Case No. 82623

IN THE COURT OF APPEAL FOR THE STATE OF NEVADA

In the Matter of the Estates of Thelma Ailene Sarge and Edwin John Sarge.

ESTATE OF THELMA AILENE SARGE; ESTATE OF EDWIN JOHN SARGE; AND JILL SARGE,

Plaintiffs-Appellants,

v.

ZACHARY PEDERSON; MICHELLE PEDERSON; AND ROSE HILL, LLC,

Defendants-Appellees.

On Appeal from the First Judicial District Court, Carson City County
Case No. 16 RP 00009 1B, Honorable James T. Russell, presiding

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APPELLANTS' OPENING BRIEF

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I.

JURISDICTIONAL STATEMENT

This is an appeal filed pursuant to Nevada Rule of Appellate Procedure 3(b)(l). On December 24, 2020, the Honorable James T. Russell of the First Judicial District Court an entered order: 1) granting respondents', Michael Pederson and Michelle Pederson ("Respondents" or "Pedersons"), motion for summary judgment ("MSJ"); 2) denying Appellants', Jill Sarge, Estate of Edwin Sarge, Estate of Thelma Sarge (collectively "Appellants" or "Sarge") MSJ; denying as moot Respondent's, Rosehill LLC ("Respondent" or "Rosehill"), motion to dismiss ("Order") [ER 16-23], and an order striking Appellants' notices of ruling regarding the district court's rulings on the motions. [ER 13-15]

Thereafter, pursuant to NRCP 54(b), Appellants moved for an order certifying the Order as a final judgment which was granted on February 10, 2021. [ER 503-5] On March 11, 2021, Appellants' filed their notice of appeal. [ER 565-66] Thus, confirming the orders appealed herein are appealable.

II.

ISSUES PRESENTED FOR REVIEW

The facts presented below are undisputed. The issues presented herein are pertain to the interpretation of the relevant statutes or rules wherein the district court granted Respondents' motion for summary judgment, denied Appellants' motion for

summary judgment, and denied as moot Respondent's motion to dismiss, including the order striking Appellants' notices of ruling.

Whether the district court's order granting Respondents' MSJ and denying Appellants' MSJ was an error of law where it concluded Appellants' cause of action was limited to only NRS 107.560(2) where NRS 107.560(7) unambiguously states "[t]he rights, remedies and procedures provided by this section are in addition to and independent of any other rights, remedies or procedures provided by law." [ER 20: ¶ 6; 21-2: ¶ 12]

Whether the district court's order granting Respondents' MSJ and denying Appellants' MSJ was an error of law where it concluded Respondents are conclusively BFPs pursuant to NRS 107.560(4) where 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 and any of its encumbrancers for value without notice." [ER 20: ¶ 7; 21: ¶ 11]

Whether the district court's order granting Respondents' MSJ and denying Appellants' MSJ was an error of law where it concluded Respondents are BFPs pursuant to NRS 14.017 [ER 19-20: ¶ 3; 21: ¶ 11] rather than NRS 107.080(7)[1] and NRS 111.180 where NRS 111.180 defines a BFP as "[a]ny purchaser who purchases

[1] Any reference to NRS 107.080 is in reference to the statute as amended by S.B. 239, Ch. 316 and enacted as of June 1, 2015.

[ ] real property....and who does not have actual knowledge, constructive notice, or reasonable cause to know that there exists a defect in, or adverse rights, title or interest to, the real property....." where the undisputed facts confirm Respondents went into contract with Respondent, Rosehill, to purchase the property and opened escrow immediately after the October 13, 2016, foreclosure sale [ER 142-3: ¶¶ 1, 3, 4, 5, 6, 8] and prior to Appellants' filing their complaint [ER 533-8], recording their notice of pendency of action on October 31, 2016 [ER 149-52], where all Respondents had actual notice of the recorded notice of pendency of action ("NPA") [ER 143: ¶ 9] before the recording of the trustee's deed. [ER 256-8]

Whether the district court erred in denying Respondent's, Rosehill, motion to dismiss as moot where Appellants, pursuant to NRCP 15(a)(1)(B), filed an amended complaint in response to its motion which, by operation of law, rendered its motion moot. [ER 21-2: ¶ 12]

Whether the district court erred in striking Appellants' notices of rulings which simply notified the parties the district court had decided to grant Respondents' motion; deny Appellants' motion, and deny Respondent's, Rosehill, motion and were not a notice of entry of order regarding the same as the district court suggests. [ER 13-14]

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III.

