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Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

APPELLANTS

v.

ROC TITLE, LLC, a Nevada Limited
Liability Company, NEVADA
ASSOCIATION SERVICES, INC., a
Nevada Corporation, SATICOY BAY
LLC SERIES 10449 FORKED RUN, a
Nevada Limited Liability Company and
DOES 1 through 10 and ROE
CORPORATIONS I
through X, inclusive.

RESPONDENTS

SC Case No. 85204

Dist. Ct. Case No.: A-22-852903-C

APPELLANTS' REPLY BRIEF

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RULE 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 so that the judges of this court may evaluate possible disqualification or recusal.

There are no corporations for Appellants.

The attorneys who appeared for Appellants or will be appearing are:

LEIDIANNE L BAUTISTA – Joseph A. Scalia, Esq. – Senior Counsel LLC.

CONSTANTINE S. NACAR - Joseph A. Scalia, Esq. – Senior Counsel LLC.

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ARGUMENT

I. SUMMARY OF DISPUTED FACTS

For purposes of this Reply, Appellant only addresses those facts presented by Respondents that are either inaccurate or misleading and which were not addressed in the opening brief.

- Respondents assert that ROC Title was not listed as a party to the action in the Complaint. ROB – 3. While this is correct, Respondents fail to inform the court that ROC Title was included in the caption for the Ex-Parte Emergency Request for Stay of Redemption Date and Injunction Pending Transfer of Title. AA-000012. Further, Respondents fail to state how this is relevant as ROC Title is not a necessary party to the action. Further, ROC Title was the title company for Appellant’s attempted sale and redemption of the property, not for the trustee's sale.
- Respondents assert that Appellant’s calculation of past due deficiency assessments was incorrect, pointing out that the total was \$783.00, instead of \$369.00 as stated in Appellant’s Brief. See ROB p.3. Respondents inappropriately take advantage of the rules prohibiting an appellate party from bringing in facts not contained in the record of the lower court. NRAP 28(e). Respondents correctly alleged in their complaint that the only delinquency was \$369.00. AA 1-3. The remainder of the \$783 was the homeowner association costs of enforcing its lien. As time passed, the collection costs

increased in the 90 days from the notice of delinquent assessment lien to the date of sale by over \$5,021.99. AA p.5.

Although Respondents are well versed in how these assessments are calculated, they intentionally seek to mislead the court by combining collection costs with the delinquency even though failed to object to Appellant's amount in their opposition to the ex-parte at the lower court level and should not be able to contradict this amount at this court. Respondents' nitpicking over \$414 in lien enforcement costs simply emphasizes Appellant's point that losing over \$150,000 in equity in a property over a few hundred dollars in delinquency is simply unconscionable and unjust.

- Respondents intentionally misconstrue Appellant's arguments regarding successor in interest. ROB 5 Appellants never alleged that a successor in interest had already purchased the right to redeem or the property to be redeemed. Appellant alleged, correctly, that it intended to have a third party redeem the property as part of a sale contract that would have more than satisfied the redemption lien. AA p.88. Appellant also correctly alleged that Respondents refused to allow it because it was impossible to fund the sale in time for the redemption deadline. AA p.14.
- Respondents state that Appellant did not present a 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.” ROB

p.5. Their complaint seems to be focused on an inadvertent omitted citation as it appears in the record at AA 13, AA 14, AA 15, AA 27, and in oral argument. AA 87-91.

- Respondents’ statement that Appellants did not claim the notices were not received ROB 6, is not relevant to the appeal as that was not referenced by the court in its Order denying the Ex-parte. AA p.64.

II. RESPONDENT’S CLAIM THAT BAUTISTA’S ALLEGATIONS WERE UNSUBSTANTIATED AND CONTRADICTORY IS FALSE.

There was a factual basis to stay the redemption date.

Respondent states “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. This is not correct. In the complaint paragraph 21, the Appellants alleged they had a cash offer on April 22, 2023, but the title company refused to use the sale proceeds to redeem the property and reported \$202,227.12 to the buyer as a payoff before closing. As a result, the buyer withdrew. AA p. 4-5. Appellants went on to allege that on May 9, 2022, they sent a meet and confer to escrow and the agent for Saticoy Bay requesting cooperation in effectuating the redemption, to no avail. AA p. 6. Thus Appellant alleged they had a timely redemption offer which was rejected improperly and had arranged for a new offer which, due to the elapsed time, could

not close before the redemption date. AA p.6.

