IN THE SUPREME COURT OF THE STATE OF NEVADA

TYRONE KEITH ARMSTRONG,

Appellant,

vs.

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; WESTERN PROGRESSIVE-NEVADA, INC.;

Respondents.

Supreme Court Case No.: 83545

[District Court Case No.: A-19-796941-C]

RESPONDENT'S ANSWERING BRIEF
(RESPONDENT U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR STRUCTURED ASSET SECURITIES CORPORATION MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-BC3)

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NRAP 26.1 DISCLOSURE

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

Respondent U.S. Bank National Association, as Trustee for Structured Asset Securities Corporation Mortgage Pass-Through Certificates, Series 2007-BC3 ("U.S. Bank Trust") certifies that it is a national banking association and a wholly-owned subsidiary of U.S. Bancorp. U.S. Bancorp is a publicly held company. It has no parent company, and no publicly held company owns 10% or more of its shares.

U.S. Bank Trust was initially represented in the district court by Jeffrey S. Allison of Houser & Allison, APC (later known as Houser LLP). U.S. Bank Trust has been represented by Mark J. Connot, Esquire, and Kevin M. Sutehall, Esquire, of Fox Rothschild LLP since September 27, 2019, when a substitution of counsel was filed with the district court.

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JURISDICTIONAL AND ROUTING STATEMENTS

For purposes of the appeal and to expedite a decision, Respondent U.S. Bank Trust does not dispute that jurisdiction is proper in this Court.

STATEMENT OF THE ISSUE

When a property owner admits that a dispute with a lender interferes with his use of his property, and he takes action in response to that interference, is the limitations period of NRS 11.080 triggered such that the owner in possession is required to bring his claim for quiet title within five years?

STATEMENT OF THE CASE

Appellant Tyrone Armstrong, proceeding pro se, filed his verified complaint on June 18, 2019. Joint Appendix[1], Vol. 1, at R000002-R000021, ROA 1:2-21. He then filed an amended complaint in 2021. Joint Appendix, Vol. 1, at R000103-R000121, ROA 14:2875-2893. In both, Mr. Armstrong challenged the validity of certain 2007 loan documents, claiming them to be fraudulent and unenforceable.

U.S. Bank Trust answered the pleadings, asserted affirmative defenses (including statutes of limitations), and in response to the amended complaint alleged counterclaims for unjust enrichment, equitable mortgage, and equitable subrogation.

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[1] U.S. Bank Trust and Respondents PHH Mortgage Corporation; PHH Mortgage Corporation, successor to Ocwen Loan Servicing, LLC, erroneously named; and Western Progressive-Nevada Inc. are submitting Respondents' Joint Appendix (hereafter the "Joint Appendix") contemporaneously with this brief.

Joint Appendix, Vol. 1, at R000089-R000102, ROA 4:857-870; Joint Appendix, Vol. 1, at R000194-R000210, ROA 14:2980-2996. Those counterclaims were contingent on Mr. Armstrong succeeding on the merits of his underlying claims.

After Mr. Armstrong filed his amended complaint, the parties filed cross-motions for summary judgment on Mr. Armstrong's claims. Joint Appendix, Vol. 2, at R000228-R000260, ROA 15:3099-3131; Joint Appendix, Vol. 3, at R000712-R000713, ROA 18:3877-3878; Joint Appendix, Vol. 4, at R000715-R000728, ROA 17:3655-3668; Joint Appendix, Vol. 6, at R001280-R001310, ROA 18:3882-3912. U.S. Bank Trust argued, among other things, that Mr. Armstrong's claims were time-barred by the governing statutes of limitations.

The cross-motions were heard by the district court on June 2, 2021. The court determined that genuine issues of material fact remained in dispute, which precluded summary judgment in Mr. Armstrong's favor. The court requested supplemental briefing on the statutes of limitations, and then held an additional hearing. Joint Appendix, Vol. 7, at R001702-R001708, ROA 26:5599-5605; Joint Appendix, Vol. 8, at R001713, ROA 26:5639.

