

IN THE SUPREME COURT OF THE STATE OF NEVADA

U.S. BANK, N.A.,

Appellant,

vs.

5316 CLOVER BLOSSOM CT.
TRUST and COUNTRY GARDEN
OWNERS ASSOCIATION,

Respondents.

Case No. 75861

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Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Department XXIV
The Honorable Jim Crockett, District Judge
District Court Case No. A-14-704412-C

**APPELLANT'S APPENDIX
VOLUME V**

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CERTIFICATE OF SERVICE

I certify that I electronically filed on October 24, 2018, the foregoing **APPELLANT'S APPENDIX VOLUME V** with the Clerk of the Court for the Nevada Supreme Court by using the CM/ECF system. I further certify that all parties of record to this appeal either are registered with the CM/ECF or have consented to electronic service.

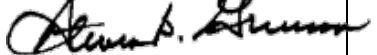
☐ By placing a true copy enclosed in sealed envelope(s) addressed as follows:

☒ (By Electronic Service) Pursuant to CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF systems sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's CM/ECF system.

☒ (Nevada) I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

/s/ Patricia Larsen

An employee of AKERMAN LLP



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LaSalle Bank, N.A., as Trustee to the Holders of the
Zuni Mortgage Loan Trust 2006-OA1, Mortgage
Loan Pass-Through Certificates, Series 2006-OA1*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

5316 CLOVER BLOSSOM CT TRUST;

Plaintiff,

v.

U.S. BANK, NATIONAL ASSOCIATION,
SUCCESSOR TRUSTEE TO BANK OF
AMERICA, N.A., SUCCESSOR BY MERGER
TO LASALLE BANK, N.A., AS TRUSTEE TO
THE HOLDERS OF THE ZUNI MORTGAGE
LOAN TRUST 2006-OA1, MORTGAGE
LOAN PASS-THROUGH CERTIFICATES
SERIES 2006-OA1; and CLEAR RECON
CORPS,

Defendants.

Case No.: A-14-704412-C

Dept. No.: XXIV

**DEFENDANT U.S. BANK, N.A., AS
TRUSTEE'S NOTICE OF APPEAL**

Notice is hereby given U.S. Bank, N.A., Successor Trustee to Bank of America, N.A., Successor by Merger to LaSalle Bank, N.A., as Trustee to the Holders of the Zuni Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-Through Certificates Series 2006-OA1 (**U.S. Bank**), appeals to the Supreme Court of Nevada from this Court's (1) Findings of Fact, Conclusions of Law, and Judgment entered on February 7, 2018, Notice of Entry of which was entered on February 8, 2018, (2) Findings of Fact, Conclusions of Law, and Judgment entered on April 13, 2018, Notice of Entry of which was entered on April 16, 2018, (3) Order Denying U.S. Bank, N.A., as Trustee's Motion for

Reconsideration under NRCP 59 entered on May 1, 2018, Notice of Entry of which was entered on May 1, 2018, and (4) all interlocutory orders incorporated therein.

DATED May 10, 2018.

AKERMAN LLP

/s/ Rebekkah B. Bodoff

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Bank, N.A., as Trustee to the Holders of the Zuni
Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-
Through Certificates Series 2006-OA1*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on the 10th day of May, 2018, I caused to be served a true and correct copy of the foregoing **DEFENDANT U.S. BANK, N.A., AS TRUSTEE'S CASE APPEAL STATEMENT**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to FRCP 5(b), the above referenced document was electronically filed on the date hereof with the Clerk of the Court for the United States District Court 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 as follows:

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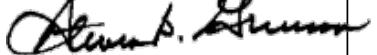
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LaSalle Bank, N.A., as Trustee to the Holders of the
Zuni Mortgage Loan Trust 2006-OA1, Mortgage
Loan Pass-Through Certificates, Series 2006-OA1*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

5316 CLOVER BLOSSOM CT TRUST;

Plaintiff,

v.

U.S. BANK, NATIONAL ASSOCIATION,
SUCCESSOR TRUSTEE TO BANK OF
AMERICA, N.A., SUCCESSOR BY MERGER
TO LASALLE BANK, N.A., AS TRUSTEE TO
THE HOLDERS OF THE ZUNI MORTGAGE
LOAN TRUST 2006-OA1, MORTGAGE LOAN
PASS-THROUGH CERTIFICATES SERIES
2006-OA1; and CLEAR RECON CORPS,

Defendants.

Case No.: A-14-704412-C

Dept. No.: XXIV

**DEFENDANT U.S. BANK, N.A., AS
TRUSTEE'S CASE APPEAL
STATEMENT**

U.S. Bank, N.A., Successor Trustee to Bank of America, N.A., Successor by Merger to LaSalle Bank, N.A., as Trustee to the Holders of the Zuni Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-Through Certificates Series 2006-OA1, by and through its attorneys of record at AKERMAN LLP, submits its Case Appeal Statement pursuant to NRAP 3(f)(3).

