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Elizabeth A. Brown  
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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

IN THE MATTER OF ESTATE OF  
THELMA AILENE SARGE and ESTATE  
OF EDWIN JOHN SARGE,

Supreme Court No. 82623

District Court Cases  
Consolidated with:  
Case No.: 16 PBT 00107 1B and  
16 PBT 00108 1B

ESTATE OF THELMA AILENE SARGE:  
ESTATE OF EDWIN SARGE: AND JILL  
SARGE,

Appellants,

vs.

ZACHARY PEDERSEN; MICHELLE  
PEDERSEN; and ROSEHILL, LLC,

Respondents,

**OPPOSITION TO MOTION FOR STAY PENDING APPEAL**

COMES NOW, ZACHARY and MICHELLE PEDERSEN and Defendants,  
Rosehill, LLC, by and through its counsel, James M. Walsh, Esq. of Walsh & Rosevear,  
and opposes Sarge's Motion for Stay Pending Appeal.

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## STATEMENT OF FACTS

The District Court has entered its Findings of Fact and Conclusions of Law (Ex 5. Pankopf Declaration) making the following findings:

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.

4. Both Sarges passed away and the heirs have not occupied 1636 Sonoma St. as their full-time residence.

6. Thereafter, on or about August 29, 2016, Quality Loan Corporation did record a Notice of Trustee's Sale as Document No. 467446, Official Records of Carson City.

1           7.     At the duly noticed trustee's sale, as indicated, Rosehill, LLC was the  
2 successful bidder in the amount of \$255,100, and a Trustee's Deed Upon Sale was issued  
3 to Rosehill, LLC and recorded November 2, 2016, as Document No. 469496, Official  
4 Records of Carson City Recorder.

5           8.     Plaintiff brought the instant action and recorded a Lis Pendens against the  
6 subject property.

7           9.     On or about November 2, 2016, Rosehill moved to expunge the Lis  
8 Pendens, and after hearing December 5, 2016, this Court entered its order expunging the  
9 Lis Pendens. At such hearing, the Court indicated that Plaintiff having failed to meet the  
10 requirements of NRS 14.015, that Rosehill's title had a priority from the date of the Deed  
11 of Trust in 2006, that Plaintiffs had failed to meet their burden to provide any evidence  
12 that a default did not exist under the terms and conditions of the Deed of Trust at the time  
13 of foreclosure, that Plaintiffs produced no evidence of a tender of the amounts due and  
14 owing under the Deed of Trust and that the provisions of NRS 107.080 required no notice  
15 to the estate or the beneficiaries. Sarge did not seek any stay of the order and it was not  
16 until over six months after the sale to Pedersen did Sarge file a Notice of Appeal of the  
17 dismissal. NOA filed June 14, 2017.

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

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

25          12.    Rose Hill and Quality Loan Service subsequently both filed Motions to  
26 Dismiss.  
27  
28

13. Sarge's opposed the motions and specifically filed a Supplemental Opposition wherein they admit that they had made an election to pursue their Loss Mitigation Options under NRS 107.530. See exhibit D to the supplement. 7.

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

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

## CONCLUSIONS OF LAW

1. Summary judgment is appropriate when the pleadings and admissible evidence show there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). *See Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986) (*citing* Fed. R. Civ. Pro. 56(c)); NRCP 56. When deciding a motion for summary judgment, the evidence and any reasonable inferences drawn from it, must be viewed in a light most favorable to the non-moving party. NRCP 56; *Winn v. Sunrise Hospital and Medical Center*, 128 Nev. Adv. Op. 23 (2012). If reasonable minds could differ on material facts, summary judgment is inappropriate because summary judgment's purpose is to avoid unnecessary trials when the facts are undisputed, and the case must then proceed to the trier of fact. *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir. 1995); *see also Nw. Motorcycle Ass'n v. U.S. Dept. of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994).

