

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

AMY FACKLAM, an individual.
Appellant,

v.

HSBC BANK USA, N.A., as Trustee for
Deutsche Alt-A Securities Mortgage Loan
Trust, et al.,
Respondent

No. 70786

Electronically Filed
Aug 02 2016 03:29 p.m.

Tracie K. Lindeman
Clerk of Supreme Court

DOCKETING STATEMENT CIVIL APPEALS

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.

1. Judicial District Eighth Judicial District Department VI

County Clark County Judge Elissa F. Cadish

District Ct. Case No. A-16-733762-C

2. Attorney filing this docketing statement:

Attorney Jacob L. Hafter, Esq. Telephone (702) 405-6700

Firm HAFTERLAW

Address 6851 West Charleston Blvd.
Las Vegas, NV 89117

Client(s) Amy Facklam

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 Jeffrey S. Allison, Esq. Telephone (702) 410-7593

Firm HOUSER & ALLISON, APC

Address 3900 Paradise Road, Suite 101
Las Vegas, NV 89169

Client(s) HSBC BANK USA, N.A., as Trustee for Deutsche Alt-A Securities Mortgage Loan

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 checked="" type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input checked="" 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:

Not Applicable

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:

Not Applicable

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

The complaint was filed on March 21, 2016, seeking both declaratory relief and injunctive relief. Appellant initiated this action seeking a declaration from the Court that any attempts by Respondent HSBC BANK USA, N.A. to foreclose on her primary residence, a remedy available to it as a result of Appellant's alleged breach of her mortgage, a written contract, are now barred, as it has been over six years since Respondent first filed a notice the breach, accelerating the entire amount due under the mortgage. To that end, it is Appellant's position that the statute of limitations related to Appellant's alleged breach of a written contract has run. This case hinges on a question of law, specifically, whether a rescission filed with the county recorder in 2011, which expressly stated that such rescission did not "waiv[e], cur[e], extend[] to, or affect[] any default, either past, present or future, under such Deed of Trust, or as impair[] any right or remedy thereunder," rescinded any acceleration of the mortgage which occurred as a result of the 2009 notice of default, resetting the statute of limitations related to a breach of the mortgage.

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

Whether the district court erred when it ruled in favor of the bank on a counter-motion to dismiss, finding that, regardless of the limiting language in the 2011 rescission, it rescinded the acceleration of the mortgage caused by the 2009 notice of breach, resetting the statute of limitations for pursuing a claim of breach of the mortgage.

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

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 is a case of first impression which involves real property which are important to the people of this great State.

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 is presumptively retained by the Supreme Court pursuant to Rule 17(a)(10) because this action concerns an question of first impression involving real property as well as a question of statewide public importance. See NRAP 17(a)(10).

14. Trial. If this action proceeded to trial, how many days did the trial last? 0

Was it a bench or jury trial? not applicable

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?

Not Applicable

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from June 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 July 6, 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 July 11, 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:

Not applicable

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)(2).

SUBSTANTIVE APPEALABILITY

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

(a)

- | | |
|---------------------------------------------------|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

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

NRAP 3A(b)(1) allows appeals to be taken from a final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered. The District Court entered a final judgment on June 27 2016; accordingly, NRAP 3A(b)(1) provides authority to the Appellant to appeal the final Judgment.

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

(a) Parties:

Plaintiff Amy Facklam, an individual;

Defendant HSBC BANK USA, National Association, as Trustee for Deutsche Alt-A
Securities Mortgage Loan Trust, Mortgage Pass-Through Certificates, Series
2007-AR2

(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:

Not Applicable

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.

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)):

Not Applicable

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.

Amy Facklam

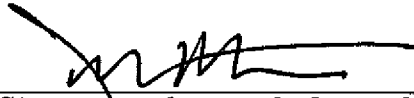
Name of appellant

Jacob L. Hafter, Esq.

Name of counsel of record

August 2, 2016

Date


Signature of counsel of record

State of Nevada, Clark County

State and county where signed


CERTIFICATE OF SERVICE

I certify that on the 2nd day of August, 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.)

Jeffrey S. Allison, Esq.
Lindsey E. Pena, Esq.
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Attorneys for HSBC Bank USA National Association.

Dated this 2nd day of August, 2016


Signature