

IN THE SUPREME COURT OF THE STATE OF NEVADA

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TRP FUND VI, LLC, a Nevada
Limited Liability Company,

Appellant,

CASE NO. 84407

(8th Judicial District Court Case No.
A-22-848493-C)

vs.

QUALITY LOAN SERVICE
CORPORATION, a foreign corporation;
PHH MORTGAGE CORPORATION, a
foreign corporation FEDERAL NATIONAL
MORTGAGE ASSOCIATION, a National
Banking Entity,

Respondents.

**REPLY IN SUPPORT OF EMERGENCY MOTION UNDER
NRAP 27(e) FOR INJUNCTION / STAY PENDING APPEAL**

(Action Required Prior Sale Date of April 1, 2022)

JOHN HENRY WRIGHT, ESQ.
Nevada Bar No. 6182
THE WRIGHT LAW GROUP, P.C.
2340 Paseo Del Prado, Suite D-305
Las Vegas, NV 89102
Telephone: (702) 405-0001
Facsimile: (702) 405-8454
Email: john@wrightlawgroupnv.com

*Attorney for Appellant
TRP Fund VI, LLC*

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I. ARGUMENT.

A. **The Filing of Bankruptcy Petition Accelerated The Note and The Debt Has Been Fully Matured and Wholly Due, Even if The Loan is Held By Fannie Mae:**

Respondents wrongfully argue that only an act of the lender can accelerate the note. It is a basic tenet of the Bankruptcy Code that, regardless of the terms of the instrument or acts of the lender, bankruptcy operates as the acceleration of the principal amount of all claims against the debtor. Again, this was explained in 1984 at length by the Federal Bankruptcy Court in *In re Manville Forest Prods. Corp.*, 43 B.R. 293, 297-298 (Bankr. S.D.N.Y. 1984), *aff'd in part, rev'd in part*, 60 B.R. 403 (S.D.N.Y. 1986), wherein the Court stated:

... the debt due them was automatically accelerated by the filing of the bankruptcy petition. It is a basic tenet of the bankruptcy Code that “bankruptcy operates as the acceleration of the principal amount of all claims against the debtor.” (Citations omitted) .

In 1987, *In re Skyler Ridge*, 80 B.R. 500; 1987 Bankr. LEXIS 1935 (Dec. 1987), the United States Bankruptcy Court cited to the legislative history in the congressional record, as well as *Manville*, stating: “The automatic acceleration of a debt upon the filing of a bankruptcy case is well established (citations omitted).”

Respondent makes arguments as if these precedential cases do not exist, and again asserts that the debt secured by the deed of trust can only be deem “wholly due” by the terms of the deed of trust itself. Again, Respondent ignores the obvious

implications of *HSBC Bank USA v. Calpine Corporation*, 2010 U.S. Dist. LEXIS 96792; 2010 WL 3835299 (Sept. 15, 2010), wherein the same argument was made and the Court rejected it, stating:

... The argument misses the mark. According to the terms of the notes, a voluntary bankruptcy filing constitutes an event of default that accelerates and matures the notes, thus making them due and payable immediately. **Even without these provisions, the Bankruptcy Code would require the same result, as the filing of a bankruptcy petition renders all of the petitioner's outstanding debts mature and payable.** *See, e.g., In re Granite Broad. Corp.*, 369 B.R. 120, 144 (Bankr. S.D.N.Y. 2007); *In re Ridgewood Apartments of DeKalb County, Ltd.*, 174 B.R. 712, 720 (Bankr. S.d. Ohio 1994) (“Even without specific contractual language, a bankruptcy filing acts as an acceleration of all of a debtor’s obligations.”) ...

(*HSBC Bank USA v. Calpine Corporation*, 2010 U.S. Dist. LEXIS 96792; 2010 WL 3835299 at 9 -14, emphasis added). Thus, there is no distinguishing acceleration from maturity. The result is the same and the debt is “wholly due” regardless of any act by the holder of the deed of trust. Simply put, the bankruptcy alters the maturity date of the note.

B. The FHFA Moratorium on Foreclosures Cannot Toll a Statute of Repose:

Respondent argues that “even if the Loan was considered to have been accelerated by the Borrowers’ bankruptcy discharge, the ten-year clock under NRS 106.240 was tolled during the pendency of the COVID - 19 foreclosure moratorium.” (Opp. at 22). In support of this proposition, Respondent provides exhibits 15 and 16, which are merely press releases from FHFA regarding its own policies. What

Respondent fails to recognize is that these so-called moratoriums are nothing more than self imposed restrictions that have no legal force to toll a statute of repose such as NRS 106.240 which imposes an outside limit on the enforcement of a deed of trust. Notably, Respondent has cited to no legal authority for such a departure from well established law regarding the purpose of statutes of repose. A statute of repose is never tolled.

C. NRS 106.240 Is Not Intended To Merely Clear Forgotten or Abandoned Liens:

Respondent has also attempted to diminish the significance of NRS 106.240 by claiming that it is merely a device for clearing the recorder's books. Respondent states, "[t]olling the ten-year period during the pendency of the Prior Quiet title Action would comport with NRS 106.240's purpose: to clear abandoned and forgotten liens from the record, thereby making title marketable without the need for quiet title litigation," citing to *LBM Fin. LLC v. Shamus Holdings, Inc.*" (Opp. at 16).