2. Rosehill's title and that of its successor in interest, the Pedersens, is derivative and has the priority of the Deed of Trust foreclosed on by Quality Loan Corporation. That Deed of Trust was dated March 4, 2006, recorded April 26, 2006. This relation back of priority of the Trustee's Deed extinguishes any claims, liens or encumbrances with regard to the real property after April 26, 2006 in favor of the purchaser Rosehill and its successors in interest. United States of America v. Real Property at 2659 Roundhill Dr., Alamo, CA, 194 F.3d 1020 (9<sup>th</sup> Cir. 1999). It is clear

1 therefrom that any claims or interest of Sarge, the Sarge Estate or any interest arriving  
2 therefrom were extinguished by the Quality Loan Corporation foreclosure.

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

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

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

22 5. Sarge has admitted that long before the foreclosure occurred in October 2016  
23 that they had been in communication with Champion Mortgage to pursue their Loss  
24 Mitigation Options pursuant to NRS 107.530. In fact, as noted Jill Sarge on February 4,  
25 2016 executed a Loss Mitigation Option Acknowledgment wherein, she elected to short  
26 sale of the property. See exhibit D to the Supplement to Opposition to Motion to Dismiss  
27 Complaint.

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

1           7.     After recordation of the Trustee’s Deed of Sale NRS 107.560(4) provides a  
2 safe haven for any purchaser at the foreclosure sale. It states “a violation of NRS 107.400  
3 to 107.560, inclusive, does not affect the validity of a sale to a bona fide purchaser for  
4 value...”

5           8.     During this period time Sarge was represented by current counsel who was  
6 in communication with the lender’s representatives specifically about the foreclosure  
7 schedule. See Sarge’s Opposition to Motion to Dismiss complaint filed December 30,  
8 2016 at p. 3 line 15 wherein Sarge states:

9                   “Counsel for the Estates notified the trustee it had failed to serve the  
10                  NOD and NOS on the Estates and demanded it cease and desist from  
11                  foreclosing on the property...”

12           9.     In addition to the foregoing Sarge in their motion admits their election to  
13 participate in the loss mitigation process offered by the Bank and even threatened  
14 injunctive remedy should the bank proceed. This brought them squarely within the  
15 foreclosure prevention alternatives defined in NRS 107.420 and limited their remedy once  
16 they allowed the foreclosure to proceed to those against the bank as set forth in NRS  
17 107.560. And NRS 107.560 (4) specifically grants BFP protection to subsequent  
18 purchasers.

19           10.    Sarge’s pleadings constitute Judicial Admissions. Judicial admissions are  
20 defined as deliberate, clear, unequivocal statements by a party about a concrete fact within  
21 that party's knowledge. *Reyburn Lawn & Landscape Designers, Inc. v. Plaster Dev. Co.,*  
22 *Inc.*, 255 P.3d 268, 127 Nev. 331 (2011) citing *Smith v. Pavlovich*, 394 Ill.App.3d 458,  
23 333 Ill.Dec. 446, 914 N.E.2d 1258, 1267 (2009). What constitutes a judicial admission  
24 should be determined by the circumstances of each case and evaluated in relation to the  
25 other testimony presented in order to prevent disposing of a case based on an unintended  
26 statement made by a nervous party. *Id.*, 333 Ill.Dec. 446, 914 N.E.2d at 1268. *See Scalf v.*  
27 *D.B. Log Homes, Inc.*, 128 Cal. App.4th 1510, 27 Cal.Rptr.3d 826, 833 (2005) (reasoning  
28 that concessions in pleadings are judicial admissions whereas oral testimony subject to

1 traditional impeachment is construed as evidence); *Chaffee v. Kraft General Foods, Inc.*,  
2 886 F.Supp. 1164 (D.N.J.1995) (explaining the difference between a judicial admission,  
3 which is conclusively binding, and an evidentiary party admission, which may be  
4 challenged).

5 "Judicial admissions are formal admissions in the pleadings which have the effect  
6 of withdrawing a fact from issue and dispensing wholly with the need for proof of the  
7 fact." *In re Barker*, 839 F.3d 1189 (9th Cir. 2016); "Judicial admissions are 'conclusively  
8 binding on the party who made them'" *Am. Title Ins. Co. v. Lacelaw Corp.*, 861 F.2d 224,  
9 226 (9th Cir. 1988). "Where, however, the party making an ostensible judicial admission  
10 explains the error in a subsequent pleading or by amendment, the trial court must accord  
11 the explanation due weight." *Sicor Ltd. v. Cetus Corp.*, 51 F.3d 848 (9th Cir. 1995). *See*  
12 *Lacelaw*, 861 F.2d at 226 ("Factual assertions in pleadings and pretrial orders, unless  
13 amended, are considered judicial admissions conclusively binding on the party who made  
14 them."); *Hooper v. Romero*, 68 Cal.Rptr. 749, 753, 262 Cal.App.2d 574, 580 (1968)  
15 (same).

