

Electronically Filed
Jul 24 2018 09:31 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

NOAS

Michael Beede, Esq.
Nevada Bar No. 13068
James W. Fox, Esq.
Nevada Bar No. 13122
THE LAW OFFICE OF MIKE BEEDE, PLLC
2470 St. Rose Pkwy, Suite 307
Henderson, NV 89074
Phone: 702-473-8406
Fax: 702-832-0248
eservice@legallv.com
Attorneys for Plaintiff, Kenneth Berberich

DISTRICT COURT

CLARK COUNTY, NEVADA

KENNETH BERBERICH,

Plaintiff,

CASE NO. A-18-768728-C
DEPT NO. XXVI

v.

CONNIE FERNANDEZ; BANK OF
AMERICA, N.A.; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.; and DOES 1 through 10,
inclusive; and ROE CORPORATIONS 1
through 10, inclusive,

NOTICE OF APPEAL

Defendants.

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

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1 Plaintiff, Kenneth Berberich (“Plaintiff”), by and through his attorneys of record, Michael
2 Beede, Esq. and James W. Fox, Esq. of The Law Office of Mike Beede, PLLC, hereby appeals
3 to the Supreme Court of Nevada the June 15, 2018 Order Granting Defendants Bank of America,
4 N.A. and Mortgage Electronic Registration Systems, Inc.’s Motion to Dismiss Complaint and
5 Denying Plaintiff’s Countermotion for Summary Judgment, and all interlocutory orders
6 incorporated therein.

7 DATED this 17th day of July, 2018.

8 THE LAW OFFICE OF MIKE BEEDE, PLLC

9 By: /s/ Michael Beede, Esq.
10 MICHAEL BEEDE, ESQ.
11 Nevada Bar No. 13068
12 JAMES W. FOX, ESQ.
13 Nevada Bar No. 13122
14 2470 St. Rose Pkwy, Suite 307
15 Henderson, NV 89074
16 T: 702-473-8406
17 *Attorneys for Plaintiff, Kenneth Berberich*

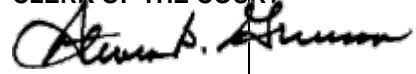
18 **CERTIFICATE OF SERVICE**

19 Pursuant to NRCP 5(b), I hereby certify that I am an employee of The Law Office of Mike
20 Beede, PLLC, and that on this 17th day of July, 2018, I did cause a true and correct copy of the
21 foregoing **NOTICE OF APPEAL** to be served upon each of the parties listed below via electronic
22 service through the Eighth Judicial District Court’s Odyssey E-File and Serve System:

23 Michael Beede, Esq.
24 Rex Garner
25 Natalie Winslow
26 Akerman LLP

eservice@legallv.com
rex.garner@akerman.com
natalie.winslow@akerman.com
AkermanLAS@akerman.com

27 /s/ Amanda Abril
28 An Employee of the Law Office of Mike Beede, PLLC



1 ASTA
2 Michael Beede, Esq.
3 Nevada Bar No. 13068
4 James W. Fox, Esq.
5 Nevada Bar No. 13122
6 THE LAW OFFICE OF MIKE BEEDE, PLLC
7 2470 St. Rose Pkwy, Suite 307
8 Henderson, NV 89074
9 Phone: 702-473-8406
10 Fax: 702-832-0248
11 eservice@legallv.com
12 Attorneys for Plaintiff, Kenneth Berberich

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 KENNETH BERBERICH,
11 Plaintiff,

12 v.

13 CONNIE FERNANDEZ; BANK OF
14 AMERICA, N.A.; MORTGAGE
15 ELECTRONIC REGISTRATION
16 SYSTEMS, INC.; and DOES 1 through 10,
17 inclusive; and ROE CORPORATIONS 1
18 through 10, inclusive,

Defendants.

CASE NO. A-18-768728-C
DEPT NO. XXVI

CASE APPEAL STATEMENT

19 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

20 Plaintiff, Kenneth Berberich ("Plaintiff"), by and through his attorneys of record, Michael
21 Beede, Esq. and James W. Fox, Esq. of The Law Office of Mike Beede, PLLC, hereby submits
22 his Case Appeal Statement pursuant to NRAP3(f)(3).

