

1 TORY M. PANKOPF (SBN 7477)
2 **TORY M PANKOPF, LTD**
3 748 S Meadows Parkway, Suite 244
4 Reno, Nevada 89521
5 Telephone: (775) 384-6956
6 Facsimile: (775) 384-6958
7 Attorney for the Estates and Jill Sarge

Electronically Filed
Mar 26 2021 11:10 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

8 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

9
10
11 IN THE MATTER OF ESTATE OF THELMA
12 AILENE SARGE and ESTATE OF EDWIN
13 JOHN SARGE.

Supreme Court No. 82623

District Court Case No. 16 RP 00009 1B

14 ESTATE OF THELMA AILENE SARGE;
15 ESTATE OF EDWIN JOHN SARGE; AND
16 JILL SARGE,
17 Appellants,
18 vs.
19 ZACHARY PEDERSON; MICHELLE
20 PEDERSON; and ROSEHILL, LLC,
21 Respondents.

22 **REPLY TO OPPOSITION TO**
23 **MOTION TO STAY ORDER PENDING APPEAL**

24 Appellants, ESTATE OF THELMA AILENE SARGE, ESTATE OF EDWIN JOHN
25 SARGE (collectively, “Estates”), and JILL SARGE (“Sarge”) (collectively “Appellants”) by and
26 through their attorney of record, Tory M. Pankopf, of the Law Offices of Tory M. Pankopf, Ltd.,
27 reply to respondents’, ZACHARY and MICHELLE PEDERSON (“Pedersons”) and Defendant,
28 ROSEHILL, LLC (“Rosehill”), (collectively, “Respondents”) opposition to Appellants’ motion
for a stay pending appeal (“Motion”) (“Reply”).

1 **I. REPLY**

2 **A. Opposition Is a Cut and Paste Job.**

3 Respondents' opposition is merely a cut and paste job of their motion for summary
4 judgment and is identical to the district court's orders granting summary judgment and denying
5 Appellants' motion for a stay.¹ Pedersons prepared the proposed orders granting summary
6 judgment and denying Appellants' motion for a stay.² Paragraphs 1-15 of their opposition
7 (Statement of Facts)³ are identical to both orders and paragraphs 1-12 of their opposition
8 (Conclusions of Law) are identical to paragraphs 1-12 of the conclusions of law found in the order
9 granting summary judgment and paragraphs 16-26 of the order denying the motion for stay.⁴

10 Respondents' opposition then cuts and pastes its conclusion from its motion for summary
11 into its opposition which states:

12 "It is clear from these findings and conclusions and the authorities set forth in support
13 of the summary judgment motion, that Sarge having as its sole remedy damages
14 against the lender pursuant to the provisions of NRS 107.420 & 560, cannot prevail
on appeal."

15 There is no legal analysis, and the opposition does not address any of the assertions made by
16 Appellants. Respondents do not address any of the factors set forth in NRAP 8(c) or respond to
17 Appellants' analysis of them. Based thereon the stay should be granted.

18 **B. Opposition Is a Confession of Error.**

19 Respondents' opposition does not address any of the substantive issues of law raised in
20 Appellants' Motion. They simply repeat, without any legal analysis, their ultimate conclusion
21 that they are bona fide purchasers ("BFPs") pursuant to NRS 14.017 and 107.560. Respondents
22 continue to not address the substantive effect of NRS 107.560(7) which states the section does
23
24

25 ¹ Attached hereto as Exhibit "10" is a true and correct copy of the district court's order denying Appellants' motion
26 for a stay. See also declaration of Tory M. Pankopf in support of Reply ("Pankopf Dec") filed concurrently
herewith.

27 ² Pankopf Dec.

28 ³ Appellants' object to Respondents' statement of facts and their opposition given they are not supported by a
declaration.

⁴ See Appellants' Exhibits "5", "6", and "10".

1 not limit Appellants' rights and remedies.⁵ They continue to not address the application of NRS
2 107.080 and 111.180 regarding who is a BFP when an action is initiated pursuant to NRS 107.080.
3 They continue to not address the issue regarding having become equitable owners of the property
4 upon going into contract to purchase it sometime between October 13, 2016 and October 31,
5 2016. Their failure to respond to Appellants' assertions constitutes a confession of error. *See*
6 *Polk v. State*, 126 Nev. 180, 184-85, 233 P.3d 357, 360 (2010) (failure to address an issue on
7 appeal may result in a determination of confession of error).