PROCEDURAL HISTORY

On October 13, 2016, Appellants' house was foreclosed on by Quality Loan Servicing Corp ("QLSC") as trustee of the deed of trust securing Appellants' Home Equity Conversion Mortgage[2] ("HECM") and Nationstar Mortgagee LLC, doing business as Champion Mortgage ("Nationstar") who is the servicer of the Reverse Mortgage. [ER 555: line 7-11] On October 31, 2016, Appellants filed and recorded their complaint alleging a breach of NRS 107.080 [ER 17: ¶ 8; 533-8] and, pursuant to NRS 107.080, recorded an NPA [ER 17: ¶ 1; 508: ¶ 1; 515-18; ER 530: ¶ 7]. Prior to Appellants' recording of the complaint and NPA, Respondent, Rosehill, had purchased Appellants' house at the foreclosure sale and immediately flipped it to Respondents, Pedersons. [ER 17: ¶ 2, 7; 508: ¶ 3; 509: ¶¶ 4, 5, 6, and 8; 510: lines 19-22; 529: ¶ 2; 530: ¶¶ 6, 9] On November 2, 2016, Respondent, Rosehill, moved the district court for an order expunging the NPA. [ER 508-21] Sometime between October 31 and November 2, 2016, the title/escrow company provided Respondents with a copy of the NPA. [ER 509: ¶ 9; 510: lines 20-22]

[2] Commonly referred to as a "Reverse Mortgage." That is, it is a retirement tool where the borrower accesses the equity in their house. Upon the death of the last borrower, the borrowers' estates or their heirs have, among other things, the legal and contractual right to sell the property for 95% of its appraised value to satisfy the outstanding loan balance inclusive of closing costs from the sale. [ER 126-7; 343-4]; 24 C.F.R. § 206.125

On November 28, 2016, defendant, Quality Loan Service Corp ("QLSC"), filed a motion to dismiss the complaint and expunge the NPA. [ER 573] On December 2, 2016, an order was entered amending the complaint as to DOE I for Respondent, Rosehill. [ER 539-40] On December 6, 2016, orders were entered expunging the NPA [ER 541-42] and consolidating the cases [ER 544-45]. On February 7, 2017, Appellants filed a motion to amend the complaint identifying DOE defendants, Zachary Pederson, Michelle Pederson, and Nationstar Mortgage, d/b/a Champion Mortgage. [ER 573] On February 23, 2017, Respondent, Rosehill, filed its motion to dismiss the complaint. [ER 572]

On May 12, 2017, an order was entered granting the motions to dismiss. [ER 547-51] On June 15, 2017, Appellants filed their notice of appeal of the order granting the motions to dismiss the complaint and expunge the NPA. [ER 565-66] On February 27, 2020, this Court entered its order reversing and remanding the district court's order granting the motions to dismiss the complaint and expunge the NPA. [ER 522-27] On March 25, 2020, the remittitur was filed in the district court. [ER 571]

On May 4, 2020, defendant, QLSC, filed its answer to the complaint. [Id.] On May 7, 2020, orders were entered amending the complaint as to DOE defendants, Zachary Pederson, Michelle Pederson, and Nationstar Mortgage, d/b/a

Champion Mortgage [ER 506-7], and granting Appellant's, Jill Sarge, request to intervene [ER 552-53] filed more than three years earlier.

Despite Appellants' complaint having been amended to include Respondents', Pedersons, as DOE defendants, Respondents, on May 22, 2020, moved the district court for an order to intervene. [ER 570] On August 8, 2020, an order was entered granting Respondents motion to intervene. [Id.] On August 13, 2020, Respondents filed their complaint in intervention. [ER 528-32] On August 21, 2020, Respondents filed their answer to Appellants' complaint. [ER 570] On August 28, 2020, Appellants filed their answer to Respondents' complaint in intervention. [Id.] On October 26, 2020, defendant, Nationstar, filed its answer to Appellants' complaint. [ER 569]

On November 24, 2020, Respondents, Pedersons, filed their amended motion for summary judgment. [ER 220-85; 569] On the same day, Respondent, Rosehill, rather than filing an answer to Appellants' complaint as required by NRCP 12 after this Court reversed and remanded the order granting its prior motion to dismiss the complaint [ER 522-27], Respondent filed its second motion to dismiss to the complaint. [ER 160-219; 569] On December 3, 2020, rather than object, Appellants opted to respond by, pursuant to NRCP 15(a)(1)(B), filing their amended complaint. [ER 380-99; 569]