- 23 1) The appellant filing this Case Appeal statement is KENNETH BERBERICH.
24 2) The order(s) appealed are:
25 a) The Order Granting Defendants Bank of America, N.A. and Mortgage Electronic
26 Registration Systems, Inc.'s Motion to Dismiss Complaint and Denying Plaintiff's
27 Countermotion for Summary Judgment, signed by the honorable Judge Gloria
28

1 Sturman on June 14, 2018, and filed in the above-entitled Court on June 15, 2018.

2 A Notice of Entry of Order was filed on June 19, 2018.

3 3) Counsel for Appellant is as follows:

4 **THE LAW OFFICE OF MICHAEL BEEDE, PLLC**

5 Michael N. Beede, Esq.
6 Nevada Bar No. 13068
7 2470 St. Rose Pkwy, Suite 307
8 Henderson, NV 89074
9 T: 702-473-8406
10 F: 702-832-0248

11 4) Counsel for Respondent is as follows:

12 **AKERMAN LLP**

13 Natalie L. Winslow, Esq.
14 Nevada Bar No. 12125
15 1635 Village Center Cir., Suite 200
16 Las Vegas, NV 89134
17 T: (702) 634-5000
18 F: (702) 380-8572

19 5) All counsel listed above are licensed to practice law in Nevada.

20 6) Appellant is represented by retained counsel in the District Court.

21 7) Appellant is represented by retained counsel on appeal.

22 8) Appellant was not granted leave to proceed in forma pauperis by the District Court.

23 9) The date proceedings commenced in District Court was January 31, 2018.

24 10) In this action, Plaintiff/Appellant Berberich argues that he own the property located
25 at 8735 Mount Mira Loma Avenue, Las Vegas, NV 89178 and bearing Clark County
26 Assessor's Parcel Number 176-29-511-068 (the "Property") free and clear of all liens
27 as a result of an HOA superpriority lien foreclosure sale. Defendants, Bank of
28 America, N.A. ("BANA") and Mortgage Electronic Registration Systems, Inc.
("MERS") filed a Motion to Dismiss Plaintiff's Complaint, contending that NRS
11.080 time-bars Plaintiff's Claims. Plaintiff/Appellant Berberich brought a counter-
motion for summary judgment, contending that NRS 11.080 bars an action to quiet
title five years from the date the Plaintiff has been dispossessed of the property in

1 question, and because Berberich remains in possession of the Property, the Statute of
2 Limitations has not begun to run. The Court ruled in favor of BANA and MERS,
3 granting their Motion to Dismiss Plaintiff's Complaint.

4 11) Plaintiff filed his Complaint for Quiet Title in the District Court on January 31, 2018.

5 12) This matter did not reach trial.

6 13) The Order Granting Defendants Bank of America, N.A. and Mortgage Electronic
7 Registration Systems, Inc.'s Motion to Dismiss Complaint and Denying Plaintiff's
8 Countermotion for Summary Judgment was filed on June 15, 2018. Notice of Entry
9 of that Order was filed on June 19, 2018.

10 14) This case has not previously been the subject of an appeal to or original writ
11 proceeding in the Supreme Court.

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

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

14 DATED this 17th day of July, 2018.

15 THE LAW OFFICE OF MIKE BEEDE, PLLC

16
17 /s/ Michael Beede, Esq.

18 MICHAEL BEEDE, ESQ.

19 Nevada Bar No. 13068

JAMES W. FOX, ESQ.

20 Nevada Bar No. 13122

21 2470 St. Rose Pkwy, Suite 307

Henderson, NV 89074

22 T: 702-473-8406

Attorneys for Plaintiff, Kenneth Berberich

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of The Law Office of Mike
3 Beede, PLLC, and that on this 17th day of July, 2018, I did cause a true and correct copy of the
4 foregoing **CASE APPEAL STATEMENT** to be served upon each of the parties listed below via
5 electronic service through the Eighth Judicial District Court’s Odyssey E-File and Serve System:

6
7 Michael Beede, Esq.
8 Rex Garner
9 Natalie Winslow
10 Akerman LLP

eservice@legallv.com
rex.garner@akerman.com
natalie.winslow@akerman.com
AkermanLAS@akerman.com

11 /s/ Amanda Abril
12 An Employee of The Law Office of Mike Beede, PLLC

DEPARTMENT 26
CASE SUMMARY
CASE NO. A-18-768728-C

Kenneth Berberich, Plaintiff(s)
vs.
Connie Fernandez, Defendant(s)

Location: **Department 26**
Judicial Officer: **Sturman, Gloria**
Filed on: **01/31/2018**
Cross-Reference Case Number: **A768728**

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CASE INFORMATION

Case Type: **Other Title to Property**
Case Flags: **Appealed to Supreme Court**

DATE	CASE ASSIGNMENT
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Current Case Assignment

Case Number	A-18-768728-C
Court	Department 26
Date Assigned	01/31/2018
Judicial Officer	Sturman, Gloria


PARTY INFORMATION


Plaintiff	Berberich, Kenneth	Beede, Michael <i>Retained</i> 702-473-8406(W)
Defendant	Bank of America N A Removed: 06/15/2018 Dismissed Fernandez, Connie Mortgage Electronic Registration Systems Inc Removed: 06/15/2018 Dismissed	


DATE	EVENTS & ORDERS OF THE COURT	INDEX
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01/31/2018	 Complaint Filed By: Plaintiff Berberich, Kenneth <i>Complaint: Quiet Title</i>	
01/31/2018	 Initial Appearance Fee Disclosure Filed By: Plaintiff Berberich, Kenneth <i>Initial Appearance Fee Disclosure</i>	
02/02/2018	 Summons Electronically Issued - Service Pending Party: Plaintiff Berberich, Kenneth <i>Summons</i>	
02/02/2018	 Summons Electronically Issued - Service Pending Party: Plaintiff Berberich, Kenneth <i>Summons</i>	
02/02/2018	 Summons Electronically Issued - Service Pending Party: Plaintiff Berberich, Kenneth <i>Summons</i>	


DEPARTMENT 26
CASE SUMMARY
CASE NO. A-18-768728-C


02/05/2018  Notice of Lis Pendens
Filed by: Plaintiff Berberich, Kenneth
Notice of Lis Pendens


03/19/2018  Affidavit of Service
Filed By: Plaintiff Berberich, Kenneth
Affidavit of Process


03/19/2018  Affidavit of Service
Filed By: Plaintiff Berberich, Kenneth
Affidavit of Service for Mortgage Electronic Registration Systems, Inc.


03/26/2018  Notice of Appearance
Party: Defendant Bank of America N A; Defendant Mortgage Electronic Registration Systems Inc
Notice of Appearance


03/28/2018  Initial Appearance Fee Disclosure
Filed By: Defendant Mortgage Electronic Registration Systems Inc
Initial Appearance Fee Disclosure


04/10/2018  Affidavit of Due Diligence
Filed By: Plaintiff Berberich, Kenneth
Affidavit of Due Diligence


04/16/2018  Motion to Dismiss
Filed By: Defendant Bank of America N A; Defendant Mortgage Electronic Registration Systems Inc
Bank Of America, N.A. S Motion To Dismiss Complaint Under Nrcp 12(B)(5)


04/18/2018  Ex Parte Application to Extend Time for Service
Filed By: Plaintiff Berberich, Kenneth
Plaintiff's Ex-Parte Application to Extend Time to Serve and for an Order for Service by Publication as to Defendant Connie Fernandez

05/03/2018  Opposition to Motion
Filed By: Plaintiff Berberich, Kenneth
Opposition to Defendants' Motion to Dismiss and Countermotion for Summary Judgment

05/05/2018  Initial Appearance Fee Disclosure
Filed By: Plaintiff Berberich, Kenneth
Plaintiff's Initial Appearance Fee Disclosures








05/07/2018  Notice of Change of Address
Filed By: Plaintiff Berberich, Kenneth
Notice of Change of Address

05/10/2018  Order
Filed By: Plaintiff Berberich, Kenneth
Order Granting Ex-Parte Application to Extend Time to Service and for Service by Publication

05/15/2018  Reply in Support
Filed By: Defendant Bank of America N A
Reply Supporting Motion To Dismiss Complaint Under Rule 12(B)(5) And Opposition To

DEPARTMENT 26
CASE SUMMARY
CASE NO. A-18-768728-C

Countermotion For Summary Judgment And Alternatively, Request For Rule 56(F) Relief

05/16/2018	 Reply in Support Filed By: Plaintiff Berberich, Kenneth <i>Plaintiff's Reply in Support of its Countermotion for Summary Judgment</i>
05/21/2018	 Certificate of Mailing <i>Certificate of Mailing</i>
05/22/2018	Motion to Dismiss (9:30 AM) (Judicial Officer: Sturman, Gloria) <i>Motion to Dismiss Complaint Under NRCP 112(B)(5)</i>
05/22/2018	Opposition and Countermotion (9:30 AM) (Judicial Officer: Sturman, Gloria) <i>Opposition to Defendant's Motion to Dismiss and Countermotion for Summary Judgment</i>
05/22/2018	 All Pending Motions (9:30 AM) (Judicial Officer: Sturman, Gloria)
06/15/2018	Order of Dismissal (Judicial Officer: Sturman, Gloria) Debtors: Kenneth Berberich (Plaintiff) Creditors: Connie Fernandez (Defendant), Bank of America N A (Defendant), Mortgage Electronic Registration Systems Inc (Defendant) Judgment: 06/15/2018, Docketed: 06/18/2018
06/15/2018	 Order Granting Motion Filed By: Defendant Bank of America N A <i>Order Granting Motion to Dismiss Complaint and Denying Countermotion for Summary Judgment</i>
06/19/2018	 Affidavit of Publication of Summons Filed By: Plaintiff Berberich, Kenneth; Defendant Fernandez, Connie <i>Affidavit of Publication of Summons</i>
06/19/2018	 Notice of Entry <i>Notice of Entry of Order Granting Motion to Dismiss Complaint and Denying Countermotion for Summary Judgment</i>
07/12/2018	 Three Day Notice of Intent to Default <i>Three Day Notice of Intent to Default Against Defendant Connie Fernandez</i>
07/17/2018	 Notice of Appeal Filed By: Plaintiff Berberich, Kenneth <i>Notice of Appeal</i>
07/17/2018	 Case Appeal Statement Filed By: Plaintiff Berberich, Kenneth <i>Case Appeal Statement</i>
07/18/2018	 Default <i>Default Connie Fernandez</i>

DATE

FINANCIAL INFORMATION

Defendant Bank of America N A	
Total Charges	253.00
Total Payments and Credits	253.00
Balance Due as of 7/19/2018	0.00

DEPARTMENT 26
CASE SUMMARY
CASE NO. A-18-768728-C

Plaintiff Berberich, Kenneth
Total Charges
Total Payments and Credits
Balance Due as of 7/19/2018

499.00
499.00
0.00

DISTRICT COURT CIVIL COVER SHEET

County, Nevada

Case No. _____

Department 26

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): KENNETH BERBERICH	Defendant(s) (name/address/phone): CONNIE FERNANDEZ; BANK OF AMERICA, N.A.; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; inclusive; ROE CORPORATIONS 1 through 10, inclusive
Attorney (name/address/phone): Michael Beede, Esq. 2470 St. Rose Pkwy., Ste. 201 Henderson, NV 89074 702-473-8406	Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)