By order entered August 25, 2021, the court formally denied Mr. Armstrong's motion and granted U.S. Bank Trust's countermotion. Joint Appendix, Vol. 8, at R001712-R001717, ROA 26:5638-5643. The court held that all of Mr. Armstrong's claims were barred by their respective statutes of limitations and dismissed his

complaint with prejudice. Regarding quiet title, the court reasoned that the statute of limitations is triggered either when an owner in possession is ejected from his property or when the validity or legality of his ownership or possession is called into question. Because the validity or legality of Mr. Armstrong's ownership or possession was called into question in May 2010, the limitations period expired in May 2015.[2]

Mr. Armstrong filed a notice of appeal. Joint Appendix, Vol. 8, at R001724-R001726, ROA 26:5658-5660.

STATEMENT OF FACTS

Mr. Armstrong owns property located in Clark County. Joint Appendix, Vol. 1, at R000002, ROA 1:2; Joint Appendix, Vol. 2, at R000268, ROA 15:3139. He purchased the property in 1998 through a mortgage with Norwest Mortgage. Joint Appendix, Vol. 1, at R000007, ROA 1:7. The loan was secured by a deed of trust on the property. *Id.*

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2 Mr. Armstrong erroneously asserts that "Respondents' countermotions for unjust enrichment, equitable mortgage and equitable subrogation were granted." (Appellant's Br. at 9). First, these were not countermotions, but rather were *counterclaims* for relief. Second, the district court only dismissed Mr. Armstrong's claims; it did not address the counterclaims. However, as noted above, those counterclaims only become relevant if Mr. Armstrong prevails on the merits of his underlying claims. *See* Joint Appendix, Vol. 1, at R000205-R000209, ROA 14:2991-2995.

In 2003, Mr. Armstrong refinanced his loan with Finance America LLC. *Id.*; Joint Appendix, Vol. 1, at R000123, ROA 14:2895; Joint Appendix, Vol. 2, at R000278-R000302, ROA 15:3149-3173. In 2004, Mr. Armstrong again refinanced his loan, this time with New Century Mortgage Corporation. Joint Appendix, Vol. 1, at R000007, ROA 1:7; Joint Appendix, Vol. 4, at R000841-R000863, ROA 18:3781-3803. The 2004 loan was subsequently acquired by Countrywide Financial Corporation and then by Bank of America. Joint Appendix, Vol. 1, at R000008, ROA 1:8. Again, the loan was secured by a deed of trust on the property. Joint Appendix, Vol. 4, at R000841, ROA 18:3781. The adjustable interest rate on the 2004 loan was subject to change in January 2007. Joint Appendix, Vol. 4, at R000857, ROA 18:3797.

That brings us to the 2007 loan documents. Those documents suggest, by their terms, that Mr. Armstrong again refinanced his loan, this time through a January 2007 Adjustable Rate Note in favor of BNC Mortgage, Inc., which was secured by a deed of trust on the property. Joint Appendix, Vol. 4, at R000739-R000746, ROA 17:3679-3686; Joint Appendix, Vol. 4, at R000748-R000770, ROA 17:3688-3710. The documents on their face contain Mr. Armstrong's initials and signatures, at least one being a notarized signature. *Id.* The 2007 deed of trust was recorded on January 25, 2007. Joint Appendix, Vol. 4, at R000748, ROA 17:3688.

The very same day, the 2004 loan (with Bank of America) was paid off in full. Joint Appendix, Vol. 4, at R000908, ROA 18:3848.

For his part, Mr. Armstrong denies that the 2007 loan and deed of trust are valid. *See, e.g.*, Joint Appendix, Vol. 1, at R000008, ROA 1:8. Although his arguments have shifted over time, Mr. Armstrong has variously asserted that he did not sign the 2007 loan documents, that he otherwise paid off the 2004 loan himself, or that the 2004 loan was paid off from the settlement of a third-party litigation.[3]

The 2007 loan and deed of trust were ultimately assigned to U.S. Bank Trust. Joint Appendix, Vol. 4, at R000772-R000775, ROA 17:3712-3715. U.S. Bank Trust and its agents have paid real estate taxes, homeowner's insurance, and other amounts on the property that have benefitted Mr. Armstrong. Joint Appendix, Vol. 4, at R000831-R000839, ROA 18:3771-3779.

