

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 ALBERT ELLIS LINCICOME, JR., AND
4 VICENTA LINCICOME,

5 Appellants,

6 v.

7
8 SABLES, LLC A NEVADA LIMITED
9 LIABILITY COMPANY, AS TRUSTEE OF
10 THE DEED OF TRUST GIVEN BY
11 VICENTA LINCICOME AND DATED
12 5/23/2007; FAY SERVICING, LLC, A
13 DELAWARE LIMITED LIABILITY
14 COMPANY AND SUBSIDIARY OF FAY
15 FINANCIAL, LLC; PROF-2013-M4 LEGAL
16 TITLE TRUST BY U.S. BANK, N.A., AS
17 LEGAL TITLE TRUSTEE; BANK OF
18 AMERICA, N.A.; BRECKENRIDGE
19 PROPERTY FUND 2016, LLC, A UTAH
20 LIMITED LIABILITY COMPANY;
21 NEWREZ, LLC, D/B/A SHELLPOINT
22 MORTGAGE SERVICING, LLC; 1900
23 CAPITAL TRUST II, BY U.S. BANK TRUST
24 NATIONAL ASSOCIATION; AND MCM-
25 2018-NPL2,

26 Respondents.

Supreme Court Case No.
84238

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Third Judicial District
Elizabeth A. Brown
Clerk of Supreme Court
01332

27 **RESPONDENT BRECKENRIDGE PROPERTY FUND 2016, LLC’S**
 MOTION TO DISMISS APPEAL

 Comes now Respondent Breckenridge Property Fund 2016, LLC

 (“Breckenridge”), by and through its undersigned counsel of record, Hutchison &
 Steffen, and hereby submits its Motion to Dismiss Appeal. This motion is based on
 the pleadings and papers on file herein and the following memorandum of points

1 and authorities.

2 Dated this 16th day of March, 2022.

3 HUTCHISON & STEFFEN, PLLC

4
5
6 /s/Brenoch Wirthlin

7 John T. Steffen (4390)
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16 *Attorney for Respondent,*
17 *Breckenridge Property Fund, LLC*

18 **I. INTRODUCTION AND STATEMENT OF FACTS**

19 1. On July 23, 2021, Appellants' Albert Ellis Lincicome, Jr., and Vicenta
20 Lincicome ("Appellants") notice of appeal was docketed with this Court
21 commencing appeal no. 83261 ("First Appeal").

22 2. Because the First Appeal was prematurely filed against Breckenridge,
23 Breckenridge filed its motion to dismiss the First Appeal as to Breckenridge on
24 December 22, 2021 ("Motion to Dismiss").

25 3. Appellants opposed the Motion to Dismiss. On January 19, 2022, this
26 Court granted the Motion to Dismiss.
27

1 4. In its Order Partially Dismissing Appeal (“Dismissal Order”), this
2 Court held that the lower court’s Order on Breckenridge Motion for Summary
3 Judgment (“Breckenridge MSJ”) “is not appealable as it does not dispose of all the
4 claims and issues raised by Breckenridge. Accordingly, because “no other statute
5 or court rule appears to authorize an appeal” from said district court order, the
6 Court granted the motion to dismiss the appeal as to Breckenridge.
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9 5. Subsequently, without obtaining certification regarding the
10 Breckenridge MSJ, and without a resolution of the remaining claims of
11 Breckenridge, the Appellants wrongfully filed yet another appeal of the
12 Breckenridge MSJ, as well as other orders, commencing the instant case no. 84238
13 (“Second Appeal”).
14

15
16 6. Further, while the Appellants filed a request for certification of the
17 Breckenridge MSJ in the trial court, they filed the instant appeal concurrently,
18 without awaiting any ruling on the request for certification, as a delay tactic as well
19 as a way to force Breckenridge into yet another settlement conference to attempt to
20 extract a settlement from Breckenridge, despite the fact that the Appellants failed
21 to participate in good faith in the settlement conference in the First Appeal.
22

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24 7. However, this Court saw Appellants’ Second Appeal for what it was
25 and issued an exemption from the settlement program on March 2, 2022.
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II. STANDARD OF REVIEW

This Court has limited jurisdiction to consider appeals that are either authorized by statute or rule, including a “final judgment”. *Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440 (1994); *see also* NRAP 3A. Importantly, a final judgment is one that “disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney's fees and costs.” *See Saticoy Bay, LLC, Series 9720 Hitching Rail v. Peccole Ranch Cmty. Ass'n*, 137 Nev. Adv. Op. 52, 495 P.3d 492, 496 (2021) (*citing Lee v. GNLV Corp.*, 116 Nev. 424 (2000)). The purpose is to promote judicial economy by avoiding piecemeal appellate review. *See Valley Bank of Nevada*, 110 Nev. at 444.

III. ARGUMENT

A. Appellants’ Second Appeal is improper and should be dismissed for lack of jurisdiction just as the First Appeal was dismissed as to Breckenridge.

The Appellants filed the First Appeal which was dismissed as the Breckenridge MSJ is not an appealable order. *See Lee v. GNLV Corp.*, 116 Nev. 424 (2000). The Appellants then filed the Second Appeal despite not having even waited for a ruling on their application for certification, and in the process depriving the lower court of jurisdiction to even decide the certification. Accordingly, their Second Appeal is improper and should be dismissed.

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1 **IV. CONCLUSION**

2 For all these reasons, Respondent Breckenridge respectfully requests that
3 this Court dismiss the instant appeal, and grant such other and further relief as the
4 Court deems appropriate.
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6 Dated this 16th day of March, 2022.
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8 /s/Brenoch Wirthlin
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RESPONDENT BRECKENRIDGE PROPERTY FUND 2016, LLC'S

MOTION TO DISMISS APPEAL, on all parties of record to this appeal, via Electronic Service through the E-Flex System.

/s/Danielle Kelley
An Employee of Hutchison & Steffen, PLLC