Civil Case Filing Types

<p>Real Property</p> <p>Landlord/Tenant</p> <p><input type="checkbox"/> Unlawful Detainer</p> <p><input type="checkbox"/> Other Landlord/Tenant</p> <p>Title to Property</p> <p><input type="checkbox"/> Judicial Foreclosure</p> <p><input checked="" type="checkbox"/> Other Title to Property</p> <p>Other Real Property</p> <p><input type="checkbox"/> Condemnation/Eminent Domain</p> <p><input type="checkbox"/> Other Real Property</p>	<p>Negligence</p> <p><input type="checkbox"/> Auto</p> <p><input type="checkbox"/> Premises Liability</p> <p><input type="checkbox"/> Other Negligence</p> <p>Malpractice</p> <p><input type="checkbox"/> Medical/Dental</p> <p><input type="checkbox"/> Legal</p> <p><input type="checkbox"/> Accounting</p> <p><input type="checkbox"/> Other Malpractice</p>	<p>Torts</p> <p>Other Torts</p> <p><input type="checkbox"/> Product Liability</p> <p><input type="checkbox"/> Intentional Misconduct</p> <p><input type="checkbox"/> Employment Tort</p> <p><input type="checkbox"/> Insurance Tort</p> <p><input type="checkbox"/> Other Tort</p>
<p>Probate</p> <p>Probate (select case type and estate value)</p> <p><input type="checkbox"/> Summary Administration</p> <p><input type="checkbox"/> General Administration</p> <p><input type="checkbox"/> Special Administration</p> <p><input type="checkbox"/> Set Aside</p> <p><input type="checkbox"/> Trust/Conservatorship</p> <p><input type="checkbox"/> Other Probate</p> <p>Estate Value</p> <p><input type="checkbox"/> Over \$200,000</p> <p><input type="checkbox"/> Between \$100,000 and \$200,000</p> <p><input type="checkbox"/> Under \$100,000 or Unknown</p> <p><input type="checkbox"/> Under \$2,500</p>	<p>Construction Defect & Contract</p> <p>Construction Defect</p> <p><input type="checkbox"/> Chapter 40</p> <p><input type="checkbox"/> Other Construction Defect</p> <p>Contract Case</p> <p><input type="checkbox"/> Uniform Commercial Code</p> <p><input type="checkbox"/> Building and Construction</p> <p><input type="checkbox"/> Insurance Carrier</p> <p><input type="checkbox"/> Commercial Instrument</p> <p><input type="checkbox"/> Collection of Accounts</p> <p><input type="checkbox"/> Employment Contract</p> <p><input type="checkbox"/> Other Contract</p>	<p>Judicial Review/Appeal</p> <p>Judicial Review</p> <p><input type="checkbox"/> Foreclosure Mediation Case</p> <p><input type="checkbox"/> Petition to Seal Records</p> <p><input type="checkbox"/> Mental Competency</p> <p>Nevada State Agency Appeal</p> <p><input type="checkbox"/> Department of Motor Vehicle</p> <p><input type="checkbox"/> Worker's Compensation</p> <p><input type="checkbox"/> Other Nevada State Agency</p> <p>Appeal Other</p> <p><input type="checkbox"/> Appeal from Lower Court</p> <p><input type="checkbox"/> Other Judicial Review/Appeal</p>
<p>Civil Writ</p> <p>Civil Writ</p> <p><input type="checkbox"/> Writ of Habeas Corpus</p> <p><input type="checkbox"/> Writ of Mandamus</p> <p><input type="checkbox"/> Writ of Quo Warrant</p>	<p><input type="checkbox"/> Writ of Prohibition</p> <p><input type="checkbox"/> Other Civil Writ</p>	<p>Other Civil Filing</p> <p>Other Civil Filing</p> <p><input type="checkbox"/> Compromise of Minor's Claim</p> <p><input type="checkbox"/> Foreign Judgment</p> <p><input type="checkbox"/> Other Civil Matters</p>

Business Court filings should be filed using the Business Court civil coversheet.

1/31/2018

Date

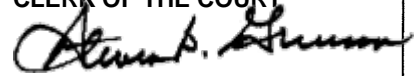
/s/ Michael Beede, Esq.

Signature of initiating party or representative

See other side for family-related case filings.

CONFIDENTIAL

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Steven D. Grierson
CLERK OF THE COURT



1 NATALIE L. WINSLOW, ESQ.
Nevada Bar No. 12125
2 REX D. GARNER, ESQ.
Nevada Bar No. 9401
3 AKERMAN LLP
1635 Village Center Circle, Suite 200
4 Las Vegas, Nevada 89134
Telephone: (702) 634-5000
5 Facsimile: (702) 380-8572
Email: natalie.winslow@akerman.com
6 Email: rex.garner@akerman.com

7 *Attorneys for Bank Of America, N.A. and*
8 *Mortgage Electronic Registration Systems, Inc.*

9 **EIGHTH JUDICIAL DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 KENNETH BERBERICH,

12 Plaintiff,

13 v.

