


IN THE SUPREME COURT OF THE STATE OF NEVADA

CHASE MANHATTAN BANK, AS  
INDENTURE TRUSTEE FOR  
RESIDENTIAL FUNDING CORP., AND  
SUCCESSOR-IN-INTEREST TO  
CAPITOL COMMERCE MORTGAGE  
CO.,  
Appellant,  
vs.  
JOHN C. SHARP,  
Respondent.

No. 46217

**FILED**

**OCT 16 2006**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from an order denying summary judgment, granting a motion for the distribution of funds, and entering judgment in favor of respondent in a dispute over the surplus proceeds from a foreclosure sale. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

When our preliminary review of the docketing statement and the documents submitted to this court pursuant to NRAP 3(e) revealed a potential jurisdictional defect, this court issued an order to show cause. The order, entered on July 19, 2006, indicated that it was not clear whether the district court's order was an appealable final judgment because appellant had not provided documents demonstrating that the claims asserted by Loanstar Mortgage Services, LLC, and a counterclaim

asserted by respondent John C. Sharp had been resolved.<sup>1</sup> This court therefore gave appellant 15 days, until August 3, 2006, to show cause why the appeal should not be dismissed and to submit an amended docketing statement.

Shortly after entry of the order to show cause, appellant filed a motion to dismiss or remand this matter. The motion indicated that the district court's judgment was procured through fraud—namely, the individual who appeared in district court and obtained a judgment in favor of John C. Sharp was not the individual who owned the property that was the subject of the foreclosure sale and had defaulted on the loan held by appellant. Appellant apparently sought a remand so that the district court could consider a motion to set aside the judgment under NRCP 60(b). But appellant had not followed the proper procedure for such a remand, as set forth in Huneycutt v. Huneycutt.<sup>2</sup>

In addition to appellant's failure to follow the Huneycutt procedure for a remand, the matter was complicated by appellant's failure to respond to the July 19, 2006, order to show cause. The jurisdictional defects noted in the order to show cause must be resolved as a preliminary matter because if this court lacks jurisdiction, then the district court was not divested of jurisdiction and appellant would not have to resort to the Huneycutt procedure. For this reason, this court deferred ruling on appellant's motion and ordered appellant to comply with the July 19,

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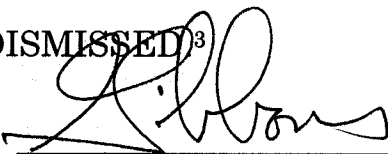
<sup>1</sup>See NRAP 3A(b); Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000); Rae v. All American Life & Cas. Co., 95 Nev. 920, 605 P.2d 196 (1979).

<sup>2</sup>94 Nev. 79, 575 P.2d 585 (1978).

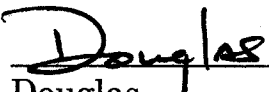
2006, order to show cause by addressing the jurisdictional defects and filing an amended docketing statement. And this court cautioned appellant that failure to demonstrate that this court has jurisdiction may result in the dismissal of this appeal. Appellant had until September 11, 2006, to respond to that order.

To date, appellant has not responded to the order entered August 25, 2006. As appellant has not demonstrated that the district court's order was a final appealable judgment, we conclude that we lack jurisdiction over this appeal and therefore

ORDER this appeal DISMISSED<sup>3</sup>

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Kenneth C. Cory, District Judge  
Ara H. Shirinian, Settlement Judge  
Edgar C. Smith III  
Hall Jaffe & Clayton, LLP  
John C. Sharp  
Clark County Clerk

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<sup>3</sup>We deny the July 24, 2006, motion to dismiss or remand as moot.