

In the Supreme Court of the State of Nevada

MARC E. RADOW and KELLEY L. RADOW,
Husband and Wife,

Appellants,

vs.

U.S. BANK NATIONAL ASSOCIATION, as
trustee, successor in interest to
WACHOVIA BANK, NATIONAL ASSOCIATION,
as trustee for WELLS FARGO ASSET
SECURITIES CORPORATION, MORTGAGE
PASS-THROUGH CERTIFICATES, SERIES
2005-AR1,

Respondent.

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APPELLANTS' OPENING BRIEF

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NRAP 26.1 Disclosures

The undersigned counsel of record certifies that the following persons and entities described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the justices of this court may evaluate possible disqualification or recusal.

1. All parent corporations and publicly held companies owning 10 percent or more of the party's stock:

N/A

2. Name of all law firms whose attorneys have appeared for the party or amicus in this case (including proceedings in the district court or before an administrative agency) or are expected to appear in this court:

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Jurisdictional Statement

This is a direct appeal from the district court's final order disposing of the petition for mediation assistance, and the Court therefore has jurisdiction under NRAP 3A(b)(1) and FMR 24. The district court entered its order on March 10, 2020 (AA, Vol. 2, 278-286), and Respondent filed a notice of entry of order on March 16, 2020 (AA, Vol. 2, 287-304). Appellants filed their notice of appeal on April 13, 2020. AA, Vol. 2, 305-306.

Routing Statement

This is an appeal from a case arising from the Foreclosure Mediation Program, is therefore presumptively assigned to the Court of Appeals under NRAP 17(b)(15).

Statement of Issues Presented for Review

1. Did the district court err by concluding the Missing Assignment was invalid and therefore not a required document under the FMR's?
2. Should the district court have applied judicial estoppel to prevent Respondent from arguing that the Missing Assignment was invalid?
3. Did the district court err by concluding that, under *Einhorn v. BAC Home Loans Services, L.P.*, Appellants' possession of the unauthenticated,

unrecorded version of the Missing Assignment during the mediation excused Respondent's failure to produce a certified copy of the Missing Assignment?

4. Did the district court err by awarding affirmative relief to Respondent when Respondent filed its countermotion for relief after the deadline contained in FMR 20(2)?

Statement of the Case

Nature of the Case

This is a case arising from Nevada's Foreclosure Mediation Program. Appellants attended a foreclosure mediation with Respondent, but the parties did not resolve their issues. Respondent failed to provide certified copies of all assignments of the deed of trust, and the mediator found (as five prior mediators found) that failure to provide certified copies of all assignments precluded Respondent from receiving a foreclosure certificate.

Course of Proceedings

After the mediator filed her Mediator's Statement recommending sanctions against Respondent, Appellants moved the district court for appropriate relief, seeking sanctions against Respondent based on Respondent's failure to comply with the Foreclosure Mediation Rules. AA, Vol. 1, 26-57. Respondent opposed the motion, and it filed a countermotion two days after the deadline to seek relief under FMR 20(2). Appellants replied and opposed Respondent's countermotion. Finally, Respondent replied in support of its countermotion.

On March 10, 2020, the Court entered its order denying Appellants' motion and granting the affirmative relief requested by Respondent in its counter-motion. AA, Vol. 2, 278-286. Appellants appealed.

Statement of Facts

Nevada's Foreclosure Mediation Rules were enacted to provide for the orderly, timely, and cost-effective mediation of owner-occupied residential foreclosures. FMR 1(2). For over ten years, Appellants Marc E. Radow and Kelley L. Radow (the "Radows" or "Appellants") participated in numerous foreclosure mediations in an effort to save their family home after being victimized by the Great Recession.

Each time, Respondent failed to participate in the mediations in good faith. Each time, the Radows continued their efforts to negotiate a resolution, without seeking sanctions for Respondent's bad faith. Each time, Respondent recorded a new notice of default, and each time, the process started anew.

On July 16, 2019, Respondent recorded its latest Notice of Default. AA, Vol. 1, 2, ¶ 2 As a result, and in an effort to again try to resolve the issue and save their home, Marc E. Radow and Kelley L. Radow (the "Radows" or "Appellants") filed a petition for mediation assistance under NRS 107.086. AA, Vol. 1, 1-12. On November 25, 2019, the Radows and Respondent participated

in a foreclosure mediation under Nevada's Foreclosure Mediation Rules (the "FMR's"). AA, Vol. 1, 26-57. At the mediation, Respondent failed to provide a certified copy of a March 24, 2011 Assignment of the Deed of Trust (the "Missing Assignment"), and mediator Linda Linton recommended that a foreclosure certificate not issue, and that Respondent be sanctioned for its conduct. AA, Vol. 1, 33.