By contrast, Mr. Armstrong has not made any payments on the 2007 loan. Joint Appendix, Vol. 4, at R000734, ROA 17:3674. Thus, on May 6, 2010, U.S. Bank Trust's agents recorded a notice of default and election to sell the property. Joint Appendix, Vol. 1, at R000009, ROA 1:9. According to Mr. Armstrong, he became aware of this recordation at that time, which "interfered with [his] use of the

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3 This factual dispute is irrelevant for purposes of the appeal because the statute of limitations issue does not depend on whether Mr. Armstrong signed the 2007 loan documents or whether the 2004 loan was paid off by the 2007 loan. Thus, U.S. Bank Trust will not address those arguments further in this brief.

Property" and caused him "lack of sleep, anxiety, depression, lack of appetite and loss of productivity related to his employment." *Id.*

Later in 2010, the foreclosure proceedings went to mediation, in which Mr. Armstrong promised to provide financial information to U.S. Bank Trust in an effort to have U.S. Bank Trust modify the 2007 loan. Joint Appendix, Vol. 4, at R000819-R000824, ROA 18:3759-3764.

This was not the only action that Mr. Armstrong took as a result of the May 2010 recordation. In March 2011, Mr. Armstrong also responded to the notice of election to sell with a five-page, notarized, certified mail letter countering that the 2007 deed of trust was unenforceable and setting forth his legal arguments. Joint Appendix, Vol. 6, at R001256-R001260, ROA 20:4232-4236. Mr. Armstrong asserted that "the bank" had been "paid in Full" and argued that "you do not have the right to foreclose or proceed with any actions." Joint Appendix, Vol. 6, at R001259-R001260, ROA 20:4325-4236. In addition, Mr. Armstrong stated that he would "be filing a civil action that is now ready to be filed" if the matter was not resolved within ten days. Joint Appendix, Vol. 6, at R001260, ROA 20:4236.

Eight years later, on June 18, 2019, Mr. Armstrong filed his complaint. Joint Appendix, Vol. 1, at R000002-R000021, ROA 1:2-21.

SUMMARY OF THE ARGUMENT

The parties agree that a claim for quiet title is governed by a five-year statute of limitations. The only question is when that limitations period began to run here. In Mr. Armstrong's view, the statute is never triggered so long as an owner remains in possession of property. The district court disagreed and correctly held that the statute is triggered when an owner's possession is disturbed. Under these facts, the answer to the "crucial inquiry" reveals that Mr. Armstrong's right to the property became disturbed in 2010—nine years before he brought his claim for quiet title. Because Mr. Armstrong's claim was barred by the statute of limitations, the district court's order should be affirmed.

STANDARD OF REVIEW

Although Mr. Armstrong is correct that the question in this appeal is reviewed de novo, *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (per curiam), he erroneously cites the standard for a dismissal pursuant to Rule 12(b)(5). (Appellant's Br. at 10-11). The order on appeal was not a Rule 12 dismissal, but rather was a grant of summary judgment pursuant to Rule 56. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." NRCP 56(c).

ARGUMENT

A. A claim for quiet title must be brought within five years of when the claim accrues.

Chapter 11 governs the time limits for bringing civil actions and provides that such actions "can only be commenced within the periods prescribed in this chapter." NRS 11.010. As relevant here, an action to recover real property or to recover the possession of real property must be brought within five years. NRS 11.080. This statute of limitations applies to actions for quiet title. *Lanigir v. Arden*, 82 Nev. 28, 36 n.3, 409 P.2d 891, 895 n.3 (1966); *Kerr v. Church*, 74 Nev. 264, 272, 329 P.2d 277, 281 (1958); *see also Scott v. Mortg. Elec. Registration Sys., Inc.*, 605 F. App'x 598, 600 (9th Cir. 2015) ("The statute of limitations for quiet title claims in Nevada is five years.").

