



## Featured Article

# How to Lose a Case in the California Court of Appeal

*By Melissa Robbins Coutts, Esq., McCarthy & Holthus, LLP*

The Court of Appeal’s decision in *Ewald v. Nationstar Mortgage LLC*, 13 Cal.App.5th 947 (2017), reads like a primer on how not to handle an appellate case. Due to egregious errors in the appellant’s counsel’s handling of the matter, the court refused to even consider the merits of the appeal, and rather affirmed the judgment in the defendant’s favor on procedural grounds alone.

The case arose from wrongful foreclosure allegations brought by a borrower against his loan servicer. Ewald had asserted causes of action against Nationstar Mortgage for misrepresentation and breach of contract, alleging that Nationstar failed to honor a loan modification. Nationstar filed a motion for summary judgment presenting evidence that it had offered a modification, and it was the borrower who failed to comply by timely signing and returning the agreement.

The lower court granted Nationstar’s motion for summary judgment, and the borrower appealed. But the borrower’s counsel took none of the steps necessary to adequately brief the matter on appeal. Among her errors, the Court of Appeal noted that the borrower’s counsel failed to articulate the standard of review, failed to cite legal authority in support of her arguments, failed to provide authority to demonstrate the court had jurisdiction over the appeal, and failed to even describe the elements of the causes of action she attempted to support. Any one of these deficiencies alone would have provided a sufficient basis for the appellate court to affirm the judgment. Thus, due to what the court described as appellant’s counsel’s “egregious violations of basic appellate norms,” the judgment was affirmed without the court even discussing the merits of the borrower’s claims.

This case highlights the importance of choosing competent appellate counsel to handle matters on appeal, as the requirements of appellate briefing can differ significantly from what may be acceptable in a trial court. If your briefs fail to comport with the necessary requirements, you risk losing your

appeal before any true appellate review of the case has even begun.



*Melissa Robbins Coutts is an attorney with McCarthy & Holthus, LLP and manages the firm’s Civil Litigation and Evictions Departments. Ms. Coutts represents trustees, lenders, and servicers in default and title related litigation and appeals in both Arizona and California. She can be reached at [mcoutts@mccarthyholthus.com](mailto:mcoutts@mccarthyholthus.com).*

“

... the requirements of appellate briefing can differ significantly from what may be acceptable in a trial court.

”