On November 30, 2020, Appellants filed their MSJ on Respondents' complaint in intervention and their opposition to Respondents' MSJ. [ER 286-96; 569] On December 3, 2020, Appellants filed their notice regarding their opposition to Respondents' Amended MSJ.[3] [ER 377-9; 568] On December 8, 2020, Respondents' filed their reply to Appellants' opposition to the amended MSJ [ER 400-8] and their opposition to Appellants' MSJ. [ER 409-75] On December 8, 2020, Respondent's, Rosehill, filed a reply to Appellants' amended complaint. [ER 476-502]

On December 10, 2020, the district court notified the parties via email that it was granting Respondents', Pedersons, motion, and denying Appellants' and Respondent's motions. [ER 3] The district court's ruling was premature as to Appellants' motion given Respondents had just filed their opposition to it on December 8, 2020 which denied Appellants their right to file a reply. [ER 409-75] On December 18, 2020, defendant, Nationstar, filed its answer to the amended complaint. [ER 568] On December 21, 2020, based upon the district court's notices of its decisions on the parties' motions, Appellants filed a notice of ruling granting

[3] On November 13, 2020, Respondents had originally served Appellants with their MSJ but did not file it with the district court. [ER 22; 567-74] Appellants' opposition filed on November 30 was in response to the original MSJ served on them. Appellants' notice was simply notifying the district court their opposition was intended to be their response to the amended MSJ given the only difference between the two motions was their title i.e., MSJ vs Amended MSJ.

Respondents' motion [ER 1-4], denying Appellants' motion [ER 5-8], and denying Respondent's, Rosehill, motion [ER 9-12]. On December 22, 2020, the district court entered an order striking each of Appellants' notices of ruling. [ER 13-15] On December 24, 2020, an order with findings of fact and conclusions of law was entered granting Respondents' motion, denying Appellants' motion, and denying Respondent's, Rosehill, motion. [ER 16-23]

On January 13, 2021, defendant, QLSC, filed its answer to the amended complaint. [ER 568] On January 19, 2021, Appellants filed their motion for an order certifying and directing entry of final judgment on the order granting and denying the parties' motions. [Id.] On February 10, 2021, an order certifying and directing entry of final judgment was entered. [ER 503-05] On March 11, 2021, Appellants filed their notice of appeal regarding the order granting and denying the parties' motions. [ER 565-66]

IV.

STATEMENT OF THE CASE

All the facts relevant to this appeal are undisputed. At the time Respondents filed their motions [ER 160-219; 220-85], Appellants had alleged in their operative complaint [ER 533-38], pursuant to the requirements of NRS 107.080, defendants, QLSC and Nationstar, failed to provide written notice of the Notice of Default and Election to Sell ("NOD") recorded on September 2, 2015 and the Notice of Sale

("NOS") recorded on August 29, 2016 to the Estates and record titleholders (i.e., the heirs) of the subject property. [ER 536: ¶¶ 6-12]

The law of the case has determined the "known address" is the Empire Lane address. [ER 526] Also, according to the law of the case, a genuine issue of material fact remains as to whether QLSC notified Appellants. [Id.] However, QLSC has readily admitted that it did not. [ER 100-14; 116-24; 317-31; 333-41]

In response to Respondent's, Rosehill, motion, and NRCP 16.1 disclosures made by defendants, QLSC and Nationstar, Appellants', on December 3, 2020, filed their amended complaint augmenting their causes of action. [ER 380-99] In addition to the breach of NRS 107.080, Appellants' amended complaint included a cause of action for multiple breaches of NRS 107.550. [ER 385-6] Appellants alleged violations of both NRS 107.080 and 107.550 prejudiced them by: 1) depriving them of their statutory and contractual right under the terms of the reverse mortgage and deed of trust to exercise the 95% pay off option; 2) unilaterally terminating the foreclosure prevention alternative they had accepted; 3) retiring $32,000.00 in additional principal and interest without having to pay; 4) realizing $15,000.00 cash; 5) Saving money by avoiding fees added to the loan balance; and 6) Preventing the foreclosure sale. [ER 387] It also includes specific allegations for punitive damages [ER 389-94], attorneys' fees and costs as special damages [ER 394-5], conversion [Id.], unjust enrichment [Id.], and quiet/slander of title. [Id.]

