costs and Disbursements*

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NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

*Please refer to Rule 3 for an explanation of any possible deficiencies.*

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*\*\*Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

# Certification of Copy

State of Nevada }  
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

LAS VEGAS DEVELOPMENT GROUP, LLC,

Plaintiff(s),

vs.

THE BANK OF NEW YORK MELLON fka  
THE BANK OF NEW YORK, AS TRUSTEE  
FOR THE CERTIFICATEHOLDERS OF  
CWABS, INC., ASSET-BACKED  
CERTIFICATES, SERIES 2006-7,

Defendant(s),

Case No: A-17-756215-C

Dept No: XIII

now on file and of record in this office.

**IN WITNESS THEREOF**, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 19 day of October 2020.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk