

IN THE SUPREME COURT OF THE STATE OF NEVADA

DENNIS BAHAM, AN INDIVIDUAL,
Appellant(s),

vs.

BAYVIEW LOAN SERVICING, LLC, A
FOREIGN LIMITED LIABILITY
COMPANY; FIRST AMERICAN
TRUSTEE SERVICING SOLUTIONS,
LLC, A FOREIGN LIMITED LIABILITY
COMPANY; AND THE BANK OF NEW
YORK MELLON, F/K/A THE BANK OF
NEW YORK AS TRUSTEE FOR THE
CERTIFICATE HOLDERS OF CWALT,
INC., ALTERNATIVE LOAN TRUST
2005-2, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2,
Respondent(s),

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Elizabeth A. Brown
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RECORD ON APPEAL VOLUME 3

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//

counsel at the time of hearing.

DATED this 28 day of August, 2020.

MORTENSON & RAFIE, LLP

/s/ Peter B. Mortenson

Peter B. Mortenson, Esq.

Nevada Bar No. 5725

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This case involves the foreclosure of the real property located at 6017 Guild Ct., Las Vegas, Nevada, APN: 125-14-810-039 (the "Property"). There have been many cases regarding a number of issues with regards to the foreclosure of the first deed of trust on the Property. There have been four cases of judicial review of foreclosure mediations. The first three cases resulted in the court denying certification of the foreclosure mediation. On the petition for judicial review of the fourth foreclosure mediation, the court denied Plaintiff's petition and allowed a certificate of foreclosure mediation to issue. Plaintiff timely appealed that decision.

1 Since that time, despite the efforts of the Plaintiff, the Property was sold and title has
2 been transferred to Defendant BANK OF NEW YORK MELLON f/k/a THE BANK OF NEW
3 YORK AS TRUSTEE FOR THE CERTIFICATE HOLDERS OF CWALT, INC.,
4 ALTERNATIVE LOAN TRUST 2005-2, MORTGAGE PASS-THROUGH CERTIFICATES,
5 SERIES 2005-2 ("BONY"). However, Plaintiff remains in possession of the Property.
6

7 Defendant BONY has filed a motion to consolidate that case with this case. Plaintiff
8 does not oppose the consolidation of the two cases (A-19-795762-C and A-20-810458).

9 Plaintiff files this Opposition to Motion to Dismiss to allow time for Plaintiff to remain
10 in the Property and to maintain the status quo pending the outcome of the Appeal of the fourth
11 judicial review of foreclosure mediation. Plaintiff includes a Countermotion for Leave to
12 Amend Complaint to include a cause of action for fraud based on a discrepancy on the
13 endorsement of the original promissory note.
14

15 II.

16 FACTS

17 Plaintiff purchased the Property on or about December 23, 2004. Plaintiff gave a Deed
18 of Trust ("DOT") to Countrywide Home Loans, Inc. (the "Lender") for a value of \$616,020.00.
19 Plaintiff signed an Adjustable Rate Note (the "Note") as a promise to pay. Plaintiff received a
20 Certified Copy of the Note which contained no endorsement (attached as Exhibit "1"). Plaintiff
21 later received two different Certified Copies of the Note which contained an endorsement by a
22 bank officer who was no longer employed by Countrywide (attached as Exhibits "2" and "3").
23

24 In September, 2011, Plaintiff and BAC Home Loans Servicing, LLC agreed to a loan
25 modification. On or about January 23, 2012, MERS, acting on behalf of Countrywide,
26 assigned the DOT to Defendant BONY. On February 28, 2013, BONY substituted First
27
28

1 American Trustee Servicing Solutions, Inc. (“FATS”) as trustee of the DOT, replacing the
2 existing trustee.

3 From 2015 to 2018, Plaintiff participated in four foreclosure mediations. All four
4 mediations failed. Plaintiff petitioned for judicial review in all four mediations. The District
5 Court denied the fourth Petition and allowed the foreclosure mediation to be certified. Plaintiff
6 filed a timely appeal of that decision. The appeal is current in the Nevada Court of Appeals.
7 All briefing has been completed and a decision is pending.
8

9 Plaintiff filed this case to prevent BONY from holding its foreclosure sale. This court
10 temporarily stopped the foreclosure sale from going forward, but eventually the sale was held
11 and BONY became the titled owner. Plaintiff remains in possession of the Property but is
12 threatened with eviction when the State restrictions on evictions are removed. Plaintiff asks
13 this court to stay any evictions of the Plaintiff from the Property and maintain the status quo
14 until the Nevada Court of Appeals renders its decision on whether the certification of
15 foreclosure mediation is proper.
16
17

18 III.

19 LEGAL STANDARD

20 The applicable standard of review for a dismissal under NRCP 12(b)(5) is rigorous, as
21 this court “‘must construe the pleading liberally and draw every fair intendment in favor of the
22 [non-moving party].’ ” *Squires v. Sierra Nev. Educational Fund.*, 107 Nev. 902,
23 905. (quoting *Merluzzi v. Larson*, 96 Nev. 409). All factual allegations of the complaint must
24 be accepted as true. *Capital Mortgage Holding v. Hahn*, 101 Nev. 314, 315. A complaint will
25 not be dismissed for failure to state a claim “‘unless it appears beyond a doubt that the plaintiff
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27
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1 could prove no set of facts which, if accepted by the trier of fact, would entitle him [or her] to
2 relief.” *Edgar v. Wagner*, 101 Nev. 226, 228. (citing *Conley v. Gibson*, 355 U.S. 41).

3
4 **IV.**

5 **ARGUMENT**

6 **OPPOSITION TO MOTION TO DISMISS**

7 **A. Plaintiff has an Appeal pending.**

8 Nevada Rules of Appellate Procedure 8 allows for relief from a judgment pending the
9 outcome of an appeal. Plaintiff has filed a timely appeal in the Nevada Court of Appeals of the
10 decision in which a certification of foreclosure mediation was allowed be recorded. The appeal
11 has been fully briefed and a decision is pending.

12 If the Court of Appeals decides in favor of the Plaintiff, the foreclosure of the Property
13 must be voided and reversed, which would allow the Plaintiff to remain in the Property. This
14 court should not allow the Plaintiff to be evicted when the pending appeal would allow him to
15 remain in the Property with title.

16 Additionally, Plaintiff requests that during the pendency of the appeal, that this court
17 maintain the status quo by ordering that title to the property may not be transferred to any other
18 parties.

19 **B. The Note was fraudulently endorsed.**

20 Plaintiff signed the Note in December, 2004. Plaintiff later received a certified copy of
21 the Note with no endorsement (see **Exhibit “1”**). Then, on December 11, 2011, Plaintiff
22 received another certified copy. However, that copy had an endorsement on it that is signed by
23 an employee who left Countrywide 5 years earlier (see **Exhibit “2”**). Again, on November 5,
24 2015, Plaintiff received another certified copy of the Note. However, this certified copy has
25
26
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1 marks on the copy that are not on the prior two. It also includes the same endorsement from the
2 same employee who left Countrywide (see **Exhibit “3”**).

3 Because the Note, signed by Plaintiff, is fraudulently endorsed, and because the Note is
4 required for foreclosure proceedings, all of BONY’s foreclosure proceedings must be void,
5 including the foreclosure sale.
6

7 **COUNTERMOTION FOR LEAVE TO AMEND COMPLAINT**

8 Under NRCP 15(a), a party may amend its pleading with leave of court, which “leave
9 shall be freely given when justice so requires.” “A motion for leave to amend pursuant to
10 NRCP 15(a) is addressed to the sound discretion of the trial court.” *Kantor v. Kantor*, 116 Nev.
11 886, 891, (Nev. 2000) (citing *Connell v. Carl’s Conditioning*, 97 Nev. 436, 439 (Nev. 1981).
12 “[I]n the absence of any apparent or declared reason- such as undue delay, bad faith or dilatory
13 motive on the part of the movant- **the leave sought should be freely given.**” *Stephens v.*
14 *Southern Nevada Music Co.* 89 Nev. 104, 105 (Nev. 1973) (emphasis added) (citing *Foman v.*
15 *Davis*, 371 U.S. 178 (1962)). The Nevada Supreme Court has held that a denial of leave to
16 amend must be supported with justifying reason. *Adamson v. Bowker*, 85 Nev. 115, 121 (Nev.
17 1969).
18
19

20 **A. The Note was fraudulently endorsed.**

21 As stated above in Plaintiff’s Opposition to Defendant’s Motion to Dismiss, the Note,
22 signed by Plaintiff, is fraudulently endorsed, and because the Note is required for foreclosure
23 proceedings, all of BONY’s foreclosure proceedings must be void, including the foreclosure
24 sale.
25

26 Plaintiff has included an Amended Complaint to add a cause of action for intentional
27 misrepresentation (attached as **Exhibit “4”**). The Complaint properly alleges that facts and
28

1 circumstances, as stated herein, of the intentional misrepresentation of the Defendants in their
2 attempt to make it appear as though the Note was timely and properly transferred via a blank
3 endorsement. However, the endorsement is fraudulent because it is signed by an employee
4 who was no longer employed by Countrywide at the time of the purported transferral and
5 endorsement.
6

7 **V.**

8 **CONCLUSION**

9 For the reasons set forth herein, Plaintiff respectfully requests that this Court deny
10 BONY's *Motion To Dismiss* and grant Plaintiff's *Motion for Leave to Amend Complaint*.
11

12 DATED this 28 day of August, 2020.

13 MORTENSON & RAFIE, LLP

14 */s/ Peter B. Mortenson*

15 _____
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22 Email: manager@nvlaw.us
23 *Attorney for Dennis Baham*
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of MORTENSON & RAFIE, LLP and that on this 28 day of August, 2020, I caused the above and foregoing document *Opposition To Motion To Dismiss And Countermotion For Leave To Amend Complaint* to be served as follows:

- ☒ Pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system.
- ☐ By placing same to be deposited for mailing in the United States Mail, enclosed in a sealed envelope upon which first class postage prepaid in Las Vegas, Nevada.
- ☐ Pursuant to EDCR 7.26, to be sent via facsimile, by duly executed consent for service by electronic means.
- ☐ By hand delivery to the attorney listed below:

To the address, email address, and/or facsimile number listed below:

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EXHIBIT 1

Prepared by: AMANDA "AJ" WILSON

LOAN #: 86239382

InterestOnlySM ADJUSTABLE RATE NOTE
(One-Year LIBOR Index (As Published in *The Wall Street Journal*) - Rate Caps)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE AND FOR CHANGES IN MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

DECEMBER 21, 2004
[Date]

LAS VEGAS
[City]

6017 GUILD CT, LAS VEGAS, NV 89131-2931
[Property Address]

This is to certify that this is a true
and correct copy of the original
NORTH AMERICAN TITLE COMPANY
By WLO

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 616,020.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is COUNTRYWIDE HOME LOANS, INC. I will make all payments under this Note in the form of cash, check or money order. I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 5.250 %. The interest rate I will pay may change in accordance with Section 4 of this Note. The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment on the first day of every month, beginning on FEBRUARY 01, 2005. Before the First Principal and Interest Payment Due Date as described in Section 4 of this Note, my payment will consist only of the interest due on the unpaid principal balance of this Note. Thereafter, I will pay principal and interest by making a payment every month as provided below.

I will make my monthly payments of principal and interest beginning on the First Principal and Interest Payment Due Date as described in Section 4 of this Note. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date, and if the payment includes both principal and interest, it will be applied to interest before Principal. If, on JANUARY 01, 2035, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at P.O. Box 10219, Van Nuys, CA 91410-0219 or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

My monthly payment will be in the amount of U.S. \$ 2,695.09 before the First Principal and Interest Payment Due Date, and thereafter will be in an amount sufficient to repay the principal and interest at the rate determined as described in Section 4 of this Note in substantially equal installments by the Maturity Date. The Note Holder will notify me prior to the date of change in monthly payment.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 or 5 of this Note.

CONV
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Initials: D.B.



* 2 3 9 9 1 *



* 0 6 6 2 3 9 3 8 2 0 0 0 0 2 D 8 0 5 *

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES**(A) Change Dates**

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of JANUARY, 2010, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market (LIBOR), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO & ONE-QUARTER percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 10.250 % or less than 2.250 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 10.250 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

Before the effective date of any change in my interest rate and/or monthly payment, the Note Holder will deliver or mail to me a notice of such change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

(G) Date of First Principal and Interest Payment

The date of my first payment consisting of both principal and interest on this Note (the "First Principal and Interest Payment Due Date") shall be the first monthly payment date after the first Change Date.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date of my monthly payments unless the Note Holder agrees in writing to those changes. If the partial Prepayment is made during the period when my monthly payments consist only of interest, the amount of the monthly payment will decrease for the remainder of the term when my payments consist of only interest. If the partial Prepayment is made during the period when my payments consist of principal and interest, my partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED**(A) Late Charges for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of FIFTEEN calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of interest, during the period when my payment is interest only, and of principal and interest thereafter. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

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(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

(A) Until my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument shall read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in it is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

(B) When my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument described in Section 11(A) above shall then cease to be in effect, and Uniform Covenant 18 of the Security Instrument shall instead read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

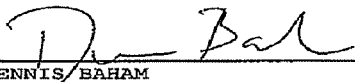
LOAN #: 86239382

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.



DENNIS BAHAM (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]


EXHIBIT 2

CERTIFICATION OF ORIGINAL NOTE (IF APPL.)

Loan Number: 2000518153
APN Number: _____
Borrower(s) Name: Dennis Baham
Property Address: 6017 Guild Ct
City: Las Vegas State: NV Zip: 89131

I, Alicia Wood with Residential Credit Solutions, Inc. hereby declare under penalty of perjury and under oath pursuant to NRS 240.1655(2) that I am in actual possession of the following original document for the above referenced property.

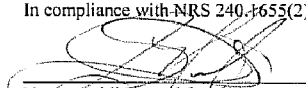
Attached are true and correct certified copies of the original:

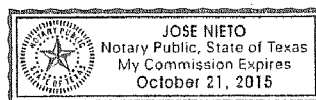
■ Note
Signed: 
Name: Alicia Wood
Title: Vice President
Company Name: Residential Credit Solutions, Inc.
Address: 4708 Mercantile Dr.
Fort Worth, TX 76137

State of TEXAS
County of TARRANT

On 11th DEC. 2014 before me, Jose Nieto Personally appeared Alicia Wood known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Subscribed and Sworn to before me
In compliance with NRS 240.1655(2):


Notary Public in and for said



State of TEXAS
County of TARRANT

CERTIFICATION OF ORIGINAL ENDORSEMENT(S)/ALLONGE(S) (IF APPL.)

Loan Number: 2000518153
APN Number: _____
Borrower(s) Name: Dennis Baham
Property Address: 6017 Guild Ct
City: Las Vegas State: NV Zip: 89131

I, Alicia Wood with Residential Credit Solutions, Inc. hereby declare under penalty of perjury and under oath pursuant to NRS 240.1655(2) that I am in actual possession of the following original document for the above referenced property.

Attached are true and correct certified copies of the original:

■ Each Endorsement/Allonge

Signed: _____

Name: Alicia Wood

Title: Vice President

Company Name: Residential Credit Solutions, Inc.

Address: 4708 Mercantile Dr.

Fort Worth, TX 76137

State of TEXAS

County of TARRANT

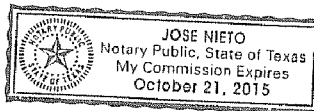
On 16 DEC. 2014 before me, Jose Nieto Personally appeared Alicia Wood known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Subscribed and Sworn to before me
In compliance with NRS 240.1655(2):

Notary Public in and for said

State of TEXAS

County of TARRANT



2005/7/53

Prepared by: AMANDA "AJ" WILSON

True and Certified Copy

LOAN #: 66239382

InterestOnlySM ADJUSTABLE RATE NOTE
(One-Year LIBOR Index (As Published in *The Wall Street Journal*) - Rate Caps)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE AND FOR CHANGES IN MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

DECEMBER 21, 2004
[Date]

LAS VEGAS
[City]

NEVADA
[State]

6017 GUILD CT, LAS VEGAS, NV 89131-2331
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 616,020.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is COUNTRYWIDE HOME LOANS, INC. I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 5.250 %. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment on the first day of every month, beginning on FEBRUARY 01, 2005. Before the First Principal and Interest Payment Due Date as described in Section 4 of this Note, my payment will consist only of the interest due on the unpaid principal balance of this Note. Thereafter, I will pay principal and interest by making a payment every month as provided below.

I will make my monthly payments of principal and interest beginning on the First Principal and Interest Payment Due Date as described in Section 4 of this Note. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date, and if the payment includes both principal and interest, it will be applied to interest before Principal. If, on JANUARY 01, 2035, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at P.O. Box 10219, Van Nuys, CA 91410-0219 or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

My monthly payment will be in the amount of U.S. \$ 2,695.09 before the First Principal and Interest Payment Due Date, and thereafter will be in an amount sufficient to repay the principal and interest at the rate determined as described in Section 4 of this Note in substantially equal installments by the Maturity Date. The Note Holder will notify me prior to the date of change in monthly payment.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 or 5 of this Note.



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CONV

• MULTISTATE Interest Only ADJUSTABLE RATE NOTE - ONE YEAR L
2D805-XX (04/03)(d)

Page 1 of 4

Initials: D.B.



* 2 3 9 9 1 *



* 0 8 6 2 3 9 3 8 2 0 0 0 0 2 D 8 0 5 *

True and Certified Copy

LOAN #: 86239382

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of JANUARY, 2010, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market (LIBOR), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO & ONE-QUARTER percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 10.250 % or less than 2.250 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 10.250 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

Before the effective date of any change in my interest rate and/or monthly payment, the Note Holder will deliver or mail to me a notice of such change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

(G) Date of First Principal and Interest Payment

The date of my first payment consisting of both principal and interest on this Note (the "First Principal and Interest Payment Due Date") shall be the first monthly payment date after the first Change Date.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date of my monthly payments unless the Note Holder agrees in writing to those changes. If the partial Prepayment is made during the period when my monthly payments consist only of interest, the amount of the monthly payment will decrease for the remainder of the term when my payments consist of only interest. If the partial Prepayment is made during the period when my payments consist of principal and interest, my partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of FIFTEEN calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of interest, during the period when my payment is interest only, and of principal and interest thereafter. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

CONV

● MULTISTATE Interest Only ADJUSTABLE RATE NOTE - ONE YEAR LIBOR INDEX
2DB05-XX (04/03)

Page 2 of 4

Initials: D.B.

True and Certified Copy

LOAN #: 86239382

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

(A) Until my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument shall read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in it is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

(B) When my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument described in Section 11(A) above shall then cease to be in effect, and Uniform Covenant 18 of the Security Instrument shall instead read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

True and Certified Copy

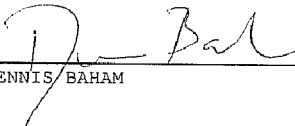
LOAN #: 86239382

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.



DENNIS/BAHAM (Seal)
-Borrower


(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]

PAY TO THE ORDER OF

WITHOUT RECOURSE
COUNTRYWIDE HOME LOANS, INC.
BY 

David A. Spector
Managing Director

EXHIBIT 3

CERTIFICATION OF ORIGINAL NOTE

Loan Number: 2000518153
APN Number: 125-14-810-039
Borrower(s) Name: Dennis Baham
Property Address: 6017 Guild Ct.
City: Las Vegas State: NV Zip: 89131

I, Alicia Wood with Residential Credit Solutions, Inc. hereby declare under penalty of perjury and under oath pursuant to NRS 240.1655(2) that I am in actual possession of the following original document for the above referenced property.

Attached are true and correct certified copies of the original:

■ NOTE

Signed: 

Name: Alicia Wood

Title: Vice President

Company Name: Residential Credit Solutions, Inc.


Address: 4708 Mercantile Dr.

Fort Worth, TX 76137

State of TEXAS
County of TARRANT

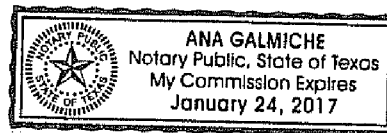
On 10/22/15 before me, Ana Galmiche Personally appeared Alicia Wood known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Subscribed and Sworn to before me
In compliance with NRS 240.1655(2):


Notary Public in and for said

State of Texas

County of Tarrant



Prepared by: AMANDA "AJ" WILSON

LOAN #: 86239382

InterestOnlySM ADJUSTABLE RATE NOTE
(One-Year LIBOR Index (As Published in *The Wall Street Journal*) - Rate Caps)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE AND FOR CHANGES IN MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

~~DECEMBER 21, 2004~~
[Date]

~~LAS VEGAS~~
[City]

~~NEVADA~~
[State]

~~6017 GUILD CT, LAS VEGAS, NV 89131-2331~~
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 616,020.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is COUNTRYWIDE HOME LOANS, INC. I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 5.250 %. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment on the first day of every month, beginning on FEBRUARY 01, 2005. Before the First Principal and Interest Payment Due Date as described in Section 4 of this Note, my payment will consist only of the interest due on the unpaid principal balance of this Note. Thereafter, I will pay principal and interest by making a payment every month as provided below.

I will make my monthly payments of principal and interest beginning on the First Principal and Interest Payment Due Date as described in Section 4 of this Note. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date, and if the payment includes both principal and interest, it will be applied to interest before Principal. If, on JANUARY 01, 2035, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at P.O. Box 10219, Van Nuys, CA 91410-0219 or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

My monthly payment will be in the amount of U.S. \$ 2,695.09 before the First Principal and Interest Payment Due Date, and thereafter will be in an amount sufficient to repay the principal and interest at the rate determined as described in Section 4 of this Note in substantially equal installments by the Maturity Date. The Note Holder will notify me prior to the date of change in monthly payment.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 or 5 of this Note.



610 086239382 N 001 001

CONV

• MULTISTATE Interest Only ADJUSTABLE RATE NOTE - ONE YEAR L
2D805-XX (04/03)(c)

Page 1 of 4

Initials: D.B.



* 2 3 9 9 1 *



* 0 8 6 2 3 9 3 8 2 0 0 0 0 2 0 8 0 5 *

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES**(A) Change Dates**

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of JANUARY, 2010, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market (LIBOR), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO & ONE-QUARTER percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 10.250 % or less than 2.250 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 10.250 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

Before the effective date of any change in my interest rate and/or monthly payment, the Note Holder will deliver or mail to me a notice of such change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

(G) Date of First Principal and Interest Payment

The date of my first payment consisting of both principal and interest on this Note (the "First Principal and Interest Payment Due Date") shall be the first monthly payment date after the first Change Date.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date of my monthly payments unless the Note Holder agrees in writing to those changes. If the partial Prepayment is made during the period when my monthly payments consist only of interest, the amount of the monthly payment will decrease for the remainder of the term when my payments consist of only interest. If the partial Prepayment is made during the period when my payments consist of principal and interest, my partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED**(A) Late Charges for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of FIFTEEN calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of interest, during the period when my payment is interest only, and of principal and interest thereafter. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

CONV

● MULTISTATE Interest Only ADJUSTABLE RATE NOTE - ONE YEAR LIBOR INDEX
2D805-XX (04/03)

Page 2 of 4

Initials: D.B.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

(A) Until my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument shall read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in it is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

(B) When my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument described in Section 11(A) above shall then cease to be in effect, and Uniform Covenant 18 of the Security Instrument shall instead read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

CERTIFICATION OF ORIGINAL ENDORSEMENT(S)/ALLONGE(S) (IF APPL.)

Loan Number: 2000518153
APN Number: 125-14-810-039
Borrower(s) Name: Dennis Baham
Property Address: 6017 Guild Ct.
City: Las Vegas State: NV Zip: 89131

I, Alicia Wood with Residential Credit Solutions, Inc. hereby declare under penalty of perjury and under oath pursuant to NRS 240.1655(2) that I am in actual possession of the following original document for the above referenced property.

Attached are true and correct certified copies of the original:

- Each Endorsement/Allonge (Countrywide Home Loan, Inc. to Blank)

Signed: 

Name: Alicia Wood

Title: Vice President

Company Name: Residential Credit Solutions, Inc.

Address: 4708 Mercantile Dr.


Fort Worth, TX 76137

State of TEXAS

County of TARRANT

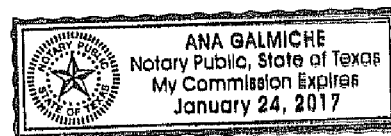
On 10/22/15 before me, Ana Galmiche Personally appeared Alicia Wood known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Subscribed and Sworn to before me
In compliance with NRS 240.1655(2):


Notary Public in and for said

State of Texas

County of Tarrant



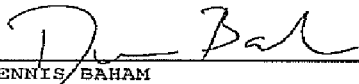
LOAN #: 86239382

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.


DENNIS BAHAM (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]

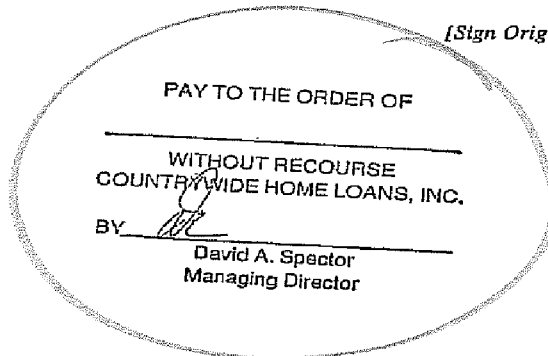


EXHIBIT 4

ACOM

Peter B. Mortenson, Esq.

Nevada Bar No. 5725

MORTENSON & RAFIE, LLP

10781 W. Twain Avenue

Las Vegas, NV 89135

Ph: 702-363-4190

Fx: 702-363-4107

Email: manager@nvlaw.us

Attorney for Dennis Baham

DISTRICT COURT

CLARK COUNTY, NEVADA

DENNIS BAHAM, an individual,

Plaintiff,

vs.

BAYVIEW LOAN SERVICING, LLC, a
Foreign Limited Liability Company; FIRST
AMERICAN TRUSTEE SERVICING
SOLUTIONS, L.L.C., a Foreign Limited
Liability Company; and BANK OF NEW
YORK MELLON f/k/a THE BANK OF NEW
YORK AS TRUSTEE FOR THE
CERTIFICATE HOLDERS OF CWALT,
INC., ALTERNATIVE LOAN TRUST 2005-
2, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2,

Defendants.

Case No.: A-19-795762-C

Dept. No.: IV

AMENDED COMPLAINT

Arbitration Exempt:

Concerns title to real estate

AMENDED COMPLAINT

COMES NOW, Plaintiffs DENNIS BAHAM, by and through his attorneys, the law
firm of MORTENSON & RAFIE, LLP., and hereby alleges against the above captioned
Defendants, BAYVIEW LOAN SERVICING, LLC, FIRST AMERICAN TRUSTEE
SERVICING SOLUTIONS, L.L.C., and BANK OF NEW YORK MELLON f/k/a THE BANK

1 OF NEW YORK AS TRUSTEE FOR THE CERTIFICATE HOLDERS OF CWALT, INC.,
2 ALTERNATIVE LOAN TRUST 2005-2, MORTGAGE PASS-THROUGH CERTIFICATES,
3 SERIES 2005-2; inclusive, complaining, averring and alleging as follows:

4
5 **PARTIES AND JURISDICTION**

6 1. Plaintiff, Dennis Baham (hereinafter "Plaintiff" or "Baham") is and at all times
7 mentioned herein, was, a resident of Las Vegas, Clark County, Nevada.

8 2. Defendant BAYVIEW LOAN SERVICING, LLC, is and at all times mentioned
9 herein, was, a Foreign Limited Liability Company doing business in Nevada.

10 3. Defendant FIRST AMERICAN TRUSTEE SERVICING SOLUTIONS, L.L.C., is and
11 at all times mentioned herein, was, a Foreign Limited Liability Company doing business in
12 Nevada.

13 4. Defendant BANK OF NEW YORK MELLON f/k/a THE BANK OF NEW YORK AS
14 TRUSTEE FOR THE CERTIFICATE HOLDERS OF CWALT, INC., ALTERNATIVE
15 LOAN TRUST 2005-2, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-2,
16 is and at all times mentioned herein, was, a Foreign Limited Liability Company doing business
17 in Nevada.

18 5. That the true names or capacities, whether individual, corporate, association or
19 otherwise, of Defendants DOES I through X, inclusive, and ROE CORPORATIONS I through
20 X, inclusive, are unknown to Plaintiffs, who therefore sues said Defendants by such fictitious
21 names; Plaintiffs are informed and believe and therefore allege that each of the Defendants
22 designated herein as a DOE and ROE CORPORATIONS are responsible in some manner for
23 the events and happenings referred to and caused damages proximately to the Plaintiffs as
24 herein alleged, and that Plaintiffs will ask leave of this Court to amend this Complaint, to
25
26
27
28

1 insert the true names and capacities of DOES I through X, and ROE CORPORATIONS I
2 through X, when the same have been ascertained, to formulate appropriate allegations, and to
3 join such Defendant in this action.

4
5 6. Jurisdiction in this matter is proper because the subject of this matter is the real
6 property located at 6017 Guild Ct., Las Vegas, Nevada, APN: 125-14-810-039 (the
7 “Property”).

8 7. Venue in the Eighth District Court is proper because the Property is located in Clark
9 County, Nevada.

10 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

11
12 8. Baham purchased the Property on or about December 23, 2004.

13 9. Baham signed an Adjustable Rate Note containing a promise to pay (the “Note”).

14 10. Baham received a copy of the Note.

15 11. On December 11, 2011, Plaintiff received another certified copy of the Note. This
16 copy, however, had a blank endorsement on it.

17 12. The endorsement on the Note that Plaintiff received on December 11, 2011 is from a
18 former employee of Countrywide.

19 13. The former employee who signed the endorsement had left Countrywide some time in
20 2006.

21 14. On November 5, 2015, Plaintiff received another certified copy of the Note. However,
22 this certified copy has marks on the copy that are not on the prior two, specifically,
23 highlighting and circling of particular terms.

24 15. The certified copy of the Note received by Plaintiff on November 5, 2015, also
25 includes the same endorsement from the same employee who left Countrywide years earlier.
26
27
28

1 16. Plaintiff and Defendant BONY participated in four unsuccessful foreclosure
2 mediations between 2015 and 2018.

3 17. Plaintiff petitioned the District Court for judicial review of all four foreclosure
4 mediations.

5 18. On February 27, 2019, the District Court denied the fourth petition for judicial review
6 (case #A-18-775019-FM) and ordered that the certificate of foreclosure issue.

7 19. Plaintiff filed a timely appeal of the February 27, 2019 decision of the District Court.
8 Briefing in the appellate case was completed and a decision is pending by the Nevada Court of
9 Appeals.
10

11 20. A foreclosure sale of the Property took place on February 28, 2020.

12 21. Defendant BONY is currently the titled owner of the Property.