The November 25, 2019 was the sixth mediation between these parties, and the full history is provided below.

History

The Radows have attempted to negotiate in good faith with Respondent for over eight years. In each attempt, Respondent failed to comply with the FMR's by not providing all the required documentation and, in some instances, Respondent engaged in other bad faith actions and inactions. The details of the mediations reveal a pattern of misconduct by Respondent.

The First Mediation

The First Mediation was held on November 9, 2011. At that mediation, Respondent "failed to bring to the mediation each document required." AA, Vol. 1, 82-84. Mediator Liz Gonzales determined that "Lender failed to bring to the mediation each document required." AA, Vol. 1, 82. A foreclosure certificate was not issued, and the Radows did not petition for sanctions.

The Second Mediation

After Respondent failed to provide the required documents at the First Mediation, Respondent recorded a new Notice of Default. The Radows, hoping to negotiate a successful resolution with Respondent, again elected to participate in the Foreclosure Mediation Program.

The Radows and Respondent attended the Second Mediation on April 11, 2013. Again, Respondent failed to comply with the FMR's. Respondent "failed to demonstrate authority, or provide access to a person with authority, to negotiate a loan modification" and it "failed to participate in good faith." AA, Vol. 1, 90. Further, Respondent failed to provide a "certification with an original signature of each endorsement and/or assignment of the mortgage note, or judicial order pursuant to NRS 104.3309." *Id.*

In the mediator's Specific Recommendation for Sanctions, mediator David Hamilton, Esq. found that "whoever owns the Radows' note and deed of trust did not provide the proper documents and misrepresented who owned the note and deed of trust." AA, Vol. 1, 91. Mr. Hamilton continued:

At this Mediation, the representatives of the Beneficiary refused to negotiate. They attempted to excuse this refusal by claiming that they had not gotten [sic] all of the requested profit and loss statements for the Radows' Capital Management LLC. In an exchange of emails just before the Mediation, Radow pointed out why a P&L for 2013 could not be created and provided the 2012 P&L. In response the Lender stated [Radow] could bring the

underlying documents to the mediation to satisfy the request for the information about JAGR. However, at the Mediation, the production of the underlying documents was suddenly not satisfactory. The Lender refused to negotiate even though the Radows made an offer for a modification. The Lender's conduct of refusing to negotiate demonstrated bad faith.

Therefore, it is recommended that Wells Fargo Bank, N.A. and its attorneys, Tiffany and Bosco, and Haley Abel be sanctioned \$50,000.

Id. (emphasis added). Mr. Hamilton provided a more extensive narrative of Respondent's bad faith as an attachment to his mediation statement. AA, Vol. 1, 95-99.

Again, hoping to eventually work out a compromise with Respondent, the Radows did not petition for judicial review to seek the recommended sanctions.

The Third Mediation

Again, Respondent filed a new Notice of Default, and again, the Radows elected to participate in mediation. The Third Mediation was held on January 30, 2014, and again, Respondent failed to provide "A certification with an original signature of each assignment of the deed of trust (DOT), or judicial order pursuant to NRS 104.3309." AA, Vol. 1, 109. Respondent also "failed to provide homeowner with a certified copy of the limited power of attorney ten days before the mediation as required by FMP Rule 11(7)(c)." AA, Vol. 1, 110.

Mediator Wayne Chimarusti, Esq. recommended that a foreclosure certificate should not issue due to Respondent's non-compliance with the FMR's. *Id.* Again, the Radows did not petition for sanctions.

The Fourth Mediation

After Respondent recorded a new Notice of Default, the Radows elected to participate in a fourth foreclosure mediation. This Fourth Mediation occurred on October 29, 2014 with mediator Stephen Ramos. Yet again, Respondent failed to provide "A certification with an original signature of each assignment of the deed of trust (DOT), or judicial order pursuant to NRS 104.3309." AA, Vol. 1, 125.

After this fourth attempt, Respondent petitioned for judicial review seeking an order allowing Respondent to foreclose. *See* Case No. CV14-02572 (2nd Judicial Dist. Court). Judge Elliot Sattler ordered a hearing to consider the parties' arguments, but Respondent failed to appear. Judge Sattler denied Respondent's petition (AA, Vol. 1, 134-137) and subsequent motion to set aside order / motion for reconsideration (AA, Vol. 1, 139-145).

