UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Docket No. 10-17230

TARA D. MAVES

Plaintiff-Appellant

vs.

FIRST HORIZON HOME LOANS and,
QUALITY LOAN SERVICES

Defendants-Appellees

On Appeal from An Order of the
United States District Court
for the District of Nevada

APPELLANT'S OPENING BRIEF

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A. **The Basis for the District Court's Jurisdiction**.

Plaintiff / Appellant filed her complaint in Washoe County District Court on June 2, 2010. Defendants / Respondents removed on June 30, 2010, based upon diversity, 28 U.S.C. § 1441(b). Diversity was the sole basis for the District Court's jurisdiction.

B. **The Basis for the Court of Appeals Jurisdiction.**

This Court has jurisdiction of this appeal based upon the final order denying Appellants' motion to remand and dismissing Appellant's' Complaint dated September 15, 2010.

C. **Filing Date of Appeal**.

Notice of Appeal from the denial of Appellant's Remand Motion and Order dismissing Appellant's complaint was filed on October 5, 2010.

D. **Assertion that the Appeal is from a Final Order of Judgment that Disposes of all Parties' Claims or Information Establishing the Court of Appeals Jurisdiction on Some Other Basis.**

This appeal is from an order denying remand and dismissing Appellant's complaint. There are no issues, causes of action, or parties that remain for the court below.

II. ISSUES PRESENTED

1. Did the District Court err in refusing to remand Appellants' case based upon; (a) Appellant prayed for equitable relief over local

real property, traditionally a state court area of jurisdiction; (b) violation of a State law lending statute and; (c) violation of State law collection licencing provisions. (See Appellant's Motion for Judicial Notice of State of Nevada Cease and Desist Order commanding Respondent Quality Loan Services to stop acting as an unlicenced collection agent in Nevada. Copy of this Order located at Except 113 for the Court's convenience)

2. Did the District Court err in dismissing Appellant's complaint based upon the apparent granting of judicial notice to unauthenticated copies of purported mortgage papers and mailing and posting documents, all of which were objected to.

3. Did the District Court err in denying Appellant a hearing upon Respondent's request for judicial notice?

4. The District Court erred in its refusal to certify unique questions of Nevada Deed of Trust and Collection Agency law to the Nevada Supreme Court, thereby substituting the federal court's interpretation of Nevada law in the first instance.

III. STATEMENT OF THE CASE.

Nevada has a unique property impacting upon the federal court system. In addition to one of the highest unemployment rates--- that gives rise to one of the highest foreclosure rates, it has NO resident predatory lenders nor mortgages servicers

for diversity jurisdictional purposes. Most of the absurd, greed driven, over valued, no asset housing loans were made, securitized and/or sold by or to out-of-state entities. None of the mortgage "bundlers" that packaged millions of mortgages (now relabeled "toxic assets" that the taxpayers bailed out) "reside" in Nevada.

Since the era of quick profits from the boom in anything-goes-housing-loans ended, the mortgage lenders, bundlers and servicers (often related entities) have found another way to keep the profits rolling. The loan servicers charge huge fees to foreclose – which they can immediately deduct from all the mortgage payments they collect and pass the massive losses onto the unidentified "certificate holders" of the "mortgage backed securities."

In order to make the new foreclosure profit centers even more profitable, these lenders and servicers have banded together into the informal "Foreclosure Industry." Often, these foreclosure mills are staffed with what the press has reported as "the Burger King Kids." The Foreclosure Industry has decided that it does not need to bother with the Nevada's annoying, time consuming and profit sapping, State Deed of Trust laws in Nevada Revised Statutes, section 107.080, et sec. Nor, does Respondent Quality Loan Services ("Quality") need to bother with Nevada's Collection Agency laws, nor pay transfer fees and property taxes, cheating Nevada couties out of millions of dollars. Nevada has issued a Cease and Desist letter to Quality for operating in Nevada without the proper license.

Due to close to a 100% pretrial dismissal rate, most of the cases brought by homeowners are removed to federal District Court by Las Vegas collection counsel. Quality's collection counsel managed to get herself appointed agent for service of process—guaranteeing instant removal. While Plaintiff and Quality's *in-hous*e counsel were discussing a simple settlement – collection counsel removed this case, thus guaranteeing the District Court an opportunity to provide a first interpretation of Nevada laws.

