IN THE SUPREME COURT OF NEVADA

LEIDIANNE L BAUTISTA, an individual and CONSTANTINE S. NACAR, an individual,

Appellants,

vs.

NEVADA ASSOCIATION SERVICES, INC., a Nevada Corporation, SATICOY BAY LLC SERIES 10449 FORKED RUN, a Nevada Limited Liability Company

Respondents.

Supreme Court Case No. 85204

RESPONDENT'S ANSWERING BRIEF

Counsel for Respondent Saticoy Bay LLC Series 10449 Forked Run:

Roger P. Croteau, Esq.
Nevada Bar No. 4958
Christopher L. Benner, Esq.
Nevada Bar No. 8963
ROGER P. CROTEAU & ASSOCIATES, LTD.
2810 W. Charleston Blvd., Ste. 67
Las Vegas, Nevada 89102
Tel: (702) 254-7775
Fax: (702) 228-7719
Email: croteaulaw@croteaulaw.com

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. Law firms that have appeared for Saticoy Bay, LLC, 10449 Forked Run ("Saticoy"): Roger P. Croteau & Associates, Ltd.

2. Parent corporations/entities: Respondent is a Nevada series limited liability company. Respondent's Manager is Bay Harbor Trust, with Iyad Haddad as the trustee of the Bay Harbor Trust. No publicly held corporation owns 10% or more of the beneficial interest in the Respondent and/or the Bay Harbor Trust.

Dated this September 27, 2023

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Roger P. Croteau
Roger P. Croteau, Esq.
Nevada Bar No. 4958
Christopher L. Benner, Esq.
Nevada Bar No. 8963
2810 W. Charleston Blvd., Ste. 67
Las Vegas, Nevada 89102
Attorneys for Respondent Saticoy

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II. INTRODUCTION

The instant action relates to the efforts of a homeowner to conduct a sale of real property which was subject to a deed of trust and sold to Saticoy by way of a homeowner association foreclosure. Following Saticoy's purchase of real property at a homeowner foreclosure sale, Appellants Leidianne Bautista and Constantine Nacar ("Bautista") sought to conduct a sale of the real property, but upon a title company requiring a redemption of the homeowner association sale and payment of the deed of trust, allegedly could not complete the sale before the redemption date was set to expire. Bautista thus

Bautista initially obtained a Temporary Restraining Order on Bautista's "Ex-Parte – Emergency Request for Stay of Redemption Date and Injunction Preventing Transfer or Sale" ("Motion for Stay") filed concurrently with the "Emergency Complaint for Injunctive and Other Relief" ("Complaint") three days prior to the redemption period expiring. The district court properly refused to provide Bautista a Preliminary Injunction, finding that Bautista did not have a likelihood of success on the merits, as Bautista presented no cognizable legal or equitable basis for the relief requested, any claim against the escrow company regarding the redemption was not applicable to the appearing parties, and that Bautista's theories regarding

what constituted a "successor-in-interest" were inapplicable in this matter. Bautista thereafter appealed the denial of the preliminary injunction.

III. STATEMENT OF RELEVANT FACTS

Respondent Saticoy purchased the real property located at 10449 Forked Run St., Las Vegas Nevada 89178 APN 176-27-822-022 ("Property") at a foreclosure sale conducted Nevada Association Services ("NAS") on behalf of Quintessa II at Mountains Edge Homeowners' Association ("HOA") on March 24, 2022. Bautista, at the eleventh hour, sought to obtain additional time to redeem the Property, and to effectuate a proposed sale, by way of a Complaint for Injunctive Relief, Declaratory Relief, and Unjust Enrichment.

Bautista does not contend that a timely tender of the amount necessary under NRS 116.31166 ever occurred, or was even attempted. Indeed, the entire purpose of the litigation, as set forth in the Complaint, is to:

> 1. To Extend the Redemption period to allow the Homeowner to use either Money from the sale to redeem the property; or in the alternative to use a portion of the excess proceeds to redeem the property, said sums being replaced by purchase money:
>
> 2. An order preventing the HOA from issuing a deed to SATICOY BAY until this court has ruled on this action
>
> 3. An Order from the Court directing a title company to consummate the sale and use the sale proceeds to pay the HOA fees and redemption amounts.

See AA-000002-3.

The "title company," ROC Title, ("ROC") is not listed as party in either the caption or the "Parties, Jurisdiction and Venue" sections of the Complaint. See AA-000001-3.