The district court granted Respondents' MSJ based on NRS 107.560 and 14.017. [ER 3] Appellants' MSJ was denied because their damages were "limited to [ ] 107.560(2)." [ER 7] Respondent's, Rosehill, motion was denied as being moot because the district court granted Respondents' motion. [ER 11] In reality, the motion to dismiss was moot because Appellants had filed their amended complaint pursuant to NRCP 15(a)(1)(B). [ER 380-99]

Ultimately, the two main legal issues on appeal are questions of law regarding whether Appellants' rights and remedies are limited by NRS 107.560 and whether Respondents are, pursuant to either NRS 107.080 or NRS 107.506, BFPs.

V.

STATEMENT OF FACTS

Respondent, Rosehill, purchased Appellants' house (hereafter "property") at the October 13, 2016, foreclosure sale. [ER 221: lines 4-5; 20-3; 256-8; ER 142: ¶ 3; 143: ¶ 5; 154-5; 161: lines 4-5; 20-3; 195-7]

Prior to the NPA being recorded on October 31, 2016, [ER 142: lines 20-3; 149-52] Respondent, Rosehill, had re-sold the property to Respondents and opened escrow sometime between October 13, 2016, and October 31, 2016. [ER 143: ¶ 4, 6, 8; 144: lines 18-22] Respondent made this statement on October 2, 2016. [ER 145]

On October 31, 2016, Appellants filed and recorded their complaint for defendants' (QLSC and Nationstar) failure to comply with NRS 107.080(3) and (4). [ER 533-38] They also filed and recorded their NPA pursuant to NRS 107.080(5)(c). [ER 142: ¶ 1; 149-52]

Respondents had actual knowledge of Appellants' NPA when they received a copy of it from their escrow company sometime between October 31, 2016, and November 2, 2016. [ER 143: 4; 144: lines 18-22;145]

On November 2, 2016 Respondent, Rosehill ("Rosehill"), recorded its Trustee's Deed. [ER 221: lines 20-23; 256-8]

VI.

Argument

A. Standard of Review re Summary Judgment and Dismissal.

An order granting summary judgment is reviewed de novo. *Walker v. Am. Bankers Ins. Grp.*, 108 Nev. 533, 536, 836 P.2d 59, 61 (1992). Summary judgment is proper if "the pleadings and [all] other evidence on file demonstrate that no genuine issue as to any material fact [exists] and that the moving party is entitled to ... judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121P.3d1026, 1029 (2005) (internal quotation marks omitted). "[T]he evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." *Id*. "A factual dispute is genuine when the

evidence is such that a rational trier of fact could return a verdict for the nonmoving party.,, *Id*. at 731, 121 P.3d at 1031. The district court's legal conclusions are reviewed de novo. *Buzz Stew, Ltd. Liab. Co. v. City of N. Las Vegas*, 124 Nev. 224, 227, 181 P.3d 670, 672 (2008).

A district court's decision is reviewed for an abuse of discretion. *Tighe v. Las Vegas Metro. Police Dep't*, 110 Nev. 632, 634, 877 P.2d 1032, 1034 (1994). The record considered by the district court is reviewed to determine whether its decision is supported by substantial evidence. Id. A decision that lacks support in the form of substantial evidence is arbitrary or capricious, and thus an abuse of discretion that warrants reversal. Id.

B. Conclusion Respondents Are Bona Fide Purchasers Is an Error of Law.

1. The Applicable Statute Is NRS 107.080, Not NRS 14.017.

The district court erred by concluding Respondents are BFPs pursuant to NRS 14.017 and NRS 107.560. [ER 21: ¶ 11] It is mistaken because NRS 107.080 specifically identifies who are BFPs following a non-judicial foreclosure sale. Specifically, NRS 107.080(7) provides:

> "Upon expiration of the time for commencing an action which is set forth in subsections 5 and 6, any failure to comply with the provisions of this section or any other provision of this chapter does not affect the rights of a bona fide purchaser as described in NRS 111.180."

