

IN THE SUPREME COURT OF THE STATE OF NEVADA

BANK OF AMERICA, N.A.,
MORTGAGE ELECTRONIC
REGISTRATIONS SYSTEM, INC.,
and THE BANK OF NEW YORK
MELLON,

Appellants,

vs.

THOMAS JESSUP, LLC SERIES VII,
FOXFIELD COMMUNITY
ASSOCIATION, and ABSOLUTE
COLLECTION SERVICES,

Respondents.

Case No. 73785

Electronically Filed
Oct 02 2017 08:56 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**DEFENDANTS THE BANK OF NEW
YORK MELLON FKA THE BANK OF
NEW YORK AS TRUSTEE FOR THE
CERTIFICATEHOLDERS OF THE
CWABS, INC., ASSET-BACKED
CERTIFICATES, SERIES 2005-17, BANK
OF AMERICA N.A., AND MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC. AMENDED CASE
APPEAL STATEMENT**

Defendants Bank of America, N.A., The Bank of New York Mellon fka The Bank of New York as Trustee for the Certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2005-17, and Mortgage Electronic Systems, Inc. (collectively, **Defendants**) appeal the Decision and Order entered on July 14, 2017, and for which a Notice of Entry of Decision and Order was entered on July 20, 2017, and all interlocutory orders incorporated therein. The Court found in favor of Plaintiff Thomas Jessup, LLC, ruling that Plaintiff purchased the subject property at the HOA foreclosure sale subject to no prior interest. The Court also found in favor of Counterdefendants Foxfield Community Association (**the HOA**) and Absolute Collection Services, LLC (**ACS**) on all counterclaims asserted by Defendants.

Defendants submit this Case Appeal Statement pursuant to NRAP 3(f)(3).

1. The appellants filing this case appeal statement are Defendants Bank of America, N.A., The Bank of New York Mellon fka The Bank of New York as Trustee for the Certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2005-17, and Mortgage Electronic Systems, Inc. (**Appellants**).

2. Notice of Entry of Decision and Order was entered on July 20, 2017, and all interlocutory orders incorporated therein. The Court found in favor of Plaintiff Thomas Jessup, LLC, ruling that Plaintiff (**Thomas Jessup**) purchased the subject property at the HOA foreclosure sale subject to no prior interest. The Court also found in favor of Counterdefendants the HOA and ACS, ruling against the Appellants' counterclaims.

3. Counsel for Appellants are Darren T. Brenner and William Habdas of Akerman LLP, 1160 N. Town Center Drive, Suite 330, Las Vegas, Nevada 89144.

4. Trial counsel for Thomas Jessup is Richard Tobler, Esq., RICHARD L. TOBLER, LTD., 3654 N. Rancho, Drive, Suite 102, Las Vegas, NV 89130. Appellants are not aware whether trial counsel will also act as appellate counsel for Thomas Jessup.

5. Trial counsel for the HOA and ACS is Shane Cox, Esq., ABSOLUTE COLLECTION SERVICES, LLC, 8440 W. Lake Mead Blvd., Suite 210, Las Vegas, Nevada 89128. Appellants are not aware whether trial counsel will also act as appellate counsel for the HOA and ACS.

6. Counsel for Appellants are licensed to practice law in Nevada. Counsel for Thomas Jessup is licensed to practice law in Nevada. Counsel for the HOA and ACS is licensed to practice law in Nevada.

7. Appellants are represented by retained counsel in the district court.

8. Appellants are represented by retained counsel on appeal.

9. Appellants were not granted leave to proceed in forma pauperis by the district court.

10. The date proceedings commenced in the district court was June 16, 2013.

11. In this action, Respondent alleges that it owns the property located at 588 Bugle Bluff Road, Henderson, Nevada 89015 (**Property**) free and clear of all liens as a result of an HOA foreclosure sale. Respondent filed a complaint for quiet title to have the court declare that Respondent bought the Property free and clear of Appellants' interests, including the deeds of trust held by Bank of America, N.A. and The Bank of New York Mellon fka The Bank of New York as Trustee for the Certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2005-17 (**BONY as Trustee**) (**Deeds of Trust**). Appellants alleged that BONY as Trustee's Deed of Trust was not extinguished by the foreclosure sale by Foxfield Community Association (the **HOA**) because Bank of America satisfied the tender doctrine by offering to pay the super-priority portion of the HOA's lien prior to the HOA's

foreclosure sale through the HOA's trustee, Absolute Collection Services, LLC (ACS). ACS refused to provide Bank of America with that information. Moreover, the HOA sale was commercially unreasonable, and Respondent was not a bona fide purchaser. Defendants' motion for summary judgment was denied, and trial began April 3, 2017. After trial concluded in this case, the Court found in favor of Plaintiff Thomas Jessup, LLC, ruling that Plaintiff purchased the subject property at the HOA foreclosure sale subject to no prior interest, and in favor of the HOA and ACS on all counterclaims.

12. This appeal does not involve child custody or visitation.

13. This appeal does not involve the possibility of settlement.

Dated: September 29, 2017

AKERMAN LLP

/s/ William S. Habdas

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

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Attorneys for Defendants Bank of America, N.A., The Bank of New York Mellon fka The Bank of New York as Trustee for the Certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2005-17, and Mortgage Electronic Systems, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on the 29th day of September, 2017., I caused to be served a true and correct copy of the foregoing **DEFENDANTS THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE CWABS, INC., ASSET-BACKED CERTIFICATES, SERIES 2005-17, BANK OF AMERICA N.A., AND MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AMENDED CASE APPEAL STATEMENT**, in the following manner:

(ELECTRONIC SERVICE) The above referenced document was electronically filed on the date hereof with the Clerk of the Court for the Supreme Court of the State of Nevada by using the Court's CM/ECF system and served through the Court's Notice of electronic filing system automatically generated to those parties registered on the Court's Master E-Service List.

Richard Tobler, Esq.
3654 N. Rancho Drive, Suite 102
Las Vegas, Nevada 89130

Attorney for Respondent Thomas Jessup, LLC Series VII

(AND BY UNITED STATES MAIL) By depositing a copy of the above-referenced document for mailing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada, to the parties listed below at their last-known mailing addresses, on the date above written as follows:

Shane Cox, Esq.
ABSOLUTE COLLECTION SERVICES, LLC,
8440 W. Lake Mead Blvd., Suite 210
Las Vegas, Nevada 89128

*Attorneys for Respondents Foxfield Community Association
and Absolute Collection Services, Inc.*

/s/ Carla Llarena
An employee of AKERMAN LLP