13 22. Plaintiff still remains in possession of the Property.
14

15 **FIRST CAUSE OF ACTION**
16 **(Injunctive Relief)**

17 23. Plaintiff repeats, realleges and incorporates by reference each and all of the allegations
18 hereinabove of this Complaint as though fully set forth herein.

19 24. Plaintiff filed a timely appeal in case # A-18-775019-FM.

20 25. The appeal is still pending.

21 26. If the appeal is decided in favor of Plaintiff, it will have the effect of voiding all of the
22 foreclosure actions taken by BONY after the certificate of foreclosure was issued.

23 27. The foreclosure sale, in which BONY took title to the Property, took place after the
24 certificate of foreclosure was issued and would be voided if the appeal is decided in favor of
25 the Plaintiff.
26

27 28. Baham requests that this court enjoin the Defendant BONY from filing any evictions,
28

1 pending the outcome of the appeal.

2 29. As a direct and proximate cause of Defendant's actions, it has become necessary for
3 Plaintiff to secure the services of an attorney, and Plaintiff is entitled to recover fees and costs
4 incurred herein as special damages.
5

6 **FIRST CAUSE OF ACTION**
7 **(Intentional Misrepresentation)**

8 30. Plaintiff repeats, realleges and incorporates by reference each and all of the allegations
9 hereinabove of this Complaint as though fully set forth herein.

10 31. In December, 2004, Plaintiff signed the Note promising payment for the Property.

11 32. Defendants provided a certified copy of the Note that did not have an endorsement on
12 it.

13 33. On December 11, 2011, Plaintiff received a certified copy of the Note with a blank
14 endorsement on it.

15 34. The endorsement on the Note that Plaintiff received on December 11, 2011 is signed
16 by a former employee of Countrywide who had not been employed by Countrywide since
17 2006.
18

19 35. On November 5, 2015, Plaintiff received another certified copy of the Note with the
20 same endorsement, but with circling and highlighting.
21

22 36. Defendants intentionally misrepresented that the Note had been transferred by adding
23 the endorsement of the Note after the time in which the transfer was represented to have been
24 made.
25

26 37. The misrepresentation was intentional.

27 38. The misrepresentation was intended to make the courts, the Plaintiff, and foreclosure
28 mediators believe that the Note was properly transferred.

1 39. The Plaintiff was damaged when the courts and the foreclosure mediators accepted the
2 misrepresentation as true because the Property was sold in a foreclosure sale.

3 40. As a direct and proximate cause of Defendant's actions, it has become necessary for
4 Plaintiff to secure the services of an attorney, and Plaintiff is entitled to recover fees and costs
5 incurred herein as special damages.
6

7 **WHEREFORE**, Plaintiff respectfully prays for the following relief from the Court:

- 8 A. An Order of injunction to prevent BONY from evicting Plaintiff;
9 B. An Order maintaining the status quo by preventing any transfers of title or
10 assignments.
11 C. An Order reversing the foreclosure due to the intentional misrepresentation of the
12 endorsement on the Note.
13 D. For an award of reasonable attorney's fees and costs of suit incurred herein;
14 E. For an award of pre-judgment and post judgment interest; and
15 F. For such other and further relief as the Court deems just and proper.
16
17

18 DATED this ____ day of _____, 2020.

19 MORTENSON & RAFIE, LLP

20 */s/ Peter B. Mortenson*

21 _____
22 Peter B. Mortenson, Esq.
23 Nevada Bar No. 5725
24 10781 W. Twain Avenue
25 Las Vegas, NV 89135
26 Ph: 702-363-4190
27 Fx: 702-363-4107
28 Email: manager@nvlaw.us
Attorney for Dennis Baham

SAO

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Nevada Bar No. 13088

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*Attorneys for The Bank of New York Mellon, as
Trustee for the Certificateholders of CWALT, Inc.,
Alternative Loan Trust 2005-2, Mortgage Pass-
Through Certificates, Series 2005-2*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DENNIS BAHAM, an individual,

Plaintiff,

v.

BAYVIEW LOAN SERVICING, LLC, a Foreign
Limited Liability Company; FIRST AMERICAN
TRUSTEE SERVICING SOLUTIONS, LLC, a
Foreign Limited Liability Company; and BANK
OF NEW YORK MELLON f/k/a THE BANK
OF NEW YORK AS TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWALT, INC.,
ALTERNATIVE LOAN TRUST 2005-2,
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2,

Defendants.

Case No.: A-19-795762-C

Dept. No.: IV

**STIPULATION AND ORDER TO
CONTINUE HEARING AND EXTEND
BRIEFING SCHEDULE**

{54636715}

Defendants The Bank of New York Mellon, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2005-2, Mortgage Pass-Through Certificates, Series 2005-2 and Bayview Loan Servicing, LLC (BoNYM) and Bayview Loan Servicing, LLC, and plaintiff Dennis Baham, by and through undersigned counsel, submit this stipulation and order to continue the hearing on the motion to consolidate and motion to dismiss currently set for September 17, 2020, and to extend the briefing schedule.

Baham filed an opposition and countermotion on August 28, 2020. However, the document was inadvertently filed only and not e-served. Therefore, counsel for defendants only recently became aware of the filing when they reviewed the court's docket, and need additional time to prepare and file their replies and response to the countermotion. The parties agree to extend defendants' deadline to file their replies in support of the motion to dismiss and their response to plaintiff's countermotion for leave to amend to **September 25, 2020**. The parties further agree to continue the hearing to a date and time convenient for the court after October 9, 2020.

AKERMAN LLP/s/ Jamie K. Combs

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Nevada Bar No. 12125

JAMIE K. COMBS, ESQ.

Nevada Bar No. 13088

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

*Attorneys for The Bank of New York Mellon, as
Trustee for the Certificateholders of CWALT,
Inc., Alternative Loan Trust 2005-2, Mortgage
Pass-Through Certificates, Series 2005-2*

MORTENSEN & RAFIE, LLP/s/ Richard R. K. Waltjen

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Nevada Bar No. 5725

RICHARD R. K. WALTJEN, ESQ.

Nevada Bar No. 13416

10781 W. Twain Avenue

Las Vegas, Nevada 89135

Attorneys for Dennis Baham

WRIGHT, FINLAY & ZAK, LLP/s/ Darren T. Brenner

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

7785 W. Sahara Avenue, Suite 200

Las Vegas, Nevada 89117

Attorneys for Bayview Loan Servicing, LLC

Dennis Baham vs. Bayview Loan Servicing, LLC
A-19-795762-C

ORDER

Based on the stipulation of the parties and good cause appearing:

IT IS HEREBY ORDERED that defendants have until September 25, 2020, to file their reply in support of the motion to dismiss and their response to plaintiff's counter-motion for leave to amend.

IT IS FURTHER ORDERED that the hearing on the motion to consolidate and motion to dismiss is RESET to January 12, 2021 at 9:00 a.m.

DATED this ____ day of September, 2020.

Dated this 17th day of September, 2020



DISTRICT COURT JUDGE

89A D06 08D8 E4BD
Kerry Earley
District Court Judge

Respectfully Submitted By:

AKERMAN LLP

/s/ Jamie K. Combs

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

JAMIE K. COMBS, ESQ.

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Las Vegas, Nevada 89134

*Attorneys for The Bank of New York Mellon, as
Trustee for the Certificateholders of CWALT,
Inc., Alternative Loan Trust 2005-2, Mortgage
Pass-Through Certificates, Series 2005-2*

Llarena, Carla (LAA-Las)

From: Combs, Jamie (Assoc-Las)
Sent: Wednesday, September 16, 2020 11:41 AM
To: Llarena, Carla (LAA-Las); Larsen, Patricia (LAA-Las)
Cc: Winslow, Natalie (Ptrn-Las)
Subject: FW: Dennis Baham v. BoNYM / Bayview A-20-810458-C and A-19-795762-C
Attachments: ORDER_ [Baham, Dennis] - SAO to Continue Hearing & Extend Briefing Schedule.nrl;
ORDER_ [Baham, Dennis] - SAO to Continue Hearing & Extend Briefing Schedule.DOCX

From: Rick Waltjen <rwaltjen@nvlaw.us>
Sent: Wednesday, September 16, 2020 11:34 AM
To: Darren T. Brenner <dbrenner@wrightlegal.net>; Combs, Jamie (Assoc-Las) <jamie.combs@akerman.com>; Office Manager <manager@nvlaw.us>
Cc: Winslow, Natalie (Ptrn-Las) <natalie.winslow@akerman.com>
Subject: RE: Dennis Baham v. BoNYM / Bayview A-20-810458-C and A-19-795762-C

Good morning,

You have our permission to use the Esignature of either myself or Peter B. Mortenson for the SAO to extend briefing time and continue date of hearing on Motion to Dismiss and Motion to Consolidate.

Thanks

Richard Waltjen, Esq.
Attorney at Law
10781 West Twain Avenue
Las Vegas, NV 89135
Phone: 702.363.4190
FAX: 702.363.4107
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From: Darren T. Brenner [<mailto:dbrenner@wrightlegal.net>]
Sent: Wednesday, September 16, 2020 11:25 AM
To: 'jamie.combs@akerman.com'; Rick Waltjen; Office Manager
Cc: natalie.winslow@akerman.com
Subject: RE: Dennis Baham v. BoNYM / Bayview A-20-810458-C and A-19-795762-C

Okay to file with my signature.

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Partner – Nevada Office



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Cc: natalie.winslow@akerman.com
Subject: RE: Dennis Baham v. BoNYM / Bayview A-20-810458-C and A-19-795762-C

Good morning,

Here is the proposed stipulation. Please let me know if you have any revisions or if you approve of submitting with your electronic signature. I am also copying Darren Brenner, as counsel for Bayview, to confirm whether he approves as well.

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

| | |
|--|------------------------|
| Dennis Baham, Plaintiff(s) | CASE NO: A-19-795762-C |
| vs. | DEPT. NO. Department 4 |
| Bayview Loan Servicing, LLC, Defendant(s) | |

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Service Date: 9/17/2020

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Email: natalie.winslow@akerman.com

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*Attorneys for The Bank of New York Mellon, as
Trustee for the Certificateholders of CWALT, Inc.,
Alternative Loan Trust 2005-2, Mortgage Pass-
Through Certificates, Series 2005-2*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DENNIS BAHAM, an individual,

Plaintiff,

v.

BAYVIEW LOAN SERVICING, LLC, a Foreign
Limited Liability Company; FIRST AMERICAN
TRUSTEE SERVICING SOLUTIONS, LLC, a
Foreign Limited Liability Company; and BANK
OF NEW YORK MELLON f/k/a THE BANK
OF NEW YORK AS TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWALT, INC.,
ALTERNATIVE LOAN TRUST 2005-2,
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2,

Defendants.

Case No.: A-19-795762-C

Dept. No.: IV

**NOTICE OF ENTRY OF STIPULATION
AND ORDER TO CONTINUE HEARING
AND EXTEND BRIEFING SCHEDULE**

{54636715}

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that a **STIPULATION AND ORDER TO CONTINUE**
3 **HEARING AND EXTEND BRIEFING SCHEDULE** has been entered by this Court on the 17th
4 day of September, 2020, in the above-captioned matter. A copy of said Order is attached hereto as
5 **Exhibit A.**

6 Dated this 17th day of September, 2020.

7 **AKERMAN LLP**

8 /s/ Jamie K. Combs

9 ARIEL E. STERN, ESQ.

10 Nevada Bar No. 8276

NATALIE L. WINSLOW, ESQ.

11 Nevada Bar No. 12125

JAMIE K. COMBS, ESQ.

12 Nevada Bar No. 13088

1635 Village Center Circle, Suite 200

13 Las Vegas, Nevada 89134

14 *Attorneys for The Bank of New York Mellon, as*
15 *Trustee for the Certificateholders of CWALT, Inc.,*
16 *Alternative Loan Trust 2005-2, Mortgage Pass-*
17 *Through Certificates, Series 2005-2*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 17th day of September, 2020, and pursuant to NRCP 5.1, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF STIPULATION AND ORDER TO CONTINUE HEARING AND EXTEND BRIEFING SCHEDULE**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

MORTENSON & RAFIE, LLP

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| Felipe Villa | fvilla@nvlaw.us |
| Richard Waltjen, Esq. | rwaltjen@nvlaw.us |
| Stacy Warner | swarner@nvlaw.us |

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| DEFAULT ACCOUNT | NVefile@wrightlegal.net |
| Darren Brenner | dbrenner@wrightlegal.net |
| Jason Craig | jcraig@wrightlegal.net |

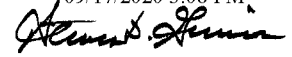
I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

/s/ Carla Llarena

An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A


CLERK OF THE COURT

SAO

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

JAMIE K. COMBS, ESQ.

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Alternative Loan Trust 2005-2, Mortgage Pass-
Through Certificates, Series 2005-2*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DENNIS BAHAM, an individual,

Plaintiff,

v.

BAYVIEW LOAN SERVICING, LLC, a Foreign
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CERTIFICATES, SERIES 2005-2,

Defendants.

Case No.: A-19-795762-C

Dept. No.: IV

**STIPULATION AND ORDER TO
CONTINUE HEARING AND EXTEND
BRIEFING SCHEDULE**

{54636715}

Defendants The Bank of New York Mellon, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2005-2, Mortgage Pass-Through Certificates, Series 2005-2 and Bayview Loan Servicing, LLC (BoNYM) and Bayview Loan Servicing, LLC, and plaintiff Dennis Baham, by and through undersigned counsel, submit this stipulation and order to continue the hearing on the motion to consolidate and motion to dismiss currently set for September 17, 2020, and to extend the briefing schedule.

Baham filed an opposition and countermotion on August 28, 2020. However, the document was inadvertently filed only and not e-served. Therefore, counsel for defendants only recently became aware of the filing when they reviewed the court's docket, and need additional time to prepare and file their replies and response to the countermotion. The parties agree to extend defendants' deadline to file their replies in support of the motion to dismiss and their response to plaintiff's countermotion for leave to amend to **September 25, 2020**. The parties further agree to continue the hearing to a date and time convenient for the court after October 9, 2020.

AKERMAN LLP/s/ Jamie K. Combs

NATALIE L. WINSLOW, ESQ.

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JAMIE K. COMBS, ESQ.

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Las Vegas, Nevada 89134

*Attorneys for The Bank of New York Mellon, as
Trustee for the Certificateholders of CWALT,
Inc., Alternative Loan Trust 2005-2, Mortgage
Pass-Through Certificates, Series 2005-2*

MORTENSEN & RAFIE, LLP/s/ Richard R. K. Waltjen

PETER B. MORTENSEN, ESQ.

Nevada Bar No. 5725

RICHARD R. K. WALTJEN, ESQ.

Nevada Bar No. 13416

10781 W. Twain Avenue

Las Vegas, Nevada 89135

Attorneys for Dennis Baham

WRIGHT, FINLAY & ZAK, LLP/s/ Darren T. Brenner

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

7785 W. Sahara Avenue, Suite 200

Las Vegas, Nevada 89117

Attorneys for Bayview Loan Servicing, LLC

Dennis Baham vs. Bayview Loan Servicing, LLC
A-19-795762-C

ORDER

Based on the stipulation of the parties and good cause appearing:

IT IS HEREBY ORDERED that defendants have until September 25, 2020, to file their reply in support of the motion to dismiss and their response to plaintiff's countermotion for leave to amend.

IT IS FURTHER ORDERED that the hearing on the motion to consolidate and motion to dismiss is RESET to January 12, 2021 at 9:00 a.m.

DATED this ____ day of September, 2020.

Dated this 17th day of September, 2020



DISTRICT COURT JUDGE

89A D06 08D8 E4BD
Kerry Earley
District Court Judge

Respectfully Submitted By:

AKERMAN LLP

/s/ Jamie K. Combs

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

NATALIE L. WINSLOW, ESQ.

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Trustee for the Certificateholders of CWALT,
Inc., Alternative Loan Trust 2005-2, Mortgage
Pass-Through Certificates, Series 2005-2*

Llarena, Carla (LAA-Las)

From: Combs, Jamie (Assoc-Las)
Sent: Wednesday, September 16, 2020 11:41 AM
To: Llarena, Carla (LAA-Las); Larsen, Patricia (LAA-Las)
Cc: Winslow, Natalie (Ptrn-Las)
Subject: FW: Dennis Baham v. BoNYM / Bayview A-20-810458-C and A-19-795762-C
Attachments: ORDER_ [Baham, Dennis] - SAO to Continue Hearing & Extend Briefing Schedule.nrl;
ORDER_ [Baham, Dennis] - SAO to Continue Hearing & Extend Briefing Schedule.DOCX

From: Rick Waltjen <rwaltjen@nvlaw.us>
Sent: Wednesday, September 16, 2020 11:34 AM
To: Darren T. Brenner <dbrenner@wrightlegal.net>; Combs, Jamie (Assoc-Las) <jamie.combs@akerman.com>; Office Manager <manager@nvlaw.us>
Cc: Winslow, Natalie (Ptrn-Las) <natalie.winslow@akerman.com>
Subject: RE: Dennis Baham v. BoNYM / Bayview A-20-810458-C and A-19-795762-C

Good morning,

You have our permission to use the Esignature of either myself or Peter B. Mortenson for the SAO to extend briefing time and continue date of hearing on Motion to Dismiss and Motion to Consolidate.

Thanks

Richard Waltjen, Esq.
Attorney at Law
10781 West Twain Avenue
Las Vegas, NV 89135
Phone: 702.363.4190
FAX: 702.363.4107
rwaltjen@nvlaw.us



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Okay to file with my signature.

Darren T. Brenner, Esq.
Partner – Nevada Office



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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

| | |
|--|------------------------|
| Dennis Baham, Plaintiff(s) | CASE NO: A-19-795762-C |
| vs. | DEPT. NO. Department 4 |
| Bayview Loan Servicing, LLC, Defendant(s) | |

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8 *Attorney for Defendant, Bayview Loan Servicing, LLC*

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DISTRICT COURT

CLARK COUNTY, NEVADA

DENNIS BAHAM, an individual,

Plaintiff,

vs.

BAYVIEW LOAN SERVICING, LLC, a
Foreign Limited Liability Company; FIRST
AMERICAN TRUSTEE SERVICING
SOLUTIONS, LLC, a Foreign Limited Liability
Company; and BANK OF NEW YORK
MELLON f/k/a THE BANK OF NEW YORK
AS TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWALT, INC.,
ALTERNATIVE LOAN TRUST 2005-2,
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2,

Defendants.

Case No.: A-19-795762-C

Dept: IV

**REPLY IN SUPPORT OF MOTION TO
CONSOLIDATE and MOTION TO
DISMISS**

AND

**OPPOSITION TO COUNTERMOTION
FOR LEAVE TO AMEND COMPLAINT**

Bayview Loan Servicing LLC (**Bayview**) submits the following reply in support of its motions to dismiss and opposition to plaintiff's counter motion to amend. Bayview also joins the arguments set forth in BoNYM's reply/opposition and reiterates many of those arguments on behalf of itself as set forth below.

I. Plaintiff Concedes the Allegations Currently Pled do not Support Claims.

The defendants set forth several reasons why the complaints were subject to dismissal: claim preclusion, mootness, and failure to state a claim. Although his briefing is styled as an opposition, plaintiff does not dispute that the allegations currently pled fail to state a claim upon

1 which relief can be granted. Plaintiff concedes his allegations are non-meritorious by proposing
2 an entirely different set of facts that are not contained in the complaint based on a supposed
3 discrepancy involving the note.

4 Plaintiff's new factual allegations cannot form a basis to deny dismissal. Allegations not
5 contained in the complaint cannot be considered on a motion to dismiss. *Davenport v. GMAC*
6 *Mortg.*, 129 Nev. 1109 (2013) ("a complaint must contain some 'set of facts, which, if true,
7 would entitle [the plaintiff] to relief."); *Estorga v. Santa Clara Valley Transportation Auth.*,
8 No. 16-CV-02668-BLF, 2016 WL 11523668, at *1 (N.D. Cal. Sept. 12, 2016) ("the Court shall
9 disregard facts that are not alleged on the face of the complaint or not contained in documents
10 attached to the complaint."); citing *Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005). The
11 motion to dismiss must be granted on the basis that plaintiff has fully abandoned his prior
12 claims and allegations and new allegations cannot be considered absent amendment.

13 **II. Leave to Amend Should be Denied as Futile**

14 Leave to amend should not be granted if the proposed amendment would be futile.
15 *Allum v. Valley Bank of Nev.*, 109 Nev. 280, 287, 849 P.2d 297, 302 (1993). A proposed
16 amendment may be deemed futile if the plaintiff seeks to amend the complaint in order to plead
17 an impermissible claim. *See Soebbing v. Carpet Barn, Inc.*, 109 Nev. 78, 84, 847 P.2d 731, 736
18 (1993). Plaintiff's proposed amendments are futile.

19 Plaintiff pleads a sole damage claim for intentional misrepresentation against all
20 defendants.¹ According to plaintiff, at some point he received a certified copy of his note
21 without an endorsement from the defendants. Proposed Amended Complaint (PAC) ¶32.² On
22 December 11, 2011, he received an unendorsed copy of the note with a blank endorsement. *Id.*
23 ¶33. He claims the endorsement was signed by someone not employed at Countrywide since
24 2006. *Id.* ¶34. Plaintiff claims to have received the same note again on November 5, 2015, but
25 with "circling and highlighting." *Id.* ¶35. Based solely on these allegations, plaintiff alleges
26

27 ¹ Plaintiff also attempts to allege a claim for injunctive relief, which is not a claim, but also does
28 not involve Bayview because it is not the title holder to the property.

² Plaintiff does not say when the first copy of the note was allegedly received. *Id.*

1 “Defendants intentionally misrepresented that the Note had been transferred by adding the
2 endorsement of the Note after the time in which the transfer was represented to have been
3 made.” *Id.* ¶36. Plaintiff also claims the alleged misrepresentation was “intended to make the
4 courts, the Plaintiff, and foreclosure mediators believe that the Note was properly transferred.”
5 *Id.* ¶38.

6 Plaintiffs’ proposed amended complaint is futile for a myriad of reasons. **First**,
7 endorsing a note is a routine and legal activity. **Second**, any claim based on the note is barred
8 by claim preclusion for the same reasons as stated in the motion to dismiss. **Third**, this court
9 does not have jurisdiction to assess the conduct at the mediation. That solely belonged to Judge
10 Bell—and now the Court of Appeals—who oversees action concerning the propriety of the
11 foreclosure mediation. **Fourth**, Bayview cannot be liable for any alleged statements or conduct
12 at the mediation because any statements are confidential and subject to judicial and/or quasi-
13 judicial immunity and privilege. **Fifth**, plaintiff cannot have suffered damages because of an
14 endorsement. BoNYM foreclosed on the deed of trust; it has not sought to enforce the note.
15 **Sixth**, plaintiff has not stated a claim for fraud against Bayview that complies with the
16 heightened pleading standard of Rule 9. He merely lumps Bayview in as a “defendant” without
17 explaining what conduct would even be attributable to it.

18 1. Endorsements on a note are not indicative of fraud.

19 The practice of endorsing a note is routine. *See Edelstein v. Bank of New York Mellon*,
20 128 Nev. 505, 523, 286 P.3d 249, 261 (2012) (“a note initially made payable ‘to order’ can
21 become a bearer instrument, if it is endorsed in blank.”). It’s functionally no different than
22 endorsing the back of a personal check. In this instance, the publicly filed deed of trusts alerted
23 plaintiff that the note might get sold after its execution to any one at anytime. *See* Exhibit A to
24 Motion to Dismiss, Deed of Trust at ¶20 (“The note or a partial interest in the Note...can be
25 sold one more times without prior notice to Borrower.”). Plaintiff clearly understands that the
26 loan was assigned from the original lender (Countrywide) to BoNYM. BoNYM was assigned
27 beneficial interest in the publicly recorded documents. Exhibit B to Motion to Dismiss.
28

1 Plaintiff acknowledges he participated in four prior foreclosure mediations with BoNYM. See
2 PAC ¶16.

3 Similarly, there is nothing nefarious that the employee who executed the blank
4 endorsement on the 2004 note subsequently left the company in 2006. It merely indicates the
5 note was endorsed sometime prior to 2006.³

6 2. Plaintiff's claims are barred by claim preclusion.

7 As discussed in the motion to dismiss, plaintiff's claims for relief are barred by claim
8 preclusion. For the same reasons, claim preclusion also bars any arguments plaintiff now makes
9 regarding the note.

10 Claim preclusion applies where "(1) the parties or their privies are the same, (2) the final
11 judgment is valid, and (3) the subsequent action is based on the same claims or any part of them
12 that were or could have been brought in the first case." *Five Star Capital Corp. v. Ruby*, 124
13 Nev. 1048, 1054, 194 P.3d 709, 713 (2008) *holding modified by* *Weddell v. Sharp*, 131 Nev.
14 Adv. Op. 28, 350 P.3d 80 (2015). Claim preclusion "embraces all grounds of recovery that were
15 asserted in a suit, as well as those that could have been asserted." *Five Star* 194 P.3d at 715.

16 Each of these factors are met. **First**, the foreclosure mediation action involved the same
17 parties or their privies—plaintiff and Bayview on behalf of BoNYM. Plaintiff acknowledges he
18 had each version of the note—with and without endorsements—when he filed the petition for
19 judicial review in 2018. **Second**, plaintiff acknowledges the appeal resulted in a final binding
20 order that is now on appeal. **Third**, plaintiff could and should have raised the issue in the
21 foreclosure mediation. Plaintiff acknowledges he had the notes in his position at that time per
22 his express allegations. One of the very purposes of the petition for judicial review is to assess
23 whether anything occurred at mediation to justify the imposition of sanctions. FMR
24

25 ³ Even the name of the security indicates the loan would have been sold in 2005, before the
26 employee who signed the certificate allegedly left the company. See PAC acknowledge
27 BoNYM's full description as: THE BANK OF NEW YORK AS TRUSTEE FOR THE
28 CERTIFICATE HOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2005-2,
MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-2.

20(3)(authorizing the award of sanctions). Plaintiff is barred by seeking to assert these claims here.

3. This Court does not have jurisdiction over foreclosure mediation based claims.

This court does not have jurisdiction to address the parties alleged conduct at mediation. That belongs solely to the district court overseeing the mediation, in this case Judge Bell and now the Court of Appeals. *See, e.g.* FMR 1(1)(setting forth bases for program and district court's related authority); FMR 3 (describing district court's role in mediation process); FMR 20 (vesting jurisdiction in the district court to award sanctions); FMR 24 (appellate review).

The rules do not vest a district court with the power to conduct a mediation through other means, such as a civil complaint. *See* Court Minutes entered herein on July 9, 2019. Even if the foreclosure mediation rules allowed a separate civil complaint, this court already held it could not exercise jurisdiction because of the already open foreclosure mediation case now pending before the court of appeals. District courts have equal and coextensive jurisdiction, and thus various district courts lack jurisdiction to review the acts of other district courts. N.R.S. 3.220; *see also State v. Sustacha*, 108 Nev. 223, 826 P.2d 959 (1992). In addition, the Nevada Constitution provides that the district courts have appellate jurisdiction only in cases arising in justices' courts and "other inferior tribunals." Nev. Const. art. 6, § 6; *see also Sustacha*, 108 Nev. at 226, 826 P.2d at 961.

Relatedly, plaintiff also waived and should be estopped from challenging the note. Waiver is the intentional relinquishment of a known right. *Nev. Yellow Cab Corp. v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 123 Nev. 44, 49, 152 P.3d 737, 740 (2007). Waiver of a right may be inferred when a party engages in conduct so inconsistent with an intent to enforce the right as to induce a reasonable belief that the right has been relinquished. *Id.* Further, a party seeking equity is required to do equity. *Overhead Door Co. of Reno, Inc. v. Overhead Door Corp.*, 103 Nev. 126, 128, 734 P.2d 1233, 1235 (1987). Equitable estoppel prevents a party from asserting legal rights that, in equity and good conscience, they should not be allowed to assert because of their own conduct. *NGA #2 Liab. Co. v. Rains*, 113 Nev. 1151, 1159, 946 P.2d 163, 168 (1997).

1 Plaintiff waived the argument regarding the note by failing to raise it in the foreclosure
2 mediation action. Plaintiff waived the argument when he failed to raise it in his motion to
3 alter/amend the judgment in the foreclosure mediation action. Plaintiff did not raise this
4 argument when he filed his chapter 13 bankruptcy case either, and scheduled BoNYM's loan as
5 an *undisputed* secured debt. *See* Exhibit C to BoNYM's reply and opposition to counter-motion
6 to amend.

7 In addition to constituting a waiver of the argument that the note was fraudulently
8 endorsed, Baham's chapter 13 bankruptcy petition, which listed the loan as neither disputed nor
9 contingent, is a judicial admission that the loan is valid. *Suter v. Goedert*, 396 B.R. 535, 541 (D.
10 Nev. 2008) ("[s]tatements made in bankruptcy schedules are executed under penalty of perjury
11 and, when offered against the debtor, 'are eligible for treatment as judicial admissions.'");
12 *Wolinsky v. Oak Tree Imaging, LP*, 362 B.R. 770, 780 (S.D. Tex. 2007); *Matter of Musgrove*,
13 187 B.R. 808, 812 (Bankr. N.D. Ga. 1995); *In re Gervich*, 570 F.2d 247, 253 (9th Cir. 1978)
14 (schedules may create judicial admission of debt's existence); *In re Leonard*, 151 B.R. 639, 643
15 (Bankr. N.D.N.Y. 1992); *see also River Glider Ave. v. The Bank of New York Mellon*, Nevada
16 Supreme Court Case No. 79808, Order of Affirmance (Nev. Sept. 18, 2020) (unpublished).
17 Plaintiff filed the chapter 13 bankruptcy case in bad faith and solely to invoke the automatic
18 bankruptcy stay to avoid foreclosure. *See* Mot. at p. 4, Exhibit Y, Z. In light of this conduct, and
19 his judicial admission regarding the validity of the loan, the court should conclude Baham
20 waived these arguments and is estopped from asserting them here.

21 4. Representations at mediation are confidential and immune from prosecution.

22 Plaintiff cannot bring claims based on representations at mediation for two reasons.
23 **First**, all discussions and documents provided at mediation are confidential and inadmissible in
24 a subsequent action. FRM 22(1) ("documents and discussions presented during the mediation
25 shall be deemed confidential and inadmissible in any subsequent actions or proceedings").