Bautista consistently acknowledges that the assessments to the HOA went unpaid, however, Bautista's stated amounts for the deficiency are inaccurate. NAS recorded a Notice of Default on September 27, 2019, which set forth a deficiency of assessment of $783.00. See AA-000033. NAS recorded a Notice of Foreclosure Sale over two years later which set forth a total amount due and owing of $7,214.69. AA-000037. Bautista sets forth only the assertion set forth in the Complaint regarding the "actual delinquent assessments were $369.00" without further support or explanation, despite two recorded documents clearly evidencing the contrary. Furthermore, Bautista does not contest that over two and a half years elapsed between the recordation of the Notice of Default on September 27, 2019, and the sale on March 24, 2022. Opening Brief ("OB") at 3.

Bautista's assertion that "the defendants refused to allow the redemption of the property" is an overinclusive statement premised solely upon the assertion in the Motion for Stay, wherein Bautista stated:

> The homeowners intended to use the proceeds of the sale to redeem the property and were expected to close prior to the redemption date.

> However, despite obtaining a cash offer for their home of $470,000, the title companies refused to consummate the sale without the homeowners first resolving the mortgage on the property and redeeming it. This is absurd as the proceeds of the sale are usually used to pay the mortgage and the Plaintiffs need the money to pay the redemption.
> If the court does not grant the homeowner's request to extend the redemption period and use the sale proceeds to redeem the property, they will lose almost $150,000.00 in equity to SATICOY BAY.
>
> See AA-0000013

Bautista never sets forth any evidence, either in the record to date or in the Opening Brief, that any defendant prevented or refused a properly tendered redemption. Indeed, the Complaint and Motion for Stay both clearly assert that no redemption occurred because Bautista was unable to conclude a sale prior to the redemption period elapsing, and sought to stay the 60-day redemption period's expiration. AA-00005. Indeed, the Reply of Bautista, in response to Saticoy's Opposition to the Motion to Stay, only further confused the issue, by asserting:

> 1. DEFENDANT SATICOY BAY did not purchase the property. They have in essence purchased an option. This option is subject to certain redemption rights. NRS 116.3116 makes it clear that it's purchase is "subject to" the BAUTISTA and NACAR's right to redeem.
> 2. One of those redemption rights is set forth in NRS 116.3116 allows the redemption to be performed by his "successor in interest." A successor in interest is one who either 1) purchases the right to redemption from the owner or 2) is a good faith purchaser of the property for value.
>
> See AA-0000048.

Thus, Bautista created confusion by asserting, without evidence or legal justification, that a "successor in interest" i.e. not Bautista, had either purchased the right to redeem, or the property to be redeemed. While Bautista attaches an incomplete, partial, brokerage agreement with one Natosha Easter to the Reply, there is no evidence of any effort to redeem, transfer the "right to redeem" or an actual transfer of the Property. AA-000050-59. Additionally, Bautista attaches a "Payoff Statement" with a date of May 27, 2022, and good through May 31, 2022, concerning the deed of trust encumbering the Property. AA-000061. The Payoff Statement clearly indicates that the "interest due" timeframe was from May 1, 2020, to May 27, 2022, indicating a failure to pay all interest for nearly two years, and that the amount outstanding was $290,273.19 as of May 31, 2022, refuting Bautista's factual statements that "as a result of the actions of Respondents, Appellants will lose the $103,000 equity between the $315,000 bid and the $202,000 mortgage." OB page 4, and AA-000061.

Bautista presets no citation to the record supporting the factual assertion that "SATICOY BAY's business practice has the consequence of making redemption by a homeowner illusory, defeating the legislative intent of offering defaulting homeowners redemption." OB page 4. At no juncture does Bautista allege that either Bautista or any other party provided notice pursuant to NRS 116.31166(4). AA-

000001-16. Additionally, while Bautista claims that the defects in the notice of sale, including a failure to record an affidavit of either the notice of delinquent assessment lien or the notice of default, at no juncture does Bautista allege the that notices were not received, only asserting that documents were not recorded. OB page 4-5. Saticoy initially challenged this assertion, stating that "[w]hile Bautista attempts to argue equity, as set forth above, Bautista failed to make payments to the HOA, failed to set froth any steps taken to prevent the sale (only broadly arguing a failure of notice) despite clear notice of same." AA-000026-27. Bautista's Reply is completely silent as to any failure to receive notice. AA-0047-49. Indeed, Bautista's request for an injunction concludes by stating that "Plaintiff requests the court enjoin the trustee from transferring title and stay the deadline for the redemption period until hearings can be held on how to effectuate the closing of the sale of the property." AA-000016. At no juncture does Bautista allege a lack of notice of the sale or that Bautista had paid the assessments, only that the outcome would be inequitable because the "amount was just under $8,000." AA-000015.

