IN THE SUPREME COURT OF THE STATE OF NEVADA

SFR INVESTMENTS POOL 1, LLC, a Nevada Limited Liability Company, Appellants, vs. NATIONSTAR MORTGAGE, LLC, a Delaware Limited Liability Company Respondent.	Case No. 82078	Electronically Filed Sep 27 2021 06:46 p.m. Elizabeth A. Brown Clerk of Supreme Court

APPEAL

From the Eighth Judicial District Court, Clark County,
The Honorable Mary Kay Holthus, District Court Judge
Case No. A-13-684715-C

RESPONDENT'S SUPPLEMENTAL APPENDIX

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Dated this 27th day of September, 2021.

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CERTIFICATE OF SERVICE

I certify that I electronically filed on September 27, 2021, the foregoing **RESPONDENT'S SUPPLEMENTAL APPENDIX** 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/ Carla Llarena
An employee of AKERMAN LLP

FILED

AUG 26 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NATIONSTAR MORTGAGE LLC, Plaintiff-Appellee, v. SATICOY BAY LLC, SERIES 9229 MILLIKAN AVENUE; MILLIKAN AVENUE TRUST, Defendants-Appellants, and INDEPENDENCE II HOMEOWNERS' ASSOCIATION, Defendant.	No. 19-17043 D.C. No. 2:15-cv-02151-JAD-NJK District of Nevada, Las Vegas ORDER

Before: PAEZ and VANDYKE, Circuit Judges, and GLEASON,* District Judge.

Appellants challenged the district court's grant of summary judgment in favor of Appellee (Nationstar) based on the court's conclusion that the Federal Foreclosure Bar, 12 U.S.C. § 4617(j)(3), prevented the extinguishment of the first deed of trust owned by the Federal National Mortgage Association (Fannie Mae) on the subject property. Saticoy Bay LLC, Series 9229 Millikan Avenue (Saticoy) raised at least

* The Honorable Sharon L. Gleason, United States District Judge for the District of Alaska, sitting by designation.

a dozen arguments as to why it acquired free and clear title to the property, of which we rejected in a published opinion as either squarely foreclosed by on-point precedent or as wholly without merit. *See generally Nationstar Mortg. LLC v. Saticoy Bay LLC, Series 9229 Millikan Ave.*, 996 F.3d 950 (9th Cir. 2021). Simultaneous with the filing of the opinion, we sua sponte issued an order to show cause why Saticoy and its counsel, Michael F. Bohn, should not be sanctioned under Federal Rule of Appellate Procedure 38 for these practices. Order at 2–3 (May 5, 2021), *Nationstar Mortg. LLC v. Saticoy Bay LLC, Series 9229 Millikan Ave.*, 996 F.3d 950 (9th Cir. 2021) (No. 19-17043), ECF No. 55. We invited the parties to brief the issue and have heard from both sides.

Saticoy continues to press arguments that are foreclosed by precedent or attempts to distinguish on-point cases by asserting that such cases did not account for a particular detail insignificant to their analysis. For example, Saticoy still contends that Nev. Rev. Stat. § 111.325 "expressly provides that [Fannie Mae's] unrecorded conveyance was 'void' as to Saticoy Bay because that writing was not 'first duly recorded.'" It espouses this view, even though the Nevada Supreme Court has explicitly rejected the argument that Nev. Rev. Stat. § 111.325 required Freddie Mac to record its interest in a home loan to establish that interest in the context of a Federal Foreclosure Bar case. *See Daisy Tr. v. Wells Fargo Bank, N.A.*, 445 P.3d 846, 849 (Nev. 2019) (en banc). In fact, the court clearly stated that "we are not

persuaded that … [Nev. Rev. Stat. §] 111.325 is implicated" in that situation. *Id*. In response, Saticoy issues a blanket assertion that *Daisy Trust* is "inconsistent with controlling Nevada law," i.e., the plain language of the statute. Although we recognize that parties may need to make arguments foreclosed by precedent, they do so by acknowledging the relevant precedent and either arguing that such precedent should be overturned or by identifying specific factors or analysis central to the reasoning and ultimate conclusion of the precedent that do not apply to the present case. Saticoy does not do this.

