

IN THE SUPREME COURT OF THE STATE OF NEVADA

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC; SJC VENTURES
HOLDING COMPANY, LLC, d/b/a SJC
VENTURES, LLC,

Petitioners,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, AND THE
HONORABLE JOANNA KISHNER,
DISTRICT JUDGE

Respondents,

CBC PARTNERS I, LLC; CBC
PARTNERS, LLC; 5148 SPANISH
HEIGHTS, LLC; KENNETH ANTOS
AND SHEILA NEUMANN-ANTOS,;
DACIA, LLC,

Real Parties In
Interest.

**EMERGENCY PETITION FOR
WRIT OF HABEAS CORPUS
PROHIBITION DIRECTING THE
EIGHTH JUDICIAL DISTRICT
COURT CLARK COUNTY,
NEVADA, HONORABLE
JOANNA KISHNER, DISTRICT
JUDGE, TO REVERSE THE
DENIAL OF AN INJUNCTIVE
RELIEF ORDER WITH RESPECT
TO RESIDENTIAL PROPERTY
FORECLOSURE SALE SET FOR
FEBRUARY 1, 2022**

**RELIEF REQUESTED WITHIN 14
DAYS**

Dist. Ct. Case No.: A-20-813439-B

ORIGINAL PETITION

From the Eighth Judicial District Court, Clark County
The Honorable Joanna Kishner, District Judge

JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
DANIELLE J. BARRAZA, ESQ.
Nevada Bar No. 13822
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Telephone: (702) 629-7900
Facsimile: (702) 629-7925
Email: jag@mgalaw.com
djb@mgalaw.com

Attorneys for Petitioners

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.

1. Spanish Heights Acquisition Company, LLC (“SHAC”) is a private, single member Nevada limited liability company which is 100% owned by SJC Ventures Holding Company, LLC, d/b/a SJC Ventures, LLC. No publicly held corporation owns a 10% or greater stock interest in SHAC.
2. SJC Ventures Holding Company, LLC, d/b/a SJC Ventures, LLC (“SJC Ventures”) is a private, Delaware limited liability company which is 100% owned by a family trust which benefits Jay Bloom and other beneficiary family members. No publicly held corporation owns a 10% or greater stock interest in SHAC.

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3. Attorneys who have appeared or are expected to appear for Petitioners:
Joseph A. Gutierrez, Esq. and Danielle J. Barraza, Esq. of Maier Gutierrez
& Associates;

DATED this 28th day of January, 2022

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Joseph A. Gutierrez
JOSEPH A. GUTIERREZ, ESQ. (9046)
DANIELLE J. BARRAZA, ESQ. (13822)
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Attorneys for Petitioners

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JURISDICTIONAL STATEMENT

This petition for writ of mandamus is from (1) an Eighth Judicial District Court ruling/order denying injunctive relief with respect to foreclosure of the Property at issue, with a foreclosure sale set to take place on February 1, 2022. The hearing denying the request for injunctive relief took place on January 28, 2022. An order has not yet issued.

Writ relief is available when there is no “plain, speedy and adequate remedy in the ordinary course of law.” NRS 34.170.

Under Nevada law, a “writ of prohibition ... arrests the proceedings of any tribunal ... exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal” NRS 34.320. “Prohibition is a proper remedy to restrain a district judge from exercising a judicial function without or in excess of its jurisdiction.” *Smith v. Eighth Jud. Dist. Ct.*, 107 Nev. 674, 677 (1991). “A writ of prohibition may issue when a district court acts without or in excess of its jurisdiction and the petitioner lacks a plain, speedy, and adequate remedy at law.” *Nev. State Bd. of Architecture v. Eighth Jud. Dist. Ct.*, 135 Nev. 375, 377 (2019) (citations omitted). “Whether a writ of prohibition will issue is within this [C]ourt’s sole discretion.” *Id.*

A writ of mandamus will issue to compel the performance of an act, which the law requires as a duty resulting from an office, trust, or station, and where there

is no plain, speedy, and adequate remedy in the ordinary course of law. *Hickey v. District Court*, 105 Nev. 729, 782 P.2d 1336 (1989); NRS 34.160. A writ of mandamus is available when the respondent has a clear, present legal duty to act, or to control an arbitrary or capricious exercise of discretion. *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 637 P.2d 534 (1981). The writ is the appropriate remedy to compel performance of a judicial act. *Solis-Ramirez v. Eighth Judicial Dist. Court ex rel. County of Clark*, 112 Nev. 344, 913 P.2d 1293 (1996).

