

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY BENKO, A NEVADA
RESIDENT; ET AL.,
Appellants,
v.
QUALITY LOAN SERVICE
CORPORATION, A CALIFORNIA
CORPORATION; ET AL.,
Respondents

Supreme Court No. 73484
District Court Case No. A-11-619857
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Elizabeth A. Brown
Clerk of Supreme Court

**APPELLANTS' MOTION FOR LEAVE TO FILE BRIEF
IN EXCESS OF TYPE-VOLUME AND PAGE
LIMITATIONS**

**Appeal from Eighth Judicial District Court
Clark County, Nevada**

The Honorable William Kephart

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INTRODUCTION

Appellants Jeffrey Benko, Camilo Martinez, Ana Martinez, Frank Scinta, Jacqueline Scinta, Susan Hjorth, Raymond Sansota, Francine Sansota, Sandra Kuhn, Jesus Gomez, Silvia Gomez, Donna Herrera, Jesse Hennigan, Susan Kallen, Robert Mandarich, James Nico, Patricia Tagliamonte, and Bijan Laghaei (hereinafter “Plaintiffs”) respectfully request the Court’s permission to exceed the type-volume (and page limitations) for briefs pursuant to NRAP 32(a)(7)(D). Appellants have completed their opening brief, a copy of which is attached hereto, and, as attested by the undersigned declaration, have worked diligently to present the relevant facts, issues, and law within the type-volume and page limitations provided by the Nevada Rules of Appellate Procedure. Despite Plaintiffs’ great efforts to do so, however, it is not possible, given the factual and legal complexity of this case, for Plaintiffs to satisfy the type-volume limitation of 14,000 words (or the page limitation).

This putative class action has had a lengthy and convoluted procedural history. It was originally filed in Nevada state court in October 2011. It was thereupon removed to federal court in Nevada, where it was eventually dismissed by the trial court as a matter of law under Federal Rule of Civil Procedure 12(b)(6). On appeal, the Ninth Circuit Court of Appeals in 2015 reversed the trial court, and remanded the case back with instructions that it be returned to Nevada state court.

In late 2015, the Nevada trial court permitted Plaintiffs to file an amended complaint. Defendants moved to dismiss the case under NRCP 12(b)(5), over Plaintiffs' vigorous opposition. In February 2016, Judge Scann heard Defendants' motion, and orally denied it as to the claims stated in the operative complaint. The parties thereafter conducted very limited discovery for approximately a year, during which Plaintiffs filed no less than 15 motions to compel discovery, virtually all of which the trial court granted at least in part. No written order on Defendants' motion to dismiss was entered, in part due to the untimely death of Judge Scann in July 2016. The Discovery Commissioner struggled with the lack of a written order, and eventually suggested Plaintiffs seek clarification from the trial court. She also suggested phasing of discovery likely did not make sense in light of the evidence. Plaintiffs thereafter sought clarification from the trial court, which prompted it to consider dismissing the case as a matter of law under NRCP 12(b)(5). After the parties submitted supplemental briefing at its request, the trial court formally dismissed Plaintiffs' claims as a matter of law pursuant to NRCP 12(b)(5), as reflected in the final judgment of June 7, 2017.

LEGAL STANDARD

Pursuant to NRAP 32, this Court will grant a motion to exceed the type-volume (or page) limitations upon a showing of diligence and good cause. (NRAP 32(a)(7)(D)(i).) The motion shall be filed on or before the brief's due date, and

shall be accompanied by a declaration stating in detail the reasons for the motion and the number of additional pages, words, or lines of text required. (*Id.* at (ii).) It shall also be accompanied by a single copy of the brief that the movant proposes to file. (*Id.* at (iii).)

ARGUMENT

As a preliminary matter, Plaintiffs have complied with the requirement of NRAP 32(a)(7)(D)(i)-(iii). Plaintiffs' motion has been filed nearly a week before the due date of their brief, and is accompanied by the supporting declaration of counsel detailing, as required, the reasons for the motion and the number of additional words requested. It is also accompanied by a single copy of Plaintiffs' proposed brief, which contains the certificate of compliance required by NRAP 32(a)(7)(D)(ii).

For the reasons explained in the undersigned declaration of counsel, Plaintiffs' respectfully request that the Court grant Plaintiffs' motion, and give them permission to file a brief containing 26,738 words.

Dated this 27th day of February 2018.

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DECLARATION OF NICHOLAS A. BOYLAN

1. I am an attorney licensed to practice before all courts of the State of Nevada. I have been the lead Plaintiffs' attorney in this case since it was filed in 2011, and I am the lead attorney representing Plaintiffs in the instant matter before this Court. I am intimately familiar with the facts, circumstances, and procedural history of this case. Matters set forth herein are true of my personal knowledge and, if called as a witness and sworn, I would and could testify competently thereto.

2. Attached hereto is a copy of the opening brief Plaintiffs propose to file in this matter. As certified by me in the certificate of compliance contained therein, I have read Plaintiffs' brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that, except as indicated herein below, the brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

3. I also certify that, except as noted herein, this brief complies with the

requirements of NRAP 32, including NRAP 32(a)(4)-(6). This brief has been prepared in a proportionally-spaced typeface (Times New Roman) of 14 points, using Microsoft Word 2010, and is double-spaced. Excluding the parts of the brief exempted by NRAP 32(a)(7)(c), the brief contains 26,738 words and more than 30 pages. Because this exceeds the page and type-volume limitations found in NRAP 32, Plaintiffs move, concurrently with the filing of the brief, for permission under NRAP 32(a)(7)(D) to exceed the type-volume limitations of NRAP 32(a)(7)(A)(ii).

