IN THE SUPREME COURT

STATE OF ARIZONA

LAVELLE BRIDGES,	) Supreme Court
	) No. CV-21-0024-PR
Plaintiff/Appellee,	)
	) Court of Appeals
v.	) Division One
	) No. 1 CA-CV 19-0556
NATIONSTAR MORTGAGE L.L.C., a	)
Delaware corporation,	) Maricopa County
	) Superior Court
Defendant/Appellant.	) No. CV2016-000605
	)
	)

SUPPLEMENTAL BRIEF OF PLAINTIFF/APPELLEE BRIDGES

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INTRODUCTION

Under Arizona law, even if a contract allows a lender to accelerate a debt without notice, the lender must undertake some affirmative act to make clear to the borrower it has accelerated the obligation. This rule helps to ensure that the borrower is fully informed of the circumstances surrounding claims against his property, and it provides a starting point for the timeframe during which his current predicament must be resolved. When a lender elects to sell trust property following a default, the expectation is that the lender intends to use the proceeds from the sale to satisfy the entire debt. This expectation is reasonable given that the sole purpose of the lien is to secure the payment of the debt. When neither the deed of trust nor applicable statutes requires notice of acceleration and the lender has not made its intentions known, the legal presumption should be that the debt has been accelerated by the time that the notice of sale is recorded. Establishing this bright-line rule would provide the borrower with notice of acceleration and would afford him the protections underlying the statute of limitations.

STATEMENT OF THE ISSUES

The Court granted review of the following issues:

1. Did recording a notice of trustee sale accelerate the debt here as a matter of law?

2. Was the limitations period here tolled?

SUPPLEMENTAL ARGUMENT

I. The Recordation of the Notice(s) of Trustee's Sale Accelerated the Debt as a Matter of Law.

Under the "affirmative act rule" adopted in *Baseline Fin. Servs. v. Madison,* 229 Ariz. 543 (Ariz. App., 2012), "notwithstanding a creditor's contractual ability to accelerate a debt without notice, it must undertake some affirmative act to make clear to the debtor it has accelerated the obligation." *Id*. at 544, ¶ 8. As the rule itself indicates, its purpose is to provide effective notice to the debtor that the debt has been accelerated. *See also*, *In Re: Crystal Prop*., 268 F.3d 743, 749 (9th Cir. 2001) ("[A] party having an option to declare a note due and payable cannot simply by his own secret intention, never disclosed by act or word, claim that he declared the note due and payable") (internal citation omitted).

The affirmative act rule serves two important policies: first, it provides notice to the borrower of the status of the loan and of the amount being pursued (thus informing his response to claims against his property); second, it furthers the policy underlying the statute of limitations "to protect defendants from stale claims and uncertainty about potential unresolved claims." *Mertola, LLC v. Santos*, 244 Ariz. 488, 491-92 ¶ 17 (Ariz. 2018) (internal citation omitted). The legislature has determined that six years is the proper limitation period to foreclose on real property. A.R.S. §§ 33-816, 12-548. In *Navy Fed. Credit Union v. Jones*, 187 Ariz. 493 (Ariz.

App. 1996), the court determined that an action for unmatured, future installments accrues—and the limitation period for the entire debt commences—when the creditor exercises the optional acceleration clause. *Id*. at 495. Therefore, to avail itself of the protections to which it is entitled by law, it is imperative that a borrower have notice of when a lender accelerates a debt.

In the present case, neither the Deed of Trust nor Arizona's deed of trust statutes requires the lender to give notice of acceleration to the borrower at any time prior to the sale of the Property. Under the terms of the Deed of Trust, following a default and prior to accelerating the debt, the lender is required to send a notice informing the borrower that failure to cure the default by a certain date (not less than 30 days from the date of the notice) "may result in acceleration of the sums secured by this Security Instrument and sale of the Property." (I.R. 51, Exhibit B at ¶ 22). If the default is not cured by the date specified in the notice, "Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law." *Id.* If the lender invokes the power of sale, it is instructed to inform the trustee in writing that a default has occurred and that the lender has elected to sell the property. The trustee is then instructed to record a notice of sale and, after the time required by applicable law, to sell the property at

public auction without demand on the borrower.[1] *Id.* The Deed of Trust does not require the lender or the trustee to disclose whether the debt has been accelerated at any point from the time of default to the moment that the property is sold.