Bautista's confused and generally unsupported recitation of facts illustrates the underlying infirmities of the Motion for Stay. Bautista's legal reasoning did little to provide additional foundation for the requested relief, as set forth below, and thus the district court properly denied the requested injunction.

IV. SUMMARY OF ARGUMENT

Bautista's Motion for Stay suffered several infirmities that Bautista failed to correct, leading to the district court properly denying injunctive relief. Bautista repeatedly conflates the district court's factual findings with legal conclusions, including Bautista's failure to timely redeem as the basis for a refusal for injunctive relief, instead of a predicate to the issuance of a deed to Saticoy. Bautista likewise failed to properly contest any failings of the foreclosure sale, and failed to allege a lack of notice. As is apparent from the caption and pleadings of the Complaint, Bautista sought to compel ROC to complete a sale wherein the title to the Property was in dispute, by way of litigation to which ROC was not even a party. Moving past these issues, Bautista's legal theory rested on a circular scheme whereby a redemption could be accomplished to prevent the loss of the Property only by staying the time period in which the redemption was required to occur to allow for a sale of the Property to obtain the funds necessary to redeem the Property. While Bautista argues that the loss of possible equity and the possibility of a purchase of the Property by another entity provided an equitable and statutory basis for staying the redemption deadline set forth in NRS 116.31166, Bautista failed create a nexus between the requested relief and the parties before the court. The district court properly denied Bautista the requested injunctive relief, as Bautista's purported

claims against Saticoy were based on nothing but a desire to effectuate Bautista's circular, convoluted, and ultimately contradictory plan to force a sale of the Property in order to permit a redemption to allow the sale of the Property in the first place.

V. LEGAL ARGUMENT

A. STANDARD OF REVIEW AND RELEVANT STATUTORY LAW.

Bautista sought an injunction to prevent the 60-day redemption period of NRS 116.31166(3) following the HOA sale from elapsing. To substantiate this request, Bautista brought a series of unsupported statutory interpretations, often in conflict with the facts as asserted by Bautista. The district court properly reviewed the pleadings, and denied the requested relief.

"As the grant or denial of a preliminary injunction is a question addressed to the discretion of the district court, our task on appeal is to search the record to determine whether the lower court exceeded the permissible bounds of judicial discretion. *No. One Rent-A-Car v. Ramada Inns,* 94 Nev. 779, 780, 587 P.2d 1329, 1330 (1978), citing *Nevada Escrow Service, Inc. v. Crockett,* 91 Nev. 201, 533 P.2d 471 (1975). "This court's review is limited to the record to determine whether the lower court exceeded the permissible bounds of discretion." *S.O.C., Inc. v. Mirage Casino-Hotel,* 117 Nev. 403, 407, 23 P.3d 243, 246 (2001). "A preliminary injunction is available if an applicant can show a likelihood of success on the merits and a

reasonable probability that the non-moving party's conduct, if allowed to continue, will cause irreparable harm for which compensatory damage is an inadequate remedy." *Dangberg Holdings Nev., L.L.C. v. Douglas Cty.,* 115 Nev. 129, 142, 978 P.2d 311, 319 (1999).

NRS 116.31166(3) sets forth the basis for redeeming a sale following a homeowner association foreclosure:

> A unit sold pursuant to NRS 116.31162 to 116.31168, inclusive, may be redeemed by the unit's owner whose interest in the unit was extinguished by the sale, or his or her successor in interest, or any holder of a recorded security interest that is subordinate to the lien on which the unit was sold, or that holder's successor in interest. The unit's owner whose interest in the unit was extinguished, the holder of the recorded security interest on the unit or a successor in interest of those persons may redeem the property at any time **within 60 days after the sale** by paying:
>
> (a) The purchaser the amount of his or her purchase price, with interest at the rate of 1 percent per month thereon in addition, to the time of redemption, plus:
>
> (1) The amount of any assessment, taxes or payments toward liens which were created before the purchase and which the purchaser may have paid thereon after the purchase, and interest on such amount;
>
> (2) If the purchaser is also a creditor having a prior lien to that of the redemptioner, other than the association's lien under which the purchase was made, the amount of such lien, and interest on such amount; and
>
> (3) Any reasonable amount expended by the purchaser which is reasonably necessary to maintain and repair the unit in accordance with the standards set forth in the governing documents, including,

> without limitation, any provisions governing maintenance, standing water or snow removal

(Emphasis added).

