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. A796941] **RESPONDENT U.S. BANK TRUST'S SUR-REPLY IN OPPOSITION 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") submits its sur-reply in opposition to Appellant Tyrone Armstrong's ("Appellant's") Verified Motion for Transcripts to be Prepared Pursuant to NRAP 9 (the "Motion"). This sur-reply responds to the erroneous statements of both fact and the law within Appellant's Reply to Response to Appellant's Motion (the "Reply"), filed on February 26, 2024.

First and foremost, Appellant erroneously asserts in the Reply that deposition transcripts are "transcripts," as the term is used in Nevada Rules of Appellate

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Procedure ("NRAP") 9 and 10.[1] They are not. While NRAP 1 does not define "transcript," the Court's rules contextually prove that deposition transcripts are not transcripts as referenced in those rules. For example, NRAP 9(a)(1)(B), relating to "necessary transcripts," concerns "a verbatim record [that] was made of the district court proceedings." NRAP 9(a)(3)(C), relating to the content of transcript request forms, specifically references "court reporter[s] or recorder[s]" who recorded the "necessary proceedings," and further requires transcript request forms to name the judge or officer who heard the proceedings and the "date or dates of the trial or hearing to be transcribed." NRAP 9(d), concerning proceedings that were not recorded and/or when a transcript is unavailable, begins by referencing situations where "a hearing or trial was not recorded..." NRAP 9 clearly and unambiguously refers to transcripts of "proceedings" in the district court, and not of depositions taken during discovery.

NRAP 10 confirms this interpretation. NRAP 10(a) provides that the "trial court record consists of the papers and exhibits filed in the district court, *the transcript of the proceedings*, if any, the district court minutes, and the docket entries made by the district court clerk." Emphasis added. Nowhere does NRAP 10, or any

[1] Portions of NRAP 9, and NRAP 10 in its entirety, do not apply to pro se litigants. Here, however, Appellant cites these rules in his reply brief, and hence interpretation of them is appropriate.

other rule, suggest that deposition transcripts are "transcripts of the proceedings," and indeed the word "deposition" does not appear in either NRAP 9 or 10.

Misconstruing and misreading the rule, Appellant asserts that "under NRAP 13(b) deposition transcripts are referenced as being subject to court review." Reply at 2:23-2:24. NRAP 13 concerns the obligations of "persons serving as court reporters or reporters pro tempore or court recorders in trials, proceedings, or hearings subject to court review." NRAP 13(a). The sole reference to depositions in NRAP 13(b) relates to this Court's power to sanction court reporters by, among other things, potentially requiring such court reporters to show cause why he or she should not be precluded from acting as a reporter in regard to trials, proceedings, administrative hearings, and potentially depositions. Appellant's statement about NRAP 13(b) is misleading.

Appellant also cites Nevada Rule of Civil Procedure 32 for the proposition that, if a party introduces only part of a deposition transcript, other parties including the adverse party may introduce other parts of the transcript. This rule, which governs Nevada district courts, simply means that Appellant could have attempted to introduce portions of deposition transcripts in his response to U.S. Bank Trust's (or any other party's) motion for summary judgment.[2] Appellant was represented

[2] Of course, the district court could only rely on admissible evidence, and the subject deposition transcripts, including the transcript of Appellant's own deposition, are inadmissible hearsay as set forth in U.S. Bank Trust's Response to the Motion.

by private legal counsel in the District Court proceeding below, who opted not to seek their introduction in the summary judgment proceedings. Parenthetically, any suggestion that Appellant proceeded pro se in the motions which are the subject of this appeal is simply misleading.

Appellant also cites his alleged "indigence" for why he supposedly did not possess the transcripts of his deposition and of Roseanne Ehring's deposition. Again, Appellant was represented by private counsel during his own deposition. Appellant's claims of pauperism have always been dubious. Appellant has, for example, resided in the property at issue in this matter for well over a decade without making a single payment on any loan encumbering the property, including the loan that U.S. Bank Trust purchased.

Appellant's Reply is replete with other mischaracterizations and falsities, not all of which are addressed here. Regardless, Appellant voluntarily vacated his claims of forgery and fraud long ago. Accordingly, any deposition testimony about Appellant signing the loan documents is, even if it were admissible, no longer material to this litigation.

Finally, Appellant cites various statutes under Nevada's hearsay rules, including the "residual" hearsay exception of NRS 51.075, in a last ditch attempt to claim that his own deposition testimony is admissible evidence. Appellant failed to make these arguments before the District Court, in part because he did not cite his

deposition testimony there. Even if he had done so, a deposition of a party, here Appellant, is emphatically not a statement where the "nature and the special circumstances under which it is made offer assurances of accuracy not likely to be enhanced by calling the declarant as a witness." NRS 51.075. This Court has held that "a district court should apply the residual hearsay exception for an available witness rarely and only in exceptional circumstances." *Michael Hohl Carson Valley v. Hellwinkel Fam. Ltd. P'ship*, 135 Nev. 687, 442 P.3d 151 (2019). No such special circumstances exist here.

For the foregoing reasons, as well as those set out in U.S. Bank Trust's Response to Appellant's Verified Motion for Transcripts to be Prepared Pursuant to NRAP 9, Appellant's Motion should be denied in its entirety.

DATED this 27th day of February, 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I hereby certify that I am an employee of Fox Rothschild LLP, and that on the 27th day of February, 2024, I filed and served a true and correct copy of the foregoing **RESPONDENT U.S. BANK TRUST'S MOTION FOR LEAVE TO FILE SUR-REPLY IN OPPOSITION TO APPELLANT'S VERIFIED MOTION FOR TRANSCRIPTS** via the Court's electronic filing system to:

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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
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