

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
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Elizabeth A. Brown
Clerk of Supreme Court

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

APPELLANTS' 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 Response to this Court's *Order to Show*
Cause entered November 8, 2023 ("OSC") as set forth hereinbelow.

INTRODUCTION

Respondent Breckenridge Property Fund 2016, LLC (hereinafter “Breckenridge”), filed its Motion to Extend Time to File Respondents Answering Brief and Appendix (“Motion to Extend”) therein alleging that there are “two pending claims which the district Court has not yet resolved.”¹

However, all claims have been resolved by the District Court, and this Court has jurisdiction to review the orders subject to this appeal pursuant to NRAP 3A(b)(1).

PROCEDURAL AND FACTUAL HISTORY

1. On November 7, 2018, Albert Ellis Lincicome and Vicenta Lincicome (together as the “Lincomes”) filed their Complaint, Application for Temporary Restraining Order, and *Notice of Lis Pendens* (“Lis Pendens”) with the district court.²

2. On or about 10/3/2019, Breckenridge filed its *Intervenor’s Counterclaim*.³

3. On 12/6/2019, the district court entered its Order granting the Lincicomes leave to file their Second Amended Complaint, and on December 20, 2019, the Lincicomes filed their Second Amended Complaint.⁴

¹ Resp. 10/18/2023 Mot., p.1.

² AA0049-173, Vol. I; AA00174-302, Vol.II; AA00305-306, Vol.II.

³ AA001546-1578, Vol. VIII.

⁴ AA001685-1852, Vol.IX-X.

4. On or about 10/2/2020, Breckenridge filed its *Crossclaim Against Prof-2013-M4 Legal Title Trust*, by U.S. Bank National Association, as Legal Title Trustee.⁵

5. On 3/18/2021, Breckenridge filed its Motion for Summary Judgment.⁶

6. On 6/23/2021, the district court entered its *Order Denying Plaintiffs' Motion for Summary Judgment/Granting Motions for Summary Judgment filed by BANA, Prof-2013 M4 Legal Trust, US Bank and Fay Servicing* (“Second MSJ Order”).⁷ On the same day the district court entered its *Order on Breckenridge Motion for Summary Judgment* (“Breckenridge MSJ Order”).⁸

7. On 7/19/2021, Appellants filed their Notice of Appeal with the Nevada Supreme Court under Case No. 83261.⁹

8. On 11/5/2021, the district court entered its *Order Concerning: Breckenridge Property Fund 2016, LLC's Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents and Plaintiffs' Motion for Stay Pending Appeal*.¹⁰ Thereafter, on 11/22/2021, the district court entered its *Permanent Writ of Restitution*.¹¹

⁵ AA002028-2034, Vol. XI.

⁶ AA002485-2535, Vol. XIII.

⁷ AA004049-4066, Vol. XX.

⁸ AA00005-12, Vol. I.

⁹ AA005254-5257, Vol. XXIV.

¹⁰ AA004647-4656, Vol. XXII.

¹¹ AA00001-4, Vol.1.

9. On 1/19/2022, the district court entered its *Order on Attorney's Fees and Costs*, determining Breckenridge to be the prevailing party in the action and entitled to an award attorney's fees pursuant to NRS 18.010(2) on the basis that the action was "maintained without reasonable grounds."¹²

10. On 1/19/2022, this Court entered its *Order Partially Dismissing Appeal* granting Breckenridge's motion to dismiss Breckenridge from the appeal, filed in Nevada Supreme Court Case No. 83261.¹³

11. On 2/10/2023, the district court entered its *Order Granting in Part Breckenridge Property Fund 2016's Motion for Judgment on its Remaining Claims* ("Remaining Claims Order").¹⁴

12. On or about 3/15/2023, Breckenridge filed its second *Motion for Attorney's Fees and Costs*, again seeking attorney's fees and costs under NRS 18.010(2)(b) as the prevailing party as to its claims against the Lincicomes under the District Court's Remaining Claims Order.¹⁵

13. On 3/24/2023, the Lincicomes filed their Notice of Appeal.¹⁶

14. On 9/20/2023, the Lincicomes electronically filed their opening brief with the Court Clerk of the Nevada Supreme Court.

¹² AA00013-25, Vol.1

¹³ AA004694-4696, Vol. XXII.

¹⁴ AA000026-37, Vol.I.

¹⁵ AA005199-5253, Vol. XXIV.

¹⁶ AA005254-5257, Vol. XXIV.