The Court may, in its discretion, treat a petition for writ of mandamus as one for prohibition, or vice versa, or treat a notice of appeal interchangeably as a Petition for a Writ. *Messner v. District Court*, 104 Nev. 759, 766 P.2d 1320 (1988); *In re Temporary Custody of Five Minors*, 105 Nev. 441, 777 P.2d 901 (1989).

ROUTING STATEMENT

This case should be assigned to the Court of Appeals, as the Court of Appeals has original jurisdiction over “cases challenging the grant or denial of injunctive relief.” N.R.A.P. 17(b)(12).

RELIEF SOUGHT

This petition seeks a writ of mandamus directing the Eighth Judicial District Court to reverse its (pending) order declining to issue an injunction against Defendants with respect to their efforts to foreclose on the residential Property at issue.

The district court abused its discretion in failing to issue an injunction against Defendants, specifically ruling that there is no likelihood of success on the merits, and that there is no irreparable harm. This was an error.

The foreclosure action at issue violates NRS 107.0805, which governs the power of sale for a residential foreclosure. That statute requires the beneficiary of the trustee to issue a Notice of Breach in addition to a written statement containing the following:

(I) That amount of payment required to make good the deficiency in performance or payment, avoid the exercise of the power of sale and reinstate the terms and conditions of the underlying obligation or debt existing before the deficiency in performance or payment, as of the date of the statement;

(II) The amount in default;

(III) The principal amount of the obligation or debt secured by the deed of trust;

(IV) The amount of accrued interest and late charges;

(V) A good faith estimate of all fees imposed in connection with the exercise of the power of sale; and

(VI) Contact information for obtaining the most current amounts due and the local or toll-free telephone number described in subparagraph (4).

NRS 107.0805(1)(b)(3) (emphasis added). Injunctive relief was sought in this case by the property owner Spanish Heights Acquisition Company, LLC (“SHAC”) because the foreclosing entity, 5148 Spanish Heights, LLC, failed to include a good faith estimate of the fees imposed in connection with the exercise of the power of sale. Instead, 5148 Spanish Heights, LLC included in its written statement all of the fees and costs that it incurred in the underlying matter, and all of the fees and costs

it incurred in SHAC’s bankruptcy matter, neither of which have anything to do with actually exercising power of the sale. For point of reference, the January 4, 2021 Notice of Default issued by 5148 Spanish Heights, LLC indicates that the “good faith estimate” of all the fees imposed in connection with the exercise of the power of sale is “between \$9,000.00 and \$25,000.00.” PA0316. In January 2022, the payoff demand written statement issued by 5148 Spanish Heights, LLC included the following breakdown of principal, accrued interest, and fees:

Principal	\$2,935,001.14
Accrued Interest	\$1,315,105.24
Advances	\$1,326,744.55
Interest Owed	\$1,038,910.12
Attorney’s Fees (foreclosure)	\$42,572.50
Costs (foreclosure)	\$12,305.07
Attorney’s Fees (state)	\$624,479.00
Costs (state)	\$28,696.06
Attorney’s Fees (BK)	\$174,790.50
Costs (BK)	\$20,898.15
Total Owed	\$7,519,502.33

PA0273. As such, the fees and costs associated with just the foreclosure sale grew exponentially from \$9,000-\$25,000 to \$54,877.57 without any justification. Of more concern is the fact that the attorneys’ fees from the underlying action and from SHAC’s bankruptcy action were tacked on to the payoff demand – which violates

NRS 107.0805(1)(b)(3) which states that only those fees incurred in actually exercising power of the sale can be included. The district court erred in failing to issue injunctive relief precluding the foreclosure sale from occurring as a result of the violation of NRS 107.0805(1)(b)(3), which unreasonably interfered with SHAC's ability to redeem the Property prior to the foreclosure sale.