An issue of fact exists as to whether Plaintiff missed her opportunity to force Quality into the Nevada Foreclosure Mediation program by not getting to the post office in time to pick up the Notice of Default–before the program's thirty day cut off period elapsed. Indeed, an examination of the unauthenticated copies of scanned copies makes any mail related documents questions of fact, denying the District Court's cursory summary judgment. Instead of informally negotiating a settlement and modification of Plaintiff's adjustable rate mortgage, or simply proceeding to mediation, Quality's collection counsel yells: "gotcha!" More litigation fees!!!!!

As usual, the out-of-state Foreclosure Industry mortgage servicer profits exclusively from having Appellant's house emptied and placed in the economically useless and wasteful "shadow inventory" (along with thousands of others) in order to collect all the foreclosure fees. This case is absolute proof that Quality IS THE problem, not part of the solution.

Quality's foreclosure notices and sale were issued without the proper Nevada licenses, and, if not totally fraudulent, then they were in complete violation of Nevada Revised Statutes, section 107.080, dealing with deed of trust foreclosures. Respondents do not bother with the local laws requiring Recording transfers of interests in County Recorder's Office's *until* they want to record a Trustee's deed. r.

Finally the media have exposed the massive fraud in the Foreclosure Industry's documentation. This exposure should put an end to the harassment from a pulpit of hypocrisy about: "They owe money! Just because we were too busy to bother with Nevada laws... is no reason not to give us the house!"

Now, its just a pile of computer generated photo copies, the originals which are said to have existed in a far, far away computer, never produced because the Foreclosure Industry immediately files their summary judgment motion – self-excusing themselves from the Mandatory FRCP Rule 26 disclosures. And, for the now instantaneous federal district eviction courts, a quick way to dispose of those annoying Nevadans who actually want creditors to follow Nevada laws. The founding fatherws would tun over in their graves if they thought the federal courts were to be used to avoid State law consumer protection statutes in order to feed massive fraud.

Our pregnant Plaintiff/Appellant disputed the assertion that she was properly served by non-licensed Quality with the mandatory Nevada mediation request forms. Appellant filed her affidavit in support, thus creating an issue of material fact. The copies of copies of copies of scanned signatures cannot be read by anyone because they

are barely there at all. And, Quality filed to produce the return receipt for this mail since the mediation program documents DEMAND the documents be sent certified with a return receipt.

IV. STATEMENT OF FACTS

Plaintiff filed her VERIFIED complaint for TRO, Preliminary and Permanaent Injunction, Cancellation of Certificate of Non-mediation, Declaratory Relief, Quiet Title, Unfair and Deceptive Trade Practices and Damages for Violation of NRS 598D.100 (a Nevada lending statute) on June 2, 2010 (Excerpt 103).

On June 30, 2010, Respondents filed their Petition for Removal based upon Diversity. (Excerpt 100). Appellant filed her Remand motion on July 13, 2010 (Excerpt 94) Respondents opposed Remand on July 15, 2010 (Excerpt 90)

Respondents filed their Motion to Dismiss or in the Alternative Motion for Summary Judgment on July 26, 2010 (Excerpt 38) and their Affidavit in Support of Motion to Dismiss or Summary Judgment on July 26, 2010 (Excerpt 53) On July 28, 2010, Appellant filed her Motion to Enlarge Time to Respond to Summary Judgment Motion and Certify Question of Law to the Nevada Supreme Court (Excerpt 31) This motion was opposed on August 6, 2010 (Excerpt 23) On August 13, 2010, the District Court denied the Motion to Remand and ignored the Request to certify questions of law to the Nevada Supreme Court (Excerpt 18).

On August 24, 2010, Appellant filed her Opposition to Standard Motion to Dismiss and Demand for a Hearing on Defendants Request for Judicial Notice and

Demand for FRCP 26.1 Discovery Conference and Supporting Affidavit of Appellant Tara Maves. (Excerpt 08 and 16) On September 15, 2010, the District Court granted Summary Judgment to Respondents (Excerpt 2) On October 5, 2010, Appellant filed her notice of Appeal. (Excerpt 1)

V. SUMMARY OF ARGUMENT

Remand: The State District court had jurisdiction over Appellant's local real property prior to the removal motion based upon Appellant's complaint. Thus, the District Court is deprived of jurisdiction over the same real property– a jurisdictional argument although couched in abstention terms. And, the Doctrine of Abstention over cases asking for equitable relief of local property (declaratory relief and quiet title) mandated remand. Title issues to local residential real property are traditionally a state court function, especially when equitable relief is sought as in Appellant's complaint.