"To determine whether a statute and rule require strict compliance or substantial compliance, this court looks at the language used and policy and equity considerations…. In so doing, [this court] examine[s] whether the purpose of the statute or rule can be adequately served in a manner other than by technical compliance with the statutory or rule language." *Leyva v. Nat'l Default Servicing Corp.,* 127 Nev. 470, 475-76, 255 P.3d 1275, 1278 (2011). "This court has recognized as a 'general tenet that Time and manner' requirements are strictly construed, whereas substantial compliance may be sufficient for 'form and content' requirements.'" *Saticoy Bay LLC v. Nev. Ass'n Servs*., 135 Nev. 180, 187, 444 P.3d 428, 434-35 (2019), citing *Leven v. Frey*, 123 Nev. 399, 408, 168 P.3d 712, 714 (2007).

B. THE DISTRICT COURT PROPERLY DENIED AN INJUNCTION DUE TO BAUTISTA'S UNSUBSTANTIATED AND CONTRADICTORY ALLEGATION.

Bautista, in a novel, circular, set of logical leaps, requested an injunction of the issuance of the deed to Saticoy, and a stay of the 60 days set forth in NRS 116.31166(3) ("Redemption Date") in order to allow Bautista to obtain the funds necessary to pay the required funds, or create a successor in interest who would do so.

In an effort to justify the extension of the Redemption Date, Bautista alleges a slew of factual unsupported, and legally disjointed, bases in a mishmash of equitable and legal theories. While Bautista appears to have a constantly shifting set of requests and process in mind, Bautista failed to consistently plead or support the requested injunction, resulting in the district court properly rejecting the requested injunction. Thus, while Bautista now claims the district court abused its discretion finding that Bautista did not have a likelihood of success on the merits, the district courts decision was clearly proper in light of the haphazard factual and legal basis presented in this matter.

1. Bautista failed to present a factual or legal basis for a stay of the Redemption Date.

Bautista's first argument against the district court's denial of an injunction is that the district court conflated Bautista's likelihood of success on the merits with Bautista's failure to comply with NRS 116.31166, by stating that the district court "stayed the time to redeem the property in its Temporary Restraining Order entered on May 20, 2022 … it is an error of fact or law to bar Appellants from proceeding on the grounds that they didn't meet a redemption deadline." Bautista fails to note that the Motion to Stay requested the "court enjoin the trustee from transferring title and stay the deadline for the redemption period until hearing can be held on how to effectuate the closing of the sale of the property." AA-000016. Bautista does not

contend that either Bautista, or any other entity tendered any funds, provided a notice of an intent to redeem, or even alleged an effort to tender an estimated payment. Bautista analogizes the situation to a motion for new trial as staying the time for an appeal; however, this is an inaccurate analogy. Here, the district court clearly was clearly simply recognizing an uncontested factual issue, namely, that no redemption actually occurred before the Redemption Date. While Bautista asserts that this finding was "illogical, and unfair to deny a request to extend a deadline on the basis of the deadline having expired," the district court does not state that the passing of the deadline was a premise for the denial of the stay of the sale date. Instead, as shown by the district court's order including the direction that "IT IS FURTHER ORDERED that Nevada Association Services, Inc., shall issue a foreclosure deed to Saticoy Bay LLC Series 10449 Forked Run pursuant to NRS 116.31166(7)" that the factual recitation of the Redemption date having passed was a necessary premise for ordering the issuance of a foreclosure deed. AA-000076.

Bautista does not contend that 60 days had not elapsed; instead, Bautista mischaracterizes a factual statement regarding the passage of time, i.e. the 60 days set forth in NRS 116.31166(3) and the facts in this matter, as a basis for the rejection of the requested injunction, instead of the rejection of the relief requested in the Motion to Stay, that the "court enjoin the trustee from transferring title and stay the

deadline for the redemption period." AA-000016. Thus, while Bautista seeks to characterize this factual statement as an "illogical … unfair" basis for denying a stay of the redemption deadline, it was instead an uncontested factual finding necessary for addressing the request to enjoin the "trustee" (NAS) from transferring title. The district court clearly evaluated both requests of Bautista, and properly set forth this factual premise to substantiate the denial of requested injunction of NAS.