14 CONNIE FERNANDEZ; BANK OF
AMERICA, N.A.; MORTGAGE ELECTRONIC
15 REGISTRATION SYSTEMS, INC.,; and DOES
1 through 10, inclusive; ROE CORPORATIONS
16 1 through 10, inclusive

17 Defendants.

Case No.: A-18-768728-C

18 Dept. : XXVI

19 **ORDER GRANTING MOTION TO**
20 **DISMISS COMPLAINT**

21 **AND**

22 **DENYING COUNTERMOTION FOR**
23 **SUMMARY JUDGMENT**

24 Bank of America, N.A. and Mortgage Electronic Registration Systems, Inc. (MERS) filed a
25 motion to dismiss complaint under NRCPC 12(b)(5) on April 16, 2018. Plaintiff Kenneth Berberich
26 opposed the motion to dismiss and filed a counter motion for summary judgment. Bank of America
27 and MERS opposed the counter motion. The motion to dismiss and counter motion came on for
28 hearing on May 22, 2018. Rex Garner attended for Bank of America and MERS. James Fox
attended for plaintiff. The court, having heard the arguments of counsel, rules as follows:

AKERMAN LLP

1635 Village Center Circle, Suite 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 - FAX: (702) 380-8572

1 The Nevada supreme court has confirmed that NRS 11.080 applies to HOA foreclosure sales.
2 *See Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A.* 388 P.3d 226,
3 232 (Nev. 2017) ("Saticoy did not acquire its interest in the Property until it purchased Lots 21 and
4 26 at the HOA foreclosure sale held in 2013. Therefore, the statute of limitations for a quiet title
5 action under NRS 11.080 will not run until July 2018.").

6 Berberich had five years from the date of the HOA foreclosure sale—or until August 11,
7 2016—to file his complaint. NRS 11.080. He filed his complaint on January 31, 2018. As a result,
8 he cannot maintain his claims against Bank of America and MERS.

9 Accordingly, Bank of America and MERS's motion to dismiss is GRANTED.

10 Plaintiff's countermotion for summary judgment is DENIED.

11 **IT IS SO ORDERED.**

12 
13 _____
14 DISTRICT COURT JUDGE

15 *June 14, 2018*
16 _____
17 DATED

18 Respectfully Submitted by:

19 **AKERMAN LLP**

20 
21 _____
22 NATALIE L. WINSLOW, ESQ.

23 Nevada Bar No. 12125

24 1635 Village Center Cir., Suite 200

25 Las Vegas, NV 89134

26 *Attorneys for Bank of America, N.A. and Mortgage Electronic Registration Systems, Inc.*

27 Approved as to form and content by:

28 **THE LAW OFFICE OF MIKE BEEDE, PLLC**

29 
30 _____
31 MICHAEL BEEDE, ESQ.

32 Nevada Bar No. 13068

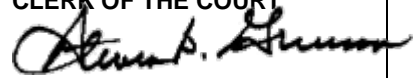
33 JAMES W. FOX, ESQ.

34 Nevada Bar No. 13122

35 2470 St. Rose Parkway, Suite 307

36 Las Vegas, NV 89074

37 *Attorneys for Plaintiff Kenneth Berberich*



1 **NOTA**
2 NATALIE L. WINSLOW, ESQ.
3 Nevada Bar No. 12125
4 REX D. GARNER, ESQ.
5 Nevada Bar No. 9401
6 AKERMAN LLP
7 1635 Village Center Circle, Suite 200
8 Las Vegas, Nevada 89134
9 Telephone: (702) 634-5000
10 Facsimile: (702) 380-8572
11 Email: email @akerman.com
12 Email: rex.garner@akerman.com

13 *Attorneys for Bank Of America, N.A. and*
14 *Mortgage Electronic Registration Systems, Inc.*

15 **EIGHTH JUDICIAL DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 KENNETH BERBERICH,

18 Plaintiff,

19 v.

20 CONNIE FERNANDEZ; BANK OF
21 AMERICA, N.A; MORTGAGE ELECTRONIC
22 REGISTRATION SYSTEMS, INC.; and DOES
23 I through 10, inclusive; ROE CORPORATIONS
24 1 through 10, inclusive

25 Defendants.

26 Case No.: A-18-768728-C

27 Dept. : XXVI

28 **NOTICE OF ENTRY OF ORDER
GRANTING MOTION TO DISMISS
COMPLAINT AND DENYING
COUNTERMOTION FOR SUMMARY
JUDGMENT**

29 **TO: ALL PARTIES OF RECORD AND THEIR COUNSEL:**

30 PLEASE TAKE NOTICE that an Order Granting Motion to Dismiss Complaint and Denying
31 Countermotion for Summary Judgment was entered on the 15th day of June, 2018, in the above-

32 ///

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37 ///

1 entitled court, a copy of which is attached hereto as Exhibit A.