8 **C. District Court's Order Denying Motion for Stay.**

9 Appellants' Motion does state that they unsuccessfully moved the district court for a stay
10 order but did not clearly state the reasons why it was denied.⁶ That is, Appellants' Motion
11 addresses the reasons why the district court denied their motion for stay but did not so state them
12 as such. In denying Appellants' motion the district court concluded that:

- 13 1) Appellants' rights and remedies were limited by NRS 107.560 and that Pedersons
14 were BFPs pursuant to NRS 14.017 and NRS 107.560(4);
- 15 2) The foreclosure extinguished Appellants' rights or claim to the property despite
16 having complied with NRS 107.080;⁷
- 17 3) Appellants' were required to attempt to enjoin the foreclosure sale and failed to do it;
- 18 4) Appellants' will not suffer irreparable harm;
- 19 5) Respondents' will suffer irreparable harm because a stay will render their title
20 unmarketable; and
- 21 6) It is unlikely Appellants will prevail on appeal.

22 The district court's conclusions were based upon the facts stated in paragraphs 1-15, 18,
23 19, 22, and 23 of the order denying Appellants' motion for a stay.⁸

25 ⁵ Respondents did not address the issue in its reply to Appellants' opposition to their MSJ or their opposition to
26 Appellants' motion for a stay of the order.

26 ⁶ See opening paragraph of Motion; Exhibit "10".

27 ⁷ The district court erroneously concludes that Appellants' filed their complaint prior to the October 13, 2016
foreclosure sale; See Pankopf Dec.

28 ⁸ None of these facts were supported by declaration or any other means. However, the only fact in dispute is
whether Appellants were in default at the time the notice of default was recorded given they were exercising their

1 **D. Supersedeas Bond Is Not Required.**

2 Respondents contend a supersedeas bond is required pursuant to NRCP 62(d)(1). Their
3 contention is in error given the applicable rule is NRAP 8(a)(2)(E) which provides “[t]he court
4 may condition relief on a party’s filing a bond or other appropriate security in the district court.”
5 Whether a bond is to be posted is left to the discretion of this Court.

6 Here, Respondents concede there is no requirement for posting a bond where the
7 order/judgment is not monetary. However, they contend that a bond should be posted because
8 Appellants’ appeal is abusive, and their title has been wrongfully attacked which has rendered
9 their title unmarketable. First, their title has not been wrongfully attacked. Appellants exercised
10 their right to file their complaint pursuant to NRS 107.080 which instructed them to record a
11 notice of pendency of action (“NPA”) in order to preserve their claim of title to the property.⁹
12 Second, Appellants’ appeal raises errors of law involving the applications of NRS 107.080,
13 107.560, 111.180, and 14.017. All of these issues have been raised in the district court and in
14 Appellants’ pending Motion. This appeal has not been brought for an improper purpose. As
15 discussed above, Respondents have not denied, refuted, or addressed any of these issues here or
16 in the district court, and is therefore a confession of error. *Polk*, supra.

17 Second, Respondents contend they are burdened with paying their mortgage, real property
18 taxes, other expenses associated with home ownership, and continuing litigation costs. This is
19 not your typical foreclosure case where Appellants remain in possession of the real property and
20 an appeal would deprive Respondents of possession of it. Respondents are in possession of the
21 property and will remain in possession during the appeal.¹⁰ Regardless of whether an appeal is
22 pending, Respondents remain obligated to pay their mortgage, property taxes, insurance, and any
23 other expenses related to maintaining the property. There is no risk of harm to the property that
24

25 _____
rights under federal law and their reverse mortgage as discussed in their pending Motion; See Exhibit “10” and
Pankopf Dec.

26 ⁹ This Court has previously opined that a legitimate question of fact is at issue regarding Appellants’ “known
27 address”.

28 ¹⁰ The nonbinding authority relied upon by Defendants to support the imposition of a supersedeas bond involves
real property where the party seeking the bond is not in possession of the real property while the appeal is pending.
Obviously, case law isn’t persuasive.

