

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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APPELLANTS' REPLY BRIEF TO RESPONDENT NATIONAL DEFAULT
SERVICING CORPORATION'S ANSWERING BRIEF

Appeal from Eighth Judicial District Court
Clark County, Nevada

The Honorable William Kephart

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies the following are persons and entities as described in Nevada Rule of Appellate Procedure (“NRAP”) 26.1(a), and must be disclosed. These representations are made in order that the justices of this Court may evaluate possible disqualification or recusal.

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 are individuals. They will be referred to herein as “Plaintiffs” or “Appellants.”

Nicholas A. Boylan of the Law Office of Nicholas A. Boylan, APC, and Shawn Christopher of the Christopher Legal Group have appeared for the foregoing parties and intend to do so before this Court.

Dated this 11th day of July 2018.

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ARGUMENT

In its Answering Brief, Respondent National Default Servicing Corporation (“NDSC”) joins and incorporates by reference the points and authorities set forth by Respondent California Reconveyance Company (“CRC”) in the Statement of Issues Present for Review, Statement of the Case and Facts, Summary of Argument, and Argument sections of CRC’s Answering Brief. Insofar as NDSC joins in, relies on, or discusses the issues, facts, and arguments CRC presents in its answering brief, Plaintiffs will address those issues, facts, and arguments in replying to CRC. Insofar as NDSC joins in, relies on, or discusses the issues, facts, and arguments other Defendants, including QLS specifically, present in their answering briefs, Plaintiffs has addressed those issues, facts, and arguments in replying to the other Defendants (as well as below).

Plaintiffs must address a misleading and incorrect contention NDSC makes in its Answering Brief at pp. 2-3, however. There, NDSC, relying on CRC’s Answering Brief, incorrectly suggests Plaintiffs’ arguments regarding letters sent by NDSC to Plaintiff Nico are without merit. NDSC also accuses Plaintiffs of mischaracterizing other communications between Plaintiffs and the other Defendants, but does not explain in what ways, if any, Plaintiffs purportedly did so. (*Id.*)

NDSC's assertion, to the extent it can be understood, appears to be based on the erroneous premise that a communication could not serve more than one purpose. Thus, NDSC is wrong to suggest its letters to Plaintiff Nico were not attempts to collect a debt simply because, according to NDSC, they were "provided in response" to his "request for reinstatement and payoff information." (NDSC Answering Brief, at p. 3.) These are not mutually exclusive or inconsistent purposes: insofar as NDSC was attempting to collect a debt in communicating with Plaintiff Nico, it would still be a collection agency, even if a particular communication was also sent to provide reinstatement and payoff information at his request. (*See, e.g., Reese v. Ellis, Painter, Ratterree & Adams LLP* (11th Cir. 2012) 678 F.3d 1211, 1218 ["The communication related to debt collection does not become unrelated to debt collection simply because it also relates to the enforcement of the security interest."].)

Indeed, the documents referenced by Plaintiffs help to show this: as reflected therein, NDSC provided information regarding the amounts Plaintiff Nico would need to pay NDSC to reinstate or pay-off his defaulted debt, and instructed him on how and when to provide such money to NDSC. (*See* AA004182-AA004185.) Especially in light of NDSC's admissions in other communications with Plaintiff Nico (and other Plaintiffs) that it was seeking to collect a debt and that any information it obtained would be used for that purpose, an inference easily arises

that NDSC was attempting to collect a debt through its February 2010 communications with Plaintiff Nico. (*See, e.g.*, AA004155-AA004180.)

Dated this 11th day of July 2018.

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CERTIFICATE OF COMPLIANCE

I hereby certify I have read this appellate 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, this 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 the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

I hereby certify 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 457 words.

Dated this 11th day of July 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 July 11, 2018, I e-served a true and correct copy of the foregoing on those listed below:

- **APPELLANTS' REPLY BRIEF TO RESPONDENT NATIONAL DEFAULT SERVICING CORPORATION'S ANSWERING BRIEF**

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

Executed on July 11, 2018.

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

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