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]

U.S. BANK TRUST'S RESPONSE TO APPELLANT'S EMERGENCY MOTION UNDER NRAP 27(e) FOR STAY OF PROCEEDINGS AND REQUEST FOR INJUNCTION PENDING APPEAL

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 Response to Plaintiff/Appellant Tyrone Armstrong's ("Appellant's") Emergency Motion Under NRAP 27(e) for Stay of Proceedings and Request for Injunction Pending Appeal (the "Motion").

I. INTRODUCTION AND RELEVANT BACKGROUND

On August 25, 2021, the District Court filed its first order granting summary judgment on behalf of U.S. Bank Trust and its co-defendant PHH Mortgage Corporation, PHH Mortgage Corporation, successor to Ocwen Loan Servicing, LLC, erroneously named ("PHH," and together with U.S. Bank Trust, "Respondents"). That first summary judgment order dismissed all five of Appellant's claims, with prejudice, based on their respective statutes of limitations. Within the August 25, 2021 order, the District Court dissolved any prior injunctive relief that it had entered in favor of Appellant.[1]

[1] The District Court never actually entered a preliminary injunction in favor of Appellant. While undersigned counsel was not involved at the time, a review of the District Court's docket and record from 2019 reveals what happened. On June 28, 2019, the Court entered an Order Granting [Appellant's] Temporary Restraining Order (the "TRO"), and set a further hearing on Appellant's request for a preliminary injunction for July 10, 2019. The hearing on Appellant's request for preliminary injunction was apparently postponed from July 10, 2019. The District Court clerk's minutes from a hearing held on July 31, 2019, at 2:30 p.m., indicate that U.S. Bank Trust's then-counsel advised the District Court that a previously scheduled foreclosure sale was put on hold during the litigation, and the District Court vacated

Appellant appealed the August 2021 summary judgment order. On August 11, 2022, this Court entered an Order Affirming in Part, Reversing in Part, and Remanding. The Supreme Court's order affirmed dismissal of all of Appellant's claims, except for the quiet title claim, and remanded as to that claim only.

In November 2022, Respondents filed a second set of motions for summary judgment. On June 5, 2023, following briefing and oral argument, the District Court entered notice of its "Order (1) Granting Defendant U.S. Bank National Association, As Trustee For Structured Asset Securities Corporation Mortgage Pass-Through Certificates, Series 2007-BC3's Motion for Summary Judgment; (2) Granting Defendant PHH Mortgage Corporation, for itself and as Successor to Ocwen Loan Servicing, LLC's Motion for Summary Judgment; and (3) Denying Plaintiff Tyrone Keith Armstrong's Counter-Motions for Summary Judgment" (the "MSJ Order"). The MSJ Order granting summary judgment disposed of Appellant's sole remaining cause of action for quiet title.

Although Appellant subsequently filed a notice of appeal of the MSJ Order, he did not seek a prompt stay of enforcement of that order. In fact, no order staying enforcement of the MSJ Order or enjoining Respondents from instituting foreclosure

---

the TRO. The District Court apparently never entered a preliminary injunction in favor of Plaintiff, whether orally or in writing.

proceedings on the underlying property, based on the 2007 loan, existed at the time, or exists even now.

Accordingly, in or around November 2023, and after years of abstaining from doing so, U.S. Bank Trust's loan-servicer initiated foreclosure proceedings on the property. As confirmed in the underlying summary judgment motion, and elsewhere, Appellant admits that he has not made a single payment on the underlying 2007 loan since that loan was originated. In addition, U.S. Bank Trust and/or its vendors have advanced amounts out-of-pocket to pay third parties, such as for real estate taxes, in relation to the loan for years. Foreclosure is long overdue by any reasonable measure based on Appellant's long-standing failure to fulfill his obligations on the 2007 loan.

For reasons that Appellant does not address in his "emergency" Motion, he waited until March 18, 2024, fifteen days before the foreclosure sale is currently set to occur, to file separate motions for a stay ("Motion to Stay") and for injunctive relief ("Motion for TRO") with the District Court. Appellant inequitably waited months to file the motions, notwithstanding his apparent knowledge of the initiation of the foreclosure proceedings as long ago as November 13, 2023, when he asserts that Respondents caused a notice of default and election to sell to be recorded against the property. [2]

[2] This Court has recognized that "due to their urgent nature, emergency motions use considerable court and party resources." *TRP Fund VI, LLC v. PHH Mortgage*

U.S. Bank Trust and PHH each opposed the Motion to Stay and Motion for TRO in responses filed in the afternoon on March 22, 2024. Notwithstanding his claimed disabilities, Appellant filed reply briefs in support of his motions with the District Court on Sunday, March 24, 2024 at 9:33 p.m., just over two calendar days after U.S. Bank Trust and PHH filed their responses.