2. Bautista failed to assert a lack of notice of the HOA sale, or an argument requiring strict compliance.

Bautista asserts that the underlying sale by the HOA was invalid due to a failure to comply with NRS 116.31162(1)(a); however, Bautista fails to take the next, necessary step, in that Bautista fails to assert a lack of notice. Bautista only notes that "there is no affidavit of service recorded for either document [notices of lien and default] and the documents do not claim they were served properly" OB at 10, AA-000014. Bautista does not address that the Notice of Delinquent Assessment Lien, Notice of Default, and Notice of Foreclosure Sale were clearly recorded, and that an Affidavit of Mailing of the Notice of Sale was clearly recorded. AA-000031-42. Bautista does not allege a lack of notice of the sale, or indeed of the underlying obligation or failure to pay assessments. Indeed, Bautista does not even assert a lack of notice, or prejudice from said notice. Instead, Bautista alleges an equitable

argument regarding the underlying amount of assessments due and owing, and leaves it at equity, with the assumption that an unrecorded affidavit of service of the initial notice of the lien and default (but not of the actual sale) is sufficient proof of inequity.

Bautista appears to assert, without setting forth the argument in either the Opening Brief or the record, a requirement for strict compliance with NRS 116.31162(1)(a) for a valid sale. Bautista's failure to assert an argument or support requirement, failure to support such a requirement with appropriate case law or statutory support, and failure to assert a lack of notice and prejudice, substantiates the district court's finding that Bautista failed to support its contentions with legal authority. Simply stated, Bautista made a partial factual assertion, and left it to the district court to assume a likelihood of success, which the district court failed to accept.

Bautista's allegations that Saticoy "overbid" on the sale of the Property, and thus was unjustly enriched, was rejected by the trial court for being both factually and legally inconsistent. The ability and process by which a redemption is to be effectuated was recently addressed in detail in *Saticoy Bay LLC v. Nev. Ass'n Servs.,* 135 Nev. 180, 444 P.3d 428 (2019)("*Warm Springs*"), as cited by both Bautista in the Opening Brief and by Saticoy in the Opposition to the Motion to Stay. OB at 4,

AA-000025. While Bautista contends that *Warm Springs* decision simply asserts that Saticoy cannot direct who the funds are received from in order to redeem a property, the *Warm Springs* decision states much more. Warm Springs lays out the consideration of the court in determining if strict compliance is necessary, seeking "to determine whether a statute and rule require strict compliance or substantial compliance, this court looks at the language used and policy and equity considerations." *Leyva v. Nat'l Default Servicing Corp.,* 127 Nev. 470, 475-76, 255 P.3d 1275, 1278 (2011). "In so doing, [this court] examine[s] whether the purpose of the statute or rule can be adequately served in a manner other than by technical compliance with the statutory or rule language." *Id*. at 476, 255 P.3d at 1278. While *Warm Springs* set forth why certified copies were necessary in a foreclosure mediation, it also stated that "no equivalent ramification is evident in NRS Chapter 116 when a certified copy of a deed is not provided during redemption … the remedies suggest strict compliance is not necessary in that '[t]he remedies provided by [NRS Chapter 116] must be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed.' 135 Nev. at 187. As the *Warm Springs* court did not require strict compliance with NRS 116 regarding the notice of redemption a party seeking to redeem under NRS 116.31166 needed to present, Bautista fails to present any justification that strict compliance

was necessary regarding NRS 116.31162(1)(e), and fails to do so here.

Bautista also attempts to continue the Unjust Enrichment theory supported Bautista's claim that Saticoy intentionally overbid at the time of the auction. Bautista's theory appears to be that Saticoy bid $315,100.00 at the time of the sale in order to make it more difficult for Bautista to complete the redemption. First, Bautista presents no evidence in either the Complaint or Motion to Stay other than the hyperbolic argument of counsel, which Bautista continues in the Opening Brief. OB at 3. Bautista presents to factual or additional support for the contention that Saticoy "drives up the redemption costs increasing the likelihood that a homeowner will not redeem and thereby converts the homeowner's surplus equity." Id. As explained by Saticoy in the Opposition, "Pursuant to *Saticoy Bay LLC v. Nev. Ass'n Servs.,* 444 P.3d 428 (Nev. 2019), Bautista did not separately have to tender the entire $315,100 + 2% interest ($6,302), but only needed to pay the amount due under the HOA's lien ($7,674.22 per the certificate of sale.) in addition to the interest. NAS would have provided the rest to Saticoy, thus making the bidding price largely irrelevant." AA-000025-26. Bautista did not address this issue in the Reply, and instead only asserts that the amount of assessment due was a small portion of that which was due to the HOA. Bautista does not present any evidence other than conjecture that the $315,100 bid by Saticoy was not in response to other bidding, or

