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IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY BENKO, *et al.*,

Supreme Court Case No. 73484

Appellants,

Electronically Filed
May 10 2018 10:53 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

vs.

QUALITY LOAN SERVICE
CORPORATION, *et al.*,

Respondents.

APPEAL

From the Eighth Judicial District Court
The Honorable Judge William Kephart, District Court Judge, Dept. 19
District Court Case No. A-11-649857-C

**RESPONDENT NATIONAL DEFAULT SERVICING
CORPORATION'S ANSWERING BRIEF**

Submitted by:

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NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

There is no parent corporation of Respondent National Default Servicing Corporation and no publicly held corporation owning 10% or more of National Default Servicing Corporation's stock.

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I.

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II.
TABLE OF AUTHORITIES

RULES

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III.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Rule 28(i) of the Nevada Rules of Appellate Procedure states the following:

“(i) Briefs in a Case Involving Multiple Appellants or Respondents. In a case involving more than one appellant or respondent, including consolidated cases, any number of appellants or respondents may join in a single brief, and any party may adopt by reference a part of another’s brief. Parties may similarly join in reply briefs.”

In the interest of judicial economy, and as permitted by NRAP 28(i), NDSC hereby joins and incorporates by reference herein all of the points and authorities set forth by Respondent California Reconveyance Company in the Statement of the Issues section of its Answering Brief, on file herein.

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IV.

STATEMENT OF THE CASE

Pursuant to NRAP 28(i), NDSC hereby joins and incorporates by reference herein all of the points and authorities set forth by Respondent California Reconveyance Company in the Combined Statement of the Case and Facts section of its Answering Brief, on file herein.

V.

STATEMENT OF FACTS

Pursuant to NRAP 28(i), NDSC hereby joins and incorporates by reference herein all of the points and authorities set forth by Respondent California Reconveyance Company in the Combined Statement of the Case and Facts section of its Answering Brief, on file herein.

VI.

SUMMARY OF ARGUMENT

Pursuant to NRAP 28(i), NDSC hereby joins and incorporates by reference herein all of the points and authorities set forth by Respondent California Reconveyance Company in the Summary of Argument section of its Answering Brief, on file herein.

Additionally, to the extent that the Appellants have made reference to certain letters allegedly sent by NDSC, the Appellants have made similar

1 allegations and arguments pertaining to certain others of the Respondents.
2 As explained in California Reconveyance Company’s Answering Brief,
3
4 those alleged activities would not constitute debt collection activity.

5 **VII.**

6 **ARGUMENT**

7
8 **A. THE DISTRICT COURT’S DISMISSAL ORDER MUST BE**
9 **AFFIRMED**

10 **1. NDSC Joins In the Answering Brief Filed by California**
11 **Reconveyance Company**

12 Pursuant to NRAP 28(i), NDSC hereby joins and incorporates by
13 reference herein all of the points and authorities set forth by Respondent
14 California Reconveyance Company in the Argument section of its
15 Answering Brief, on file herein.

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18 **2. The Appellants’ Arguments Regarding Letters Allegedly**
19 **Sent by NDSC Are Without Merit**

20 In their Opening Brief, the Appellants have referenced two letters
21 from NDSC to James Nico (hereinafter “Nico”) dated February 1, 2010 and
22 February 3, 2010, respectively. The Appellants have stated that those letters
23 may constitute an admission by NDSC that it was a debt collector attempting
24 to collect a debt. *Opening Brief*, p. 9. The Appellants have argued that
25
26 “Exhibit ‘AA’ demonstrates NDSC was seeking to collect the funds itself,
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1 by means of a certified check payable to NDSC, on behalf of the lender.
2 (AA004182-AA004185.)” *Opening Brief*, p. 9.
3

4 Similarly, the Appellants have referenced letters allegedly sent by
5 Quality Loan Service Corporation to certain of the Appellants. *Opening*
6 *Brief*, pp. 21-23. The Appellants have also referenced certain deposition
7 testimony regarding situations in which certain others of the Respondents
8 might provide reinstatement information to a borrower in default. *Opening*
9 *Brief*, pp. 57-58. However, the Appellants have mischaracterized alleged
10 communications between the Respondents and the Appellants, including the
11 letters allegedly sent to Nico by NDSC. For instance, as stated in the letters
12 allegedly sent by NDSC, the letters were provided in response to Nico’s
13 request for reinstatement and payoff information, not as an attempt to collect
14 a debt.
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19 The legal inadequacies in the Appellants’ arguments regarding
20 communications between the Appellants and the Respondents have been
21 addressed in detail in the Answering Brief filed by California Reconveyance
22 Company. *See e.g. California Reconveyance Company’s Answering Brief*,
23 pp. 13-14, 22-26. For the reasons already explained by California
24 Reconveyance Company, the information allegedly provided to the
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Appellants would not constitute debt collection nor is it inconsistent with the statutory scheme for non-judicial foreclosure.

VIII.

CONCLUSION

NDSC requests that the Court affirm in its entirety the judgment entered by the district court.

IX.

CERTIFICATE OF COMPLIANCE

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4 I hereby certify that I have read this appellate brief, and to the best of
5 my knowledge, information, and belief, it is not frivolous or interposed for
6 any improper purpose. I further certify that this brief complies with all
7 applicable Nevada Rules of Appellate Procedure, in particular NRAP
8 28(e)(1), which requires every assertion in the brief regarding matters in the
9 record to be supported by a reference to the page and volume number, if any,
10 of the transcript or appendix where the matter relied on is to be found. I
11 understand that I may be subject to sanctions in the event that the
12 accompanying brief is not in conformity with the requirements of the
13 Nevada Rules of Appellate Procedure.
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18 I hereby certify that this brief complies with the formatting
19 requirements of NRAP 32(a)(4), the typeface requirements of NRAP
20 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief
21 has been prepared in a proportionally spaced typeface using Microsoft Word
22 2010 in 14 point font size Times New Roman.
23
24

25 I further certify that this brief complies with the page- or type-volume
26 limitations of NRAP 32(a)(7) because, excluding the parts of the brief
27 exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface
28

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of 14 points or more and contains no more than 14,000 words (542) and no more than 1,300 lines of text (69).

DATED this 9th day of May, 2018.

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X.

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of May, 2018 I electronically served a copy of the above NATIONAL DEFAULT SERVICING CORPORATION'S ANSWERING BRIEF to:

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