Likewise, Arizona's deed of trust statutes do not specifically require a lender to disclose whether a debt has been accelerated. *See* A.R.S. § 33-808(C)(4) (notice of sale must include the original principal balance, but not the amount currently due on the loan); A.R.S. § 33-809(C) (statement of breach or nonperformance does not require notice of acceleration); A.R.S. § 33-809(E) (at any time deed of trust is subject to reinstatement pursuant to section 33-813 and upon written request, trustee required to provide the amount of unpaid principal balance, but not required to disclose whether such balance is currently due); A.R.S. § 33-813(C) & (D) (upon request, trustee required to provide estimate or exact amount necessary to reinstate the trust deed, but regardless of whether or not the debt is accelerated, reinstatement under section 33-813(A) only requires payment of past due sums, plus charges).

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[1] In his Motion for Summary Judgment, Mr. Bridges argued that, per the Deed of Trust, acceleration occurs by the time that the lender sends written notice informing the trustee of the default and of its the election to sell the property. After the trustee receives such notice, the trustee is instructed—without further input from the lender—to sell the property and apply the proceeds of the sale "to all sums secured by this Security Instrument." *See* (I.R. 107, pp. 6-9). Absent further instruction from the lender, acceleration is presumed to have occurred by the time that the lender invokes the power of sale and notifies the trustee of its election to sell the property.

In circumstances where neither the deed of trust nor statutory law requires notice of acceleration prior to the sale of the Property, the affirmative act rule provides a safeguard to ensure 1) that the borrower receives notice of acceleration; and 2) that the lender does not circumvent the statute of limitations by withholding notice of acceleration.[2] The recording of a notice of trustee's sale is effective notice of acceleration because, at that point, the borrower has a reasonable expectation that the lender intends to sell the property to collect on the entire amount of the debt. In general, the sole purpose of the lien is to secure the debt as a whole. When the lender decides to sell the property, the presumption is that it is attempting to recoup the amount of the loan. This presumption is especially justified in light of the possible effects of Arizona's anti-deficiency statutes. *See* A.R.S. §§ 33-729 and 33-814(G).

Although, in theory, a lender could have a legitimate reason to foreclose on property for only the installment payments that have become due, the standard for the application of the affirmative act rule is not, and should not be, absolute certainty. For example, in *Baseline Fin. Servs. v. Madison, supra,* the Court of Appeals held that repossession of an automobile was a sufficient exercise of acceleration. Arguably, a creditor could repossess property and sell the property to collect *only*

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[2] *See* 18 Samuel Williston, Law of Contracts, § 2021A, at 697, Walter H.E. Jaeger ed., 1978 ("Where the plaintiff's right of action depends upon a preliminary act to be performed by himself, he cannot suspend indefinitely the running of the Statute of Limitations by delaying performance of this act").

the past due payments. However, the mere possibility of such an occurrence should not define the presumptive standard.

By recognizing the recording of a notice of trustee's sale as a sufficient exercise of acceleration, the Court would create a bright-line rule within the arena of foreclosure practice.[3] If, contrary to expectation, a lender truly intends to foreclose for only the past-due payments, the affirmative act rule seemingly allows the lender to notice a trustee's sale without accelerating the debt by making this intention clear to the borrower. If a lender decides to foreclose for only past-due payments *after* recording a notice of trustee's sale, the lender may unilaterally revoke acceleration by performing an affirmative act which communicates to the borrower that the lender has revoked acceleration. *Andra R Miller Designs LLC v. US Bank NA*, 418 P.3d 1038, 1044 ¶ 20 (App. 2018). By adopting this bright-line rule, the Court would bring much-needed clarity to this area of foreclosure law by setting the expectations of both lenders and borrowers.[4]

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[3] In contrast, if recording a notice of sale is not enough to demonstrate acceleration under the affirmative act rule and neither the statutes nor the contract requires notice of acceleration, then the lender would be required to take some additional action to accelerate the debt. If the lender fails to do so, it would only be entitled to collect past-due payments from the proceeds of the trustee sale.