that Saticoy intentionally bid $315,100 in order that the interest (wither $3,151 if the redemption occurred in the first month, or $6,3012 in the second month), would be prohibitive for Bautista.

While Bautista contends that Saticoy prevented the redemption of the Property, i.e. "refused to allow the redemption of the property," Bautista asserted it was the action of ROC title that prevented the ability to redeem, stating:

> Despite obtaining a cash offer for their home of $470,000, the title companies refused to consummate the sale without the homeowners first resolving the mortgage on the property and redeeming it. This is absurd as the proceeds of the sale are usually used to pay the mortgage and the Plaintiffs need the money to pay the redemption.
>
> AA-000013.

Bautista fails to set forth how Saticoy "refused to allow the redemption" when it was ROC Title, an entity which was not even a defendant in the matter[1] that apparently "refuse to allow the redemption." Bautista does not set forth how the requirement of ROC that the deed of trust be paid at the same time as the redemption was the action of Saticoy. Furthermore, Bautista does not present any basis for presenting a stay of the Redemption Date. Beyond hyperbolic argument regarding

[1] ROC is intermittently set forth in the caption by Bautista, but is not named as defendant in the Complaint, the docket, or appears to have ever been served or appeared.

"exacting punishment on cash strapped homeowners," Bautista provided neither legislative nor judicial support that the time period set forth in NRS 116.31166 may be stayed by a court simply to allow a homeowner to complete a sale. The statutory language is clear, setting forth a 60-day deadline by which a homeowner, successor in interest, or holder of a first deed of trust may redeem a property. Likewise, Bautista sets forth no equitable reason why additional time should be allowed to conduct a sale of the Property, which was encumbered by a deed of trust which Bautista had clearly failed to pay interest upon for two years, and was sold (subject to redemption) after Bautista had failed to pay assessments upon in over two years.

Regarding the deed of trust, Bautista presented contradictory evidence and legal argument to the district court to support the contention that ROC required Bautista "to pay $315,000 to Respondent [Saticoy] and $202,000 to their bank in order to redeem the property." OB page 7. Indeed, Bautista's only evidence presented to the district court is the "Payoff Statement" that sets forth that the amount owed under the deed of trust was over $290,000. AA-000061. Thus, the minimal information presented to the district court only further underscored that Bautista simply sought further delay, and would continue to seek to prevent loss of the Property.

Bautista continues to present confused reasoning regarding the proposed right

to a stay of the Redemption Date by continually referencing the amount owed is assessments as compared to trustee fees and the unsupported contention that Saticoy was "the only party bidding." OB page 11. Bautista does not present any legal argument or precedent suggesting a maximum limit that may be bid at a foreclosure sale, and presents no practical reason why such a limit should be imposed. Indeed, pursuant to *Shadow Wood Homeowners Ass'n v. N.Y. Cmty. Bancorp. Inc.,* 132 Nev. 49, 366 P.3d 1105 (2016), when a buyer at a homeowners' association foreclosure sale pays too little the sale may be called into question, as opposed to the "overbidding" alleged by Bautista. Were Saticoy the only bidding party, as alleged by Bautista, it would be entirely contradictory to every other matter previously brought before the Nevada judiciary, and a complete requirement to impose at foreclosure sales, unfounded in statute or reason, preventing purported "overbidding" so that possible redeemers could more easily re-obtain a property.

The district court completely disregarded this unsupported factual and legal contention, and properly denied the injunctive relief requested by Bautista.

3. Bautista's third and fourth topics are reiterations of the first.

Bautista's third contention regarding the action of ROC and fourth contention regarding Bautista's failure to pay assessment or the redemption amount are simply reiterations of Bautista's first and second contention. Bautista fails to provide any

support from the record that "SATICOY refuses to provide the redemption amounts," continuing to fail to present a demand or notice of redemption was ever submitted pursuant to NRS 116.31166(4) or that a request was ever made.