26 **Second**, statements made in a judicial or quasi judicial proceeding are immune from
27 prosecution. The Nevada Supreme Court has recognized "the long-standing common law rule
28 that communications uttered or published in the course of judicial proceedings are absolutely

1 privileged”. *Fink v. Oshins*, 118 Nev. 428, 432–33, 49 P.3d 640, 643 (2002) (quoting *Circus*
2 *Circus Hotels v. Witherspoon*, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983)). The privilege
3 extends to quasi-judicial proceedings. *Spencer v. Klementi*, 136 Nev. Adv. Op. 35, 466 P.3d
4 1241, 1247 (2020)(internal citations omitted). The privilege applies as long as the statements
5 are “in some way pertinent to the subject of the controversy.” *Greenberg Traurig v. Frias*
6 *Holding Co.*, 130 Nev. 627, 630–31, 331 P.3d 901, 903 (2014)(Citing *Fink v. Oshins*, 118 Nev.
7 428, 432–33, 49 P.3d 640, 643 (2002); *Circus Circus Hotels*, 99 Nev. at 60, 657 P.2d at 104.
8 Again, if plaintiff had a problem with statements made at mediation, then his remedy was to
9 bring it to the mediator’s attention to request a sanctions recommendation, or to the district
10 court.

11 5. BoNYM enforced the deed of trust, not the note.

12 Plaintiff’s arguments regarding the note and endorsement are also immaterial. Plaintiff is
13 not personally liable under the note as a result of his chapter 7 bankruptcy discharge, and
14 Bayview/BoNYM were not attempting to enforce the note at the foreclosure mediation. The
15 foreclosure mediation concerned only foreclosure. Whether the note is enforceable has no
16 bearing on that issue. *See In re Connor*, 27 F.3d 365, 366 (9th Cir. 1994) (“pre-existing lien on
17 property . . . remains enforceable against that property even after an individual’s personal
18 liability has been discharged.”); *In re Lopez*, 345 F.3d 701, 707 (9th Cir. 2003).

19 6. Plaintiff has not pled a valid claim for fraud.

20 Fraud is subject to NRCP 9(b)’s heightened pleading standard. Under Rule 9, plaintiff
21 must allege facts indicating that defendant did not intend to perform at the time he/she made the
22 promise at issue or a statement of fact was false when given. *See, e.g., Balsamo v. Sheriff,*
23 *Clark County*, 93 Nev. 315, 316, 565 P.2d 650, 651 (Nev. 1977); *see also Bulbman, Inc. v.*
24 *Nevada Bell*, 108 Nev. 105, 111, 825 P.2d 588, 592 (Nev. 1992). Plaintiff must detail the “who,
25 what, when, where, and how” of their claims. *Pirelli Armstrong Tire Corp Retiree Med.*
26 *Benefits Trust v. Walgreen Co.*, 631 F.3d 436, 441 (7th Cir. 2011).

27 Plaintiff’s PAC fails this standard. Plaintiff does not state the content of the
28 misrepresentation, how made it, how it was made, or how it influenced the outcome of the

1 mediation. Plaintiff similarly lumps all defendants together, without specifying which conduct
2 is attributable to who and when. Rule 9(b) does not allow a complaint to merely lump multiple
3 defendants together. *Davenport v. Homecomings Fin., LLC*, 130 Nev. 1169 (2014) (citing
4 *Swartz v. KPMG LLP*, 476 F.3d 756, 764–65 (9th Cir.2007)). The rule requires “plaintiffs to
5 differentiate their allegations when suing more than one defendant ... and inform each defendant
6 separately of the allegations surrounding his alleged participation in the fraud.” *Id.*

7 DATED September 23, 2020.

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9
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CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 25th day of September, 2020, I did cause a true copy of the foregoing **REPLY IN SUPPORT OF MOTION TO CONSOLIDATE and MOTION TO DISMISS AND OPPOSITION TO COUNTERMOTION FOR LEAVE TO AMEND COMPLAINT** to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFR 9, addressed as follows:

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9 *Alternative Loan Trust 2005-2, Mortgage Pass-*
10 *Through Certificates, Series 2005-2*

11 **EIGHTH JUDICIAL DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 DENNIS BAHAM, an individual
14
15 Plaintiff,

16 v.

17 BAYVIEW LOAN SERVICING, LLC, a
Foreign Limited Liability Company; FIRST
18 AMERICAN TRUSTEE SERVICING
SOLUTIONS, LLC, a Foreign Limited Liability
Company; and BANK OF NEW YORK
19 MELLON f/k/a THE BANK OF NEW YORK
AS TRUSTEE FOR THE
20 CERTIFICATEHOLDERS OF CWALT, INC.,
ALTERNATIVE LOAN TRUST 2005-2,
21 MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2,

22 Defendants.

Case No.: A-20-810458-C
Dept.: XI

AND

Case No: A-19-795762-C
Dept.: IV

**SUPPLEMENT TO BoNYM'S REPLY IN
SUPPORT OF ITS MOTION TO DISMISS
AND RESPONSE TO PLAINTIFF'S
COUNTERMOTION TO AMEND**

23 Plaintiff's opposition to the motion to dismiss and its countermotion to amend the complaint
24 asked that the court "maintain the status quo" pending resolution of Baham's appeal in his
25 foreclosure mediation case, arguing that "if the Court of Appeals decides in favor of the Plaintiff, the
26 foreclosure of the Property must be voided and reversed." *See* Opp. at p. 5. On October 9, 2020, the
27 Nevada court of appeals affirmed judgment in favor of Bayview, as servicer for BoNYM,

confirming the issuance of the foreclosure certificate was proper. A true and correct copy of the court's order of affirmance is attached as **Exhibit A**.

DATED October 12, 2020.

AKERMAN LLP

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Loan Trust 2005-2, Mortgage Pass-Through
Certificates, Series 2005-2*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of October, 2020, I caused to be served a true and correct copy of the foregoing , in the following manner:

☒ **(ELECTRONIC SERVICE FOR CASE NO: A-20-810458-C)** Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

| | |
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☒ **(ELECTRONIC SERVICE FOR CASE NO: A-19-795762-C)** Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

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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

EXHIBIT A

EXHIBIT A

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DENNIS BAHAM,
Appellant,
vs.
BAYVIEW LOAN SERVICING, LLC,
Respondent.

No. 78491-COA

FILED

OCT 09 2020

ELIZABETH A. DEAN
CLERK OF APPEALS COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Dennis Baham appeals from a district court order denying a request for appropriate relief in a foreclosure mediation matter. Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

After defaulting on his home loan, Baham elected to participate in Nevada's Foreclosure Mediation Program (FMP), and respondent Bayview Loan Servicing, LLC (Bayview)—acting as servicer on behalf of the lender and beneficiary of the first deed of trust, The Bank of New York Mellon (BNYM)—appeared at the mediation. The parties did not come to an agreement on a loan modification, and the mediator recommended that the district court dismiss Baham's petition for foreclosure mediation assistance and direct the issuance of a foreclosure certificate. Baham subsequently filed a request for appropriate relief under FMR 20(2) in the district court, arguing primarily that the power of attorney authorizing Bayview to act on BNYM's behalf did not provide it with the authority necessary to participate in the FMP. On that ground, Baham requested that the district court sanction Bayview by declining to direct the issuance

of a foreclosure certificate. Following a hearing, the district court entered a written order denying Baham's request, and this appeal followed.

Nearly five months after the district court entered its order, and while this appeal was pending, Baham filed a motion—styled as a “motion to alter or amend judgment”—requesting that the district court set its order aside under NRCP 60(b)(2) on grounds of newly discovered evidence. Specifically, Baham contended that shortly before the district court entered its order, he received a letter from the Nevada Financial Institutions Division (NFID) informing him that Bayview had not been licensed as a debt collector at the time it initiated the underlying foreclosure. He argued that Bayview therefore lacked authority to foreclose or participate in the FMP proceedings. The district court denied Baham's motion, concluding that the letter from NFID did not constitute newly discovered evidence.

On appeal, Baham largely abandons his arguments from below concerning the power of attorney granted to Bayview by BNYM.¹ Instead, he contends that the district court abused its discretion by denying his motion for relief under NRCP 60(b)(2), and he again argues that Bayview lacked authority to foreclose or participate in the FMP proceedings because it was not properly licensed as a debt collector when it initiated foreclosure.

¹Baham states in his opening brief that the representative for BNYM at the mediation did not possess a power of attorney executed by that entity and instead only possessed one executed by Bayview. But this assertion is contradicted by the record, which reflects that Bayview acted as BNYM's representative at the mediation and that BNYM had executed a power of attorney in Bayview's favor allowing it to do so.

Baham also contends that a letter from BNYM that he had attached to his request for appropriate relief below shows that BNYM might not be the true beneficiary of the first deed of trust and that Bayview also lacked the requisite authority to participate on that ground.²

In an FMP matter, we give deference to the district court's factual determinations, but we review legal issues de novo. *Pascua v. Bayview Loan Servicing, LLC*, 135 Nev. 29, 31, 434 P.3d 287, 289 (2019).

With respect to Baham's arguments concerning NRCP 60(b) relief and Bayview's failure to be licensed as a debt collector, we decline to consider those issues, as they are not properly before us. Baham's notice of appeal does not identify the district court's order denying his request for NRCP 60(b) relief, and he did not file a separate notice of appeal from that order. See NRAP 3(c)(1)(B) (providing that a notice of appeal must

²Bayview contends that Baham waived this issue by failing to raise it below, but we disagree. Although the district court did not expressly address the issue in its order, Baham attached the letter from BNYM to his request for appropriate relief and referred to it therein as proof that Bayview failed to comply with all of the FMP requirements. Thus, this issue is properly before us on appeal. However, Baham does argue for the first time on appeal in his reply brief that Bayview failed to provide copies of certain required documents at the mediation, including the underlying note and an August 2013 assignment. Because he did not present these issues to the district court and instead presents them for the first time in his reply brief, we decline to consider them. See *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal."); see also *Khoury v. Seastrand*, 132 Nev. 520, 530 n.2, 377 P.3d 81, 88 n.2 (2016) (concluding that an issue raised for the first time in a reply brief was waived).

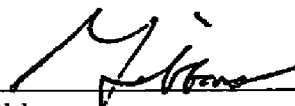
“designate the judgment, order or part thereof being appealed”); *see also* *Yu v. Yu*, 133 Nev. 737, 738 n.1, 405 P.3d 639, 639 n.1 (2017) (recognizing that an order denying NRCP 60(b) relief is independently appealable). Further, this court will generally not consider any order on appeal that is not included in a notice of appeal unless, among other things, “the intention to appeal from a specific judgment may be reasonably inferred from the text of the notice.” *Collins v. Union Fed. Sav. & Loan Ass’n*, 97 Nev. 88, 89-90, 624 P.2d 496, 497 (1981). And Baham could not have intended to seek this court’s review of the order denying NRCP 60(b) relief at the time he filed his notice of appeal because he filed the notice prior to filing his NRCP 60(b) motion. Moreover, to the extent Baham’s motion sought reconsideration or other relief, the arguments presented in the motion are likewise not properly before us given that Baham filed the motion after filing the notice of appeal. *See Arnold v. Kip*, 123 Nev. 410, 416-17, 168 P.3d 1050, 1054 (2007) (noting that arguments made in a motion for reconsideration can be reviewed in the context of an appeal from a final judgment when, among other things, they are properly part of the record on appeal as demonstrated by the motion and order having been filed prior to the notice of appeal).


We likewise reject Baham’s contention that the letter from BNYM that he had attached to his underlying request for appropriate relief indicates that BNYM is not the true beneficiary of the first deed of trust. As argued by Bayview, the letter merely indicates that BNYM is not the servicer of the underlying loan; it says nothing about BNYM’s status as holder of the underlying note and deed of trust. Accordingly, Baham has failed to set forth any grounds for reversal of the district court’s order

denying his request for appropriate relief and directing the issuance of a foreclosure certificate. *See Pascua*, 135 Nev. at 31, 434 P.3d at 289.

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Linda Marie Bell, Chief Judge
Cogburn Law Offices
Akerman LLP/Las Vegas
Eighth District Court Clerk



ORDR

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Through Certificates, Series 2005-2*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DENNIS BAHAM, an individual,

Plaintiff,

v.

BAYVIEW LOAN SERVICING, LLC, a Foreign
Limited Liability Company; FIRST AMERICAN
TRUSTEE SERVICING SOLUTIONS, LLC, a
Foreign Limited Liability Company; and BANK
OF NEW YORK MELLON f/k/a THE BANK
OF NEW YORK AS TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWALT, INC.,
ALTERNATIVE LOAN TRUST 2005-2,
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2,

Defendants.

Case No.: A-20-810458-C
Dept.: XI

AND

Case No.: A-19-795762-C

Dept. No.: IV

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS COMPLAINTS
AND DENYING COUNTERMOTION TO
AMEND**

Defendants The Bank of New York Mellon, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2005-2, Mortgage Pass-Through Certificates, Series 2005-2 (**BoNYM**) and Bayview Loan Servicing, LLC filed a motion to dismiss the complaints filed by plaintiff in case A-19-795762-C and A-20-810458-C, which this Court ordered consolidated. Plaintiff Dennis Baham filed an opposition and counter motion to amend and defendants filed replies and responses to Baham's counter motion. This Court held a hearing on January 19, 2021 and heard argument of

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1 counsel. Having considered the motion, opposition, countermotion, response, replies, as well as the
2 pleadings and papers on file and the arguments of counsel,

3 **IT IS ORDERED** that defendants' motion to dismiss is **GRANTED**. Plaintiff's complaints
4 are **DISMISSED** with prejudice.

5 Both of plaintiff's complaints allege a single claim for injunctive relief seeking to stop
6 BoNYM from foreclosing on the subject property. The claims are based on the allegation that
7 BoNYM's servicer Bayview lacked authority because it did not hold a debt-collectors license at the
8 time the notice of default was recorded.

9 Plaintiff's claims are barred by claim preclusion. Claim preclusion applies where "(1) the
10 parties or their privies are the same, (2) the final judgment is valid, and (3) the subsequent action is
11 based on the same claim or any part of them that were or could have been brought in the first case."
12 *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054, 194 P.3d 709, 713 (2008) *holding modified*
13 *by Weddell v. Sharp*, 131 Nev. Adv. Op. 28, 350 P.3d 80 (2015). Claim preclusion "embraces all
14 grounds of recovery that were asserted in a suit, as well as those that could have been asserted." *Five*
15 *Star*, 194 P.3d at 715.

16 Plaintiff litigated the issue of BoNYM's authority to foreclosure through the foreclosure
17 mediation action, case no. A-18-775019-FM, appeal no. 78491. Plaintiff also litigated the issue of
18 Bayview's licensure in federal court as case no. 2:19-cv-01125-APG-VCF. The parties or their
19 privies were the same in those actions as they are here. Both actions resulted in final valid
20 judgments. Plaintiff's sole remedy to challenge conduct related to the foreclosure mediation was
21 through the foreclosure mediation action. *See Tobler v. Sables, LLC*, 968 F.3d 1010, 1012 (9th Cir.
22 2020). The foreclosure mediation action resulted in a final order concluding BoNYM was entitled to
23 a foreclosure certificate, which the Nevada Supreme Court affirmed. The federal court action
24 resulted in an order of dismissal of plaintiff's claims with prejudice, from which plaintiff did not
25 appeal. Plaintiff is barred from raising the same issues he brought, or could have brought, in either
26 of the two prior actions.

27 Plaintiff's claims also fail because injunctive relief is a remedy rather than a cause of action,
28 and because the claims are moot as BoNYM has already foreclosed. *See, e.g., In re Wal-Mart Wage*

1 & *Hour Employment Practices Litig.*, 490 F. Supp. 2d 1091, 1130 (D. Nev. 2007) (claim for
2 injunctive relief was "not a separate cause of action" and "not an independent ground for relief"); *see*
3 *also In re Mann*, 907 F.2d 923, 926 (9th Cir. 1990) (party's failure to obtain stay of foreclosure sale
4 pending appeal rendered moot appeal of court's ruling on foreclosure action).

5 Plaintiff's claim cannot be characterized as one for wrongful foreclosure, as plaintiff does not
6 allege he fully performed under the loan agreement. *See Collins v. Union Fed. Sav. & Loan Ass'n*,
7 99 Nev. 284, 304, 662 P.2d 610, 623 (1983) (A claim for wrongful foreclosure requires the plaintiff
8 to show (1) the defendant exercised a power of sale or foreclosed on the property, and (2) at the time
9 the power of sale was exercised, there was no breach of condition or failure of performance by the
10 mortgagor that would have authorized the foreclosure.) Plaintiff admits he has not paid the
11 mortgage loan since 2011. Plaintiff's allegations regarding Bayview's licensure status are also
12 irrelevant to a wrongful foreclosure action as it was BoNYM, not Bayview, who foreclosed.
13 Plaintiff's allegations do not satisfy the elements of a wrongful foreclosure claim.

14 **IT IS FURTHER ORDERED** that plaintiff's counter-motion to amend is **DENIED**. The
15 Court finds that plaintiff's proposed amended complaint will not cure the deficiencies in the
16 complaint, and therefore amendment would be futile. *Cervantes v. Countrywide Home Loans, Inc.*,
17 656 F.3d 1034, 1041 (9th Cir. 2011).

Dated this 10th day of February, 2021



28B 679 6DD8 403B
Nadia Krall
District Court Judge

Respectfully submitted by:

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Sent: Tuesday, February 9, 2021 9:56 AM
To: Combs, Jamie (Assoc-Las)
Cc: Llarena, Carla (LAA-Las); Larsen, Patricia (LAA-Las); Winslow, Natalie (Ptnr-Las)
Subject: RE: Baham orders

Approved.

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From: jamie.combs@akerman.com [mailto:jamie.combs@akerman.com]
Sent: Tuesday, February 9, 2021 9:48 AM
To: Darren T. Brenner
Cc: carla.llarena@akerman.com; patricia.larsen@akerman.com; natalie.winslow@akerman.com
Subject: Baham orders

Hi Darren,

You previously approved the draft orders, but please confirm we have approval to attach your electronic signature to both orders for submission.

Thanks!

Jamie Katherine Combs

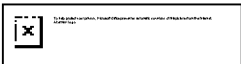
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[EXTERNAL This email originated outside the network. Please use caution when opening any attachments or responding to it.]

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Dennis Baham, Plaintiff(s)

CASE NO: A-20-810458-C

7 vs.

DEPT. NO. Department 11

8 Bayview Loan Servicing LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 2/10/2021

15 Natalie Winslow

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16 Ariel Stern

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17 Jamie Combs

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18 DEFAULT ACCOUNT

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19 Jason Craig

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20 Akerman LLP

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21 Jamie Combs

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22 Dennis Baham

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23 Darren Brenner

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NEOJ

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

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*Attorneys for The Bank of New York Mellon, as
Trustee for the Certificateholders of CWALT, Inc.,
Alternative Loan Trust 2005-2, Mortgage Pass-
Through Certificates, Series 2005-2*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DENNIS BAHAM, an individual,

Plaintiff,

v.

BAYVIEW LOAN SERVICING, LLC, a Foreign
Limited Liability Company; FIRST AMERICAN
TRUSTEE SERVICING SOLUTIONS, LLC, a
Foreign Limited Liability Company; and BANK
OF NEW YORK MELLON f/k/a THE BANK
OF NEW YORK AS TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWALT, INC.,
ALTERNATIVE LOAN TRUST 2005-2,
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2,

Defendants.

Case No.: A-19-795762-C

Dept.: IV

**NOTICE OF ENTRY OF ORDER
GRANTING DEFENDANTS' MOTION TO
DISMISS COMPLAINTS AND DENYING
COUNTERMOTION TO AMEND**

///

///

///

///

///

///

{54636715}

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that an **ORDER GRANTING DEFENDANTS' MOTION TO**
3 **DISMISS COMPLAINTS AND DENYING COUNTERMOTION TO AMEND** has been
4 entered by this Court on the 10th day of February, 2021, in the above-captioned matter. A copy of
5 said Order is attached hereto as **Exhibit A**.

6 Dated this 10th day of February, 2021.

7 **AKERMAN LLP**

8 /s/ Jamie K. Combs

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

JAMIE K. COMBS, ESQ.

Nevada Bar No. 13088

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

*Attorneys for The Bank of New York Mellon, as
Trustee for the Certificateholders of CWALT, Inc.,
Alternative Loan Trust 2005-2, Mortgage Pass-
Through Certificates, Series 2005-2*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 10th day of February, 2021, and pursuant to NRCP 5.1, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION TO DISMISS COMPLAINTS AND DENYING COUNTERMOTION TO AMEND**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

WRIGHT FINLAY & ZAK LLP

| | |
|-----------------|--------------------------|
| DEFAULT ACCOUNT | NVefile@wrightlegal.net |
| Darren Brenner | dbrenner@wrightlegal.net |
| Jason Craig | jcraig@wrightlegal.net |

DENNIS BAHAM - PLAINTIFF

| | |
|-----------------------|-------------------|
| Kevin Chan | kchan@nvlaw.us |
| Felipe Villa | fvilla@nvlaw.us |
| Richard Waltjen, Esq. | rwaltjen@nvlaw.us |

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/ Patricia Larsen

An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A



ORDR

NATALIE L. WINSLOW, ESQ.
Nevada Bar No. 12125
JAMIE K. COMBS, ESQ.
Nevada Bar No. 13088
AKERMAN LLP
1635 Village Center Circle, Suite 200
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*Attorneys for The Bank of New York Mellon, as
Trustee for the Certificateholders of CWALT, Inc.,
Alternative Loan Trust 2005-2, Mortgage Pass-
Through Certificates, Series 2005-2*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DENNIS BAHAM, an individual,

Plaintiff,

v.

BAYVIEW LOAN SERVICING, LLC, a Foreign
Limited Liability Company; FIRST AMERICAN
TRUSTEE SERVICING SOLUTIONS, LLC, a
Foreign Limited Liability Company; and BANK
OF NEW YORK MELLON f/k/a THE BANK
OF NEW YORK AS TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWALT, INC.,
ALTERNATIVE LOAN TRUST 2005-2,
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2,

Defendants.

Case No.: A-20-810458-C
Dept.: XI

AND

Case No.: A-19-795762-C

Dept. No.: IV

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS COMPLAINTS
AND DENYING COUNTERMOTION TO
AMEND**

Defendants The Bank of New York Mellon, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2005-2, Mortgage Pass-Through Certificates, Series 2005-2 (**BoNYM**) and Bayview Loan Servicing, LLC filed a motion to dismiss the complaints filed by plaintiff in case A-19-795762-C and A-20-810458-C, which this Court ordered consolidated. Plaintiff Dennis Baham filed an opposition and counter motion to amend and defendants filed replies and responses to Baham's counter motion. This Court held a hearing on January 19, 2021 and heard argument of

{54636715}

1 counsel. Having considered the motion, opposition, countermotion, response, replies, as well as the
2 pleadings and papers on file and the arguments of counsel,

3 **IT IS ORDERED** that defendants' motion to dismiss is **GRANTED**. Plaintiff's complaints
4 are **DISMISSED** with prejudice.

5 Both of plaintiff's complaints allege a single claim for injunctive relief seeking to stop
6 BoNYM from foreclosing on the subject property. The claims are based on the allegation that
7 BoNYM's servicer Bayview lacked authority because it did not hold a debt-collectors license at the
8 time the notice of default was recorded.

9 Plaintiff's claims are barred by claim preclusion. Claim preclusion applies where "(1) the
10 parties or their privies are the same, (2) the final judgment is valid, and (3) the subsequent action is
11 based on the same claim or any part of them that were or could have been brought in the first case."
12 *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054, 194 P.3d 709, 713 (2008) *holding modified*
13 *by Weddell v. Sharp*, 131 Nev. Adv. Op. 28, 350 P.3d 80 (2015). Claim preclusion "embraces all
14 grounds of recovery that were asserted in a suit, as well as those that could have been asserted." *Five*
15 *Star*, 194 P.3d at 715.

16 Plaintiff litigated the issue of BoNYM's authority to foreclosure through the foreclosure
17 mediation action, case no. A-18-775019-FM, appeal no. 78491. Plaintiff also litigated the issue of
18 Bayview's licensure in federal court as case no. 2:19-cv-01125-APG-VCF. The parties or their
19 privies were the same in those actions as they are here. Both actions resulted in final valid
20 judgments. Plaintiff's sole remedy to challenge conduct related to the foreclosure mediation was
21 through the foreclosure mediation action. *See Tobler v. Sables, LLC*, 968 F.3d 1010, 1012 (9th Cir.
22 2020). The foreclosure mediation action resulted in a final order concluding BoNYM was entitled to
23 a foreclosure certificate, which the Nevada Supreme Court affirmed. The federal court action
24 resulted in an order of dismissal of plaintiff's claims with prejudice, from which plaintiff did not
25 appeal. Plaintiff is barred from raising the same issues he brought, or could have brought, in either
26 of the two prior actions.

27 Plaintiff's claims also fail because injunctive relief is a remedy rather than a cause of action,
28 and because the claims are moot as BoNYM has already foreclosed. *See, e.g., In re Wal-Mart Wage*

1 & *Hour Employment Practices Litig.*, 490 F. Supp. 2d 1091, 1130 (D. Nev. 2007) (claim for
2 injunctive relief was "not a separate cause of action" and "not an independent ground for relief"); *see*
3 *also In re Mann*, 907 F.2d 923, 926 (9th Cir. 1990) (party's failure to obtain stay of foreclosure sale
4 pending appeal rendered moot appeal of court's ruling on foreclosure action).

5 Plaintiff's claim cannot be characterized as one for wrongful foreclosure, as plaintiff does not
6 allege he fully performed under the loan agreement. *See Collins v. Union Fed. Sav. & Loan Ass'n*,
7 99 Nev. 284, 304, 662 P.2d 610, 623 (1983) (A claim for wrongful foreclosure requires the plaintiff
8 to show (1) the defendant exercised a power of sale or foreclosed on the property, and (2) at the time
9 the power of sale was exercised, there was no breach of condition or failure of performance by the
10 mortgagor that would have authorized the foreclosure.) Plaintiff admits he has not paid the
11 mortgage loan since 2011. Plaintiff's allegations regarding Bayview's licensure status are also
12 irrelevant to a wrongful foreclosure action as it was BoNYM, not Bayview, who foreclosed.
13 Plaintiff's allegations do not satisfy the elements of a wrongful foreclosure claim.

14 **IT IS FURTHER ORDERED** that plaintiff's counter-motion to amend is **DENIED**. The
15 Court finds that plaintiff's proposed amended complaint will not cure the deficiencies in the
16 complaint, and therefore amendment would be futile. *Cervantes v. Countrywide Home Loans, Inc.*,
17 656 F.3d 1034, 1041 (9th Cir. 2011).

18 Dated this 10th day of February, 2021

19 

20 28B 679 6DD8 403B
21 Nadia Krall
22 District Court Judge

21 Respectfully submitted by:

22 AKERMAN LLP

23 /s/ Jamie K. Combs

24 ARIEL E. STERN, ESQ.

25 Nevada Bar No. 8276

26 NATALIE L. WINSLOW, ESQ.

27 Nevada Bar No. 12125

28 JAMIE K. COMBS, ESQ.

Nevada Bar No. 13088

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Attorneys for BoNYM

Approved as to form and content by:

*Dennis Baham vs. Bayview Loan Servicing, LLC
A-19-795762-C and A-20-810458-C*

WRIGHT, FINLAY & ZAK, LLP

/s/ Darren T. Brenner

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

7785 W. Sahara Avenue, Suite 200

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Attorneys for Bayview Loan Servicing, LLC

MORTENSEN & RAFIE, LLP

/s/ No Response

PETER B. MORTENSEN, ESQ.

Nevada Bar No. 5725

RICHARD R. K. WALTJEN, ESQ.

Nevada Bar No. 13416

10781 W. Twain Avenue

Las Vegas, Nevada 89135

Attorneys for Dennis Baham

Llarena, Carla (LAA-Las)

From: Darren T. Brenner <dbrenner@wrightlegal.net>
Sent: Tuesday, February 9, 2021 9:56 AM
To: Combs, Jamie (Assoc-Las)
Cc: Llarena, Carla (LAA-Las); Larsen, Patricia (LAA-Las); Winslow, Natalie (Ptnr-Las)
Subject: RE: Baham orders

Approved.

Darren T. Brenner, Esq.
Partner – Nevada Office



7785 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
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(702) 475-7964 Main, Ext. 7014
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dbrenner@wrightlegal.net

**Wright, Finlay & Zak, LLP: Your Counsel for
California, Nevada, Arizona, Washington,
Oregon, Utah, New Mexico, Hawaii,
Montana and South Dakota**



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COLLECTOR ATTEMPTING TO COLLECT A DEBT.
ANY INFORMATION OBTAINED WILL BE USED
FOR THAT PURPOSE.

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From: jamie.combs@akerman.com [mailto:jamie.combs@akerman.com]
Sent: Tuesday, February 9, 2021 9:48 AM
To: Darren T. Brenner
Cc: carla.llarena@akerman.com; patricia.larsen@akerman.com; natalie.winslow@akerman.com
Subject: Baham orders

Hi Darren,

You previously approved the draft orders, but please confirm we have approval to attach your electronic signature to both orders for submission.

Thanks!

Jamie Katherine Combs

Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134

D: 702 634 5007

Admitted in Nevada and Washington

jamie.combs@akerman.com

vCard | Profile



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[EXTERNAL This email originated outside the network. Please use caution when opening any attachments or responding to it.]

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Dennis Baham, Plaintiff(s)

CASE NO: A-20-810458-C

7 vs.

DEPT. NO. Department 11

8 Bayview Loan Servicing LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 2/10/2021

15 Natalie Winslow

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16 Ariel Stern

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17 Jamie Combs

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20 Akerman LLP

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21 Jamie Combs

jamie.combs@akerman.com

22 Dennis Baham

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23 Darren Brenner

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1 **NOW**

2 Peter B. Mortenson, Esq.
3 Nevada Bar No. 5725

4 **MORTENSON & RAFIE, LLP**

5 10781 W. Twain Avenue

6 Las Vegas, NV 89135

7 Ph: 702-363-4190

8 Fx: 702-363-4107

9 Email: manager@nvlaw.us

10 *Attorney for Dennis Baham*

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 DENNIS BAHAM, an individual,

14 Plaintiff,

15 vs.

16 BAYVIEW LOAN SERVICING, LLC, a
17 Foreign Limited Liability Company; FIRST
18 AMERICAN TRUSTEE SERVICING
19 SOLUTIONS, L.L.C., a Foreign Limited
20 Liability Company; and BANK OF NEW
21 YORK MELLON f/k/a THE BANK OF NEW
22 YORK AS TRUSTEE FOR THE
23 CERTIFICATE HOLDERS OF CWALT,
24 INC., ALTERNATIVE LOAN TRUST 2005-
25 2, MORTGAGE PASS-THROUGH
26 CERTIFICATES, SERIES 2005-2,

27 Defendants.

Case No.: A-19-795762-C

Dept. No.: IV

NOTICE OF WITHDRAWAL

28 Please take notice that, judgment or final determination of this matter having been
entered, Peter B. Mortenson, Esq. and Darius F. Rafie, Esq. of the law firm of MORTENSON
& RAFIE, LLP hereby withdraw as attorneys of record for Plaintiff, DENNIS BAHAM, in this
action, pursuant to Rule 46 of the Supreme Court of the State of Nevada.