"In determining whether a statute of limitations has run against an action, the time must be computed from the day the cause of action accrued." *Clark v. Robison*, 113 Nev. 949, 951, 944 P.2d 788, 789 (1997) (per curiam) (internal citation omitted). "A cause of action 'accrues' when a suit may be maintained thereon." *State ex rel. Dep't of Transp. v. Pub. Emps. Ret. Sys. of Nev.*, 120 Nev. 19, 22, 83 P.3d 815, 817 (2004). The triggering date is based on when the plaintiff knew or should have known of the injury alleged. *G&H Assocs. v. Ernest W. Hahn, Inc.*, 113 Nev. 265, 272, 934 P.2d 229, 233 (1997) (per curiam).

B. A claim for quiet title accrues when an owner's right to possess property has been disturbed.

An action for quiet title "may be brought by any person against another who claims an estate or interest in real property, adverse to the person bringing the action, for the purpose of determining such adverse claim." NRS 40.010. The goal of the action for quiet title is to determine "who holds superior title to a land parcel." *Las Vegas Dev. Grp., LLC v. Blaha*, 134 Nev. 252, 257, 416 P.3d 233, 237 (2018); *see also* 74 C.J.S. *Quieting Title* § 2 (2022) ("The purpose of an action or remedy to quiet title . . . is to clear the title against future claims and determine the validity of any adverse claims."). The action "does not seek to hold anyone liable, but instead simply seeks a determination regarding the parties' respective rights with regard to the subject property." *U.S. Bank Tr., N.A. v. SFR Invs. Pool 1, LLC*, 461 P.3d 159, 2020 WL 1903156, at *1 (Nev. Apr. 16, 2020) (unpublished); *see also U.S. Bank, N.A. v. Thunder Props., Inc.*, 138 Nev. Adv. Op. 3, 503 P.3d 299, 304 (2022) (explaining that "actions to resolve competing claims to title and clouds on title are quiet title actions brought under NRS 40.010").

Because of the nature of the action, a claim for quiet title accrues when there is a sufficiently concrete dispute over those adverse rights. *See, e.g.*, *Berberich v. Bank of Am., N.A.*, 136 Nev. 93, 460 P.3d 440 (2020). The fact that another party *may* assert some adverse interest in property is insufficient. For example, this Court stated more than a century ago that "the mere grazing of unenclosed grazing land is

not sufficient in itself to set in motion the running of the statute of limitations as against a true owner." *O'Banion v. Simpson*, 44 Nev. 188, 191 P. 1083, 1089 (1920). Like the proverbial tree falling in the forest, that conduct "is not such as is calculated to give notice that the land is occupied and claimed by another." *Id.*

On the other hand, taking affirmative action to establish possession is the type of conduct that "under such circumstances is adverse from its inception." *Id.* at 1088. Thus, the limitations period begins running when the plaintiff's interest in the property is "called into question." *Nationstar Mortg., LLC v. Falls at Hidden Canyon Homeowners Ass'n*, No. 2:15-cv-01287-RCJ-NJK, 2017 WL 2587926, at *2 (D. Nev. June 14, 2017) (unpublished); *cf. Borden v. Clow*, 21 Nev. 275, 30 P. 821, 822 (1892) (noting that the defendant remained in "quiet and undisturbed possession" of property "until the demand for an accounting was made upon him").[4] Understandably, mere notice to an owner that he is in default because he missed a payment may not be enough to trigger the statute of limitations, because (like the grazing of unenclosed grazing land) that notice may be insufficient to create a concrete dispute. However, when an owner in possession recognizes that there has

4 For *personal* property, an owner no longer has undisturbed possession when his right to possession "is seriously interfered with." *Shupe & Yost, Inc. v. Fallon Nat'l Bank of Nev.*, 109 Nev. 99, 101, 847 P.2d 720, 721 (1993) (per curiam).

been interference with his property and employs countermeasures, then the limitations period *has* been triggered. The bell has rung.