NRS 116.31166(4) states that:

> Notice of redemption must be served by the person redeeming the unit on the person who conducted the sale and on the person from whom the unit is redeemed, together with:
>
> (a) If the person redeeming the unit is the unit's owner whose interest in the unit was extinguished by the sale or his or her successor in interest, a certified copy of the deed to the unit and, if the person redeeming the unit is the successor of that unit's owner, a copy of any document necessary to establish that the person is the successor of the unit's owner.

Bautista never provided the district court with even a minimal allegation a notice of redemption, even a deficient or defective notice, was transmitted to either NAS or Saticoy. Indeed, while Bautista continues to assert as fact that Saticoy refused such a demand, the record is completely bare of any allegation supporting Bautista's compliance, substantial or strict, with NRS 116.31166(4). Indeed, while Bautista claims to lack the funds for the necessary redemption, Bautista presents neither compliance with, nor excuse for, the requirement. Indeed, while Bautista repeats that the Redemption Date was stayed by the temporary injunction, and Bautista requested a further extension, at no juncture did Bautista request, or obtain, an extension to comply with NRS 116.31166(4), or allege strict or substantial

compliance with the requirements. While the district court did not note this failing in the Order denying the Motion to Stay, it was not the responsibility of the district court to presume the requirements that Bautista would need stayed, or to granny unrequested relief.

Bautista also contests the district court noting that Bautista's complaints against the requirements of the "escrow company," ROC, should be directed at ROC, not Saticoy and NAS. Bautista failed to name ROC, while intermittently asserting it was due to ROC's failure to permit the sale of the Property to proceed due to improper requirements. While Bautista inconsistently includes ROC in the caption of this matter, ROC is not listed in the Complaint as a party, and no evidence of service is included in the record. While Bautista continues to assert that the alleged action of ROC "has no bearing on Appellants' motion," it underscores that Bautista's contention that a non-party, and not Saticoy, prevented the alleged redemption by Bautista.

Bautista also reframes the first contention in the fourth argument, claiming that the district court erred when it "found there was no inequity" because Bautista failed to timely pay the assessment or redeem the Property. As set forth by the district court, these were undisputed facts that went to the validity of the sale and the requirements requiring NAS to issue the trustee's deed following the elapsing of the

60-day period of NRS 116.31166. Bautista mischaracterizes the district court's refusal to grant an injunction prohibiting the issuance of an injunction on NAS from issuing the deed as the basis for the refusal to stay the Redemption Date. The district court correctly denied the requested injunction.

4. Bautista's final contention regarding a successor in interest is contradicted by Bautista's own assertions.

Finally, Bautista concludes with the contention that the district court improperly determined that purported buyer could have functioned as a "successor in interest" while simultaneously noting that the purchase agreement was not concluded. To draw attention from this factual discrepancy, Bautista argues that the term "successor in interest" is applicable to a purchaser. However, Bautista's own allegations state that no sale had occurred, and Bautista failed to present even an allegation, much less evidence, that the Property was sold. Indeed, Bautista affirmatively states that it was due to the limitations of ROC Title that the Property was not sold. AA-000005, AA-000013. While asserting that the Property was under contract for sale, at no point in the record or in the opening brief does Bautista explain how a *prospective* purchaser could be a successor in interest with a right of redemption pursuant to NRS 116.31166. Instead, Bautista notes that pursuant to *Warm Springs*, Saticoy could not dictate the source of redemption funds. While

Saticoy could not dictate the source of redemption funds, the point of law is irrelevant, as Saticoy did not reject tendered funds. Indeed, Bautista implicitly acknowledges that funds were never tendered because the purported sale never occurred.

Furthermore, while Bautista claims the district court "did not cite any authority that a prospective buyer is not a successor in interest," Bautista fails to examine the issue further. OB at 8. If there wee a successor in interest, Bautista does no evaluate whether Bautista would still have standing to seek an injunction. As set forth above, no "prospective buyer" is named as a party, much less an actual buyer. Indeed, only by Bautista's circular reasoning of staying the redemption so a sale can occur so that a redemption can occur does the prospect of a "prospective purchaser" even become a possibility, much less relevant. Bautista does not even draw the corollary to an estate functioning as a "successor in interest" for the evaluation, instead electing to simply state that the district court did not present case law refuting Bautista's unsubstantiated hypothetical. The district court properly elected not to delve into this quagmire of assumptions, and found that Bautista did not have a likelihood of success on the merits.

