

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

NATIONSTAR MORTGAGE, LLC; AND THE BANK
OF NEW YORK MELLON F/K/A THE BANK OF NEW
YORK AS TRUSTEE FOR THE HOLDERS OF THE
CERTIFICATES, FIRST HORIZON MORTGAGE
PASS-THROUGH CERTIFICATES SERIES PHAMS
2005-AA5, BY FIRST HORIZON HOME LOANS, A
DIVISION OF FIRST TENNESSEE BANK NATIONAL
MASTER SERVICER, IN ITS CAPACITY AS AGENT
FOR THE TRUSTEE UNDER THE POOLING AND
SERVICING AGREEMENT,
Appellants,
vs.
CATHERINE RODRIGUEZ,
Respondent.

No. 66761

**DOCKETING STATEMENT
CIVIL APPEALS**

Electronically Filed
Nov 12 2014 03:01 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 25
County Clark Judge Hon. Kathleen Delaney
District Ct. Case No. A-13-685616-J

2. Attorney filing this docketing statement:

Attorney Melanie D. Morgan Telephone (702) 222-4149
Firm Kravitz, Schnitzer & Johnson, Chtd.
Address _____

Client(s) Appellants Nationstar Mortgage LLC and Bank of New York Mellon

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Tara Newberry/Venicia Considine Telephone (702)608-4232; (702)386-1070
Firm Connaghan Newberry Law Firm/Legal Aid Center of Southern Nevada, Inc.
Address 7854 W. Sahara Ave. 725 E. Charleston Blvd.
Las Vegas, NV 89117 Las Vegas, NV 89104

Client(s) Catherine Rodriguez

Attorney None other known Telephone _____
Firm _____
Address _____

Client(s) N/A

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|--|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>Petition for Judicial Review</u> |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

8. Nature of the action. Briefly describe the nature of the action and the result below:

This action stems from a Petition for Judicial Review filed by the Respondent (borrower) following an October 6, 2011 foreclosure mediation. Appellants (lender) did not present certified copies of the note, deed of trust, and assignments, and the foreclosure certificate did not issue. On July 22, 2013, Respondent filed a Petition for Judicial Review requesting that a hearing be held "to determine bad faith and appropriate sanctions" because the uncertified copy of the note presented at the mediation 21 months earlier contained an endorsement placed on the note in error. Following an evidentiary hearing, the district court entered an order sanctioning Appellants \$50,000.00 a piece, with additional sanctions of \$10,000.00 per day if payment was not made within 30 days of entry of the order. The sanction awarded also included interest, attorneys' fees and costs.

9. Issues on appeal. State specifically all issues in this appeal (attach separate sheets as necessary):

- Issue No. 1: Whether the district court had jurisdiction to consider a petition for judicial review filed more than thirty days following receipt of the mediator's statement.
- Issue No. 2: Whether the district court erred in considering evidence outside of the scope of the October 6, 2011 foreclosure mediation.
- Issue No. 3: Whether the district court erred in its determination that Appellants failed to mediate in good faith.
- Issue No. 4: Whether the district court abused its discretion in determining sanctions against Appellants.
- Issue No. 5: Whether the district court erred as a matter of law in imposing sanctions in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.
- Issue No. 6: Whether the district court erred as a matter of law in considering Appellants' financial condition in determining sanctions to be imposed against Appellants.
- Issue No. 7: Whether the district court erred by making factual determinations that were not supported by substantial evidence.

PLEASE SEE ATTACHED SHEET WITH ISSUE NO. 8

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None

DOCKETING STATEMENT

Continued

9. Issues on Appeal

Issue No. 8: Whether the district court erred in its determination that Appellants failed to present a person with authority at the mediation.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

This appeal involves the issue of whether the district court has jurisdiction to consider a Petition for Judicial Review brought under Nevada's foreclosure mediation program filed after the time specified in Foreclosure Mediation Rule 21.

13. Trial. If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? _____

14. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice? No

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from October 6, 2014

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

16. Date written notice of entry of judgment or order was served October 6, 2014

Was service by:

☐ Delivery

☒ Mail/electronic/fax

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

18. Date notice of appeal filed October 23, 2014

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The Court's Findings of Fact, Conclusions of Law and Order is a final resolution of the Petition for Judicial Review.

21. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Catherine Rodriguez

Nationstar Mortgage, LLC

The Bank of New York Mellon F/K/A The Bank of New York as Trustee For
The Holders Of The Certificates, First Horizon Mortgage Pass-Through Certificate
Series Phams 2005-AA5, By First Horizon Home Loans, A Division Of First
Tennessee Bank National Master Services, In Its Capacity As Agent For The Trust
Under The Pooling And Servicing Agreement

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Respondent alleged that Appellants mediated in bad faith in violation of NRS 107.080 etc. and the Nevada Supreme Court Amended Foreclosure Rules. The formal disposition of all claims occurred on October 6, 2014, when the Court's Findings of Fact and Conclusions of Law and Order was entered.

23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

24. If you answered "No" to question 23, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

26. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Nationstar Mortgage, LLC and
Bank of New York Mellon

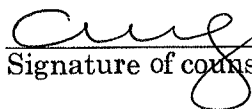
Name of appellant

Melanie D. Morgan, Esq.

Name of counsel of record

November 12, 2014

Date



Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 12th day of November, 2014, I served a copy of this completed docketing statement upon all counsel of record:

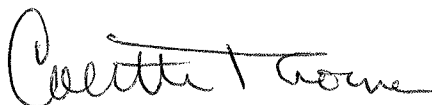
☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Venicia G. Considine, Esq.
Legal Aid Center of Southern Nevada, Inc.
725 East Charleston Blvd.
Las Vegas, NV 89104

Tara D. Newberry, Esq.
Connaghan Newberry Law Firm
7854 W. Sahara Ave.
Las Vegas, NV 89117

Dated this 12th day of November, 2014



Signature