Further, this case presents unique issues of the interpretation of the Nevada Laws upon deed of trust practice, mandatory mediation of mortgage disputes and whether or not a collection agency licences is needed by Respondent Quality. In its haste to "hurry up" the foreclosure process the District Court refused to certify the above unique questions of Nevada law and made first impression interpretations of Nevada law— a task that should have been left up to the Nevada Supreme Court.

Indeed, at this Court's initiated mediation conference telephone call, Respondents' counsel declined to participate in mediation. Counsel stated words to the effect that the issue of the requirement of a "collection license" for Quality Loan

Servicers, and their ilk, had not been ruled upon by this Court. And, that this Court's ruling on this issue would define if Nevada's collection license laws applied.

This entire usurpation of a unique area of Nevada law by the federal courts is astounding. It is made possible only because the federal courts have become the de facto eviction courts in Nevada by virtue of the courts assuming diversity jurisdiction and being the ONLY courts to interpret Nevada laws on the entire Foreclosure Industry process.

Dismissal of Appellants' complaint:

The District Court's Order assumes that Quality Loan Services did not need a collection license, nor any documentary proof of its right to foreclose. This assumption of the interpretation of Nevada law is flatly contradicted by the State of Nevada's Cease and Desist Order against Quality acting as an unlicenced collection agency, issued October 15, 2010. (Excerpt 113) In Appellant's view, granting summary judgment upon unauthenticated and missing documents in the chain of title is a complete mystery. The District Court simply ignored Appellant's demand for a hearing upon the judicially noticed documents and the declaration submitted in support authenticated and proved nothing.

Are copies of documents labeled "public documents" self-authenticating because *some* of them were recorded in the Washoe County Recorder's Office? If this Court holds that the label "public document" makes authentication unnecessary, then the contents of every single document, including every pleading filed in every case in

every jurisdiction in this and every other country must be accepted as true and proof of what the document contains.

The *contents* of documents recorded in the Washoe County Recorder's Office, labeled "public documents" are textbook examples of hearsay and must be authenticated. In this case, the fact that the copy is a copy of a document recorded in the Washoe County Recorder's Office is judicially noticeable. The CONTENTS of the document is hearsay. How the mailing and publication copies, which were never recorded, ANYWHERE, could fit under the rubric of "public documents" judicially noticeable, is astounding. How could non-signed declarations of mailing of foreclosure notices be judicially noticeable–let alone "proof" of anything?

VI. STANDARDS OF REVIEW

Removal of a case from state to federal court raises a question of federal subject matter jurisdiction. Accordingly, a remand order (or denial of remand) should be reviewed de novo. *Lively v. Wild Oats Markets, Inc.* 456 F3d 933, 938 (9th Cir 2006)

An order granting a FRCP 12(b)(6) motion to dismiss for failure to state a claim is reviewed de novo. Dismissal of Appellants' complaint without leave to amend is improper "unless it is clear, upon de novo review, that the complaint could not be saved by amendment." *Manzarek v. St. Paul Fire & Marine Ins. Co.* 519 F3d 1025, 1031 (9th Cir. 2008). Where the district court considered matters outside the pleadings in making its decision, the dismissal will be reviewed as a summary judgment motion.

Jacobson v. AEG Capital Corp. 50 F3d 1493 1496 (9th Cir. 1995)

VII. ARGUMENT

1. THE STATE COURT ASSUMED JURISDICTION OVER THE SUBJECT LOCAL REAL PROPERTY

Although the federal remand section, 28 U.S.C. § 1442, allows remand, it does not of itself, resolve the jurisdictional issue for this Court. "A defendant's power to remove a case to federal court is independent of the federal court's power to hear it. These are analytically distinct inquiries and should not be confused." *Nebraska ex rel. Dep't of Soc. Servs. V. Benson,* 146 F.3d 676, 679 (9th Cir. 1998) The Ninth Circuit has held that the general removal provision cannot overcome a jurisdictional defect. See *California ex rel. Sacramento Metro. Air Quality Mgmt. Dist. V. United States,* 215 F.3d 1005, 1010-15 (9th Cir. 2000)

Property cannot be subject to two jurisdictions at the same time. Therefore, "where the jurisdiction of the state court has first attached, the federal court is precluded from exercising its jurisdiction over the same res to defeat or impair the state court's jurisdiction." *Kline v. Burke Const. Co.* (1922) 260 U.S. 226, 229, 43 S.Ct. 79, 81. This is no mere discretionary abstention rule. Rather, it is a mandatory jurisdictional limitation. *State Engineer of State of Nevada v. South Fork Band of Te-Moak Tribe,* 339 F.3d 804, 809-810 (9th Cir. 2003).

