

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDERIC AND BARBARA
ROSENBERG LIVING TRUST,

Appellant/Cross-Respondent,

vs.

MACDONALD HIGHLANDS
REALTY, LLC, a Nevada Limited
Liability Company; MICHAEL
DOIRON, an Individual; and FHP
VENTURES, a Nevada Limited
Partnership,

Respondent/Cross-Appellants.

Case No. 69399

District Court Case No. A689113
Electronically Filed
Aug 10 2016 01:01 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

FREDERIC AND BARBARA
ROSENBERG LIVING TRUST,

Appellant,

vs.

SHAHIN SHANE MALEK,

Respondent.

Case No. 70478

District Court Case No. A689113

RESPONSE TO ORDER TO SHOW CAUSE

Appellant/Cross-Respondent The Barbara and Frederick Rosenberg Living Trust (the "Trust") hereby submits its response to this Court's July 11, 2016 Order to Show Cause why the appeal in Docket No. 70478 should not be dismissed for lack of jurisdiction. This response is based on the papers on file herein, the memorandum of points and authorities below, and NRAP 3A(b)(1), 4(a)(6) and NRCPC 54(b).

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

On July 11, 2016 this Court issued an Order to Show Cause based on a potential jurisdictional defect. Specifically, this Court was concerned as to whether or not final judgment had been entered in the matter because it appeared that the Trust's claims against BAC Home Loans Servicing, LP remained pending in the district court.

On or about March 10, 2016, a Stipulation and Order was entered in the district court case dismissing the Trust's claims against Bank of America, N.A. It was the intent at the parties at that time to dismiss BAC Home Loans Servicing, LP as well; but, as pointed out by this Court, it appears from a review of the entered stipulation and order that it only dismisses the Trust's claims against Bank of America, N.A. Accordingly, the parties have taken the necessary steps to properly dismiss all claims against BAC Home Loans Servicing, LP and resolve any potential jurisdictional defect.

II. Argument

In response to this order, the Trust hereby submits the necessary documentation to establish this court's jurisdiction. A Stipulation and Order Dismissing BAC Home Loans Servicing, LLC was entered in the district court on August 9, 2016, notice of entry of which was served on August 10, 2016. A true

and correct copy of the Notice of Entry with the file-stamped Stipulation and Order Dismissing BAC Home Loans Servicing, LLC, is attached hereto as **Exhibit 1.**

This Court lacks jurisdiction if the order or judgment from which an appeal is taken does not finally resolve all claims against all defendants. *See* NRCP 54(b); *see also* NRAP 4(a)(6). If a premature notice of appeal is filed, but entry of final judgment is entered before this Court dismisses the premature appeal, then “the notice of appeal shall be considered filed on the date of and after entry of the order, judgement or written disposition. . . .” NRAP 4(a)(6). “A notice or stipulation of dismissal filed under NRCP 41(a)(1) has the same effect as a judgment or order signed by the judge and filed by the clerk and constitutes entry of a judgment or order for purposes of this Rule. If that notice or stipulation dismisses all unresolved claims pending in an action in the district court, the notice or stipulation constitutes entry of a final judgment or order for purposes of this Rule.” NRAP(4)(a)(3).

Here, the Stipulation and Order Dismissing BAC Home Loans Servicing, LLC served to fully and finally dismiss all unresolved claims pending in the action in the district court. The Stipulation and Order Dismissing BAC Home Loans Servicing, LLC was filed under NRCP 41(a)(1) and was entered on August 9,

2016, prior to this Court dismissing the pending appeal. Pursuant to NRAP 4(a)(3) the Stipulation and Order Dismissing BAC Home Loans Servicing, LLC constitutes entry of a final judgment or order for purposes of NRAP(4). Therefore, the Trust's notice of appeal was timely filed on August 9, 2016 and this Court has proper jurisdiction.