The district court also erred because the interest stated in the January 4, 2021 Notice of Default is \$1,315,105.24, with interest accruing at a rate of \$1,608.22 per day, whereas the total interest claimed in the January 2022 written statement is \$2,352,015.36, which far exceeds the amount claimed on January 4, 2021 plus an additional years' worth of interest at \$1,608.22 per day.

Accordingly, the motion for injunctive relief should have been granted, and the district court's order denying the motion should be reversed, with Defendants enjoined from conducting the sale until a corrected written statement is issued pursuant to NRS 107.0805(1)(b)(3).

ISSUES PRESENTED

Did the district court abuse its discretion in failing to issue an injunction order against Defendants, instead ruling at the hearing that there is no likelihood of success on the merits and there is no irreparable harm because the only dispute is "monetary."

FACTS NECESSARY TO CONSIDER THE PETITION

This action involves the residential property located at 5148 Spanish Heights Drive, Las Vegas, Nevada 89148, with Assessor's Parcel Number 163-29-615-007 ("Property"). The original owners of the residential Property were Kenneth and Sheila Antos, with the deed recorded in April 2007. On October 14, 2010, a Grant, Bargain, Sale Deed was recorded, transferring the Property to the Kenneth and Sheila Antos Living Trust. PA0001-PA0004.

The Property is now owned by SHAC pursuant to a recorded deed. PA0278-PA0280. Jay Bloom, who serves as a manager for SHAC and SJC Ventures, uses the Property as his primary residence where he lives with his family, including his elderly octogenarian in-laws and three rescue animals. PA0275.

Defendants/ real parties in interest CBC Partners I, LLC and 5148 Spanish Heights, LLC ("Defendants") claim to hold an interest in the Property purportedly secured by a contested third-position Deed of Trust.

After Defendants continued attempting to wrongfully foreclose on the Property in the middle of litigation, SHAC and SJC Ventures sought, and were granted, a temporary restraining order, issued on January 5, 2021, which precluded Defendants from moving forward with any foreclosure sale, pending the district court's evidentiary hearing on the preliminary injunction and "trial" on related legal issues. PA0149-PA0153.

The preliminary injunction evidentiary hearing and bench “trial” commenced on February 1, 2021. On February 3, 2021, before completion of the trial, SHAC filed for bankruptcy in the United States District Court for the District of Nevada. PA0154-PA0159.

On the morning of February 3, 2021, SHAC’s counsel informed the district court of SHAC’s bankruptcy filing before any trial proceedings began for the day. Nevertheless, the trial was allowed to continue despite SHAC’s objections, and in violation of the automatic stay of litigation, continuing on February 3, 2021 and on March 15, 2021.

On April 6, 2021, the district court issued Findings of Fact and Conclusions of Law stemming from that trial. PA0327-347. The district court specifically ordered that its “temporary restraining order, filed January 5, 2021, will remain in place pending further order of the Bankruptcy Court.” PA0179.

Thereafter, the Bankruptcy Court determined that CBC Partners I, LLC and 5148 Spanish Heights, LLC violated the bankruptcy stay by moving forward with the trial on February 3, 2021 and March 15, 2021 despite the fact that SHAC had filed bankruptcy by that time. *See* PA0870-PA0873, finding that the Defendants “violated the automatic stay” with respect to issues (a), (b), and (c) of the 4/6/2021 FFCL. Those issues are:

(a) Contractual interpretation and/or validity of the underlying “Secured

Promissory Note between CBC Partners I, LLC, and KCI Investments, LLC, and all modifications;

(b) Interpretation and/or validity of the claimed third-person Deed of Trust and all modifications thereto, and determination as to whether any consideration was provided in exchange for the Deed of Trust; and

(c) Contractual interpretation and/or validity of the Forbearance Agreement, Amended Forbearance Agreement and all associated documents/contracts.