//

MORTENSON & RAFIE, LLP

10781 West Twain Avenue
Las Vegas, Nevada 89135
Telephone (702) 363-4190 Facsimile (702) 363-4107

1 Plaintiff, DENNIS BAHAM, may be reached at his last known phone and address:

2 6017 Guild Court
3 Las Vegas, NV 89131
4 (702) 303-1263

5 DATED this 11 day of February, 2021.

6 **MORTENSON & RAFIE, LLP**

7 */s/ Peter B. Mortenson*

8

Peter B. Mortenson, Esq.
9 Nevada Bar No. 5725
10 10781 West Twain Avenue
11 Las Vegas, NV 89135
12 manager@nvlaw.us
13 *Attorneys for Plaintiff Dennis Baham*

MORTENSON & RAFIE, LLP
10781 West Twain Avenue
Las Vegas, Nevada 89135
Telephone (702) 363-4190 Facsimile (702) 363-4107

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of MORTENSON & RAFIE, LLP and that on this 11 day of February, 2021, I caused the above and foregoing document *Notice Of Withdrawal* to be served as follows:

- ☒ Pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system.
- ☐ By placing same to be deposited for mailing in the United States Mail, enclosed in a sealed envelope upon which first class postage prepaid in Las Vegas, Nevada.
- ☐ Pursuant to EDCR 7.26, to be sent via facsimile, by duly executed consent for service by electronic means.
- ☐ By hand delivery to the attorney listed below:

To the address, email address, and/or facsimile number listed below:

| | |
|-----------------|-----------------------------|
| Jamie Combs | jamie.combs@akerman.com |
| Akerman LLP | AkermanLAS@akerman.com |
| Ariel Stern | ariel.stern@akerman.com |
| Natalie Winslow | natalie.winslow@akerman.com |
| DEFAULT ACCOUNT | NVefile@wrightlegal.net |
| Darren Brenner | dbrenner@wrightlegal.net |
| Jason Craig | jcraig@wrightlegal.net |

/s/Richard Waltjen

An employee of MORTENSON & RAFIE, LLP



1 **MEMC**
2 ARIEL E. STERN, ESQ.
3 Nevada Bar No. 8276
4 NATALIE L. WINSLOW, ESQ.
5 Nevada Bar No. 12125
6 JAMIE K. COMBS, ESQ.
7 Nevada Bar No. 13088
8 AKERMAN LLP
9 1635 Village Center Circle, Suite 200
10 Las Vegas, Nevada 89134
11 Telephone: (702) 634-5000
12 Facsimile: (702) 380-8572
13 Email: natalie.winslow@akerman.com
14 Email: jamie.combs@akerman.com

15 *Attorneys for The Bank of New York Mellon, as*
16 *Trustee for the Certificateholders of CWALT, Inc.,*
17 *Alternative Loan Trust 2005-2, Mortgage Pass-*
18 *Through Certificates, Series 2005-2*

19 **EIGHTH JUDICIAL DISTRICT COURT**

20 **CLARK COUNTY, NEVADA**

21 DENNIS BAHAM, an individual,
22
23 Plaintiff,

24 v.

25 BAYVIEW LOAN SERVICING, LLC, a
26 Foreign Limited Liability Company; FIRST
27 AMERICAN TRUSTEE SERVICING
28 SOLUTIONS, LLC, a Foreign Limited Liability
Company; and BANK OF NEW YORK
MELLON f/k/a THE BANK OF NEW YORK
AS TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWALT, INC.,
ALTERNATIVE LOAN TRUST 2005-2,
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2,

Defendants.

Case No.: A-19-795762-C
Dept. No.: IV

consolidation pending with

Case No.: A-20-810458-C
Dept.: XI

**THE BANK OF NEW YORK MELLON, AS
TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWALT,
INC., ALTERNATIVE LOAN TRUST 2005-
2, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2'S
MEMORANDUM OF COSTS**

AKERMAN LLP
1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 – FAX: (702) 380-8572

1 Jamie K. Combs, counsel for plaintiff, states as follows:

2 I am a duly licensed attorney admitted to practice in the State of Nevada. I am an attorney at
3 the law firm of Akerman LLP, counsel for The Bank of New York Mellon, as Trustee for the
4 Certificateholders of CWALT, Inc., Alternative Loan Trust 2005-2, Mortgage Pass-Through
5 Certificates, Series 2005-2 (**BoNYM**) in this matter. BoNYM is the prevailing party in this case. I
6 have personal knowledge of the following costs and disbursements expended, and the items
7 contained below are true and correct to the best of my knowledge and belief.

8 These costs and disbursements were reasonable and necessarily and actually incurred in this
9 action.

10 I declare under penalty of perjury that the foregoing is true and correct.

11 DATED this 16th day of February, 2021.

12 /s/ Jamie K. Combs

13 JAMIE K. COMBS, ESQ.

14 **I. Legal Discussion**

15 NRS 18.020(5) allows for a prevailing party to recover its costs in an action involving the
16 title or boundaries of real estate, stating that costs must be allowed of course to the prevailing party
17 against any adverse party against whom judgment is rendered, including:

- 18 5. In an action which involves the title or boundaries of real estate, or the legality
19 of any tax, impost, assessment, toll or municipal fine, including the costs
accrued in the action if originally commenced in a Justice Court.

20 Because BoNYM prevailed against Dennis Baham (**Baham**) in this matter, appropriate costs
21 must be awarded to BoNYM.

22 NRS 18.005 outlines the costs that can be recovered by a prevailing party:

- 23 1. Clerks' fees.
24 2. Reporters' fees for depositions, including a reporter's fee for one copy of each
deposition.
25 3. Jurors' fees and expenses, together with reasonable compensation of an officer
26 appointed to act in accordance with NRS 16.120.
27 4. Fees for witnesses at trial, pretrial hearings and deposing witnesses, unless the court
28 finds that the witness was called at the instance of the prevailing party without reason
or necessity.

5. Reasonable fees of not more than five expert witnesses in an amount of not more than \$1,500 for each witness, unless the court allows a larger fee after determining that the circumstances surrounding the expert's testimony were of such necessity as to require the larger fee.
6. Reasonable fees of necessary interpreters.
7. The fee of any sheriff or licensed process server for the delivery or service of any summons or subpoena used in the action, unless the court determines that the service was not necessary.
8. Compensation for the official reporter or reporter pro tempore.
9. Reasonable costs for any bond or undertaking required as part of the action.
10. Fees of a court bailiff or deputy marshal who was required to work overtime,
11. Reasonable costs for telecopies.
12. Reasonable costs for photocopies.
13. Reasonable costs for long distance telephone calls.
14. Reasonable costs for postage.
15. Reasonable costs for travel and lodging incurred taking depositions and conducting discovery.
16. Fees charged pursuant to NRS 19.0335.
17. Any other reasonable and necessary expense incurred in connection with the action, including reasonable and necessary expenses for computerized services for legal research.

Below is a list of the costs that are recoverable by BoNYM for costs that were reasonable, necessary, and actually incurred in BoNYM's litigation of this matter.

II. Clerk's Filing Fees (pursuant to NRS 18.005(1))

| | | |
|------------------|--|----------|
| March 8, 2020 | Opposition to Motion for Preliminary Injunction | \$3.50 |
| August 8, 2020 | Lis Pendens | \$3.50 |
| August 8, 2020 | Filing Fee Remittance | \$233.19 |
| October 8, 2020 | BoNYM's Reply Supporting Motion to Dismiss 2019 and 2020 Complaints and Response to Countermotion to Amend | \$3.50 |
| October 8, 2020 | Notice of Entry of Stipulation and Order to Continue Hearing and Extend Briefing Schedule | \$3.50 |
| November 8, 2020 | Supplement to BoNYM's Reply in Support of its Motion to Dismiss and Response to Plaintiff's Countermotion to Amend | \$3.50 |

November 8, 2020 Supplement to BoNYM's Reply in Support of its Motion to Dismiss and Response to Plaintiff's Countermotion to Amend \$3.50

SUBTOTAL: **\$254.19**

See Exhibit A and Exhibit B

GRAND TOTAL: **\$254.19**

Respectfully submitted this 16th day of February, 2021.

AKERMAN LLP

/s/ Jamie K. Combs

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

JAMIE K. COMBS, ESQ.

Nevada Bar No. 13088

1635 Village Center Circle, Suite 200

Las Vegas, NV 89134

*Attorneys for The Bank of New York Mellon, as
Trustee for the Certificateholders of CWALT, Inc.,
Alternative Loan Trust 2005-2, Mortgage Pass-
Through Certificates, Series 2005-2*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 16th day of February, 2021 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **THE BANK OF NEW YORK MELLON, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2005-2, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-2'S MEMORANDUM OF COSTS**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & served through the Notice Of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

| | |
|-----------------|--------------------------|
| DEFAULT ACCOUNT | NVefile@wrightlegal.net |
| Darren Brenner | dbrenner@wrightlegal.net |
| Kevin Chan | kchan@nvlaw.us |
| Jason Craig | jcraig@wrightlegal.net |
| Filipe Villa | fvilla@nvlaw.us |
| Richard Waltjen | rwaltjen@nvlaw.us |

/s/ Patricia Larsen

An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A

Remittance Copy

Invoice Date
Invoice No.

April 23, 2020
9561127

[REDACTED]

Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**

Matter Name: **DENNIS BAHAM [REDACTED] (A-20-810458) NV**

Matter Number: [REDACTED]

Claim No: [REDACTED]

For professional services rendered through March 31, 2020 as summarized below:

| | |
|---------------------------|-------------------|
| [REDACTED] | [REDACTED] |
| Disbursements | <u>\$173.73</u> |
| TOTAL THIS INVOICE | [REDACTED] |

March 31, 2020

9561127

[illegible]

As of

March 31, 2020

Invoice Number

9561127

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114

As of

March 31, 2020

114

9561127

[illegible]

| | | | |
|------------|---|------------|------------|
| | [REDACTED] | | |
| [REDACTED] | [REDACTED] | [REDACTED] | |
| [REDACTED] | | | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | |
| [REDACTED] | | | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | |
| [REDACTED] | | | [REDACTED] |
| 8-Mar-20 | FILING FEES - BANK OF AMERICA - 104; E-File#5708907; 2/26/2020; Clark County District Court; Opposition to Motion for Preliminary Injunction. JH/5356 | 3.50 | |
| [REDACTED] | | | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | |
| [REDACTED] | | | [REDACTED] |
| [REDACTED] | [REDACTED] | | |

Remittance Copy

Invoice Date
Invoice No.

September 13, 2020
9605054



Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**

Matter Name: **DENNIS BAHAM** [REDACTED] (A-20-810458) NV

Matter Number: [REDACTED]

Claim No: [REDACTED]

For professional services rendered through August 31, 2020 as summarized below:

| | |
|---------------------------|------------|
| [REDACTED] | [REDACTED] |
| Disbursements | \$236.69 |
| TOTAL THIS INVOICE | [REDACTED] |

| | |
|------------|------------|
| [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] |

August 31, 2020

9605054

| Case No. | Case Name | Case Type | Case Status |
|----------|---------------|-----------|-------------|
| 1 | John Doe | Case 1 | Case 1 |
| 2 | Jane Smith | Case 2 | Case 2 |
| 3 | Bob Johnson | Case 3 | Case 3 |
| 4 | Alice Brown | Case 4 | Case 4 |
| 5 | Charlie Davis | Case 5 | Case 5 |
| 6 | Eve White | Case 6 | Case 6 |
| 7 | Frank Green | Case 7 | Case 7 |
| 8 | Grace Black | Case 8 | Case 8 |
| 9 | Henry Blue | Case 9 | Case 9 |
| 10 | Ivy Red | Case 10 | Case 10 |

| <u>Date</u> | <u>Disbursements</u> | <u>Value</u> |
|-------------|--|--------------|
| 8-Aug-20 | FILING FEES - BANK OF AMERICA - 25; E-File#3660606; 7/16/20; Clark County District Court; Lis Pendens. JH/5356 | 3.50 |
| 8-Aug-20 | FILING FEES - BANK OF AMERICA - 16; E-File#6308428; 7/13/20; Clark County District Court; Filing Fee Remittance. JH/5356 | 223.00 |
| 8-Aug-20 | FILING FEES - BANK OF AMERICA - 18; E-File#6308428; 7/13/20; Clark County District Court; Filing Fee Remittance. JH/5356 | 10.19 |

Remittance Copy

Invoice Date
Invoice No.

November 25, 2020
9625484



Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**

Matter Name: **DENNIS BAHAM** [REDACTED] (A-20-810458) NV

Matter Number: [REDACTED]



Claim No: [REDACTED]

For professional services rendered through October 31, 2020 as summarized below:

| | |
|---------------------------|------------|
| [REDACTED] | [REDACTED] |
| Disbursements | \$7.00 |
| TOTAL THIS INVOICE | [REDACTED] |



 NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE As of October 31, 2020
 SERVICING

 DENNIS BAHAM  (A-20-810458) NV Invoice Number 9625484

| | | | | |
|-------------|-------------|-------------|-------------|-------------|
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| <u>Date</u> | <u>Disbursements</u> | <u>Value</u> |
|-------------|---|--------------|
| 8-Oct-20 | FILING FEES - BANK OF AMERICA - 53; E-File#6682442; 9/25/20; Clark County District Court; BoNYM's Reply Supporting Motion to Dismiss 2019 and 2020 Complaints and Response to Countermotion to Amend. JH/5356 | 3.50 |
| 8-Oct-20 | FILING FEES - BANK OF AMERICA - 26; E-File#6642665; 9/17/20; Clark County District Court; Notice of Entry of Stipulation and Order to Continue Hearing and Extend Briefing Schedule. JH/5356 | 3.50 |

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Remittance Copy

Invoice Date
Invoice No.

January 26, 2021
9641331



Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**

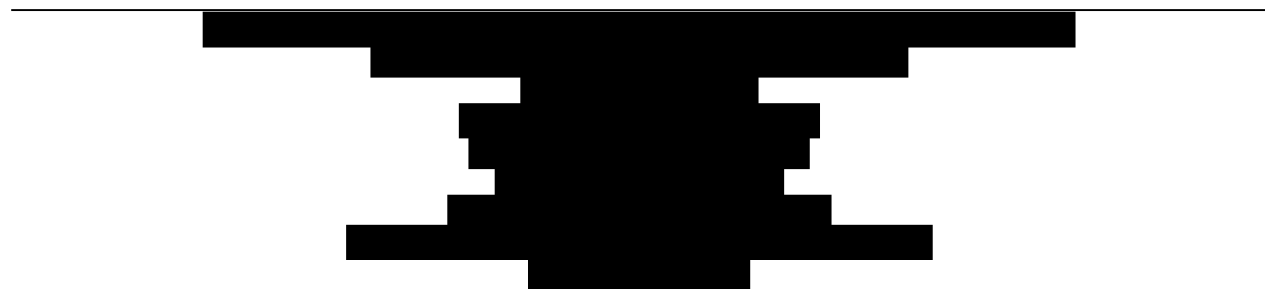
Matter Name: **DENNIS BAHAM** [REDACTED] (A-20-810458) NV

Matter Number: [REDACTED]

Claim No: [REDACTED]

For professional services rendered through December 31, 2020 as summarized below:

| | |
|---------------------------|------------|
| [REDACTED] | [REDACTED] |
| Disbursements | \$7.00 |
| TOTAL THIS INVOICE | [REDACTED] |



| | | | | | |
|------------|------------|------------|------------|------------|------------|
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |

587

EXHIBIT B

EXHIBIT B

Case # A-20-810458-C - Dennis Baham, Plaintiff(s)vs.Bayv**Envelope Information****Envelope Id**

5708907

Submitted Date

2/26/2020 3:48 PM PST

Submitted User Name

akermanlas@akerman.com

Case Information**Location**

Department 11

Category

Civil

Case Type

Other Title to Property

Case Initiation Date

2/13/2020

Case #

A-20-810458-C

Assigned to Judge

Gonzalez, Elizabeth

Filings**Filing Type**

EFileAndServe

Filing Code

Opposition to Motion - OPPM (CIV)

Filing DescriptionOpposition to Motion for
Preliminary Injunction**Client Reference Number**

[REDACTED]

Courtesy Copies

greenskies87@gmail.com

Filing on Behalf of

Bank of New York Mellon

Filing Status

Accepted

Accepted Date

2/26/2020 3:52 PM PST

Accept Comments

Auto Review Accepted

Lead Document

| File Name | Security | Download |
|--|----------|-----------------------------|
| OTHER_[Baham,_Dennis] _Opposition_to_Motion_for_PI_co | | Original File Court Copy |

eService Details

| Status | Name | Firm | Served | Date Opened |
|--------|----------------|-------------|--------|-----------------------|
| Sent | Jamie Combs | Akerman LLP | Yes | Not Opened |
| Sent | Jamie Combs | Akerman LLP | Yes | Not Opened |
| Sent | Akerman LLP | Akerman LLP | Yes | 2/26/2020 3:52 PM PST |
| Sent | Akerman LLP | Akerman LLP | Yes | Not Opened |
| Sent | Darren Brenner | Akerman LLP | Yes | Not Opened |
| Sent | Darren Brenner | Akerman LLP | Yes | Not Opened |

Parties with No eService

| Name | Address |
|----------------------------------|---------|
| First American Trustee Servicing | |

Fees

Opposition to Motion - OPPM (CIV)

| Description | Amount |
|----------------------|---------------|
| Filing Fee | \$0.00 |
| Filing Total: | \$0.00 |

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|------------------------|---------------|
| Total Filing Fee | \$0.00 |
| E-File Fee | \$3.50 |
| Envelope Total: | \$3.50 |

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|-----------------------------|------------------|-----------------|-------------|
| Transaction Amount | \$3.50 | | |
| Transaction Id | 6833878 | | |
| Filing Attorney | Jamie Combs | Order Id | 005708907-0 |
| Transaction Response | Payment Complete | | |

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Help

Case # A-20-810458-C - Dennis Baham, Plaintiff(s)vs.Bayv**Envelope Information****Envelope Id**

6330606

Submitted Date

7/16/2020 1:33 PM PST

Submitted User Name

akermanlas@akerman.com

Case Information**Location**

Department 11

Category

Civil

Case Type

Other Title to Property

Case Initiation Date

2/13/2020

Case #

A-20-810458-C

Assigned to Judge

Gonzalez, Elizabeth

Filings**Filing Type**

EFileAndServe

Filing Code

Lis Pendens - LIS (CIV)

Filing Description

Lis Pendens

Client Reference Number

369207 (Baham)

Filing on Behalf ofBayview Loan Servicing LLC,Bank
of New York Mellon**Filing Status**

Accepted

Accepted Date

7/16/2020 1:34 PM PST

Accept Comments

Auto Review Accepted

Lead Document**File Name**NTC_[Baham,_Dennis]
_Lis_Pendens_
(filed_Odyssey).PDF**Security**

Public Filed Document

DownloadOriginal File
Court Copy**eService Details**

| Status | Name | Firm | Served | Date Opened |
|--------|-----------------|--------------------------|--------|-----------------------|
| Sent | Dennis Baham | | Yes | 7/16/2020 2:17 PM PST |
| Sent | Ariel Stern | Akerman LLP | Yes | Not Opened |
| Sent | Ariel Stern | Akerman LLP | Yes | Not Opened |
| Sent | Jamie Combs | Akerman LLP | Yes | Not Opened |
| Sent | DEFAULT ACCOUNT | Wright, Finlay & Zak LLP | Yes | Not Opened |
| Sent | Jason Craig | Wright, Finlay & Zak LLP | Yes | 7/16/2020 2:05 PM PST |
| Sent | Jamie Combs | | Yes | Not Opened |
| Sent | Akerman LLP | Akerman LLP | Yes | Not Opened |
| Sent | Natalie Winslow | Akerman LLP | Yes | Not Opened |
| Sent | Natalie Winslow | Akerman LLP | Yes | Not Opened |
| Sent | Akerman LLP | Akerman LLP | Yes | Not Opened |
| Sent | Jamie Combs | Akerman LLP | Yes | Not Opened |
| Sent | Darren Brenner | Wright, Finlay & Zak LLP | Yes | 7/16/2020 1:34 PM PST |

Parties with No eService

| Name | Address |
|----------------------------------|---------|
| First American Trustee Servicing | |

Fees

Lis Pendens - LIS (CIV)

| Description | Amount |
|----------------------|---------------|
| Filing Fee | \$0.00 |
| Filing Total: | \$0.00 |

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|------------------------|---------------|
| Total Filing Fee | \$0.00 |
| E-File Fee | \$3.50 |
| Envelope Total: | \$3.50 |

| | |
|--------------------|---------|
| Transaction Amount | \$3.50 |
| Transaction Id | 7462906 |

| | | | |
|-----------------------------|------------------|-----------------|-------------|
| Filing Attorney | Jamie Combs | Order Id | 006330606-0 |
| Transaction Response | Payment Complete | | |

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Version: 2019.1.6.115

Case # A-20-810458-C - Dennis Baham, Plaintiff(s)vs.Bayv**Envelope Information**

| | | |
|-------------------------------|---|--|
| Envelope Id 6308428 | Submitted Date 7/13/2020 10:48 AM PST | Submitted User Name akermanlas@akerman.com |
|-------------------------------|---|--|

Case Information

| | | |
|---|--------------------------------|---|
| Location Department 11 | Category Civil | Case Type Other Title to Property |
| Case Initiation Date 2/13/2020 | Case # A-20-810458-C | |
| Assigned to Judge Gonzalez, Elizabeth | | |

Filings

| | |
|---|---|
| Filing Type EFileAndServe | Filing Code Filing Fee Remittance - FFR (CIV) |
| Filing Description Filing Fee Remittance | |
| Client Reference Number [REDACTED] (Baham) | |
| Filing on Behalf of Bank of New York Mellon | |
| Filing Status Accepted | Accepted Date 7/13/2020 1:18 PM PST |

Lead Document

| | | |
|---|--|--|
| File Name PLDG_[Baham_Dennis] _Filing_Fee_Remittance_ (filed_Odyssey).PDF | Security Non-Public Document | Download Original File Court Copy |
|---|--|--|

eService Details

| Status | Name | Firm | Served | Date Opened |
|--------|------|------|--------|-------------|
|--------|------|------|--------|-------------|

| Status | Name | Firm | Served | Date Opened |
|--------|-------------|-------------|--------|------------------------|
| Sent | Akerman LLP | Akerman LLP | Yes | 7/13/2020 10:52 AM PST |

Parties with No eService

| Name | Address |
|----------------------------------|---------|
| First American Trustee Servicing | |

Fees

Filing Fee Remittance - FFR (CIV)

| Description | Amount |
|-------------------------|-----------------|
| Filing Fee | \$0.00 |
| 05A Civil Answer/Appear | \$223.00 |
| Filing Total: | \$223.00 |

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|------------------------|-----------------|
| Total Filing Fee | \$223.00 |
| Payment Service Fee | \$6.69 |
| E-File Fee | \$3.50 |
| Envelope Total: | \$233.19 |

| | | | |
|-----------------------------|------------------|-----------------|-------------|
| Transaction Amount | \$233.19 | | |
| Transaction Id | 7441714 | | |
| Filing Attorney | Natalie Winslow | Order Id | 006308428-0 |
| Transaction Response | Payment Complete | | |

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Version: 2019.1.6.115

Help

Case # A-20-810458-C - Dennis Baham, Plaintiff(s)vs.Bayv**Envelope Information**

| | | |
|-------------------------------|---|--|
| Envelope Id 6682442 | Submitted Date 9/25/2020 12:07 PM PST | Submitted User Name akermanlas@akerman.com |
|-------------------------------|---|--|

Case Information

| | | |
|---|--------------------------------|---|
| Location Department 11 | Category Civil | Case Type Other Title to Property |
| Case Initiation Date 2/13/2020 | Case # A-20-810458-C | |
| Assigned to Judge Gonzalez, Elizabeth | | |

Filings

| | |
|-------------------------------------|--|
| Filing Type EFileAndServe | Filing Code Reply in Support - RIS (CIV) |
|-------------------------------------|--|

Filing Description
BoNYM's Reply Supporting Motion
to Dismiss 2019 and 2020
Complaints and Response to
Countermotion to Amend

Client Reference Number
[REDACTED] (Baham)

Filing on Behalf of
Bank of New York Mellon

| | |
|----------------------------------|--|
| Filing Status Accepted | Accepted Date 9/25/2020 12:09 PM PST |
|----------------------------------|--|

Accept Comments
Auto Review Accepted

Lead Document

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|---|--|--|
| File Name RPLY_[Baham] _Reply_Supporting_MTD_and_Re (filed_Odyssey).PDF | Security Public Filed Document | Download Original File Court Copy |
|---|--|--|

eService Details

| Status | Name | Firm | Served | Date Opened |
|---------------|-----------------|--------------------------|---------------|------------------------|
| Sent | Dennis Baham | | Yes | 9/25/2020 12:10 PM PST |
| Sent | Ariel Stern | Akerman LLP | Yes | Not Opened |
| Sent | Ariel Stern | Akerman LLP | Yes | Not Opened |
| Sent | Jamie Combs | Akerman LLP | Yes | Not Opened |
| Sent | DEFAULT ACCOUNT | Wright, Finlay & Zak LLP | Yes | Not Opened |
| Sent | Jason Craig | Wright, Finlay & Zak LLP | Yes | 9/25/2020 1:37 PM PST |
| Sent | Jamie Combs | | Yes | Not Opened |
| Sent | Akerman LLP | Akerman LLP | Yes | Not Opened |
| Sent | Natalie Winslow | Akerman LLP | Yes | Not Opened |
| Sent | Natalie Winslow | Akerman LLP | Yes | 9/25/2020 12:09 PM PST |
| Sent | Akerman LLP | Akerman LLP | Yes | Not Opened |
| Sent | Jamie Combs | Akerman LLP | Yes | Not Opened |
| Sent | Darren Brenner | Wright, Finlay & Zak LLP | Yes | Not Opened |

Parties with No eService

| Name | Address |
|----------------------------------|----------------|
| First American Trustee Servicing | |

Fees**Reply in Support - RIS (CIV)**

| Description | Amount |
|----------------------|---------------|
| Filing Fee | \$0.00 |
| Filing Total: | \$0.00 |

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|------------------------|---------------|
| Total Filing Fee | \$0.00 |
| E-File Fee | \$3.50 |
| Envelope Total: | \$3.50 |

\$3.50

| | | | |
|-----------------------------|------------------|-----------------|-------------|
| Transaction Amount | | | |
| Transaction Id | 7816129 | | |
| Filing Attorney | Jamie Combs | Order Id | 006682442-0 |
| Transaction Response | Payment Complete | | |

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Version: 2019.1.6.115

Case # A-19-795762-C - Dennis Baham, Plaintiff(s)vs.Bayv**Envelope Information****Envelope Id**

6642665

Submitted Date

9/17/2020 4:48 PM PST

Submitted User Name

akermanlas@akerman.com

Case Information**Location**

Department 4

Category

Civil

Case Type

Other Title to Property

Case Initiation Date

5/30/2019

Case #

A-19-795762-C

Assigned to Judge

Krall, Nadia

Filings**Filing Type**

EFileAndServe

Filing CodeNotice of Entry of Stipulation and
Order - NTSO (CIV)**Filing Description**Notice of Entry of Stipulation and
Order to Continue Hearing and
Extend Briefing Schedule**Client Reference Number**

[REDACTED] - Dennis Baham

Filing on Behalf of

Bank of New York Mellon

Filing Status

Accepted

Accepted Date

9/17/2020 4:50 PM PST

Accept Comments

Auto Review Accepted

Lead Document**File Name**NTC_[Baham,_Dennis]
_Notice_of_Entry_of_SAO_to_Co
[fsOdyssey].PDF**Security**

Public Filed Document

DownloadOriginal File
Court Copy

eService Details

| Status | Name | Firm | Served | Date Opened |
|---------------|-----------------------|--------------------------|---------------|-----------------------|
| Sent | Richard Waltjen, Esq. | Mortenson & Rafie, LLP | Yes | 9/17/2020 4:54 PM PST |
| Sent | Felipe Villa | Mortenson & Rafie, LLP | Yes | Not Opened |
| Sent | Stacy Warner | Mortenson & Rafie, LLP | Yes | Not Opened |
| Sent | Ariel Stern | Akerman LLP | Yes | 9/17/2020 4:53 PM PST |
| Sent | DEFAULT ACCOUNT | Wright, Finlay & Zak LLP | Yes | Not Opened |
| Sent | Natalie Winslow | Akerman LLP | Yes | Not Opened |
| Sent | Jamie Combs | Akerman LLP | Yes | Not Opened |
| Sent | Akerman LLP | Akerman LLP | Yes | 9/17/2020 4:54 PM PST |
| Sent | Akerman LLP | Akerman LLP | Yes | Not Opened |
| Sent | Jamie Combs | Akerman LLP | Yes | Not Opened |
| Sent | Natalie Winslow | Akerman LLP | Yes | Not Opened |
| Sent | Ariel Stern | Akerman LLP | Yes | Not Opened |
| Sent | Jason Craig | Wright, Finlay & Zak LLP | Yes | 9/18/2020 7:44 AM PST |
| Sent | Darren Brenner | Wright, Finlay & Zak LLP | Yes | 9/18/2020 7:44 AM PST |

Parties with No eService

| Name | Address |
|--------------|----------------|
| Dennis Baham | |

Fees**Notice of Entry of Stipulation and Order - NTSO (CIV)**

| Description | Amount |
|----------------------|---------------|
| Filing Fee | \$0.00 |
| Filing Total: | \$0.00 |

| | |
|------------------------|---------------|
| Total Filing Fee | \$0.00 |
| E-File Fee | \$3.50 |
| Envelope Total: | \$3.50 |

| | | | |
|-----------------------------|------------------|-----------------|-------------|
| Transaction Amount | \$3.50 | | |
| Transaction Id | 7776387 | | |
| Filing Attorney | Jamie Combs | Order Id | 006642665-0 |
| Transaction Response | Payment Complete | | |

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Case # A-20-810458-C - Dennis Baham, Plaintiff(s)vs.Bayv**Envelope Information****Envelope Id**

6765813

Submitted Date

10/12/2020 6:10 PM PST

Submitted User Name

akermanlas@akerman.com

Case Information**Location**

Department 11

Category

Civil

Case Type

Other Title to Property

Case Initiation Date

2/13/2020

Case #

A-20-810458-C

Assigned to Judge

Gonzalez, Elizabeth

Filings**Filing Type**

EFileAndServe

Filing Code

Supplement - SUPPL (CIV)

Filing Description

Supplement to BoNYM's Reply in
Support of its Motion to Dismiss
and Response to Plaintiff's
Countermotion to Amend