However, as one Nevada Federal District Court, noted:

The legislative history established that NRS § 106.240 was not intended simply to "allow county clerks to clean the books," the heading of the original 1917 bill makes clear that it provides a means to "quiet title." After the 1965 amendments, the bill provides for quieting title as to both mortgages and deeds of trusts. The plain meaning is thus that it unburdens a property of any obligations pursuant to these types of written instruments.

Bergenfield v. U.S. Bank Natl. Assn., 216-cv-01691-RFB-PAL, 2017 WL 4544422, at *4 (D. Nev. Oct. 10, 2017).

D. Respondent's Argument regarding the Legislative Intent in 1917 Regarding the Pendency of Actions Simply Does Not Apply Here:

Respondent makes the incredibly strained argument that the reference in the title of the 1917 Act should somehow be interpreted as the intent of the legislature to preclude the application of the statute of repose to this case based on notice of lis pendens. Respondent begins its pendency argument by stating “[t]he statute that includes NRS 106.240 expressly addresses notices of pending litigation, such as the Lis Pendens filed here, and its text and structure confirm NRS 106.240's inapplicability.” (Opp. at 18). Respondent clearly misunderstands the purpose of a notice of lis pendens, as a lis pendens has zero effect on a statute of repose, which NRS § 106.240 clearly is. Rather, a lis pendens serves only to provide notice that any potential purchaser would be taking title that is subject to the outcome of the litigation. A lis pendens itself has no other effect. NRS § 14.010 states:

**Notice of Pendency of actions affecting real property:
Recording**

1. In an action for the foreclosure of a mortgage upon real property, or affecting the title or possession of real property, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing his or her answer, if affirmative relief is claimed in the answer, shall record with the recorder of the county in which the property, or some part thereof, is situated, a notice of the pendency of the action, containing the names of the parties, the object of the action and a description of the property in that county affected thereby, and the defendant shall also in the notice state the nature and extent of the relief claimed in the answer.

2. A notice of an action affecting real property, which is pending in any United States District Court for the District of Nevada may be recorded and indexed in the same manner and in the same place as provided with respect to actions pending in courts of this state.

3. From the time of recording only, except as otherwise provided in NRS 14.017, the pendency of the action is **constructive notice to a purchaser or encumbrancer of the property affected thereby**. In case of the foreclosure of the mortgage, all purchasers or encumbrancers, but unrecorded deed or other instrument in writing made before the recording of the notice, and after the date of the mortgage, shall be deemed purchaser or encumbrancers after the recording of the notice, and subject thereto, unless NRS 14.017 is applicable or they can show that, at the time of recording the notice, the plaintiff had actual notice of the purchase or encumbrance. (Emphasis added)

Thus, the notice of lis pendens is to inform a purchaser or encumbrancer that any interest they acquire would be subject to the outcome of the pending litigation. There is nothing in the statute that remotely suggests that the pendency of an action is to be construed as tolling a statute of repose, or any other statute for that matter, as suggested by Respondent.

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II. CONCLUSION

Based on all the foregoing, Appellant TRP FUND VI, LLC respectfully requests that this Honorable Court issue an Injunction Pending Appeal.

DATED this 30th day of March, 2022.

Respectfully submitted by:
THE WRIGHT LAW GROUP, P.C.

/s/ John Henry Wright, Esq.
JOHN HENRY WRIGHT, ESQ.
Nevada Bar No. 6182
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
Telephone: (702) 405-0001
Facsimile: (702) 405-8454
Attorney for Appellant
TRP FUND VI, LLC

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Reply complies with the formatting requirements of NRAP Rule 32(a)(4), the typeface requirement of NRAP Rule 32(a)(5) and the type style requirement of NRAP Rule 32(a)(6) because this brief has been prepared in proportionately spaced typeface using WordPerfect X6 in 14 point and Times New Roman.

2. I further certify that this motion complies with the page- or typed-volume limitations of NRAP Rule 32(a)(7) because excluding the parts of the brief that are exempted by NRAP Rule 32(a)(7)(c), it is proportionately spaced, has a typeface of 14 points or more and contains 5 pages.

3. Finally, I hereby certify that I have read this motion, 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 motion complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP Rule 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

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where the matter relied on is 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 30th day of March, 2021.

Respectfully submitted by:
THE WRIGHT LAW GROUP, P.C.

/s/ John Henry Wright, Esq.
JOHN HENRY WRIGHT, ESQ.
Nevada Bar No. 6182
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
Telephone: (702) 405-0001
Facsimile: (702) 405-8454

Attorney for Appellant
TRP FUND VI, LLC

CERTIFICATE OF SERVICE

I certify that I electronically filed on March 30, 2022, the foregoing **REPLY IN SUPPORT OF EMERGENCY MOTION UNDER NRAP 27(e) FOR INJUNCTION PENDING APPEAL** with the Clerk of the Court for the Nevada Supreme Court by using the Court's electronic file and serve system. I further certify that all parties of record are either registered with the Court's electronic filing system or have consented to electronic service and that electronic service shall be made upon and in accordance with the Court's Master Service List.

I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

I further certify that I served a copy of this document by electronically mailing a true and correct copy, to:

AKERMAN, LLP

Melanie D. Morgan, Esq.

Natalie L. Winslow, Esq.

Nicholas E. Belay, Esq.

melanie.morgan@akerman.com

Natalie.winslow@akerman.com

Nicholas.belay@akerman.com

Attorneys for Defendant FEDERAL NATIONAL MORTGAGE ASSOCIATION

I further certify that I served a copy of this document by mailing a true and correct copy, thereof, postage prepaid, addressed to:

None

/s/ Candi Ashdown

An Employee of **The Wright Law Group, P.C.**