

IN THE SUPREME COURT OF THE STATE OF NEVADA

<p>SATICOY BAY, LLC, SERIES 34 INNISBROOK, Appellant,</p> <p>v.</p> <p>THORNBURG MORTGAGE SECURITIES TRUST 2007-3; FRANK TIMPA; MADELANIE TIMPA; TIMPA TRUST; RED ROCK FINANCIAL SERVICES, LLC; SPANISH TRIAL MASTER ASSOCIATION; REPUBLIC SERVICES; and LAS VEGAS VALLEY WATER DISTRICT, Respondents.</p>	<p>Supreme Court No. 80111 District Case No. A710161</p> <p style="text-align: right;">Electronically Filed Dec 23 2019 10:48 p.m. Elizabeth A. Brown Clerk of Supreme Court</p> <p>DOCKETING STATEMENT CIVIL APPEALS</p>
--	--

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department XXVI

County Clark Judge Gloria Sturman

District Court Case No. A-14-710161-C

2. Attorney filing this docketing statement:

Attorney Roger P. Croteau Telephone (702) 254-7775

Firm ROGER P. CROTEAU & ASSOCIATES, LTD.

Address 2810 West Charleston Blvd., Suite 75
Las Vegas, Nevada 89102

Client(s) Saticoy Bay LLC Series 34 Innisbrook

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney: Ariel E. Stern, Esq. Telephone: (702) 634-5000

Attorney: Melanie D. Morgan, Esq. Telephone: (702) 634-5000

Attorney: Scott R. Lachman, Esq. Telephone: (702) 634-5000

Firm: AKERMAN LLP

Address: 1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134

Client(s) Thornburg Mortgage Securities Trust 2007-3

Attorney: Bryan Naddafi, Esq. Telephone: (702) 522-6450

Attorney: Elena Nutenko, Esq. Telephone: (702) 522-6450

Firm: AVALON LEGAL GROUP LLC

Address: 9480 South Eastern Avenue, Suite 257
Las Vegas, Nevada 89123

Client(s): Frank Timpa, Madelanie Timpa and Timpa Trust (Co-counsel)

Attorney: Travis D. Akin, Esq. Telephone: (702) 510-8567

Firm: THE LAW OFFICE OF TRAVIS AKIN

Address: 8275 South Eastern Avenue, Suite 200
Las Vegas, Nevada 89123

Client(s): Frank Timpa, Madelanie Timpa and Timpa Trust

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|--|---|
| <input type="checkbox"/> Judgment after bench trial | <input checked="" type="checkbox"/> Dismissal |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input checked="" type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | |
| <input type="checkbox"/> Other disposition (specify):
_____ | |

5. Does this appeal rise issues concerning any of the following?

- Child Custody
- Venue
- Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.* bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

8. Nature of the action. Briefly describe the nature of the action and the result below:

Plaintiff/Appellant commenced an action in the district court below alleging six claims against the named Defendants/Respondents. Plaintiff's/Appellant's claims/causes of action sought damages for (I) declaration to quiet title against all Defendants, (II) declaratory relief as to all Defendants (III) unlawful detainer against the Former Owners and the Timpa Trust, (IV) intentional and/or negligent misrepresentation and violation of NRS 116.1113 against HOA and the HOA Trustee, (V) unjust enrichment as to the HOA, HOA Trustee, the Former Owners and the Timpa Trust, and (VI) rescission of the HOA foreclosure sale occurred based upon the misrepresentations of the HOA and HOA Trustee and on equity grounds under the facts of this case.