See PA0161 at fn. 1. It has long been established that “violations of the automatic stay are void, not voidable.” *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992). This means that the district court’s rulings on contractual interpretation of the aforementioned agreements are void.

Thereafter, the bankruptcy stay of litigation was lifted by order of the Bankruptcy Court entered on Jul 27, 2021. The district court matter then proceeded towards a trial.

The parties reached a settlement on or around November 15, 2021. PA0205-PA0242. On November 15, 2021, the parties placed settlement terms on the record before the district court. *Id.* That was followed by an order granting the parties’ joint oral motion to vacate the trial date and stay the case pending a settlement between the parties. The parties agreed that in the event the settlement payments were not made, 5148 Spanish Heights, LLC would have the ability to initiate foreclosure

proceedings on the Property. PA0224.

Petitioners were unable to make a scheduled payment on January 5, 2022, which resulted in a default of the settlement agreement. PA0275.

As a result, on January 11, 2022, Defendants recorded a Notice of Trustee's Sale, setting the sale for February 1, 2022. PA0268-PA0271. Also in January 2022, Defendants issued a written statement to SHAC purporting to be a breakdown of all of the principal, interest, late fees, and attorneys' fees and costs owed that SHAC would have to pay in order to redeem the Property prior to the foreclosure sale. PA0273. That written statement violated NRS 107.0805(1)(b)(3).

As such, on January 19, 2022, Petitioners filed a motion for TRO and preliminary injunction on an order shortening time, seeking to enjoin the foreclosure sale from occurring until a proper written statement payoff demand could be issued pursuant to NRS 107.0805(1)(b)(3). PA0250-PA0322.

That motion was fully briefed (*See* PA0323-PA0341; PA0342-PA0355; PA0356-PA0835; and PA0836-PA0873), and a hearing was held on January 28, 2022, wherein the district court denied the injunctive relief requested, ruling that there is no likelihood of prevailing on the merits, and no irreparable harm.

Because Petitioners have no adequate remedy in the ordinary course of the law with respect to the injunctive relief that was not granted, this Court should exercise its discretion to consider and resolve this issue now. Petitioners submit that

extraordinary relief is not only warranted, but demanded under the circumstances.

WHY THE WRIT SHOULD ISSUE

A. The Injunctive Relief Should Have Been Granted

The district court should have granted injunctive relief and prevented 5148 Spanish Heights, LLC from being able to foreclose on the Property, as there is a statutory breach associated with the foreclosure documents that 5148 Spanish Heights, LLC has submitted.

1. Petitioners Demonstrated a Likelihood of Success on the Merits of their Claims Regarding the Written Statement Payoff Demand

To grant a preliminary injunction, the Court must “assess the plaintiff’s likelihood of success on the merits, not whether the plaintiff has actually succeeded on the merits.” *Southern Oregon Barter Fair v. Jackson County*, 372 F.3d 1128, 1136 (9th Cir. 2004). Moreover, “decisions on preliminary injunctions are just that--preliminary--and must often be made hastily and on less than a full record.” *Id.* Thus, “the possibility that the party obtaining a preliminary injunction may not win on the merits at the trial is not determinative of the propriety or validity of the trial court's granting the preliminary injunction.” *B.W. Photo Utilities v. Republic Molding Corp.*, 280 F.2d 806, 807 (9th Cir.1960).

Here, Petitioners can show a likelihood of success on the merits as to their argument that 5148 Spanish Heights, LLC provided a defective written statement

payoff demand which includes unaccounted for interest figures and unreasonable fees and cost figures, which presented an unreasonable obstacle to SHAC exercising its right to redeem the Property prior to the foreclosure sale.

