

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. A686277

Electronically Filed
Dec 22, 2014 12:58 p.m.

Tracie K. Lindeman
Clerk of Supreme Court

**RENEWED 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."**

This Court previously denied the parties' motion for remand because they had not yet obtained a certification order from the district court. The parties have now obtained a certification order from the district court, which is attached as **Exhibit "2."**

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*. Bank of America's answering brief in the appeal is currently due on December 30, 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 issued a certification.

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 22nd day of December,
2014

AKERMAN LLP

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DATED this 22nd day of December,
2014

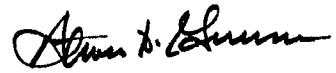
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EXHIBIT 1

EXHIBIT 1



CLERK OF THE COURT

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16 *Attorneys for Bank of America, N.A.*

17 **DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 7510 PERLA DEL MAR AVE. TRUST,

20 Plaintiff,

21 v.

22 BANK OF AMERICA, N.A.; NORTH
23 AMERICAN TITLE COMPANY, a Nevada
24 corporation; MOUNTAINS EDGE MASTER
25 ASSOCIATION; and DOMINIC NOLAN,

26 Defendants.

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

**STIPULATION REQUESTING
CERTIFICATION**

27 Pursuant to *Foster v. Dingwall*, 126 Nev. ___, 228 P.3d 453, 455 (2010), plaintiff 7510
28 Perla Del Mar Ave. Trust and defendant Bank of America, N.A. stipulate and agree to request
this Court certify its intention to vacate or set aside the order granting Bank of America's motion
to dismiss. The notice of entry of the order granting Bank of America's motion to dismiss was
served on February 19, 2014. The order was appealed, and briefing is in progress. Granting
certification, in light of the Nevada Supreme Court's opinion in *SFR Investments Pool I, LLC v.*
U.S. Bank, 130 Nev. ___, ___ P.3d ___, 2014 WL 4656471 (Adv. Op. No. 75, Sept. 18, 2014),

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1 will avoid unnecessary time and expense of both parties to continue appellate briefing. A copy
2 of the proposed Certification is attached hereto as **Exhibit 1**.

3 The parties hereby stipulate and agree that:

4 1. The legal basis for the order was an interpretation of NRS 116.3116(2) that granted
5 associations only a payment priority for 9 months of assessments from the proceeds of the
6 beneficiary of a first security interest foreclosure.

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

9 3. Plaintiff's appeal divested this Court of jurisdiction over the order. *Foster v. Dingwall*,
10 126 Nev. ___, 228 P.3d 453, 454-55 (2010). However, if a basis exists for a district court to
11 vacate an appealed order, then a party can request "to have the district court certify its intent to
12 grant the requested relief[.]" *Id.* at 455. District courts retain limited jurisdiction to resolve these
13 requests for certification and if a "[c]ourt is inclined to grant the relief requested, then it may
14 certify its intent to do so." *Id.*¹

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

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

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

23 7. The parties stipulate and agree that certification promotes judicial economy by preserving
24 judicial resources and allowing the case to move forward in light of the Nevada Supreme Court's
25

26
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*.

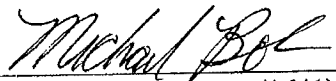
1 SFR decision. Only plaintiff's opening brief on appeal has been filed and Bank of America has
2 requested an extension of time for Bank of America to file its answering brief so the parties
3 could seek relief from this Court.

4 Accordingly, the parties request that this Court reconsider its order and certify its intent
5 to vacate the order and to enter a new order denying Bank of America's motion to dismiss, as set
6 forth in Exhibit 1, so that the parties may petition the Nevada Supreme Court for remand and
7 proceed with litigation consistent with the SFR opinion.

10 DATED this ____ day of October, 2014

11 LAW OFFICES OF MICHAEL F. BOHN,
12 ESQ., LTD.

14 By:



Michael F. Bohn, Esq. (1641)
376 E. Warm Springs Road, Suite 140
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16 *Attorneys for Plaintiff*

DATED this ____ day of October, 2014

AKERMAN LLP

By:


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Attorneys for Bank of America, N.A.

EXHIBIT 1

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Attorneys for Bank of America, N.A.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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BANK OF AMERICA, N.A.; NORTH
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corporation; MOUNTAINS EDGE MASTER
ASSOCIATION; and DOMINIC NOLAN,

Defendants.

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

CERTIFICATION ORDER

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

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

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

3. Plaintiff's appeal divested this Court of jurisdiction over the order. *Foster v. Dingwall*, 126 Nev. ___, 228 P.3d 453, 454-55 (2010). However, if a basis exists for a district court to

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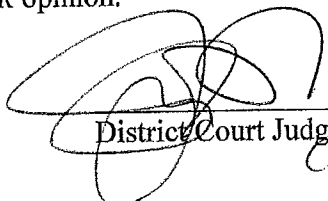
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1 Good cause appearing, the COURT CERTIFIES as follows:

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

5 DATED this 16 day of ^{December} October, 2014.

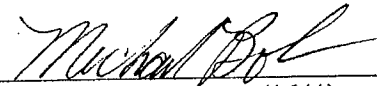

District Court Judge

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8 APPROVED AS TO FORM AND CONTENT:

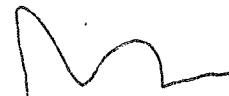
SUBMITTED BY:

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EXHIBIT 2

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9
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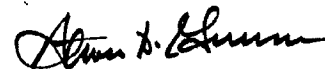
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Case No.: A-13-686277-C
Dept.: XXX

CERTIFICATION ORDER

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CLERK OF THE COURT

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District Court Judge

8 APPROVED AS TO FORM AND CONTENT:

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