

THE COURT OF APPEALS OF THE STATE OF NEVADA

NONA TOBIN,

Appellant,

v.

BRIAN CHIESI, an individual; DEBORA CHIESI, an individual; QUICKEN LOANS, INC.; JOEL A. STOKES, an individual; JOEL A. STOCKS and SANDRA F. STOKES as Trustees of the JIMIJACK IRREVOCABLE TRUST; REDROCK FINANCIAL SERVICES; and NATIONSTAR MORTGAGE, LLC,

Respondents.

FILED

OCT 18 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

Case No.: 82294

Dist. Court No.: A-19-799890-C

APPEAL

From the Eighth Judicial District Court, Clark County Nevada
The Honorable Susan Johnson, Department XXII, District Court Judge
District Court Case No. A-19-799890-C

**APPELLANT NONA TOBIN'S OPPOSITION TO
RESPONDENTS' JOINT MOTION TO STRIKE APPENDIX**

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21-29905

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

The Court should deny Respondents' Joint Motion to Strike Appendix because all of Appellant's Appendix is necessary for this Court to determine whether the district Court erred in granting a motion to dismiss based on *res judicata*. For this Court to resolve whether the district court improperly applied the doctrine of *res judicata*, claim preclusion, and nonmutual claim preclusion to the case at issue, Eighth District Court Case No. A-19-799890-C, Appellant's Appendix requires inclusion of the material documents (Volumes 1-15: AA0001-AA3106, and Volume 16, Nos.1-7: AA3107-AA3227) from the prior Eighth Judicial District Court Case No. A-15-720032-C (hereinafter the "First Action"), which was consolidated with Eighth Judicial District Court Case No. A-16-730078-C. Appellant subsequently brought Case No. A-19-799890-C (hereinafter the "Second Action") which the district court dismissed pursuant to the doctrine of *res judicata*.

Appellant Nona Tobin's (hereinafter "Appellant") issues on appeal respectfully requests this Court's reversal of Respondent's Red Rock Financial Services' Motion to Dismiss (AA3257-AA3776), and Joinders thereto by Respondents' Brian Chiesi, Debora Chiesi, Quicken Loans Inc. (collectively, the "Chiesi Defendants" joinder: AA3801-AA3812), and Joel A. Stokes, individually, Joel A. Stokes and Sandra F. Stokes, as Trustees of the Jimijack Irrevocable Trust,

Jimijack Irrevocable Trust (collectively, the “Jimijack Defendants” joinder: AA3777-AA3800) based on *res judicata*, claim preclusion, and nonmutual claim preclusion and a decision in the First Action. Pursuant to NRAP 30(a), Appellant attempted in good faith to submit a joint appendix with Respondents, however, Respondents would not agree to the material documents necessary for this Court to properly review the lower court’s decision. Therefore, pursuant to NRAP 30(b)(3), Appellant included the First Action in her appendices (Volumes 1-15: AA0001-AA3106, and Volume 16, Nos.1-7: AA3107-AA3227) to ensure that this Court would properly have “other portions of the record essential to determination of the issues on appeal.” *See* NRAP 30(b)(3) below.

II. Legal Argument

The Court should deny Respondents’ Motion to Strike portions of Appellant’s Appendix because the documents are necessary for a determination of whether *res judicata* applies. NRAP 30(b)(3) states:

“Appellant’s Appendix. If a joint appendix, is not prepared, appellant’s appendix to the opening brief shall include those documents required for inclusion in the joint appendix under this Rule, **and any other portions of the record essential to determination of issues raised in appellant’s appeal.**”

NRAP 30(b)(3) (emphasis added).

It should first be established that Respondents essentially concede that to a degree, pleadings and documents from the First Action should be included in the

appendix for the present appeal. This is correct because the doctrines of res judicata, claim preclusion, and nonmutual claim preclusion necessitate looking back at the First Action and determining whether the parties and/or claims in the First Action necessitate dismissal of the Second Action. However, Respondents claim *Hooper v. State*, 95 Nev. 924, 926, 604 P.2d 115, 116 (1979) is applicable to their Motion to Strike Appendix. However, the *Hooper* case is distinguishable as appellants in that case attempted to include pictures that were not objected to during trial and not part of the trial court's record. Here, Appellant's appendices Volumes 1-15: AA0001-AA3106, and Volume 16, Nos.1-7: AA3107-AA3227 were part of the trial court's records in the First Action. Therefore, Appellant respectfully requests this Court grant inclusion of Appellant's appendices Volumes 1-15: AA0001-AA3106, and Volume 16, Nos.1-7: AA3107-AA3227.

Respondents further cite NRAP 10(a), which states:

"The Trial Court Record. 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."

NRAP 10(a).

Because Appellant's appendices Volumes 1-15: AA0001-AA3106, and Volume 16, Nos.1-7: AA3107-AA3227 were all "papers and exhibits filed in the district court, the transcript of the proceedings, . . . district court minutes, and the

docket entries made by the district court clerk” Appellant respectfully requests this Court grant inclusion of her appendices for consideration.

Respondents’ argument is inconsistent in that it seeks to preclude some of the pleadings from the First Action while at the same time acknowledging that parts of the First Action are necessary. In essence, Respondents argue that the Court should only see what Respondents want it to see. Appellant’s Opening Brief identifies issues on appeal of whether or not Appellant, in her individual capacity, was a party to the First Action, and whether she has valid claims to bring in the Second Action. In support of her arguments, Appellant’s Opening Brief cites numerous pleadings and documents from the First Action showing that she was in fact stricken as a party from the First Action despite the fact that she was a necessary and proper party. Furthermore, Appellant never had her claims adjudicated in the First Action. The documents that Respondents seek to strike are documents which the district court necessarily relied on to erroneously conclude that res judicata applies to Appellant’s claims in the Second Action. Therefore, the Court should deny Respondents’ Joint Motion to Strike.

III. Conclusion

In conclusion, for the reasons stated above, the Court should deny Respondents’ Joint Motion to Strike portions of Appellant’s Appendix as the

documents were necessarily relied on by the district court in dismissing the Second Action based on *res judicata*.

Dated this 13th day of October, 2021.

Respectfully submitted by:

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CERTIFICATE OF SERVICE

The undersigned hereby certifies on October 13, 2021, a true and correct copy of *Motion to Extend Time to File Appellant Nona Tobin's Opposition to Respondents' Joint Motion to Strike Appendix and Opposition to Motion to Strike,* was served via the Court's Eflex service system.

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