Defendants' most recent Notice of Default dated January 4, 2021 indicated that \$1,315,105.24 had been accrued in interest up to that point. PA0316. This means that the additional interest that needs to be calculated is from January 2021 to present day, at the \$1,608.22 per day figure included in Defendants' January 2021 Notice of Default. PA0316. Doing those calculations, that comes to another \$628,814.02 in interest accrued since January 2021. The total of \$1,315,105.24 plus \$628,814.02 comes to \$1,943,919.26.

But the written statement payoff demand accompanying the January 2022 Notice of Sale contends that the total interest owed is \$2,352,015.36. PA0273. This is nonsensical, and results in a discrepancy of \$410,096.10 in unaccounted for interest that Defendants have added to their payoff demand.

Further, Defendants are seeking over \$900,000 in fees and costs on a foreclosure action. PA0273. This is beyond unreasonable, and the actual written statement payoff demand indicates that Defendants are including fees and costs outside of the foreclosure action, as there is a separate category for attorneys' fees and costs incurred in SHAC's bankruptcy action (totaling nearly \$200,000), which is obviously unrelated to the fees and costs incurred in recording the various

statutory notices and conducting a non-judicial foreclosure sale. PA0273.

Likewise, Defendants appear to have lumped together all of their fees and costs in their entirety from this underlying action and placed them into the payoff demand for the foreclosure sale, which is improper and not supported by any legal authorities. Defendants contend that they are allowed to do this because those are “contract” damages stemming from the breach of a Forbearance Agreement. PA0351.

But NRS 107.0805 does not state that contract damages are allowed to be included in the written statement payoff demand. The fees and costs need to be associated with noticing and conducting the actual foreclosure sale, and there is no feasible scenario in which Defendants conducting a non-judicial foreclosure sale results in over \$900,000 in fees and costs.

NRS 107.0805 states, in relevant part, the requirements for a trustee sale to commence:

(3) That the beneficiary or its successor in interest, the servicer of the obligation or debt secured by the deed of trust or the trustee, or an attorney representing any of those persons, has sent to the obligor or borrower of the obligation or debt secured by the deed of trust a written statement of:

(I) That amount of payment required to make good the deficiency in performance or payment, avoid the exercise of the power of sale and reinstate the terms and conditions of the underlying obligation or debt existing before the deficiency in performance or payment, as of the date of the statement;

(II) The amount in default;

(III) The principal amount of the obligation or debt secured by the deed of trust;

- (IV) The amount of accrued interest and late charges;
(V) **A good faith estimate of all fees imposed in connection with the exercise of the power of sale;** and
(VI) Contact information for obtaining the most current amounts due and the local or toll-free telephone number described in subparagraph (4).

Accordingly, Defendants are only allowed to include in their payoff demand a “good faith estimate of all fees imposed in connection with the exercise of the power of sale.” They are not allowed to include fees and costs incurred in legal actions which are not judicial foreclosure actions (such as this instant action), nor are they permitted to include fees and costs incurred in any involvement in the Property owner’s bankruptcy case, as that has nothing to do with conducting a foreclosure sale. Nevertheless, Defendants’ payoff demand is broken down as follows:

Principal	\$2,935,001.14
Accrued Interest	\$1,315,105.24
Advances	\$1,326,744.55
Interest Owed	\$1,038,910.12
Attorney’s Fees (foreclosure)	\$42,572.50
Costs (foreclosure)	\$12,305.07
Attorney’s Fees (state)	\$624,479.00
Costs (state)	\$28,696.06
Attorney’s Fees (BK)	\$174,790.50
Costs (BK)	\$20,898.15
Total Owed	\$7,519,502.33

PA0273. As such, Defendants are representing that (somehow) the fees and costs just to conduct the foreclosure sale are \$54,877.57. There is no justification for this, especially when Defendants have already represented in their prior Notice of Default from 2021 that the “good faith estimate” of all the fees imposed in connection with the exercise of the power of sale is “between \$9,000.00 and \$25,000.00.” How has that good faith estimate somehow more than doubled to \$54,877.57? Petitioners asked for an actual breakdown on the foreclosure fees and costs, but were rebuffed by Defendants. This is why injunctive relief is warranted.