1 could be attributed to Appellants while Respondents possess it. The litigation costs associated
2 with this appeal have previously been posted with the district court in the form of the \$500 bond.
3 Respondents are not entitled to a bond being posted for continuing or expected attorneys' fees
4 and costs. Therefore, there are no damages to be bonded. Yet, without any analysis of or
5 declaration supporting actual damages, Respondents arbitrarily demand a supersedeas bond in the
6 amount of \$300,000.00.

7 Third, they contend their title to the property has been rendered unmarketable. As
8 discussed in Appellants' Motion, the only effect and purpose of a stay order is to prevent
9 Respondents from marketing and selling the real property while the appeal is pending.
10 Respondents knowingly opted to continue with their purchase of the property despite being keenly
11 aware of the defect in title.¹¹ Respondents knew shortly after becoming equitable owners¹² of the
12 property that Appellants' claim existed. Yet they elected to proceed with closing escrow and
13 taking title to the property with the cloud on it.¹³

14 Based thereon, the stay should issue without bond.

15 **B. Conclusion.**

16 Based upon the foregoing, Appellants request the Court stay the order(s) without bond
17 pending the outcome of the appeal.

18 ///

19 ///

20 ///

26 ¹¹ This issue was also raised below and in Appellants' Motion. However, Respondents' opposition does not refute,
27 deny, or address it. Another admission by Respondents.

28 ¹² Respondents went into contract to purchase the property sometime between October 13 and October 31, 2016.

¹³ Respondents took title on or about December 10, 2016. See also Appellants' argument re Respondents accepting
the risk where the third factor is discussed at page 4 of their Motion.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AFFIRMATION

Pursuant to NRS 239B.040, this document does not contain the Social Security Number of any person.

DATED: This 26th day of March 2021.

TORY M. PANKOPF LTD

By: s/ TORY M. PANKOPF
TORY M. PANKOPF, ESQ.
Attorney for Appellants

Exhibit	Description	Bates Nos.
10	District Court Order Denying Stay	095 - 102

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5, I hereby certify that on the 26th day of March 2021, I served a true and correct copy of the following document(s):

Reply to Opposition to Motion to Stay Order Pending Appeal.

By email and depositing in the U.S. Mail, first class postage prepaid thereon, addressed to the following:

Zachary and Michelle Pederson
Rosehill LLC
c/o James M. Walsh, Esq.
WASLSH & ROSEVEAR
9468 Double R Bl, Ste A
Reno, NV 89521
Fax (775) 853-0860
jmwalth@wbri.net

DATED on this 26th day of March 2021.

s/Tory M. Pankopf
Tory M. Pankopf

EXHIBIT “10”

EXHIBIT “10”

EXHIBIT “10”

EXHIBIT “10”

EXHIBIT “10”

EXHIBIT “10”

James M. Walsh, Esq.
Nevada State Bar No. 796.
Walsh & Rosevear
9468 Double R. Blvd., Suite A
Reno, Nevada 89521
Tel: (775) 853-0883
Email: jmw Walsh@wbri.net
Attorney for Pedersen

REC'D & FILED

2021 FEB 10 AM 10:47

AUBREY BOWLATT
CLERK

BY A. JEFFRIES
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

ESTATE OF THELMA AILENE SARGE and
ESTATE OF EDWIN JOHN SARGE,

Plaintiffs,

vs.

QUALITY LOAN SERVICE CORPORATION and
DOES I – X, inclusive,

Defendants.

In the Matter of the Estate of:

THELMA AILENE SARGE,

Decedent.

In the Matter of the Estate of:

EDWIN JOHN SARGE,

Decedent.

Case No.: 16 RP 0009 1B

Dept. No: I

Consolidated With Case No.:

16 PBT 00107 1B and
16 PBT 00108 1B

ORDER DENYING STAY

INTRODUCTION

Plaintiffs having filed a Motion for Stay pending appeal of this Court's order granting the Motion for Summary Judgment filed by Plaintiff's in Intervention Zachary and Michele Pedersen ("Pedersen"), who have opposed the motion. The Court having read and considered the motions and exhibits, the papers and pleadings on file and the hearing the arguments, makes the following findings and order.

