

IN THE SUPREME COURT OF THE STATE OF NEVADA

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,)

Respondents.)

NEVADA SUPREME COURT
CASE NO.: 86324
Electronically Filed
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Elizabeth A. Brown
Clerk of Supreme Court

APPEAL FROM
THIRD JUDICIAL DISTRICT
COURT CASE NO.: 18-CV-01332

APPELLANTS' AMENDED RESPONSE TO ORDER TO SHOW CAUSE

COME NOW, APPELLANTS ALBERT ELLIS LINCICOME and
VICENTA LINCICOME, by and through their attorney, Michael G. Millward, Esq.,
of Millward Law, Ltd., and hereby file their Amended Response to this Court's
Order to Show Cause entered April 24, 2023 ("OSC") as set forth hereinbelow.

Appellants previously appealed the district court's summary judgment orders
in Docket No. 83261, as to all parties except Breckenridge Property Fund 2016

("Breckenridge"), and this Court's *Order of Affirmance* was entered in that matter on December 29, 2022.

Appellants agree that they cannot again challenge the summary judgment orders with respect to those rights and interest that have already been finally adjudicated by this Court's affirmance.

However, with the exception of Bank of America, N.A. ("BANA"), the other Respondents may have an interest in the outcome of this appeal.¹ If the challenged judgment were overturned the other Respondents would be an "aggrieved party" to the extent that their interests were affected by this Court's decision.²

Nevertheless, based on the *Stipulation and Order regarding Dismissal of Breckenridge Property Fund 2016, LLC's Cross-Claim Against Prof-2013-M4 Legal Title Trust*, by U.S. Bank National Association, as Legal Title Trustee filed October 11, 2022, no Respondent has a pending interest before the district court mandating their participation.³

¹ Appellants are informed that BANA and does not wish to participate in this appeal. Appellants do not believe that any outcome resulting from this appeal could in any way affect BANA's interests, and therefore, Appellants have no reason to assert that BANA's participation in this appeal is necessary. A copy of correspondence from Attorney Lachman, Esq. is attached as Exhibit 1.

² See *Vill. League to Save Incline Assets, Inc. v. State*, 388 P.3d 218 (Nev. 2017) (citing *Jacinto v. PennyMac Corp.*, 129 Nev. 300, 303, 300 P.3d 724, 726 (2013)).

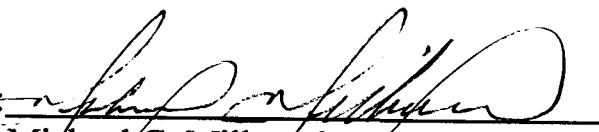
³ A copy of the *Stipulation and Order regarding Dismissal of Breckenridge Property Fund 2016, LLC's Cross-Claim Against Prof-2013-M4 Legal Title Trust*, by U.S. Bank National Association, as Legal Title Trustee is attached as Exhibit 2.

Thus, Appellants do not object to the dismissal of all Respondents so long as their waiver of their right to participate does not diminish the fact that they may be bound by any decision rendered by this Court.

Therefore, Appellants respectfully request that, unless any Respondent provides this Court with notice that they desire to participate in this appeal, this Court dismiss all Respondents other than Breckenridge.

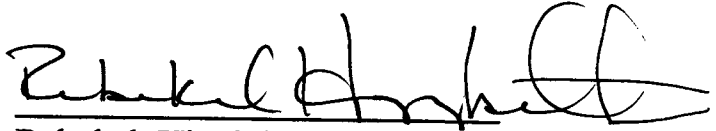
Respectfully submitted this 30th day of May, 2023.

MILLWARD LAW, Ltd.

By: 
Michael G. Millward, Esq.
Attorney for Appellants

CERTIFICATE OF SERVICE

I, Rebekah Higginbotham, certify that I am an employee of Millward Law, Ltd., and that on the 30th day of May, 2023, I served the foregoing, *Appellants' Amended Response to Order to Show Cause*, on all parties of record to this appeal, via Electronic Service through the E-Flex System.


Rebekah Higginbotham

EXHIBIT

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EXHIBIT

1

michael@millwardlaw.com

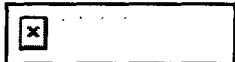
From: scott.lachman@akerman.com
Sent: Tuesday, May 16, 2023 4:52 PM
To: becky@millwardlaw.com
Cc: michael@millwardlaw.com; rhernandez@wrightlegal.net; paige.magaster@akerman.com
Subject: RE: Lincicome Supreme Court Appeal - Case No. 86324

Michael – I'm reaching out one last time requesting you dismiss BANA and the other banks. I am a jurisdictional nerd and can't see how the NSC has jurisdiction over a second appeal on the same judgment (as to the banks). As a professional courtesy, I am letting you know that BANA will be seeking NRAP 38 sanctions if it is forced to reply. Happy to jump on a call to discuss this week.

Scott Lachman

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EXHIBIT
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EXHIBIT
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FILED

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CLERK OF DISTRICT COURT
THIRD JUDICIAL DISTRICT
Ava Ortiz

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10 Attorney for Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association, as
11 Legal Title Trustee, Fay Servicing LLC, and Shellpoint Mortgage Servicing, LLC

12 **THIRD JUDICIAL DISTRICT COURT**

13 **LYON COUNTY, NEVADA**

14 ALBERT ELLIS LINCICOME, JR. and
15 VICENTA LINCICOME,

16 Plaintiffs,

17 vs.