15. On 10/18/2023, Breckenridge filed its *Motion to Extend Time to File Respondent's Answering Brief and Appendix* ("Motion to Extend").

16. On 11/8/2023, this Court entered its Order to Show Cause, requesting the Lincicomes show cause as to why this appeal should not be dismissed.

ARGUMENT

A. This Court has Jurisdiction to Consider the Lincicomes' Appeal

This appeal is properly before this Court now that the district court has ruled upon all of Breckenridge's remaining claims.

Breckenridge has asserted to this Court in its October 18, 2023 Motion to Extend that its slander of title claim remains to be resolved by the district court.¹⁷

According to the allegations made by Breckenridge in its Intervenor's Counterclaim, the basis for Breckenridge's slander of title action is the Lincicomes' alleged failure to release their Lis Penden that they recorded on November 7, 2018.¹⁸

However, the Lincicomes' Lis Pendens was recorded as required by NRS 14.010(1) when the Linicomes filed their complaint.¹⁹

¹⁷ Resp. 10/18/2023 Mot., p.1.

¹⁸ AA000305-306, Vol

¹⁹ See NRS 14.010(1).

Pursuant to NRS 14.010(1), at the time the plaintiff files a complaint with claims “affecting the title to real property, or possession of the real property” notice of the pendency of the action “shall” be recorded with the county recorder.²⁰

Additionally, NRS 14.010(1) also required Breckenridge to file a notice of pendency of the action when it also sought affirmative relief in its answer.²¹

Breckenridge’s claim for slander of title was fully resolved by the district court in its February 10, 2022, *Order Granting in Part Breckenridge Property Fund 2016’s Motion for Judgment on its Remaining Claims* (“Remaining Claims Order”).²²

In the Remaining Claims Order, the district court specifically addressed Breckenridge’s claim for slander of title.²³ The district court correctly recognized that the November 7, 2018 Lis Pendens could not have been maliciously recorded for the purpose of slandering title as to Breckenridge two month before Breckenridge purchased the property at the foreclosure sale on January 4, 2019.²⁴

Accordingly, the district court ruled in favor of the Lincicomes on the claim by determining that Breckenridge “cannot succeed on the slander of title cause of action.”²⁵ The district court noted that there is no evidence of malicious conduct and

²⁰ NRS 14.010(1)

²¹ *See id.*

²² AA000026-37, Vol I.

²³ AA000034-36, Vol I.

²⁴ AA000035, Vol. I (*finding no evidence of malice*).

²⁵ AA000034, Vol. I.

further declared that it “cannot award damages under the slander of title cause of action.”²⁶

Even though Breckenridge has used the allegation that its slander of title claim is unresolved as the basis for needing an extension of time, on or about March 15, 2023, after the Remaining Claims Order was entered, Breckenridge filed its second motion for attorney’s fees and costs, as the “prevailing party,” pursuant to NRS 18.010(2)(b).²⁷

Thus, on March 15, 2023, it would appear that Breckenridge also believed that it was the prevailing party and the Court had resolved all of its claims.²⁸

There is only one possible interpretation of the meaning that be made from the Court’s clear declaration that Breckenridge “cannot succeed on the slander of title cause of action;” that relief for slander of title had been denied as unrecoverable.²⁹

Thus, based upon the district court’s Remaining Claims Order, and the district court’s orders entered November 22, 2021, November 5, 2021, and June 23, 2021, all claims in this case have been ruled upon.³⁰

²⁶ AA000035, Vol. I.

²⁷ AA005199-5253, Vol. XXIV.

²⁸ *See id.*

²⁹ *Id.*

³⁰ AA00001-37, Vol. I.

Accordingly, this Court should conclude that all claims asserted by Breckenridge and the Lincicomes have been fully resolved, and this Court now has jurisdiction to hear the Lincicomes' appeal pursuant y to NRAP 3A(b)(1).

Therefore, the Lincicomes respectfully request that this Court enter an order to resume the briefing schedule and direct Breckenridge to file an answering brief.

Dated: December 8, 2023

MILLWARD LAW, LTD

By: 

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CERTIFICATE OF SERVICE

I, Brittanie L. Brown, certify that I am an employee of Millward Law, Ltd., and that on the 8th day of December , 2023, I served the foregoing, *Appellants' Response to Order to Show Cause*, on all parties of record to this appeal, via Electronic Service through the E-Flex System.



Brittanie L. Brown