[4] The Court may need to decide if a lender should be permitted to notice a sale without acceleration or to revoke acceleration for the purpose of circumventing the statute of limitations. However, this issue goes beyond the scope of the present case.

II. The Limitations Period was Not Tolled.

In its Am. Resp. to Pl.'s Mot. for Summ. J. (I.R. 156), Nationstar argued for tolling based on two theories: first, Nationstar argued that Mr. Bridges should be equitably estopped from using the statute of limitations due to his multiple requests for loan modification and short sale (I.R. 156, pp. 7-10); second, Nationstar argued that the statute of limitations was tolled by Mr. Bridges' bankruptcy filings (I.R. 156, p. 10). Nationstar also included two additional tolling arguments for the first time in its Opening Brief to the Court of Appeals: one based on the principle of equitable tolling (p. 21-23) and one based on acknowledgment of the debt (pp. 27-28).

A. Mr. Bridges' Bankruptcy Filings Did Not Toll the Statute of Limitations Via *In re Smith*.

Nationstar argues that, under Arizona law, a statute of limitations is tolled for the number of days a party is in bankruptcy. (I.R. 156, p. 10). Nationstar's argument misconstrues the interplay between federal bankruptcy law and state law on limitation periods. Federal bankruptcy law controls the effect of bankruptcy stays on limitation periods. Under 11 U.S.C. § 108(c), if the limitation period for a nonbankruptcy action has not expired before the filing of a bankruptcy petition, then the period shall expire at the later of – (1) "the end of such period, including any suspension of such period occurring on or after the commencement of the case;" or (2) "30 days after the notice of the termination or expiration of the stay…."

In *In re Smith*, 352 B.R. 702 (B.A.P. 9th Cir. 2006), the court affirmed the "majority view" that the "reference in § 108(c)(1) to 'suspension' of time limits clearly does not operate in itself to stop the running of a statute of limitations; rather, this language merely incorporates suspensions of deadlines that are expressly provided in other federal or state statutes." *Id*. at 706 (citations omitted). Thus, §108(c)(1) would only suspend the six-year statute of limitations if there is some federal nonbankruptcy statute or state law that tolls the limitation period in A.R.S. § 33-816 due to bankruptcy stays.

In Arizona, there is no statutory provision for tolling limitation periods due to bankruptcy stays. However, several federal district court decisions have interpreted this Court's ruling in *In re Smith*, 209 Ariz. 343 (Ariz., 2004) ("*In re Smith*"), as creating a general tolling exception for bankruptcy stays by means of judicial fiat. *See Mlynarczyk v. Wilmington Sav. Fund Soc'y FSB*, No. CV-15-08235-PCT-SPL, 2016 WL 3524329 (D. Ariz. Apr. 29, 2016); *In re Va Bene Trist, LLC*, No. 2:17-bk-00993-DPC, WL 770357 (Bankr. D. Ariz. Oct. 26, 2017).

In *In re Smith*, the Court was asked to address two certified questions from the U.S. Bankruptcy Court for the District of Arizona. The questions centered on the issue of whether a bankruptcy stay tolls the time period under A.R.S. § 12-1551 to file an affidavit of renewal of judgment. *In re Smith* at 344 ¶ 7. In the course of the discussion, the Court stated, "Under Arizona law, *enforcement* is stayed and the

time in which to **enforce the judgment** is tolled during the pendency of bankruptcy actions, just as it is while supersedeas bonds preclude enforcement and in other similar circumstances." *Id*. at 345 ¶ 12 (emphasis added, italics in the original).

The Court went on to explain,

> [U]nder Arizona law, a creditor with a judgment entered on January 1, 2000, who was prevented by the existence of a supersedeas bond or bankruptcy stay from executing on the judgment until January 1, 2004, could nonetheless file a renewal affidavit within the ninety days preceding January 1, 2005. See A.R.S. § 12-1612(B). But even if an affidavit were not filed, the time in which to ***enforce*** **the judgment** would be tolled and extended through January 1, 2009, to accommodate the time the creditor was precluded by the bond or stay from attempting to collect on the judgment.

