

IN THE SUPREME COURT OF THE STATE OF NEVADA

7510 PERLA DEL MAR AVE TRUST,
Appellant,
vs.
BANK OF AMERICA, N.A.,
Respondent.

Supreme Court Case No. 65069
District Court Case No. 16-17
Tracie Lindeman
Clerk of Supreme Court
Electronically Filed
Dec 01 2014 02:36 p.m.
**JOINT MOTION FOR REMAND TO THE
EIGHTH JUDICIAL DISTRICT COURT
AND
REQUEST FOR DISMISSAL OF APPEAL
WITHOUT PREJUDICE
AND
STIPULATION TO EXTEND TIME TO FILE
RESPONSE BRIEF PENDING RESOLUTION
OF THE MOTION**

Appellant 7510 Perla Del Mar Ave Trust (the **Trust**) and respondent Bank of America, N.A. move this court, pursuant to *Foster v. Dingwall*, 228 P.3d 453 (2010), for an order remanding this matter back to the district court and dismissing this appeal without prejudice. Further the parties stipulate and request this Court suspend the briefing schedule pending resolution of this joint motion. This motion is based on the memorandum of points and authorities attached hereto and the request for certification to the district court attached as **Exhibit "1."**

FACTUAL BACKGROUND

On August 1, 2013, the Trust filed a complaint for injunctive relief, quiet title, and declaratory relief. On November 15, 2013, Bank of America filed a motion to dismiss. The district court granted Bank of America's motion on February 19, 2014. The Trust timely appealed on February 20, 2014. The legal

basis for the district court's order was an interpretation of NRS 116.3116(2) that granted homeowners' association only a payment priority for 9 months of assessments from the proceeds of the beneficiary of a first security interest foreclosure.

On September 18, 2014, this Court issued its opinion in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. ___, 334 P.3d 408 (2014). This Court held that NRS 116.3116(2) gives an association "a true superpriority lien, proper foreclosure of which will extinguish a first deed of trust." *Id.* at 419. Thus, *SFR* contradicts the stated basis for the district court's order.

The parties stipulated and requested that the district court certify that if this Court were to remand the case, the district court would vacate its dismissal order and enter an order denying Bank of America's motion and allow litigation to continue in light of *SFR*. The request is pending before the district court. *See* Ex. 1. Bank of America's answering brief in the appeal is currently due on December 1, 2014.

II

LAW & ARGUMENT

The timely filing of a notice of appeal "divests the district court of jurisdiction to act and vests jurisdiction in this court." *Foster v. Dingwell*, 126 Nev. at ___, 228 P.3d at 454-455 (citing *Mack-Manley v. Manley*, 122 Nev. 849,

855, 138 P.3d 525, 529 (2006)) (quoting *Rust v. Clark Cty. School District*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987)).

Here, the Trust appealed after the district court granted Bank of America's motion to dismiss. The parties sought the district court's certification to vacate the appealed order after this court issued its opinion in *SFR*. The district court has not yet issued a certification, but the parties anticipate the district court will do so given that its order granting Bank of America's motion to dismiss was based on erroneous interpretation of law.

The parties recognize that it is within this court's discretion to grant the instant motion for remand. In the interest of judicial economy, the parties request this Court to exercise that discretion and remand this matter back to the district court so that the district court may vacate the dismissal order, enter an order denying Bank of America's motion to dismiss, and allow litigation to continue in light of the *SFR* opinion. Further, the parties request that this court suspend the briefing schedule pending resolution of this motion.

III

CONCLUSION

This case is appropriate for remand. This Court should grant the parties' joint motion.

WHEREFORE, the parties respectfully request that this court enter an order dismissing this appeal without prejudice and remanding the matter back to the district court so that the district court may vacate its order granting the motion to dismiss and enter an order denying the motion to dismiss.

Additionally, should the district court fail to act as represented in the certification, the Trust shall retain the right to reinstate the instant appeal, relating back to the original notice of appeal, and the briefing schedule shall be reissued.

Finally, the parties request this court enter an order suspending the briefing schedule in this case pending resolution of this joint motion.

DATED this 1st day of December, 2014

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EXHIBIT 1

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9
10 **DISTRICT COURT**
CLARK COUNTY, NEVADA

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12 7510 PERLA DEL MAR AVE. TRUST,

13 Plaintiff,

14 v.

15 BANK OF AMERICA, N.A.; NORTH
16 AMERICAN TITLE COMPANY, a Nevada
corporation; MOUNTAINS EDGE MASTER
17 ASSOCIATION; and DOMINIC NOLAN,

18 Defendants.

Case No.: A-13-686277-C
Dept.: XXX

CERTIFICATION ORDER

19 The Court, upon the stipulated request of the parties, has reviewed and considered the
20 papers on file herein, and finds as follows:

21 1. The legal basis for the order granting Bank of America's motion to dismiss was an
22 interpretation of NRS 116.3116(2) that granted associations only a payment priority for 9 months
23 of assessments from the proceeds of the beneficiary of a first security interest foreclosure.

24 2. Plaintiff timely appealed the order granting Bank of America's motion to dismiss on
25 February 20, 2014.

26 3. Plaintiff's appeal divested this Court of jurisdiction over the order. *Foster v. Dingwall*,
27 126 Nev. ___, 228 P.3d 453, 454-55 (2010). However, if a basis exists for a district court to
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1 vacate an appealed order, then a party can request "to have the district court certify its intent to
2 grant the requested relief[.]" *Id.* at 455. District courts retain limited jurisdiction to resolve these
3 requests for certification and if a "[c]ourt is inclined to grant the relief requested, then it may
4 certify its intent to do so." *Id.*¹

5 4. The Nevada Supreme Court, on September 18th, issued its opinion in *SFR Investments*
6 *Pool 1, LLC v. U.S. Bank, N.A.*, concluding that NRS 116.3116(2) gives associations a true
7 super-priority lien, proper non-judicial foreclosure of which extinguishes a first deed of trust.
8 *SFR*, 2014 WL 4656471, at *3-10, 12.

9 5. The Nevada Supreme Court also held that an association's super-priority lien may be
10 foreclosed non-judicially. *Id.* at *7-10, 12.

11 6. *SFR* rejected the legal basis iterated in the order granting Bank of America's motion to
12 dismiss.

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27 ¹ This process was developed in *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978),
28 *disapproved on other grounds by Foster*, 126 Nev. ___, 228 P.3d 453 and refined in *Foster*.

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Good cause appearing, the COURT CERTIFIES as follows:

If the case on appeal were remanded to this Court, it would vacate its order granting Bank of America's motion to dismiss, filed on February 19, 2014, and allow the litigation to continue consistent with the holdings in the recent *SFR* opinion.

DATED this _____ day of October, 2014.

District Court Judge

APPROVED AS TO FORM AND CONTENT:

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