4. As reflected in the brief, this matter raises a question of statewide public importance as a principal issue, concerning the possible interplay of Nevada's non-judicial foreclosure statutes (in NRS Chapter 107) and statutes regulating claim collection agencies in Nevada (in NRS Chapter 649). The case raises a substantial issue of first impression and an issue of public policy: Whether entities that qualify as collection agencies under NRS 649.020(1) are exempt from compliance with the license requirements of NRS Chapter 649 solely because they carry out their claim collection activities while purporting to act as non-judicial foreclosure trustees under deeds of trust pursuant to NRS Chapter 107. This Court has not yet addressed this important question. Given the significant harms unlicensed collection agency activities have caused in Nevada for at least the last decade, and may cause in the future, and that this case is a putative class action seeking remedies and injunctive state-wide relief that would be applicable to tens-

of-thousands of Nevadans, resolution of this substantial issue of first impression will require consideration of important public policies in Nevada that will have consequences throughout the Silver State, affecting tens of thousands of Nevadans.

5. As also reflected in the brief and its appendix, this putative class action was filed in Nevada state court in October 2011 by Nevadans allegedly subject to Defendants' illegal collection agency activities and communications. In their operative pleading, Plaintiffs bring claims for statutory consumer fraud under NRS 41.600 and unjust enrichment on behalf of themselves and a putative class of similarly-situated Nevadans. As alleged therein, Defendants engaged in collection agency activities on behalf of lenders, seeking to collect and collecting on defaulted loans. When doing so, Defendants lacked the license required by Nevada law to conduct debt collection agency activities in Nevada, and had not registered as foreign collection agencies with the Commissioner of the Nevada Financial Institutions Division ("FID"). During their unsupervised, illegal, and unlicensed collection agency activities in Nevada, Defendants received and were unjustly enriched with illicit fees and costs (estimated at or above a quarter billion dollars), which amounts the lenders added to their debt-claims against Nevadans, based on defaulted loans.

6. Defendants removed the case to federal court, where it was eventually dismissed under Federal Rule of Civil Procedure 12(b)(6). After Plaintiffs

appealed, the Ninth Circuit Court of Appeals reversed the federal trial court's decision in 2015, and remanded the case back with instructions it be returned to Nevada state court.

7. In late 2015, the Nevada trial court permitted Plaintiffs to file their Second Amended Complaint ("SAC"). Defendants moved to dismiss the case under NRCP 12(b)(5), over Plaintiffs' vigorous opposition. In February 2016, Judge Scann heard Defendants' motion, and orally denied it as to the claims stated in the operative complaint. The parties thereafter conducted very limited discovery for approximately a year, during which Plaintiffs filed no less than 15 motions to compel discovery, virtually all of which the trial court granted at least in part. No written order on Defendants' motion to dismiss was entered, in part due to the untimely death of Judge Scann in July 2016. The Discovery Commissioner struggled with the lack of a written order, and eventually suggested Plaintiffs seek clarification from the trial court. She also suggested phasing of discovery likely did not make sense in light of the evidence. Plaintiffs thereafter sought clarification from the trial court, which prompted it to consider dismissing the case as a matter of law under NRCP 12(b)(5). After the parties submitted supplemental briefing at its request, the trial court formally dismissed Plaintiffs' claims as a matter of law pursuant to NRCP 12(b)(5), as reflected in the final judgment of June 7, 2017.

8. I have worked diligently and with great effort to adequately and

professionally present the necessary facts, issues, and law to this Court in Plaintiffs' opening brief. I have been mindful throughout of the type-volume and page limitations imposed by the Nevada Rules of Appellate Procedures, and this Court's ruling on those rules. I have therefore worked diligently to eliminate as excess words and pages wherever possible, and to present the facts, issues, and law as concisely and clearly as possible to the Court. Plaintiffs have also complied with the various rules regarding margins, spacing, and typeface.

9. Nonetheless, as stated above, despite Plaintiffs' best efforts, the pertinent portions of the draft opening brief Plaintiffs propose to file contain, by my calculation, 26,738 words (and more than 30 pages).

10. Given the complex and unusual procedural posture of this case, the extensive relevant facts as to multiple defendants that must be presented, and the complexity and importance of the legal issues at stake in this matter, Plaintiffs' opening brief must exceed the presumptive limit of 14,000 words imposed by the Nevada Rules of Appellate Procedure. At least two statutory regulatory schemes—*i.e.*, NRS Chapters 649 and 107—must be analyzed in this matter, and many pages need to be devoted to both. Similarly, given the unusual procedural history of this case and the record, the relevant facts as to the various different defendants in this case needed to be discussed by Plaintiffs at some length. In terms of legal research and analysis, Plaintiffs have tried to digest and discuss cases across the nation that

would be relevant to this Court's determination of this important issue of first impression in Nevada.

11. I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Dated this 27th day of February 2018.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of the Law Office of Nicholas A. Boylan, APC, and not a party to this action, and that on February 28, 2018, I e-served a true and correct copy of the foregoing on those listed below:

- **APPELLANTS' MOTION FOR LEAVE TO FILE BRIEF IN EXCESS OF TYPE-VOLUME AND PAGE LIMITATIONS**

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed on February 28, 2018.

/s/ Marina Vaisman
An Employee of Nicholas A. Boylan

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