18 SABLES, LLC, a Nevada limited liability
19 company, as Trustee of the Deed of Trust, given
20 by Vicenta Lincicome and dated 5/23/2007;
21 FAY SERVICING, LLC, a Delaware limited
22 liability company and , subsidiary of Fay
23 Financial, LLC; PROF-2013-M4 LEGAL
24 TITLE TRUST by U.S. BANK, N.A., as Legal
25 Title Trustee; for BANK OF AMERICA, N.A.;
26 BRECKENRIDGE PROPERTY FUND 2016, a
27 Utah limited liability company; NEWREZ,
28 LLC, d/b/a SHELLPOINT MORTGAGE
SERVICING , LLC, substituted in for DOE 1;
1900 CAPITAL TRUST II, BY U.S. BANK
TRUST NATIONAL ASSOCIATION,
substituted in for DOE 2; MCM-2018-NPL2,
substituted in for DOE3; and DOES 4-10.

Defendants.

BRECKENRIDGE PROPERTY FUND 2016, a
Utah limited liability company;

Case No.: 18-cv-01332

Dept. No.: II

**STIPULATION AND ORDER
REGARDING DISMISSAL OF
BRECKENRIDGE PROPERTY FUND
2016, LLC'S CROSS-CLAIM AGAINST
PROF-2013-M4 LEGAL TITLE TRUST,
BY U.S. BANK NATIONAL
ASSOCIATION, AS LEGAL TITLE
TRUSTEE**



1	Counterclaimant,
2	vs.
3	ALBERT ELLIS LINCICOME, JR., an
4	individual; VICENTA LINCICOME, an
5	individual; and DOE OCCUPANTS 1-5.
6	Counterdefendants.
7	BRECKENRIDGE PROPERTY FUND 2016, a
8	Utah limited liability company;
9	Cross-Claimant,
10	vs.
11	PROF-2013-M4 LEGAL TITLE TRUST, BY
12	U.S. BANK NATIONAL ASSOCIATION, AS
13	LEGAL TITLE TRUSTEE,
14	Cross-Defendant.

This undersigned parties Breckenridge Property Fund 2016, LLC ("Breckenridge") and Prof-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee ("Cross-Defendant" and together with Breckenridge referred to herein as the "Parties") hereby stipulate as follows:

- 1) On November 7, 2018, plaintiffs Albert Ellis Lincicome, Jr. and Vicenta Lincicome ("Plaintiffs") filed their complaint in this matter ("Complaint").
- 2) On October 2, 2020, Cross-Claimant Breckenridge filed its cross-claim for wrongful foreclosure/rescission and restitution ("Cross-Claim") against Cross-Defendant.
- 3) On November 2, 2020, Cross-Defendant filed its Answer to Breckenridge's Cross-Claim against Cross-Defendant.
- 4) On June 23, 2021, the District Court entered its Order on Breckenridge Motion for Summary Judgment ("Breckenridge MSJ Order").
- 5) The parties hereby agree that Breckenridge's Cross-Claim against Cross-Defendant filed on October 2, 2020 is to be dismissed without prejudice to Breckenridge bringing said Cross-Claim in the event any appeal by the Plaintiffs of the Breckenridge MSJ

1 Order or related final judgment is successful. In the event said appeal is successful,
2 the Parties hereby agree that Breckenridge may re-file its Cross-Claim against Cross-
3 Defendant and that said Cross-Claim will relate back to the filing of the Plaintiffs'
4 original Complaint.

5 6) The parties further agree that each side will bear its own fees and costs.

6 Respectfully submitted by:	Approved as to form and content by:
7 Dated this <u>29th</u> day of September, 2022	Dated this <u>26</u> day of September, 2022
8 WRIGHT, FINLAY & ZAK, LLP	HUTCHINSON & STEEFEN, PLLC
9 	
10 Ramir M. Hernandez, Esq.	Brenoch R. Wirthlin, Esq.
11 Nevada Bar No. 13146	Nevada Bar No. 10282
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13 Las Vegas, Nevada 89117	Las Vegas, NV 89145
14 Attorneys for Defendants, Prof-2013 M4-Legal	Attorneys for Defendant, Breckenridge
15 Title Trust, by U.S. Bank, National	Property Fund 2016, LLC
16 Association, as Legal Title Trustee, Fay	
Servicing LLC, and Shellpoint Mortgage	
Servicing, LLC	

17 IT IS SO ORDERED that Breckenridge Property Fund 2016, LLC's Cross-Claim against
18 Prof-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee filed
19 on October 2, 2020 is **DISMISSED WITHOUT PREJUDICE**. It is further ordered that in the
20 event any appeal by the Plaintiffs of the Breckenridge MSJ Order or related final judgment is
21 successful Breckenridge may re-file its Cross-Claim against Cross-Defendant and that said Cross-
22 Claim will relate back to the filing of the Plaintiffs' original Complaint.

23 IT IS FURTHER ORDERED that each party will bear its own fees and costs.

24 Dated this 11th day of October, 2022.

25 
26
27 DISTRICT JUDGE
28