

IN THE SUPREME COURT FOR THE STATE OF NEVADA

TYRONE KEITH ARMSTRONG,

Appellant,

v.

U.S. BANK NATIONAL  
ASSOCIATION, AS TRUSTEE FOR  
STRUCTURED ASSET SECURITIES  
CORPORATION MORTGAGE PASS-  
THROUGH CERTIFICATES, SERIES  
2007-BC3; OCWEN LOAN  
SERVICING, LLC; PHH MORTGAGE  
CORPORATION; AND WESTERN  
PROGRESSIVE-NEVADA, INC.,

Respondents.

Supreme Court No. 86920

Electronically Filed  
Feb 08 2024 11:38 AM  
[District Court No. A79694]  
Elizabeth A. Brown  
Clerk of Supreme Court

**RESPONSE TO APPELLANT'S**  
**VERIFIED MOTION FOR**  
**TRANSCRIPTS TO BE**  
**PREPARED PURSUANT TO**  
**NRAP 9**

Respondent U.S. Bank National Association, as Trustee for Structured Asset Securities Corporation Mortgage Pass-Through Certificates, Series 2007-BC3 (“U.S. Bank Trust”) responds to Appellant Tyrone Armstrong’s (“Appellant’s”) Verified Motion for Transcripts to be Prepared Pursuant to NRAP 9 (the “Motion”). The Motion should be denied because, inter alia: (1) Appellant’s proposed use of the transcripts is neither relevant nor material to the subject of the appeal pending before this Court; and, (2) the deposition transcripts of Appellant (“Armstrong Transcript”) and Roseanne Ehring (“Ehring Transcript”) are plainly inadmissible in any event.

Appellant misrepresents the sole subject now on appeal before this Court and, in the process, retreads arguments that have no bearing on this Court's disposition. That sole subject is the District Court's 2023 order which granted summary judgment in favor of both U.S. Bank Trust and PHH Mortgage Corporation ("PHH") on what was Appellant's solitary remaining claim below, an equitable quiet title claim. Rather than argue the merits of the District Court's 2023 order, including those concerning the facts and authorities which the District Court considered and on which it relied, Appellant, in the Motion, demonstrates nothing more than an intention to litigate claims which he voluntarily dismissed long ago and which were not then before the District Court. Appellant does this in an attempt to manufacture disputes of material fact, where none exist. Respectfully, the Court should deny Appellant's Motion.

## **1. Relevant Background**

Appellant filed his original Complaint (the "Complaint") before the District Court nearly five years ago, on June 19, 2019. The Complaint asserted six causes of action: (1) wrongful foreclosure; (2) quiet title; (3) declaratory relief; (4) slander of title; (5) intentional infliction of emotional distress; and, (6) fraud. The Complaint alleged, in pertinent part, that unnamed third parties had engaged in fraud and/or forgery with respect to a certain 2007 loan, including the notarized deed of trust securing it (the "Deed of Trust"). The Deed of Trust was recorded on January 25,

2007 against Appellant's real property, located at 3713 Brentcove Drive, North Las Vegas, NV 89032.

Following extensive discovery, Appellant filed a Motion for Leave to File First Amended Complaint ("Motion to Amend") on December 7, 2020. There, Appellant "set aside his claims of intentional infliction of emotional distress and allegation of forgery." Motion to Amend at 2:20-2:21. Appellant further acknowledged that he did "not have the ability to plead his fraud claims with more particularity and, [therefore he] set aside that claim." *Id.* at 2:23-2:24. In the Motion to Amend, Appellant conceded that "the setting aside of the specified claims as reflected by [Appellant's] FAC reduces the discovery load of all parties and contributes to judicial economy." *Id.* at 5:15-5:16.

In its December 18, 2020, response to the Motion to Amend, U.S. Bank Trust did not oppose the Motion to Amend, but merely requested a discovery extension if the Motion to Amend was to be granted, because the proposed first amended complaint significantly modified the Complaint. At its January 6, 2021 hearing, the District Court granted the Motion to Amend, which it memorialized in an order filed on February 5, 2021. Appellant then filed his First Amended Complaint (the "FAC") on February 27, 2021. Consistent with the Motion to Amend, the FAC, which superseded the Complaint, contained no claims of forgery in respect of the Deed of Trust and the related 2007 loan documents.