The District Court heard oral argument on the Motion for TRO and the Motion to Stay on March 26, 2024. Contrary to Appellant's claim, the motions were **not** denied solely because the District Court held that it lacked jurisdiction. U.S. Bank Trust argued, among other things, that the District Court lacked jurisdiction to grant the Motion for TRO, but conceded that the court possessed jurisdiction to rule on the Motion to Stay pursuant to NRAP 8(a). The District Court accepted U.S. Bank Trust's and PHH's various arguments and orally denied Appellant's Motion to Stay and Motion for TRO. No written orders have yet been entered.

II. THE MOTION SHOULD BE DENIED

A. The Court Should Deny Appellant's Request for a Stay

Because the District Court dismissed Appellant's last remaining cause of action in the MSJ Order, as distinct from granting affirmative relief in favor of

---

Corp., 138 Nev. Adv. Op. 21, 506 P.3d 1056, 1057 (2022). Appellant has now filed three separate emergency motions, two with the District Court and now the Motion before this Court, all because he inexplicably failed to raise the issue in late 2022 after learning of the foreclosure proceedings.

Respondents, there is simply nothing for the Court to stay. Against this backdrop, Appellant's Motion is a disingenuous request to deprive U.S. Bank Trust of its rights, the intended result of which would be to permit Appellant to continue to wrongfully extend his payment-free occupancy of the underlying property, in prejudice to Respondents' rights, beyond the seventeen years that have already passed. That is not only entirely inequitable and inappropriate, but is also without merit.

NRAP 8 provides the appropriate criteria for this Court to consider in whether to grant, or to deny, relief. NRAP 8(c) provides that:

> In deciding whether to issue a stay or injunction, the Supreme Court or Court of Appeals will generally consider the following factors: (1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

NRAP 8(c); *see also Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004) (same factors described). Each of these factors disfavor a stay.

First, the object of the appeal will not be defeated if the stay is denied. As discussed above, the MSJ Order under appeal does not relate to affirmative relief sought by the Respondents. Rather, it simply rejected Appellant's request for the District Court to enter equitable relief in his favor. Nothing has precluded Respondents from initiating foreclosure proceedings against Appellant, at least since

the entry of the August 2021 order, which granted summary judgment in favor of Respondents and dissolved any potential, outstanding injunctions. The Motion seeks relief that has nothing to do with the District Court's latest rejection of Appellant's last-surviving cause of action. Accordingly, it cannot plausibly be argued that the object of Appellant's appeal will be defeated without a stay.

Second and third, Appellant will not suffer irreparable harm or serious injury without a stay order. To the contrary, if a stay is entered, U.S. Bank Trust will suffer even more harm than it has incurred to date as a result of Appellant's litigation tactics. As detailed in U.S. Bank Trust's two summary judgment filings and elsewhere, Appellant has lived in and enjoyed his home without satisfying the concurrent obligation of making a single home loan payment to any lender *since 2007*. As demonstrated below, the outstanding balance on the 2007 loan at issue here exceeds $550,342. Even setting aside the $237,000 principal balance that he has not repaid, Appellant has avoided paying hundreds of thousands of dollars in interest since he procured the benefits of the 2007 Loan. Additionally, Appellant has been the beneficiary of tens of thousands in out-of-pocket funds advanced by Respondents on his behalf, including those for real estate taxes and homeowners insurance. Appellant, who routinely portrays himself as a pauper, including in the Motion before this Court, has successfully, and intentionally through delay tactic after delay tactic, padded his own pockets for more than a decade and a half, all to

Respondents' detriment. Considering this history, it is impossible to argue with any degree of legitimacy or candor that *Appellant* will be harmed in the absence of a stay; rather, it is Respondents who will continue to be harmed if a stay is granted. Appellant has exploited the judicial system and, before it, the non-judicial foreclosure process, for years. A stay, if entered, will continue to unjustly enrich Appellant to the detriment of U.S. Bank Trust, which will be further harmed because it will again be deprived of its rightful, statutory foreclosure remedies, despite Appellant's abject disregard of his loan repayment obligations.