III. Conclusion

For the reasons stated above, this Court should not dismiss the instant appeal as the jurisdictional defects have been cured.

Dated this 10th day of August, 2016.

KIM GILBERT EBRON

/s/Jacqueline A. Gilbert _____

Jacqueline A. Gilbert, Esq.

Nevada Bar No. 10593

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Email: jackie@KGElegal.com

*Attorney for The Barbara and
Frederick Rosenberg Living Trust*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 10, 2016, I filed the foregoing **RESPONSE TO ORDER TO SHOW CAUSE** via the Supreme Court Electronic Filing System, which shall be e-served to the following party:

J. Randall Jones, Esq.
Nevada Bar No. 1927
Spencer H. Gunnerson, Esq.
Nevada Bar No. 8810
Mathew S. Carter, Esq.
Nevada Bar No. 9524
3800 Howard Hughes Parkway, 17th Fl.
Las Vegas, Nevada 89169
*Attorneys for Respondents/Cross-Appellants MacDonald Highlands Realty, LLC,
Michael Doiron and FHP Ventures, A Nevada Limited Partnership*

Preston P. Rezaee, Esq.
Nevada Bar No. 10729
Jay DeVoy, Esq. (*Of Counsel*)
Nevada Bar No. 11950
200 E. Charleston Blvd.
Las Vegas, Nevada 89104
Attorneys for Shahin Shane Malek

/s/ Jacqueline A. Gilbert

an employee of KIM GILBERT EBRON

EXHIBIT 1

Notice of Entry of Stipulation and
Order to Dismiss BAC Home Loans
Servicing, LP with Prejudice

NESO

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2 E-mail: diana@kgelegal.com
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3 Nevada Bar No. 10580
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8 *Attorneys for Plaintiff*

DISTRICT COURT

CLARK COUNTY, NEVADA

11 THE FREDRIC AND BARBARA
12 ROSENBERG LIVING TRUST,

13 Plaintiff,

14 vs.

15 BANK OF AMERICA, N.A.; BAC HOME
LOANS SERVICING, LP, a foreign limited
16 partnership; MACDONALD HIGHLANDS
REALTY, LLC, a Nevada limited liability
17 company; MICHAEL DOIRON, an individual;
SHAHIN SHANE MALEK, an individual;
18 PAUL BYKOWSKI, an individual; THE
FOOTHILLS AT MACDONALD RANCH
19 MASTER ASSOCIATION, a Nevada limited
liability company; THE FOOTHILLS
20 PARTNERS, a Nevada limited partnership;
DOES I through X; and ROE
21 CORPORATIONS I through X, inclusive,

22 Defendants.

23 SHAHIN SHANE MALEK,

24 Counterclaimant,

25 vs.

26 THE FREDRIC AND BARBARA
27 ROSENBERG LIVING TRUST,

28 Counter-Defendant.

Case No.: A-13-689113-C

Dept. No.: I

**NOTICE OF ENTRY OF
STIPULATION AND ORDER TO
DISMISS BAC HOME LOANS
SERVICING, LP WITH PREJUDICE**

KIM GILBERT EBRON
7625 DEAN MARTIN DRIVE, SUITE 1110
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(702) 485-3300 FAX (702) 485-3301

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of August, 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic service system the foregoing, **NOTICE OF ENTRY OF STIPULATION AND ORDER TO DISMISS BAC HOME LOANS SERVICING, LP WITH PREJUDICE** to the following parties:

Akerman LLP		
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	Akerman Las Vegas Office	akermanlas@akerman.com
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/s/ Jacqueline A. Gilbert
an employee of Kim Gilbert Ebron

CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA
ROSENBERG LIVING TRUST,

Plaintiff,

vs.