Again, the Radows did not move for sanctions, again hoping that something could be resolved with Respondent.

The Fifth Mediation

Respondent again recorded a new Notice of Default, and the Radows elected mediation. The Fifth Mediation occurred on November 23, 2015.

At this mediation, Respondent again failed to produce a certified copy of the Missing Assignment. AA, Vol. 1, 152. This document had previously been presented as evidence by Respondent in the United States Bankruptcy Court, Case No. 10-52176-gwz, *In re: Marc Radow*, in Respondent's successful attempt to lift the automatic stay to allow Respondent to foreclose on the Radows' home. AA, Vol. 1, 165; AA, Vol. 1, 77, ¶¶ 5-7.

The mediator, Gayle Holderer, found that Respondent complied with the FMR's, even though Respondent failed to produce a certified copy of the Missing Assignment. AA, Vol. 1, 152. The Radows petitioned for judicial review, participated in a settlement conference with Judge Barry Breslow. The parties failed to reach a resolution, but the Radows agreed to dismiss the petition in exchange for Respondent's withdrawal of the Notice of Default. AA, Vol. 1, 77-78, ¶ 10.

The Sixth Mediation

After Respondent filed a new Notice of Default, the Radows petitioned for mediation under the new version of the FMR's. Prior to the mediation, Respondent required numerous financial documents from the Radows. AA, Vol. 1, 78, ¶ 11. The Radows questioned the need for these documents, as

Respondent had noted during prior mediations that Respondent was not able to modify the loan due to investor restrictions (this ‘investor’ was never present at any of the previous mediations). *Id.* Respondent nonetheless demanded production of financial documents, which the Radows provided. *Id.* Responding to the Radows’ attorney’s questions regarding the need for updated financials, counsel for Respondent wrote:

These documents are not pointless or an exercise in futility, my client cannot determine what modification programs are even available without that information, not to mention that the rules of the foreclosure program expressly provide for the same and require that they be provided. My client was requesting that information in order to complete a modification review as part of their good faith participation in this process; ...

AA, Vol. 1, 184-185.¹

Despite Respondent’s attorney’s email contending financials were needed, Respondent, at the mediation, admitted that the Radows could never be approved for any loan modification, no matter what the Radows’ financial

¹ The FMR’s require the borrower to produce documents if “the beneficiary ... indicates that documents are required to determine eligibility for a loan modification, short sale, or other alternative to foreclosure ...” FMR 13(2). There is no requirement that the lender demand certain documents. In other words, the lender should, in good faith, demand production of documents the lender actually needs, rather than demanding all financials and then, at the mediation, claim that no matter the borrower’s financial position, there are no programs available based on the length of time between the original default and the mediation.

documents showed. AA, Vol. 1, 78, ¶ 12. In other words, the Radows' document production was an exercise in futility.

Like the prior five mediations, Respondent failed to provide a certified copy (or any copy) of the Missing Assignment. AA, Vol. 1, 173. Respondent claimed a lack of knowledge of the assignment, and argued that because it was not recorded, it served no purpose. AA, Vol. 1, 78-79, ¶ 14. Yet, Respondent used the Missing Assignment years earlier to obtain a lift of the automatic stay in Marc Radow's Bankruptcy proceedings. AA, Vol. 1, 200-202. Respondent's claimed lack of knowledge of the Missing Assignment is contradicted by Respondent's own filing in Marc Radow's bankruptcy case.

Mediator Linda Linton recognized Respondent's failure to provide a required document, and she recommended that Respondent not receive a foreclosure certificate, and that Respondent should be sanctioned. AA, Vol. 1, 174 (last paragraph). The Radows then timely moved the Court for appropriate relief under FMR 20(2). Respondent opposed the motion, and filed a countermotion for relief, but Respondent's request for relief was failed after the 10-day deadline in FMR 20(2). AA, Vol. 2, 203-213.

The district court denied the Radows' Motion and granted relief to Respondent by ordering that a foreclosure certificate issue. AA, Vol. 2, 278-286.