To support his contrary argument, Mr. Armstrong relies almost exclusively on this Court's decision in *Berberich*. However, Mr. Armstrong misconstrues the *Berberich* decision. There, the appellant purchased property at a homeowners' association foreclosure sale and, after he owned it for some time, filed a quiet title action seeking a judicial declaration that the foreclosure extinguished the deed of trust that had secured the *prior* homeowner's mortgage. 136 Nev. at 94, 460 P.3d at 441. This Court held that the statute of limitations "starts to run when the plaintiff has been deprived of ownership or possession of the property." *Id.* at 96, 460 P.3d at 442. Put another way, the Court explicitly stated that "the limitations period *does* begin to run against a property owner once the owner has notice of disturbed possession." *Id.* at 97, 460 P.3d at 443 (emphasis added).

Mr. Armstrong reads this decision to mean that an owner in possession is never subject to the statute of limitations, but that is simply not the case. On the particular facts of *Berberich*, the record did not show "whether, or when," the appellant's possession of the property ever became disturbed. *Id.* Because the evidence in the record could not answer the "crucial inquiry," this Court reversed the district court's order granting the bank's motion to dismiss and remanded for further proceedings. *Id.*

Clearly, a plaintiff need not *actually* be ousted from the property. Indeed, the *Berberich* Court specifically said that the limitations period is "triggered" when the plaintiff "has had the validity or legality of his or her ownership or possession of the property called into question." *Id.* That is, the statute of limitations begins to run when a plaintiff's "ownership or possession of the property [is] disputed." *Id.*

Indeed, this Court recently cited *Berberich* with approval and reaffirmed that common-sense approach in *Thunder Properties*, reiterating that the statute is triggered by "explicitly calling the owner's right to possession into question or indirectly challenging the owner's interest by asserting that another party has a senior interest." 503 P.3d at 306. Although in *Thunder Properties* the lienholder was the plaintiff, the test is the same. The limitations period begins when, as in that case, the lienholder "receives notice of some affirmative action by the titleholder to repudiate the lien or that is otherwise inconsistent with the lien's continued existence." *Id.*

Under *Berberich* and *Thunder Properties*, the limitations period is admittedly not triggered by the mere notice of a potential adverse claim. After all, the hypothetically adverse interest may never solidify into a concrete dispute. However, as here, an adverse claim that actually disturbs the owner's possession, and even prompts responsive action by the owner, *is* sufficient to begin the statute of limitations.

The law in other jurisdictions is in accord and is persuasive. In California, for example, the limitations period does not run while an adverse claim "lies dormant and inactive."[5] *Salazar v. Thomas*, 186 Cal. Rptr. 3d 689, 696 (Cal. Ct. App. 2015). A mere notice of default may provide a cloud on title, but by itself it does not dispute or disturb a plaintiff's possession of the property. *Id.* at 691. Accordingly, "mere notice of an adverse claim is not enough to commence the owner's statute of limitations." *Id.* at 696. However, "disputed possession" occurs whenever "the validity of one's occupancy, dominion or control over the property [is] called into question." *Id.* at 698.

That rule makes sense, because "[i]n many instances one in possession would not know of dormant adverse claims of persons not in possession." *Muktarian v. Barmby*, 407 P.2d 659, 661 (Cal. 1965). And even if the owner *does* know of a potential adverse claim, "there is no reason to put him to the expense and inconvenience of litigation until such a claim is pressed against him." *Id.*[6]

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5 This Court sometimes follows the law of California when our state statutes are similar. *See, e.g.*, *Chandra v. Schulte*, 135 Nev. 499, 502, 454 P.3d 740, 743 (2019); *Delucchi v. Songer*, 133 Nev. 290, 298-99, 396 P.3d 826, 832-33 (2017).

