

**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

[District Court No. 479694]

Electronically Filed  
Mar 06 2024 10:07 AM  
Elizabeth A. Brown  
Clerk of Supreme Court

**RESPONDENT U.S. BANK**  
**TRUST'S MOTION TO DISMISS**  
**APPEAL PURSUANT TO NRAP**  
**31(d)(1)**

Respondent U.S. Bank National Association, as Trustee for Structured Asset Securities Corporation Mortgage Pass-Through Certificates, Series 2007-BC3 (“U.S. Bank Trust”) moves to dismiss Appellant Tyrone Keith Armstrong’s (“Appellant’s”) appeal pursuant to Nevada Rule of Appellate Procedure (“NRAP”) 31(d).

**I. RELEVANT BACKGROUND**

Appellant filed his Complaint with the District Court on June 19, 2019. Four years later, on June 2, 2023, and for the second time<sup>1</sup>, the District Court granted

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<sup>1</sup> The District Court granted summary judgment in favor of Respondents on August 25, 2021. This Court later affirmed in part and reversed in part, remanding the matter as to Appellant’s quiet title claim only.

summary judgment in favor of both U.S. Bank Trust and co-respondent PHH Mortgage Corporation, for itself and as Successor to Ocwen Loan Servicing, LLC (“PHH”, and together with U.S. Bank Trust, “Respondents”) and against Appellant. Appellant filed this second Notice of Appeal on July 1, 2023.

On August 11, 2023, this Court entered an Order Regarding Pro Bono Counsel and Directing Transmission of Record. Between then and December 5, 2023, Legal Aid Center of Southern Nevada filed a notice of determination of eligibility on behalf of Appellant and requested extensions for pro bono counsel to appear. On December 5, 2023, the Legal Aid Center filed a Notice Regarding Pro Bono Representation stating that, despite prior, tentative placements, it had been unable to locate an attorney willing to represent Appellant.

This Court entered an Order Reinstating Briefing on December 13, 2023. The order required Appellant to file an informal or opening brief within 60 days, or by February 12, 2024. The same order provided that “failure to timely file an informal brief or an opening brief may result in dismissal of this appeal. *See* NRAP 31(d).”

On February 6, 2024, six days before his informal or opening brief was due, Appellant filed a document entitled “Appellant’s Verified Motion for Transcripts to be Prepared Pursuant to NRAP 9” (the “Motion for Transcripts”). Appellant did not file the Motion for Transcripts on an emergent basis. Within that motion, Appellant asked the Court to permit the record to be supplemented to add the deposition transcripts of himself and another witness. U.S. Bank Trust opposed the Motion for Transcripts in a response filed on February 8, 2024. Appellant filed a reply on

February 26, 2024, and U.S. Bank Trust filed a motion for leave to file a sur-reply on February 27, 2024.

In the meantime, on February 9, 2024, the Clerk of the Court entered an “Order Granting Telephonic Extension” upon Appellant’s request. This order extended the deadline for Appellant to file his informal or opening brief until February 26, 2024.

Appellant failed to file an informal or opening brief by February 26, 2024. Instead, on that same day, Appellant emailed to counsel an unfiled copy of a document entitled “Appellant’s Verified Motion for an Extension of Time to File Opening Brief Pursuant to NRAP 31” (the “Motion for Extension”). The Motion for Extension was filed on March 1, 2024. In the Motion for Extension, Appellant requested leave to file his opening brief until 30 days after denial of the Motion for Transcripts or 30 days after his receipt of the subject transcripts.

## **II. THE APPEAL SHOULD BE DISMISSED**

Appellant’s election to ignore the Court’s deadline to file his informal or opening brief, and instead to file back-to-back motions relating to his legally deficient request to insert into this appellate record out-of-court testimony, neither evidential nor cited in the underlying proceedings, is an obvious attempt to create further delay. The most appropriate remedy to redress Appellant’s bad faith conduct is immediate dismissal of the appeal.

By failing and refusing to file his informal or opening brief by the extended, February 26, 2024 deadline, and instead by filing the “Motion for Extension of Time to File Opening Brief,” Appellant violated this Court’s rules and orders. Through

these actions, Appellant unilaterally granted himself an open-ended extension to file his opening brief, in contradiction of both the Court's December 13, 2023 Order Reinstating Briefing and the Clerk's February 9, 2024 Order Granting Telephonic Extension.

Appellant continues his pattern and practice of gamesmanship and delay that has been characteristic of him in the nearly five years since he filed his Complaint. For example, no plausible reason besides delay explains Appellant's choice to wait until February 6, 2024 to file his Motion for Transcripts. To reiterate, the Court ordered Appellant to file his informal opening brief by February 12, 2024. Appellant then secured a 14-day extension to file the opening brief by February 26, 2024. As a result, Appellant had 74 days to prepare his brief. Appellant could have filed the Motion for Transcripts in December 2023 or in January 2024. He chose not to do so, instead waiting almost two months until February 6, 2024 to file it, and then on a non-emergent basis. Appellant then cited his last-minute Motion for Transcripts as the basis for his Motion for Extension. Clearly, Appellant intentionally manufactured the circumstances that he cites as good cause for this Court to grant his Motion for Extension. This should not be countenanced.

