

**IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON**

ALBERT ELLIS LINCICOME, JR. and)
VICENTA LINCICOME,)
Appellants,)
v.)
SABLES, LLC, a Nevada limited liability)
company, as Trustee of the Deed of Trust)
given by Vicenta Lincicome and dated)
5/23/2007; FAY SERVICING, LLC, a)
Delaware limited liability company and)
subsidiary of Fay Financial, LLC; PROF-)
2013-M4 LEGAL TITLE TRUST by U.S.)
BANK, N.A., as Legal Title Trustee;)
BANK OF AMERICA, N.A.;)
BRECKENRIDGE PROPERTY FUND)
2016, a Utah limited liability company;)
NEWREZ, LLC, d/b/a SHELLPOINT)
MORTGAGE SERVICING, LLC.; 1900)
CAPITAL TRUST II, by U.S. BANK)
TRUST NATIONAL ASSOCIATION;)
MCM-2018-NPL2.)
Respondents.)

THIRD JUDICIAL DISTRICT
COURT CASE NO.: 84238
NEVADA SUPREME COURT
CASE NO.: 84238

Electronically Filed
Mar 02 2022 11:56 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

CASE APPEAL STATEMENT

FILED
2022 MAR -2 AM 11:30
JANAYA SORRINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT
Barley bapst

Plaintiffs ELLIS LINCICOME and VICENTA LINCICOME by and through their attorneys, Michael G. Millward, Esq., of Millward Law, Ltd., and Justin M. Clouser, Esq., of Clouser Hempen Wasick Law Group, Ltd., submit their Case Appeal Statement in accordance with NRAP 3(f) as follows:

APPELLANTS: The Appellants are ALBERT ELLIS LINCICOME, JR. AND VICENTA LINCICOME (together referred to as “Appellants” or “the Lincicomes”). Appellants are represented in the instant action by retained counsel Michael G. Millward, Esq., of Millward Law, Ltd., 1591 Mono Avenue, Minden,

Nevada 89423, and Justin M. Clouser, Esq., of Clouser Hempen Wasick Law Group, Ltd., 1512 US HWY 395 N, Ste. 1, Gardnerville, Nevada 89410. Appellants were represented by retained counsel before the District Court. Appellants' counsel, Michael G. Millward, Esq., and Justin M. Clouser, Esq., are licensed to practice law in Nevada. Appellants have not sought and were not granted leave to proceed in forma pauperis.

This appeal concerns real property and claims pertaining to wrongful foreclosure. This appeal does not involve child custody or visitation. Appellants do not believe settlement of this appeal is likely based upon the result of the prior settlement conference.

DISTRICT COURT JUDGE: HONORABLE LEON ABERASTURI of the Third Judicial District Court issued the Orders that are the subject of this appeal.

RESPONDENTS: The Respondents and respective counsel for each respondent are as follows:

1. BRECKENRIDGE PROPERTY FUND 2016, LLC, represented by Hutchison & Steffen, PLLC, 10080 W. Alta Drive, Suite 200, Las Vegas, Nevada 89145, and Wedgewood, LLC, 2320 Potosi Street, Suite 130, Las Vegas, Nevada 89146

Appellants are informed and believe that the foregoing respective counsel

for Respondent Breckenridge are licensed in Nevada.

DISTRICT COURT PROCEEDINGS: The Lincicomes initiated the proceedings before the Third Judicial District Court on November 7, 2018, by filing their Complaint and application for preliminary injunction. The proceedings from which this appeal is taken concern motions for summary judgment, *Breckenridge Property Fund 2016's Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents*, and *Breckenridge Property Fund 2016's Motion for Attorney Fees and Costs*.

NATURE OF ACTION: In 2007, the Lincicomes purchased their home in Dayton, Nevada. By late 2008, the Lincicomes had fallen behind on their mortgage payments, and in early 2009, the beneficiary of the Deed of Trust at the time, Defendant Bank of America, N.A. (hereinafter "BANA") recorded a notice of default.

In July of 2009, BANA made an offer to the Lincicomes to modify their 2007 Deed of Trust. The Lincicomes accepted the offer to modify their mortgage and timely submitted the paperwork to BANA on July 31, 2009.

On September 1, 2009, BANA accepted the Lincicomes' first payment on the modified loan, even though BANA was unable to locate the modification in its system. On October 1, 2009, BANA rejected the Lincicomes' payment when BANA's customer service agent again could not find a record of the modification

in BANA's system.

Thereafter in May of 2011, without notice to the Lincicomes, BANA recorded the 2009 modification with the Lyon County Recorder's Office. The Lincicomes remained unaware that BANA had found the modification until 2017 when the recorded modification was disclosed at a foreclosure mediation.

Even though it is admitted by all parties to this matter that the modification exists, was recorded, and that it effectively modified the Lincicomes' mortgage, no beneficiary of the deed of trust, or servicer has abided by its terms. BANA, US Bank, and all subsequent beneficiaries of the modified Deed of Trust have failed to implement or provide the Lincicomes with the opportunity to make payment under its terms. The Trustee under the Deed of Trust was informed that the terms of the modified Deed of Trust have not been followed or honored by BANA or any other successor beneficiary under the Deed of Trust.