NRS 107.080(5) provides that "every sale made under the provisions of this section and other sections of this chapter vests in the purchaser the title of the

grantor and any successors in interests without equity or right of redemption. Except as provided in subsection 7….." Consequently, the statutes that are determinative of whether Respondents are BFPs in good faith are NRS 107.080 and NRS 111.180. Not NRS 14.017. NRS 111.180(1) provides:

> "Any purchaser who purchases an estate or interest in any real property in good faith and for valuable consideration and who does not have actual knowledge, constructive notice of, or reasonable cause to know that there exists a defect in, or adverse rights, title or interest to, the real property is a bona fide purchaser."

The only purchasers of the property who can declare themselves BFPs are purchasers who have, among other things, no actual or constructive notice of this action and where Appellants had failed to timely bring an action pursuant to sections 5 and 6 of NRS 107.080. Here, Appellants timely filed their complaint pursuant to sections 5 and 6. [ER 533-38] and recorded both their NPA and their complaint. [ER 149-52; 366-9; 515-18]

The applicable subsection Appellants were required to comply with was section 6 given they have alleged proper notice was not provided to them by defendants, QLSC and Nationstar. The NRS 107.080 statute in effect at the time of the foreclosure sale (2015 S.B. 239, Ch. 316, Pg. 1614) provided an action pursuant to section 5 had to be commenced, except as otherwise provided in subsection 6, no later than 15-days after the trustee's deed had been recorded and the NPA had to be recorded no later than 5-days after the action was commenced. NRS 107.080(5)(b).

An action commenced pursuant to section 6 must be commenced 90-days after the foreclosure sale. NRS 107.080(6).

Here, the foreclosure sale occurred on October 13, 2016. Appellants' complaint was filed on October 31, 2016, and both their complaint and NPA were recorded on that date too. Given Appellants have alleged a failure to provide proper notice, they had until January 11, 2017, to file their complaint and until January 16, 2017, to record their NPA. Regardless, Appellants timely filed their complaint and recorded their NPA pursuant to both subsections. Consequently, Respondents were forever precluded from being BFPs because only persons who have purchased foreclosed properties where the time limits set forth in subsections 5 and 6 have expired without a complaint having been filed and an NPA being recorded can be BFPs.

Moreover, Respondent, Rosehill, has admitted in its motion to expunge the lis pendens that they i.e., Pedersons and Rosehill, "promptly" went into contract to purchase the property sometime between October 13, 2016 [ER 221: lines 20-3] and October 31, 2016, and that escrow was opened. [ER 143: ¶¶ 4, 5, 6, and 8; 144: 18-22] Respondent, Rosehill, admits Respondents, Pedersons and Rosehill, were provided a copy of Appellants' NPA by the escrow company before November 2, 2016. [ER 143: ¶ 9; 145] Nor do Respondents deny they had either constructive or

actual knowledge of the NPA. [ER 220-6; 160-6; 400-3; 409-16; 476-9][4] Consequently, Respondents had actual knowledge of this action. As a matter of law, Respondents are not BFPs.

2. District Court Erred by Applying NRS 107.560.

The district court's conclusion Respondents are BFPs pursuant to NRS 107.560 is an error of law. [ER 20: ¶¶ 7, 9; 21: ¶ 11] Subsection 4 of NRS 107.560 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 and any of its encumbrances for value without notice."[5]

NRS 107.560(4).

Subsection 4 is clear that it is applicable to determining whether a person is a BFP when a "violation of NRS 107.400 to 107.560" has been alleged.

First, Appellants' complaint does not allege a violation of NRS 107.400 to 107.560. [ER 533-38] It alleges only a violation of NRS 107.080. [Id.] Thus, subsection 4 is not applicable to determine whether Respondents are BFPs given

[4] Respondents' motions, opposition, and replies do not have any statements in them or declarations in support of any statements in them averring they never received actual notice of the recorded NPA.

[5] Incidentally, Respondents' motion [ER 225: lines 11-13] and the district court's order [ER 20: ¶ 9] never correctly cite the content of NRS 107.560(4). That is they both conclude that NRS 107.560(4) provides a "safe haven for any purchaser at the foreclosure sale." [Id.] They support this erroneous conclusion by omitting the most important part of the subsection. That is "without notice".

the operative complaint at the time their motion was filed. Rather NRS 107.080(7) is determinative of whether Respondents are BFPs. See analysis in preceding section regarding whether Respondents are BFPs pursuant to NRS 107.080.