2 DATED June 19, 2018.

3 **AKERMAN LLP**

4 /s/ Natalie L. Winslow, Esq.

5 NATALIE L. WINSLOW, ESQ.

6 Nevada Bar No. 12125

7 REX D. GARNER, ESQ.

8 Nevada Bar No. 9401

9 1635 Village Center Circle, Suite 200

10 Las Vegas, Nevada 89134

11 *Attorneys for Bank Of America, N.A. and*
12 *Mortgage Electronic Registration Systems, Inc.*

13 **AKERMAN LLP**

14 1635 Village Center Circle, Suite 200
15 LAS VEGAS, NEVADA 89134
16 TEL.: (702) 634-5000 – FAX: (702) 380-8572
17
18
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20
21
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 26th day of March, 2018 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING MOTION TO DISMISS COMPLAINT AND DENYING COUNTERMOTION FOR SUMMARY JUDGMENT**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & served through the Notice Of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

Michael N. Beede, Esq.
THE LAW OFFICE OF MIKE BEEDE PLLC
2470 St. Rose Parkway, Suite 201
Henderson, Nevada 89074

Attorney for Plaintiff

/s/ Jill Sallade

An employee of AKERMAN LLP

AKERMAN LLP

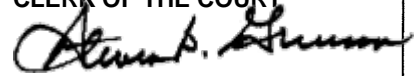
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Exhibit A

CONFIDENTIAL

Electronically Filed
6/15/2018 2:36 PM
Steven D. Grierson
CLERK OF THE COURT



1 NATALIE L. WINSLOW, ESQ.
Nevada Bar No. 12125
2 REX D. GARNER, ESQ.
Nevada Bar No. 9401
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Telephone: (702) 634-5000
5 Facsimile: (702) 380-8572
Email: natalie.winslow@akerman.com
6 Email: rex.garner@akerman.com

7 *Attorneys for Bank Of America, N.A. and*
8 *Mortgage Electronic Registration Systems, Inc.*

9 **EIGHTH JUDICIAL DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 KENNETH BERBERICH,

12 Plaintiff,

13 v.

14 CONNIE FERNANDEZ; BANK OF
AMERICA, N.A.; MORTGAGE ELECTRONIC
15 REGISTRATION SYSTEMS, INC.,; and DOES
1 through 10, inclusive; ROE CORPORATIONS
16 1 through 10, inclusive

17 Defendants.

Case No.: A-18-768728-C

18 Dept. : XXVI

19 **ORDER GRANTING MOTION TO**
20 **DISMISS COMPLAINT**

21 **AND**

22 **DENYING COUNTERMOTION FOR**
23 **SUMMARY JUDGMENT**

24 Bank of America, N.A. and Mortgage Electronic Registration Systems, Inc. (MERS) filed a
25 motion to dismiss complaint under NRCPC 12(b)(5) on April 16, 2018. Plaintiff Kenneth Berberich
26 opposed the motion to dismiss and filed a counter motion for summary judgment. Bank of America
27 and MERS opposed the counter motion. The motion to dismiss and counter motion came on for
28 hearing on May 22, 2018. Rex Garner attended for Bank of America and MERS. James Fox
attended for plaintiff. The court, having heard the arguments of counsel, rules as follows:

AKERMAN LLP

1635 Village Center Circle, Suite 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 - FAX: (702) 380-8572

1 The Nevada supreme court has confirmed that NRS 11.080 applies to HOA foreclosure sales.
2 *See Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A.* 388 P.3d 226,
3 232 (Nev. 2017) ("Saticoy did not acquire its interest in the Property until it purchased Lots 21 and
4 26 at the HOA foreclosure sale held in 2013. Therefore, the statute of limitations for a quiet title
5 action under NRS 11.080 will not run until July 2018.").

6 Berberich had five years from the date of the HOA foreclosure sale—or until August 11,
7 2016—to file his complaint. NRS 11.080. He filed his complaint on January 31, 2018. As a result,
8 he cannot maintain his claims against Bank of America and MERS.