Id. at 346, ¶ 14 (emphasis added, italics in the original). The Court was specifically referring to the **enforcement of judgments** under A.R.S. § 12-1551.

The Court was applying a well-established common law principle that the *enforcement of a judgment* is tolled during a stay of execution:

> At common law, the right to sue out an execution in a personal action was limited to a year and a day from the entry of judgment. ... [Y]et it was well established at common law that when the plaintiff had judgment with stay of execution, or execution was stayed by injunction, the plaintiff might sue out an execution within one year after the stay terminated or the injunction was dissolved.

Harding v. Sutherlin, 120 Ariz. 193, 195 (Ariz. App. 1978). In *North Star Development Corp. v. Wolfswinkel*, 146 Ariz. 406 (Ariz. App. 1985), the Court of

Appeals applied this principle to stays of execution through supersedeas bonds. Likewise, in *In re Smith*, the Supreme Court continued in this line of cases by applying the principle to bankruptcy stays, noting their kinship to supersedeas bonds in staying the execution of judgments. The Court did not intend to establish a general bankruptcy tolling policy for Arizona through judicial fiat.

If Arizona were to adopt such a policy, this decision must come from the legislature, and not the judicial branch of government. S*ee Florez v. Sargeant*, 185 Ariz. 521, 529 (Ariz. 1996) ("These are very delicate policy decisions that properly belong to the legislative branch of government. … [T]he weighing, balancing, and policy making that go into such an enterprise are properly legislative, not judicial tasks."); *Doe v. Roe*, 187 Ariz. 605, 612 (Ariz. App. 1996) ("If a claimant is to have a longer period than two years following the first discovery of childhood sexual abuse, that extension will have to come from the legislature. We do not have the power to make that change").

B. The Limitations Period was Not Tolled by the Doctrine of Equitable Estoppel.

1. Equitable Estoppel Does Not Apply to the Facts of This Case.

The doctrine of estoppel by inducement prevents a party's wrongful misconduct from impeding another party from timely filing suit: "[E]stoppel does not apply in the absence of evidence of 'concealment, a specific threat or

demonstrable duress.'" *Nolde v. Frankie*, 192 Ariz. 276, 280 ¶16 (Ariz. 1998) (citations omitted). In this case, Nationstar does not allege that Mr. Bridges made false promises, threats or misrepresentations. Instead, Nationstar identifies Mr. Bridges' submissions of loan modification and short sale applications—actions permitted by Nationstar's own policies—as conduct which wrongly induced its forbearance. Nationstar offers no legal authority to support its claim that such legitimate and commonplace transactions could invoke the principle of equitable estoppel.

In addition, estoppel by inducement "applies only if the defendant's conduct *reasonably* caused the plaintiff to forbear filing a timely action." *Id*. at 280 ¶18. "When considering the reasonable basis of the plaintiff's failure to timely file, a court must determine whether the defendant's conduct resulted in duress so severe as to deprive a reasonable person of the freedom of will to file the action." *Id.* Mr. Bridges' actions did not render Nationstar unable to act. Nationstar is a sophisticated business entity. If Nationstar, at any time, believed that Mr. Bridges' conduct was causing undue delay in the foreclosure process, there were numerous options that it could have taken to preserve its rights. For example, Nationstar could have filed a judicial foreclosure action to stop the running of the statute of limitations (*see* A.R.S. §33-807(B)), requested that Mr. Bridges sign a tolling agreement as a condition of continuing the loss mitigation process, unilaterally revoked acceleration, or—as

alluded to in the next section—Nationstar could simply have ended the loss mitigation process and foreclosed on the Property.

2. Nationstar's Policies and Procedures did Not Prevent Nationstar from Timely Foreclosing on the Property.

Nationstar designated its internal policies and procedures as confidential. Because Mr. Bridges referred to those policies and procedures in his Am. Reply in Supp. of Mot. for Summ. J. (I.R. 161) and in his Answering Brief, Mr. Bridges requested the Superior Court and the Court of Appeals to seal those respective documents. The courts ordered those documents to be sealed. To avoid referring to Nationstar's policies and procedures and requesting the Court to seal this Supplemental Brief, Mr. Bridges relies on the arguments contained in his Answering Brief to prove that Nationstar's policies and procedures did not prevent Nationstar from timely foreclosing on the Property. In particular, Mr. Bridges incorporates by reference the arguments contained in his Answering Brief, pp. 17-21.