Further, and because Appellant obtained a 14-day telephonic extension pursuant to NRAP 31(b)(1), by rule "no further extensions for filing the brief may be granted except on motion under Rule 31(b)(3)." NRAP 31(b)(3), in turn, requires that subsequent motions for extension of time include various contents, including "the reasons or grounds why an extension is necessary (including demonstrating extraordinary and compelling circumstances under Rule 26(b)(1)(B), if required)."

NRAP 31(b)(3)(A)(iv). NRAP 26(b)(1)(B) provides, that “a party may, on or before the due date sought to be extended, request by telephone a single 14-day extension of time for performing any act except the filing of a notice of appeal. If good cause is shown, the clerk may grant such a request by telephone or by written order of the clerk. *The grant of an extension of time to perform an act under this Rule will bar any further extensions of time to perform the same act unless the party files a written motion for an extension of time demonstrating extraordinary and compelling circumstances why a further extension of time is necessary.*” Emphasis added.

Despite his being aware of this “extraordinary and compelling circumstances” standard,<sup>2</sup> Appellant failed even to acknowledge this requisite standard in the Motion for Extension. More importantly, Appellant’s Motion for Extension falls far short of satisfying that standard. As described above, Appellant *created* the circumstances underlying his request, not only by failing to file his Motion for Transcripts until 54 days after the Court set the briefing schedule on December 13, 2023, but also by filing it in the ordinary (non-emergent) course. Additionally, as established elsewhere, the Motion for Transcripts is substantively baseless and is premised on a misreading of the Court’s rules, as it seeks to introduce out-of-court testimony into the appellate record that, first, constitutes hearsay and, second, was not a subject of the underlying motion for summary judgment.

The appeal should be dismissed because Appellant plainly and willfully ignored the Court’s deadlines. “If an appellant fails to file an opening brief or

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<sup>2</sup> See Exhibit 1, email dialogue between U.S. Bank Trust’s counsel and Appellant that preceded the latter’s filing of the Motion for Extension.

appendix within the time provided by this Rule, or within the time extended, a respondent may move for dismissal of the appeal or the court may dismiss the appeal on its own motion.” NRAP 31(d)(1). Motions for extensions of time to file briefs, “may be made no later than the due date for the brief,” pursuant to NRAP 31(b)(3). Appellant failed to do so. This Court should dismiss the appeal.

Appellant claims elsewhere that he could not file his informal or opening brief without this Court first ruling on his Motion for Transcripts because of “uncertainty as to whether the record will be supplemented with transcripts” and because he claims prejudice “if the opening brief is prematurely submitted without the requested transcripts.” This is patently false and demonstrates nothing more than gamesmanship. Setting aside for present purposes that the Motion for Transcripts lacks merit, as a procedural matter Appellant could obviously have filed a timely brief based on the record as it existed on the February 26, 2024 due date. Then, if appropriate, Appellant could have sought leave to supplement his initial brief if the Court granted any portion of his Motion for Transcripts.

Throughout the litigation, Appellant has depicted himself as a *pro se* litigant with limited faculties. For example, in the Motion for Extension, Appellant asserted, “I began going through all 32 volumes of the record<sup>3</sup> by myself. I have disabilities that prevent me from reading at a normal pace.”

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<sup>3</sup> Why, exactly, Appellant believes that it was necessary to review the 32-volume record, if indeed he did so, is unclear and will remain unclear unless and until Appellant actually files an informal or opening brief. The appeal relates to the narrow issues that were the subject of the motion for summary judgment, which in turn relates to his sole remaining claim for quiet title. Appellant’s suggestion that he was forced to review the entire record forecasts his intention to stray from the

Appellant's self-serving assertions are misleading. As an initial matter, Appellant chose to retain private counsel below when it served his purposes. Indeed, Appellant was represented by such counsel, among other times, for purposes of the summary judgment proceedings which are the subject of this appeal. Moreover, the record throughout the five years of litigation demonstrates that while "prevent[ed] . . . from reading at a normal pace," Appellant apparently has had no difficulty authoring brief after brief without retained counsel when it has suited him. Whether Appellant has been assisted by others in those submissions is not for U.S. Bank Trust to say.