Lender filed an Answer and Counterclaim for (1) Quiet Title/Declaratory Relief versus Plaintiff/Appellant and HOA, (II) Permanent and Preliminary Injunction versus Plaintiff/Appellant, (III) Wrongful foreclosure versus the HOA and HOA Trustee, (IV) Negligence versus the HOA and HOA Trustee, (V) Negligence per se versus HOA and HOA Trustee, (VI) Breach of Contract versus the HOA and HOA Trustee, (VII) Misrepresentation versus the HOA, (VIII) Unjust Enrichment versus Plaintiff/Appellant, HOA and HOA Trustee, (IX) Breach of the Covenant of Good Faith and Faith Dealing versus the HOA and HOA Trustee, (X) In the Alternative, Application for Deficiency Judgment/Breach Contract versus Timpa and the Lender requesting that the Court declare that the HOA foreclosure sale is void and that the sale should be set aside. The HOA Trustee answered the various claims and asserted a Counterclaim for Interpleader of the excess proceeds of the HOA foreclosure sale in the amount of \$1,168,865.05 that it did not deposit with the Court until June 20, 2019. The Former Owners and the Timpa Trust failed to answer or otherwise plead in response to Plaintiff/Appellant's three (3) complaints, nor did the Former Owners and Timpa Trust answer or otherwise plead a response to the Lender's Counterclaim. In response to the HOA Trustee's Counterclaim for Interpleader Madelaine Timpa and the Timpa Trust answered the Counterclaim and filed a claim by Madelaine Timpa for the surplus funds/excess proceeds.

9. Issues on appeal.

The claims and counterclaims of the parties to this litigation emanate from an NRS 116 foreclosure sale that occurred on November 7, 2014, for a high bid of \$1,201,000.00. The issues decided by the Court related to the Lender's rejected tender of the Lender's tender of the super priority lien amount issues of rescission of the HOA foreclosure sale by the HOA Trustee based upon the HOA and HOA Trustee's misrepresentation and omissions of material facts by the HOA and HOA Trustee relating to the Lender's rejected tender by HOA Trustee, and the proper distribution of the HOA foreclosure proceeds pursuant to NRS 116 *et. seq.* To that end, the Court made three substantive orders that the Plaintiff/Appellant hereby appeals:

(1) The Court's *Findings of Fact, Conclusions of Law, and Order Granting Thornburg Mortgage Securities Trust 2007-3's Motion for Summary Judgment*, entered on the 3rd day of December, 2018 granted summary judgment in Lender's favor and found that the HOA foreclosed on only the sub-priority portion of its lien; Saticoy purchased an interest in the property subject to the deed of trust which remained first position encumbrance against the property; that all remaining claims not specifically mentioned, including all claims in Lender's counterclaim and crossclaims and Plaintiff/Appellant's complaint, are dismissed with prejudice. The Court failed to consider the arguments of Plaintiff/Appellant and Lender's request that the foreclosure sale be declared void and to rescind the sale. The Court further dismissed the claims of Plaintiff/Appellant against the HOA and HOA Trustee in error without finding of facts and/or conclusions of law regarding all claims alleged by Plaintiff/Appellant against the HOA and HOA Trustee. The Court failed to exercise its equitable powers and perform equity in this case where the facts demand equity, yet the Court exercised the equitable remedy of tender. For the foregoing reasons, the Plaintiff/Appellant asserts that the Court abused its discretion and committed errors of law;

(2) The *Order* entered in this action on the 11th day of September, 2019 granted Timpa Trust's Motion for Summary Judgment and ordered the Clerk of the Court to issue a check in the amount of \$29,161.69 from the excess proceeds deposited with the Court on June 20, 2019, payable to "Koch & Scow LLC" as payment for the attorney fees and costs alleged to be due to the HOA Trustee pursuant to NRS 116.31164, and ordered the Clerk of Court to issue a check in the amount of \$1,139,703.36 from the excess proceeds payable to Todd Timpa and Stuart Timpa, successor co-trustees of the Timpa Trust and Bryan Naddafi and Travis Akin, their attorneys, as collection of the portion of HOA Excess Proceeds due and owing to Timpa Trust under NRS 116.31164. Plaintiff/Appellant asserts that the excess proceeds are payable to all subordinate liens of record determined as of the date of filing of the Notice of Delinquent Assessment Lien. The Appellant disputes the award of attorney fees and costs, payable to Koch & Scow LLC to the extent that it exceeds the amount in association with the interpleader; and