But more concerning is the Defendants’ attempt to tack on all of their other fees and costs (incurred from this instant action and the SHAC Bankruptcy action) onto the foreclosure payoff demand. There is no legal authority for this. The statute is clear, you can only include the fees imposed in connection with exercising the power of sale. NRS 107.0805. Defendants have tried to rope all of these fees and costs in by making the conclusory claim that “As a direct result of Plaintiffs actions Defendants have incurred Reimbursable fees and costs in the amount of approximately \$903,741.28.” PA0351. But respectfully, that is not the test for fees and costs under NRS 107.0805. It needs to be only the fees and costs incurred in exercising the sale.

As such, Petitioners demonstrated a likelihood of success as to their claim that the payoff demand associated with the Notice of Sale is defective as a result of a

myriad of accounting errors and the overstating of fees and costs. Thus, a temporary restraining order and preliminary injunction are warranted against Defendants.

Petitioners also lodged concerns about the interest calculation, as the plain language on Defendants' own January 2021 Notice of Default, states that the total interest has already accumulated in the amount of \$1,315,105.24 as of January 4, 2021 date of Notice. PA0316. Calculating the additional interest at the rate of \$1,608.22 per day would result in an additional \$628,814.02 in interest accrued from January 4, 2021 through January 31, 2022, for a total in interest of \$1,943,919.26.

However, the written statement payoff demand claims that the total interest is \$2,352,015.36. PA0273. Petitioners contend that this discrepancy warrants enjoining the foreclosure sale and conducting an evidentiary hearing to determine the actual amount of accrued interest.

The district court largely rejected Petitioners argument by determining that NRS 107 does not apply because even though the Property is a residentially-zoned property and is used as a residence, it was listed as collateral for underlying business deals, which makes this a "commercial sale." But pursuant to NRS 107.015, "residential foreclosure" means the "sale of a single-family residence under a power of sale granted by NRS 107.0805." The Property is a single-family residence, being used by a family as their primary place of residence.

Defendants' own Notice of Default concedes that this a residential sale being

conducted under NRS 107.080. *See* PA0315 (“It has been established that the beneficiary and/or mortgage servicer of the deed of trust has caused a trustee to exercise the power of sale pursuant to NRS 107.080.”). As such, the Notice of Default concedes that this is a residential sale that needs to be conducted pursuant to NRS 107. The district court erred in holding otherwise.

2. Petitioners Showed They Would Incur Irreparable Injury

The district court ruled that this was solely a “monetary” issue, but that is not the case. As a result of Defendants violating NRS 107.0805 with respect to the written statement payoff demand, that unreasonably interfered with Petitioners’ ability to exercise their right to redeem the Property, which puts the Property in jeopardy of foreclosure.

In the absence of immediate injunctive relief by this Court, Plaintiffs will suffer irreparable harm for which no monetary damages are adequate. The Nevada Supreme Court has held that “[g]enerally harm is ‘irreparable’ if it cannot adequately be remedied by compensatory damages.” *Hamm v. Arrowcreek Homeowners’ Ass’n*, 124 Nev. 28, 183 P.2d 895, 901 (2008) (citing *Univ. Sys. v. Nevadans for Sound Gov’t*, 120 Nev. 712, 721, 100 P.3d 179, 87 (2004)). “[A]n injury is not fully compensable by money damages if the nature of the plaintiffs’ loss would make damages difficult to calculate.” *Basicomputer Corp. v. Scott*, 973 F.2d 507, 511 (6th Cir. 1992).

Nevada courts have repeatedly held that real property is unique and interference with real property rights usually leads to irreparable harm. *See Dixon v. Thatcher*, 103 Nev. 414, 416, 742 P.2d 1029, 1030 (1987) “[R]eal property and its attributes are considered unique and loss of real property rights generally results in irreparable harm.” *See also, Leonard v. Stoebling*, 102 Nev. 543, 728 P.2d 1358 (1986) (view from home is unique asset; injunction issued to preserve view); *see also Nevada Escrow Service, Inc. v. Crockett*, 91 Nev. 201, 533 P.2d 471 (1975) (denial of injunction to stop foreclosure reversed because legal remedy inadequate).