6 Notably, an adverse claim can be "pressed" in myriad ways. According to persuasive authority from another sister state, the triggering event can be as simple as an email notifying the owner that someone else claims ownership of the property. *Nelson v. Allen*, No. 1 CA-CV 17-0041, 2018 WL 1417610, at *4 (Ariz. Ct. App. Mar. 22, 2018) (unpublished). So long as the owner is "aware of who [is] invading his possession of the [property] and in what way," the limitations period begins to run. *Id.*

When that claim is pressed, the limitations period begins running. In essence, all that is required is "adequate notice" of a concrete dispute. *See Mayer v. L&B Real Est.*, 185 P.3d 43, 47 (Cal. 2008); *cf. Vincent Murphy Chevrolet Co. v. United States*, 766 F.2d 449, 452 (10th Cir. 1985) (explaining under the Federal Quiet Title Act that "all that is necessary is a reasonable awareness that the government claims some interest adverse to the plaintiffs"). In accordance with the law of this Court and persuasive authority from other jurisdictions, the district court below applied the correct test.

C. Mr. Armstrong's claim for quiet title was time-barred because it was brought more than five years after the claim accrued.

Here, the adverse claim against Mr. Armstrong's ownership and possession was not "dormant." It interfered with Mr. Armstrong's use of the property, created physical and emotional effects, and resulted in affirmative action in response. Contrary to Mr. Armstrong's argument, "possession does not provide a plaintiff with an unlimited tolling period without qualification." *Kumar v. Ramsey*, 286 Cal. Rptr. 3d 876, 887 (Cal. Ct. App. 2021).

According to Mr. Armstrong, the limitations period has not begun in this case because "no foreclosure deed has been recorded and no unlawful detainer action has been commenced." (Appellant's Br. at 14). But those are only two ways to disturb possession—not the only ways.

Mr. Armstrong's possession became disturbed in May 2010 when U.S. Bank Trust's agents recorded a notice of default and election to sell the property. Indeed, Mr. Armstrong himself admits that the recordation of this document "interfered with [his] use of the Property" and caused him "lack of sleep, anxiety, depression, lack of appetite and loss of productivity related to his employment." Joint Appendix, Vol. 1, at R000009, ROA 1:9. The district court correctly held that Mr. Armstrong is bound by what he pled. Of course, to interfere with something is to disturb it. *See, e.g.*, Webster's Third New International Dictionary 660 (2002) (defining "disturb" as "to interfere with").

If that were not enough, the interference caused by the May 2010 recordation resulted in Mr. Armstrong writing a five-page letter challenging U.S. Bank Trust's right to foreclose on the property. In fact, Mr. Armstrong even threatened in that 2011 letter that he would "be filing a civil action that is now ready to be filed." Joint Appendix, Vol. 6, at R001260, ROA 20:4236. Yet, he waited until 2019 to assert his quiet title claim. Because the claim was brought more than five years after his ownership or possession had been disturbed, his claim was time-barred.

Mr. Armstrong's reliance on *Huang v. Wells Fargo Bank, N.A.* is misplaced. In that case, the California Court of Appeal reiterated that courts "look to the nature of the right asserted, not the form of action or relief sought." 261 Cal. Rptr. 3d 798, 802 (Cal. Ct. App. 2020). Here, the nature of the right asserted concerns the

legitimacy of the 2007 loan documents. To the extent Mr. Armstrong claims those documents were fraudulent, any dispute concerning them was hardened in 2010 (when U.S. Bank Trust's agents recorded a notice of election to sell the property), and no doubt by 2011 (when Mr. Armstrong responded with a five-page letter and threatened litigation).[7]

The fact that the non-judicial foreclosure sale has not yet been consummated, an argument upon which Mr. Armstrong appears to rely, does not mean that Mr. Armstrong can sit on his rights indefinitely. *Johnson v. JP Morgan Chase Bank, N.A.*, No. LA CV15-01338 JAK (ASx), 2015 WL 12696034 (C.D. Cal. May 22, 2015) (unpublished). In *Johnson*, for example, the plaintiff filed an action for quiet title based on what he contended was a "wrongful foreclosure" by the defendants.