After Appellant filed the FAC, containing four causes of action, rather than six as pleaded in the Complaint, the parties filed competing motions for summary judgment. In an order entered on August 26, 2021, the District Court: denied Appellant's motion for summary judgment; and, granted U.S. Bank Trust's and PHH's countermotions for summary judgment based on the expired statutes of limitations applicable to each of Appellant's four remaining causes of action. *See* Order Denying Plaintiff's Amended Motion for Partial Summary Judgment and Granting Defendants' Countermotions for Summary Judgment on Statutes of Limitations Grounds. Appellant appealed the District Court's order to this Court. This Court subsequently entered its Order Affirming in Part, Reversing in Part, and Remanding on August 11, 2022. In doing so, this Court affirmed the District Court's order granting summary judgment on Appellant's wrongful foreclosure, slander of title, and declaratory relief causes of action, and reversed and remanded solely as to that for quiet title.

Following remand, both U.S. Bank Trust and PHH filed motions for summary judgment. *See, e.g.*, U.S. Bank Trust's Motion for Summary Judgment, filed January 17, 2023. Appellant, who had retained private counsel to represent him on differing occasions in connection with the litigation<sup>1</sup>, opposed both motions in briefs filed on

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<sup>1</sup> Appellant was, for example, represented by counsel at his deposition and at certain hearings over time.

his behalf by Alex B. Ghibaudo, Esquire, a Nevada attorney.<sup>2</sup> Those opposition briefs properly contained no reference to either fraud or forgery.

The District Court granted U.S. Bank Trust's and PHH's respective motions for summary judgment in an order dated June 2, 2023, entered on June 5, 2023. The District Court held that there were no disputes of material fact and granted both motions for the reasons articulated in them. Appellant appealed, setting the stage for these proceedings.

## **2. The Motion Should be Denied**

### **a. The Transcripts Are Neither Material nor Relevant to the Order Being Appealed Except as Cited in Defendants' District Court Briefs**

To state the obvious, Appellant did not cite or attach excerpts of his own deposition testimony in opposition to either U.S. Bank Trust's or PHH's 2023 motions for summary judgment. Had he done so, the excerpts would likely have been inadmissible (see below), but they would have been part of the record on appeal. Additionally, Appellant executed and attached declarations to both of his oppositions to the 2023 motions for summary judgment<sup>3</sup>, but the declarations did

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<sup>2</sup> Appellant included countermotions for summary judgment in both opposition briefs. The countermotions were later denied.

<sup>3</sup> U.S. Bank Trust does not waive arguments concerning admissibility of Appellant's declarations.

not include statements consistent with, or otherwise relating to, the deposition testimony that Appellant now seeks to introduce into the appellate record.

As confirmed above, Appellant “set aside” any claim that the 2007 loan and the Deed of Trust were procured by fraud or forgery, when he sought, in 2020, and obtained, in 2021, leave of the District Court to file the FAC. Yet, in the Motion, Appellant now suggests that his deposition testimony is necessary to contradict evidence relied on by defendants in their motions below concerning “who executed the 2007 BNC loan documents.” Motion at 7:2-7:3. Similarly, Appellant now contends that Ms. Roseanne Ehring’s deposition testimony may be argued to overcome the presumption that the Deed of Trust is “authentic.”<sup>4</sup> Whether the Deed of Trust, with its duly notarized signature, is authentic is no longer material or relevant to the within litigation. Appellant set aside those arguments several years ago when he voluntarily withdrew his fraud and forgery claims. Moreover, and properly so, Appellant’s retained counsel never sought to present those claims in connection with the motions for summary judgment which are currently on appeal. For Appellant to suggest to this Court that his current in proper person status allows for the inclusion of such immaterial and irrelevant testimony is, respectfully,

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<sup>4</sup> Ms. Ehring’s testimony in fact bolstered U.S. Bank Trust’s and PHH’s arguments. Notably, Ms. Ehring was deposed in May 2021, several months after Appellant filed the FAC within which he abandoned his fraud and forgery claims.

disingenuous; he was not in proper person below. The Court should reject this attempt.

**b. The Transcripts Are Inadmissible Hearsay**

The Armstrong Transcript is inadmissible hearsay, with no exception. NRS 51.065. Appellant's Motion confirms that Appellant now seeks nothing more than the introduction of certain self-serving portions of his own deposition testimony for the truth of the matter asserted.<sup>5</sup> NRS 51.035(1) (hearsay "means a statement offered in evidence to prove the truth of the matter asserted"). Appellant does so in an effort now to assert that he perhaps didn't execute the Deed of Trust, which should then raise an issue of material fact. Clearly, the Armstrong Transcript is an out-of-court statement offered for the truth of the matter asserted, even if the testimony contained in it could be argued to be material or relevant to the within litigation. Appellant's effort should, respectfully, be rejected.