Client Reference Number

[REDACTED] - Dennis Baham

Filing on Behalf of

Bank of New York Mellon

Filing Status

Accepted

Accepted Date

10/12/2020 6:12 PM PST

Accept Comments

Auto Review Accepted

Lead Document**File Name**

RPLY_[Baham_Dennis]
_Supplement_to_BNYM's_RIS_of
[fsOdyssey].PDF

Security

Public Filed Document

Download

Original File
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eService Details

| Status | Name | Firm | Served | Date Opened |
|--------|-----------------|--------------------------|--------|------------------------|
| Sent | Dennis Baham | | Yes | 10/12/2020 7:11 PM PST |
| Sent | Ariel Stern | Akerman LLP | Yes | Not Opened |
| Sent | Ariel Stern | Akerman LLP | Yes | Not Opened |
| Sent | Jamie Combs | Akerman LLP | Yes | Not Opened |
| Sent | DEFAULT ACCOUNT | Wright, Finlay & Zak LLP | Yes | Not Opened |
| Sent | Jason Craig | Wright, Finlay & Zak LLP | Yes | 10/13/2020 7:47 AM PST |
| Sent | Jamie Combs | | Yes | Not Opened |
| Sent | Akerman LLP | Akerman LLP | Yes | 10/13/2020 7:44 AM PST |
| Sent | Natalie Winslow | Akerman LLP | Yes | Not Opened |
| Sent | Natalie Winslow | Akerman LLP | Yes | Not Opened |
| Sent | Akerman LLP | Akerman LLP | Yes | Not Opened |
| Sent | Jamie Combs | Akerman LLP | Yes | Not Opened |
| Sent | Darren Brenner | Wright, Finlay & Zak LLP | Yes | Not Opened |

Parties with No eService

| Name | Address |
|----------------------------------|---------|
| First American Trustee Servicing | |

Fees**Supplement - SUPPL (CIV)**

| Description | Amount |
|----------------------|---------------|
| Filing Fee | \$0.00 |
| Filing Total: | \$0.00 |

| | |
|------------------------|---------------|
| Total Filing Fee | \$0.00 |
| E-File Fee | \$3.50 |
| Envelope Total: | \$3.50 |

\$3.50

| | | | |
|-----------------------------|------------------|-----------------|-------------|
| Transaction Amount | | | |
| Transaction Id | 7897954 | | |
| Filing Attorney | Jamie Combs | Order Id | 006765813-0 |
| Transaction Response | Payment Complete | | |

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Help

Case # A-19-795762-C - Dennis Baham, Plaintiff(s)vs.Bayv**Envelope Information**

| | | |
|-------------------------------|---|--|
| Envelope Id 6765818 | Submitted Date 10/12/2020 6:13 PM PST | Submitted User Name akermanlas@akerman.com |
|-------------------------------|---|--|

Case Information

| | | |
|--|--------------------------------|---|
| Location Department 4 | Category Civil | Case Type Other Title to Property |
| Case Initiation Date 5/30/2019 | Case # A-19-795762-C | |
| Assigned to Judge Krall, Nadia | | |

Filings

| | |
|-------------------------------------|--|
| Filing Type EFileAndServe | Filing Code Supplement - SUPPL (CIV) |
|-------------------------------------|--|

Filing Description
Supplement to BoNYM's Reply in
Support of its Motion to Dismiss
and Response to Plaintiff's
Countermotion to Amend

Client Reference Number
[REDACTED] - Dennis Baham

Filing on Behalf of
Bank of New York Mellon

| | |
|----------------------------------|--|
| Filing Status Accepted | Accepted Date 10/12/2020 6:15 PM PST |
|----------------------------------|--|

Accept Comments
Auto Review Accepted

Lead Document

| | | |
|--|--|--|
| File Name RPLY_[Baham_Dennis] _Supplement_to_BNYM's_RIS_of [fsOdyssey].PDF | Security Public Filed Document | Download Original File Court Copy |
|--|--|--|

eService Details

| Status | Name | Firm | Served | Date Opened |
|---------------|-----------------------|--------------------------|---------------|------------------------|
| Sent | Richard Waltjen, Esq. | Mortenson & Rafie, LLP | Yes | 10/13/2020 8:23 AM PST |
| Sent | Felipe Villa | Mortenson & Rafie, LLP | Yes | Not Opened |
| Sent | Stacy Warner | Mortenson & Rafie, LLP | Yes | Not Opened |
| Sent | Ariel Stern | Akerman LLP | Yes | Not Opened |
| Sent | DEFAULT ACCOUNT | Wright, Finlay & Zak LLP | Yes | Not Opened |
| Sent | Natalie Winslow | Akerman LLP | Yes | Not Opened |
| Sent | Jamie Combs | Akerman LLP | Yes | Not Opened |
| Sent | Akerman LLP | Akerman LLP | Yes | Not Opened |
| Sent | Akerman LLP | Akerman LLP | Yes | Not Opened |
| Sent | Jamie Combs | Akerman LLP | Yes | Not Opened |
| Sent | Natalie Winslow | Akerman LLP | Yes | Not Opened |
| Sent | Ariel Stern | Akerman LLP | Yes | Not Opened |
| Sent | Jason Craig | Wright, Finlay & Zak LLP | Yes | 10/13/2020 7:48 AM PST |
| Sent | Darren Brenner | Wright, Finlay & Zak LLP | Yes | 10/12/2020 6:55 PM PST |

Parties with No eService

| Name | Address |
|--------------|----------------|
| Dennis Baham | |

Fees**Supplement - SUPPL (CIV)**

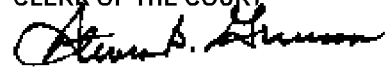
| Description | Amount |
|----------------------|---------------|
| Filing Fee | \$0.00 |
| Filing Total: | \$0.00 |

| | |
|------------------------|---------------|
| Total Filing Fee | \$0.00 |
| E-File Fee | \$3.50 |
| Envelope Total: | \$3.50 |

| | | | |
|-----------------------------|------------------|-----------------|-------------|
| Transaction Amount | \$3.50 | | |
| Transaction Id | 7897959 | | |
| Filing Attorney | Jamie Combs | Order Id | 006765818-0 |
| Transaction Response | Payment Complete | | |

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Help



DENNIS K. BAHAM
6017 GUILD CT
LAS VEGAS, NV 89131
GREENSKIES87@GMAIL.COM
TELEPHONE: 702-303-1263
PLAINTIFF IN PRO PER

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

DENNIS BAHAM, an individual,

Plaintiff

v.

BAYVIEW LOAN SERVICING, LLC, a
Foreign Limited Liability Company; FIRST
AMERICAN TRUSTEE SERVICING
SOLUTIONS, L.L.C., a Foreign Limited
Liability Company; and BANK OF NEW
YORK MELLON f/k/a THE BANK OF
NEW YORK AS TRUSTEE FOR THE
CERTIFICATE HOLDERS OF CWALT,
INC., ALTERNATIVE LOAN TRUST 2005-
2, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2,

Defendants.

Case No.: A-20-810458-C
Dept No.: XI

**OPPOSITION TO
MEMORANDUM OF COSTS**

**BANK OF NEW YORK MELLON AS
TRUSTEE FOR THE CERTIFICATE
HOLDERS OF CWALT, INC.
ALTERNATIVE LOAN TRUST 2005-2,
MORTGAGE PASS THROUGH
CERTIFICATE SERIES 2005-2'S**

COMES NOW, Plaintiff, Dennis Baham, Pro per, who informs the court he is opposing
the memorandum of costs based on the context of the motion for reconsideration that is to
be filed.

Dated this 19th day of February, 2021

By: /s/Dennis Baham
Dennis Baham
6017 Guild Court
Las Vegas, Nevada 89131
Plaintiff in Pro per

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of February, 2021 and pursuant to NRCP 5, I caused a true and correct copy of the foregoing **OPPOSITION TO MEMORANDUM OF COSTS FOR BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATE HOLDERS OF CWALT, INC, ALTERNATIVE LOAN TRUST 2005, MORTGAGE PASS THROUGH CERTIFICATE SERIES 2005-2'S** in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & served through the Notice Of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's contact list.

Jamie Combs jamie.combs@akerman.com
Natalie Winslow natile.winslow@akerman.com
Ariel Stern ariel.stern@akerman.com
Darren Brenner dbrenner@wrightlegal.net

/s/Dennis Baham
Plaintiff Pro per



NEOJ

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

JAMIE K. COMBS, ESQ.

Nevada Bar No. 13088

AKERMAN LLP

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Telephone: (702) 634-5000

Facsimile: (702) 380-8572

Email: natalie.winslow@akerman.com

Email: jamie.combs@akerman.com

*Attorneys for The Bank of New York Mellon, as
Trustee for the Certificateholders of CWALT, Inc.,
Alternative Loan Trust 2005-2, Mortgage Pass-
Through Certificates, Series 2005-2*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DENNIS BAHAM, an individual,

Plaintiff,

v.

BAYVIEW LOAN SERVICING, LLC, a Foreign
Limited Liability Company; FIRST AMERICAN
TRUSTEE SERVICING SOLUTIONS, LLC, a
Foreign Limited Liability Company; and BANK
OF NEW YORK MELLON f/k/a THE BANK
OF NEW YORK AS TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWALT, INC.,
ALTERNATIVE LOAN TRUST 2005-2,
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2,

Defendants.

Case No.: A-19-795762-C

Dept.: IV

Consolidated with

Case No.: A-20-810458-C

Dept.: XI

**NOTICE OF ENTRY OF ORDER
GRANTING DEFENDANTS' MOTION TO
CONSOLIDATE**

///

///

///

///

///

///

{54636715}

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that an **ORDER GRANTING DEFENDANTS' MOTION TO**
3 **CONSOLIDATE** has been entered by this Court on the 24th day of February, 2021, in the above-
4 captioned matter. A copy of said Order is attached hereto as **Exhibit A**.

5 Dated this 24th day of February, 2021.

6 **AKERMAN LLP**

7 /s/ Jamie K. Combs

8 NATALIE L. WINSLOW, ESQ.

9 Nevada Bar No. 12125

JAMIE K. COMBS, ESQ.

Nevada Bar No. 13088

10 1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

11 *Attorneys for The Bank of New York Mellon, as*
12 *Trustee for the Certificateholders of CWALT, Inc.,*
13 *Alternative Loan Trust 2005-2, Mortgage Pass-*
14 *Through Certificates, Series 2005-2*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 24th day of February, 2021, and pursuant to NRCP 5.1, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION TO CONSOLIDATE** in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

WRIGHT FINLAY & ZAK LLP

| | |
|-----------------|--------------------------|
| DEFAULT ACCOUNT | NVefile@wrightlegal.net |
| Darren Brenner | dbrenner@wrightlegal.net |
| Jason Craig | jcraig@wrightlegal.net |

DENNIS BAHAM - PLAINTIFF

| | |
|-----------------------|------------------------|
| Kevin Chan | kchan@nvlaw.us |
| Felipe Villa | fvilla@nvlaw.us |
| Richard Waltjen, Esq. | rwaltjen@nvlaw.us |
| Dennis Baham | greenskies87@gmail.com |

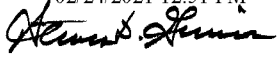
I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

/s/ Patricia Larsen

An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A


CLERK OF THE COURT

ORDR

NATALIE L. WINSLOW, ESQ.
Nevada Bar No. 12125
JAMIE K. COMBS, ESQ.
Nevada Bar No. 13088
AKERMAN LLP
1635 Village Center Circle, Suite 200
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Email: natalie.winslow@akerman.com
Email: jamie.combs@akerman.com

*Attorneys for The Bank of New York Mellon, as
Trustee for the Certificateholders of CWALT, Inc.,
Alternative Loan Trust 2005-2, Mortgage Pass-
Through Certificates, Series 2005-2*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DENNIS BAHAM, an individual,

Plaintiff,

v.

BAYVIEW LOAN SERVICING, LLC, a Foreign
Limited Liability Company; FIRST AMERICAN
TRUSTEE SERVICING SOLUTIONS, LLC, a
Foreign Limited Liability Company; and BANK
OF NEW YORK MELLON f/k/a THE BANK
OF NEW YORK AS TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWALT, INC.,
ALTERNATIVE LOAN TRUST 2005-2,
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2,

Defendants.

Case No.: A-20-810458-C
Dept.: XI

AND

Case No.: A-19-795762-C
Dept. No.: IV

**ORDER GRANTING DEFENDANTS'
MOTION TO CONSOLIDATE**

Defendants The Bank of New York Mellon, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2005-2, Mortgage Pass-Through Certificates, Series 2005-2 (**BoNYM**) and Bayview Loan Servicing, LLC filed a motion to consolidate case numbers A-19-795762-C and A-20-810458. Plaintiff Dennis Baham did not oppose the motion to consolidate. Therefore, pursuant to EDCR 2.20(e) and good cause appearing,

///

{54636715}

1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 – FAX: (702) 380-8572

Dated this 24th day of February, 2021

Kali Kull

A09 BC1 BA17 E4C3
Nadia Krall
District Court Judge

/s/ *Jamie K. Combs*

ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
NATALIE L. WINSLOW, ESQ.
Nevada Bar No. 12125
JAMIE K. COMBS, ESQ.
Nevada Bar No. 13088
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134

Attorneys for BoNYM

Approved as to form and content by:

WRIGHT, FINLAY & ZAK, LLP

/s/ *Darren T. Brenner*

DARREN T. BRENNER, ESQ.
Nevada Bar No. 8386
7785 W. Sahara Avenue, Suite 200
Las Vegas, Nevada 89117

Attorneys for Bayview Loan Servicing, LLC

MORTENSEN & RAFIE, LLP

/s/ No Response

PETER B. MORTENSEN, ESQ.
Nevada Bar No. 5725
RICHARD R. K. WALTJEN, ESQ.
Nevada Bar No. 13416
10781 W. Twain Avenue
Las Vegas, Nevada 89135

Attorneys for Dennis Baham

February 9, 2021

VIA EMAIL TO dc4inbox@clarkcountycourts.us

The Honorable Nadia Krall
Eighth Judicial District Court
Regional Justice Center
200 Lewis Avenue, Dept. 4
Las Vegas, Nevada 89101

Re: *Dennis Baham v. Bank of New York Mellon, et al.*
Case Number: A-19-795762-C and A-20-810458-C
Proposed Orders on Motion to Consolidate and Motion to Dismiss

Dear Judge Krall:

Enclosed are proposed orders on defendants' motions to consolidate and dismiss, consistent with the court's order at the hearing held on January 19, 2021. We circulated the proposed orders to plaintiff's counsel for review and comment on January 29, 2021, requesting a response by February 3. On February 3, Plaintiff's counsel requested until February 8, 2021 to review the proposed order and provide either approval as to form and content or any comments/revisions. To date, plaintiff has not approved the form and content of the order or proposed any revisions to the order. We therefore submit the proposed order to the court for review and signature.

Very truly yours,

/s/ Jamie K. Combs

Jamie K. Combs, Esq.

Enclosures

cc: Darren Brenner, Esq. by email
Peter Mortensen, Esq. by email
Rick Waltjen, Esq. by email

Llarena, Carla (LAA-Las)

From: Darren T. Brenner <dbrenner@wrightlegal.net>
Sent: Tuesday, February 9, 2021 9:56 AM
To: Combs, Jamie (Assoc-Las)
Cc: Llarena, Carla (LAA-Las); Larsen, Patricia (LAA-Las); Winslow, Natalie (Ptnr-Las)
Subject: RE: Baham orders

Approved.

Darren T. Brenner, Esq.
Partner – Nevada Office



7785 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
(702) 608-1871 Direct
(702) 475-7964 Main, Ext. 7014
(702) 946-1345 Fax
dbrenner@wrightlegal.net

**Wright, Finlay & Zak, LLP: Your Counsel for
California, Nevada, Arizona, Washington,
Oregon, Utah, New Mexico, Hawaii,
Montana and South Dakota**



PLEASE BE ADVISED THAT THIS FIRM IS A DEBT
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From: jamie.combs@akerman.com [mailto:jamie.combs@akerman.com]
Sent: Tuesday, February 9, 2021 9:48 AM
To: Darren T. Brenner
Cc: carla.llarena@akerman.com; patricia.larsen@akerman.com; natalie.winslow@akerman.com
Subject: Baham orders

Hi Darren,

You previously approved the draft orders, but please confirm we have approval to attach your electronic signature to both orders for submission.

Thanks!

Jamie Katherine Combs

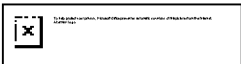
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134

D: 702 634 5007

Admitted in Nevada and Washington

jamie.combs@akerman.com

vCard | Profile



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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Dennis Baham, Plaintiff(s)

CASE NO: A-20-810458-C

7 vs.

DEPT. NO. Department 11

8 Bayview Loan Servicing LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 2/24/2021

15 Natalie Winslow

natalie.winslow@akerman.com

16 Ariel Stern

ariel.stern@akerman.com

17 Jamie Combs

jamie.combs@akerman.com

18 DEFAULT ACCOUNT

NVefile@wrightlegal.net

19 Jason Craig

jcraig@wrightlegal.net

20 Akerman LLP

AkermanLAS@akerman.com

21 Jamie Combs

jamie.combs@akerman.com

22 Dennis Baham

greenskies87@gmail.com

23 Darren Brenner

dbrenner@wrightlegal.net



DENNIS K. BAHAM
6017 GUILD CT
LAS VEGAS, NV 89131
GREENSKIES87@GMAIL.COM
TELEPHONE: 702-303-1263
PLAINTIFF IN PRO PER

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

DENNIS BAHAM, an individual,

Plaintiff

v.

BAYVIEW LOAN SERVICING, LLC, a
Foreign Limited Liability Company; FIRST
AMERICAN TRUSTEE SERVICING
SOLUTIONS, L.L.C., a Foreign Limited
Liability Company; and BANK OF NEW
YORK MELLON f/k/a THE BANK OF
NEW YORK AS TRUSTEE FOR THE
CERTIFICATE HOLDERS OF CWALT,
INC., ALTERNATIVE LOAN TRUST 2005-
2, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2, NEW
REZ HOME MORTGAGES LLC,
SHELLPOINT MORTGAGE SERVICING

Defendants.

Case No.: A-20-810458-C
A-19-795762-C

Dept No.: IV

DEFAULT

It appearing from the files and records in the aboved entitled action that **BAYVIEW**
LOAN SERVICING, LLC, herein, being duly served with a copy of the Summons and
Complaint on the 8th day of June, 2020; that more than 20 days, exclusive of the day of
service, having expired since service upon the Defendant; that no answer or other appearance

having been filed and no further time having been granted, the default of the above-named Defendant for failing to answer, or otherwise plead to Plaintiff's Complaint is hereby entered.

STEVEN D. GRIERSON, CLERK OF COURT

By:  3/2/2021
Michelle McCarthy A-19-795762-C
Deputy Clerk Date

Submitted By:

/s/Dennis Baham February 26, 2021
Plaintiff in Pro per Date



OPPM

NATALIE L. WINSLOW, ESQ.
Nevada Bar No. 12125
JAMIE K. COMBS, ESQ.
Nevada Bar No. 13088
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: natalie.winslow@akerman.com
Email: jamie.combs@akerman.com

*Attorneys for The Bank of New York Mellon, as
Trustee for the Certificateholders of CWALT, Inc.,
Alternative Loan Trust 2005-2, Mortgage Pass-
Through Certificates, Series 2005-2*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DENNIS BAHAM, an individual

Plaintiff,

v.

BAYVIEW LOAN SERVICING, LLC, a
Foreign Limited Liability Company; FIRST
AMERICAN TRUSTEE SERVICING
SOLUTIONS, LLC, a Foreign Limited Liability
Company; and BANK OF NEW YORK
MELLON f/k/a THE BANK OF NEW YORK
AS TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWALT, INC.,
ALTERNATIVE LOAN TRUST 2005-2,
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2,

Defendants.

Lead Case No.: A-19-795762-C
Consolidated with A-20-810458-C

Department: IV

**BoNYM'S OPPOSITION TO
PLAINTIFF'S MOTION FOR
RECONSIDERATION**

The Bank of New York Mellon, as Trustee for the Certificateholders of CWALT, Inc.,
Alternative Loan Trust 2005-2, Mortgage Pass-Through Certificates, Series 2005-2 (**BoNYM**) by
and through undersigned counsel, opposes plaintiff's motion for reconsideration of this court's order
granting BoNYM's motion to dismiss.

...

...

56817582;1

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION.**

This court should not allow plaintiff's vexatious behavior to continue. Plaintiff has exhaustively litigated the issues related to his defaulted mortgage loan, on which he has not made payments since 2011. Plaintiff already has a judgment of sanctions against him in the bankruptcy court for pursuing a frivolous bankruptcy action solely to deter and delay BoNYM's foreclosure. Despite this, he continues to file frivolous motions to delay BoNYM's ability to take possession of the property it has owned for over a year now. The motion for reconsideration is meritless and should be summarily denied. The court's decision was not clearly erroneous and, contrary to plaintiff's assertions, there is no newly discovered evidence to change the outcome.

To the extent the court construes plaintiff's motion as a request for a stay pending appeal, the court should reject this request. A stay pending appeal is not appropriate here. Plaintiff cannot show any likelihood of success on appeal or a substantial question on the merits. Plaintiff would be unjustly enriched by a stay, not irreparably harmed if a stay is denied. BoNYM would suffer substantial harm by the continued delay in its ability to recoup the amounts owed to it. If the court is inclined to grant a stay pending appeal, it should require plaintiff to post a substantial bond of at least \$100,000 to compensate BoNYM for the damages it will sustain from the delay.

II. LEGAL STANDARD.

Eighth Judicial District Court Rule 2.24 provides: "[n]o motions once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties." A party seeking reconsideration must file the motion within fourteen days after the notice of order, "unless the time is shortened or enlarged by order." EDCR 2.24(b). Rehearing is appropriate only when "substantially different evidence is subsequently introduced or the decision is clearly erroneous. *Masonry and Tile Contractors Ass'n of So. Nev. v. Jolley, Urga & Wirth, Ltd.*, 941 P.2d 486, 113 Nev. 737 (1997); *see also Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976) ("Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted.").

1 Under Nevada Rule of Civil Procedure 59, a party may move to alter or amend a judgment
2 based on "newly discovered evidence. . . that the party could not, with reasonable diligence, have
3 discovered and produced at trial." NRCP 59(a)(1)(D). Alternatively, under NRCP 60, a party may
4 move for relief from a final judgment based on "[n]ewly discovered evidence that, with reasonable
5 diligence, could not have been discovered in time to move . . . under Rule 59(b)." NRCP 60(b)(2).

6 **III. ARGUMENT.**

7 **A. Plaintiff did not discover "new evidence"**

8 Plaintiff argues the court should reconsider its dismissal because of "new evidence"
9 allegedly showing BoNYM's power of attorney agreement with Bayview was expired when the
10 foreclosure sale occurred. This is not new evidence—this is an argument plaintiff has made before,
11 and which has already been rejected as a basis for setting aside the foreclosure. Bayview did not
12 foreclose on plaintiff's property, nor did Shellpoint. The property was foreclosed in the name of
13 BoNYM. Bayview serviced the loan on behalf of BoNYM prior to servicing transferring to
14 Shellpoint. But the entity which serviced the loan at the time of the foreclosure sale is irrelevant to
15 BoNYM's authority to foreclose, and plaintiff lacks standing to challenge a servicing contract to
16 which he is not a party in any event. *See Wood v. Germann*, 331 P.3d 859, 861 (Nev. 2014) (a
17 nonparty to a contract lacks standing to challenge the contract). BoNYM demonstrated its standing
18 to foreclose on the property through the foreclosure mediation program, which resulted in the
19 issuance of a foreclosure certificate. The Nevada Supreme Court denied plaintiff's request for a stay
20 of foreclosure pending appeal, and ultimately affirmed judgment in favor of BoNYM.

21 Plaintiff alleges various other issues with no relevance to the validity of the foreclosure, and
22 which demonstrate a general misunderstanding on plaintiff's part of the mortgage industry and
23 litigation. Plaintiff attempts to place nefarious intent behind innocuous conduct of BoNYM's
24 servicers and counsel. For example, plaintiff complains documents were sent by Shellpoint
25 addressed to Akerman.¹ The reason for this is straightforward—due to the various lawsuits ongoing
26 since 2018, correspondence regarding the account is directed through counsel. That counsel would

27
28 ¹ BoNYM does not concede the authenticity of any of the unauthenticated documents attached to plaintiff's motion.

1 request a payoff during the litigation, particularly where plaintiff was seeking an injunction to stop
2 the foreclosure sale, is not unusual. Likewise, that the servicer would obtain an appraisal or
3 otherwise have the property valued prior to foreclosure is also not unusual. Nor do any of these
4 alleged "new facts" have any relevance to the validity of BoNYM's foreclosure.

5 **B. The court did not clearly err in granting BoNYM's motion to dismiss**

6 The court did not clearly err in granting BoNYM's motion to dismiss. Plaintiff alleged a
7 single cause of action against BoNYM for injunctive relief to stop a foreclosure sale. The
8 foreclosure sale took place more than a year ago, mooted plaintiff's claim. Plaintiff did not set forth
9 any facts which, if true, would demonstrate he had any valid claim for wrongful foreclosure if
10 granted leave to amend. The issues related to BoNYM's authority to foreclose had already been
11 litigated resulting in a final judgment, making any claim related to its authority barred by res
12 judicata. Plaintiff has provided no legal authority to this court demonstrating its decision was clearly
13 erroneous. The court's decision was well-founded and need not be reconsidered.

14 **C. The court should not stay eviction proceedings**

15 Plaintiff requests the court stay any eviction proceedings against him. This is not the proper
16 forum to defend against an eviction proceeding. To the extent plaintiff is requesting a stay of
17 eviction pending appeal, the court should deny the request.

18 When considering a motion to stay pending an appeal, the court will consider: 1) whether
19 the object of the appeal will be defeated if the stay is denied; 2) whether the moving party will suffer
20 irreparable or serious injury if the stay is denied; 3) whether the non-moving party will suffer
21 irreparable or serious injury if the stay is granted; and 4) whether the moving party is likely to
22 prevail on the merits of the appeal. NRAP 8(c), *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248,
23 251, 89 P.3d 36, 38 (2004). Although the party seeking a stay does not necessarily have to show it is
24 more likely than not to prevail on appeal to obtain a stay, he still "must 'present a substantial case on
25 the merits when a serious legal question is involved and show that the balance of equities weighs
26 heavily in favor of granting the stay.'" *Hansen v. Eighth Judicial Dist. Ct.*, 116 Nev. 650, 659, 6 P.3d
27 982, 987 (2000).

28 . . .

1 **1. No substantial case on the merits**

2 As discussed in BoNYM's motion to dismiss and further discussed in this response to
3 plaintiff's motion for reconsideration, plaintiff's claims are meritless, having been rejected by several
4 courts now. Plaintiff defaulted on his mortgage loan obligations and made no payments since 2011.
5 BoNYM demonstrated its authority to foreclose in the foreclosure mediation by demonstrating it was
6 the beneficiary of the deed of trust and owner of the note. Plaintiff had the opportunity to challenge
7 BoNYM's authority through the foreclosure mediation action. That court rejected plaintiff's
8 arguments regarding BoNYM's authority and the alleged issues related to its then-servicer Bayview.
9 The Nevada supreme court has affirmed judgment granting BoNYM a foreclosure certificate.
10 Baham also filed a separate action against Bayview related to its servicing of the account on behalf
11 of BoNYM and debt collection license. The federal court dismissed that complaint as well, and
12 plaintiff did not appeal. Baham also attempted to stop foreclosure by filing a frivolous chapter 13
13 bankruptcy action (despite already having no personal liability for the loan due to an earlier 2007
14 bankruptcy discharge). The bankruptcy court similarly found no issue with BoNYM's status as
15 creditor, dismissed the bankruptcy, and sanctioned plaintiff for the frivolous bankruptcy filing.
16 Plaintiff now attempts to assert "new" allegations against BoNYM's current servicer and its attorneys
17 to avoid eviction. His new assertions are confusing and have no impact or relevance to his claim
18 BoNYM lacked authority to foreclose. Plaintiff has no likelihood of success on appeal.

19 **2. Object of appeal will not be defeated**

20 Plaintiff also cannot show the object of the appeal will be defeated if the stay is denied. The
21 foreclosure sale has already occurred, and plaintiff no longer owns the property. At this juncture,
22 even if the appeal had any likelihood of success, the remedy would be limited to money damages.

23 **3. No irreparable harm to plaintiff**

24 Plaintiff would be unjustly enriched by a stay pending appeal, not irreparably harmed if the
25 stay is denied. This court, the federal court, the foreclosure mediation court, the Nevada Supreme
26 Court, and the bankruptcy court have each rejected plaintiff's various iterations of the same
27 arguments. Plaintiff is a vexatious litigant and has already demonstrated he will not stop filing
28 frivolous suits and motions, even when the court sanctions him for doing so. He has been living

1 payment free in the property for almost a decade. He had the opportunity to stipulate to a stay of the
2 foreclosure sale pending the appeal in the foreclosure mediation, subject to making the monthly
3 payments as required under NRS 106.086(11) ("During the pendency of any mediation pursuant to
4 this section, a unit's owner must continue to pay any obligation, other than any past due obligation.")
5 See Ex. A, Declaration of Counsel.² He declined BoNYM's pre-foreclosure offer. *Id.* The
6 "irreparable harm," if any, is a direct result of plaintiff's default on his mortgage loan obligations.

7 **4. Substantial harm to BoNYM**

8 As discussed above, plaintiff has not made a payment on this loan for almost a decade. Yet,
9 he continues to reside in the property while BoNYM, through its servicers, has been paying property
10 taxes and insurance. BoNYM continues to defend against plaintiff's frivolous lawsuits and motions
11 that have no basis in fact, procedure or substantive Nevada law. BoNYM will be unable to recover
12 the amounts owed to it by reselling the property if a stay is granted, and plaintiff will continue
13 residing in the property rent-free. BoNYM will suffer serious injury if the stay is granted.

14 **5. Alternatively, a substantial bond should be required**

15 Alternatively, the court should require plaintiff to post a minimum bond of \$100,000. "The
16 purpose of security for a stay pending appeal is to protect [BoNYM]'s ability to collect the judgment
17 if it is affirmed by preserving the status quo and preventing prejudice to [BoNYM] arising from the
18 stay." *Nelson v. Heer*, 121 Nev. 832, 835, 122 P.3d 1252, 1254 (2005).

19 While the *Nelson* court set forth additional factors to consider when determining whether to
20 waive a "full supersedeas bond" and/or substitute "alternate security," for the bond, the factors
21 clearly contemplate a money judgment. 121 Nev. at 836, 122 P.3d at 1254. A money judgment is
22 not at issue here. The prejudice to BoNYM is not in its ability to later collect on the judgment but in
23 its continued inability to resell the property to recoup its investment. The unpaid balance of the loan
24 BoNYM seeks to recoup from the property exceeds \$950,000. See Notice of Sale, attached as Ex.
25 16 to plaintiff's motion. The property reverted to BoNYM at the foreclosure sale for the opening bid
26

27 ² This declaration was filed as an exhibit to Bayview's response to Mr. Baham's emergency motion for a stay of the
28 foreclosure sale pending appeal he filed with the Nevada Supreme Court on August 6, 2019.