1. The appellant filing this case appeal statement is U.S. Bank, N.A., Successor Trustee to Bank of America, N.A., Successor by Merger to LaSalle Bank, N.A., as Trustee to the Holders of the Zuni Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-Through Certificates Series 2006-OA1 (**Appellant**).

1 2. The orders appealed are the (1) Findings of Fact, Conclusions of Law, and Judgment entered
2 on February 7, 2018, Notice of Entry of which was entered on February 8, 2018, (2) Findings of
3 Fact, Conclusions of Law, and Judgment entered on April 13, 2018, Notice of Entry of which was
4 entered on April 16, 2018, and (3) Order Denying U.S. Bank, N.A., as Trustee's Motion for
5 Reconsideration under NRCP 59 entered on May 1, 2018, Notice of Entry of which was entered on
6 May 1, 2018.

7 3. Counsels for Appellant are Darren T. Brenner, Esq., and Rebekkah B. Bodoff, Esq. of
8 AKERMAN LLP, 1635 Village Center Circle, Suite 200, Las Vegas, Nevada 89134.

9 4. Trial counsel for Respondent 5316 Clover Blossom Ct. Trust (**Clover Blossom**) is Michael
10 F. Bohn, Esq. of THE LAW OFFICES OF MICHAEL F. BOHN, ESQ., LTD., 376 East Warm Springs Road,
11 Suite 140, Las Vegas, Nevada 89119. Trial counsels for Respondent Country Garden Owners
12 Association (**HOA**) is James W. Pengilly, Esq. and Elizabeth B. Lowell, Esq. of PENGILLY LAW
13 FIRM, 1995 Village Center Circle, Suite 190, Las Vegas, Nevada 89134. Appellant is not aware
14 whether trial counsel will also act as appellate counsels for Clover Blossom or the HOA.

15 5. Counsels for Appellant are licensed to practice law in Nevada. Trial counsels for Clover
16 Blossom and the HOA are licensed to practice law in Nevada.

17 6. Appellant is represented by retained counsel in the district court.

18 7. Appellant is represented by retained counsel on appeal.

19 8. Appellant was not granted leave to proceed *in forma pauperis* by the district court.

20 9. The date proceedings commenced in the district court was July 25, 2014.

21 10. This case was previously subject to appeal in the Nevada Court of Appeals, Case No. 68915,
22 wherein the Court of Appeals vacated the district court's judgment in favor of Clover Blossom and
23 remanded the case for additional fact-finding related to Appellant's pre-foreclosure tender of the
24 super-priority amount, and more, through its loan servicer, Bank of America, N.A. (**BANA**), and
25 whether the sale was unfair and oppressive.

26 11. In this action, Clover Blossom alleges that it owns the property located at 5316 Clover
27 Blossom Court, North Las Vegas, Nevada 89031 (**Property**) free and clear of all liens as a result of
28 the HOA's foreclosure sale. Clover Blossom filed a complaint for quiet title to have the court

1 declare that it bought the Property free and clear of Appellant's Deed of Trust. Appellant filed quiet
2 title and declaratory relief counterclaims, seeking a declaration that the Deed of Trust survived the
3 HOA's foreclosure sale, and asserted cross-claims in the alternative against the HOA for unjust
4 enrichment, tortious interference with contractual relations, wrongful foreclosure, and breach of
5 NRS 116.1113, seeking damages from the HOA if the Deed of Trust was held to be extinguished
6 based on its rejection of BANA's pre-foreclosure tender of an amount greater than the statutory
7 super-priority amount. On remand, Clover Blossom moved to dismiss Appellant's counterclaims for
8 quiet title and declaratory relief, arguing that it took title free and clear because (1) it was a bona fide
9 purchaser, (2) the HOA's foreclosure sale was not unfair or oppressive, and (3) BANA's tender was
10 ineffective as to Clover Blossom because it was not recorded. The HOA also moved to dismiss
11 Appellant's cross-claims against it, arguing that the claims were time-barred. At the hearing on
12 these motions, the district court converted both motions to dismiss into motions for summary
13 judgment and granted them both, holding that the Deed of Trust was extinguished and entering
14 judgment in the HOA's favor on Appellant's claims against it. Appellant timely filed a motion to
15 reconsider the order granting Clover Blossom's converted motion for summary judgment, arguing
16 that the district court's conversion was improper because Appellant did not have notice that it would
17 occur, and thus failed to attach favorable summary-judgment evidence to its opposition. The district
18 court denied that motion. Appellant now appeals from the orders granting the converted motions for
19 summary judgment and the order denying its motion for reconsideration.

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

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

DATED: May 10, 2018.

AKERMAN LLP

/s/ Rebekkah B. Bodoff

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