BANK OF AMERICA, N.A.; BAC HOME
LOANS SERVICING, LP, a foreign limited
partnership; MACDONALD HIGHLANDS
REALTY, LLC, a Nevada limited liability
company; MICHAEL DOIRON, an individual;
SHAHIN SHANE MALEK, an individual;
PAUL BYKOWSKI, an individual; THE
FOOTHILLS AT MACDONALD RANCH
MASTER ASSOCIATION, a Nevada limited
liability company; THE FOOTHILLS
PARTNERS, a Nevada limited partnership;
DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

SHAHIN SHANE MALEK,

Counterclaimant,

vs.

THE FREDRIC AND BARBARA
ROSENBERG LIVING TRUST,

Counter-Defendant.

Case No.: A-13-689113-C

Dept. No.: 1

STIPULATION AND ORDER TO
DISMISS BAC HOME LOANS
SERVICING, LP WITH PREJUDICE

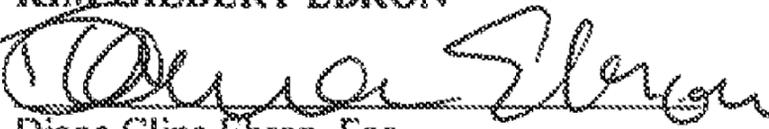
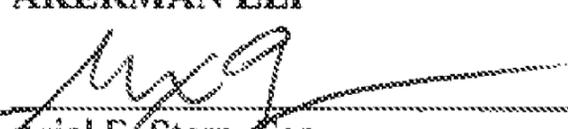
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<input type="checkbox"/> Motion to Dismiss by Def(s)	<input type="checkbox"/> Judgment of Arbitration

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1 THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST ("Plaintiff") and BAC
2 HOME LOANS SERVICING, LP ("BAC") (collectively, the "Parties"), by and through their
3 counsel of record, stipulate and agree that Plaintiff's claims against BAC, as set forth in the
4 Amended Complaint filed on January 12, 2015, shall be dismissed with prejudice, each party to
5 bear its own attorney's fees and costs associated with this lawsuit.

6 IT IS SO STIPULATED.

7 DATED this <u>29</u> day of July, 2016.	DATED this <u>27th</u> day of July, 2016.
8 KIM GILBERT EBRON	AKERMAN LLP
9 	
10 Diana Cline Ebron, Esq.	Ariel E. Stern, Esq.
11 Nevada Bar No. 10580	Nevada Bar No. 8276
12 Jacqueline A. Gilbert, Esq.	Darren T. Brenner, Esq.
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18 <i>Attorneys for Plaintiff</i>	<i>Attorneys for BAC Home Loans Servicing, LP</i>
19 DATED this <u>5th</u> day of July , 2016.	
20 <i>AUG 03 7</i>	
21 THE FIRM, P.C.	
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23 Preston P. Reznicek, Esq.	
24 Nevada Bar No. 10729	
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27 200 E. Charleston Blvd.	
28 Las Vegas, Nevada 89104	
<i>Attorneys for Shahin Shane Malek</i>	

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24 ///
25 ///
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ORDER

1
2 Upon stipulation of the Parties, and good cause appearing therefore, it is hereby
3 ORDERED that Plaintiff's claims against BAC Home Loans Servicing, LP, as set forth in the
4 Amended Complaint filed on January 12, 2015, shall be dismissed with prejudice, with each
5 party to bear its own fees and costs.

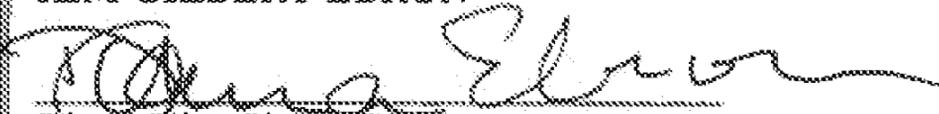
6 **IT IS SO ORDERED.**

7 DATED this 8 day of July, 2016.

8
9 
DISTRICT COURT JUDGE

10
11 Respectfully Submitted By:

12 **KIM GILBERT EBRON**

13 
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