Fourth, and finally, Appellant is unlikely to succeed on the merits. Without rehashing the facts and arguments which resulted in the MSJ Order, and without rebutting each of Appellant's wandering and irrelevant statements in his two incorporated motions and their supporting declarations, U.S. Bank Trust respectfully submits that the MSJ Order is unlikely to be altered or reversed on appeal. In a last-ditch attempt to manufacture disputes of material fact months after the District Court rightfully rejected his sole remaining claim, and in an effort to confound and confuse, Appellant spends numerous pages in the incorporated Motion to Stay and Motion for TRO discussing alleged "facts" that were not the subject of the proceedings resulting in the MSJ Order. Suffice it to say that U.S. Bank Trust disputes all of Appellant's statements and misrepresentations contained in the Motion to Stay, the

Motion for TRO, and the pending Motion. U.S. Bank Trust simply will not waste this Court's time by addressing each such allegation separately.[3]

The District Court's MSJ Order was well reasoned, was based on a lengthy and unrebutted evidentiary record, and is unlikely to be reversed on appeal. Respondents' respective motions for summary judgment were based on, for example, the definitive paper trail giving rise to Appellant's application for, and his execution of, the 2007 loan documents, the execution and delivery of which, as set forth in the summary judgment motions, are no longer contested by Appellant and are a "given," for purposes of the litigation. By way of illustration, and not in limitation: Appellant's affirmative and voluntary withdrawal of any claim that his signature adorned the underlying 2007 loan documents, including the 2007 Deed of Trust; and, Appellant's affirmative representations in a 2014 letter that he "placed [his] signature" on the 2007 Note and that his signature "gave the value to the Promissory Note", among other things. Against this backdrop, and applying

[3] In his underlying and incorporated Motion to Stay and Motion for TRO, and in an attempt to manufacture disputes of fact, Appellant makes numerous arguments about the purported deposition testimony of Roseanne Ehring, including characterizations thereof. Additionally, Appellant attached 250 pages worth of the transcript of his deposition to the Motion. These acts openly defy this Court's March 8, 2024 Order Denying Motion for Transcripts and Granting Motion for Extension of Time, where this Court rejected Appellant's attempt to expand the record on appeal to introduce the hearsay and irrelevant deposition testimony of Roseanne Ehring and of Appellant himself, in part because Appellant had failed to seek to introduce those statements in the record in the underlying summary judgment proceedings.

Nevada's law on quiet title claims, the District Court correctly awarded summary judgment to Respondents, which disposed yet again of Appellant's sole remaining claim. Appellant's attempts to muddy the record by introducing extraneous evidence to create the illusion of disputed materials facts do not bolster any failed argument that he is likely to succeed on the merits. If anything, Appellant telegraphs an intent to violate this Court's recent order (*see* FN 2), which is certainly not a persuasive way of convincing the Court that his appeal will succeed.

The Court should deny Appellant's Motion. Assuming, *arguendo*, that the Court is inclined to grant the motion, it should require Appellant to post a bond for all current and past-due amounts owing on his 2007 loan, which amounts currently exceed $550,000.[4] There is a strong likelihood that this Court will not decide the appeal for months because, among other things, Appellant's opening brief is not due until April 2024. Any bond which is materially less than the outstanding loan balance will permit Appellant to continue to live in, and enjoy, the home without meeting his loan obligations to U.S. Bank Trust for an indefinite period of time, without any consequences. This supposed "status quo" will simply embolden

[4] U.S. Bank Trust was unable to secure a payoff statement with the precise outstanding balance of Appellant's loan, including all outstanding charges, before filing this response on shortened time. Should the Court require Appellant to post a bond for the full outstanding balance of the loan for a stay to issue, U.S. Bank Trust will obtain and file a payoff statement detailing that amount.

Appellant to continue his years-long pattern and practice of abusing the judicial system for personal, financial gain. The Court should deny the Motion.

B. Appellant's Request for Injunctive Relief Should be Denied

Appellant's Motion is devoid of any authority, or any argument, in support of his request that this Court enter injunctive relief. NRAP 8(c) incorporates the same criteria discussed above for motions to stay and motions for injunctive relief. As discussed above, Appellant's Motion fails on all four of those criteria. If the Court is inclined to grant injunctive relief, it should condition the relief on Appellant posting of a bond for all current and past-due amounts owing on his 2007 loan, which amounts currently exceed $550,000.

III. CONCLUSION

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

DATED this 29th day of March, 2024.

Respectfully submitted,

FOX ROTHSCHILD LLP

/s/ Kevin M. Sutehall
KEVIN M. SUTEHALL (9437)
1980 Festival Plaza Drive, Suite 700
Las Vegas, Nevada 89135
Email: ksutehall@foxrothchild.com
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 29th day of March, 2024, I filed and served a true and correct copy of the foregoing **RESPONSE TO APPELLANT'S EMERGENCY MOTION UNDER NRAP 27(e) FOR STAY OF PROCEEDINGS AND REQUEST FOR INJUNCTION PENDING APPEAL** 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