At a hearing upon the Lincicomes' application for temporary protective order, the District Court determined that the Lincicomes were likely to succeed upon the merits of their claims and were entitled to a preliminary injunction. However, the Lincicomes were unable to post the requisite bond by December 20, 2018.

In spite of the Court's findings, on January 4, 2019, Sables, LLC, conducted the foreclosure sale of the Lincicomes' home and sold the same to Breckenridge

Property Fund 2016, LLC.

On May 30, 2019, the District Court entered an Order granting Sables, LLC's application for non-monetary status effectively dismissing Sables from the action.

On December 20, 2019, the Lincicomes were granted leave and filed their Amended Complaint seeking relief for claims of wrongful foreclosure, declaratory relief, quiet title, violation of the Homeowners' Bill of Rights, breach of contract, breach of duty of good faith and fair dealing, slander of title, and attorney's fees as special damages.

On June 23, 2021, the District Court entered its Order Denying Plaintiffs' Motion for Partial Summary Judgment/Granting Motions for Summary Judgment filed by BANA, Prof-2013 M4 Legal Trust, US Bank and Fay Servicing, LLC, and its Order on Breckenridge Motion for Summary Judgment.

On November 22, 2021, the District Court issued a Permanent Writ of Restitution.

On December 14, 2021, the Lincicomes were removed from their home by law enforcement.

On January 19, 2022, the District Court entered its *Order on Attorney's Fees and Costs*.

The Lincicomes are appealing the District Court's June 23, 2021 *Order on*

Breckenridge Motion for Summary Judgment, the District Court's November 22, 2021 Permanent Writ of Restitution, and the District Court's January 19, 2022 *Order on Attorney's Fees and Costs*.

RESULT AND RELIEF GRANTED:

1. Pertaining to the entry of the District Court's June 23, 2021 *Order on Breckenridge Motion for Summary Judgment*, summary judgment was entered in favor of Breckenridge.

2. Pertaining to the entry of the District Court's November 22, 2021 *Permanent Writ of Restitution*, the permanent writ of restitution provided authority to Breckenridge to have Appellants removed from their home.

3. Pertaining to the entry of the District Court's January 19, 2022 *Order on Attorney's Fees and Costs*, Breckenridge was awarded \$44,648.00 for attorney's fees and \$3,788.01 for costs.

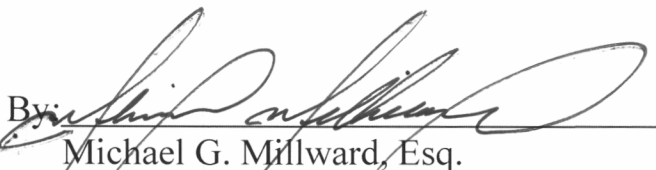
PRIOR APPEAL: This case has previously been the subject of an original writ proceeding in the Court of Appeals of the State of Nevada. A Petition for Writ of Mandamus was filed August 1, 2019, as Case No. 79152-COA, and captioned as Albert Ellis Lincicome, Jr. and Vicenta Lincicome, Petitioners, v. Third Judicial District Court of Nevada, in and for the County of Lyon; Honorable Leon Aberasturi, District Court Judge, Respondent and Sables, LLC, Fay Servicing, LLC, Prof-2012 –M4 Legal Title Trust by U.S. Bank, N.A., and Bank of

America, N.A., Real Parties in Interest. Additionally, a Petition for Review filed before the Nevada Supreme Court on February 10, 2020, under the same case number and caption.

Finally, this case is the subject of an ongoing appeal in Supreme Court Case No. 83261 captioned as Albert Ellis Lincicome, Jr. and Vicenta Lincicome, Appellants, v. Sables, LLC, A Nevada Limited Liability Company, as Trustee of the Deed of Trust given by Vicenta Lincicome and dated 5/23/2007; Fay Servicing, LLC, a Delaware Limited Liability Company and Subsidiary of Fay Financial, LLC; Prof-2013-M4 Legal Title Trust by U.S. Bank, N.A., as Legal Title Trustee; Bank of America, N.A.; Breckenridge Property Fund 2016, a Utah Limited Liability Company; Newrez, LLC, D/B/A Shellpoint Mortgage Servicing, LLC;; 1900 Capital Trust II, by U.S. Bank Trust National Association; and MCM-2018-NPL2.

Respectfully submitted this 25th day of February, 2022

MILLWARD LAW, LTD

By: 

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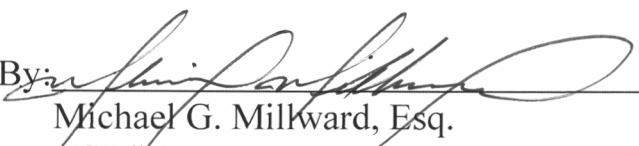
Attorney for Appellants

AFFIRMATION

The undersigned hereby affirms, pursuant to NRS 239B.030, that the foregoing does not contain the social security number of any person, or other personal information as defined by NRS 603A.040.

Dated February 25th, 2022

MILLWARD LAW, LTD

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