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7 Mr. Armstrong asserts in his Statement of Facts that he "raised the provisions of NRS 106.240, that more than 10 years have elapsed since Respondent U.S. Bank Trust accelerated its purported loan on May 06, 2010, rendering the lien satisfied." (Appellant's Br. at 7). Mr. Armstrong has not renewed that argument before this Court, but in any event the "longstanding precedent" in this state is that "a mortgagee may nonjudicially foreclose on a property even if the statute of limitations has run on an action to collect the underlying debt." *Mott v. PNC Fin. Servs. Grp., Inc.*, No. 2:16-CV-1949 JCM (EJY), 2020 WL 1659936, at *5 (D. Nev. Apr. 3, 2020) (unpublished) (citing *Penrose v. Quality Loan Serv. Corp.*, 132 Nev. 1016 (2016), *aff'd*, 861 F. App'x 125 (9th Cir. 2021); *see also Facklam v. HSBC Bank USA*, 133 Nev. 497, 499, 401 P.3d 1068, 1071 (2017) (reiterating "that a lender may recover on a deed of trust even after the statute of limitations for contractual remedies on the note has passed"). The validity of the 2007 deed of trust is not at issue here; the issue is the timeliness of Mr. Armstrong's quiet title claim.

Id. at *1. The district court dismissed the action as time-barred because the plaintiff's possession of the property had been "disturbed." *Id.* at *5.

On appeal, the Ninth Circuit affirmed. *Johnson v. JPMorgan Chase & Co.*, 695 F. App'x 218, 219 (9th Cir. 2017). In that case, the limitations period "continued running" even though an earlier foreclosure action had been dismissed with prejudice. *Id.* The plaintiff's possession had become disputed, and it remained so—even if he was still in technical possession of the property. *Id.* The same is true in our case.

Mr. Armstrong also relies on the decision by the California Court of Appeal in *Salazar*, (Appellant's Br. at 9-10, 12), but that opinion supports the district court's decision here. The *Salazar* court did not change the law; it merely mentioned several ways to "describe the same standard in different words":

> Alternatively, the question can be stated as (1) when were plaintiffs no longer owners in exclusive and undisputed possession of the land; (2) when was defendants' adverse claim pressed against plaintiffs; or (3) when was defendants' hostile claim asserted in some manner to jeopardize the superior title held by plaintiffs.

186 Cal. Rptr. 3d at 696 (internal quotations and citations omitted). Here, Mr. Armstrong's possession *was* disputed, an adverse claim *was* pressed against him, and the claim *was* asserted in a way that jeopardized Mr. Armstrong's title. Mr. Armstrong's acts and deeds confirm as much, and the district court correctly determined that Mr. Armstrong's quiet title claim was time-barred.

D. The district court correctly granted summary judgment based on the statute of limitations.

Mr. Armstrong suggests that because he remains in possession, then the statute of limitations has not yet begun to run. That is a perversion of the policies underlying statutes of limitations and is not what the legislature intended. *See Wilson v. Las Vegas Metro. Police Dep't*, 137 Nev. Adv. Op. 70, 498 P.3d 1278, 1281-82 (Nev. 2021) (declining to undermine the legislature's intent in enacting a statute of limitations because such statutes "are intended to prevent stale claims and to encourage the plaintiff to pursue his rights diligently") (internal quotation omitted). This Court should decline Mr. Armstrong's invitation to "adopt a construction which would render the statute of limitations meaningless." *See Kasey v. Molybdenum Corp. of Am.*, 336 F.2d 560, 566 (9th Cir. 1964) (interpreting California law).

Indeed, this Court recently reiterated that limitations periods should be enforced "to prevent plaintiffs from making a mockery of the statute of limitations." *Thunder Props.,* 503 P.3d at 303. One of the primary goals of statutes of limitations is predictability. *Id.* at 305. That goal is served by adhering to the rule that the limitations period for quiet title claims begins to run when an owner "has notice of disturbed possession." *Berberich*, 136 Nev. at 97, 460 P.3d at 443.