In the case of *40235 Washington Street Corp. v. Lusardi*. 976 F.2d 587 (9th Cir 1992) this Court analyzed the Supreme Court's definitive abstention case of *Colorado*

RiverWater Dist. V. U.S., 424 U.S. at 818, 96 S.Ct. at 1246-47 (1976).

In *Colorado River, Id*., the Court articulated four factors for determining whether sufficiently exceptional circumstances exist to warrant abstention: (1) whether either the state or federal court has exercised jurisdiction over a *res;* (2) the inconvenience of the federal forum; (3) the desirability of avoiding piecemeal litigation; and (4) the order in which the forums obtained jurisdiction. *Colorado River,* 424 U.S. at 818, 96 S.Ct. at 1246-47; *Nakash v. Marciano,* 882 F.2d 1411, 1415 (9th Cir.1989).

In *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp*., the High Court added two more considerations: (5) whether federal or state law controls the decision on the merits; and (6) whether the state court can adequately protect the rights of the parties. *(See Moses H. Cone,* 460 U.S. 1, 24, 27, 103 S.Ct. 927, 941, 943, 74 L.Ed.2d 765 (1983); *Nakash,* Supra., 882 F.2d at 1415.)

> In the instant case, the first prong of the *Colorado River* abstention test is dispositive. In proceedings *in rem* or *quasi in rem,* the forum first assuming custody of the property at issue has exclusive jurisdiction to proceed. *Colorado River,* 424 U.S. at 819, 96 S.Ct. at 1247; *Donovan v. City of Dallas,* 377 U.S. 408, 411, 84 S.Ct. 1579, 1581-82, 12 L.Ed.2d 409 (1964). A quiet title action is a proceeding *in rem*. 2 B.E. Witkin, California Procedure, *Jurisdiction* § 180 (3d ed. 1985). Accordingly, under *Colorado River,* the district court was required to stay the federal quiet title action because the state court, in Lusardi's quiet title action, was the first court to exercise jurisdiction over the disputed property. In our case, the El Dorado County Superior Court was the first court to assume jurisdiction over the local real property by virtue of the filing of the complaint (*Supra* at 589, Emphasis added.)

2. THE COURT SHOULD HAVE REMANDED BASED UPON ITS POWER OF ABSTENTION

Federal courts may remand an action based upon abstention principles. The Supreme Court in *Quackenbush v. Allstate Ins. Co.* (1996) 517 U.S. 706, 721, held that abstention is appropriate in cases seeking equitable or discretionary relief. Plaintiffs' complaint, filed prior to the instant removal action, seeks primarily equitable relief in that it asks for declaratory relief as well as quiet title over local real property.

Finally, in *Rank v. Nimmo,* 677 F2d 692 at 697, the court stated: More importantly, "mortgage foreclosure has traditionally been a matter for state courts and state law, and there are state law remedies available to protect mortgagors from unconscionable mortgages." (Citations omitted.)

3. NONE OF THE RECORDED, OR UNRECORDED COPIES MEET THE REQUIREMENTS FOR JUDICIAL NOTICE

The recent case of *Walker v. Woodford* (SD CA 2006) 454 F.Supp.2d 1007, 1022, contains an excellent discussion of the law of Judicial Notice:

> The Rule was intended to obviate the need for formal fact-finding as to certain facts that are undisputed and easily verified. Fed. R.Evid. 201; *Melong v. Micronesian Claims Comm*., 643 F.2d 10, 12 n. 5 (D.C.Cir.1980) (judicial notice under Rule 201 is designed for judicial recognition of scientific or historical fact without resort to cumbersome methods of proof). The Rule permits a court to take judicial notice of two kinds of facts: (1) those that are generally known within the court's territorial jurisdiction; and (2) those that are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, for example, almanac, dictionary, calendar or similar source.

