

ORIGINAL

FILED

06/23/2020

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 20-0204

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 20-0204

HSBC BANK USA, NATIONAL ASSOCIATION,
AS TRUSTEE FOR WELLS FARGO ASSET
SECURITIES CORPORATION, MORTGAGE
PASS THROUGH CERTIFICATES SERIES
2007-7, its successors in interest and/or assigns,

Plaintiff and Appellee,

v.

NICK NICKERSON; DONNA NICKERSON; and
all other persons unknown claiming or who might
claim any right, title, estate or interest in or lien or
encumbrance upon the real and personal property
described in the complaint for foreclosure adverse to
plaintiff's ownership or any cloud upon plaintiff's
title thereto, whether such claim or possible claim be
present or contingent,

Defendants and Appellants.

FILED

JUN 23 2020

Bowen Greenwood
Clerk of Supreme Court
State of Montana

ORDER

Before this Court is a Motion to Dismiss Appeal filed by counsel for Appellee HSBC Bank USA, National Association, as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates Series 2007-7 (hereinafter HSBC), filed on May 5, 2020. The Clerk of the Supreme Court held the motion for any response to be filed, pursuant to M. R. App. P. 16(2). No response was timely filed pursuant to this Court's rules, and the matter was sent to the Court on May 19, 2020. On May 20, 2020, self-represented Appellants Nick Nickerson and Donna Nickerson (hereinafter the Nickersons) filed a motion for extension of time until June 17, 2020, to file their response. On June 17, 2020, the Nickersons fax-filed a second motion for extension of time, in lieu of filing a response.

In its motion for dismissal, HSBC states that mortgage foreclosure proceedings were started in 2013 against the Nickersons. HSBC points to this Court's 2017 decision and requests dismissal because many of the issues raised have been resolved in a prior appeal. *See HSBC Bank, USA, N.A. v. Nickerson*, No. DA 15-0332, 2017 MT 206N, 2017 Mont. LEXIS 536. HSBC thus contends that any issue concerning the Lewis and Clark County District Court's rulings on the Nickersons' motions over the years have either been appealed or are now moot. HSBC explains that only a narrow issue could survive on appeal, such as any alleged irregularities in conducting the February 12, 2020 Sheriff's Sale of the Nickersons' property. HSBC points out, however, that the Nickersons' arguments about the validity of the sale are all without merit. HSBC specifically refers to our ruling where the Nickersons received notice of the sale in *Nickersons v. HSBC*, No. OP 20-0090, Order denying and dismissing Petition for Emergency Writ of Injunction to Stay Execution (Mont. Feb. 18, 2020), and our unpublished opinion deciding prior arguments concerning the real party in interest and the loan servicer on appeal. *Nickerson*, ¶¶18-19.

This Court has offered much leeway to the Nickersons in their proceedings over the years. We rescinded the District Court's Writ of Execution and vacated the initial Sheriff's sale of the property on April 25, 2017, while the previous appeal was pending. *Nickerson*, ¶ 10. We decline to afford such latitude anymore. The Nickersons had more than forty days to file a response, and they chose not to do so. The Nickersons have had their day in Montana courts. We conclude that no further appeal is warranted. Therefore,

IT IS ORDERED that HSBC's Motion to Dismiss Appeal is GRANTED and this appeal is DISMISSED WITH PREJUDICE.

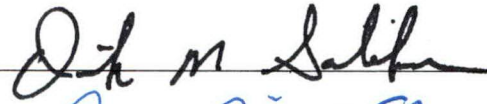
The Clerk is directed to provide a copy of this Order to counsel of record to and to Nick Nickerson and Donna Nickerson personally.

DATED this 23rd day of June, 2020.



Chief Justice







Justices