C. Nationstar's Equitable Tolling Argument Should be Rejected.

1. Nationstar's Equitable Tolling Argument Was Raised for the First Time on Appeal.

Nationstar argues that the limitation period was equitably tolled due to Mr. Bridges' loss mitigation applications and bankruptcy filings. *See* Nationstar's Opening Brief, pp. 21-23. This argument should be rejected because it was raised for the first time on appeal. Generally, "an appellate court will not consider issues

not raised in the trial court." *Hawkins v. Allstate Ins. Co.*, 152 Ariz. 490, 503 (Ariz. 1987) (internal citations omitted).

Nationstar claims that it argued equitable tolling on pages 7-8 of Nationstar's Am. Resp. to Pl.'s Mot. Summ. J. when it cited *Hosogai v. Kadota*, 700 P.2d 1327 (Ariz. 1985) and that it "inadvertently" mislabeled the doctrine of equitable tolling argument as "equitable estoppel." Appellant's Opening Br., p. 21 fn. 1. However, an examination of Nationstar's Amended Response refutes this claim. The principle of equitable estoppel is predicated on a party's misconduct, while the elements of equitable tolling requires due diligence and extraordinary circumstances.[5] In the section entitled "Bridges Is Estopped to Assert the Statute of Limitations," the equitable basis of Nationstar's argument is that Mr. Bridges should not benefit from his alleged misconduct: "The statute of limitations should not be used by Plaintiff to protect him from foreclosure when the only reason the foreclosure was postponed was due to Plaintiff's multiple requests for a loan modification and short sale." (I.R., p. 7). Thus, the argument is predicated on equitable estoppel, not equitable tolling.

Furthermore, Nationstar's argument cites the elements for equitable **estoppel** and applied those elements to establish its defense:

[5] The expression 'equitable tolling' is sometimes used generically to refer to any equitable theory applied to tolling, but as used here, it also denotes a specific theory of equity which requires elements of due diligence and extraordinary circumstance.

> In order to establish equitable estoppel, a party must show: (i) affirmative acts inconsistent with a claim afterwords [sic] relied upon; (ii) action by a party relying on such conduct; and (iii) injury to the party resulting from a repudiation of such conduct. In this case, Nationstar can establish the elements of equitable estoppel.

(I.R., p. 9). Finally, Nationstar cited *Hosogai* for the proposition that "[a] defendant may not use the statute of limitations as a shield for inequity" and for the proposition that Arizona courts have recognized an equitable exception to statute of limitations "when a defendant induces a plaintiff to forbear filing suit." (I.R. 156, p. 8). Neither of these citations support the claim that Nationstar intended equitable tolling.

Nowhere in its Amended Response does Nationstar refer to the elements of equitable tolling. Because Nationstar raised the defense of equitable tolling for the first time on appeal, the argument should be rejected by the Court.

2. Equitable Tolling Does Not Apply to Bridges' Loss Mitigation Applications.

Even if the Court should allow Nationstar to raise the issue of equitable tolling, the argument fails. Under the doctrine of equitable tolling, a party must show "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing." *Holland v. Florida*, 560 U.S. 631, 649 (2010) (internal citations omitted). In *Menominee Indian Tribe of Wis. v. United States*, 136 S.Ct. 750 (2016), the Supreme Court explained that due diligence and extraordinary circumstance are "'elements,' not merely factors of

indeterminate or commensurable weight." *Id.* at 756. *See also McCloud v. State, Dept. of Public Safety*, 217 Ariz. 82, 88 ¶ 16 (Ariz. App. 2007) (the doctrine of equitable tolling should only be used in "extraordinary circumstances" and not "a garden variety claim of excusable neglect") (citations omitted).