As such, Petitioners would likely suffer irreparable injury if Defendants’ conduct is permitted to continue because allowing Defendants to continue their foreclosure conduct unfettered will result in a potential loss of the Property as to owner SHAC.

As it would be nearly impossible for Petitioners to quantify the harm that SHAC would suffer if divested of its ownership interest in real property and SJC Ventures especially will endure as a result of losing access to the Property as a tenant through actual damages, the harm is irreparable, and can only be prevented through injunctive relief. Thus, in order to preserve this Court’s power to render a meaningful decision on the merits of the written statement payoff amount, this Court should issue a temporary restraining order and preliminary injunction enjoining the Defendants’ conduct.

3. Balance of Hardships and Public Policy Favored Petitioners

“In considering preliminary injunctions, courts also weigh the potential hardships to the relative parties and other, and the public interest. *Univ. & Cmty. Coll. Sys. of Nev.*, 120 Nev. at 721, 100 P.3d at 187 (citation omitted).

Here, the balance of harm in this case heavily favors Plaintiffs. SHAC now faces the potential loss of a real property interest, and SJC Ventures faces the loss of the real property that it currently leases. There are living beings residing in the Property, including Mr. Bloom and his wife, his octogenarian mother-in-law, and three rescue dogs. All will be displaced in the event this Court permits Defendants to move forward with a foreclosure sale without justifying their payoff demand figures, which involves massive discrepancies. Issuance of a preliminary injunction would prevent the Defendants from continuing their wrongful foreclosure actions.

Further, issuance of the injunction will merely maintain the status quo. “[T]he status quo is the last uncontested status which preceded the pending controversy.” *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809 (9th Cir. 1963), cert denied, 375 U.S. 821 (1963). Here, an injunction would merely return the parties to the status quo that existed prior to the Defendants’ contested and improper conduct.

Public policy also weighs in favor of not fast-tracking a foreclosure in this case which involves huge discrepancies in the payoff demand that that have gone unexplained. This is a not a *de minimis* deficiency that Petitioners can simply pay

off and then litigate after the fact. This is a serious deficiency that needs to be resolved prior to the foreclosure sale taking place. There was simply no basis for Defendants to illegally initiate foreclosure actions without being able to justify their payoff demand figures, which at this point appear arbitrary, especially with respect to the alleged accrued interest, which does not match up with the prior 2021 Notice of Default figures.

Accordingly, the balance of hardships favor Petitioners.

B. The District Court's Order Is the Result of a Trial That Violated the Bankruptcy Stay

At the January 28, 2022 hearing, the district court held that the prior trial has determined that this is not a residential foreclosure sale, but a commercial foreclosure sale – even though the Property at issue is solely zoned as a residential property and is in use by a family. The district court noted that because the Property is not in the name of an individual, but rather an LLC, that is a factor indicating that this is a commercial sale and that the residential foreclosure statutes do not apply.

To be clear, the Bankruptcy Court has found that Defendants violated the bankruptcy stay with respect to the portion of the trial that focused on interpretation of the contractual commercial documents. Those portions are:

- (d) Contractual interpretation and/or validity of the underlying “Secured Promissory Note between CBC Partners I, LLC, and KCI Investments,

LLC, and all modifications;

(e) Interpretation and/or validity of the claimed third-person Deed of Trust and all modifications thereto, and determination as to whether any consideration was provided in exchange for the Deed of Trust; and

(f) Contractual interpretation and/or validity of the Forbearance Agreement, Amended Forbearance Agreement and all associated documents/contracts.

PA0161 at fn. 1. The Ninth Circuit has held that “violations of the automatic stay are void, not voidable.” *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992). This means that the district court’s rulings on contractual interpretation of the documents, including any findings that the residential foreclosure statute does not apply because the contracts have transformed a residential property into a commercial property, are all void.