Second, even if Appellants' complaint alleged a violation of NRS 107.400 to 107.560, Respondents are still not BFPs. That is because it is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme. *Dezzani v. Kern & Assocs., Ltd.* (Nev. 2018) 412 P.3d 56, 60 citing *Davis v. Mich. Dep't of Treasury,* 489 U.S. 803, 809, 109 S.Ct. 1500, 103 L.Ed.2d 891 (1989). Courts must interpret statutes as a symmetrical and coherent regulatory scheme. *Id*. citing *Food & Drug Admin, v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133, 120 S.Ct. 1291, 146 L.Ed.2d 121 (2000). Generally, when the [L]egislature has employed a term or phrase in one place and excluded it in another, it should not be implied where excluded. *Id*. citing C*oast Hotels & Casinos, Inc . v. Nev . State Labor Comm'n,*117 Nev. 835, 841, 34 P.3d 546, 550 (2001). Courts read statutes within a statutory scheme harmoniously with one another to avoid an unreasonable or absurd result. *Id*. citing *Allstate Ins. Co. v. Fackett,* 125 Nev. 132, 138, 206 P.3d 572, 576 (2009).

Given NRS 107.080(7) and NRS 107.560(4) use the identical term i.e., bona fide purchaser, they must have the same meaning within the statutory scheme to

avoid an unreasonable or absurd result. *Id*. A BFP in the statutory scheme of NRS Chapter 107 is defined in NRS 111.180. NRS 107.080(7); defined supra.

Assuming for the sake of argument, Appellants' complaint had alleged some violation of NRS 107.400 to 107.560, then the same analysis as to whether Respondents are BFPs under NRS 107.080 would apply except for the time limitations found in subsections 5 and 6. Rather, Appellants could bring an action for injunctive relief to enjoin a material violation of NRS 107.400 to 107.560 any time prior to the recording of the trustee's deed. NRS 107.560(1). Or, after the trustee's deed is recorded, Appellants could bring an action to recover their actual economic damages resulting from a material violation of NRS 107.400 to 107.560 if it was not corrected and remedied before the recording of the trustee's deed. NRS 107.560(2).

Here, Appellants filed their complaint [ER 533-8] and recorded their NPA [ER 149-52] on October 31, 2016, before the trustee's deed was recorded on November 2, 2016. [ER 256-8] As discussed above, Respondents had actual knowledge of the NPA. Consequently, even when applying NRS 107.560 Respondents are not BFPs.

3. District Court Erred by Applying NRS 14.017.

The district court's conclusion Respondents are BFPs pursuant to NRS 14.017 is an error of law. [ER 19: ¶ 3; 20: ¶ 4] As discussed above, the applicable

statutes are NRS 107.080(7) and 111.180 when a claim is made pursuant to NRS 107.080.

a. Respondents Were Equitable Owners of the Property.

Assuming for the sake of argument Respondents were correct and NRS 14.017 is applicable to the undisputed facts presented herein. Respondents are still not BFPs. Section 14.017(1) provides in part that

> "….upon the recordation of a certified copy of a court order for the cancellation of a notice of the pendency of such an action with the recorder of the county in which the notice was recorded, each person who thereafter acquires an interest in the property as a purchaser ……shall be deemed to be without knowledge of the action…., irrespective of whether the person has or at any time had actual knowledge of the action…."

NRS § 14.017(1).

The operative phrase in the statute is "each person who thereafter acquires and interest in the property as a purchaser." The key word is "thereafter." As discussed above, Respondents acquired their interest in the property "before" the order expunging the NPA was recorded. [ER 541-3] Moreover, the order was reversed on appeal. [ER 226: footnote 3]

Rosehill has admitted and Respondents do not deny they "promptly" went into contract to purchase the property some time between October 13, 2016, and prior to October 31, 2016. [ER 142: ¶¶ 1, 3; 143: ¶¶ 4, 5, 6, 8 and 9; 144: lines 18-22] This is important because Nevada law provides that "[a]n equitable conversion occurs when a contract for the sale of real property becomes binding upon the

parties[,] [t]he purchaser is deemed to be the equitable owner of the land and the seller is considered to be the owner of the purchase price." *Harrison v. Rice,* 510 P.2d 633, 635 (Nev. 1973). This, because of the maxim that equity considers as done that which was agreed to be done. *Id*.