///

///

FINDINGS

1. Plaintiff, the Estate of Thelma Ailene Sarge and Edwin John Sarge, filed their complaint for “reentry” contending the foreclosure sale conducted by Quality Loan Service on or about October 13, 2016 was defective for lack of proper notice to the Estates.
2. Rosehill, LLC, was the successful bidder at that sale, paying the sum of \$255,100 for the real property at issue herein, that being, 1636 Sonoma Street, Carson City, Nevada.
3. The Deed of Trust in question herein, was executed by Edwin J. Sarge and Thelma A. Sarge. Trustees of the Sarge Trust dated March 28, 1988, recorded April 26, 2006 as Document No. 352840. Official Records of Carson City.
4. Both Sarges passed away and the heirs have not occupied 1636 Sonoma St. as their full time residence.
5. On September 2, 2015, the Sarges being in default under the terms and conditions of the Deed of Trust, a Notice of Breach and Default and of Election to Cause Sale of Real Property under Deed of Trust was recorded by Quality Loan Corporation. The Notice of Breach and Default and of Election to Cause Sale of Real Property under Deed of Trust was recorded September 22, 2015 as Document No. 457307, Official Records of Carson City.
6. Thereafter, on or about August 29, 2016, Quality Loan Corporation recorded a Notice of Trustee’s Sale as Document No. 467446, Official Records of Carson City.
7. At the duly noticed trustee’s sale, as indicated, Rosehill, LLC was the successful bidder in the amount of \$255,100, and a Trustee’s Deed Upon Sale was issued to Rosehill, LLC and recorded November 2, 2016, as Document No. 469496, Official Records of Carson City Recorder.
8. Plaintiff brought the instant action and recorded a Lis Pendens against the subject property.
9. On or about November 2, 2016, Rosehill moved to expunge the Lis Pendens, and after hearing December 5, 2016, this Court entered its order expunging the Lis Pendens. At such hearing, the Court indicated that Plaintiff having failed to meet the requirements of NRS 14.015, that Rosehill’s title had a priority from the date of the Deed of Trust in 2006, that Plaintiffs had failed to meet their burden to provide any evidence that a default did not exist under the terms and conditions of the Deed of Trust at the time of foreclosure, that Plaintiffs produced no evidence of a tender of the

1 amounts due and owing under the Deed of Trust and that the provisions of NRS 107.080 required
2 no notice to the estate or the beneficiaries. Sarge did not seek any stay of the order and it was not
3 until over six months after the sale to Pedersen did Sarge file a Notice of Appeal of the dismissal.
4 NOA filed June 14, 2017.

5 10. The Order Expunging the Lis Pendens was recorded with the Carson City Recorders Office
6 December 7, 2016 File No. 470500. Sarge sought no stay of this order pending appeal.

7 11. After expunging of the Lis Pendens, Rosehill sold the subject property by Grant Bargain and
8 Sale Deed to Pedersen. Said Deed was dated December 13, 2016 and recorded December 15, 2016, as
9 Document No. 470725, Official Records of Carson City Recorder.

10 12. Rose Hill and Quality Loan Service subsequently both filed Motions to Dismiss.

11 13. Sarge's opposed the motions and specifically filed a Supplemental Opposition wherein they
12 admit that they had made an election to pursue their Loss Mitigation Options under NRS 107.530. Exhibit
13 D to the supplement.

14 14. Sarge has made additional judicial admissions in their motion for summary judgment against
15 Pedersen at P6, L2. Wherein they contend that their election to participate in the Banks loss mitigation
16 process constituted a tender.

17 15. Sarge and their counsel had actual knowledge of the pending foreclosure and elected to participate
18 in a loss mitigation option offered by the lender.