> In other words, "the fact must be one that only an unreasonable person would insist on disputing." *United States v. Jones*, 29 F.3d 1549, 1553 (11th Cir.1994). Documents that are part of the public record may be judicially noticed to show, for example, that a judicial proceeding occurred or that a document was filed in another court case, but a court may not take judicial notice of findings of facts from another case. See *Wyatt v. Terhune*, 315 F.3d 1108, 1114 & n. 5 (9th Cir.2033); *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir.2001); *Jones*, 29 F.3d at 1553. Nor may the court take judicial notice of any matter that is in dispute. *Lee*, 250 F.3d at 689-90; *Lozano v. Ashcroft*, 258 F.3d 1160, 1165 (10th Cir.2001)....

Appellant disputed virtually everything about Defendants' photocopies. (Excerpt 40-48) Apparently counsels' secretary merely provided the court with a list of what the secretary considers to be contained within the Request?? Respondents must introduce evidence sufficient to sustain a finding that the item is what the proponent claims it to be (Fed. R.Evid. 901) or the establishment of facts sufficient to constitute self-authentication under Fed. R.Evid. 902. (See *United States v. Thomas* (2nd Cir. 1995) 54 F3d 73, 82 – authentication through testimony of knowledgeble witness. Burden of proof is upon the proponent: Fed. R.Evid. 901(a) *United States v. Gagliardi* (2nd Cir. 2007) 506 F3d 140, 151. Clearly Respondents' counsels' secretary did not have personal knowledge under 901(b)(1) of what he or she has listed as a description. And, Respondents' counsel did not have personal knowledge of tha authenticity when he produced his last minute declaration.

The Court may refuse to take judicial notice if the requesting party has failed to authenticate the documents. *Madeja v. Olympic Packers, LLC* (9th Cir 2002) 310

F3d 628, 639. It is NOT proper for a court to take judicial notice of disputed facts contained in hearsay document. See *United States v. Burch*, 169 F.3d 666, 672 (10th Cir.1999). Unauthenticated photocopies are the purest form of hearsay. The law is clear, judicial notice should be used "sparingly" in the early stages of litigation. "Only in the clearest of case should a district court reach outside the pleadings for facts necessary to resolve a case at that point." *Victaulic Co. V. Tieman* (3rd Cir. 2007) 499 F3d 227, 236.

4. ANYONE CAN RECORD ANYTHING AT THE COUNTY RECORDER'S OFFICE

As far as Appellant can determine, there is not a single county recorders' office in the United States that checks upon the authenticity or correctness of the *contents* of the documents submitted for recording. The recorder checks only the format of the document. Anyone can record anything at all on anyone's else's property so long as the recorder's format rules are followed.

Purported Lenders and their vassals have a well deserved reputation for avoiding the laws of document authentication, or paying transfer and property taxes. Recognizing this propensity the Nevada Legislature recently passed AB 149, modifying NRS 107.080, the Deed of Trust statute, that mandates mediation before a lender may foreclose. The addition to NRS 107.080, subsection 4, states in relevant part: "...The beneficiary of the deed of trust shall bring to the mediation the original or a certified copy of the deed of trust, the mortgage note and each assignment of the

deed of trust or mortgage note...." (Emphasis added.)

5. THIS COURT IS RESPECTFULLY REQUESTED TO FOLLOW IT RECENT DECISION

The case of *Lee v. City of Los Angles,* 250 F.3d 668 at 689-690 (9th Cir 2001) is most instructive on judicial notice during motions to dismiss.

2. Judicial Notice and Consideration of Extrinsic Evidence

> ...a court may consider "material which is properly submitted as part of the complaint" on a motion to dismiss without converting the motion to dismiss into a motion for summary judgment. *Branch,* 14 F.3d at 453 (citation omitted). If the documents are not physically attached to the complaint, they may be considered if the documents' "authenticity ... is not contested" and "the plaintiff's complaint necessarily relies" on them. *Parrino v. FHP, Inc.,* 146 F.3d 699, 705-06 (9th Cir.1998). Second, ***689** under Fed.R.Evid. 201, a court may take judicial notice of "matters of public record." *Mack v. South Bay Beer Distrib.,* 798 F.2d 1279, 1282 (9th Cir.1986). We review a district court's decision to take judicial notice for abuse of discretion. *Ritter v. Hughes Aircraft Co.,* 58 F.3d 454, 458 (9th Cir.1995). (Emphasis added.)
>
> ....But a court may not take judicial notice of a fact that is "subject to reasonable dispute." Fed.R.Evid. 201(b).
>
> ..... when the legal sufficiency of a complaint's allegations is tested by a motion under Rule 12(b)(6), "[r]eview is limited to the complaint." *Cervantes v. City of San Diego,* 5 F.3d 1273, 1274 (9th Cir.1993). All factual allegations set forth in the complaint "are taken as true and construed in the light most favorable to [p]laintiffs." *Epstein,* 83 F.3d at 1140. Indeed, factual challenges to a plaintiff's complaint have no bearing on the legal sufficiency of the allegations under Rule 12(b)(6).
>
> Yet, in this case, defendants' arguments in favor of affirming the dismissal of plaintiffs' federal claims rest almost entirely on factual challenges. More importantly, the district court's decision to dismiss plaintiffs' federal claims was rooted in defendants' factual assertions. In granting defendants' motions, the court assumed the existence of facts that favor defendants based on evidence outside plaintiffs' pleadings, took

