

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. 18-000005
Electronically Filed
Mar 08 2018 02:19 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**APPELLANTS' MOTION FOR LEAVE TO FILE
SUPPLEMENTAL FACT SUMMARY AS PART OF THE
APPENDIX (OR AS DIRECTED BY THE COURT)**

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

The Honorable William Kephart

Law Office of Nicholas A. Boylan, APC

Nicholas A. Boylan, Esq.,
Nevada Bar No. 5878
233 A Street, Suite 1205
San Diego, CA 92101
Telephone: (619) 696-6344
Facsimile: (619) 696-0478
Attorney for Appellants

I. INTRODUCTION AND REQUEST

On March 5, 2018, this Court denied Plaintiffs' motion to file an opening brief greater than the type-volume limitation of 14,000 words. As a result, Plaintiffs were required to revamp and substantially strip important content from the brief that was intended to help the Court expeditiously adjudicate this case. A revised brief, within the type-volume limitation, was filed with the Court on March 7, 2018.

Now, in order to substantially aid this Court in the expeditious review and adjudication of this case, Plaintiffs respectfully seek permission to file as a part of the Appendix, or as otherwise directed by the Court, the Supplemental Fact Summary that is attached hereto. Only 7 minutes is required to read the Supplemental Fact Summary.

For the reasons explained below and in the declaration of counsel included herewith, Plaintiffs respectfully request that the Court grant Plaintiffs' motion, and give them permission to file the Supplemental Fact Summary.

II. REASONS TO GRANT THIS REQUEST

Based on unusual procedure in the trial court, four summary judgment motions were pending before Judge Kephart at the time he issued his dismissal order under NRCP 12(b)(5). The voluminous factual presentations filed below by Plaintiffs in connection with the summary judgment motions are a critical part of

the record before this Court, because the dismissal order under 12(b)(5) can be affirmed only where it appears beyond a doubt that Plaintiffs could prove no set of facts that would entitle them to relief. (*Zohar v. Zbiegien* (Nev. 2014) 334 P. 3d 402.) Accordingly, the detailed factual recitation in the Supplemental Fact Summary attached hereto, with its precise citations to the actual evidence in the Appendix, must be considered by this Court in order to properly adjudicate the instant appeal.

Dated this 8th day of March 2018.

By: Nicholas A. Boylan
Nicholas A. Boylan, Esq.,
Nevada Bar No. 5878
Law Office of Nicholas A. Boylan, APC
233 A Street, Suite 1205
San Diego, CA 92101
Phone: (619) 696-6344
Attorney for Appellants

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. I have been practicing law for 34 years, beginning in Texas in 1984, California in 1987 and Nevada in 1996.

2. My strongly held professional opinion is that the Supplemental Fact Summary referenced and attached hereto should be available to this Court, and allowed into the record, in order to fully assist this Court in the proper and correct adjudication of the case. The detailed factual information, and the references to the actual evidence in the record before this Court, constitute critical and necessary information for the Court to review in order to determine whether to affirm or reverse the NRCP 12(b)(5) order dismissal order issued in the trial court below. The time necessary to read the Supplemental Fact Summary is 7 minutes. I personally clocked the reading time using a stop watch on my computer. It is a certainty that this small amount of additional reading time, given the Supplemental Fact Summary's particularized facts and citations to the evidence in the record,

will greatly enhance the Court's efficient and correct adjudication of this appeal.

3. Attached hereto is a copy of the Supplemental Factual Summary to be filed as part of the Appendix, or by whatever designation this Court so indicates. I also certify that it is not frivolous or interposed for any improper purpose.

4. I also certify that, except as noted herein, this Supplemental Fact Summary complies with the requirements of NRAP 32, including NRAP 32(a)(4)-(6). It has been prepared in a proportionally-spaced typeface (Times New Roman) of 14 points, using Microsoft Word 2010, and is double-spaced.

5. As reflected in the prior motion filed in this Court by Plaintiffs, this matter raises a question of statewide public importance as the 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). Tens of thousands of Nevada citizens are impacted by this putative class action and potentially millions of Nevada citizens could be adversely affected in the future if the trial court is not reversed, because rogue foreign collection agencies will operate without any supervision by the Nevada Financial Institutions Division. 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.

6. I have worked diligently and with great effort to adequately and professionally present the necessary facts to this Court in Plaintiffs' opening brief. However, there is insufficient space for the important, detailed facts recited in the Supplemental Fact Summary. 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. I am confident that 7 minutes of additional reading is justified and important.

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

Dated this 8th day of March 2018.

By: Nicholas A. Boylan
Nicholas A. Boylan, Esq.,
Nevada Bar No. 5878
Law Office of Nicholas A. Boylan, APC
233 A Street, Suite 1205

San Diego, CA 92101
Phone: (619) 696-6344
Attorney for Appellants

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 March 8, 2018, I e-served a true and correct copy of the foregoing on those listed below:

- **APPELLANTS' MOTION FOR LEAVE TO FILE SUPPLEMENTAL FACT SUMMARY AS PART OF THE APPENDIX (OR AS DIRECTED BY THE COURT)**

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

Executed on March 8, 2018.

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

Kristen Schuler-Hintz, Esq.
Thomas Beckom, Esq.
McCarthy & Holthus
9510 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
(702) 685-0329
866-339-5691 (fax)
khintz@mccarthyholthus.com
tbeckom@mccarthyholthus.com

Richard J. Reynolds, Esq.
Burke, Williams & Sorrenson, LLP
1851 East First Street, Suite 1550
Santa Ana, California 92705
(949) 863-3363
(949) 474-6907 (fax)
rreynolds@bwslaw.com

APPELLANTS' MOTION FOR LEAVE TO FILE BRIEF SUPPLEMENTAL FACT
SUMMARY AS PART OF THE APPENDIX (OR AS DIRECTED BY THE COURT)

Allan E. Ceran, Esq.
Burke, Williams & Sorensen, LLP
444 South Flower Street, Suite 2400
Los Angeles, CA 90071-2953
(213) 236.2837
(213) 236.0600
(213) 236.2700 (fax)
ACeran@bwsllaw.com

Michael R. Brooks, Esq.
Nevada Bar No. 7287
KOLESAR & LEATHAM
400 South Rampart Boulevard, Suite 400 Las Vegas, Nevada 89145
mbrooks@klnevada.com
P: (702) 362-7800
F: (702) 362-9472

Gregory L. Wilde, Esq.
Kevin S. Soderstrom, Esq.
TIFFANY & BOSCO, P.A.
212 S. Jones Boulevard
Las Vegas, NV 89017
(702) 258-8200
(702) 258-8787 (fax)
glw@tblaw.com
kss@tblaw.com

Lawrence G. Scarborough, Esq.
Jessica R. Maziarz, Esq.
Kathryn Brown, Esq.
Bryan Cave LLP
Two N. Central Avenue
Suite 2200
Phoenix, AZ 85004
(602) 364-7000
(602) 364-7137
lgscarborough@bryancave.com
Jessica.Maziarz@bryancave.com
Kathryn.Brown@bryancave.com

Kent F. Larsen, Esq.
Katie M. Weber, Esq.
Smith Larsen & Wixom
Hills Center Business Park
1935 Village Center Circle
Las Vegas, NV 89134
(702) 252-5002
(702) 252-5006 (fax)
kfl@slwlaw.com
kw@slwlaw.com