Here, Respondents acquired their interest in the property prior to the recording of the NPA on October 31, 2016. Rosehill served and filed its motion to expunge the NPA on November 2, 2016. [ER 512] The order expunging the NPA was entered on December 6, 2016 and recorded the following day. [ER 260-3] Given Respondents' equitable ownership interest in the property arose prior to the recordation of the order expunging the NPA i.e., December 7, 2016, they are precluded from being "deemed to be without knowledge of the action." NRS 14.017. Moreover, Respondents never deny they are "equitable owners" in either reply to Appellants' opposition or their opposition to Appellants' MSJ. As a matter of law, NRS 14.017 does not establish Respondents are BFPs.

b. Order Canceling NPA Pendens Was Never Effective.

Respondents contend that Appellants' failure to seek an order staying the order canceling the NPA precluded the effect of this Court's order reversing it. [ER 18: lines 1-3; 222: line 7; 224: lines 24-6] Respondents seem to contend that because their deed was recorded after the order was recorded and before this Court reversed it they are forever after BFPs pursuant to NRS 14.017.

The order was never effective because Respondent, Rosehill, never filed and served a notice of entry of order to start the 30-day clock terminating the stay. [ER 467-74]; NRCP 62(a).[6] That is, the order was never effective in terminating the NPA because it remained automatically stayed by Respondent's failure to serve written notice of entry of order until this Court reversed it on February 27, 2020. [ER 522-7] It is immaterial whether Appellants moved to stay the order canceling it because Respondent failed to serve written notice. Consequently, Respondents, Pederson, took title to the property while the NPA was still in effect. Even if the preceding analysis was incorrect, and it is not, Respondents were, as discussed above, "equitable owners"[7] of the property months prior to the order expunging the NPA.

C. Appellants' Rights Are Not Limited To NRS 107.560.

1. NRS 107.560(7) Augments Appellants' Rights and Remedies.

The district court erred by concluding Appellants' rights were limited to NRS 107.400 et. seq. once they began to pursue a foreclosure prevention alternative. [ER 20: ¶¶ 5, 6; 21-2: ¶ 12] Appellants' rights and remedies are not limited to NRS

[6] Upon entry of judgment/order, an automatic stay of the order arises prohibiting the execution of or proceedings to enforce it until 30-days after service of written notice of entry of order.
[7] *Harrison,* supra.

107.560(2). The district court's conclusion that they are is erroneous because NRS 107.560(7) states:

> "[t]he rights, remedies and procedures provided by this section are in addition to and independent of any other rights, remedies or procedures provided by law."

Nev. Rev. Stat. § 107.560(7).

Moreover, NRS 107.560 is not applicable because Appellants' complaint has not alleged a violation of NRS 107.400 to 107.560. [ER 533-8] The district court's order, Respondent's MSJ, reply, and opposition completely ignore subsection 7. [ER 16-23; 220-6; 400-3; 409-16]

"Statutory interpretation is a question of law subject to de novo review." *Williams v. State* (Nev. 2017) 402 P.3d 1260, 1262. The goal of statutory interpretation "is to give effect to the Legislature's intent." *Id*. To ascertain the Legislature's intent, we look to the statute's plain language. *Id*. "[W]hen a statute's language is clear and unambiguous, the apparent intent must be given effect, as there is no room for construction." *Id*. This court "avoid[s] statutory interpretation that renders language meaningless or superfluous," and "whenever possible ... will interpret a rule or statute in harmony with other rules or statutes. *Id*. "If, however, a statute is susceptible to more than one reasonable meaning, it is ambiguous, and the plain meaning rule does not apply." *Edgington v. Edgington* (Nev. 2003) 119 Nev. 577, 583.

When interpreting subsection 7, the words should be given their plain meaning. *Williams*, supra. The words within the statute do not limit Appellants' rights, remedies and procedures. Contrarily, subsection 7 augments their rights, remedies and procedures because there is only one reasonable meaning to be given to the phrase "are in addition to and independent of any other rights, remedies or procedures." That is the remedies, rights, and procedures provided by section 107.560 are in addition to and independent of any other rights, remedies or procedures provided by law. Which means Appellants may bring a claim for breach of NRS 107.080, NRS 107.560, and any other claims that are appropriate.

D. Respondents Never Addressed Substantive Issues Below.

Neither Respondents' reply to Appellants' opposition to MSJ nor their opposition to Appellants' MSJ address any of the substantive issues of law raised in Appellants' MSJ or opposition. [ER 409-75; 476-502] They simply repeat, without any legal analysis, their ultimate conclusion that they are BFPs pursuant to NRS 14.017 and 107.560 and that Appellants remedies are limited to NRS 107.560.