> judicial notice of the truth of disputed factual matters, and did not construe plaintiffs' allegations in the light most favorable to plaintiffs

The *Lee* court's conclusion, in the last paragraph, above, is identical to the instant case. The District Court rested its reasoning upon unproven, unauthenticated factual matters since every single piece of paper in Respondents' Request for Judicial Notice was disputed! Thus, the court was NOT permitted to rely upon them to dismiss Appellants' complaint.

6. APPELLANT'S DEMANDS FOR A HEARING ON THE JUDICIALLY NOTICED DOCUMENTS WAS IGNORED

Respondents' counsel has learned not to formally request judicial notice in previous cases. Now, counsel just attaches "exhibits" to their 12(b)(6) motions and urges the District Court to ignore any evidentiary challenges to these photocopies. The District Court NEVER mentions its "ruling" on Appellant's evidentiary challenges.

To challenge the propriety of taking judicial notice a party must file a motion requesting an opportunity to be heard. *Chen v. Metropolitian Ins. & Annuity Co.* (5th Cir. 1990) 907 F2d 566, 569. Appellant so demanded. (Excerpt 09) The court must provide an opportunity to be heard. *Cooperative de Ahorro y Credito Aguada v. Kidder, Peabody & Co.* (1st Cir. 1993) 993 F2d 269, 273). No hearing was ever held.

7. APPELLANT'S DEMANDS FOR FRCP RULE 26 DISCOVERY WAS IGNORED

Quality's counsel's foreclosure mill needs to simply throw some photocopies into a motion – file a 12(b)(5) motion and tell the District Court these non-authenticated papers prove the District Court should throw out a well founded and VERIFIED complaint – so that Quality is excused from having to provide the quantum of proof necessary to prevail at trial. For example, it is a triable issue of fact as to who, or what is the real beneficiary and to provide some quantum of admissible evidence to show that the offered entity: 1. Actually exists; 2. has a legally cognizable interest, thus legal standing to oppose this complaint. Summary judgment is proper , only after adequate opportunity for discovery, so that no serious claim can be made that the losing party was "railroaded" by a premature motion for summary judgment. *Celotex Corp. V. Catrett,* 477 US 317, at 326 (1986).

Respondents IMMEDIATELY file its cookie cutter motion as soon as it removes so that NO discovery is actually possible. Summary judgment is proper , only after adequate opportunity for discovery, so that no serious claim can be made that the losing party was "railroaded" by a premature motion for summary judgment. *Celotex Corp. V. Catrett,* 477 US 317, at 326 (1986). Appellant's request was ignored. (Excerpt 11)

8 THE DISTRICT COURT REFUSED TO CERTIFY UNIQUE QUESTIONS OF NEVADA LAW TO THE NEVADA SUPREME COURT

The Nevada's Supreme Court's prerogative to interpret Nevada statutory law has been usurped by this federal district's universal dismissal of Foreclosure Industry cases at the pleading stage–without the court's certification of critical questions of Nevada law. (Excerpt 12)

For example, there is no Nevada Supreme Court cases or rulings on the contents required in a Notice of default, NRS 107.080, et sec. Yet, Qaulity asserts the deficiencies in the NOD alleged in Plaintiffs VERIFIED, repeat Verified complaint are "misunderstandings..." of the deed of trust, ".... and pertinent law,..." (Excerpt 43-7:14) Only Quality KNOWS what the law concerning the content of an NOD actually requires. And, the District Court merely accepted Quality's opinion.

