

IN THE SUPREME COURT OF THE STATE OF NEVADA

BANK OF NEVADA, a Nevada
Banking corporation,

Appellant,

vs.

MURRAY PETERSEN, an individual,

Respondent.

SUPREME COURT CASE NO. 66568

District Court Case No. A-13-680012-C

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Tracie K. Lindeman
Clerk of Supreme Court

APPEAL

**From the Eighth Judicial District Court
The Honorable Kenneth Cory, District Judge**

**APPELLANT'S SUPPLEMENTAL AUTHORITIES TO APPELLANT'S
OPENING BRIEF**

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Pursuant to NRAP 31(e), Petitioner Bank of Nevada (“BON”) submits the following supplemental authorities. In the instant appeal, BON seeks reversal of the District Court’s judgment in a guarantor deficiency action.

NRS 40.455(1) states that:

[U]pon *application* of the . . . beneficiary of the deed of trust within 6 months after the date of the foreclosure sale . . . and after the required hearing, the court shall award a deficiency judgment to . . . the beneficiary of the deed of trust if it appears from the sheriff’s return or the recital of consideration in the trustee’s deed that there is a deficiency of the proceeds of the sale and a balance remaining due to the . . . beneficiary of the deed of trust, respectively.

(emphasis added). As outlined on pages 1-3, 5, and 11 of BON’s Opening Brief, in granting Respondent Murray Petersen’s Motion for Summary Judgment, the District Court found that BON had not complied with NRS 40.455(1) because BON had not filed an “application” within six months after foreclosure. NRS 40.455 does not define the term “application.”

On June 10, 2015, Senate Bill 453 was approved by the Governor of Nevada and is effective as of October 1, 2015. Senate Bill 453 adds the following definition to NRS 40.455:

(4) For purposes of an action against a guarantor, surety or other obligor of an indebtedness or obligation secured by a mortgage or lien upon real property pursuant to NRS 40.495, the term “application” includes, without limitation, a complaint or other pleading to collect the indebtedness or obligation which is filed before the date and time of the foreclosure sale unless a judgment has been entered in such action as provided in paragraph (b) of subsection 4 of NRS 40.495.

While BON primarily argues via its Opening Brief that NRS 40.455 does not apply to BON in its capacity as a junior lienholder (Appellant's Opening Brief at 6-8), this added definition is pertinent to this Court's analysis should this Court find that NRS 40.455 applies to BON.

Dated this 23rd day of September, 2015.

SNELL & WILMER L.L.P.

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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On September 23, 2015, I caused to be served a true and correct copy of the foregoing

**APPELLANT'S SUPPLEMENTAL AUTHORITIES TO APPELLANT'S
OPENING BRIEF** upon the following by the method indicated:

- ☐ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.
- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.
- ☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

/s/ Ruby Lengsavath

An Employee of Snell & Wilmer L.L.P.