Standard of Review

In reviewing a district court order granting or denying judicial review in an FMP matter, the Court gives deference to a district court's factual determinations. *Pascua v. Bayview Loan Servicing, LLC*, 135 Nev. 29, 31, 434 P.3d 287, 289 (2019). But, the Court examines the district court's legal determinations de novo. *Id.* The Court reviews the district court's decision on the imposition of sanctions under an abuse of discretion standard. *Pasillas v. HSBC Bank USA*, 127 Nev. 462, 468, 255 P.3d 1281, 1286 (2011). Finally, the application of judicial estoppel is a question of law which the Court reviews de novo. *Marcuse v. Del Webb Communities, Inc.*, 123 Nev. 278, 287, 163 P3d 462, 468 (2007).

Summary of the Argument

The main issue in this appeal is whether the district court erred by finding that Respondent complied with the Foreclosure Mediation Rules' document production requirements. The district court erred by determining, without any analysis, that the Missing Assignment was invalid, and therefore did not need to be produced by Respondent. The district court further erred by failing to apply judicial estoppel to preclude Respondent from making the argument that the Missing Assignment was invalid.

The district court erred by determining that even if the Missing Assignment was valid, *Einhorn v. BAC Home Loans Servicing, LP* excused Respondent's failure. The district court failed to recognize that the Missing Assignment was never recorded (in contrast with *Einhorn*), so it did not have a presumption of authenticity, and Respondent should have produced a certified copy in compliance with the rules.

Finally, the district court erred by awarding affirmative relief to Respondent, even though Respondent filed its motion after the deadline in FMR 20.

Argument

I. The district court erred by determining that the missing assignment was invalid.

A. Introduction and Document Production Requirements

Under the Foreclosure Mediation Rules (the "FMR's"), the beneficiary of a deed of trust must produce before and at the mediation, the original or certified copy of the deed of trust, and a certified copy of each assignment of the deed of trust. FMR 13(7)(a) & (b); NRS 107.086(5). If an original is not produced, the certified copy must include a notarized statement under oath that the beneficiary is in actual possession of the original document, and that the copy is a true and correct copy of the original. FMR 13(8)(a).

If the beneficiary does not participate in the mediation in good faith or does not bring to the mediation each document required by NRS 107.086(5), the mediator shall prepare and submit to the district court a recommendation concerning the imposition of sanctions against the beneficiary. NRS 107.086(6). The district court may issue an order imposing such sanctions the district court deems appropriate. *Id.*

Here, Respondent failed to provide an original or certified copy of the Missing Assignment of the deed of trust. AA, Vol. 1, 32-33. The mediator determined that Respondent's failure to produce the assignment violated the FMR's, and she recommended that a foreclosure certificate not issue, and that Respondent be sanctioned for the violation. *Id.*

B. The missing assignment is not a "rogue" or "invalid" assignment.

At the district court, Respondent did not dispute the existence of the Missing Assignment, and it did not dispute that it used the Missing Assignment in the Bankruptcy Court to justify a lift-stay motion. *See generally*, AA, Vol. 2, 203-212. Instead, Respondent argued that production of the Missing Assignment was not required, because Respondent contended the Missing Assignment was invalid. AA, Vol. 2, 205-206. It appears Respondent

based its contention on the fact the Missing Assignment contained a misspelled word and was not recorded. AA, Vol. 2, 205.

First, whether the assignment was recorded or not has no bearing on whether it is a valid assignment. Prior to October 1, 2011, an assignment of a deed of trust did not require recordation for it to be valid. The 2011 Legislature, in AB 284, replaced the word “may” with “must” in NRS 106.210, and therefore any assignment after October 1, 2011 must be recorded to be valid. But there was no such requirement at the time the missing assignment was executed.

Second, Respondent provided no analysis as to why a misspelling of the word “securities” would render the assignment invalid. In fact, Respondent, at the district court, merely concluded the assignment was invalid, without providing any legal authority to support its conclusion. While Respondent did subsequently record another assignment, the subsequent recordation was not done to correct the error, as the correction was hand-written. If Respondent intended to record a corrected assignment, it would have made the correction in the typed document. This fact raises questions as to the original assignment, the purpose of replacement document, and whether either of them is authentic.

In its order, the district court merely assumed the Missing Assignment was invalid. The district court's order contains no analysis as to how the district court reached that conclusion. *See generally*, AA, Vol. 2, 278-285.

C. The district court erred by not applying judicial estoppel to bar Respondent from claiming the missing assignment was invalid.

Even if the district court's conclusion that the Missing Assignment is invalid is correct, the district court should have applied judicial estoppel, as Respondent successfully used the Missing Assignment in a previous proceeding.