The doctrine of equitable tolling does not apply to Mr. Bridges' loss mitigation applications because Nationstar did not diligently pursue its rights, and Nationstar was not prevented by Mr. Bridges' actions from foreclosing on the Property. See section II(B)(2) above. Nationstar even admitted that its policies and procedures did not prevent Nationstar from foreclosing: "Hindsight may suggest Nationstar should have ignored Mr. Bridges' repeated loss mitigation request, refused to work with him to save the property and foreclosed quickly." Reply Br. of Appellant Nationstar Mortgage LLC, p. 13.[6]

3. Equitable Tolling Does Not Apply to the Mr. Bridges' Bankruptcy Filings.

Equitable tolling does not apply to Mr. Bridges' bankruptcy stays because Nationstar did not diligently pursue its rights and was not prevented by some extraordinary circumstance from foreclosing on the Property. Mr. Bridges' last

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[6] Nationstar also argued that it was prevented from foreclosing on the Property by 12 C.F.R. §1024.41. Opening Br. of Appellant Nationstar Mortgage LLC, p. 22. However, under 12 C.F.R. §1024.41(i), a servicer is not required to review additional loss mitigation applications if "the borrower has been delinquent at all times since submitting the prior complete application."

bankruptcy stay was lifted on December 2, 2014. *See* Nationstar's Opening Br., p. 6. Assuming that the statute of limitations expired on January 30, 2015 (six years after the first notice of sale was recorded), Nationstar had almost two months to foreclose on the Property after the last stay was lifted.

Under 11 U.S.C. § 108(c)(2), if the limitation period for a nonbankruptcy action expires during a bankruptcy stay, the party is given an additional 30 days after the notice of the termination or expiration of the stay to file the action. Federal courts have declined to apply equitable tolling where a party failed to file an action within the 30-day window. *See Wombles v. Hagans,* No. 3:12-cv-532-TFM, 2012 WL 5512336, at *10 (M.D. Ala. 2012). (Equitable tolling did not apply because Plaintiff should have filed the action during the thirty-day window after Defendant's bankruptcy proceeding was dismissed). *See also Barraford v. T&N Ltd.*, 17 F.Supp.3d 96, 106 (D. Mass. 2014). In this case, Nationstar still had nearly two months to foreclose on the Property after the last stay was lifted.

Furthermore, Nationstar could have taken steps to preserve its rights during and between bankruptcy stays. For example, Nationstar could have motioned the bankruptcy court to lift the automatic stay, executed a trustee's sale between bankruptcy stays, requested a tolling agreement, filed a judicial foreclosure action between stays, or unilaterally revoked acceleration.

A bankruptcy stays is not an "extraordinary circumstance". Nationstar deals with bankruptcy stays on a regular basis. Because Nationstar did not diligently act to preserve its rights, the doctrine of equitable tolling does not apply.

D. Nationstar's Argument that Bridges Acknowledged the Debt Should be Rejected.

Nationstar alleges that Mr. Bridges acknowledged the debt through his loss mitigation applications which reset the limitations period. Appellant's Opening Brief, p. 27. This argument was raised for the first time on appeal and, therefore, should be rejected. *See Hawkins v. Allstate Ins. Co.*, *supra*, at 503. But even if the Court should allow Nationstar to raise the issue of acknowledgment, the argument fails for several reasons.

In Arizona, acknowledgment must be "in writing and signed by the party to be charged thereby." *Cheatham v. Sahuaro Collection Service, Inc.*, 118 Ariz. 452, 454 (Ariz. App. 1978). Nationstar has not produced any signed document to support its claim of acknowledgment. Furthermore, an acknowledgment only serves to renew a limitations period that has already run. *See De Anza Land and Leisure Corp. v. Raineri,* 137 Ariz. 262, 267 (Ariz. App. 1983). Here, the limitations period expired in January of 2015, at the earliest. However, the last time that Nationstar received a completed loan modification application from Mr. Bridges was on September 2, 2014. *See* (I.R. 162, p. 3). At that point, the six-year limitation period

had not yet expired.

