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9 IN THE SUPREME COURT OF THE STATE OF NEVADA

10 LAS VEGAS DEVELOPMENT
11 GROUP, LLC, A NEVADA LIMITED
LIABILITY COMPANY, }
12 }
Appellant, }
13 }
vs. }
14 }
THE BANK OF NEW YORK }
15 MELLON, F/K/A THE BANK OF NEW
YORK, AS TRUSTEE FOR THE }
16 CERTIFICATEHOLDERS OF CWABS,
INC., ASSET-BACKED }
17 CERTIFICATES, SERIES 2006-7,
Respondent. }

Supreme Court No. 81961

Supreme Court No. 82266

District Court Case No. A756215

18
19 **REPLY TO OPPOSITION TO MOTION TO STAY APPEALS**

20 **AND TO HOLD ALL DEADLINES IN ABEYANCE**

21 COMES NOW, Appellant, LAS VEGAS DEVELOPMENT GROUP, LLC,
22 by and through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and
23 hereby presents its Reply to Respondent's Opposition to Motion to Stay Appeals

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1 and to Hold all Deadlines in Abeyance. This Reply is made and based upon the
2 attached Memorandum of Points and Authorities and all papers and pleadings on
3 file herein.

4 DATED this 17th day of March, 2021.

5 ROGER P. CROTEAU & ASSOCIATES, LTD.

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7 /s/ Timothy E. Rhoda
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16 LAS VEGAS DEVELOPMENT GROUP, LLC

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19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **STATEMENT OF THE FACTS**

21 The facts surrounding this matter have been set forth in the instant motion.
22 Appellant shall utilize the same defined terms herein.

23 **LEGAL ARGUMENT**

24 **A. THE APPLICABLE STATUTE OF LIMITATIONS**

25 The Respondent argues that the certified question that is presently before
26 this Court in *Thunder Properties* is “inconsequential and will not affect the
27 ultimate outcome of this case.” Opposition, p. 4. It is unclear how the Bank
28 could possibly believe this to be the case. Indeed, the certified question could
easily dispose of this case in its entirety.

In *Thunder Properties*, the Ninth Circuit Court of Appeals declined to
determine the appropriate statute of limitations governing a secured lender’s
claims under Nevada law and instead certified the question to the Nevada Supreme
Court. Specifically, this Court certified the following question to this Court:

1 (1) When a lienholder whose lien arises from a mortgage for the
2 purchase of a property brings a claim seeking a declaratory judgment
3 that the lien was not extinguished by a subsequent foreclosure sale of
4 the property, is that claim exempt from statute of limitations under
5 *City of Fernley v. Nevada Department of Taxation*, 366 P.3d 699
(Nev. 2016)?

6 (2) If the claim described in (1) is subject to a statute of limitations:

7 (a) Which limitations period applies?

8 (b) What causes the limitations period to begin to run?

9 *Id.* Thus, this Court is going to determine whether a claim such as that brought by
10 the Bank in this case is or is not exempt from a statute of limitations. If this Court
11 determines that the holder of a security interest in real property that was the
12 subject of a foreclosure sale that potentially extinguished its interest IS required to
13 file an action to rebut the otherwise conclusive presumptions that exist under
14 Nevada law, this appeal will likely be resolved. This is the case because the Bank
15 herein did absolutely nothing to contest the force and effect of the HOA
16 Foreclosure Sale upon the First Deed of Trust at issue herein for **over six full**
17 **years**. If any statute of limitations is deemed to apply, the Bank failed to meet it.

18 **B. THE FAILURE TO PAY THE ENTIRE SUPERPRIORITY LIEN**

19 At the time that this case proceeded to trial, *Noonan IRA* was binding
20 precedent which dictated that all of the assessments that were due and owing in
21 association with the Property possessed superpriority over the First Deed of Trust.
22 The district court declined to follow *Noonan IRA* although it was undisputed that
23 the Bank paid only a portion of the superpriority portion of the HOA Lien.

24 The Bank argues that it was futile for it to pay any amount of money to
25 satisfy the superpriority portion of the HOA Lien. However, how it is
26 conceivably possible that the Bank believed it to be futile to send a check to the
27 HOA's agent **when it actually sent a check?**

28 In this case, it is undisputed that the Bank sent a check to Alessi. It is also
undisputed that the Bank's check was insufficient to satisfy the entire annual
assessment – all of which possessed superpriority according to *Noonan IRA*.
However, it is abundantly clear that the Bank and Miles Bauer did not believe it to

1 be futile to send a check **since they actually did so**. If they truly believed that it
2 was futile to send a check, there is no reason that they would have done this.

3 At any rate, the validity of *Noonan IRA* is currently in question based upon
4 the pending en banc reconsideration. If *Noonan IRA* is reversed and the Court
5 determines that the entire annual assessment was not entitled to superpriority, this
6 may significantly simplify or even resolve this appeal. Indeed, if the entire annual
7 assessment did not have superpriority, the Bank may have tendered an amount
8 sufficient to satisfy the superpriority portion of the HOA Lien. If *Noonan IRA* is
9 upheld, a variety of arguments will continue to exist to be adjudicated. In either
10 event, *Noonan IRA* will bear heavily upon this appeal.

11 **C. GOOD CAUSE EXISTS TO STAY THIS APPEAL**

12 *Thunder Properties* and *Noonan IRA* both bear heavily upon this case.
13 Indeed, each could potentially be dispositive. Both the parties and this Court will
14 be best served if this appeal is adjudicated based upon current, accurate and final
15 case law. This does not exist at this point in time due to the certified question and
16 en banc reconsideration.

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DATED this 17th day of March, 2021.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Timothy E. Rhoda

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 17th day of March, 2021, I caused a true and correct copy of the foregoing document to be served on all parties as follows:

X VIA ELECTRONIC SERVICE: through the Nevada Supreme Court's efile 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.

Stephen E. Haberfeld
8224 Blackburn Ave #100
Los Angeles, CA 90048
Settlement Judge

 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.