As such, to the extent that the district court’s order is based on any of the void portions of the district court’s April 2021 FFCL, it should be reversed.

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CONCLUSION

Therefore, Petitioner requests a writ of mandamus or prohibition requiring the Eighth Judicial District Court to reverse its order failing to grant injunctive relief related to foreclosure of the Property at issue.

DATED this 28th day of January 2022.

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Joseph A. Gutierrez
JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
DANIELLE J. BARRAZA, ESQ.
Nevada Bar No. 13822
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Attorneys for Petitioners

ATTORNEY'S CERTIFICATE OF COMPLIANCE

1. I 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 it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14 point Times New Roman.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 21(d) 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 5,937 words.

3. Finally, I certify that I have read this petition, 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 petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the petition 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

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on is to be found. I understand that I may be subject to sanctions in the event that the accompanying petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 28th day of January 2022.

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Joseph A. Gutierrez

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Attorneys for Petitioners

VERIFICATION

On January 28, 2022, the affiant, Danielle J. Barraza, Esq. appeared in person before me, a notary public, who knows the affiant to be the person whose signature appears on this document, who stated:


I am counsel for Petitioners Spanish Heights Acquisition Company, LLC (“SHAC”) and SJC Ventures Holding Company, LLC, d/b/a SJC Ventures, LLC (“SJC Ventures”). I have read the foregoing petition for writ of mandamus and all factual statements in the petition are either within the affiant’s personal knowledge and true and correct or supported by citations to the appendix accompanying the petition.

The exhibits in the appendix are true and correct copies of the original documents.

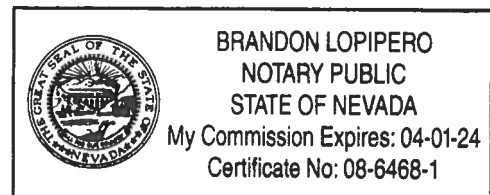


DANIELLE J. BARRAZA, ESQ.

SUBSCRIBED and SWORN to before
me this 20th day of January, 2022.



Notary Public for Said County and State



CERTIFICATE OF SERVICE

Pursuant to NRAP 21(a) and 25(c), I certify that I am an employee of MAIER GUTIERREZ & ASSOCIATES, and that on January 28th 2022, **EMERGENCY PETITION FOR WRIT OF MANDAMUS OR PROHIBITION DIRECTING THE EIGHTH JUDICIAL DISTRICT COURT CLARK COUNTY, NEVADA, HONORABLE JOANNA KISHNER, DISTRICT JUDGE, TO REVERSE THE DENIAL OF AN INJUNCTIVE RELIEF ORDER WITH RESPECT TO RESIDENTIAL PROPERTY FORECLOSURE SALE SET FOR FEBRUARY 1, 2022** was served via electronic means by operation of the court's electronic filing system:

Michael R. Mushkin, Esq.
MUSHKIN & COPPEDGE
6070 South Eastern Avenue, Suite 270
Las Vegas, Nevada 89119
Tel: 702.454.3333
Email: Michael@mccnvlaw.com
Attorney for Real Parties in Interest

Candace C. Carlyon, Esq.
Tracy M. O'Steen, Esq.
CAROLYN CICA CHTD.
265 E. Warm Springs Road, Suite 107
Las Vegas, Nevada 89119
Tel: 702.685.4444
Email: CCarlyon@CarlyonCica.com
TOSteen@CarlyonCica.com
Attorneys for Larry L. Bertsch, Receiver

Filed and electronically served via Eighth Judicial District Court electronic filing system Odyssey on January 28, 2022, of **NOTICE OF FILING PETITION FOR WRIT OF MANDAMUS IN THE NEVADA SUPREME COURT:**

Honorable Judge Joanna S. Kishner
Eighth Judicial District Court
RJC Courtroom 12B
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/ *Brandon Lopinero*

An Employee of MAIER GUTIERREZ & ASSOCIATES