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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)
19

Supreme Court No. 81961

CONSOLIDATED WITH

Supreme Court No. 82266

District Court Case No. A756215

20 **REPLY TO OPPOSITION TO MOTION TO STAY APPEAL**

21 COMES NOW, Appellant, LAS VEGAS DEVELOPMENT GROUP, LLC
22 (“LVDG”), by and through its attorneys, ROGER P. CROTEAU &
23 ASSOCIATES, LTD., and hereby presents its Reply to Respondent’s Opposition

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1 to Motion to Stay Appeal. This Reply is made and based upon the attached
2 Memorandum of Points and Authorities and all papers and pleadings on file
3 herein.

4 DATED this 31st day of August, 2021.

5 ROGER P. CROTEAU & ASSOCIATES, LTD.

6
7 /s/ Timothy E. Rhoda
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16 **LAS VEGAS DEVELOPMENT GROUP, LLC**

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18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **STATEMENT OF THE FACTS**

20 The facts surrounding this matter have been set forth in the instant Motion.
21 As this Court is aware, it heard oral argument regarding the certified question
22 presented in *U.S. Bank, N.A., as Trustee for the Specialty Underwriting and*
23 *Residential Finance Trust Mortgage Loan Asset-Backed Certificates Series 2006-*
24 *BC4 vs. Thunder Properties, Inc.*, Appeal No. 81129 (“*Thunder Properties*”) on
25 June 29, 2021. At issue in *Thunder Properties* is what statute of limitations, if
26 any, governs a lienholder who brings a claim seeking a declaratory judgment that
27 its lien was not extinguished by a homeowners association lien foreclosure sale.
28 Thunder Properties and SFR Investments have urged this Court that any claim by a
bank that its security interest was unaffected by a homeowners 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

1 knowing that their property will not be seized from them at some point in the
2 distant future.

3 The Bank's Opposition to the instant Motion substantially ignores the
4 briefing of *Thunder Properties* although its counsel also represents the bank in
5 that case. Instead, the Bank focuses primarily upon this Court's unpublished
6 opinion in the matter of *Renfroe v. Carrington Mortg. Servs., LLC*, 456 P.3d 1055
7 (Nev. 2020)(unpublished). While the unpublished decision in *Renfroe* did indeed
8 state that "statutes of limitations do not run against defenses," in *Thunder*
9 *Properties*, both Thunder Properties and SFR Investments have argued at length
10 that such a rule should not be applied in the context of this and similar matters.

11 As the Bank points out, the instant Motion is substantially similar to the
12 prior Motion filed by LVDG. The reason for this is quite simple: the current state
13 of the law remains identical to the state of the law at the time the prior Motion was
14 filed. Although oral argument took place on June 29, 2021, no opinion has issued
15 and *Thunder Properties* remains outstanding. If LVDG were to brief this matter at
16 this time, its briefing would substantially mirror that of *Thunder Properties*.
17 However, given that the answer to the certified question will address the question
18 at hand – and will very likely substantially or wholly resolve it – briefing this
19 matter at this time seems to be a waste of the time and resources of both the parties
20 and this Court.

21 LEGAL ARGUMENT

22 A. THE MANNER IN WHICH THIS COURT ANSWERS THE 23 CERTIFIED QUESTION PRESENTED IN *THUNDER PROPERTIES* 24 WILL BEAR HEAVILY ON THIS APPEAL

25 The Bank's Opposition primarily asserts that limitations do not run against
26 defenses and that, because the Bank was a defendant in this action, that *Thunder*
27 *Properties* will have no bearing on this appeal. However, this is potentially far
28 from accurate. As stated above and as this Court is aware, Thunder Properties and

1 SFR Investments have argued at length in response to the certified question that a
2 bank's failure to timely file an action to prove any defense that it may believe
3 itself to have to the extinguishment of its security interest at a homeowners
4 association lien foreclosure sale not only time bars a quiet title action but also
5 constitutes a waiver of any related arguments at a later date. This is the case
6 because of the litany of presumptions that exist under Nevada law in favor of
7 purchasers of real property at foreclosures sales. If the presumptions are not
8 timely rebutted, they must be deemed to become conclusive.

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

16 **B. LVDG CAN AND WILL FILE ITS OPENING BRIEF AND**
17 **APPENDIX IF THE COURT DESIRES THAT IT DO SO**

18 Given that it previously agreed to the prior 60-day extension of time, the
19 Bank's instant Opposition seems to take an extremely aggressive tone. Contrary to
20 the Bank's insinuations, the instant Motion is being filed in good faith because
21 counsel believes that the answer to the certified question of *Thunder Properties* is
22 critical to this appeal.

23 It is safe to say that the answer to the certified question will issue before the
24 instant matter is fully briefed in any event. Indeed, LVDG believed that it was
25 quite possible that the certified question would be answered within the span of the
26 prior 60 day extension. The Bank likely believed the same. However, this has
27 not happened. The certified question of *Thunder Properties* remains outstanding
28 and neither LVDG nor the Bank possesses the benefit of this Court's answer

1 thereto at this time.

2 While LVDG continues to believe that it is most appropriate to stay this
3 appeal until the certified question is resolved, LVDG's counsel – who, like the
4 Bank's counsel, is also involved in *Thunder Properties* – can and will brief this
5 matter within a reasonable time period. The facts underlying *Thunder Properties*
6 are strikingly similar to those of this matter. Specifically, in *Thunder Properties*,
7 the bank sat on its hands for over 5 years after the homeowners association lien
8 foreclosure sale at issue before filing suit. As a result, the United States District
9 Court for the District of Nevada dismissed the bank's Complaint as time-barred.
10 Here, the Bank sat on its hands for over 6 years, failing to take any action
11 whatsoever, until the owner of the property filed its own action in an effort to clear
12 its title. Only then was the Bank finally prodded into action. The Bank's position
13 herein suggests that the Bank could have continued to sit on its hands indefinitely
14 and that it could potentially raise any defenses decades in the future.

15 If the Court desires that this matter move forward in advance of the *Thunder*
16 *Properties* decision, the briefing will likely substantially mirror that of *Thunder*
17 *Properties*. LVDG's counsel is perfectly capable of doing this within a reasonable
18 time period of 14 or 30 days. However, again, it seems somewhat nonsensical for
19 the parties and the Court to expend time and resources when the directly on point
20 *Thunder Properties* is already fully briefed, argued and awaiting a decision.

21 CONCLUSION

22 For the reasons discussed above, LVDG respectfully requests that this Court
23 stay this appeal and hold all deadlines in abeyance until this Court resolves the
24 certified question presented in *Thunder Properties*. The answer to the certified
25 question will at the very least significantly impact this appeal if not resolve it
26 outright. Alternatively, if the Court remains disinclined to stay this matter,
27 Appellant respectfully requests a reasonable period of time of 14 to 30 days in
28 which to complete and file the Appendix and Opening Brief. Appellant

1 respectfully suggests that the dismissal of this appeal is not remotely warranted
2 under the circumstances at hand. The instant Motion is being filed in good faith
3 and not for purpose of delay. On the contrary, LVDG believes that all parties, as
4 well as the Court will benefit from a stay of this matter.

5 DATED this 31st day of August, 2021.

6 ROGER P. CROTEAU & ASSOCIATES, LTD.

7
8 /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 31st day of August, 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.