1 of \$516,600. *See* Foreclosure Deed, attached as Ex. 19 to plaintiff's motion. Any bond must be based
2 on these values or on rental values over the expected year of the appeal as discussed below.

3 The property has an estimated rental value of \$3,500 per month. *See Exhibit B*, Declaration
4 of Counsel, attaching Zillow printout. Assuming a year-long appeal, any bond should minimally be
5 placed at \$87,500 (\$45,500 for past prejudice³ + \$42,000 in future rents).

6 The bond should also include the amounts required by BoNYM to continue to carry hazard
7 insurance on the property, pay the HOA assessments, and all governmental taxes. These are
8 amounts required to prevent further damage to BoNYM. But, it does not adequately protect
9 BoNYM from any prejudice caused by the continued stay as discussed above. BoNYM is not in the
10 property retention business – its goal is to recoup its investment. Everyday eviction and resale is
11 delayed as a result of plaintiff's improper delay tactics prejudices BoNYM.

12 The bond should also encompass the reasonable attorneys' fees BoNYM will spend to
13 continue to litigate this action on appeal. When considering the reasonable rental value of the
14 property, taxes, insurance, and HOA assessments paid by BoNYM, and attorneys' fees and costs, any
15 bond requirement should be no less than \$100,000.

16 III. CONCLUSION.

17 The court should deny plaintiff's motion for reconsideration. The court's order granting
18 BoNYM's motion to dismiss was well-founded and not clearly erroneous. Plaintiff has presented no
19 "new evidence" that would change the result.

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28 ³ Calculated from February 2020 when BoNYM foreclosed.

1 This is also not the proper forum to object to eviction. To the extent the court construes
2 plaintiff's motion as a request for a stay pending appeal, the court should deny the request.
3 Alternatively, if a stay is granted, it must be conditioned on a bond sufficient to protect BoNYM
4 from further damage, which at minimum, is \$100,000.

5 DATED March 10, 2021.

6 **AKERMAN LLP**

7 */s/ Jamie K. Combs*

8 NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

9 JAMIE K. COMBS, ESQ.

Nevada Bar No. 13088

10 1635 Village Center Cir., Suite 200

Las Vegas, Nevada 89134

11 *Attorneys for The Bank of New York Mellon, as Trustee*
12 *for the Certificateholders of CWALT, Inc., Alternative*
13 *Loan Trust 2005-2, Mortgage Pass-Through*
14 *Certificates, Series 2005-2*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of March, 2021, I caused to be served a true and correct copy of the foregoing **BoNYM'S OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION**, in the following manner:

☒ **(ELECTRONIC SERVICE)** Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

| | |
|-----------------|-------------------------------|
| DEFAULT ACCOUNT | NVefile@wrightlegal.net |
| Darren Brenner | dbrenner@wrightlegal.net |
| Jason Craig | jcraig@wrightlegal.net |
| Dennis Baham | <u>greenskies87@gmail.com</u> |
| Kevin Chan | kchan@nvlaw.us |
| Filipe Villa | fvilla@nvlaw.us |
| Richard Waltjen | rwaltjen@nvlaw.us |

☐ **(UNITED STATES MAIL)** By depositing a copy of the above-referenced document for mailing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada, to the parties listed below at their last-known mailing addresses, on the date above written: N/A

☐ **(PERSONAL SERVICE)** By causing to be personally delivered a copy of the above-referenced document to the person(s) listed below: N/A

☐ **(EMAIL)** By emailing a true and correct copy of the above-referenced document to the person(s) listed below: N/A

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

EXHIBIT A

EXHIBIT A

DECL
DARREN T. BRENNER, ESQ.
Nevada Bar No. 13088
NATALIE L. WINSLOW, ESQ.
Nevada Bar No. 12125
JAMIE K. COMBS, ESQ.
Nevada Bar No. 13088
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: darren.brenner@akerman.com
Email: natalie.winslow@akerman.com
Email: jamie.combs@akerman.com

Attorneys for Bayview Loan Servicing, LLC

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

DENNIS BAHAM,

Petitioner(s),

v.

FIRST AMERICAN TRUSTEE SERVICING
SOLUTIONS; BAYVIEW LOAN SERVICING,
LLC,

Respondent(s).

Case No.: A-18-775019-FM

Dept.: VII

**DECLARATION OF JAMIE K. COMBS,
ESQ.**

I, Jamie K. Combs, Esq., declare as follows:

1. I am an attorney licensed to practice law in the state of Nevada and an associate at the law firm of Akerman, LLP, which represents Respondent Bayview Loan Servicing, LLC and BNYM as Trustee for the Trust. I am licensed to practice law before this court.

2. I make this declaration in support of Respondent's opposition to Appellant's emergency motion for a stay pending the appeal.

6. I declare under penalty of perjury under the laws of the State of Nevada and the United States the foregoing is true and correct.

/s/ Jamie K. Combs
Jamie K. Combs, Esq.

EXHIBIT 1

EXHIBIT 1

From: Combs, Jamie (Assoc-Las)
Sent: Tuesday, May 21, 2019 6:57 PM
To: 'Erik W. Fox' <EWF@cogburncares.com>
Cc: Brenner, Darren (Ptnr-Las) <darren.brenner@akerman.com>; Winslow, Natalie (Ptnr-Las) <natalie.winslow@akerman.com>
Subject: RE: Baham Foreclosure - 78491 PH BAHAM v BAYVIEW LOAN SERV., LLC

Hi Erik, although we don't agree your client is entitled to an injunction pending this appeal, we are willing to extend a proposal to stay foreclosure during the appeal as follows:

1. Your client agrees to keep the property in good condition, free of liens and encumbrances, with insurance, pays all taxes, insurance, assessments, and will not transfer the property;
2. Your client pays to Bayview, as servicer for BoNYM, the monthly loan amount (\$3,733.44) during the appeal, to be applied to the loan balance;
3. Your client consents to foreclosure in the event of non-payment of the monthly loan amount during the appeal.

Because time is of the essence given the pending foreclosure, we can only leave this offer open until close of business on Thursday. Please let me know if you would like to discuss further.

Thank you,

Jamie Combs

Associate
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134
D: 702 634 5007
jamie.combs@akerman.com

From: Erik W. Fox <EWF@cogburncares.com>
Sent: Thursday, May 16, 2019 2:59 PM

To: Combs, Jamie (Assoc-Las) <jamie.combs@akerman.com>

Subject: Baham Foreclosure - 78491 PH BAHAM v BAYVIEW LOAN SERV., LLC

Jamie –

I wanted to reach out regarding the pending foreclosure sale date of June 6, 2019. Our office is preparing to seek to enjoin the sale. As such, please let me know if your client will consent to rescind the sale notice. Let me know if we need to discuss anything.

Thanks

Erik W. Fox

Attorney

2580 St. Rose Parkway, Suite 330
Henderson, NV 89074

Ph. (702) 748-7777

Fax (702) 966-3880

www.CogburnCares.com

COGBURN
— LAW —

EXHIBIT B

EXHIBIT B

NATALIE L. WINSLOW, ESQ.
Nevada Bar No. 12125
JAMIE K. COMBS, ESQ.
Nevada Bar No. 13088
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: natalie.winslow@akerman.com
Email: jamie.combs@akerman.com

*Attorneys for The Bank of New York Mellon, as
Trustee for the Certificateholders of CWALT, Inc.,
Alternative Loan Trust 2005-2, Mortgage Pass-
Through Certificates, Series 2005-2*

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

DENNIS BAHAM, an individual,

Plaintiff,

v.

Case No.: A-20-810458-C
Dept.: XI

BAYVIEW LOAN SERVICING, LLC, a
Foreign Limited Liability Company; FIRST
AMERICAN TRUSTEE SERVICING
SOLUTIONS, LLC, a Foreign Limited Liability
Company; and BANK OF NEW YORK
MELLON f/k/a THE BANK OF NEW YORK
AS TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWALT, INC.,
ALTERNATIVE LOAN TRUST 2005-2,
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2,

Defendants.

**DECLARATION OF JAMIE K. COMBS
IN SUPPORT OF OPPOSITION TO
PLAINTIFF'S MOTION FOR
RECONSIDERATION**

I, Jamie K. Combs, declare as follows:

1. I am over the age of 18 and I am an associate attorney at Akerman LLP, admitted to practice law before this court.
2. I am counsel of record for The Bank of New York Mellon, as Trustee for the

1 Certificateholders of CWALT, Inc., Alternative Loan Trust 2005-2, Mortgage Pass-Through
2 Certificates, Series 2005-2 (**BoNYM**) and have personal knowledge of all facts stated herein. If
3 called to testify, I could and would competently do so under oath.

4 3. I make this declaration in support of BoNYM's motion for reconsideration.

5 4. Attached to this declaration is a screenshot from the Zillow website for the subject
6 property, accessed on March 10, 2021 from [https://www.zillow.com/homedetails/6017-Guild-Ct-](https://www.zillow.com/homedetails/6017-Guild-Ct-Las-Vegas-NV-89131/66838443_zpid/)
7 [Las-Vegas-NV-89131/66838443_zpid/](https://www.zillow.com/homedetails/6017-Guild-Ct-Las-Vegas-NV-89131/66838443_zpid/), showing the rental value of \$3,500.00 per month for the
8 property located at 6017 Guild Court, Las Vegas, NV 89131.

9 DATED this 10th day of March, 2021.

10 /s/ Jamie K. Combs

11 JAMIE K. COMBS, ESQ.

12 Nevada Bar No. 13088



DENNIS K. BAHAM
6017 GUILD CT
LAS VEGAS, NV 89131
GREENSKIES87@GMAIL.COM
TELEPHONE: 702-303-1263
PLAINTIFF IN PRO PER

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

DENNIS BAHAM, an individual,

Plaintiff

v.

BAYVIEW LOAN SERVICING, LLC, a
Foreign Limited Liability Company; FIRST
AMERICAN TRUSTEE SERVICING
SOLUTIONS, L.L.C., a Foreign Limited
Liability Company; and BANK OF NEW
YORK MELLON f/k/a THE BANK OF
NEW YORK AS TRUSTEE FOR THE
CERTIFICATE HOLDERS OF CWALT,
INC., ALTERNATIVE LOAN TRUST 2005-
2, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2,

Defendants.

Case No.: A-19-795762-C
A-20-810458-C

Dept No.: IV

NOTICE OF APPEAL

Notice is hereby given that DENNIS BAHAM, Plaintiff, Pro per in the above named,
hereby appeals to the Supreme Court of Nevada from the Order Granting Defendant's Motion
To Dismiss Complaints and Denying Countermotion To Amend, filed and Noticed on
February 10, 2021.

Dated this 10th day of March, 2021

By: /s/Dennis Baham
Dennis Baham
6017 Guild Court
Las Vegas, Nevada 89131
Plaintiff in Pro per

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of March , 2021 and pursuant to NRCP 5, I caused a true and correct copy of the foregoing **NOTICE OF APPEAL** in the following manner: **(ELECTRONIC SERVICE)** Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & served through the Notice Of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's contact list.

Jamie Combs jamie.combs@akerman.com
Natalie Winslow natile.winslow@akerman.com
Ariel Stern ariel.stern@akerman.com
Darren Brenner dbrenner@wrightlegal.net

/s/Dennis Baham
Plaintiff Pro per


CLERK OF THE COURT

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**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK**

DENNIS BAHAM,

Plaintiff(s),

vs.

BAYVIEW LOAN SERVICING, LLC; FIRST
AMERICAN TRUSTEE SERVICING
SOLUTIONS, L.L.C.; BANK OF NEW YORK
MELLON fka THE BANK OF NEW YORK AS
TRUSTEE FOR THE CERTIFICATE HOLDERS
OF CWALT, INC., ALTERNATIVE LOAN
TRUST 2005-2, MORTGAGE PASS-THROUGH
CERTIFICATE, SERIES 2005-2,

Defendant(s),

Case No: A-19-795762-C

Consolidated with A-20-810458-C

Dept No: IV

CASE APPEAL STATEMENT

1. Appellant(s): Dennis Baham

2. Judge: Nadia Krall

3. Appellant(s): Dennis Baham

Counsel:

Dennis Baham
6017 Guild Ct.
Las Vegas, NV 89131

4. Respondent (s): Bayview Loan Servicing, LLC

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Counsel:

Darren T. Brenner, Esq.
7785 W. Sahara Ave., Suite 200
Las Vegas, NV 89117

Respondent (s): First American Trustee Servicing Solutions, L.L.C.

Counsel:

Aaron R. Maurice, Esq.
400 S. Rampart Blvd., Suite 400
Las Vegas, NV 89145

Respondent (s): Bank of New York Mellon fka The Bank of New York as Trustee for the
Certificate Holders of CWALT, Inc., Alternative Loan Trust 2005-2, Mortgage Pass-Through
Certificates, Series 2005-2

Counsel:

Natalie L. Winslow, Esq.
1635 Village Center Cir., Suite 200
Las Vegas, NV 89134

5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A
- Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A
- Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A
- Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A
6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No
7. Appellant Represented by Appointed Counsel On Appeal: N/A
8. Appellant Granted Leave to Proceed in Forma Pauperis**: N/A
***Expires 1 year from date filed*
Appellant Filed Application to Proceed in Forma Pauperis: No
Date Application(s) filed: N/A
9. Date Commenced in District Court: May 30, 2019
10. Brief Description of the Nature of the Action: REAL PROPERTY - Other
- Type of Judgment or Order Being Appealed: Dismissal

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11. Previous Appeal: No

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 11 day of March 2021.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann
Heather Ungermann, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

cc: Dennis Baham



OPPM

WRIGHT, FINLAY & ZAK, LLP
Darren T. Brenner, Esq.
Nevada Bar No. 8386
Rock K. Jung, Esq.
Nevada Bar No. 10906
7785 W. Sahara Ave., Suite 200
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(702) 475-7964; Fax: (702) 946-1345
dbrenner@wrightlegal.net
rjung@wrightlegal.net
Attorney for Defendant Bayview Loan Servicing, LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

DENNIS BAHAM, an individual

Plaintiff,

vs.

BAYVIEW LOAN SERVICING, LLC, a
Foreign Limited Liability Company; FIRST
AMERICAN TRUSTEE SERVICING
SOLUTIONS, L.L.C., a Foreign Limited
Liability Company; and BANK OF NEW
YORK MELLON f/k/a THE BANK OF NEW
YORK AS TRUSTEE FOR THE
CERTIFICATE HOLDERS OF CWALT, INC.,
ALTERNATIVE LOAN TRUST 2005-2,
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2,

Defendants.

Case No.: A-19-795762-C

Consolidated with: A-20-810458-C

Dept. No.: 4

**DEFENDANT BAYVIEW LOAN
SERVICING, LLC'S OPPOSITION TO
PLAINTIFF'S MOTION TO
RECONSIDER AND MEMORANDUM
OF POINTS AND AUTHORITIES**

Hearing Date: April 8, 2021

Hearing Time: 9:00 A.M.

Defendant Bayview Loan Servicing, LLC ("Bayview") submits its Opposition to Plaintiff's Motion for Reconsideration and Memorandum of Points and Authorities ("Motion") on February 25, 2021.

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1 **III. LEGAL ARGUMENTS**

2 **A. Baham's Motion is Untimely.**

3 This court entered its order on February 10, 2021. Baham filed his motion 15 days later
4 on February 25, 2021. Under EDCR 2.24(b), a motion for reconsideration must be filed within
5 14 days from notice of entry of an order. Accordingly, Plaintiff's motion for reconsideration is
6 untimely.

7 **B. Baham's Motion also fails on the merits.**

8 Even if the court overlooks the fact that Plaintiff's motion is late, Baham fails to offer
9 any new evidence or arguments. This Court "may reconsider a previously decided issue if
10 substantially different evidence is subsequently introduced or the decision is clearly erroneous."
11 *Masonry and Tile Contractors Ass'n of Southern Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev.
12 737, 741, 941 P.2d 486, 489 (1997) (citations omitted).

13 Baham raises five arguments in support of reconsideration, only some of which appear to
14 be directed at Bayview. Baham reiterates his claim that Bayview attended the 2018 foreclosure
15 mediation without a valid power of attorney. This is, of course, the exact same argument which
16 the Court previously rejected in Case No. A-18-775019-FM. *See* Motion to Dismiss at Ex. U
17 ("Order Denying Petitioner's Motion to Alter/Amend the Judgment") of Defendants Motion to
18 Consolidate and Motion to Dismiss. As noted above, the Court of Appeals recently affirmed that
19 order. It is now up to the Nevada Supreme Court whether it wishes to review the order of the
20 Court of appeals. Because this is not a new argument, it is not appropriately before this court on
21 reconsideration.

22 Baham also claims that a January 25, 2012 document supposedly shows "no new loans
23 were received" by BoNYM. Motion at p. 8. To the extent this argument is directed at Bayview,
24 Baham fails to explain how the near decade old argument is newly discovered evidence. He also
25 fails to explain how this document changes this Court's prior legal analysis. As Baham
26 acknowledges, Bayview was the former servicer and/or subservicer. It was not the beneficiary of
27 the deed of trust or the foreclosure trustee. *See* Motion to Dismiss at Ex. B ("Assignment of
28 Deed of Trust"), Ex. D ("Notice of Default and Election to Sell Under Deed of Trust"), Ex. F

1 (“Notice of Default and Election to Sell Under Deed of Trust”), Ex. K (“State of Nevada
2 Foreclosure Mediation Program Certificate”), Ex. M (“Notice of Trustee’s Sale”), and Ex. BB
3 (“Trustee’s Deed Upon Sale”). Baham also argues Bayview still continued foreclosure activities
4 after the service release. *See* Motion at p. 7. The court should disregard this argument as it was
5 never previously raised and (2) is not factually true or supported by any actual evidence.

6 The remaining arguments do not appear to be directed at Bayview. To the extent they
7 are, Baham fails to present any new evidence or arguments that matter. Baham appears to
8 dispute the validity of charges in a memorandum of costs presented by Bayview’s codefendants.
9 Baham is free to object to the costs as he has done. None of that matters to the applicability of
10 issue preclusion as to his claims against Bayview.

11 Baham also complains that Shellpoint sent a “hello” letter addressed to the undersigned
12 rather than him. Baham again fails to explain how that would give rise to a valid claim against
13 Bayview or anyone for that matter. Baham’s deed of trust expressly notifies him that loan
14 servicing may transfer from time to time. *See* Motion to Dismiss at Ex. A (“Deed of Trust”), p.
15 13, ¶20. That it occurred here has no bearing on this matter.

16 Plaintiff also claims that newly discovered evidence includes “Akerman law (sic)
17 requested a pay-off in Baham’s name before the Foreclosue (sic) sale to Bank of America (see
18 exhibit #8). Baham informed Baham (sic) that the account they were trying to get a pay off had
19 been closed for years.” *See* Motion at p. 6. Baham gives another irrelevant statement which he
20 tries to pass off as “newly discovered evidence that Shellpoint did an appraisal in Baham’s name
21 to apply for mortgae (sic) funding prior to the foreclosure sale”. *Id.* Baham fails to explain how
22 any of this gives rise to a valid claim, particularly as to Bayview.

23 Baham also asks this court to review a prior order from a 2016 action presided over by
24 Judge Delaney, where summary judgment was purportedly granted in his favor. Baham
25 misunderstands that order, which merely found the representative who presented at that prior
26 mediation lacked authority. That order is not newly discovered evidenced, and has nothing to do
27 with this case.

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IV. CONCLUSION

Baham has failed to present a valid basis for reconsideration. His motion should be denied.

DATED this 11th day of March, 2021.

WRIGHT, FINLAY & ZAK, LLP

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CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 11th day of March, 2021, I did cause a true copy of the foregoing **DEFENDANT BAYVIEW LOAN SERVICING, LLC’S OPPOSITION TO PLAINTIFF’S MOTION TO RECONSIDER AND MEMORANDUM OF POINTS AND AUTHORITIES** to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFR 9, and/or by depositing a true and correct copy in the United States Mail, addressed as follows:

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DENNIS K. BAHAM
6017 GUILD CT
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/s/ Jason Craig
An Employee of WRIGHT, FINLAY & ZAK, LLP

EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

DENNIS BAHAM,

Appellant,

vs.

BAYVIEW LOAN SERVICING, LLC,

Respondent.

CASE NO.: 78491

Electronically Filed
Mar 04 2021 10:07 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Eighth Judicial District Court of the State of Nevada
In and For the County of Clark
District Court Case No.: A775019

**RESPONDENT, BAYVIEW LOAN SERVICING, LLC'S ANSWER TO
PETITION FOR REVIEW**

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I. INTRODUCTION

This case is not appropriate for consideration under NRAP 40A because issues raised in petition were not properly or timely raised before the district court or the court of appeals. The law in the area of waiver is well established, and it is not a matter of public policy that justifies en banc reconsideration. Baham's petition should be denied.

Additionally, Baham's arguments fail on the merits. Bayview Loan Servicing (**Bayview**) appeared at mediation, with an appropriate power of attorney from Baham's lender, the Bank of New York Mellon (**BoNYM**). The parties could not reach an agreement on a short pay because Baham refused to provide any documentation. The mediator and district court both agreed Bayview acted properly and that a mediation certificate should issue. Baham's allegations against Bayview were also already rejected on the merits by the United States District Court. Baham should be precluded from relitigating those issues here, particularly where they were not timely raised to the district court or included with the notice of appeal in this case.

II. STATEMENT OF FACTS

A. Baham's petition for judicial review.

Dennis Baham financed the purchase of real property in 2004 with a loan secured by a deed of trust. PA 0050-75. BoNYM was at all relevant times the

record beneficiary of the deed of trust. PA 007-78. Baham failed to make payment on his loan since at least 2011. PA 0082-84.

In 2018, BoNYM sought to foreclose. PA 0082-84. Baham petitioned for foreclosure mediation assistance on May 24, 2018. PA 0001. At the time of the mediation, Bayview serviced the loan. In anticipation of the foreclosure mediation, Bayview made multiple requests for information necessary to evaluate Baham for foreclosure alternatives, as required by FMR 13(3). PA 0093; PA 0105-108. Baham ignored each of these requests.

The foreclosure mediation occurred on October 12, 2018. PA 0092. Bayview attended the mediation as BoNYM's representative with a power of attorney. PA 0027. The parties did not reach an agreement. PA 0028. The mediator specifically noted that Baham failed to provide documentation requested by Bayview and recommended a certificate of foreclosure mediation should issue. PA0030.

Baham filed a request for relief with the district court on November 2, 2018. PA0016. Baham asked the court to find Bayview lacked authority to appear at the mediation based on an alleged insufficient power of attorney and his belief Bayview's representative purportedly did not truly have authority to negotiate. PA 0016-42. After full briefing and argument, the district court denied Baham's request for relief. PA 0043-127; 156-164. Baham appealed. PA 0165-167.

On July 22, 2019, with the appeal already pending for several months, Baham filed a motion to alter or amend the judgment, raising for the first time his argument that a certificate should not have issued because Bayview was not licensed for debt collection under NRS Ch. 649. PA 0168-178. The district court denied the motion because it was not based on newly discovered evidence. PA 0335-336. In particular, Baham knew Bayview did not have a debt collector license as of September of 2017, when he submitted a complaint to the Nevada Financial Institutions Division. PA 0183, PA 0278. Baham was aware of this issue when he filed his request for relief, but failed to raise it as part of that request. See PA 0181. Baham did not separately appeal the order denying his NRCP 60 motion.

On February 28, 2020, BoNYM foreclosed. **Ex. A**, Foreclosure Deed. As a result, Baham is no longer on title. Bayview is also no longer involved with the servicing of the loan and has not been since prior to the foreclosure sale. **Ex. B**, Goodbye Letter.

B. Baham's other litigation.

This is not Baham's only legal action involving this property or the allegations he now presents to the court. With the appeal pending in this case, Baham filed a separate class-action lawsuit against Bayview alleging claims for declaratory judgment, violation of NRS 649.370, and violation of the FDCPA based on the argument Bayview engaged in unlicensed debt collection activity

before January 2019. PA 0289-299. Bayview removed that action to federal court (Case No. 2:19-cv-01125). On March 20, 2020, the United States District Court for the District of Nevada dismissed Baham's complaint for failure to state a claim upon which relief can be granted. *Baham v. Bayview Loan Servicing*, No. 2:19-cv-01125-APG-VCF, 2020 U.S. Dist. LEXIS 49060 (D. Nev. Mar. 20, 2020).¹ Baham did not appeal.

On August 6, 2019, Baham also filed a bankruptcy in a (successful) effort to temporarily postpone the foreclosure sale. The bankruptcy court found Baham's filing was a "textbook" example of a bad faith bankruptcy and sanctioned him \$20,099. *See* 19-15039-abl at ECF No. 52, ECF No. 55-1, 22:25-23:4; and ECF No. 62. Baham also filed two other state court cases that made similar allegations to the federal class action. *See* Case No. A-19-795762-C & A-20-810458-C. The two other state court cases were recently dismissed on grounds of claim preclusion/res judicata, among other things. **Ex. D & Ex. E.**

III. ARGUMENT

A. This matter is not appropriate for en banc reconsideration.

This matter is not appropriate for en banc reconsideration under NRAP 40A(a). The arguments advanced by Baham were not raised before the district

¹ For the court's convenience, a copy of the federal court's order is attached as **Exhibit C**.

court. The law of waiver is well established and does not involve a substantial precedential or public policy concern. *See, e.g., Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (“A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal.”).²

Baham’s request for relief to the district court raised only two related arguments: (1) Bayview purportedly lacked a sufficient power of attorney to appear on behalf of BoNYM and (2) Bayview allegedly lacked authority to bind BoNYM. PA 0016-42. Both of these arguments were rejected by the District Court. PA 0043-127; 156-164.

Baham’s current petition raises three different issues than he raised below. **First**, based on Baham’s contention that Bayview was not licensed to collect debt under NRS 649, he argues that the district court erred when it determined Bayview had authority to be present at the mediation. However, Baham’s argument does not accurately frame the issue. The district court never concluded, one way or another, whether the absence of a license under NRS 649 could impact Bayview’s authority to be present as a representative of BoNYM at the mediation. Rather, the district court held that the issue about licensure was not timely raised. The court of

² *See also Kaur v. Singh*, 477 P.3d 358, 363 n.3, 136 Nev. Adv. Rep. 77 (2020) (*same*); *Dolores v. State*, 416 P.3d 259, 262, 134 Nev. Adv. Rep. 34 (2018) (*same*); *Schuck v. Signature Flight Support of Nev., Inc.*, 126 Nev. 434, 436, 245 P.3d 542, 544 (2010)(*same*)

appeals declined to address the issue because Baham did not separately appeal the order denying his Rule 60 motion.³ Baham does not address, much less explain, how this largely procedural issue qualifies for NRAP 40A review.

Second, Baham claims the district court erred because BoNYM allegedly sent correspondence stating it could not locate a record of his loan. Baham is mistaken. The district court did not address the issue because it was not raised in the request for relief or at any time before the district court. While the court of appeals considered the issue on the merits, the court disagreed with Baham's reading of the letter. Indeed, the court made a factual finding that "the letter merely indicates that BNYM is not the servicer of the underlying loan; it says nothing about BNYM's status as holder of the underlying note and deed of trust." Order of Affirmance at p. 4; see also PA042. The letter also invited Baham to contact BoNYM's corporate office to inquire further. PA0042. There is no dispute Bayview was the servicer in this case. Likewise, there is no evidence

³ *Charmicor, Inc. v. Bradshaw Finance Co.*, 92 Nev. 310, 312 (1976) ("only those parts of the judgment which are included in the notice of appeal will be considered by the appellate court"); NRCP 3(c) ("the notice of appeal shall . . . designate the judgment, order or part thereof being appealed"); *see also Yu v. Yu*, 133 Nev. 737, 738 n. 1, 405 P.3d 639 (2017)(Recognizing that an order denying NRCP 60(b) relief is independently appealable); *Collins v. Union Fed. Sav. & Loan Ass'n*, 97 Nev. 88, 89-90, 624 P.2d 496 (1981)(the court will generally not consider any order on appeal that is not included in the notice of appeal).

Baham followed up with BoNYM's corporate office for information as the letter provided.

Third, Baham argues the district court erred by imposing an “enhanced burden” on him to provide documents at mediation. Baham did not raise this issue on appeal. The failure to timely raise an argument is a well-established waiver. *See, e.g., Old Aztec Mine, supra* 97 Nev. at 52, 623 P.2d at 983. Baham's procedural gaffs are not “matters of public policy” that “involve the rights and responsibilities of the homeowner and beneficiary under a Deed of Trust” as he claims. They are routine procedural issues that the court of appeals was fully capable of addressing. Accordingly, Baham's petition should be denied.

B. Baham's arguments also fail on the merits.

1. Bayview's status as a licensed debt collector is irrelevant.

Even if the issue of Bayview's lack of a debt collector's license had been timely raised, it fails for a myriad of reason.

First, the rules did not require BoNYM to present a licensed debt collector at the mediation. The rules simply require the attendance of “a person or persons who have the authority to negotiate and modify the loan secured by the deed of trust sought to be foreclosed.” FMR 12(1)(a). As explained by the district court and the court of appeal, Bayview presented a valid power of attorney from BoNYM. Baham does not challenge that finding in his petition.

Second, there has never been any dispute that Bayview was a licensed loan servicer.⁴ Bayview, as a mortgage servicer licensed under NRS Ch. 645F, was not separately required to obtain a debt collector's license. *See, e.g. Benko v. Quality Loan Service Corporation*, 454 P.3d 1263 (Nev. 2019). In *Benko*, this court held that trustees conducting nonjudicial foreclosures do not need to be licensed under Chapter 649. Baham provides no reason why a different standard would apply to loan servicers, or how it would make a difference to Bayview's authority to appear on BoNYM's behalf pursuant to a power of attorney.

Third, under NRS Ch. 649, an entity has the right to cure any alleged licensing violations.⁵ To the extent Bayview was required to obtain a license pursuant to Ch. 649 in the first place (which Bayview denies), Baham admits Bayview cured when it obtained a license in January 2019. PA172; PA178.

Fourth, Baham already challenged Bayview's licensing status under NRS Ch. 649 in his class action lawsuit seeking monetary damages. *See* Case No. 2:19-cv-01125. PA 0185; PA 0289-299. Baham lost that challenge. Baham is

⁴ *See, e.g.,* <https://nmlsconsumeraccess.org/EntityDetails.aspx/COMPANY/2469>, last accessed on February 16, 2021. Bayview, who has since changed its name to Community Loan Servicing, has been licensed since at least 2016. Baham has never alleged otherwise.