19 16. Rosehill's title and that of its successor in interest, the Pedersens, is derivative and has the
20 priority of the Deed of Trust foreclosed on by Quality Loan Corporation. That Deed of Trust was dated
21 March 4, 2006, recorded April 26, 2006. This relation back of priority of the Trustee's Deed extinguishes
22 any claims, liens or encumbrances with regard to the real property after April 26, 2006 in favor of the
23 purchaser Rosehill and its successors in interest. United States of America v. Real Property at 2659
24 Roundhill Dr., Alamo, CA, 194 F.3d 1020 (9th Cir. 1999). It is clear therefrom that any claims or interest
25 of Sarge, the Sarge Estate or any interest arriving therefrom were extinguished by the Quality Loan
26 Corporation foreclosure.
27
28

1 17. The Pedersen's and Rosehill's title is also protected by NRS 14.017. That statute provides in
2 pertinent part:

3
4 Upon... the recordation of a certified copy of a court order for the
5 cancellation of a notice of the pendency of such an action with the
6 recorder of the county in which the notice was recorded, each person
7 who thereafter acquires an interest in the property as a purchaser,
8 transferee, mortgagee or other encumbrancer for valuable consideration
9 , except a party to the action who is not designated by a fictitious name
10 at that time of the withdrawal or order of cancellation, shall be deemed
11 to be without knowledge of the action or any matter, claim or allegation
12 contained therein, irrespective of whether the person has or at any time
13 had actual knowledge of the action... (2) the purpose of this section
14 is to provide for the absolute and complete transferability of real
15 property after the withdrawal or cancellation of a notice of the pendency
16 of an action affecting the property.

17 18. The order of cancellation was recorded December 7, 2016 and at that time Pedersen's were not
18 parties to this action. Based upon the statute they have presumptive status as bona fide purchasers.

19 19. Sarge has admitted that long before the foreclosure occurred in October 2016 that they had been
20 in communication with Champion Mortgage to pursue their Loss Mitigation Options pursuant to NRS
21 107.530. In fact, as noted Jill Sarge on February 4, 2016 executed a Loss Mitigation Option
22 Acknowledgment wherein, she elected to short sale of the property. See exhibit D to the Supplement to
23 Opposition to Motion to Dismiss Complaint.

24 20. Once Sarge made this election her remedies became those of NRS 107.560. If the lender
25 pursued foreclosure, in violation of NRS 107.530(1), the sole remedy of Sarge was to enjoin the sale. If
26 Sarge allowed the sale to go forward, as happened here, the remedy is solely against the bank as set forth
27 in NRS 107.560(2).

28 21. After recordation of the Trustee's Deed of Sale NRS 107.560(4) provides
a safe haven for any purchaser at the foreclosure sale. It states "a violation of NRS 107.400 to 107.560,
inclusive, does not affect the validity of a sale to a bona fide purchaser for value..."

22. During this period time Sarge was represented by current counsel who was in communication
with the lender's representatives specifically about the foreclosure schedule. See Sarge's Opposition to
Motion to Dismiss complaint filed December 30, 2016 at p. 3 line 15 wherein Sarge states

1
2 “Counsel for the Estates notified the trustee it had failed to serve
3 The NOD and NOS on the Estates and demanded it cease and desist
4 from foreclosing on the property...”

5 23. In addition to the foregoing Sarge in their motion admits their election to participate in the
6 loss mitigation process offered by the Bank and even threatened injunctive remedy should the bank
7 proceed. This brought them squarely within the foreclosure prevention alternatives defined in NRS
8 107.420 and limited their remedy once they allowed the foreclosure to proceed to those against the bank
9 as set forth in NRS 107.560. And NRS 107.560 (4) specifically grants BFP protection to subsequent
10 purchasers.
11

12 24. Sarge’s pleadings constitute Judicial Admissions. Judicial admissions are defined as
13 deliberate, clear, unequivocal statements by a party about a concrete fact within that party's knowledge.
14 *Reyburn Lawn & Landscape Designers, Inc. v. Plaster Dev. Co., Inc.*, 255 P.3d 268, 127 Nev. 331 (2011)
15 citing *Smith v. Pavlovich*, 394 Ill.App.3d 458, 333 Ill.Dec. 446, 914 N.E.2d 1258, 1267 (2009). What
16 constitutes a judicial admission should be determined by the circumstances of each case and evaluated in
17 relation to the other testimony presented in order to prevent disposing of a case based on an unintended
18 statement made by a nervous party. *Id.*, 333 Ill.Dec. 446, 914 N.E.2d at 1268. *See Scalf v. D.B. Log*
19 *Homes, Inc.*, 128 Cal. App.4th 1510, 27 Cal.Rptr.3d 826, 833 (2005) (reasoning that concessions in
20 pleadings are judicial admissions whereas oral testimony subject to traditional impeachment is construed
21 as evidence); *Chaffee v. Kraft General Foods, Inc.*, 886 F.Supp. 1164 (D.N.J.1995) (explaining the
22 difference between a judicial admission, which is conclusively binding, and an evidentiary party
23 admission, which may be challenged).
24