Respondents' did not address the substantive effect of NRS 107.560(7) which states the section does not limit Appellants' rights and remedies. They did not address the application of NRS 107.080 and 111.180 regarding who is a BFP when an action is initiated pursuant to NRS 107.080. They did not address the issue

regarding having become "equitable owners" of the property upon going into contract to purchase it sometime between October 13, 2016 and October 31, 2016.

E. Notices of Ruling Are Not Fugitive Documents.

The district court had no authority to strike Appellants' notices of rulings as fugitive documents.[8] [ER 13-12] It appears the district court has conflated a notice of entry of order with that of a notice of ruling before the entry of an order on the ruling.

On December 10, 2020, the district court sent the parties an email announcing its ruling on the motions and directed counsel for Respondents to prepare a proposed order. [ER 3] The district court clearly and unequivocally advised the parties it intended to grant Respondents' MSJ, deny Appellants' MSJ, and deny Respondent's motion to dismiss "because the Court will be granting Pedersons' MSJ." [Id.]

There is no statute or court rule prohibiting a party to provide a "notice of ruling" nor is leave from a district court required. The district court's email advising the parties of its decision on the motions is a judicial act which should be part of the record below regarding the genesis of the subsequent order filed and entered. If the district court had rendered its decision at a hearing on the motions, then it would

[8] Nevada case law does not provide a clear definition as to what constitutes a "fugitive document" but it appears to be a document not authorized to be filed in a case by statute, rule, with leave from the court, or where a document has been filed by a person who is represented by counsel or who has no standing in the case.

have filed a minute order describing the outcome of the hearing. Given the rulings were made without the benefit of a hearing, the district should have issued/filed a minute order rather than sending the email. Regardless, Appellants made it part of the record by filing and serving the notices of ruling. [ER 1-12]

The notices of rulings are not the district court's order nor could they be misconstrued as such. Nor could they be misconstrued as the proposed order requested from Respondents. They are simply notices of the district court's rulings on the motions which accurately reflect its rulings on the motions and the order subsequently entered on December 24, 2020 [ER 22]

Based thereon, the district court's order striking the notices of ruling is in error.

VII.

CONCLUSION

Given the uncontroverted evidence and the correct application of law, the district court's orders granting Respondents' MSJ, denying Appellants' MSJ, and denying Respondent's motion to dismiss the complaint must be reversed and remanded directing the district court to enter orders granting Appellants' MSJ, denying Respondents' MSJ, and taking no further action on Respondent's motion to dismiss given Appellants having filed their amended complaint in response to its motion to dismiss.

The district court's order striking Appellants' notices of rulings must also be reversed and remanded.

AFFIRMATION Pursuant to NRS 239B.030

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

Dated: July 27, 2021

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in font size 14 and Times New Roman.

2. I further certify that this brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is:

Proportionately spaced, has a typeface of 14 points or more and contains 5,916 words; and does not exceed 25 pages.

3. I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: This 27th day of July 2021. **Tory M Pankopf, Ltd**

s/ TORY M. PANKOPF
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Attorney for Appellants

IN THE SUPREME COURT OF THE STATE OF NEVADA

In the Matter of the Estates of Thelma Ailene Sarge and Edwin John Sarge.	NO. 82623
ESTATE OF THELMA AILENE SARGE; ESTATE OF EDWIN JOHN SARGE; AND BY AND THROUGH THE PROPOSED EXECUTRIX, JILL SARGE, Appellants, vs. ZACHARY PEDERSON; MICHELLE PEDERSON; AND ROSE HILL, LLC, Respondents.	DISTRICT COURT NO. 16 RP 000091B

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

The appellants are not a corporation nor is there a parent corporation to disclose.

Undersigned counsel, Tory M Pankopf of the Law Offices of Tory M Pankopf, Ltd, is the only counsel and law firm having appeared on behalf of Appellants in the underlying matter.

Dated: July 27, 2021

s/Tory M Pankopf
TORY M. PANKOPF
Attorney for Appellants

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ROUTING STATEMENT

This appeal remains with the Supreme Court given none of the presumptions of NRAP 17(b) are applicable.

Dated: July 27, 2021

s/Tory M Pankopf
TORY M. PANKOPF
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