

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

OCT 18 2021

INDICATE FULL CAPTION:

TYRONE KEITH ARMSTRONG

No. 83545

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

vs.

U.S. BANK NATIONAL ASSOCIATION, as
Trustee for Structured Asset Securities Corporation
Mortgage Pass-Through Certificates, Series
2007-B23;
OCWEN LOAN SERVICING LLC;
PHH MORTGAGE CORPORATION;
WESTERN PROGRESSIVE-NEVADA INC. 

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

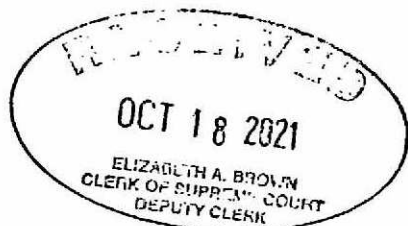
Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for 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.



Revised December 2015

21-29950

1. Judicial District Eighth Department 18
County Clark Judge Honorable Mary K. Holthus
District Ct. Case No. A-19-796941-C

2. Attorney filing this docketing statement:

Attorney Pro Se Telephone (702) 491-8426
Firm N/A
Address 3713 Brentcove Drive
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Email: performanceoneautomotive@gmail.com
Client(s) Tyrone Keith Armstrong

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 Kevin M. Sutehall, Esq. Telephone (702) 699-5925
Firm Fox Rothschild LLP
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Las Vegas, Nevada 89135
Email: KSutehall@foxrothschild.com
Client(s) U.S. Bank, N.A., as Trustee for Structured Asset Securities Corporation Mortgage-

Attorney Jeffrey S. Allison, Esq. Telephone (949) 679-1111
Firm Houser LLP
Address 6671 S. Las Vegas Boulevard
Las Vegas, Nevada 89119
Email: jallison@houser-law.com
Client(s) Ocwen Loan Servicing LLC; PHH Mortgage Corporation; Western Progressive-Nev

(List additional counsel on separate sheet if necessary)

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

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

5. Does this appeal raise 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:

In Re: BNC Mortgage LLC, Lehman Brothers Holdings Inc.;
Case No: 08-13555 (SCC);
United States Bankruptcy Court Southern District of New York;
Petition to lift the bankruptcy automatic stay;
Date of disposition: January 21, 2020.

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

This appeal challenges an Order dismissing a complaint for quiet title based upon the statute of limitations. Appellant purchased real property in 1998. Appellant refinanced his loan in 2004 with Bank of America. On January 25, 2007, a cloud originated on Appellant's title from BNC Mortgage, Inc. BNC was acquired by Lehman Brothers Holdings Inc. and filed for bankruptcy in 2008. The lien was assigned to U.S. Bank Trust. From May 06, 2010 to June 13, 2019, U.S. Bank Trust commenced three separate non-judicial foreclosure proceedings against the subject property. In 2016, Bank of America returned the original note and deed of trust to Plaintiff along with a payoff letter and lien release. When Appellees recorded a notice of trustee sale on June 13, 2019, Appellant responded with a complaint for quiet title. The district court found that the statute of limitations was triggered on May 2010 due to averments made in Appellant's complaint regarding emotional, physical and financial harm in connection with the initial notice of default. No foreclosure sale has occurred, no transfer of title has occurred, no unlawful detainer action has occurred and Appellant continues to occupy the property.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Appellant requests this Court to determine whether the averments made in his complaint(s) regarding emotional, physical and financial harm related to the initial notice of default recorded on May 06, 2010 are sufficient as a matter of law to confer "disturbed possession" consistent with this Court's holding in *Berberich v. Bank of America* and the factors set forth in *Salazar v. Thomas*, as cited by the Court.

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:

None.

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

If so, explain: Within the holding of *Berberich v. Bank of America*, this Court cited to a California authority, *Salazar v. Thomas*, regarding "disturbed possession" as an alternative basis to trigger the 5 year statute of limitations of NRS 11.080. The *Salazar* case provided three specific factors in determining disturbed possession. The question before the Court is whether the correct analysis was applied when the lower court found that Appellant's statute of limitations on his quiet title claim began on May 06, 2010. This issue is a matter of public importance so that the statute of limitations does not work as a statute to forfeit a homeowner's property rights.

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 circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter should be retained by the Supreme Court pursuant to NRAP 17(a)(11)(12). The challenged Order is not consistent with the published decision in *Berberich v. Bank of Am., N.A.*, 460 P.3d 440, 441, 2020 Nev. LEXIS 10, *1, 136 Nev. Adv. Rep. 10 (Nev. March 26, 2020); particularly the factors of "disturbed possession" referenced in *Berberich* (see *Salazar v. Thomas*, 236 Cal. App. 4th 467, 469, 186 Cal. Rptr. 3d 689, 690, 2015 Cal. App. LEXIS 369, *1 (Cal. App. 5th Dist. May 1, 2015)).

This is a matter of first impression and raises a question of statewide importance so that the statute of limitations of NRS 11.080 does not work to be a statute that forfeits property rights of homeowners that are not in disturbed possession of real property.

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

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 this appeal? If so, which Justice?
None.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Aug 25, 2021

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

17. Date written notice of entry of judgment or order was served Aug 26, 2021

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 _____

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 _____

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

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed September 15, 2021

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)(1)

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:
The district court dismissed my claims with prejudice due to the statute of limitations. A final judgment was entered. There is nothing left to do but for Appellees to enforce the judgment.

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

(a) Parties:

U.S. Bank National Association, as Trustee for Structured Asset Securities
Corporation Mortgage Pass-Through Certificates, Series 2007-BC3;
Ocwen Loan Servicing LLC;
PHH Mortgage Corporation; and
Western Progressive-Nevada Inc.

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

23. Give a brief description (3 to 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: Tyrone Keith Armstrong
Quiet title
Dismissed with prejudice on August 25, 2021

Appellee: U.S. Bank Trust
Unjust enrichment, equitable mortgage, and equitable subrogation
Granted on August 25, 2021

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:

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ 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 3A(b)):

The district court dismissed my quiet title claim with prejudice related to a mortgage lien, due to the statute of limitations, and it is a final judgment. The Order is independently appealable under NRAP 3A(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, cross-claims 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

No attachments
Pro Se appeal
Record transmitted on 10/08/2021

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.

Tyrone Keith Armstrong
Name of appellant

Pro Se
Name of counsel of record

October 14, 2021
Date

//s//Tyrone Keith Armstrong
Signature of counsel of record

State of Nevada, County of Clark
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 14 day of October, 2021, 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.)

HOUSER, LLP
Jeffrey S. Allison, Esq.
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Bldg. D, Ste. 210
Las Vegas, Nevada 89119

FOX ROTHSCHILD, LLP
Kevin M. Sutehall, Esq.
1980 Festival Plaza Drive Ste. 700
Las Vegas, Nevada 89135

Dated this 14 day of October, 2021

//s//Tyrone Keith Armstrong
Signature