

**IN THE SUPREME COURT OF NEVADA**

NONA TOBIN, AS TRUSTEE OF THE  
GORDON B. HANSEN TRUST,  
DATED 8/22/08,

Appellant,

vs.

JOEL A. STOKES; SANDRA F.  
STOKES, AS TRUSTEE OF THE  
JIMIACK IRREVOCABLE TRUST;  
YUEN K. LEE, AN INDIVIDUAL,  
D/B/A MANAGER; F. BONDURANT,  
LLC; SUN CITY ANTHEM  
COMMUNITY ASSOCIATION, INC.;  
AND NATIONSTAR MORTGAGE,  
LLC,

Respondents.

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Elizabeth A. Brown  
Clerk of Supreme Court

Case No. 79295

**APPEAL**

from the Eighth Judicial District Court, Department XXXI  
The Honorable Joanna S.. Kishner, District Judge  
District Court Case No. A-15-720032-C

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**RESPONDENT'S MOTION TO DISMISS APPEAL**

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Respondent Nationstar Mortgage LLC moves to dismiss Nona Tobin, as Trustee of the Gordon B. Hansen Trust's appeal as to Nationstar. Nona Tobin did not raise any claims against Nationstar in the underlying litigation, and lacks standing to pursue any claims against Nationstar on appeal.

### **MEMORANDUM OF POINTS AND AUTHORITIES**

#### **A. Relevant procedural history**

Nona Tobin, as trustee of the Gordon B. Hansen Trust,<sup>1</sup> intervened as a defendant in this case in January 2017. *Id.* at 000164-000281. On January 31, 2017, Nina Tobin filed her crossclaim for quiet title against Sun City. *See id.* at 290-385. On February 1, 2017, she filed her answer to Jimijack's complaint and counterclaim against Jimijack. AA Vol. 3, 000386-000423. On the same day, she also filed crossclaims against F. Bondurant, LLC (*id.* at 000427-000450) and Opportunity Homes (*id.* at 000451-000509). Nona Tobin did not raise any claims against Nationstar in these pleadings.

On November 30, 2018, Nona Tobin filed a motion to amend answer, counterclaim, and crossclaims, which sought to "clarify her claim for quiet title to include all parties, including. . . Nationstar[.]" *See* RA Vol. I, 4. The court heard

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<sup>1</sup> All references to Nona Tobin herein are to Nona Tobin in her capacity as trustee of the Gordon B. Hansen Trust. Nona Tobin also moved to intervene individually but the court never granted her leave to do so.

the motion on January 10, 2019, and granted it—although Nona Tobin's counsel represented she did not seek to add any parties or cross-claims. *See* RA Vol. I, 36. Nona Tobin never filed an order, much less an entry of order, granting her motion for leave to amend. In addition, Nona Tobin never filed the amended pleading naming Nationstar as a party. AA Vol. 5, 001054. Nona Tobin never filed a pleading asserting any claims against Nationstar.

The court entered summary judgment in favor of Sun City on Nona Tobin's claim against it, and Nationstar's limited joinder thereto, by order entered April 17, 2019. *Id.* at 001057. Nationstar resolved its claims against Opportunity Homes and F. Bondurant by stipulation entered February 20, 2019. AA Vol. 4, 000862-000867. Nationstar and Jimijack later stipulated to the voluntary dismissal of all claims against Jimijack, which resolved all claims between them, and dismissed Nationstar from the case. AA Vol. 10, 001896-001898.

Nona Tobin filed a notice of appeal on July 23, 2019. AA Vol. 14, 002862-002869. Nona Tobin appealed from three orders: (1) the court's finding of fact, conclusions of law and judgment entered on June 24, 2019; (2) the findings of fact, conclusions of law, and order granting Sun City's summary judgment motion entered April 17, 2019; and (3) the court's order denying her motion for reconsideration of the April 17, 2019 order, entered on May 31, 2019. *Id.*

**B. Nona Tobin lacks standing to bring claims against Nationstar on appeal**

The Nevada supreme court is "a court of limited appellate jurisdiction." *Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 444, 874 P.2d 729, 732 (1994). It "has jurisdiction to entertain an appeal only where an appeal is authorized by statute or court rule." *Id.* (citations omitted). NRAP 3A provides, in relevant part, "[a] party who *is aggrieved by* an appealable judgment or order may appeal from that judgement or order[.]" (emphasis added).

