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Clerk of Supreme Court

8
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.
18

Supreme Court No. 81961

CONSOLIDATED WITH

Supreme Court No. 82266

District Court Case No. A756215

19 **REPLY TO OPPOSITION TO MOTION TO STAY APPEAL**

20 COMES NOW, Appellant, LAS VEGAS DEVELOPMENT GROUP, LLC,
21 by and through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and
22 hereby presents its Reply to Respondent's Opposition to Motion Motion to Stay
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1 Appeal. This Reply is made and based upon the attached Memorandum of Points
2 and Authorities and all papers and pleadings on file herein.

3 DATED this 30th day of June, 2021.

4 ROGER P. CROTEAU & ASSOCIATES, LTD.

5
6 /s/ Timothy E. Rhoda
7 ROGER P. CROTEAU, ESQ.
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15 **LAS VEGAS DEVELOPMENT GROUP, LLC**

16
17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **STATEMENT OF THE FACTS**

19 The facts surrounding this matter have been set forth in the instant Motion.
20 As this Court is aware, it heard oral argument regarding the certified question
21 presented in *U.S. Bank, N.A., as Trustee for the Specialty Underwriting and*
22 *Residential Finance Trust Mortgage Loan Asset-Backed Certificates Series 2006-*
23 *BC4 vs. Thunder Properties, Inc.*, Appeal No. 81129 (“*Thunder Properties*”) yesterday, on June 29, 2021. At issue in *Thunder Properties* is what statute of
24 limitations, if any, governs a lienholder who brings a claim seeking a declaratory
25 judgment that its lien was not extinguished by a homeowners association lien
26 foreclosure sale. Thunder Properties and SFR Investments have urged this Court
27 that any claim by a bank that its security interest was unaffected by a homeowners
28 association lien foreclosure sale must be actually litigated within a period of time
or be forever waived – including as a defense. Otherwise, purchasers of real
property at foreclosure sales will never be able to have the peace of mind
associated with knowing that their property will not be seized from them at some

1 point in the distant future.

2 LEGAL ARGUMENT

3 **A. THE MANNER IN WHICH THIS COURT ANSWERS THE** 4 **CERTIFIED QUESTION PRESENTED IN *THUNDER PROPERTIES*** 5 **WILL BEAR HEAVILY ON THIS APPEAL**

6 The Bank's Opposition primarily asserts that limitations do not run against
7 defenses and that, because the Bank was a defendant in this action, that *Thunder*
8 *Properties* will have no bearing on this appeal. However, this is far from accurate.
9 As the Court is aware, Thunder Properties and SFR Investments have argued at
10 length in response to the certified question that a bank's failure to timely file an
11 action to *prove* any defense that it may believe itself to have to the extinguishment
12 of its security interest at a homeowners association lien foreclosure sale not only
13 time bars a quiet title action but also constitutes a waiver of any related arguments
14 at a later date. This is the case because of the litany of presumptions that exist in
15 favor of purchasers of real property at foreclosures sales. If the presumptions are
16 not timely rebutted, they must be deemed to become conclusive.

17 In the instant case, more than six years passed between the date of the HOA
18 Foreclosure Sale at issue and the filing of the filing of the Bank's counterclaim. In
19 the interim time period, the Bank took no action whatsoever to assert that its
20 interest had survived the foreclosure sale. Thus, the manner in which this Court
21 answers the certified question will bear heavily on this appeal. As a result, it is
22 appropriate to stay this matter until after *Thunder Properties* is decided.

23 **B. THE BANK DOES NOT OPPOSE AN EXTENSION OF TIME**

24 While LVDG believes that it is most appropriate to stay this appeal until the
25 certified question of *Thunder Properties* is fully resolved, LVDG has alternatively
26 requested an extension of time until August 27, 2021, in which to file the Opening
27 Brief and Appendix. The Bank does not oppose such an extension. As a result,
28 if the Court is not inclined to stay this appeal until Thunder Properties is decided,

1 LVDG respectfully requests an extension of time until August 27, 2021, in which
2 to file its Opening Brief and Appendix. It is possible that this Court will answer
3 the certified question prior to said date.

4 **CONCLUSION**

5 For the reasons discussed above, LVDG respectfully requests that this Court
6 stay this appeal and hold all deadlines in abeyance until this Court resolves the
7 certified question presented in *Thunder Properties*. Alternatively, if the Court is
8 not inclined to stay this matter, Appellant respectfully requests an extension of
9 time in which to file the Opening Brief and Appendix herein until August 27,
10 2021. The Respondent does not oppose such an extension.

11 DATED this 30th day of June, 2021.

12 ROGER P. CROTEAU & ASSOCIATES, LTD.

13
14 /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 30th day of June, 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.