Appellant's Motion for Extension, and the events leading up to it, are excellent examples of Appellant's ability to operate at a faster pace, and at a higher level, than he otherwise suggests. In the Motion for Extension, Appellant notes that he corresponded with U.S. Bank Trust's counsel seeking a stipulation to extend the briefing schedule "from February 22, 2024 to February 25, 2024." The dialogue to which Appellant refers, between Appellant and the undersigned U.S. Bank Trust counsel, occurred in emails that are attached hereto as Exhibit 1. U.S. Bank Trust calls the Court's attention to the timeline of those emails. Specifically, on Sunday, February 25, 2024, Appellant received, reviewed, and sent a 326-word email response to U.S. Bank Trust's counsel's email in one hour and 50 minutes (between 12:26 p.m., when U.S. Bank Trust's email was sent, and 2:16 p.m., when Appellant sent his response). *Id.* Additionally, Appellant, presumably on his own, then drafted

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actual matter on appeal in his opening brief. This "throwing spaghetti at the wall" approach is consistent with Appellant's conduct below.

the seven-page Motion for Extension, presumably between February 25, 2024<sup>4</sup> and February 26, 2024 at 5:11 p.m., when Appellant emailed a copy of the unfiled motion to Respondents' counsel. *See* Exhibit 2 (without its attachment). Appellant appears able to author emails and motions very quickly when he chooses to do so. The foregoing timeline confirms this.

Appellant's attempt to paint himself as impoverished and incapable of purchasing a 50-page transcript is disingenuous. To repeat facts that were well established below: Appellant has resided in the real property at issue without making a single payment on his current loan since U.S. Bank Trust's predecessor, BNC Mortgage, paid off the prior loan in January 2007; Appellant has saved himself hundreds of thousands of dollars by not making payments for over 200 months; during that period, Respondents have advanced tens of thousands of dollars in escrow-related charges on Appellant's behalf. In just over the next three months, the underlying litigation will reach its fifth anniversary. Throughout this time span, U.S. Bank Trust and its agent, PHH, have been precluded from foreclosing on the underlying mortgage.

Appellant clearly understands that the Court's adverse ruling in this, his second, appeal will finally put an end to his ongoing attempts to delay inevitable foreclosure. Appellant's Motion for Extension, the Motion for Transcripts which preceded it, and his other tactics are calculated to create delay precisely because the

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<sup>4</sup> Perhaps Appellant made the tactical decision to begin drafting the Motion for Extension closer to February 22, 2024, when he requested that Respondents' counsel stipulate to an extension. Either way, the point remains the same.



longer this matter lasts, the longer Appellant continues to benefit financially by residing at the property without fulfilling his payment obligations.

At some point, this matter respectfully must end. There is no time like the present. Appellant has defied the Court's deadline. Accordingly, dismissal of the appeal is appropriate.

### **III. CONCLUSION**

For the foregoing reasons, Appellant's appeal should be dismissed in its entirety.

DATED this 6<sup>th</sup> day of February, 2024.

Respectfully submitted,

**FOX ROTHSCHILD LLP**

/s/ Kevin M. Sutehall

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*Attorneys for Respondent U.S. Bank  
National Association, as Trustee for  
Structured Asset Securities Corporation  
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 6<sup>th</sup> day of February, 2024, I filed and served a true and correct copy of the foregoing **RESPONDENT U.S. BANK TRUST'S MOTION TO DISMISS APPEAL PURSUANT TO NRAP 31(d)(1)** via the Court's electronic filing system to:

Jeffrey S. Allison, Esq.  
Houser LLP  
6671 S. Las Vegas Blvd.  
Las Vegas, NV 89119  
jallison@houser-law.com  
*Attorneys for Respondent PHH Mortgage Corporation;  
PHH Mortgage Corporation, successor to Ocwen Loan  
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:

Tyrone Keith Armstrong  
3713 Brentcove Drive  
North Las Vegas, NV 89032  
performanceoneautomotive@gmail.com  
*Appellant*

/s/ Doreen Loffredo

An employee of Fox Rothschild LLP

# **EXHIBIT 1**

**From:** [Tyrone Armstrong](#)  
**To:** [Sutehall, Kevin M.](#)  
**Cc:** [Jeffrey S. Allison](#); [Grossman, John L.](#)  
**Subject:** Re: [EXT] NV Supreme Court case no: 86920; Reqt for Extension of Time  
**Date:** February 25, 2024 2:16:03 PM

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Mr. Sutehall,

As you may know, Legal Aid told me I was approved for an attorney. I was waiting on them to request the transcripts. Then Legal Aid said no attorney was available to represent me. After getting that news, I had to go through 32 volumes of the record by myself before I was able to find out some of the transcripts were missing. Mr. Sutehall, you and I have been in a lot of court hearings together and you have observed my limited ability to read as fast as everyone else in the room. The record reflects that I am currently on disability. This physical impediment, in addition to not having a lawyer from the start, is why it took me a while to request that transcripts be prepared and put in the record.