In 2010, Marc E. Radow filed a bankruptcy petition in the United States Bankruptcy Court, District of Nevada, as Case No. 10-52176-gwz. In a Motion to Lift the Automatic Stay, Respondent used the Missing Assignment to prove it had the right to foreclose. AA, Vol. 1, 77, ¶¶ 5-6. Respondent was successful in this endeavor, in that the Bankruptcy Court lifted the stay to enable Respondent to foreclose. AA, Vol. 1, 200-201.

The elements of judicial estoppel are: (1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party successful in asserting the first position; (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake. *Marcuse v.*

Del Webb Communities, Inc., 123 Nev. 278, 287, 163 P.3d 462, 468-69 (2007).

“The central purpose of judicial estoppel is to guard the judiciary’s integrity, and thus a court may invoke the doctrine at its own discretion.” *Id.*

Respondent has taken two positions: (1) Respondent relied upon the Missing Assignment to persuade the Bankruptcy Court to lift the automatic stay and (2) at the district court, Respondent claimed the missing assignment “did not validly assign any interest since it was a void document that did not actually transfer any interest in the Deed of Trust ...” AA, Vol. 2, 206 at ll. 16-17. These positions, both taken in judicial proceedings, are totally inconsistent – valid assignment v. invalid assignment. Respondent’s first position – valid assignment – was successful, in that the Bankruptcy Court lifted the automatic stay. Respondent has not made any argument that the first position was taken as a result of ignorance, fraud, or mistake.

The district court erred by summarily dismissing the Radows’ argument on judicial estoppel. The district court wrote, “Moreover, any allegations by Petitioners that the [Missing Assignment] was presented at a bankruptcy proceeding, should have been addressed with the Bankruptcy Court.” AA, Vol. 2, 284. This statement ignores the reality of the situation. The Radows had no knowledge whether the Missing Assignment was invalid at the time, so there was no reason to raise the issue with the Bankruptcy Court. Further, with

judicial estoppel, the point is to discourage parties from benefitting from a position in one venue, and then changing position in another and benefitting from the changed position, as the central purpose of judicial estoppel is to guard the judiciary's integrity. *Marcuse*, 123 Nev. at 287, 163 P.3d at 469.

II. The district court erred by finding that the missing assignment did not need to be produced.

After finding that the missing assignment was “invalid” and therefore did not need to be produced, the district court, relying on *Einhorn v. BAC Home Loans Servicing, LP*, 128 Nev. 689, 290 P.3d 249 (2012), determined that even if the Missing Assignment was valid, Respondent did not need to produce it because Appellants brought a copy of it to the mediation. AA, Vol. 2, 283-284. This finding represents an incorrect reading of the holding in *Einhorn*.

In *Einhorn*, the trust deed beneficiary failed to provide a certified copy of a **recorded** assignment that was necessary to establish the lender as the beneficiary of the deed of trust. *Einhorn*, 128 Nev. at 693, 290 P.3d at 252. However, the borrower's attorney provided a copy of the recorded assignment from the county recorder's records. *Id.* at 697, 254. The Court found that because the borrower's attorney obtained the document from the county recorder's office, the recorded document was sufficient to authenticate the writing. *Id.* The Court also held that because there was a notary

acknowledgement on the assignment, the assignment carried “a presumption of authenticity.” *Id.*

This case is different than *Einhorn*. Here, the missing assignment was never recorded, so Respondent cannot rely on the recording to authenticate the document. Instead, it was presented to the Bankruptcy Court on March 29, 2011 as part of Respondent’s successful attempt to lift the automatic stay in Marc Radow’s bankruptcy proceedings. While the missing assignment has a notary acknowledgement, there is no indication that the copy is authentic in any way, or that it is the only missing assignment of the subject deed of trust.

At the foreclosure mediation, Respondent’s attorney and representative claimed to have no knowledge of the missing assignment, and further claimed that it was irrelevant because it was not recorded. AA, Vol. 1, 78-79, ¶ 14.

This raises serious questions about the correct beneficiary of the deed of trust: Are there other assignments out there that alter the chain of title between the time of the execution of the Missing Assignment on March 24, 2011 and the July 28, 2011 assignment (recorded July 24, 2012)? If there were no other assignments in that period of time, what was the purpose of creating another one that purportedly does the same thing as the Missing Assignment?