⁵ If the Commissioner determines that a person is engaging in debt collection activity without a license, the Commissioner first must issue a cease and desist order, and can impose penalties only if the person fails to timely comply with the order, thus providing an opportunity to cure. Nev. Rev. Stat. § 649.390(2)-(4).

prohibited under the doctrine of issue preclusion from relitigating those arguments here. As explained by the federal court, there is no liability on Bayview even if it was required to have a license under NRS 649.

2. BoNYM was the beneficiary of the loan.

Baham also argues the district court erred by ignoring the letter BoNYM allegedly sent stating it could not locate Baham's loan. As noted above in Section III.A, Baham's allegations do not accurately characterize the letter.⁶ As explained by the court of appeals, "the letter merely indicates that BNYM is not the servicer of the underlying loan; it says nothing about BNYM's status as holder of the underlying note and deed of trust." Order of Affirmance at p. 4; see also PA042. As acknowledged by Baham, Bayview serviced the loan.

3. Baham was not subject to an "enhanced burden."

Baham also argues he was improperly subjected to an alleged "enhanced burden" because the district court found he failed to produce documentation. Baham's argument is incorrect. The district court did not find *Baham* was required to provide anything. Instead, the district court found *Bayview* could not be sanctioned for declining to offer a short pay where it had no information from Baham to consider. PA 0159-164.

⁶ There is also nothing to suggest the letter is authentic.

Baham is also wrong regarding his interpretation of the mediation rules. Baham was required to use “best efforts” to provide documentation. See FMR 13. Baham was asked three times before the mediation to provide documentation, and he ignored every request. He similarly failed to show up at the mediation with documentation. The mediator explained “this was the first mediation in some time, at least that I could recall, where a homeowner did not submit responsive documents in the program.” PA0028. Baham presented no record to the district court—or this court for that matter—to demonstrate any effort to provide documents, much less his “best effort” to do so as required by FMR 13.

IV. CONCLUSION

This case is not appropriate for consideration under NRAP 40A. Baham’s petition should be denied. Alternatively, Bayview did nothing sanctionable at the mediation. The district court’s order should be affirmed.

Dated this 4th day of March, 2021.

WRIGHT, FINLAY & ZAK, LLP

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CERTIFICATE OF COMPLIANCE

I CERTIFY 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 in Times New Roman and 14 point font size.

I CERTIFY this brief complies with the page or type-volume limitations of NRAP 32(a)(7) and NRAP 40A because, excluding the parts of the answer exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points or more, does not exceed 10 pages or 433 lines, and contains 2,041 words.

I CERTIFY I have read this 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 opening 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 of the transcript or appendix where the matter relied on is to be found.

...

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...

...

I understand I may be subject to sanctions in the event the brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 4th day of March, 2021.

WRIGHT, FINLAY & ZAK, LLP

/s/ Darren T. Brenner

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*Attorneys for Respondent, Bayview Loan
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PROOF OF SERVICE

I certify that I electronically filed on the 4th day of March, 2021, the foregoing **RESPONDENT, BAYVIEW LOAN SERVICING, LLC'S ANSWER TO PETITION FOR REVIEW** with the Clerk of the Court for the Nevada Supreme Court by using the CM/ECF system. I further certify that all parties of record to this appeal either are registered with the CM/ECF or have consented to electronic service.

[X] (By Electronic Service) Pursuant to CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF systems sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's CM/ECF system.

Robin Wright
Ariel Stern
Jamie Combs
Jamie Cogburn
Erik-Anthony Fox
Natalie Winslow

[X] (Nevada) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

/s/ Jason Craig

An Employee of Wright Finlay Zak, LLP

Exhibit A

APN Number: 125-14-810-039

Recording Requested By
First American Trustee Servicing Solutions, LLC
4795 Regent Blvd, Mail Code 1011-F
Irving, TX 75063

When Recorded & Mail Tax Statements To :
THE BANK OF NEW YORK MELLON FKA
THE BANK OF NEW YORK AS TRUSTEE FOR
THE CERTIFICATEHOLDERS OF CWALT,
INC., ALTERNATIVE LOAN TRUST 2005-2,
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2
55 Beattie Place Ste 500
Greenville SC 29601

Title Order Number : 8457622
TS Number : NV1400259949
Loan Type : Conventional

Inst #: 20200310-0003510

Fees: \$42.00

RPTT: \$2636.70 Ex #:

03/10/2020 03:49:19 PM

Receipt #: 4014524

Requestor:

FIRST AMERICAN MORTGAGE S

Recorded By: DOBLC Pgs: 4

DEBBIE CONWAY

CLARK COUNTY RECORDER

Src: ERECORD

Ofc: ERECORD

TRUSTEES DEED UPON SALE

The undersigned hereby affirms that there is no Social Security Number contained in this document

The undersigned grantor declares under penalty of perjury

- 1) The grantee herein WAS the foreclosing Beneficiary
- 2) The amount of the unpaid debt together with costs was..... \$ 942,944.13
- 3) The amount paid by the Grantee at the trustee sale was..... \$ 516,600.00
- 4) The documentary transfer tax is \$ 2,636.70

5) Said property is INCORPORATED / UNINCORPORATED LAS VEGAS

And First American Trustee Servicing Solutions, LLC, (herein called Trustee), as the duly appointed Trustee under the Deed of Trust hereinafter described, does hereby grant and convey, but without warranty, expressed or implied to :

THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2005-2, MORTGAGE PASS-
THROUGH CERTIFICATES, SERIES 2005-2

(herein called Grantee), all of its right, title and interest in and to that certain property situated in the County of
CLARK in the State of Nevada, described as follows :

See Exhibit A attached hereto and made a part hereof.

Recitals :

This conveyance is made pursuant to the powers conferred upon the Trustee by that certain Deed of Trust dated
12/21/2004 and executed by ,

DENNIS BAHAM

Page | 1

APN Number : 125-14-810-039
Title Order Number : 8457622
TS Number : NV1400259949
Loan Type : Conventional

as Trustor, and recorded 12/23/2004, as Instrument No. 20041223-0002350, of Official Records of CLARK County, Nevada, and after fulfillment of the conditions specified in said Deed of Trust authorizing this conveyance.

Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the County Recorder of said County.

Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the Recorded of said County.

All requirements of law regarding the mailing of copies of notices or the publication of a copy of the Notice of Default or the personal delivery of the copy of the Notice of Default and the posting and publication of copies of the Notice of a Sale have been met.

Said property was sold by said Trustee at public auction on 02/28/2020 at the place named in the Notice of Sale, in the County of CLARK State of Nevada, in which the property is situated. Grantee, being the highest bidder at such sale, became the purchaser of said property and paid therefore to said trustee the amount of \$ 516,600.00 in lawful money of the United States, or by the satisfaction, pro tanto, of the obligations then secured by said Deed of Trust.

The undersigned hereby affirms that there is no Social Security Number contained in this document

Date : MAR 02 2020

First American Trustee Servicing Solutions, LLC

By : Tammy Rossum
Tammy Rossum, Supervisor

FATICO submits this document for recordation as a courtesy for physical convenience only. FATICO has not examined this document for its validity, sufficiency, or effect, if any, upon title to the real property described herein.

State of Texas
County of Dallas

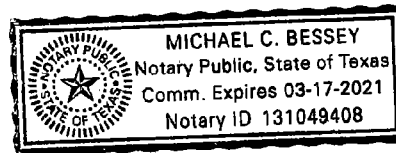
Before me MICHAEL C. BESSEY, a Notary Public, on this day personally appeared

Tammy Rossum, known to me to be the person whose name is subscribed to therefore going instrument and acknowledged to me that this person executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office this day of 03/02/2020

Witness my hand and official seal

Signature : [Signature]



APN Number : 125-14-810-039
Title Order Number : 8457622
TS Number : NV1400259949
Loan Type : Conventional

Exhibit A

Legal Description

PARCEL I: LOT 39 IN BLOCK A OF FINAL MAP OF ELKHORN/JONES, A RESIDENTIAL PLANNED DEVELOPMENT AS SHOWN BY MAP THEREOF ON FILE IN BOOK 114 OF PLATS, PAGE 14, IN THE

OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA. EXCEPTING THEREFROM A NONEXCLUSIVE EASEMENT OF ACCESS, INGRESS, EGRESS, USE AND ENJOYMENT OF, IN, TO AND OVER THE ASSOCIATION PROPERTY AS DELINEATED ON THE PLAT MAP REFERRED TO ABOVE AND FURTHER DEFINED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CANYON MIST ESTATES RECORDED JANUARY 12, 2004 IN BOOK 20040112 AS DOCUMENT NO. 02925 OF OFFICIAL RECORDS, AS THE SAME MAP FROM TIME TO TIME BE AMENDED AND/OR SUPPLEMENTED IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL II: A NONEXCLUSIVE EASEMENT OF ACCESS, INGRESS, EGRESS, USE AND ENJOYMENT OF, IN, TO AND OVER THE ASSOCIATION PROPERTY AS DELINEATED ON THE PLAT MAP AND

FURTHER DEFINED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CANYON MIST ESTATE RECORDED JANUARY 12, 2004 IN BOOK 20040112 AS DOCUMENT NO. 02925, AND AS THE SAME MAY FROM TIME TO TIME BE AMENDED AND/OR SUPPLEMENTED IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA, WHICH EASEMENT IS APPURTENANT TO PARCEL ONE (1).

**STATE OF NEVADA
DECLARATION OF VALUE FORM**

1. Assessor Parcel Number(s)

- a. 125-14-810-039
b. _____
c. _____
d. _____

2. Type of Property

- a. ☐ Vacant Land b. ☒ Single Fam. Res.
c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
g. ☐ Agricultural h. ☐ Mobile Home
☐ Other _____

FOR RECORDER'S OPTIONAL USE ONLY

Book: _____ Page: _____
Date of Recording : _____
Notes: _____

3. a. Total Value/Sales Price of Property

\$ 516,600.00

b. Deed in Lieu of Foreclosure Only (value of property)

(_____)

c. Transfer Tax Value

\$ 516,600.00

d. Real Property Transfer Tax Due

\$ 2,636.70

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption : _____

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest of 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any addition amount owed.

Signature [Signature]

Capacity Tammy Rossum, Supervisor

Signature [Signature]

Capacity Chet Sconyers, Vice President

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: First American Trustee Servicing Solutions, LLC

Address: 4795 Regent Blvd, Mail Code 1011-F
City: Irving
State: TX Zip: 75063

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: THE BANK OF NEW YORK MELLON
FKA THE BANK OF NEW YORK AS TRUSTEE
FOR THE CERTIFICATEHOLDERS OF CWALT,
INC., ALTERNATIVE LOAN TRUST 2005-2,
MORTGAGE PASS-THROUGH CERTIFICATES,
SERIES 2005-2

Address: 55 Beattie Place Ste 500
City: Greenville
State: SC Zip: 29601

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Print Name: First American Trustee Servicing Solutions, LLC

Escrow #: NV1400259949/8457622

Address: 4795 Regent Blvd, Mail Code 1011-F
City: IRVING

State: TX Zip: 75063

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

Exhibit B



676



BAYVIEW
LOAN SERVICING

Bayview Loan Servicing, LLC
4425 Ponce de Leon Blvd. 5th Floor
Coral Gables, FL 33146

TRANSFER OF SERVICE NOTICE

January 23, 2020

DENNIS BAHAM
BRENNER DARREN
1635 VILLAGE CENTER CIR
LAS VEGAS, NV 89134-6375

Bayview Loan Number:



Property Address:

6017 GUILD CT
LAS VEGAS, NV 89131

Dear Customer:

Bayview Loan Servicing, LLC would like to take this opportunity to say "thank you." Effective 2/1/2020, your mortgage loan servicing will be transferred from Bayview Loan Servicing, LLC to Shellpoint Mortgage Servicing. The transfer of servicing is a common practice. It is our goal to make this transfer as seamless as possible for you. This transfer does not affect the terms or conditions of your loan documents other than the terms directly related to the servicing of your loan.

Below you will find a summary of the changes that will occur.

A few items of importance regarding this transfer:

- Bayview Loan Servicing will stop accepting mortgage payments after 1/31/2020.
- The date your new servicer, Shellpoint Mortgage Servicing, will start accepting mortgage payments is 2/1/2020.

As of this date all payments should be remitted to Shellpoint Mortgage Servicing.

Shellpoint Mortgage Servicing
P.O. Box 740039
Cincinnati, OH 45274-0039

- If you have already mailed your payment to Bayview Loan Servicing and it is received after the transfer date, it will be forwarded to Shellpoint Mortgage Servicing for processing.
- If your payment is currently being automatically debited, this service will be cancelled after 1/31/2020.
- This transfer **does not affect** the status of any pending bankruptcy, or foreclosure proceedings.
- If we currently hold an escrow account for the payment of your taxes and/or homeowners insurance, the taxing authority(s) and insurance agent(s) will be notified of the transfer to ensure proper and timely payment of these items. If you receive any insurance or tax bills on or after 2/1/2020, please forward them to Shellpoint Mortgage Servicing.

How to contact us:

Should you have questions, here are the applicable mailing addresses, toll-free numbers and hours of operation.

Contact Bayview Loan Servicing, LLC on or before 1/31/2020:**Send Correspondence To:**

Bayview Loan Servicing, LLC
4425 Ponce de Leon Blvd., 5th Floor
Coral Gables, FL 33146

Customer Service:

Toll-free Numbers & Hours
1-855-813-6597
8:00am –9:00pm, (ET) Monday -Friday

Contact your new servicer, Shellpoint Mortgage Servicing, on or after 2/1/2020:**Send Correspondence To:**

Shellpoint Mortgage Servicing
P.O. Box 10826
Greenville, SC 29603-0826

Customer Service:

1(800) 365-7107
8:00am - 10:00pm (EST) - Monday - Friday 8:00am -
3:00pm (EST) - Saturday

You should be aware of the following information, which is set out in more detail in Section 6 of the Real Estate Settlement Procedure Act (RESPA) (12U.S.C. 2605): During the 60 day period following the effective date of the transfer of the loan servicing, a loan payment received by your previous servicer before its due date may not be treated by the new as late, and a late fee may not be imposed upon you.

Except under limited circumstances, the law requires that your present Servicer send you this notice not less than 15 days before the effective date of transfer, or at closing. Your new Servicer must also send you this notice no more than 15 days after this effective date, or at closing.

Your Annual Statements

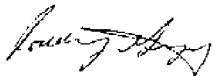
In January 2021, you will receive two separate Mortgage Interest Statements (Form 1098), one from Bayview Loan Servicing and the other from Shellpoint Mortgage Servicing. These annual statements will report the amount of interest and real estate taxes you paid during the time each company serviced your loan in 2020.

We Appreciate the Opportunity to Serve You

We greatly appreciate the trust you have placed in us. Bayview Loan Servicing would like to extend a sincere "thank you" for the opportunity we had to serve you.

It has been a pleasure to service your loan and we wish you a successful relationship with Shellpoint Mortgage Servicing.

Sincerely,



Roddrey Gregory, Assistant Vice President
Customer Relations Department.
Bayview Loan Servicing, LLC

Disclaimers and Notices

Important Notice for Oregon Residents: Residential mortgage loan servicers are regulated by the Oregon Division of Financial Regulation. To file a complaint, call (888) 877-4894 or visit <http://dfr.oregon.gov>.

THIS LETTER IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A DEMAND FOR PAYMENT, AN ATTEMPT TO COLLECT A DEBT, A REQUEST ON AN OBLIGATION, AN ATTEMPT TO IMPOSE PERSONAL LIABILITY UPON YOU FOR A DISCHARGED DEBT, OR AN ATTEMPT TO MODIFY ANY BANKRUPTCY PLAN OR DISCHARGE ORDER.

Confirmed SII Disclaimer: If you are a confirmed successor in interest of the account, unless you assume the mortgage loan obligation under state law, you are not personally liable for the mortgage debt and cannot be required to use your own assets to pay the mortgage debt.

The following mailing address must be used for all Error Notices & Information Requests:
Bayview Loan Servicing, LLC, Customer Support, 4425 Ponce de Leon Boulevard, 5th Floor,
Coral Gables, FL 33146.

Exhibit C

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 DENNIS BAHAM, et al.,

4 Plaintiffs

5 v.

6 BAYVIEW LOAN SERVICING, LLC,

7 Defendant

Case No.: 2:19-cv-01125-APG-VCF

**Order (1) Granting Motion to Dismiss,
(2) Denying Motion to Amend, and
(3) Granting Motion for Leave to File
Supplemental Authority**

[ECF Nos. 4, 7, 19]

8 Plaintiffs Dennis Baham, Chuck Reineck, and Jeanette Reineck filed a class action
9 complaint against defendant Bayview Loan Servicing, LLC (Bayview) under the Fair Debt
10 Collection Practices Act (FDCPA). The plaintiffs allege that Bayview collected debts,
11 specifically mortgage loans secured by real property, without a license issued by the Nevada
12 Department of Business & Industry Financial Institutions Division. According to the complaint,
13 Bayview engaged in activity to collect on mortgages before it became a licensed collection
14 agency in Nevada on January 18, 2019. ECF No. 1. The plaintiffs seek declaratory relief and
15 allege violations of the FDCPA and Nevada Revised Statutes § 649.370.¹

16 Bayview moves to dismiss the § 649.370 claim because (1) Chapter 649 does not create a
17 private right of action, (2) the chapter allows Bayview to cure a licensing violation, which it did,
18 and (3) the complaint does not plausibly allege Bayview engaged in debt collection activity as to
19 any of the plaintiffs' mortgages. As to the FDCPA claim, Bayview argues that under controlling
20 authority, attempting to collect a debt without a license is not a per se violation of the FDCPA,
21
22

23 ¹ Section 649.370 provides that any violation of the FDCPA "shall be deemed to be a violation of this chapter."

1 and the complaint does not plausibly allege any other violation. Finally, Bayview argues that
2 because the plaintiffs fail to state a substantive claim, their declaratory relief claim also must fail.

3 The plaintiffs respond that unlicensed debt collection activity violates the FDCPA. They
4 also contend that there is a private right of action under Chapter 649, but to the extent there is
5 not, then the FDCPA claim should still survive. They contend some remedy must exist, under
6 either federal or state law, to address Bayview's unlicensed debt collection activity. Although
7 the plaintiffs briefly argue a private right of action exists under state law, they nevertheless seek
8 leave to amend to make clear that their claim arises only under the FDCPA, not Nevada law.

9 After briefing on the motion to dismiss was complete, Bayview moved for leave to file
10 supplemental authority in the form of the Supreme Court of Nevada's decision *Benko v. Quality*
11 *Loan Service Corporation*, 454 P.3d 1263 (Nev. 2019) (en banc). In *Benko*, the Supreme Court
12 of Nevada held that trustees conducting nonjudicial foreclosures do not need to be licensed under
13 Chapter 649. Bayview argues that this case shows it was not required to obtain a license in the
14 first place and thus could not have violated either Nevada law or the FDCPA. The plaintiffs
15 respond that *Benko* is distinguishable because that case involved a trustee conducting a
16 nonjudicial foreclosure sale, but Bayview is not a foreclosure trustee. Instead, Bayview is a
17 mortgage servicer who directed the trustee to conduct the foreclosure.

18 I grant Bayview's motion to dismiss because the plaintiffs have not plausibly alleged a
19 violation of the FDCPA and because there is no private right of action under Chapter 649. I
20 deny the plaintiffs' motion to amend because the proposed amended complaint also does not
21 plausibly allege a violation of the FDCPA. I grant Bayview's motion for leave to file
22 supplemental authority.

23 ////

1 **A. FDCPA**

2 The Ninth Circuit has held that debt collection practices in violation of a state's licensing
3 law are not per se violations of the FDCPA. *Wade v. Reg'l Credit Ass'n*, 87 F.3d 1098, 1100 (9th
4 Cir. 1996). That court acknowledged that several district courts had held that it could be a per se
5 violation, including the case on which the plaintiffs here rely. *Id.* at 1100 (citing *Kuhn v. Account*
6 *Control Tech., Inc.*, 865 F. Supp. 1443 (D. Nev. 1994)). The *Wade* court concluded that the
7 mere fact that the debt collection company was not licensed under state law was not in and of
8 itself an FDCPA violation. *Id.* Instead, it examined the debt collector's communications to
9 determine whether those violated the FDCPA and found no violations. *Id.* at 1099-1100.

10 The plaintiffs' complaint likewise alleges only that Bayview conducted collection activity
11 in Nevada without a license by sending requests for payment and by initiating foreclosure. But
12 that is all that the complaint alleges. There are no factual allegations that Bayview's
13 communications or conduct otherwise violated the FDCPA. Because the plaintiffs allege only a
14 state law licensing violation, they have failed to allege a violation of the FDCPA. Accordingly,
15 they also have not alleged a basis for declaratory relief under the FDCPA. I therefore grant
16 Bayview's motion to dismiss the FDCPA claim.

17 I also deny the plaintiffs' motion for leave to amend because the proposed amended
18 complaint contains the same defect as the original complaint in that it asserts only a state law
19 licensing violation. Ordinarily, I would grant leave for the plaintiffs to amend to allege facts that
20 would state an FDCPA claim. However, the plaintiffs were on notice of the defect in their
21 original complaint through Bayview's motion and they did not allege facts in their proposed
22 amended complaint that would show an FDCPA violation. Presumably, if the plaintiffs had such
23 facts, they would have alleged them in the proposed amended complaint. The plaintiffs also do

1 not contend in their opposition or motion to dismiss that additional facts exist. I therefore
2 dismiss the plaintiffs' FDCPA claim with prejudice.

3 **B. Nevada Law**

4 I have previously ruled that there is no private right of action under Chapter 649. *Preston*
5 *v. Clark Cty. Collection Serv., LLC*, No. 2:14-CV-00021-APG-PAL, 2014 WL 6882626, at *3
6 (D. Nev. Dec. 4, 2014). The plaintiffs have not persuaded me that I should reach a different
7 conclusion in this case. Although the plaintiffs contend this leaves them without a remedy for
8 unlicensed collection activity, they may file a complaint against Bayview with the Commissioner
9 of Financial Institutions, which Baham did. *See Nev. Rev. Stat. § 649.385*; ECF No. 1 at 7.
10 Remedies include the Commissioner suing to restrain the practices or impose administrative
11 fines, as well as potential criminal liability for the violator. *See Nev. Rev. Stat. §§ 649.400-.440*.
12 Because there is no private right of action under Chapter 649, I dismiss with prejudice the
13 plaintiffs' claim under § 649.370 and any related request for declaratory relief.

14 **C. Conclusion**

15 I THEREFORE ORDER that defendant Bayview Loan Servicing, LLC's motion for
16 leave to file supplemental authority (**ECF No. 19**) is **GRANTED**.

17 I FURTHER ORDER that the plaintiffs' motion to amend (**ECF No. 7**) is **DENIED**.

18 I FURTHER ORDER that defendant Bayview Loan Servicing, LLC's motion to dismiss
19 (**ECF No. 4**) is **GRANTED**. The clerk of court is instructed to enter judgment in favor of
20 defendant Bayview Loan Servicing, LLC and against the plaintiffs, and to close this case.

21 DATED this 20th day of March, 2020.

22 
23 _____
ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE

Exhibit D



ORDR

NATALIE L. WINSLOW, ESQ.
Nevada Bar No. 12125
JAMIE K. COMBS, ESQ.
Nevada Bar No. 13088
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: natalie.winslow@akerman.com
Email: jamie.combs@akerman.com

*Attorneys for The Bank of New York Mellon, as
Trustee for the Certificateholders of CWALT, Inc.,
Alternative Loan Trust 2005-2, Mortgage Pass-
Through Certificates, Series 2005-2*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DENNIS BAHAM, an individual,

Plaintiff,

v.

BAYVIEW LOAN SERVICING, LLC, a Foreign
Limited Liability Company; FIRST AMERICAN
TRUSTEE SERVICING SOLUTIONS, LLC, a
Foreign Limited Liability Company; and BANK
OF NEW YORK MELLON f/k/a THE BANK
OF NEW YORK AS TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWALT, INC.,
ALTERNATIVE LOAN TRUST 2005-2,
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2,

Defendants.

Case No.: A-20-810458-C
Dept.: XI

AND

Case No.: A-19-795762-C

Dept. No.: IV

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS COMPLAINTS
AND DENYING COUNTERMOTION TO
AMEND**

Defendants The Bank of New York Mellon, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2005-2, Mortgage Pass-Through Certificates, Series 2005-2 (**BoNYM**) and Bayview Loan Servicing, LLC filed a motion to dismiss the complaints filed by plaintiff in case A-19-795762-C and A-20-810458-C, which this Court ordered consolidated. Plaintiff Dennis Baham filed an opposition and counter motion to amend and defendants filed replies and responses to Baham's counter motion. This Court held a hearing on January 19, 2021 and heard argument of

{54636715}

1 counsel. Having considered the motion, opposition, countermotion, response, replies, as well as the
2 pleadings and papers on file and the arguments of counsel,

3 **IT IS ORDERED** that defendants' motion to dismiss is **GRANTED**. Plaintiff's complaints
4 are **DISMISSED** with prejudice.

5 Both of plaintiff's complaints allege a single claim for injunctive relief seeking to stop
6 BoNYM from foreclosing on the subject property. The claims are based on the allegation that
7 BoNYM's servicer Bayview lacked authority because it did not hold a debt-collectors license at the
8 time the notice of default was recorded.

9 Plaintiff's claims are barred by claim preclusion. Claim preclusion applies where "(1) the
10 parties or their privies are the same, (2) the final judgment is valid, and (3) the subsequent action is
11 based on the same claim or any part of them that were or could have been brought in the first case."
12 *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054, 194 P.3d 709, 713 (2008) *holding modified*
13 *by Weddell v. Sharp*, 131 Nev. Adv. Op. 28, 350 P.3d 80 (2015). Claim preclusion "embraces all
14 grounds of recovery that were asserted in a suit, as well as those that could have been asserted." *Five*
15 *Star*, 194 P.3d at 715.

16 Plaintiff litigated the issue of BoNYM's authority to foreclosure through the foreclosure
17 mediation action, case no. A-18-775019-FM, appeal no. 78491. Plaintiff also litigated the issue of
18 Bayview's licensure in federal court as case no. 2:19-cv-01125-APG-VCF. The parties or their
19 privies were the same in those actions as they are here. Both actions resulted in final valid
20 judgments. Plaintiff's sole remedy to challenge conduct related to the foreclosure mediation was
21 through the foreclosure mediation action. *See Tobler v. Sables, LLC*, 968 F.3d 1010, 1012 (9th Cir.
22 2020). The foreclosure mediation action resulted in a final order concluding BoNYM was entitled to
23 a foreclosure certificate, which the Nevada Supreme Court affirmed. The federal court action
24 resulted in an order of dismissal of plaintiff's claims with prejudice, from which plaintiff did not
25 appeal. Plaintiff is barred from raising the same issues he brought, or could have brought, in either
26 of the two prior actions.

27 Plaintiff's claims also fail because injunctive relief is a remedy rather than a cause of action,
28 and because the claims are moot as BoNYM has already foreclosed. *See, e.g., In re Wal-Mart Wage*

1 & *Hour Employment Practices Litig.*, 490 F. Supp. 2d 1091, 1130 (D. Nev. 2007) (claim for
2 injunctive relief was "not a separate cause of action" and "not an independent ground for relief"); *see*
3 *also In re Mann*, 907 F.2d 923, 926 (9th Cir. 1990) (party's failure to obtain stay of foreclosure sale
4 pending appeal rendered moot appeal of court's ruling on foreclosure action).

5 Plaintiff's claim cannot be characterized as one for wrongful foreclosure, as plaintiff does not
6 allege he fully performed under the loan agreement. *See Collins v. Union Fed. Sav. & Loan Ass'n*,
7 99 Nev. 284, 304, 662 P.2d 610, 623 (1983) (A claim for wrongful foreclosure requires the plaintiff
8 to show (1) the defendant exercised a power of sale or foreclosed on the property, and (2) at the time
9 the power of sale was exercised, there was no breach of condition or failure of performance by the
10 mortgagor that would have authorized the foreclosure.) Plaintiff admits he has not paid the
11 mortgage loan since 2011. Plaintiff's allegations regarding Bayview's licensure status are also
12 irrelevant to a wrongful foreclosure action as it was BoNYM, not Bayview, who foreclosed.
13 Plaintiff's allegations do not satisfy the elements of a wrongful foreclosure claim.

14 **IT IS FURTHER ORDERED** that plaintiff's counter-motion to amend is **DENIED**. The
15 Court finds that plaintiff's proposed amended complaint will not cure the deficiencies in the
16 complaint, and therefore amendment would be futile. *Cervantes v. Countrywide Home Loans, Inc.*,
17 656 F.3d 1034, 1041 (9th Cir. 2011).

Dated this 10th day of February, 2021



18
19
20
21 Respectfully submitted by:

22 **AKERMAN LLP**

23 /s/ Jamie K. Combs

24 ARIEL E. STERN, ESQ.

25 Nevada Bar No. 8276

26 NATALIE L. WINSLOW, ESQ.

27 Nevada Bar No. 12125

28 JAMIE K. COMBS, ESQ.

Nevada Bar No. 13088

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Attorneys for BoNYM

Approved as to form and content by:

28B 679 6DD8 403B
Nadia Krall
District Court Judge

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 – FAX: (702) 380-8572

1 **WRIGHT, FINLAY & ZAK, LLP**

2 /s/ Darren T. Brenner
3 DARREN T. BRENNER, ESQ.
4 Nevada Bar No. 8386
5 7785 W. Sahara Avenue, Suite 200
6 Las Vegas, Nevada 89117

7 *Attorneys for Bayview Loan Servicing, LLC*

8 **MORTENSEN & RAFIE, LLP**

9 /s/ No Response
10 PETER B. MORTENSEN, ESQ.
11 Nevada Bar No. 5725
12 RICHARD R. K. WALTJEN, ESQ.
13 Nevada Bar No. 13416
14 10781 W. Twain Avenue
15 Las Vegas, Nevada 89135

16 *Attorneys for Dennis Baham*

Llarena, Carla (LAA-Las)

From: Darren T. Brenner <dbrenner@wrightlegal.net>
Sent: Tuesday, February 9, 2021 9:56 AM
To: Combs, Jamie (Assoc-Las)
Cc: Llarena, Carla (LAA-Las); Larsen, Patricia (LAA-Las); Winslow, Natalie (Ptnr-Las)
Subject: RE: Baham orders

Approved.

Darren T. Brenner, Esq.
Partner – Nevada Office



WRIGHT FINLAY & ZAK
ATTORNEYS AT LAW

7785 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
(702) 608-1871 Direct
(702) 475-7964 Main, Ext. 7014
(702) 946-1345 Fax
dbrenner@wrightlegal.net

**Wright, Finlay & Zak, LLP: Your Counsel for
California, Nevada, Arizona, Washington,
Oregon, Utah, New Mexico, Hawaii,
Montana and South Dakota**



NAMWOLF
LAW FIRM MEMBER

PLEASE BE ADVISED THAT THIS FIRM IS A DEBT
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FOR THAT PURPOSE.