Moreover, Mr. Armstrong's very argument supports the policies underlying statutes of limitations. For example, Mr. Armstrong has suggested that the 2007

loan documents were fabricated because Respondents have not produced the actual check that paid off the 2004 loan. Yet, the fact that an entity does not possess a copy of a check from more than a decade earlier merely demonstrates the importance of a limitations period. *See Petersen v. Bruen*, 106 Nev. 271, 273, 792 P.2d 18, 19-20 (1990) (explaining that statutes of limitations are designed to "prevent surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared").

Mr. Armstrong should not be permitted to subvert the statute of limitations. He has remained on the property since 2007 without making a single loan payment.[8] The impact of the May 2010 notice of election to sell was clear; it was not an innocuous grazing of unenclosed grazing land. The dispute affected Mr. Armstrong then, triggering the time for him to file suit. While he waited, U.S. Bank Trust exercised its right to nonjudicial foreclosure of the property. That proceeding should be allowed to go forward.

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8 Although the district court did not need to reach the issue, Mr. Armstrong's failure to pay defeats his claim to superior title and provides another basis for granting summary judgment on the quiet title claim. *See Schwartz-Tallard v. HSBC Bank USA, Nat'l Ass'n*, No. 2:17-cv-02328-RFB-NJK, 2019 WL 4723784, at *4 (D. Nev. Sept. 25, 2019) (unpublished), *aff'd*, 851 F. App'x 814 (9th Cir. 2021); *Chamani v. BAC Home Loans Servicing, LP*, No. 2:12-CV-1197-LRH-PAL, 2015 WL 12698309, at *3 (D. Nev. June 29, 2015) (unpublished).

E. Mr. Armstrong has abandoned his other claims.

In his amended complaint, Mr. Armstrong also asserted claims for wrongful foreclosure, slander of title, and declaratory relief. *See* Joint Appendix, Vol. 1, at R000114-R000118, ROA 14:2886-2890. The district court held that those claims were time-barred as well. Joint Appendix, Vol. 8, at R001714-R001717, ROA 26:5640-5643. The court correctly concluded that the statutes of limitations for Mr. Armstrong's claims for wrongful foreclosure, slander of title, and declaratory relief are between two and four years, all shorter limitations periods than the five-year period governing quiet title claims under NRS 11.080. *Id*.

On appeal, Mr. Armstrong's brief discusses only his claim for quiet title. Accordingly, he has abandoned his other claims. *See Campbell v. Baskin*, 69 Nev. 108, 120, 242 P.2d 290, 296 (1952). Further, Mr. Armstrong has not argued that the district court erred in denying his motion for summary judgment based on disputed issues of material fact. To the extent that this Court nevertheless intends to consider arguments relating to Mr. Armstrong's causes of action other than quiet title, U.S. Bank Trust incorporates by reference its arguments made below on the impact of the statutes of limitations applicable to those other causes of action. Joint Appendix, Vol. 6, at R001280-R001310, ROA 18:3882-3912; Joint Appendix, Vol. 6, at R001361-R001372, ROA 21:4578-4589; Joint Appendix, Vol. 6, at R001388-

R001395, ROA 22:4817-4824; Joint Appendix, Vol. 7, at R001686-1692, ROA 26:5519-5525.

CONCLUSION

For the foregoing reasons, U.S. Bank Trust respectfully requests that this Court affirm the district court's order.

Dated this 28th day of March, 2022.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 365, Times New Roman 14 pt. font.

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 NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 5,325 words.

3. Finally, I hereby certify that I have read this Respondent's 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 28th day of March, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, I served a copy of the foregoing **RESPONDENT'S ANSWERING BRIEF** upon the parties to the appeal, via the following service methods:

BY UNITED STATES MAIL: Holo Discovery, located at 3016 W. Charleston Blvd., Ste. 170, Las Vegas, Nevada 89102, at the direction of the undersigned, placed a copy of the foregoing document for collection and mailing, in a sealed envelope with postage fully prepaid addressed to:

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DATED this 28th day of March, 2022.

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