B Lack of notice of the HOA sale or an argument requiring strict requirements is a red herring.

This entire action is based upon two factors. 1) the refusal of Respondents to allow the redemption through the Appellants' sale of the property, and 2) the patent unfairness of a statute that allows a person to bid \$315,000 on a \$480,000 property to make redemption prohibitively expensive for the owners. See generally appellate brief, AA pp. 1-10. While the fact the notices were defective was pled in the complaint AA p.5, it was not the crux of Appellants' claims. Appellants never disputed that a trustee sale was held and triggered a redemption period. The only dispute is Saticoy Bay's refusal to accept redemption through a sale and overbid which made it unconscionable for Saticoy Bay to retain the benefits of the property. Respondents do not dispute that this court recently held that the buyer at a trustee sale has no interest in the source of the funds to redeem the property or to direct how the proceeds of the sale are distributed. Yet this is exactly what Respondents did by instructing the title company it would not accept money from a third-party sale. AA p.1-10, 13.

C. Respondents' Claim That Nas Would Have Paid To Saticoy Bay The Difference Between The Delinquency And The \$315,000 Bid Is Contrary To The Record.

Respondents claim All Bautista would have to tender was \$7,674.22 and that NAS would have provided the rest to Saticoy. ROB 16. This is contrary to the

allegations in the complaint that NAS was demanding a payoff of \$202,227.12 to close. AA p.2. It is surmised they already sent the money to the mortgage holder of the property before the redemption period had expired. Either way, they refused to follow the redemption rule and even indicated they would not accept the \$7,674.22 tender.

D. Respondents incorrectly stated it was ROC Title who refused to allow the redemption.

While ROC Title was the title company on the April attempted sale of the property by Appellants, they were only the messenger when they informed Appellants that either NAS, Saticoy Bay, or both required \$202,227.12 upfront before closing to accept the redemption. Respondents' attempt to confuse the matter is misleading. For example, they confuse the Appellant's April offer where they were told \$202,227.12 was required before closing, with the exhibit at AA 61 which was the payoff notice received for the offer that could not close in time for the redemption. AA p.48. Further, as alleged in the Appellant's brief, the ROC Title argument was merely illustrating why it could not meet the redemption deadline. AB 7.

E. Respondent's final argument merely continues its lack of understanding of the issues.

A common theme in Respondent's opposition is the lack of any cognitive legal argument. Instead, they repeat the same misunderstanding of the issues.

They claim Bautista needed to tender the redemption before the redemption date, however, they ignore the fact that they refused to accept tender from a third-party purchaser in April when it would have closed in time for the redemption period. Because that deal fell through, Appellants, who did not have the funds to pay the redemption amount without using their equity in the property, did not have time to close on the deal before the redemption date. They contacted Respondents before the deadline and requested their cooperation in what would have amounted to only a few days, but to no avail. Therefore, they chose the only available avenue. Obtain an injunction so the closing issues could be resolved. Had they waited until after the redemption date, the Respondent's argument might have had some merit, but they timely filed their Complaint and emergency motion.

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CONCLUSION

Based upon the arguments in their opening brief and this Reply, the Appellants respectfully request this court reverse the denial of the Appellants' emergency injunction, reinstate the temporary injunction which expired on June 2, 2022, and remand the matter back to the Eighth Judicial District Court for further proceedings on the merits of Appellants' claims.

DATED this 30th day of October 2023.

/s/ Joseph A. Scalia, Esq.
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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 in 14 point Times New Roman.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 28 and 32 because it:

a. Does not exceed 30 pages as required under NRAP 32(a)(7) and has a word count of less than 14,000 words (2223 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 on is to be found.

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4. 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 30th day of October, 2023

/s/ Joseph A. Scalia, Esq.
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AFFIRMATION

The undersigned does hereby affirm that pursuant to NRS 239B.030, the preceding document does not contain the social security number of any person.

Dated this 30th day of October, 2023

/s/ Joseph A. Scalia, Esq.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Senior Counsel, LLC., and on the 30th day of October, 2023, I served a true and correct copy of the above and foregoing Appellant's Reply Brief by the method or methods indicated below:

Via Eflex

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Dated: October 30, 2023

/s/ Joseph A. Scalia, Esq.

Employee of Senior Counsel, LLC