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From: jamie.combs@akerman.com [mailto:jamie.combs@akerman.com]
Sent: Tuesday, February 9, 2021 9:48 AM
To: Darren T. Brenner
Cc: carla.llarena@akerman.com; patricia.larsen@akerman.com; natalie.winslow@akerman.com
Subject: Baham orders

Hi Darren,

You previously approved the draft orders, but please confirm we have approval to attach your electronic signature to both orders for submission.

Thanks!

Jamie Katherine Combs

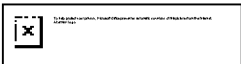
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134

D: 702 634 5007

Admitted in Nevada and Washington

jamie.combs@akerman.com

vCard | Profile



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[EXTERNAL This email originated outside the network. Please use caution when opening any attachments or responding to it.]

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Dennis Baham, Plaintiff(s)

CASE NO: A-20-810458-C

7 vs.

DEPT. NO. Department 11

8 Bayview Loan Servicing LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 2/10/2021

15 Natalie Winslow

natalie.winslow@akerman.com

16 Ariel Stern

ariel.stern@akerman.com

17 Jamie Combs

jamie.combs@akerman.com

18 DEFAULT ACCOUNT

NVefile@wrightlegal.net

19 Jason Craig

jrcraig@wrightlegal.net

20 Akerman LLP

AkermanLAS@akerman.com

21 Jamie Combs

jamie.combs@akerman.com

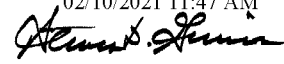
22 Dennis Baham

greenskies87@gmail.com

23 Darren Brenner

dbrenner@wrightlegal.net

Exhibit E

Electronically Filed
02/10/2021 11:47 AM

CLERK OF THE COURT
Jamie K. Combs

akerman

Akerman LLP
1635 Village Center Circle
Suite 200
Las Vegas, NV 89134

T: 702 634 5000
F: 702 380 8572

February 9, 2021

VIA EMAIL TO dc4inbox@clarkcountycourts.us

The Honorable Nadia Krall
Eighth Judicial District Court
Regional Justice Center
200 Lewis Avenue, Dept. 4
Las Vegas, Nevada 89101

Re: *Dennis Baham v. Bank of New York Mellon, et al.*
Case Number: A-19-795762-C and A-20-810458-C
Proposed Orders on Motion to Consolidate and Motion to Dismiss

Dear Judge Krall:

Enclosed are proposed orders on defendants' motions to consolidate and dismiss, consistent with the court's order at the hearing held on January 19, 2021. We circulated the proposed orders to plaintiff's counsel for review and comment on January 29, 2021, requesting a response by February 3. On February 3, Plaintiff's counsel requested until February 8, 2021 to review the proposed order and provide either approval as to form and content or any comments/revisions. To date, plaintiff has not approved the form and content of the order or proposed any revisions to the order. We therefore submit the proposed order to the court for review and signature.

Very truly yours,

/s/ Jamie K. Combs

Jamie K. Combs, Esq.

Enclosures

cc: Darren Brenner, Esq. by email
Peter Mortensen, Esq. by email
Rick Waltjen, Esq. by email

ORDR

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

JAMIE K. COMBS, ESQ.

Nevada Bar No. 13088

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Email: jamie.combs@akerman.com

*Attorneys for The Bank of New York Mellon, as
Trustee for the Certificateholders of CWALT, Inc.,
Alternative Loan Trust 2005-2, Mortgage Pass-
Through Certificates, Series 2005-2*

EIGHTH JUDICIAL DISTRICT COURT**CLARK COUNTY, NEVADA**

DENNIS BAHAM, an individual,

Plaintiff,

v.

BAYVIEW LOAN SERVICING, LLC, a Foreign
Limited Liability Company; FIRST AMERICAN
TRUSTEE SERVICING SOLUTIONS, LLC, a
Foreign Limited Liability Company; and BANK
OF NEW YORK MELLON f/k/a THE BANK
OF NEW YORK AS TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWALT, INC.,
ALTERNATIVE LOAN TRUST 2005-2,
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2,

Defendants.

Case No.: A-20-810458-C

Dept.: XI

AND

Case No.: A-19-795762-C

Dept. No.: IV

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS COMPLAINTS
AND DENYING COUNTERMOTION TO
AMEND**

Defendants The Bank of New York Mellon, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2005-2, Mortgage Pass-Through Certificates, Series 2005-2 (**BoNYM**) and Bayview Loan Servicing, LLC filed a motion to dismiss the complaints filed by plaintiff in case A-19-795762-C and A-20-810458-C, which this Court ordered consolidated. Plaintiff Dennis Baham filed an opposition and counter motion to amend and defendants filed replies and responses to Baham's counter motion. This Court held a hearing on January 19, 2021 and heard argument of

1 counsel. Having considered the motion, opposition, countermotion, response, replies, as well as the
2 pleadings and papers on file and the arguments of counsel,

3 **IT IS ORDERED** that defendants' motion to dismiss is **GRANTED**. Plaintiff's complaints
4 are **DISMISSED** with prejudice.

5 Both of plaintiff's complaints allege a single claim for injunctive relief seeking to stop
6 BoNYM from foreclosing on the subject property. The claims are based on the allegation that
7 BoNYM's servicer Bayview lacked authority because it did not hold a debt-collectors license at the
8 time the notice of default was recorded.

9 Plaintiff's claims are barred by claim preclusion. Claim preclusion applies where "(1) the
10 parties or their privies are the same, (2) the final judgment is valid, and (3) the subsequent action is
11 based on the same claim or any part of them that were or could have been brought in the first case."
12 *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054, 194 P.3d 709, 713 (2008) *holding modified*
13 *by Weddell v. Sharp*, 131 Nev. Adv. Op. 28, 350 P.3d 80 (2015). Claim preclusion "embraces all
14 grounds of recovery that were asserted in a suit, as well as those that could have been asserted." *Five*
15 *Star*, 194 P.3d at 715.

16 Plaintiff litigated the issue of BoNYM's authority to foreclosure through the foreclosure
17 mediation action, case no. A-18-775019-FM, appeal no. 78491. Plaintiff also litigated the issue of
18 Bayview's licensure in federal court as case no. 2:19-cv-01125-APG-VCF. The parties or their
19 privies were the same in those actions as they are here. Both actions resulted in final valid
20 judgments. Plaintiff's sole remedy to challenge conduct related to the foreclosure mediation was
21 through the foreclosure mediation action. *See Tobler v. Sables, LLC*, 968 F.3d 1010, 1012 (9th Cir.
22 2020). The foreclosure mediation action resulted in a final order concluding BoNYM was entitled to
23 a foreclosure certificate, which the Nevada Supreme Court affirmed. The federal court action
24 resulted in an order of dismissal of plaintiff's claims with prejudice, from which plaintiff did not
25 appeal. Plaintiff is barred from raising the same issues he brought, or could have brought, in either
26 of the two prior actions.

27 Plaintiff's claims also fail because injunctive relief is a remedy rather than a cause of action,
28 and because the claims are moot as BoNYM has already foreclosed. *See, e.g., In re Wal-Mart Wage*

1 & *Hour Employment Practices Litig.*, 490 F. Supp. 2d 1091, 1130 (D. Nev. 2007) (claim for
2 injunctive relief was "not a separate cause of action" and "not an independent ground for relief"); *see*
3 *also In re Mann*, 907 F.2d 923, 926 (9th Cir. 1990) (party's failure to obtain stay of foreclosure sale
4 pending appeal rendered moot appeal of court's ruling on foreclosure action).

5 Plaintiff's claim cannot be characterized as one for wrongful foreclosure, as plaintiff does not
6 allege he fully performed under the loan agreement. *See Collins v. Union Fed. Sav. & Loan Ass'n*,
7 99 Nev. 284, 304, 662 P.2d 610, 623 (1983) (A claim for wrongful foreclosure requires the plaintiff
8 to show (1) the defendant exercised a power of sale or foreclosed on the property, and (2) at the time
9 the power of sale was exercised, there was no breach of condition or failure of performance by the
10 mortgagor that would have authorized the foreclosure.) Plaintiff admits he has not paid the
11 mortgage loan since 2011. Plaintiff's allegations regarding Bayview's licensure status are also
12 irrelevant to a wrongful foreclosure action as it was BoNYM, not Bayview, who foreclosed.
13 Plaintiff's allegations do not satisfy the elements of a wrongful foreclosure claim.

14 **IT IS FURTHER ORDERED** that plaintiff's counter-motion to amend is **DENIED**. The
15 Court finds that plaintiff's proposed amended complaint will not cure the deficiencies in the
16 complaint, and therefore amendment would be futile. *Cervantes v. Countrywide Home Loans, Inc.*,
17 656 F.3d 1034, 1041 (9th Cir. 2011).

18 Dated this 10th day of February, 2021

19 

20 28B 679 6DD8 403B
21 Nadia Krall
22 District Court Judge

21 Respectfully submitted by:

22 AKERMAN LLP

23 /s/ Jamie K. Combs

24 ARIEL E. STERN, ESQ.

25 Nevada Bar No. 8276

26 NATALIE L. WINSLOW, ESQ.

27 Nevada Bar No. 12125

28 JAMIE K. COMBS, ESQ.

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1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Attorneys for BoNYM

Approved as to form and content by:

AKERMAN LLP

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LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 – FAX: (702) 380-8572

1 **WRIGHT, FINLAY & ZAK, LLP**

2 /s/ Darren T. Brenner
3 DARREN T. BRENNER, ESQ.
4 Nevada Bar No. 8386
5 7785 W. Sahara Avenue, Suite 200
6 Las Vegas, Nevada 89117

7 *Attorneys for Bayview Loan Servicing, LLC*

8 **MORTENSEN & RAFIE, LLP**

9 /s/ No Response
10 PETER B. MORTENSEN, ESQ.
11 Nevada Bar No. 5725
12 RICHARD R. K. WALTJEN, ESQ.
13 Nevada Bar No. 13416
14 10781 W. Twain Avenue
15 Las Vegas, Nevada 89135

16 *Attorneys for Dennis Baham*

Llarena, Carla (LAA-Las)

From: Darren T. Brenner <dbrenner@wrightlegal.net>
Sent: Tuesday, February 9, 2021 9:56 AM
To: Combs, Jamie (Assoc-Las)
Cc: Llarena, Carla (LAA-Las); Larsen, Patricia (LAA-Las); Winslow, Natalie (Ptnr-Las)
Subject: RE: Baham orders

Approved.

Darren T. Brenner, Esq.
Partner – Nevada Office



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**Wright, Finlay & Zak, LLP: Your Counsel for
California, Nevada, Arizona, Washington,
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Montana and South Dakota**



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From: jamie.combs@akerman.com [mailto:jamie.combs@akerman.com]
Sent: Tuesday, February 9, 2021 9:48 AM
To: Darren T. Brenner
Cc: carla.llarena@akerman.com; patricia.larsen@akerman.com; natalie.winslow@akerman.com
Subject: Baham orders

Hi Darren,

You previously approved the draft orders, but please confirm we have approval to attach your electronic signature to both orders for submission.

Thanks!

Jamie Katherine Combs

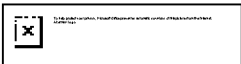
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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Dennis Baham, Plaintiff(s)

CASE NO: A-20-810458-C

7 vs.

DEPT. NO. Department 11

8 Bayview Loan Servicing LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 2/10/2021

15 Natalie Winslow

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16 Ariel Stern

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17 Jamie Combs

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18 DEFAULT ACCOUNT

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19 Jason Craig

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20 Akerman LLP

AkermanLAS@akerman.com

21 Jamie Combs

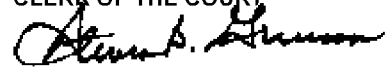
jamie.combs@akerman.com

22 Dennis Baham

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23 Darren Brenner

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6017 GUILD CT
LAS VEGAS, NV 89131
GREENSKIES87@GMAIL.COM
TELEPHONE: 702-303-1263
PLAINTIFF IN PRO PER

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

DENNIS BAHAM, an individual,

Plaintiff

v.

BAYVIEW LOAN SERVICING, LLC, a
Foreign Limited Liability Company; FIRST
AMERICAN TRUSTEE SERVICING
SOLUTIONS, L.L.C., a Foreign Limited
Liability Company; and BANK OF NEW
YORK MELLON f/k/a THE BANK OF
NEW YORK AS TRUSTEE FOR THE
CERTIFICATE HOLDERS OF CWALT,
INC., ALTERNATIVE LOAN TRUST 2005-
2, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2,

Defendants.

Case No.: A-19-795762-C
A-20-810458-C

Dept No.: IV

**PLAINTIF'S REPLY TO BoNYM'S
OPPOSITION FOR MOTION
FOR RECONSIDERATION**

The Plaintiff, Dennis Baham, Pro per, hereby files his Reply to BoNYM's Opposition to Plaintiff's Motion For Reconsideration and Counter Motion to Amend Complaint. This action is from the court's order dated January 19, 2021.

MEMORANDUM OF POINTS AND AUTHOITIES

I. INTRODUCTION

The arguments presented by BoNYM as grounds for denying Plaintiff's well-founded Motion For Reconsideration fail to demonstrate that reconsideration is not warranted. BoNYM 's brief is particularly striking because of what BoNYM do **not** and cannot contest:

As to the Pleadings filed on February 16, 2021 for Court Costs:

- Counsel for BoNYM do not and cannot dispute that Invoices for Court Costs were filed on behalf of Bank of America and NewRez LLC D/B/A Shell Point Mortgages Servicing. These two parties are not part of the instant action.
- Counsel for BoNYM do not and cannot dispute that in her declaration under the penalty of perjury dated February 16, 2021 that Bank of America nor NewRez LLC D/B/A ShellPoint Mortgage Servicing is not listed as being a client, but invoices dating back to February and March of 2020 has been submitted for this court to to consider for allowed costs as per NRS 18.020(5).

As to the Expired Modification documents sent to Baham to sign:

- Counsel for BoNYM do not and cannot dispute that Bac Home Loan Servicing LLC is the Lender listed on the modification documents not BoNYM.
- Counsel for BoNYM do not and cannot dispute that Bac Home Loan Servicng LLC was under a Consent Order from the FTC (Federal Trade Commission) from providing modifications.

As to Baham receiving a good bye and hello letter which is Federal Law:

- Counsel for BoNYM do not and cannot dispute Baham received notification of an alledged servicing transfer as the good-bye from Bayview Home Loan Servicing and the hello letter from Shell Point Loan Servicing both were addressed and sent to Akerman law Firm.

As to Bank of America the Master Servicer removing all Trusts accounts

- Counsel for BoNYM do not and cannot dispute that Bank of America removed all the mortgage trust accounts form Bayview Loan Servicng in September 2019 as identified in BOA 's monthly report.

- Counsel for BoNYM do not and cannot dispute that Bank of America as per the monthly reports show no Nevada accounts in foreclosure status in January 2020.

Baham argues and further presents that BoNYM is not the beneficiary of record and that the alleged assignment from Mers to BoNYM did not transpire per BoNYM monthly Trust Reports. Counsel labels Baham as having vexatious behavior which is not the case. In fact, Baham's is that of Justice.

Counsel states that Baham has not made a payment since 2011. Baham made his September 2011 mortgage payment which is evidenced by the canceled check which was paid to Bank of America. Bayview Loan Servicing an unlicensed debt collector In Nevada, files a Notice of Default on April 26, 2018 for a missed September 1, 2011 payment. When Baham disputed that he did not miss the September 2011 payment with the cancelled check, counsel for BoNYM ignored this documented evidence.

Counsel states that Baham has a judgement of Sanctions against him in Bankruptcy court. The \$20,000 judgement is on appeal in the 9th Circuit Court of Appeals. These fees that is allegedly owed to BoNYM is questionable based on the fact that Baham's Bankruptcy counsel did not show up for the sanction hearing to represent Baham.

II. LEGAL STANDARD

Baham reiterates that a party may seek reconsideration based upon substantially different evidence than originally presented. A motion for Reconsideration must set forth the following (1) some valid reason why the court should revisit its prior order (2) facts or law of a strongly convincing nature in support of reversing the prior decision. *Frasure v. United States* 256 F. Supp. 2D 1180,1183 (D.Nev 2003).

Under the Nevada Civil Procedure Rule 59, a party may move to alter or amend a judgement based on newly discovered evidence.

III. Argument

A. Counsel For BoNYM Alleged No New Evidence was Discovered

Baham disagrees. In fact, the totality of new evidence is undeniable. Both of the Power of Attorney Agreements from BoNYM with Bayview Loan servicing listed as the servicer were both expired prior to the Recording of the January 22, 2020 New Notice of Trustee Sale and the February 28, 2020 Trustee Sale itself.

Counsel claims Baham has made this argument before and it has already been rejected as a basis for setting aside the foreclosure is not true. This is untrue because the last Power of Attorney Agreement expired January 10, 2020. What is alarming is the fact that Bank of America discontinued Bayview Loan Servicing as a sub-servicer in September 2019. Counsel for BoNYM does not even dispute this anywhere in its opposition.

Counsel claims that it is irrelevant who the servicer is at the time of foreclosure. Baham disagrees with this statement because the servicer at the time of foreclosure must be in possession of the note and the Deed of Trust. Counsel claims the servicing of the account was transferred from Bayview to ShellPoint Mortgage servicing, but the monthly servicing report from Bank of America the master servicer show no transfer was ever done.

Counsel submitting invoices for Bank of America and ShellPoint for court costs is more newly discovered evidence.

BoNYM not having a branch location in Greenville, SC is newly discovered evidence alone with the fact that Bank of America states that Residential Credit Solutions was the last beneficiary of record.

B. The Court Should Stay Eviction Proceedings

Baham has proven with documented evidence that a Stay of eviction is justified as a matter of law.

C. Substantial harm to BoNYM

Baham disagrees. Baham has been paying the HOA dues and Homeowners's Insurance himself and taxes when allowed.

D. A Bond Should be required

Baham disagrees. A bond should not be required based on the totality of evidence submitted. Baham can prove beyond a reasonable doubt that BoNYM is the beneficiary. Baham can further prove that ShellPoint did not have standing to authorize the sale of the property.

IV. Conclusion

For the reasons set forth herein, Baham respectfully requests that this court grant his Motion for Reconsideration and countermotion to amend complaint and a stay of eviction.

I declare that the above statements are true to the best of my knowledge

Dated this 17 day of March, 2021

By: /s/Dennis Baham

Dennis Baham
6017 Guild Court
Las Vegas, Nevada 89131
Plaintiff in Pro per

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of March , 2021 and pursuant to NRCP 5, I caused a true and correct copy of the foregoing **Plaintiff's Reply To BoNYM OPPOSITION FOR RECONSIDERATION** in the following manner: **(ELECTRONIC SERVICE)** Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & served through the Notice Of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's contact list.

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Darren Brenner dbrenner@wrightlegal.net

/s/Dennis Baham

Plaintiff Pro per



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PLAINTIFF IN PRO PER

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

DENNIS BAHAM, an individual,

Plaintiff

v.

BAYVIEW LOAN SERVICING, LLC, a
Foreign Limited Liability Company; FIRST
AMERICAN TRUSTEE SERVICING
SOLUTIONS, L.L.C., a Foreign Limited
Liability Company; and BANK OF NEW
YORK MELLON f/k/a THE BANK OF
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CERTIFICATES, SERIES 2005-2,

Defendants.

Case No.: A-19-795762-C
A-20-810458-C

Dept No.: IV

**PLAINTIFF'S REPLY TO BAYVIEW
LOAN SERVICING OPPOSITION
FOR MOTION FOR
RECONSIDERATION**

COMES NOW, Plaintiff, Dennis Baham, Pro per, hereby files his Reply to Bayview
Loans Servicing Opposition to Plaintiff's Motion For Reconsideration and Counter Motion
To Amend Complaint. This action is from the court's Order dated January 19, 2021.

Bayview's Opposition continues to ignore the fact that as a matter of law, a loan
servicer cannot continue to service mortgage accounts if the master servicer cancels the

sub-servicing agreement and removes all mortgage accounts from their possession. This is exactly what happened to Bayview Loan Servicing. Bank of America the master servicer who Bayview was a sub-servicing agent for removed all of the mortgage accounts in September of 2019, but counsel for Bayview continued Foreclosure activities against Baham independent of any authorize sub-servicing agreement. Both the Power of Attorney Agreements were also expired. The last POA Agreement Bayview had expired January 10, 2020. This would mean that any attempted servicing transfer of the mortgage account to Shellpoint Mortgage Servicing would be invalid.

I. REPLY TO STATEMENT OF ISSUES

1. Where the expired Power of Attorney Agreements Bayview had with BoNYM could not have been produced earlier with reasonable diligence, should the court now consider this in granting Baham's Motion For Reconsideration? Yes
2. Where Bayview Loan Servicing claims BoNYM is the Beneficiary/Lender, but the Modification Agreement lists BAC Home Loan Servicing as the lender. Should this court disregard it merely because the Defendants deem it irrelevant in foreclosing on Baham property? No
3. Where Bayview Loan Servicing in its April 2018 Notice of Default that was recorded alleged Baham missed the September 1, 2011 payment, but when Baham produced a canceled check from Bank of America, Bayview still continued foreclosure activities. Should this court disregard a material material fact because the Defendants deem it irrelevant in foreclosing on Baham's property? No

II. REPLY STATEMENT OF FACTS

The facts related to this matter are contained in Baham's prior filings and are incorporated by reference here. In summary, this instant action is facilitated by unlicensed

debt collection activities started by Bayview Loan Servicing LLC in Nevada. The State Licensing Division informed Bayview that they need a debt collector license and that any collection activities prior to getting a license would be invalid. Bayview did not get licensed until January of 2019. so technically the Notice of Default that was recorded by Bayview Loan Servicing in April of 2018 that started all of the foreclosure proceeding should be invalid.

Baham has attended four mediations. The first three went in his favor, but the last mediation which is before the Nevada Supreme Court currently should go in Baham's favor also due to Bayview Loan Servicing not bringing the mandatory documents to the mediation as required by the mediation rules.

III. REPLY LEGAL ARGUMENTS

A. Baham understood that he had 14 days to file his Motion for Reconsideration. Due to the fact that Baham had an older operating system on his computer, it took longer for all of his exhibits to load even though they were uploaded before 12pm. The next morning Baham contacted the District court clerk who said it should be ok as long as he filed it.

B. Baham disagrees with Bayview's counsel claim that there is no new evidence. The hello good bye letters that Baham never received were addressed to Akerman law with Bayview's counsel name written on it alone with Baham's. Counsel for Bayview never informed Baham he was receiving his mail.

C. Bayview did not have possession of the note or the deed of trust when the April 2018 Notice of Default was filed. Bayview did not receive documents until June of 2018.

D. Baham asked the court to take Judicial Notice of Judge Delaney's decision because in it she specifically put the counsel of Wright Finley & Zak on notice about reusing the same documents. She further said that if it comes back to court she would

address the fraudulent note claims made by Baham's counsel. The servicer at the time was Ditech Financial. Now Bayview acquires the account and uses the same documents, a note that has an endorsement to facilitate a foreclosure.

E. Bayview after 3 postponements of the Trustee sale was suppose to restart Foreclosure process as per the NRS, but instead, they recoded a New Notice of Default in January 2020. this was of course was after the Power of Attorney Agreements had expired.

The totality of new evidence is undeniable.

IV. CONCLUSION

Based on the aforementioned, Baham respectfully requests that this court grant his Motion For Reconsideration and Countermotion to amend complaint and a stay of eviction.

I declare that the above statements are true to the best of my knowledge.

Dated this 18th day of March, 2021

By: /s/Dennis Baham
Dennis Baham
6017 Guild Court
Las Vegas, Nevada 89131
Plaintiff in Pro per

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of March , 2021 and pursuant to NRCP 5, I caused a true and correct copy of the foregoing **PLAINTIFF'S REPLY TO BAYVIEW LOAN SERVICING OPPOSITION** in the following manner: **(ELECTRONIC SERVICE)** Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & served through the Notice Of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's contact list.

Jamie Combs jamie.combs@akerman.com

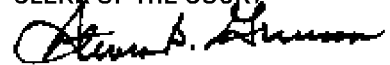
Natalie Winslow natile.winslow@akerman.com

Ariel Stern ariel.stern@akerman.com

Darren Brenner dbrenner@wrightlegal.net

/s/Dennis Baham

Plaintiff Pro per



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TELEPHONE: 702-303-1263
PLAINTIFF IN PRO PER

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DENNIS BAHAM, an individual,

Plaintiff

v.

BAYVIEW LOAN SERVICING, LLC, a
Foreign Limited Liability Company; FIRST
AMERICAN TRUSTEE SERVICING
SOLUTIONS, L.L.C., a Foreign Limited
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YORK MELLON f/k/a THE BANK OF
NEW YORK AS TRUSTEE FOR THE
CERTIFICATE HOLDERS OF CWALT,
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2, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2,

Defendants.

Case No.: A-19-795762-C
A-20-810458-C

Dept No.: IV

NOTICE OF POSTING OF COST BOND ON APPEAL

NOTICE IS HEREBY GIVEN that pursuant to NRAP 7, Plaintiff, Dennis Baham,
in proper person has

filed with District Court a bond for costs on appeal in the amount of Five Hundred Dollars and No cents (\$500.00).

Dated this 25th day of March, 2021.

By: /s/Dennis Baham
Dennis Baham
6017 Guild Court
Las Vegas, Nevada 89131
Plaintiff in Pro per

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of March, 2021 and pursuant to NRCP 5, I caused a true and correct copy of the foregoing **NOTICE OF POSTING OF COST BOND ON APPEAL in the following manner: (ELECTRONIC SERVICE)** Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & served through the Notice Of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's contact list.

Jamie Combs jamie.combs@akerman.com
Natalie Winslow natile.winslow@akerman.com
Ariel Stern ariel.stern@akerman.com
Darren Brenner dbrenner@wrightlegal.net

/s/Dennis Baham
Plaintiff Pro per



DENNIS K. BAHAM
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TELEPHONE: 702-303-1263
PLAINTIFF IN PRO PER

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

DENNIS BAHAM, an individual,

Plaintiff

v.

BAYVIEW LOAN SERVICING, LLC, a
Foreign Limited Liability Company; FIRST
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Liability Company; and BANK OF NEW
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CERTIFICATES, SERIES 2005-2,

Defendants.

Case No.: A-19-795762-C
A-20-810458-C

Dept No.: IV

**NOTICE OF ENTRY OF
DEFAULT**

PLEASE TAKE NOTICE that an Order was entered in the aboved-captioned matter
on the 2nd day Of March, 2021. A copy of which is attached hereto.

Dated this 12th day of April, 2021.

By: /s/Dennis Baham

Dennis Baham
6017 Guild Court
Las Vegas, Nevada 89131
Plaintiff in Pro per

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of April, 2021 and pursuant to NRCP 5, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF DEFAULT in the following manner: (ELECTRONIC SERVICE)** Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & served through the Notice Of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's contact list.

Jamie Combs jamie.combs@akerman.com

Natalie Winslow natile.winslow@akerman.com

Ariel Stern ariel.stern@akerman.com

Darren Brenner dbrenner@wrightlegal.net

/s/Dennis Baham

Plaintiff Pro per



DENNIS K. BAHAM
6017 GUILD CT
LAS VEGAS, NV 89131
GREENSKIES87@GMAIL.COM
TELEPHONE: 702-303-1263
PLAINTIFF IN PRO PER

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DENNIS BAHAM, an individual,

Plaintiff

v.

BAYVIEW LOAN SERVICING, LLC, a
Foreign Limited Liability Company; FIRST
AMERICAN TRUSTEE SERVICING
SOLUTIONS, L.L.C., a Foreign Limited
Liability Company; and BANK OF NEW
YORK MELLON f/k/a THE BANK OF
NEW YORK AS TRUSTEE FOR THE
CERTIFICATE HOLDERS OF CWALT,
INC., ALTERNATIVE LOAN TRUST 2005-
2, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2, NEW
REZ HOME MORTGAGES LLC,
SHELLPOINT MORTGAGE SERVICING

Defendants.

Case No.: A-20-810458-C
A-19-795762-C

Dept No.: IV

DEFAULT

It appearing from the files and records in the aboved entitled action that **BAYVIEW**
LOAN SERVICING, LLC, herein, being duly served with a copy of the Summons and
Complaint on the 8th day of June, 2020; that more than 20 days, exclusive of the day of
service, having expired since service upon the Defendant; that no answer or other appearance

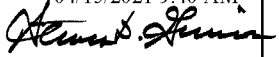
having been filed and no further time having been granted, the default of the above-named Defendant for failing to answer, or otherwise plead to Plaintiff's Complaint is hereby entered.

STEVEN D. GRIERSON, CLERK OF COURT

By:  3/2/2021
Michelle McCarthy A-19-795762-C
Deputy Clerk Date

Submitted By:

/s/Dennis Baham February 26, 2021
Plaintiff in Pro per Date


CLERK OF THE COURT

ORDR

WRIGHT, FINLAY & ZAK, LLP

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Attorney for Defendant Bayview Loan Servicing, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

DENNIS BAHAM, an individual

Plaintiff,

vs.

BAYVIEW LOAN SERVICING, LLC, a
Foreign Limited Liability Company; FIRST
AMERICAN TRUSTEE SERVICING
SOLUTIONS, L.L.C., a Foreign Limited
Liability Company; and BANK OF NEW
YORK MELLON f/k/a THE BANK OF NEW
YORK AS TRUSTEE FOR THE
CERTIFICATE HOLDERS OF CWALT, INC.,
ALTERNATIVE LOAN TRUST 2005-2,
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2,

Defendants.

Case No.: A-19-795762-C

Consolidated with: A-20-810458-C

Dept. No.: 4

**ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION**

Chambers Hearing Date: March 24, 2021

This matter regarding Plaintiff Dennis Baham's ("Plaintiff") Motion for Reconsideration filed on February 25, 2021, came before the Court during an in-chambers hearing on March 24, 2021. The Court having considered the briefs and arguments presented therein and being fully advised in the premises, hereby orders as follows:

...

...

...

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion for Reconsideration is **DENIED**.

IT IS SO ORDERED.

Dated this 15th day of April, 2021



A89 CD8 399B 0A8E
Nadia Krall
District Court Judge

Respectfully submitted by:

Approved as to form and content by:

WRIGHT, FINLAY & ZAK, LLP

AKERMAN LLP

/s/ Darren T. Brenner

/s/ Jamie K. Combs

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Las Vegas, Nevada 89134
Attorneys for Defendant The Bank of New York Mellon, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2005-2, Mortgage Pass-Through Certificates, Series 2005-2

Approved as to form and content by:

/s/ Dennis Baham

Dennis Baham
6017 Guild Ct.
Las Vegas, NV 89131
Plaintiff in pro per

**PLEADING
CONTINUES
IN NEXT
VOLUME**