

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARRINGTON MORTGAGE HOLDINGS,
LLC, Appellant,
v.

No. 70545

DOCKETING STATEMENT
CIVIL APPEALS

Electronically Filed
Jul 06 2016 08:47 a.m.
Tara K. Lindeman
Clerk of Supreme Court

R VENTURES VIII, LLC, A NEVADA
SERIES LIMITED LIABILITY COMPANY
OF THE CONTAINER R VENTURES, LLC
UNDER NRS 86.296, Respondent.

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

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 27 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.

Revised December 2015

1. Judicial District Eighth Department VI
County Clark Judge Hon. Elissa Cadish
District Ct. Case No. A-13-684151-C

2. Attorney filing this docketing statement:

Attorney Christine M. Parvan Telephone 702-634-5000

Firm Akerman LLP

Address 1160 Town Center Dr., Ste. 330
Las Vegas, NV 89144

Client(s) Carrington mortgage Holdings, LLC

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 Thomas Miskey Telephone 702-998-1500

Firm Cooper Coons, Ltd.

Address 10655 Park Run Drive, Suite 130
Las Vegas, NV 89144

Client(s) R Ventures VIII, LLC

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(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 checked="" 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 type="checkbox"/> Other disposition (specify): _____ |

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:

Although this case involves familiar issues regarding the interpretation and application of NRS 116.3116, there are no other cases or proceedings presently or previously pending before this court directly related to this appeal.

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:

Other than the underlying trial court action, there are no other cases or proceedings presently or previously pending directly related to this appeal.

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

Respondent alleges that it owns the property located at 6175 Novelty Street, Las Vegas, Nevada (Property) free and clear of all liens as a result of an HOA foreclosure sale. Respondent filed complaint for quiet title and injunctive relief to have the court declare that Respondent bought the Property free and clear of Carrington Mortgage Holdings' interests, including the deed of trust held by Carrington (Deed of Trust). Carrington alleges the Deed of Trust was not extinguished by the HOA foreclosure sale because the prior servicer of the loan, Bank of America, N.A., paid off the entire HOA lien in 2010; because Bank of America then tendered any remaining superpriority portion of the HOA's lien prior to the HOA foreclosure sale; because there was no lien for the HOA to foreclosure due to the HOA's factoring agreement with First 100, LLC; because the foreclosure sale was not commercially reasonable; because the Supremacy Clause bars an HOA from foreclosing on property, like the one at issue, secured by an FHA-insured mortgage; and because NRS 116.3116 is unconstitutional. The district court granted Respondent's motion for summary judgment over Appellant's opposition and denied Appellant's countermotion for summary judgment. Carrington now appeals that order.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

- 1) Whether an HOA's superpriority lien is evergreen?
- 2) Whether Bank of America's offer to pay the super-priority amount satisfied the tender doctrine and thus extinguished that portion of the HOA's lien prior to the foreclosure sale?
- 3) Whether the HOA's factoring agreement with First 100 split the statutory lien from the debt and also violated the HOA's CC&Rs and NRS 116.3102(p)?
- 4) Whether NRS 116 is facially unconstitutional?
- 5) Whether NRS 116 is unconstitutional as applied to FHA-insured deeds of trust?
- 6) Whether the HOA sale is void as commercially unreasonable based on inadequacy of price? and
- 7) Whether recitals of compliance with the notice requirements of NRS 116 in a trustee's deed are sufficient to establish compliance as a matter of law?

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:

This case is similar to many others currently pending before the Nevada Supreme Court in that it raises several issues regarding the application and enforceability of NRS 116.3116 (as it existed before amended by the Nevada Legislature in 2015).

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 several significant issues related to NRS 116.3116. The appellant does not seek reversal of any part of this Court's recent decision construing NRS 116.3116 in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014); however, a decision regarding the issues in this appeal could be binding on many other pending cases.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter should be retained by the Supreme Court pursuant to NRAP 17(a)(13), as it presents as a principal issue the questions of first impression whether NRS 116.3116 is facially unconstitutional and whether a tender offer of nine months of assessments extinguished the HOA's superpriority lien.

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? N/A

15. 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

16. Date of entry of written judgment or order appealed from

April 27, 2016

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

17. Date written notice of entry of judgment or order was served May 2, 2016

Was service by: Delivery

☒ Mail/electronic/fax

18. 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

19. Date notice of appeal filed June 1, 2016

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:

20. 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

21. 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 April 27, 2016 order granted summary judgment for Respondent and against appellant. Accordingly, it is a final judgment that is appealable under NRAP 3A(b)(1).

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

(a) Parties:

Bank of America
Carrington Mortgage Holdings LLC
Taylor, Bean & Whitaker Mortgage Holdings, Corp.
Wells Fargo Bank, N.A.
Southern Terrace Homeowners' Association
Joyce Pierce
R Ventures VIII, LLC

(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:

Bank of America's motion to dismiss was granted on April 28, 2016.

Taylor, Bean & Whitaker Mortgage Holdings, Corp. did not appear.

Wells Fargo was voluntarily dismissed on November 6, 2013.

Southern Terrace was voluntarily dismissed on December 12, 2013.

Joyce Pierce did not appear.

23. 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.

Judgment was granted in favor of Respondent on its claims for quiet title and declaratory relief, and against Carrington on its counterclaims for quiet title and declaratory relief, on April 27, 2016.

No other parties alleged any claims.

24. 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

25. If you answered "No" to question 24, 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

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

27. 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.

Carrington Mortgage Holdings, LLC

Name of appellant

Christine M. Parvan

Name of counsel of record

July 5, 2016

Date

/s/ Christine M. Parvan

Signature of counsel of record

Clark County, NV

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 5th day of July, 2016, 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.)

Thomas Miskey
John Coons
Coper Coons, LTD
10655 Park Run Drive, Ste 130
Las Vegas, NV 89144

Dated this 5th day of July, 2016.

/s/ Michael Hannon

Signature