9. QUALITY IS NOT PROPERLY LICENCED AS A DEBT COLLECTOR, THUS ITS NOD IS VOID *AB INITIO*

Quality argued it does not have to be licenced as debt collectors under Nevada law. Appellant asserted that it and they do have to be licenced. The State of Nevada agreed and issued its Cease and Desist Letter to Quality. (See Appellant's Request for Judicial Notice and Excerpt 113. Appellant adopts the State of Nevada's legal arguments contained in the Cease and desist Order by this reference rather than copying them herein.) Given the plague of empty, useless houses Quality has assisted in spreading, the issue of a licence is not just of importance to Appellant but the entire

state of Nevada. (See Verified Complaint, Excerpt 109-110) which states:

> The Nevada Unfair and Deceptive Trade Practice Act, NRS 598.0923 defines a 'deceptive trade practice' as conducting a business or occupation without all required state, county or city licenses; NRS 598.0923(1), and as violating a state or federal statute or regulation relating to the sale or lease of goods or services; NRS 598.0923(3) .That a violation of NRS 598.0923 is a deceptive trade practice and by recording the aforementioned NOD, Quality has violated both subsections (1) and (3) of that law, making the plaintiff a 'Victims of Fraud' as defined by NRS 41.600(2)(d). That Aurora did not have the required foreign collector's license when it sent the aforementioned notice to the plaintiff and violated the NRS 649.370 incorporating the FDCPA, in sending the notice that it did. As a victim of fraud the plaintiff is entitled to damages, costs and attorney fees under NRS 41.600(3).

The District Court, once again, skipped over STATE law questions, best left for the Nevada Supreme Court—and take Respondent's word for how the Nevada Supreme Court would rule on this issue of purely State law.

Never before has the federal court system so completely dominated an entire class of local real property cases and totally removed the State's courts from interpreting State law on local real property. The fact that the servicers gloat over mowing down impossibly bad pro se complaints in federal district court is no reason to treat every case like a plague of locusts.

It is unlikely that this unique "opportunity" has arisen before in our Country's history. None of the predatory lenders, mortgage servicers and "toxic asset" peddlers reside in Nevada for diversity purposes–normally a good thing that has had accidental but beneficial consequences to the Foreclosure Industry. The removal issue of all foreclosure law related cases has become tantamount to federal preemption of state real property foreclosure law. Thus, only the federal courts are the interpreters of Nevada law.... the Nevada courts are totally pre-empted from their own state's legal system!

CONCLUSION

It is a triable issue of fact as to whether or not any mailings and any evidence of any debt and any legal standing to collect this alleged debt whatsoever exist in admissible form. Plaintiff asserts it is NOT this Court's function to make sure that debt collectors are not annoyed by having to produce admissible evidence for the trier of fact to weight and then adjudicate. This Court is asked to become the constant and ONLY interpreter of Nevada law – an unnecessary usurpation of state's right found ONLY in Nevada.

This Court is respectfully requested NOT to rule on the adequacy of the contents of the NOD based upon Nevada law, nor whether or not Nevada's Unfair and Deceptive Trade Practice Act apply to Defendants. — but to remand this case with instructions to the District Court to remand this case or, in the alternative, to certify the essential questions of Nevada law to the Nevada Supreme Court.

CERTIFICATE OF COMPLIANCE PURSUANT TO FRAP 32(a)(7)(C)

AND CIRCUIT RULE 32-1 FOR CASE NUMBER 10-15215.

Pursuant to FRAP 32(a)(7)(C) and Nitnth Circuit Rule 32-1, I certify that the attached brief is not proportionally spaced and has type face of 13 points and contains 5443 words.

Dated: December 6, 2010

By:_____/S/_____
Terry J. Thomas, Attorney for Appellant

STATEMENT OF RELATED CASES

The some issues are identical to *Chapman v. Deutsch Bank, et al*, No. 10-15215, and *Azucena v. Aztec Foreclosure Corporation, et al,* No. 10-15553.

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of December, 2010, pursuant to FRCP 5(b), I have deposited in the United States Mail at Reno, Nevada, a true and correct copy of:

EXCERPTS OF RECORD

enclosed in a sealed envelope upon which first class postage was fully prepaid addressed to the following:

Christopher M. Hunter, Esq.
Mcarthy & Holthus, LLP
9510 West Sahara, Ste. 110
Las Vegas, NV 89117

By_____/S/_____
Terry J. Thomas