This is not an isolated problem in its response. As a second example, Saticoy argues that *Daisy Trust* does not foreclose its argument that Nev. Rev. Stat. § 111.315 requires Fannie Mae to record its interest in the deed of trust because none of the briefing—nor the Nevada Supreme Court's decision—in *Daisy Trust* cites to that specific statute. But the court in *Daisy Trust* relied on the analysis that "the deed of trust did not have to be … '*conveyed*' to Freddie Mac in order for Freddie Mac to own the secured loan" to conclude that Nev. Rev. Stat. § 111.325—which governs "[e]very conveyance of real property"—was not implicated. 445 P.3d at 849 (emphasis added). Saticoy fails to explain, because it cannot, how this rationale would not apply with equal force to Nev. Rev. Stat. § 111.315, which likewise governs "[e]very conveyance of real property." As a result, Saticoy raises a meritless challenge to our conclusion that Nev. Rev. Stat. § 111.315 is included in the Nevada

recording statutes generally referenced in *Daisy Trust* when the Nevada Supreme Court determined "that Nevada's recording statutes did not require Freddie Mac to publicly record its ownership interest as a prerequisite for establishing that interest." 445 P.3d at 849. Notably, Saticoy did not mention *Daisy Trust* in its Opening Brief in this appeal.

These are just a few examples of Saticoy's arguments that are "in direct conflict with 'firmly established rules of law for which there is no arguably reasonable expectation of reversal or favorable modification.'" *United States v. Nelson* (*In re Becraft*), 885 F.2d 547, 549 (9th Cir. 1989) (citation omitted).

In its response, Saticoy also ignores a number of arguments that it raised in the Opening Brief, including its contentions that Nationstar lacked authority to represent Fannie Mae in this litigation, and that Nationstar did not timely raise the Federal Foreclosure Bar under the statute of limitations. Based on the arguments Saticoy *did* make, we continue to conclude that its arguments are either squarely foreclosed by on-point Ninth Circuit and Nevada Supreme Court precedent or are wholly without merit, and the outcome in this appeal was thus obvious, making this appeal frivolous. *See Blixseth v. Yellowstone Mountain Club, LLC*, 796 F.3d 1004, 1007 (9th Cir. 2015) ("An appeal is frivolous when the result is obvious or the appellant's arguments are wholly without merit." (citation and internal quotation marks omitted)).

We "have discretion to award damages, attorney's fees, and single or double costs as a sanction for bringing a frivolous appeal." *Glanzman v. Uniroyal, Inc.*, 892 F.2d 58, 61 (9th Cir. 1989) (citing Fed. R. App. P. 38). Saticoy has a strong financial incentive to file appeals, even if those appeals are frivolous, because it continues to reap the economic benefit of holding title to the properties during prolonged litigation. Therefore, an appropriate sanction under Rule 38 to disincentivize Saticoy from its "alarming willingness to [waste] appellate court resources" and the resources of the district courts is warranted. *In re Becraft*, 885 F.2d at 549. Saticoy's actions have made clear "the necessity of sending a message to [Saticoy] that frivolous arguments will no longer be tolerated." *Id.* Accordingly, we order Saticoy and Bohn each to pay $500 in damages to the Clerk of Court within 30 days of this order, as reimbursement for the costs incurred during this frivolous appeal. *See Blixseth*, 796 F.3d at 1009.

We also order Saticoy and Bohn to pay to Nationstar the reasonable attorneys' fees it incurred in defending against this frivolous appeal. *See Wood v. McEwen*, 644 F.2d 797, 802 (9th Cir. 1981) (per curiam) ("A penalty is justified in favor of those litigants who have been needlessly put to trouble and expense."). The determination of an appropriate amount of fees as sanctions under Rule 38 is referred to Appellate Commissioner Lisa B. Fitzgerald, who has the authority to conduct

whatever proceedings she deems appropriate and necessary and to enter an order awarding fees subject to reconsideration by the panel. *See* 9th Cir. R. 39-1.9.

IT IS SO ORDERED.