While presenting no additional legal or equitable argument to overcome the contradictions set forth, Bautista then attempts to present an equitable argument

against Saticoy allegedly obtaining a "windfall" should the Redemption Date not be stayed. The only legal support for this equity argument is a reference to *Tyler v. Hennepin Cty.,* 143 S. Ct. 1369 (2023) wherein a municipality could not retain surplus monies from a tax lien foreclosure sale. As set forth above, Saticoy was not seeking to retain or obtain the Excess Proceeds, and only made the winning bid at the foreclosure sale. Bautista's statement that "the buyer and the Homeowners Association … should have… paid the difference to between the mortgage and the HOA delinquency and the purchase price to Appellants" illustrates the confusion of Bautista to the redemption process. OB at 14. The distribution scheme contemplated by Bautista is set forth by statute is NRS 116.31164(8)(b) which states that after a sale, the person conducting the sale shall:

> (b) Apply the proceeds of the sale for the following purposes in the following order:
>
> (1) The reasonable expenses of sale;
>
> (2) The reasonable expenses of securing possession before sale, holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by the declaration, reasonable attorney's fees and other legal expenses incurred by the association;
>
> (3) Satisfaction of the association's lien;
>
> (4) Satisfaction in the order of priority of any subordinate claim of record; and

(5) Remittance of any excess to the unit's owner.

This statutory scheme was affirmed in *Saticoy Bay, LLC v. Thornburg Mortg. Sec. Tr. 2007-3*, 510 P.3d 139 (Nev. 2022) ("*Innisbrook*"), which permitted prior homeowners to obtain the excess proceeds where a deed of trust was not found to be a "subordinate claim of record." The *Innisbrook* decision, and NRS 116.31164 and NRS 116.31166 make no reference to the possible profits of a purchaser at an HOA sale, nor does any related case law.

As set forth above, Bautista had access to the amount over the amount owed to the HOA for missed assessment and fees and costs (the "excess proceeds") which could have been used to redeem the Property, with the addition of a minimal amount from Bautista to address the amounts owed to the HOA and the interest provisions of NRS 116.31166. Bautista consistently misstates the amount owed to the holder of the first deed of trust, and presents no evidence of the purported requirement by ROC Title that the deed of trust and redemption be paid prior to the sale being allowed to proceed. As set forth in Warm Springs, Bautista was free to seek to coordinate the use of the excess proceeds to address the redemption; at no point in the record nor in the Opening Brief does Bautista state that either Saticoy or NAS refused to accept a properly proffered tender, or that NAS refused any inquiry as to the excess proceeds.

Bautista's diatribe regarding the possible profit of Saticoy is unsupported by either law or fact in either the record or the Opening Brief. Bautista simply seeks to cast aspersions on Saticoy as a red herring from Bautista's own failure to address the HOA assessments, the interest due under the deed of trust, or to even comply with the noticing requirement of NRS 116.31166(4).

VI. CONCLUSION

Based upon the foregoing, the district court denied the issuance of a preliminary injunction, and thus should be AFFIRMED.

Dated this September 27, 2023.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Roger P. Croteau
Roger P. Croteau, Esq.
Nevada Bar No. 4958
2810 W. Charleston Blvd., Ste. 75
Las Vegas, Nevada 89102
Attorneys for Respondent

VII. ATTORNEY'S 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:

[a.] This brief has been prepared in a proportionally spaced typeface using

Microsoft Office Word 365 in Times New Roman font size 14.

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

[a.] Proportionately spaced, has a typeface of 14 points or more, and contains 6,069 words; or

[b.] does not exceed 30 pages.

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3. Finally, I hereby certify that I have read this 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 September 27, 2023.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Roger P. Croteau
Roger P. Croteau, Esq.
Nevada Bar No. 4958
Christopher L. Benner, Esq.
Nevada Bar No. 8963
2810 W. Charleston Blvd., Ste. 67
Las Vegas, Nevada 89102
Attorneys for Respondent

CERTIFICATE OF SERVICE

In accordance with NRAP 25, I hereby certify that on September 27, 2023, I caused a copy of **Respondent's Answering Brief** to be filed and served electronically via the Court's E-Flex System to the following:

Joseph Scalia, Esq.
Senior Counsel LLC
3355 S. Highland Drive, Suite 111
Las Vegas, Nevada 89109
Attorneys for Appellants

/s/ Joe Koehle
An employee of ROGER P. CROTEAU
& ASSOCIATES, LTD.