(3) The *Order* entered in this action on the 18th day of November, 2019, denied Plaintiff's Motion to Amend Complaint Pursuant to NRCP 15(b)(2) and 60(b), and incorporating the reasoning of the Supreme Court of Nevada's Decision in *Jessup*, and EDCR 2.30 to Set Aside/Rescind NRS 116 Foreclosure Sale, as the Court does not see the request as an appropriate approach, that there is a separate final order. Plaintiff filed a Motion for Reconsideration under NRCP 59(e) and 60(b) of (I) the Court's Summary Judgment Order of December 3, 2018 and (II) the Court's Order Concerning the Distribution of Excess Proceeds to amend the Findings of Fact in the December 8, 2019 Summary Judgment Order. The Court granted in part and denied in part the Plaintiff's/Appellant's Motion for Reconsideration to state that at the time of the December 8, 2019 Order, the Supreme Court of Nevada's March 2019 decision in *Bank of Am., N.A. v Thomas Jessup, LLC Series VII* had not yet been published and any such references regarding the unwinding of the foreclosure sale were not discussed or considered in the Summary Judgment Order of this case and to the extent that the determination in *Jessup* have any bearing to this case, it was not considered by the Court. Plaintiff asserts that the Court abused its discretion by not granting the Motion for Reconsideration.

The Appellant disputes the award of attorney fees and costs to Kock and Scow to the that it excess the amount in association with the interpleader

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

There are a number of such cases raising similar issues but appellant believes there are discrete facts that differentiate most of those from the instant appeal. Appellant is not aware of a pending appeal with the identical issues although there may be.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

- N/A
- Yes
- No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

- Reversal of well-settled Nevada precedent (identify the case(s))
- An issue arising under the United States and/or Nevada Constitutions
- A substantial issue of first impression
- An issue of public policy
- An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- A ballot question

Is so, explain

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the court of Appeals, identify the specific issue(s) or circumstances(s) that warrant retaining the case, and include an explanation of their importance or significance:

The matter does not fall into any of the categories in NRCP 17(a) or (b).

14. Trial. If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in the appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from:

September 11, 2019 and November 18, 2019.

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

Date written notice of entry of judgment or order was served:

September 11, 2019 and November 19, 2019.

Was service by:

- Delivery
- Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion and the date of filing.

- NRCP 50(b) Date of filing _____
- NRCP 52(b) Date of filing _____
- NRCP 59 Date of filing September 24, 2019

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion November 18, 2019

(c) Date written notice of entry of order resolving tolling motion was served

November 19, 2019.

Was Service by:

Delivery

Mail

19. Date notice of appeal filed: November 19, 2019

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other: NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

NRAP 3A(b)(1)

NRS 38.205

NRAP 3A(b)(2)

NRS 233B.150

NRAP 3A(b)(3)

NRS 703.376

Other (specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment or order.

Appellant is appealing from the District Court's Ordered entered on September 11, 2019, granting Timpa Trust U/T/D March 3, 1999's Motion for Summary Judgment.

Appellant is also appealing from the District Court's Order entered on November 18, 2019, denying in part Saticoy Bay LLC Series 34 Innisbrook's Motion for Reconsideration under NRCP 59(e) and 60(b) of (I) the Court's Summary Judgment Order of December 3, 2018, and (II) the Court's Order Concerning the Distribution of Excess Proceeds and Plaintiff's Motion to Amend Complaint Pursuant to NRCP 15(b)(2) and 60(b), the Supreme Court of Nevada's Decision in *Jessup*, and EDCR 2.30 to Set Aside/Rescind, Ex Parte Motion for Entry of an Order Shortening Time for Hearing on Plaintiff's Motion to Amend Complaint pursuant to NRCP

15(b)(2) and 60(b), the Supreme Court of Nevada's Decision in *Jessup*, and EDCR 2.30 to Set Aside/Rescind NRS 116 Foreclosure Sale.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiff/Counterdefendant: Saticoy Bay, LLC, Series 34 Innisbrook

Defendant: Thornburg Mortgage Securities Trust 2007-3, et al.

