

1                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2  
3           RICARDO P. PASCUA,

4                               Appellant,

5  
6           vs.

7           BAYVIEW LOAN SERVICING,  
8           LLC; SEASIDE TRUSTEE, INC.;  
9           AND BANK OF NEW YORK  
10          MELLON,

11                               Respondent.

**Case No.: 71770**

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13                               **APPELLANT'S REPLY BRIEF**

14  
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## ARGUMENT

### **I. RESPONDENTS CONCEDE THAT SPECIAL ADMINISTRATORS CAN PARTICIPATE IN FORECLOSURE MEDIATIONS.**

Respondents concede that a special administrator is a personal representative who can participate in a foreclosure mediation. However, they incorrectly assert that Pascua was required to obtain leave of court to participate in the foreclosure mediation under NRS 140.050. NRS 140.050 does not address foreclosure mediation, short sales, loan modifications, or judicial or non-judicial foreclosures. *See* NRS 140.050. Instead, it solely discusses a special administrator's ability to make *mortgage payments*. NRS 140.050(1).

Foreclosure mediations encompass more than mortgage payments. They can result in a loan modification or in a certificate for foreclosure. Furthermore, simply making a mortgage payment is not a legal proceeding, whereas a foreclosure mediation is a legal proceeding initiated in the district court.

Respondents do not address or refute Pascua's argument that a foreclosure mediation is a legal proceeding that a special administrator can participate in under NRS 140.040. Under NRS 140.040(2)(a), a special administrator is granted authority to "commence, maintain or defend actions and other legal proceedings as a personal representative." *Id.* As set forth in Pascua's Opening Brief, a foreclosure mediation clearly qualifies as a legal proceeding.

Respondents' failure to refute this argument is a concession. *See, e.g., Singler v.*

1 *Zurich Am. Ins. Co.*, 855 N.W.2d 707, 715 (Wis. Ct. App. 2014) (“Arguments not  
2 refuted are deemed conceded.”). The District Court should be reversed.

## 3 **II. PASCUA HAS STANDING TO APPEAL.**

4  
5 For this Court to find that Pascua lacks standing to appeal, this Court must  
6 find that Pascua had no right to participate in the foreclosure mediation as special  
7 administrator. Thus, this Court cannot determine whether Pascua had standing to  
8 appeal until it determines whether special administrators may participate in  
9 foreclosure mediations pursuant to the general powers of special administration  
10 contained in NRS 140.040.

11  
12  
13 Furthermore, Respondents incorrectly interpret NRAP 3A(a) and *Valley*  
14 *Bank of Nevada v. Ginsburg*, 110 Nev. 440, 874 P.2d 729 (1994), to argue that  
15 Pascua lacks standing to appeal. Under NRAP 3A(a), “[a] party who is  
16 aggrieved by an appealable judgment or order may appeal from that judgment or  
17 order[.]” Pascua is unquestionably an “aggrieved party” within the meaning of  
18 NRAP 3A(a).

19  
20  
21 To qualify as a party “within the meaning of NRAP 3A(a),” the Appellant  
22 must have “appeared in the court below *and* [have] been named as a party of  
23 record in the trial court.” *Valley Bank*, 110 Nev. at 448, 874 P.2d at 735. As the  
24 petitioner, Pascua both appeared and was named as a party.

25  
26  
27 A party is “aggrieved” when “either a person right or a right of property is  
28 adversely and substantially affected by a district court’s ruling.” *Valley Bank*, 110

1 Nev. at 446, 874 P.2d at 734. Respondents' argument that Pascua was not  
2 "aggrieved" because he has "no claim or right in the Property," RAB p. 6,  
3 overlooks the issue on appeal. The issue on appeal is whether Pascua may  
4 participate in the foreclosure mediation as the special administrator of his wife's  
5 estate. This Court has not been asked to determine ownership of the home.  
6  
7 Because the District Court's denial of Pascua's petition prohibited his  
8 participation in the mediation, Pascua has been aggrieved by the order.  
9

### 10 CONCLUSION

11  
12 For the foregoing reasons, Pascua respectfully requests that this Court  
13 reverse the District Court's Order and remand this matter for further proceedings.  
14

15 DATED this 2<sup>nd</sup> day of May, 2018.

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**CERTIFICATE OF COMPLIANCE**

1  
2           1.     I hereby certify that this Appellant's Reply Brief complies with the  
3  
4 formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP  
5 32(a)(5), and the type style requirements of NRAP 32(a)(6) because:

6           This brief has been prepared in a proportionally spaced typeface using  
7  
8 Microsoft Word 16 in 14 font and Times New Roman type.

9           2.     I further certify that this opening brief complies with the page or  
10  
11 type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the  
12 brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface  
13 of 14 points or more, and contains 582 words.

14  
15           3.     Finally, I hereby certify that I have read this appellate brief, and to  
16 the best of my knowledge, information, and belief, it is not frivolous or  
17  
18 interposed for any improper purpose. I further certify that this brief complies  
19 with all applicable Nevada Rules of Appellate Procedure, in particular NRAP  
20 28(e)(1), which requires every assertion in the brief regarding matters in the  
21 record to be supported by a reference to the page and volume number, if any, of  
22 the transcript or appendix where the matter relied on is to be found. I understand  
23  
24 that I may be subject to sanctions in the event that the accompanying brief is not  
25  
26 in conformity

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28     ///

   ///

1 with the requirements of the Nevada Rules of Appellate Procedure.

2 DATED this 20<sup>th</sup> day of May, 2018.

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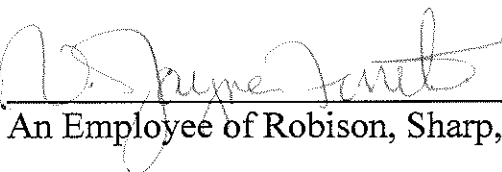


**CERTIFICATE OF SERVICE**

I hereby certify pursuant to NRAP 25(c), that on the 22<sup>nd</sup> day of May, 2018, I caused service of a true and correct copy of the above and forgoing **APPELLANT'S REPLY BRIEF** pursuant to the Supreme Court Electronic Filing System, and by first class United States mail, postage prepaid, to the following:

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