The Supreme Court has not ruled on my motion to create transcripts yet, but they did issue an order that they wanted to review the entire record. The rules say that the whole record also includes the transcripts. *See* NRAP 10(b)(1), 11(a)(2), 13(b). I think it is my right to have those transcripts in the record. I want to exercise that right so I can include specific information in my opening brief. That way all references I make to alleged facts can be in the record like you mentioned. The transcripts are important for a complete record and because they support my position that no contract ever formed between BNC and I. If my motion is granted, I would need 30 days to modify the opening brief to incorporate the new transcripts.

If my motion is not granted, I still need 30 days to file the brief because no attorney from Legal Aid previously reviewed the record and I just barely got done going through it. In addition to my inability to read very fast, I need more time to prepare my opening brief.

I hope this satisfies your questions Mr. Sutehall.

Sincerely,  
Tyrone Armstrong  
*Appellant Pro Se*

On Sun, Feb 25, 2024 at 12:26 PM Sutehall, Kevin M. <[KSutehall@foxrothschild.com](mailto:KSutehall@foxrothschild.com)> wrote:

Mr. Armstrong,

Our client views your request as yet another delay tactic. Your motion to supplement the record is baseless. It was also delinquent by choice. On December 13, 2023, the Supreme Court ordered you to file your opening brief within 60 days. For unknown reasons, you waited to file your motion concerning transcripts until February 6, 2024, six days before the opening brief was due. You chose not to file that motion as an emergency pursuant to NRAP 27(e) for whatever reason. You then secured a 14 day extension to file your opening brief pursuant to NRAP 26(b)(1).

Any further extension requires you to demonstrate extraordinary and compelling circumstances why a further extension is necessary. Here, that means demonstrating why you waited 54 days after the Supreme Court set the briefing schedule to file your motion concerning the transcripts. Given that you are asking our client to stipulate to an extension, please explain why you waited until shortly before the opening brief was due to file the transcripts motion including why the circumstances are extraordinary and compelling. In the absence of such an explanation, and unless the Supreme Court orders otherwise, we will file a motion to dismiss the appeal if your opening brief is not filed by Monday, February 26, 2024. Additionally, if you file an opening brief that includes reference to any alleged fact that is not in the record, our client will likely move to strike the brief and/or dismiss the appeal.

Fox Logo



**Kevin M Sutehall**  
Counsel

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1980 Festival Plaza Drive, Suite 700  
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- ☐ [ksutehall@foxrothschild.com](mailto:ksutehall@foxrothschild.com)

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-----Original Message-----

From: [performanceoneautomotive@gmail.com](mailto:performanceoneautomotive@gmail.com) <[performanceoneautomotive@gmail.com](mailto:performanceoneautomotive@gmail.com)>

Sent: Thursday, February 22, 2024 12:18 PM

To: Sutehall, Kevin M. <[KSutehall@foxrothschild.com](mailto:KSutehall@foxrothschild.com)>; Jeffrey S. Allison

<[jallison@houser-law.com](mailto:jallison@houser-law.com)>; Grossman, John L. <[JGrossman@foxrothschild.com](mailto:JGrossman@foxrothschild.com)>

Subject: [EXT] NV Supreme Court case no: 86920; Reqt for Extension of Time

Counsels:

My opening brief is due on Monday, 02/26/2024. My motion to supplement the record remains pending before the Court and its disposition does not appear likely to be resolved by then. The disposition of said motion affects the contents of my opening brief.

I am requesting a stipulation for a 30-day extension of time to submit my opening brief. Please indicate, no later than the close of business on 02/23/2024, whether you agree to grant me the 30-day extension of time. Otherwise I will submit a motion to the Court over the weekend and request the same.

Sincerely,

Tyrone Armstrong

Appellant Pro Se

This e-mail, including any attachments, is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, exempt or otherwise protected from disclosure under applicable law. If the reader of this transmission is not the intended recipient or the employee or agent responsible for delivering this transmission to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this transmission or its contents is strictly prohibited and may be in violation of federal or state law. If you have received this transmission in error, please notify us by email at [performanceoneautomotive@gmail.com](mailto:performanceoneautomotive@gmail.com) and delete this message from all locations on your computer. Thank you.

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| to this email and delete the original and reply emails. Thank you.

## **EXHIBIT 2**



**From:** [Tyrone Armstrong](#)  
**To:** [Sutehall, Kevin M.](#)  
**Cc:** [Jeffrey S. Allison](#); [Grossman, John L.](#)  
**Subject:** [EXT] Case No: 86920  
**Date:** February 26, 2024 5:12:05 PM  
**Attachments:** [Motion Extension Time.pdf](#)

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Gentlemen,

Please find attached:

Appellant's Verified Motion for an Extension  
of Time to File Opening Brief Pursuant to NRAP 31

Sincerely,  
Tyrone Armstrong  
*Appellant Pro Se*