Defendant: Frank Timpa

Defendant: Madelaine Timpa

Defendant: Timpa Trust

Defendant: Spanish Trail Master Association

Defendant: Red Rock Financial Services, LLC

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in the appeal, *e.g.* formally dismissed, not served, or other:

N/A

23. Give a brief description (3 or 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Appellant sought (I) determination from the District Court, pursuant to NRS 40.010 that Plaintiff is the rightful owner of the Property and that Defendant have no right, title, interest or claim to the Property, (II) declaration from the District Court, pursuant to NRS 40.010, that title in the property is vested in Appellant free and clear of all liens and encumbrances that Defendants have no estate, right, title or interest in the Property and that Defendants are forever enjoined from asserting any estate, title, right interest or claim to the Property adverse to Appellant, (III) Appellant entitled to a Writ of Restitution and possession of the premises against defendants Frank and Madeline Timpa. Defendants did file an Answer and hearing was held on October 29, 2019 that dismissed Appellant's three (4) causes of actions against defendants.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

Yes

No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

N/A

(b) Specify the parties remaining below:

N/A

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

Yes

No

26. If you answered “No” to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3(b)).

Order is independently appealable under NRAP 3(b).

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, crossclaims
- and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

See attached:

Exhibit 1 - Third Amended Complaint

Exhibit 2 - Red Rock Financial Services' Answer to Thornburg Mortgage Securities Trust 2007-3 Counterclaim; and Red Rock Financial Services' Counterclaim for Interpleader (NRCP 22)

Exhibit 3 – Order Granting in Part and Denying in Part Spanish Trial Master Association's Motion to Dismiss Thornburg Mortgage Securities Trust 2007-3's Third Amended Counterclaims and Red Rock Financial Services Joinder

Exhibit 4 – Notice of Entry of Order Granting in Part and Denying in Part

Exhibit 5 – Thornburg Mortgage Securities Trust 2007-3's Motion for Reconsideration of Order Denying Summary Judgment

Exhibit 6 – Findings of Fact, Conclusions of Law and Order Granting Thornburg Mortgage Securities Trust 2007-3's Motion for Summary Judgment

Exhibit 7 – Notice of Entry of Findings of Fact, Conclusions of Law

Exhibit 8 – Madelaine Timpa and Timpa Trust's Verified Answer to Red Rock Financial Services' Counterclaim for Interpleader and Madelaine Timpa's Claim to Surplus Funds

Exhibit 9 – Plaintiff’s Motion for Reconsideration Under NRCP 59(e) and 60(b) of (I) The Court’s Summary Judgment Order of December 3, 2018 and The Court’s Order Concerning the Distribution of Excess Proceeds

Exhibit 10 – Order Granting

Exhibit 11 – Notice of Entry of Order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Saticoy Bay, LLC, Series 34 Innisbrook
Name of appellant

Roger P. Croteau Esq.
Name of counsel of record

12/23/2019
Date

/s/ Roger P. Croteau
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 24th day of December, 2019, I served a copy of this completed docketing statement upon all counsel of record:

By personally serving it upon him/her; or

By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Ariel E. Stern, Esq.
Melanie D. Morgan, Esq.
Scott R. Lachman, Esq.
Thera A. Cooper
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
*Attorneys for Thornburg Mortgage
Securities
Trust 2007-3*

Bryan Naddafi
Elena Nutenko
AVALON LEGAL GROUP LLC
9480 South Eastern Avenue, Suite 257
Las Vegas, Nevada 89123
*Co-counsel for Frank Timpa,
Madelanie Timpa and Timpa Trust*

Travis D. Akin
THE LAW OFFICE OF TRAVIS AKIN
8275 South Eastern Avenue, Suite 200
Las Vegas, Nevada 89123
*Attorneys for Frank Timpa,
Madelanie Timpa and Timpa Trust*

David R. Koch
Daniel G. Scow
Steven B. Scow
Brody R. Wight
KOCH & SCOW, LLC
11500 South Eastern Avenue, Suite 210
Henderson, Nevada 89052

Drew J. Starbuck
Donald H. Williams
Williams Starbuck
WILLIAMS & ASSOCIATES
612 South 10th Street
Las Vegas, Nevada 89101

Sean L. Anderson
Ryan D. Hastings
**LEACH KERN GRUCHOW
ANDERSON SONG**
2525 Box Canyon Drive
Las Vegas, Nevada 89128

Patrick N. Chapim
129 Cassia Way
Henderson, Nevada 89002

DATED this 24th day of December, 2019

Anna Gresl

Signature