None of the orders Nona Tobin appeals from addressed any claims against Nationstar—Nona Tobin did not raise any. *See* AA Vol. 5, 001015-001058; AA Vol. 12, 002551-002564; AA Vol. 10, AA001889-001895. Nationstar's claims—and those raised against it by other parties—were resolved by stipulation. *See* AA Vol. 4, 000862-000867; AA Vol. 10, 001896-001898. The April 17, 2019 order and the May 31, 2019 orders granted Nationstar limited relief based on its limited joinders to Sun City's motion for summary judgment (*see* AA Vol. 4, AA 000827-000861) and Sun City's opposition to Nona Tobin's motion for reconsideration (*see* AA Vol. 8, AA 001370-001372). But Nationstar only joined Sun City's motion to the extent it set forth no genuine issue of material fact Sun City conducted a proper foreclosure of the sub-priority portion of its lien—and to reserve its right to challenge Sun City's sale to the extent any party claimed it extinguished the deed of trust. AA

Vol. 4, AA 0829. Nationstar joined Sun City's opposition to Nona Tobin's motion for reconsideration on similar limited grounds—agreeing Sun City conducted a proper foreclosure on the sub-priority lien portion only, and reserving rights to challenge the sale as to the effect on the deed of trust. AA Vol. 8, 001371.

To the extent the court's April 17, 2019 and May 31, 2019 orders granted judgment in Nationstar's favor, those orders do not "aggrieve" Nona Tobin because she raised no claims against Nationstar, and therefore she lacks standing to assert an appeal against it. *See* NRAP 3A. This court has previously held a plaintiff-appellant could not maintain an appeal against a third-party defendant against which plaintiff-appellant never raised a claim below. *See Trans W. Leasing Corp. v. Corrao Const. Co.*, 98 Nev. 385, 386, 649 P.2d 1371, 1372 (1982). Federal courts and other jurisdictions agree. *See Bryant v. Tech. Research Co.*, 654 F.2d 1337, 1343 (9th Cir. 1981) (where appellant had no direct action against respondents, it did not have standing to appeal); *St. Pierre v. Dyer*, 208 F.3d 394, 399 (2d Cir. 2000) (party not sued by appellant was not a party to the appeal); *Tinker v. Kent Gypsum Supply, Inc.*, 95 Wash. App. 761, 766, 977 P.2d 627, 630 (1999) (defendant who never asserted valid cross-claim did not have standing to appeal co-defendant's dismissal); *Wallace v. Scott*, 296 S.E.2d 423, 424 (Ga. App. 1982) (plaintiff-appellant who asserted no claim against third-party defendant lacked standing to appeal grant of summary judgment in third-party defendant's favor); *Jones v. Crown Const. Co.*, 263 S.E.2d

460, 461 (Ga. App. 1979) (appeal dismissed as to certain parties where "order appealed from did not adversely affect appellant" to the extent he did not raise claim against them.) The court should dismiss this appeal as to Nationstar.

**CONCLUSION**

Nationstar respectfully requests the appeal be dismissed as to Nationstar.

DATED June 24, 2020

**AKERMAN LLP**

*/s/ Melanie D. Morgan*

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**CERTIFICATE OF SERVICE**

I certify that I electronically filed on June 24, 2020, the foregoing **RESPONDENT'S MOTION TO DISMISS APPEAL** with the Clerk of the Court for the Nevada Supreme Court by using the Court's electronic file and serve system. I further certify that all parties of record to this appeal are either registered with the Court's electronic filing system or have consented to electronic service and that electronic service shall be made upon and in accordance with the Court's Master Service List.

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*  
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An employee of AKERMAN LLP