Finally, applications for loan modification do not constitute acknowledgment. Under Arizona law, "the new promise to pay [constituting the acknowledgment] must be sufficient in itself to support an action for debt, independent of the original promise." *De Anza* at 267. An application for loan modification is not a promise to pay and is not sufficient to support an action for debt. *See McQueen v. Bank of N.Y.*, 56 N.Y.S.3d 811, 814 (N.Y. Sup. Ct. 2017) ("[T]he request for modification is akin to an offer of settlement which does not necessarily acknowledge liability…."); *U.S. Bank, Nat'l Ass'n v. Kess*, 159 A.D.3d 767, 768-69 (N.Y. App. Div. 2018) (loan modification application is not an acknowledgment of the debt and an unconditional promise to repay the debt sufficient to reset the running of the statute of limitations).

E. Even if the Limitations Period was Tolled, Nationstar is Still Time-Barred from Foreclosing on the Property.

In his Am. Reply in Supp. of Mot. for Summ. J., Mr. Bridges argued that even if the limitations period was tolled, Nationstar would still be time-barred from foreclosing on the Property because it failed to foreclose on the Property after his application for preliminary injunction was denied. (I.R. 161, p. 10).

The "deed of trust scheme is a creature of statutes." *BT Capital, LLC v. TD Serv. Co. of Arizona*, 229 Ariz. 299, ¶ 9 (Ariz. 2012) (citations omitted). Under A.R.S. § 33-816, a trustee's sale must be made, or a judicial foreclosure action must

be commenced, within the six-year limitation period for actions on contracts secured by the deed of trust. Under A.R.S. § 33-811(C), "a person who has defenses or objections to a properly noticed trustee's sale has one avenue for challenging the sale: filing for injunctive relief." *BT Capital, LLC* at ¶ 10. A "trustor who fails to enjoin a trustee's sale waives his claims to title of the property upon the sale's completion." *Morgan AZ Fin., LLC v. Gotses*, 235 Ariz. 21, ¶ 7 (Ariz. App. 2014). Under A.R.S. § 33-811(E), once the sale is completed, the "conveyance shall be absolute without right of redemption and clear of all liens, claims or interests that have a priority subordinate to the deed of trust." The purpose of this statutory scheme is to ensure that trustee's sales "operate quickly and efficiently, outside the judicial process." *Gotses* at ¶ 7 (citations omitted).

In the present case, Mr. Bridges filed his Complaint and Application for Preliminary Injunction (I.R. 1) on January 27, 2016. The trial court denied the preliminary injunction on July 15, 2016. (I.R. 41). Under the statutory scheme for deeds of trust, Nationstar could have moved forward with foreclosure once the preliminary injunction was denied. Upon completion of the sale, any claim Mr. Bridges had to title of the Property would have been waived, and the conveyance of the Property would have been absolute without right of redemption.

Therefore, under Arizona's statutory scheme for deeds of trust, Nationstar's ability to foreclosure on the Property was unfettered from the time that Mr. Bridges'

Application for Preliminary Injunction was denied on July 15, 2016, until the trial court granted Mr. Bridges' Motion for Summary Judgment on December 21, 2018, which enjoined Nationstar from foreclosing on the Property. (I.R. 180). Thus, even if we assume, *arguendo*, that the automatic stays from Mr. Bridges' two bankruptcy filings tolled the statute of limitations for 545 days, as Nationstar claims (see Nationstar's Opening Br. p. 7), and even if we add 170 days for the time that Nationstar was prohibited from foreclosing on the Property due to the Temporary Restraining Order (which ran from January 27, 2016 until July 15, 2016), Nationstar had until January 14, 2017, to foreclose on the Property.[7] Because Nationstar slept on its rights, Nationstar is now time-barred by application of A.R.S. § 33-816.

CONCLUSION

The Recordation of the notice(s) of trustee's sale accelerated the debt here as a matter of law, and the limitations period was not tolled. Mr. Bridges respectfully requests that the Court reverse the Court of Appeals decision, reaffirm the Superior Court's judgment in this matter, and award Mr. Bridges his attorney's fees and costs.

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[7] This calculation uses the acceleration date of January 30, 2009 (when the first notice of trustee's sale was recorded) as the starting point.

RESPECTFULLY SUBMITTED on this 15th day of October, 2021.

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