Nonetheless, U.S. Bank Trust and PHH may cite to the Armstrong Transcript as a non-hearsay statement of a party opponent under NRS 51.035(3)(a), and perhaps other exceptions to the hearsay rule, including as statements against interest under NRS 51.345. Neither those hearsay exceptions nor any others apply to Appellant. Additionally, the Nevada Rules of Civil Procedure do not permit a party to use its

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<sup>5</sup> Incidentally, in the Armstrong Transcript, Appellant's testimony about most things was contradictory and unclear.

own deposition testimony for any purpose. *See* NRCP 32(a)(1) and 32(a)(3) (deposition testimony may be used *against a party* if certain conditions are met, and *an adverse party* may use deposition testimony for any purpose).

Appellant mischaracterizes Ms. Roseanne Ehring's testimony, but, regardless, the Ehring Transcript also constitutes inadmissible hearsay. Appellant notably does not cite to any particular provision within the Ehring Transcript, just as he failed to do in the motions below. Rather, Appellant relies on erroneous characterizations about his supposed recollection of the Ehring deposition, creating a double hearsay situation which simultaneously lacks foundation.

**c. The Trial Court's Hearing Transcript on a 2019 Motion to Dismiss Is Not Evidence and Is Not Applicable to This Appeal**

Appellant's final suggestion is to call attention to remarks which the District Court made during a July 2019 hearing, concerning production of a negotiated check or confirmation of a wire transfer made in conjunction with Appellant's 2007 loan.<sup>6</sup> Extensive evidence concerning Appellant's application for the 2007 loan, his execution of the 2007 loan documents, and the use of the proceeds from the 2007 loan to pay off Appellant's prior, 2004 loan was presented to the District Court in the underlying moving papers. In opposition to this unrebutted trail of documentary

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<sup>6</sup> As a reminder, U.S. Bank Trust was the successor to BNC, which originated Appellant's 2007 loan. BNC filed for bankruptcy protection a decade before Appellant filed his Complaint.



evidence, Appellant presented argument about the lack of production of a negotiated check or proof of a wire transfer. In its reply brief, U.S. Bank Trust discussed and rebutted Appellant's vacant argument that a lender (or, here, a successor to the originating lender) may not enforce a loan unless it produces, for example, a negotiated check concerning the payoff of a prior loan. Appellant cited no authority for such a proposition; the District Court correctly rejected that argument.

It was, and it remains, unnecessary for U.S. Bank Trust to produce a negotiated check or proof of wire transfer in the circumstances. As a reminder, Appellant brought his lawsuit more than 12 years after receiving his new loan from BNC and more than 12 years after BNC paid off the prior loan. The District Court's statements in 2019, when the case was in its infancy and before defendants had even filed any answer to Appellant's original Complaint, have no bearing on its 2023 order granting summary judgment. Appellant continues his efforts to distract the Court from the evidence, including his repeated admissions that he signed and initialed the 2007 loan documents, including the Deed of Trust, and the uncontroverted evidence that the 2007 loan paid in full the prior, 2004 loan.

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### 3. Conclusion

For the foregoing reasons, Appellant's Motion should be denied.

DATED this 8<sup>th</sup> day of February, 2024.

Respectfully submitted,

**FOX ROTHSCHILD LLP**

*/s/ Kevin M. Sutehall*

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Mortgage Pass-Through Certificates,  
Series 2007-BC3*

## **CERTIFICATE OF SERVICE**

Pursuant to NRAP 25, I hereby certify that I am an employee of Fox Rothschild LLP, and that on the 8<sup>th</sup> day of February, 2024, I filed and served a true and correct copy of the foregoing **RESPONSE TO APPELLANT'S VERIFIED MOTION FOR TRANSCRIPTS TO BE PREPARED PURSUANT TO NRAP 9** via the Court's electronic filing system to:

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Servicing, LLC, erroneously named; and Western  
Progressive-Nevada, Inc.*

I served a copy of the foregoing document via U.S. Mail, First Class, postage prepaid to the following:

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/s/ Doreen Loffredo

An employee of Fox Rothschild LLP