16 11. That Pedersen's are Bona Fide Purchasers for value pursuant to the  
17 provisions of NRS 14.017 and 107.560.

18 12. That Sarge's damage remedy, if any, is limited to parties other than Pedersen  
19 or Rosehill By NRS 107.560 and therefore based on the foregoing Sarge's Motion for  
20 Summary Judgment should be denied, Pedersen's Motion for Summary Judgment will be  
21 granted and Rosehill's Motion to Dismiss denied as moot.

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

### 25 **SUPERSEDEAS BOND IS REQUIRED**

26 The granting of a stay in this matter was governed by NRCP 62 (d) (1). Which  
27 provides that a stay is effective only upon posting of the supersedeas bond. While there  
28 appear to be no cases in Nevada discussing the requirement of a superseding's bond to

1 stay nonmonetary judgments involving real property, as will be seen other jurisdictions  
2 and forums have imposed the requirement of a bond in these situations. The requirement  
3 is imposed to protect parties in the position of the Pedersen's from the costs and burdens  
4 of abusive appeals. The Pedersen's purchased the property December 13, 2016 for  
5 \$300,000.00 and ever since that time have been mired in baseless litigation with Sarge.  
6 Their title has been wrongfully attacked and their property essentially rendered  
7 unmarketable. They are precluded from selling the property in a rising real estate market  
8 or taking advantage of low interest rates by refinancing. They are required to meet the  
9 burdens of continued debt service, taxes and other associated expenses not to mention  
10 litigation costs associated with this action and appeals.

11 The fact that this matter does not involve a monetary judgment does not rescue  
12 SARGE from the requirement of posting a supersedeas bond. Other courts in discussing  
13 the applicability of such a bond in real property cases have found the posting of a bond is  
14 a requirement to granting a stay. *Capital Development Group, LLC. vs. Buena Vista*  
15 *Terminal, LLC* \_\_\_\_ So. 3<sup>rd</sup> \_\_\_\_ No. 3D19-2346. That case noted that while Florida had  
16 no authority on point federal Bankruptcy cases where on point citing *In re Weinhold* 389  
17 B.R. 783 (M.D. Fla. Tampa Div. 2008) and *In re Texas equipment Co. Inc.* 283 B.R.  
18 222(Bankr. N.D. Tex 2002). Those courts noted that the purpose of the supersedeas bond  
19 is to protect the prevailing party against any loss that might result from the stay. These  
20 include such things as diminution in value and securing the prevailing party against any  
21 loss that might be sustained as a result of an ineffectual appeal. The party seeking the  
22 appeal is required to set forth any reasons for departure from this requirement. Further in  
23 determining the amount of the bond the courts have the discretion to consider such factors  
24 as the time value of money as it relates to the property, diminution in value of the property  
25 pending appeal, costs of insurance, costs of taxes, and any other expenses the appellee  
26 will incur as a result of the appeal.

27 Based upon the foregoing this court should only consider granting a stay  
28 conditioned upon plaintiff's posting of a supersedeas bond. Pedersen would submit that



1 given the \$300,000 purchase price of the property, the substantial costs of appeal and the  
2 Pedersen's inability to sell, refinance or encumber the subject property due to the  
3 pending litigation this bond should be in the amount of the purchase price of the  
4 property \$300,000. In the alternative a hearing should be held to determine a bond  
5 amount.,

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

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

21 **Affirmation Pursuant to NRS 239B.030**

22 The undersigned does hereby affirm that the preceding document does not contain  
23 the social security number of any person.

24 DATED this 25th day of March 2021.

25 **WALSH & ROSEVEAR**

26 /s/ James M. Walsh

27 JAMES M. WALSH, ESQ.

28 Attorneys for Pedersen

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I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of March 2021.

/s/ James M. Walsh  
James M. Walsh  
Walsh & Rosevear