25 “Judicial admissions are formal admissions in the pleadings which have the effect of withdrawing
26 a fact from issue and dispensing wholly with the need for proof of the fact.” *In re Barker*, 839 F.3d 1189
27 (9th Cir. 2016); “Judicial admissions are ‘conclusively binding on the party who made them’” *Am. Title*
28 *Ins. Co. v. Lacelaw Corp.*, 861 F.2d 224, 226 (9th Cir. 1988). “Where, however, the party making an

1 ostensible judicial admission explains the error in a subsequent pleading or by amendment, the trial court
2 must accord the explanation due weight.” *Sicor Ltd. v. Cetus Corp.*, 51 F.3d 848 (9th Cir. 1995). *See*
3 *Lacelaw*, 861 F.2d at 226 (“Factual assertions in pleadings and pretrial orders, unless amended, are
4 considered judicial admissions conclusively binding on the party who made them.”); *Hooper v. Romero*,
5 68 Cal.Rptr. 749, 753, 262 Cal.App.2d 574, 580 (1968) (same).

6 25. That Pedersen’s are Bona Fide Purchasers for value pursuant to the provisions of
7 NRS 14.017 and 107.560.

8 26. That Sarge’s having elected to engage in the lenders loss mitigation program and not enjoin the
9 foreclosure have only a damage remedy, limited to parties other than Pedersen or Rosehill
10 By NRS 107.560.

11 27. Sarge’s now move for a stay to maintain the alleged status quo and the cite factors set forth in NRAP
12 8(c). However the Sarge’s where engaged in loss mitigation negotiations as early as February, 2016.
13 They filed a complaint before the foreclosure sale but took no action to enjoin the sale. The sale occurred
14 and the Order Expunging the Lis Pendens was duly recorded. Sarge’s took no action to stay that order
15 and thereafter the sale to Pedersen closed. Now over 4 years post sale Sarge’s seek a stay. The status quo
16 of this matter is that the Pedersen’s as BFPs purchased the property in December of 2016 after Sarge’s
17 elected to pursue damages under NRS 107.560. The Sarge’s fail to meet the test to preserve the status
18 quo.

19 28. The Sarge’s also fail to meet the test of NRAP 8(c). Having failed to enjoin the foreclosure sale and
20 elected a damage remedy the object of the appeal will not be defeated nor will they suffer irreparable
21 harm as they have elected the damage remedy. Pedersen on the other hand may suffer irreparable harm
22 in that a stay would render their title unmarketable. Further for the reasons set forth above it is unlikely
23 Sarge will prevail on appeal.

24 Based upon the foregoing IT IS HEREBY ORDERED that the Motion for Stay is denied.

25 Dated: February 10th, 2021.

26
27 
28 JAMES T. RUSSELL
DISTRICT JUDGE

CERTIFICATE OF MAILING

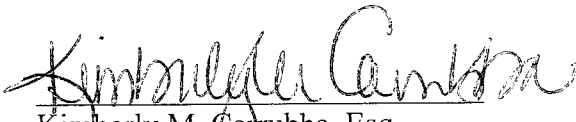
Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 10th day of February, 2021, I deposited for mailing, postage paid, at Carson City, Nevada, and sent via electronic mail, a true and correct copy of the foregoing Order addressed as follows:

James M. Walsh, Esq.
Walsh & Rosevear
9468 Double R Blvd., Ste. A
Reno, NV 89521

Melanie D. Morgan, Esq.
Donna M. Wittig, Esq.
Akerman LLP
1635 Village Center Cir., Ste. 200
Las Vegas, NV 89134

Tory M. Pankopf, Esq.
Tory M. Pankopf LTD
748 S. Meadows Pkwy., Ste. 244
Reno, NV 89521

Kristin Schuler-Hintz, Esq.
Matthew Dayton, Esq.
McCarthy Holthus LLP
9510 W. Sahara Ave., Ste. 200
Las Vegas, NV 89117


Kimberly M. Carrubba, Esq.
Law Clerk, Dept. 1

1 TORY M. PANKOPF (SBN 7477)
2 **TORY M PANKOPF, LTD**
3 748 S Meadows Parkway, Suite 244
4 Reno, Nevada 89521
5 Telephone: (775) 384-6956
6 Facsimile: (775) 384-6958
7 Attorney for the Estates and Jill Sarge

8 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

9
10
11 IN THE MATTER OF ESTATE OF THELMA
12 AILENE SARGE and ESTATE OF EDWIN
13 JOHN SARGE.

Supreme Court No. 82623

District Court Case No. 16 RP 00009 1B

14 ESTATE OF THELMA AILENE SARGE;
15 ESTATE OF EDWIN JOHN SARGE; AND
16 JILL SARGE,
17 Appellants,
18 vs.
19 ZACHARY PEDERSON; MICHELLE
20 PEDERSON; and ROSEHILL, LLC,
21 Respondents.

22 **DECLARATION OF TORY M. PANKOPF**

23 I, TORY M PANKOPF, declare and state:

24 1. I am the attorney representing the Estates of Edwin and Thelma Sarge, and Jill
25 Sarge. I am a member in good standing of the State Bar of Nevada and licensed to practice law
26 before all the courts of this state. If called as a witness, I could competently testify as to all the
27 matters contained herein. All the facts set forth in this declaration are based on my own personal
28 knowledge.

1 2. Filed concurrently with the reply to opposition to motion for an order staying order
2 while on appeal as Exhibit “10” (Bates 095 - 102) is a true and correct copy of the district court’s
3 order denying Appellants’ motion for a stay.

4 3. Respondents’ opposition is a cut and paste of their motion for summary judgment
5 and is identical to the district court’s orders granting summary judgment and denying Appellants’
6 motion for a stay.

7 4. Pedersons’ counsel prepared the proposed orders granting summary judgment and
8 denying Appellants’ motion for a stay.

9 5. Paragraphs 1-15 of Respondents’ opposition (Statement of Facts) are identical to
10 both orders.

11 6. Paragraphs 1-12 of their opposition (Conclusions of Law) are identical to
12 paragraphs 1-12 of the conclusions of law found in the order granting summary judgment and
13 paragraphs 16-26 of the order denying the motion for stay.¹

14 7. Respondents’ opposition then cuts and pastes its conclusion from its motion for
15 summary into its opposition.

16 8. The district court erroneously concludes that Appellants’ filed their complaint
17 prior to the October 13, 2016 foreclosure sale. Their complaint was filed after the foreclosure
18 sale on October 31, 2016.

19 9. None of the facts in stated in the opposition are supported by declaration or any
20 other means. However, the only fact in dispute is whether Appellants were in default at the time
21 the notice of default was recorded given they were exercising their rights under federal law and
22 their reverse mortgage as discussed in their pending Motion.

23 ///
24 ///
25 ///
26
27

28 ¹ See Appellants’ Exhibits “5”, “6”, and “10”.

1 I declare, under penalty of perjury under the laws of the State of Nevada that the foregoing
2 is true and correct.

3 **AFFIRMATION**

4 Pursuant to NRS 239B.040, this document does not contain the Social Security Number
5 of any person.

6 DATED: This 26th day of March 2021.

7
8 ***TORY M. PANKOPF LTD***

9 By: s/ TORY M. PANKOPF
10 TORY M. PANKOPF, ESQ.
11 *Attorney for Appellants*
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

DECLARATION OF TORY M. PANKOPF IN SUPPORT OF REPLY

Zachary and Michelle Pederson
Rosehill LLC
c/o James M. Walsh, Esq.
WASLSH & ROSEVEAR
9468 Double R Bl, Ste A
Reno, NV 89521
Fax (775) 853-0860
jmwash@wbrl.net

s/Tory M. Pankopf
Tory M. Pankopf