Further, Respondent's attorney's claim of lack of knowledge of the Missing Assignment is incredible. The existence of the Missing Assignment, and the failure to provide it, were subjects of the prior mediations where Respondent's prior attorney argued the Missing Assignment was a 'rogue' document. This newly-claimed lack of knowledge raises questions as to the truthfulness of Respondent in terms of the assignments that may be in existence. This underscores Respondent's pattern of misconduct.

III. Because Respondent failed to timely file its Motion for Relief, the district court erred by awarding affirmative relief to Respondent.

In response to Appellants' Motion for Relief under FMR 20(2), Respondents filed a "Countermotion for Appropriate Relief." AA, Vol. 2, 203-211. But Respondents filed the Countermotion late, and it should not have been considered.

The FMR's require any request for relief to be filed within 10 days of submission of the mediator's statement. FMR 20(2). The mediator filed her statement on December 5, 2019, but it was not served until the morning of December 6, 2019. AA, Vol. 2, 26-57. Therefore, any request for relief was due on December 16, 2019, the same day Appellants filed their Motion for Relief. FMR 20(2).

Respondents' "Counter-motion" was not filed until December 18, 2019. AA, Vol. 2, 203-211. There is no evidence in the record that Respondents sought an extension from Appellants or from the district court.

Neither the Nevada Supreme Court nor the Court of Appeals has addressed whether the ten-day requirement is jurisdictional, but the Supreme Court has analyzed deadlines under a previous version of the FMR's.

Under the prior iteration of the FMR's, a homeowner merely needed to request mediation rather than filing a petition in the district court. If the homeowner or the trust deed beneficiary were unsatisfied with the result, either could file a petition for judicial review within 30 days after receiving the Mediator's Statement. *Nationstar Mortg. v. Rodriguez*, 132 Nev. 559, 561, 375 P.3d 1027, 1028 (2016). The Nationstar Court held that the 30-day deadline was jurisdictional, citing with approval to 2 Am. Jur. 2d *Administrative Law* § 507 (2014) ("The filing of a petition for judicial review of an administrative decision within the time permitted by statute is mandatory and jurisdictional and the failure to seek judicial review of an administrative ruling within the time prescribed by statute makes such an appeal ineffective for any purpose." (footnotes omitted)). *Id.* at 562, 1029.

Under the current FMR's, a homeowner seeking a foreclosure mediation must file a petition with the district court. FMR 8(3)(b). The district court

then assigns a mediator. After completion of the mediation and the filing of the mediator's statement, either party may move for appropriate relief within 10 days of submission of the mediator's statement. FMR 20(2).

The motion for appropriate relief is akin to a petition for judicial review under the prior rules. Both seek judicial review of the mediator's findings. Therefore, timely filing of a motion for appropriate relief should be jurisdictional. Because Respondent failed to move for appropriate relief within ten days, the district court should have denied its request to issue a foreclosure certificate.

Conclusion

For over ten years, the Radows have tried to save their family home from foreclosure. Because they were in default, they could not simply restart their monthly payments without Respondent's consent. The Radows lived in a state of constant uncertainty, and they were not able to sell their home (they owed more than it was worth), and they were not able to refinance. They could not make improvements to their home as the threat of foreclosure loomed. Nevertheless, they continued to participate in the foreclosure mediation process in good faith, only to be met with bad faith conduct by Respondent. Respondent's bad faith conduct is the reason this process has

lasted for so many years, effectively tying the Radows' hands and precluding them from moving on.

The Radows participated in six mediations, and each time, the Radows participated in good faith. Each time, Respondent did not. The Radows respectfully request this Court reverse the district court's order dismissing the petition and issuing a foreclosure certificate to Respondent.

Dated this 21st day of June, 2021

A handwritten signature in black ink, appearing to read 'T. Chrissinger', is written over a horizontal line.

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NRAP 28.2 Attorneys' Certificate

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRSAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[X] This brief has been prepared in a proportionally spaced typeface using Microsoft Word for Mac in Cambria 14 point.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP32(a)(7)(C), it is either:

[X] Proportionally spaced, has a typeface of 14 points or more, and contains less than 6,000 words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the

accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 21st day of June, 2021



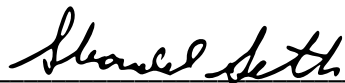
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Certificate of Service

I hereby certify that I am an employee of Hoy Chrissinger Kimmel Vallas, and that on this date the foregoing Answering Brief of Respondents was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the service list.

Dated this 21st day of June, 2021



Shondel Seth