9 Accordingly, Bank of America and MERS's motion to dismiss is GRANTED.

10 Plaintiff's countermotion for summary judgment is DENIED.

11 **IT IS SO ORDERED.**

12 
13 _____
14 DISTRICT COURT JUDGE

15 *June 14, 2018*
16 _____
17 DATED

18 Respectfully Submitted by:

19 **AKERMAN LLP**

20 
21 _____
22 NATALIE L. WINSLOW, ESQ.

23 Nevada Bar No. 12125

24 1635 Village Center Cir., Suite 200

25 Las Vegas, NV 89134

26 *Attorneys for Bank of America, N.A. and Mortgage Electronic Registration Systems, Inc.*

27 Approved as to form and content by:

28 **THE LAW OFFICE OF MIKE BEEDE, PLLC**

29 
30 _____
31 MICHAEL BEEDE, ESQ.

32 Nevada Bar No. 13068

33 JAMES W. FOX, ESQ.

34 Nevada Bar No. 13122

35 2470 St. Rose Parkway, Suite 307

36 Las Vegas, NV 89074

37 *Attorneys for Plaintiff Kenneth Berberich*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

May 22, 2018

A-18-768728-C Kenneth Berberich, Plaintiff(s)
vs.
Connie Fernandez, Defendant(s)

May 22, 2018 9:30 AM All Pending Motions

HEARD BY: Sturman, Gloria **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Lorna Shell

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT: Fox, James W., ESQ Attorney
 Garner, Rex D. Attorney

JOURNAL ENTRIES

- MOTION TO DISMISS COMPLAINT UNDER NRCP 112(B)(5) .. OPPOSITION TO DEFENDANT'S MOTION TO DISMISS AND COUNTERMOTION FOR SUMMARY JUDGMENT

Mr. Garner argued the motion was barred by NRS 11.080 as untimely, that the time runs from the date of the Homeowner's Association (HOA) sale, and that there was no tolling provided in the statute.

Mr. Fox argued NRS 11.080 stated the statute was triggered when the Pltf. is dispossessed and here the Pltf. still had possession of the property.

Court inquired if this created a situation where the Pltf. could choose his own Statute of Limitations, Mr. Fox argued the Pltf. inversely possessed the property until the bank was to raise their claim, which was adverse from his. Mr. Fox argued the bank's claims were barred under NRS 11.080 and NRS 11.070.

Upon inquiry by the Court regarding whether that would be a notice issue, Mr. Fox argued they knew they were dispossessed when the title was recorded. Mr. Fox further argued his client owned

the property and he would only have to clear the title when he wanted to sell the property.

Mr. Garner argued the Pltf. was saying any claim was untimely, that the bank paid the nine months of HOA dues which were rejected, that his client did what the law permitted and yet the sale went forward.

COURT FINDS the Gray Eagle case applied, that they had five years to perfect title, and that they cannot pursue quiet title; however they had a deed that divested Pltf.'s position AND THEREFORE ORDERED, Motion to Dismiss GRANTED as the Statute of Limitations applied; Countermotion for Summary Judgment DENIED; Mr. Garner to prepare the order.



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

MICHAEL BEEDE, ESQ.
2470 ST. ROSE PKWY., STE 307
HENDERSON, NV 89074

DATE: July 19, 2018
CASE: A-18-768728-C

RE CASE: KENNETH BERBERICH vs. CONNIE FERNANDEZ; BANK OF AMERICA, N.A.;
MORTGAGE ELECTRONIC

NOTICE OF APPEAL FILED: July 17, 2018

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- Order
- Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING MOTION TO DISMISS COMPLAINT AND DENYING COUNTERMOTION FOR SUMMARY JUDGMENT; NOTICE OF ENTRY OF ORDER GRANTING MOTION TO DISMISS COMPLAINT AND DENYING COUNTERMOTION FOR SUMMARY JUDGMENT; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

KENNETH BERBERICH,

Plaintiff(s),

vs.

CONNIE FERNANDEZ; BANK OF AMERICA, N.A.; MORTGAGE ELECTRONIC,

Defendant(s),

Case No: A-18-768728-C

Dept No: XXVI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 19 day of July 2018.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk

