


CLERK OF THE COURT

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Tracie K. Lindeman
Clerk of Supreme Court

NOA
ARIEL E. STERN, ESQ.
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THERA A. COOPER, ESQ.
Nevada Bar No. 13468
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Attorneys for Defendant Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

ALESSI & KOENIG, LLC,
Plaintiff,

v.

BANK OF AMERICA, N.A., SUCCESSOR BY
MERGER TO BAC HOME LOANS
SERVICING, LP FKA COUNTRYWIDE
HOME LOANS SERVICING, LP, unknown
entity, DOES INDIVIDUALS 1-X, inclusive, and
ROE CORPORATIONS XI-XXX, inclusive,

Defendants.

Case No.: A-13-684501-C
Dept.: XXI

**BANK OF AMERICA, N.A.'S NOTICE OF
APPEAL**

BANK OF AMERICA, N.A., SUCCESSOR BY
MERGER TO BAC HOME LOANS
SERVICING, LP FKA COUNTRYWIDE
HOME LOANS SERVICING, LP, a National
Association,

Cross-Claimant,

v.

ARMANDO A. CARIAS, an individual, DOES
INDIVIDUALS 1 through 10, inclusive, and
ROE BUSINESS ENTITIES 1 through 10,
inclusive,

Cross-Defendants.

1 BANK OF AMERICA, N.A., SUCCESSOR BY
2 MERGER TO BAC HOME LOANS
3 SERVICING, LP FKA COUNTRYWIDE
4 HOME LOANS SERVICING, LP, a National
5 Association,

6 Cross-Claimant,

7 v.

8 SFR INVESTMENTS POOL 1, LLC, a domestic
9 Limited Liability Company, SUTTER CREEK
10 HOMEOWNERS' ASSOCIATION, an unknown
11 entity, and DOES 1 through 10 and ROE
12 BUSINESS ENTITIES 1 through 10,

13 Cross-Defendants.

14 Notice is hereby given that Bank of America, N.A. appeals to the Supreme Court of Nevada
15 from this Court's order of April 18, 2016, for which a notice of entry of order was entered April 27,
16 2016, granting final judgment in favor of Cross-Defendant SFR Investments Pool 1, LLC and all
17 interlocutory orders incorporated therein.

18 DATE: May 24, 2016.

19 AKERMAN LLP

20 /s/ Thera Cooper

21 ARIEL E. STERN, ESQ.

22 Nevada Bar No. 8376

23 THERA A. COOPER, ESQ.

24 Nevada Bar No. 13468

25 AKERMAN LLP

26 1160 Town Center Drive, Suite 330

27 Las Vegas, NV 89144

28 *Attorneys for Bank of America, N.A. as
successor by merger to BAC Home Loans
Servicing, LP FKA Countrywide Home Loans
Servicing, LP*

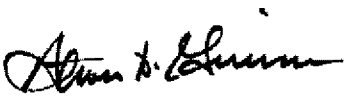
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 24th day of May, 2016, and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing, **BANK OF AMERICA, N.A.'S NOTICE OF APPEAL**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & served through the Notice Of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

Alessi & Koenig		
Contact	Email	
A&K eserve	eserve@alessikoenig.com	
<hr/>		
Kim Gilbert Ebron		
Contact	Email	
Diana Cline Ebron	diana@kgelegal.com	
E Service for Kim Gilbert Ebron	eservice@hkmlaw.com	
Sarah Felts	sarah@kgelegal.com	
Tomas Valerio	staff@kgelegal.com	
<hr/>		
Law Office of Ladine Oravetz		
Contact	Email	
Ladine Oravetz	ladineo@aol.com	

/s/ Michael Hannon
An employee of AKERMAN LLP


CLERK OF THE COURT

CAS
ARIEL E. STERN, ESQ.
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Nevada Bar No. 13468
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Email: thera.cooper@akerman.com

Attorneys for Defendant Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC,
Plaintiff,

v.

BANK OF AMERICA, N.A., SUCCESSOR BY
MERGER TO BAC HOME LOANS
SERVICING, LP FKA COUNTRYWIDE
HOME LOANS SERVICING, LP, unknown
entity, DOES INDIVIDUALS 1-X, inclusive, and
ROE CORPORATIONS XI-XXX, inclusive,

Defendants.

Case No.: A-13-684501-C
Dept.: XXI

**BANK OF AMERICA, N.A.'S CASE
APPEAL STATEMENT**

BANK OF AMERICA, N.A., SUCCESSOR BY
MERGER TO BAC HOME LOANS
SERVICING, LP FKA COUNTRYWIDE
HOME LOANS SERVICING, LP, a National
Association,

Cross-Claimant,

v.

ARMANDO A. CARIAS, an individual, DOES
INDIVIDUALS 1 through 10, inclusive, and
ROE BUSINESS ENTITIES 1 through 10,
inclusive,

Cross-Defendants.

1 BANK OF AMERICA, N.A., SUCCESSOR BY
2 MERGER TO BAC HOME LOANS
3 SERVICING, LP FKA COUNTRYWIDE
4 HOME LOANS SERVICING, LP, a National
5 Association,

6 Cross-Claimant,

7 v.

8 SFR INVESTMENTS POOL 1, LLC, a domestic
9 Limited Liability Company, SUTTER CREEK
10 HOMEOWNERS' ASSOCIATION, an unknown
11 entity, and DOES 1 through 10 and ROE
12 BUSINESS ENTITIES 1 through 10,

13 Cross-Defendants.

14 Bank of America, N.A., by and through its attorneys of record at Akerman LLP, submits its
15 Case Appeal Statement pursuant to NRAP 3(f)(3).

16 1. The appellant filing this case appeal statement is Bank of America, N.A. (**Appellant**).

17 2. The order appealed is the Final Judgment for Plaintiff entered April 18, 2016. A
18 Notice of Entry of Final Judgment was entered on April 27, 2016 by the Honorable Judge Valerie
19 Adair.

20 3. Counsel for Appellants are Ariel E. Stern, Esq. and Thera A. Cooper, Esq. of
21 Akerman LLP, 1160 N. Town Center Drive, Suite 330, Las Vegas, Nevada 89144.

22 4. Trial counsel for Respondent SFR Investments Pool 1, LLC is Diana Cline Ebron,
23 Esq., Karen L. Hanks, Esq., and Jacqueline A. Gilbert, Esq., of Kim Gilbert, Ebron, 7625 Dean
24 Martin Drive, Suite 100, Las Vegas, NV 89139. Appellant is unaware of whether trial counsel will
25 also act as appellate counsel for Respondent.

26 5. Counsel for appellant are licensed to practice law in Nevada. Trial counsel for
27 Respondent is licensed to practice law in Nevada.

28 6. Appellant is represented by retained counsel in the district court.

7. Appellant is represented by retained counsel on appeal.

8. Appellant was not granted leave to proceed in forma pauperis by the district court.

9. The date proceedings commenced in the district court was July 1, 2013.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 24th day of May, 2016, and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing, **BANK OF AMERICA, N.A.'S CASE APPEAL STATEMENT**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & served through the Notice Of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

Alessi & Koenig		
Contact	Email	
A&K eserve	eserve@alessikoenig.com	
<hr/>		
Kim Gilbert Ebron		
Contact	Email	
Diana Cline Ebron	diana@kgelegal.com	
E-Service for Kim Gilbert Ebron	eservice@hkimlaw.com	
Sarah Felts	sarah@kgelegal.com	
Tomas Valerio	staff@kgelegal.com	
<hr/>		
Law Office of Ladine Oravetz		
Contact	Email	
Ladine Oravetz	ladineo@aol.com	

/s/ Michael Hannon _____
An employee of AKERMAN LLP

DEPARTMENT 21
CASE SUMMARY
CASE NO. A-13-684501-C

Alessi & Koenig LLC , Plaintiff(s)
vs.
Armando Carias , Defendant(s)

§
§
§
§
§

Location: **Department 21**
Judicial Officer: **Adair, Valerie**
Filed on: **07/01/2013**
Case Number History:
Cross-Reference Case Number: **A684501**

CASE INFORMATION

Case Type: **Other Civil Filing**
Subtype: **Other Civil Matters**
Case Flags: **Appealed to Supreme Court
Automatically Exempt from
Arbitration**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	A-13-684501-C
Court	Department 21
Date Assigned	01/06/2014
Judicial Officer	Adair, Valerie

PARTY INFORMATION

		<i>Lead Attorneys</i>
Plaintiff	Alessi & Koenig LLC	Lam, Huong <i>Retained</i> 702-222-4033(W)
Defendant	Bank of America	Brenner, Darren T. <i>Retained</i> 702-634-5000(W)
	Carias, Armando A	
	Home Loans Servicing LP	
Counter Claimant	SFR Investments Pool 1 LLC	Cline, Diana S. <i>Retained</i> 702-485-3300(W)
Counter Defendant	Bac Home Loans Servicing LP	Brenner, Darren T. <i>Retained</i> 702-634-5000(W)
	Bank of America N A	Brenner, Darren T. <i>Retained</i> 702-634-5000(W)
	Carias, Armando A	
Cross Claimant	Bac Home Loans Servicing LP	Brenner, Darren T. <i>Retained</i> 702-634-5000(W)
	Bank of America N A	Brenner, Darren T. <i>Retained</i> 702-634-5000(W)
Cross Defendant	Alessi & Koenig LLC	

DEPARTMENT 21
CASE SUMMARY
CASE NO. A-13-684501-C

Lam, Huong
Retained
702-222-4033(W)

Carias , Armando A
Removed: 06/10/2014
Dismissed

SFR Investments Pool 1 LLC

Cline, Diana S.
Retained
702-485-3300(W)

Sutter Creek Homeowners Association

Loizzi, Steven T., Jr.
Retained
702-222-4033(W)

**Third Party
Defendant**

SFR Investments Pool 1 LLC

Cline, Diana S.
Retained
702-485-3300(W)







**Third Party
Plaintiff**

Bac Home Loans Servicing LP













Brenner, Darren T.
Retained
702-634-5000(W)

Bank of America N A














Brenner, Darren T.
Retained
702-634-5000(W)

DATE	EVENTS & ORDERS OF THE COURT	INDEX
07/01/2013	 Complaint Filed By: Cross Defendant Alessi & Koenig LLC <i>Complaint in Interpleader</i>	
07/01/2013	Case Opened	
10/07/2013	 Affidavit of Service Filed By: Cross Defendant Alessi & Koenig LLC <i>Affidavit of Service Re Armando A Carias, an Individual</i>	
10/09/2013	 Affidavit of Service Filed By: Cross Defendant Alessi & Koenig LLC <i>Affidavit of Service: Bank of America, N.A., Successor By Merger to BAC Home Loans Servicing, LP, Unknown Entity</i>	
01/06/2014	 Default Filed By: Cross Defendant Alessi & Koenig LLC <i>Default (as to Armando A. Carias)</i>	
01/06/2014	Case Reassigned to Department 21 <i>Case reassigned from Judge Kenneth Cory Dept 1</i>	
01/09/2014	 Answer Filed By: Defendant Bank of America <i>Defendant Bank of America's Answer to Plaintiff's Complaint, Cross-Claim, and Third Party Complaint</i>	
01/09/2014	 Notice of Lis Pendens Filed by: Defendant Bank of America <i>Notice of Lis Pendens</i>	














DEPARTMENT 21
CASE SUMMARY
CASE NO. A-13-684501-C

01/09/2014	 Initial Appearance Fee Disclosure Filed By: Defendant Bank of America <i>Initial Appearance Fee Disclosure</i>
01/14/2014	 Notice of Early Case Conference Filed By: Cross Defendant Alessi & Koenig LLC <i>Notice of Early Case Conference</i>
02/14/2014	 Answer Filed By: Counter Claimant SFR Investments Pool 1 LLC <i>Answer, Counterclaim and Cross-Claim</i>
02/14/2014	 Initial Appearance Fee Disclosure Filed By: Counter Claimant SFR Investments Pool 1 LLC <i>Initial Appearance Fee Disclosure (NRS Chapter 19)</i>
02/14/2014	 Notice of Lis Pendens Filed by: Cross Defendant Alessi & Koenig LLC <i>Notice of Lis Pendens</i>
03/04/2014	 Summons Filed by: Defendant Bank of America <i>Affidavit of Service of SFR Investment Pool 1, LLC (with Summons)</i>
03/11/2014	 Answer to Counterclaim Filed By: Defendant Bank of America <i>Defendant Bank of America's Answer to SFR Investments Pool 1, LLC's Third-Party Counterclaim</i>
04/11/2014	 Notice of Association of Counsel Filed By: Defendant Bank of America <i>Notice of Association of Counsel</i>
04/16/2014	 Substitution of Attorney Filed by: Defendant Bank of America <i>Substitution of Counsel</i>
05/01/2014	 Affidavit of Due Diligence Filed By: Cross Defendant Alessi & Koenig LLC <i>Affidavit of Due Diligence</i>
05/02/2014	 Ex Parte Motion Filed By: Counter Claimant SFR Investments Pool 1 LLC <i>Ex Parte Motion to Serve Armando P. Carias by Publication</i>
06/10/2014	 Notice of Voluntary Dismissal Filed By: Counter Claimant SFR Investments Pool 1 LLC <i>Notice of Voluntary Dismissal of Cross-Defendant Armando A. Carias without Prejudice</i>
06/10/2014	Dismissal Pursuant to NRCP 41 (Judicial Officer: Adair, Valerie) Debtors: Armando A Carias (Cross Defendant) Creditors: Bank of America N A (Cross Claimant), Bac Home Loans Servicing LP (Cross Claimant) Judgment: 06/10/2014, Docketed: 06/17/2014












DEPARTMENT 21
CASE SUMMARY
CASE NO. A-13-684501-C

09/11/2014	 Joint Case Conference Report Filed By: Cross Defendant Alessi & Koenig LLC <i>Joint Case Conference Report</i>
09/24/2014	 Scheduling Order <i>Scheduling Order</i>
09/26/2014	 Order Setting Civil Bench Trial <i>Order Setting Civil Bench Trial</i>
02/17/2015	 Motion for Leave to File Party: Defendant Bank of America <i>Defendant Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing LP FKA Countrywide Home Loans Servicing LP'S Motion to Amend Pleadings and Add Parties</i>
03/19/2015	 Expert Witness Designation Filed By: Counter Claimant SFR Investments Pool 1 LLC <i>SFR Investments Pool 1, LLC's Rebuttal Expert Disclosure</i>
03/23/2015	 Motion to Amend (3:00 AM) (Judicial Officer: Adair, Valerie) <i>Defendant Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing LP FKA Countrywide Home Loans Servicing LP'S Motion to Amend Pleadings and Add Parties</i>
04/15/2015	 Motion Filed By: Cross Defendant Alessi & Koenig LLC <i>Motion to Interplead Excess Proceeds, for Attorney's Fees and Costs, and to Dismiss Plaintiff from Case</i>
04/15/2015	 Memorandum of Costs and Disbursements Filed By: Cross Defendant Alessi & Koenig LLC <i>Memorandum of Costs and Disbursements</i>
04/15/2015	 Affidavit in Support Filed By: Cross Defendant Alessi & Koenig LLC <i>Affidavit of Steven T. Loizzi, Jr., Esq. in Support of Attorney Fees and Costs</i>
04/16/2015	 Amended Answer Filed By: Defendant Bank of America <i>Bank of America, N.A.'s Amended Answer To Plaintiff's Complaint and Cross-Claims against SFR Investments Pool 1, LLC And Sutter Creek Homeowners' Association</i>
04/23/2015	 Order Granting Motion Filed By: Defendant Bank of America <i>Order Granting Bank of America, N.A.'s Motion to Amend Pleadings and Add Parties</i>
05/01/2015	 Opposition to Motion Filed By: Defendant Bank of America <i>Bank of America, N.A.'s Opposition to Alessi & Koenig, LLC's Motion to Interplead Excess Proceeds, for Attorney's Fees and Costs, and to Dismiss Plaintiff from Case</i>
05/08/2015	 Answer to Crossclaim Filed By: Counter Claimant SFR Investments Pool 1 LLC <i>SFR Investments Pool 1, LLC's Answer to Bank of America, N.A.'s Cross-Claim against SFR Investments Pool 1, LLC</i>












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CASE SUMMARY
CASE NO. A-13-684501-C

05/13/2015	 Answer to Counterclaim Filed By: Cross Defendant Sutter Creek Homeowners Association <i>Alessi & Koenig, LLC and Sutter Creek Homeowners Association's Answer to Bank of America, N.A.'s Counterclaim and Crossclaim</i>
05/13/2015	 Amended Notice <i>Bank of America, N.A.'s Amended Notice of Rule 30(B)(6) Deposition to Alessi & Koenig</i>
05/18/2015	 Motion to Interplead (3:00 AM) (Judicial Officer: Adair, Valerie) <i>Plaintiff's Motion to Interplead Excess Proceeds, for Attorney's Fees and Costs, and to Dismiss Plaintiff from Case</i>
06/01/2015	 Decision (3:00 AM) (Judicial Officer: Adair, Valerie) <i>Plaintiff's Motion to Interplead Excess Funds</i>
06/03/2015	 Stipulation to Extend Discovery Party: Counter Claimant SFR Investments Pool 1 LLC <i>Stipulation and Proposed Order to Extend Discovery Deadlines (First Request)</i>
06/08/2015	 Notice of Entry of Stipulation and Order Filed By: Cross Defendant Alessi & Koenig LLC <i>Notice of Entry of Stipulation and Order</i>
07/27/2015	 Motion Filed By: Counter Claimant SFR Investments Pool 1 LLC <i>Motion for Pre-Trial Coordination on Order Shortening Time</i>
08/04/2015	 Stipulation and Order to Extend Discovery Deadlines Filed By: Defendant Bank of America <i>Stipulation and Order to Extend Discovery Deadlines (Second Request)</i>
08/05/2015	 Notice of Entry of Stipulation and Order Filed By: Defendant Bank of America <i>Notice Of Entry Of Stipulation And Order To Extend Discovery Deadlines (Second Request)</i>
08/08/2015	 Opposition to Motion Filed By: Defendant Bank of America <i>Bank of America, N.A.'s Response in Opposition To SFR Investment Pool 1, LLC's Motion For Pre-Trial Coordination on Order Shortening Time</i>
08/11/2015	 Motion to Coordinate (10:30 AM) (Judicial Officer: Bare, Rob) <i>Third Party Defendant SFR Investments Pool 1 LLC's Motion for Pre-Trial Coordination on Order Shortening Time</i>
08/12/2015	 Amended Order Setting Civil Non-Jury Trial <i>Amended Order Setting Civil Bench Trial</i>
08/25/2015	 Case Management Order Filed By: Counter Claimant SFR Investments Pool 1 LLC <i>Proposed Case Management Order</i>
09/21/2015	CANCELED Calendar Call (9:00 AM) (Judicial Officer: Adair, Valerie) <i>Vacated - per Commissioner</i>

DEPARTMENT 21
CASE SUMMARY
CASE NO. A-13-684501-C

09/28/2015	CANCELED Bench Trial (9:30 AM) (Judicial Officer: Adair, Valerie) <i>Vacated - per Commissioner</i>
10/01/2015	 Notice Filed By: Defendant Bank of America <i>Notice of Disassociation</i>
10/01/2015	 Joinder to Opposition to Motion Filed by: Defendant Bank of America <i>Joinder To Opposition and Notice of Opposition To SFR Investment Pool 1, LLC's Motion For Pre-Trial Coordination on Order Shortening Time</i>
10/30/2015	 Motion for Summary Judgment Filed By: Defendant Bank of America <i>Defendant Bank of America, N.A.'s Motion For Summary Judgment</i>
11/02/2015	 Motion for Summary Judgment Filed By: Counter Claimant SFR Investments Pool 1 LLC <i>SFR Investments Pool 1, LLC's Motion for Summary Judgment</i>
11/20/2015	 Opposition to Motion For Summary Judgment Filed By: Counter Claimant SFR Investments Pool 1 LLC <i>SFR Investments Pool 1, LLC's Opposition to Motion for Summary Judgment</i>
11/20/2015	 Joinder to Motion For Summary Judgment Filed By: Cross Defendant Alessi & Koenig LLC <i>Alessi & Koenig, LLC and Sutter Creek Homeowners Association's Joinder to SFR Investments Pool 1, LLC's Motion for Summary Judgment</i>
11/21/2015	 Joinder to Opposition to Motion Filed by: Cross Defendant Alessi & Koenig LLC <i>Alessi & Koenig, LLC and Sutter Creek Homeowners Association's Joinder to SFR Investments Pool 1, LLC's Opposition to Bank of America, N.A.'s Motion for Summary Judgment</i>
12/15/2015	 Stipulation and Order Filed by: Counter Defendant Bank of America N A <i>Stipulation and Order to Extend Deadline for Bank of America, N.A. to file Opposition, SFR Investments Pool 1, LLC to file Reply Brief and to Continue Hearing</i>
12/16/2015	 Notice of Change of Address Filed By: Counter Claimant SFR Investments Pool 1 LLC <i>Notice of Change of Address and Notice of Change of Firm Name</i>
12/16/2015	 Notice of Entry of Stipulation and Order Filed By: Defendant Bank of America <i>Notice of Entry of Stipulation and Order to Extend Deadline for Bank of America, N.A. to File Opposition, SFR Investment to file Reply Brief and to Continue Hearing</i>
12/17/2015	 Opposition to Motion Filed By: Defendant Bank of America <i>Defendant Bank of America, N.A.'s Opposition to SFR Investments Pool, 1, LLC's Motion for Summary Judgment</i>

DEPARTMENT 21
CASE SUMMARY
CASE NO. A-13-684501-C

01/04/2016	 Affidavit of Service Filed By: Counter Defendant Bank of America N A <i>Affidavit of Service - Attorney General's Office</i>
01/07/2016	 Affidavit of Service Filed By: Counter Defendant Bank of America N A <i>Affidavit of Service - Attorney General's Office</i>
01/27/2016	 Errata Filed By: Counter Claimant SFR Investments Pool 1 LLC <i>SFR Investments Pool 1, LLC's Errata to Reply in Support of Motion for Summary Judgment</i>
01/27/2016	 Reply in Support Filed By: Counter Claimant SFR Investments Pool 1 LLC <i>SFR Investments Pool 1, LLC's Reply in Support of Motion for Summary Judgment</i>
01/28/2016	 Reply in Support Filed By: Defendant Bank of America <i>Defendant Bank of America, N.A.'s Reply Brief in Support of Motion for Summary Judgment</i>
02/03/2016	Motion for Summary Judgment (9:30 AM) (Judicial Officer: Adair, Valerie) 02/03/2016, 02/08/2016 <i>Defendant Bank of America, N.A.'s Motion For Summary Judgment</i>
02/03/2016	Motion for Summary Judgment (9:30 AM) (Judicial Officer: Adair, Valerie) 02/03/2016, 02/08/2016 <i>SFR Investments Pool 1, LLC's Motion for Summary Judgment</i>
02/03/2016	Joinder (9:30 AM) (Judicial Officer: Adair, Valerie) 02/03/2016, 02/08/2016 <i>Alessi & Koenig, LLC and Sutter Creek Homeowners Association's Joinder to SFR Investments Pool 1, LLC's Motion for Summary Judgment</i>
02/03/2016	 All Pending Motions (9:30 AM) (Judicial Officer: Adair, Valerie)
02/08/2016	Decision (3:00 AM) (Judicial Officer: Adair, Valerie)
02/17/2016	 Decision (3:00 PM) (Judicial Officer: Adair, Valerie) <i>Deft. BANA's Motion for Summary Judgment</i>
02/22/2016	 Calendar Call (9:00 AM) (Judicial Officer: Adair, Valerie)
02/29/2016	CANCELED Bench Trial (9:30 AM) (Judicial Officer: Adair, Valerie) <i>Vacated - per Secretary</i>
03/04/2016	 Recorders Transcript of Hearing <i>Transcript of Proceedings Defendant Bank of America, N.A.'S Motion for Summary Judgment; Alessi & Koenig, LLC and Sutter Creek Homeowners Association's Joinder to SFR Investments Pool 1, LLC'S Motion for Summary Judgment February 3, 2016</i>
03/18/2016	 Affidavit of Service Filed By: Defendant Bank of America <i>Affidavit of Service</i>
04/18/2016	 Order

DEPARTMENT 21
CASE SUMMARY
CASE NO. A-13-684501-C

	Filed By: Counter Claimant SFR Investments Pool 1 LLC <i>Order Denying Bank of America, N.A.'s Motion for Summary Judgment and Granting SFR Investments Pool 1, LLC's Motion for Summary Judgment</i>
04/18/2016	Summary Judgment (Judicial Officer: Adair, Valerie) Debtors: Bac Home Loans Servicing LP (Cross Claimant) Creditors: Alessi & Koenig LLC (Cross Defendant), SFR Investments Pool 1 LLC (Cross Defendant), Sutter Creek Homeowners Association (Cross Defendant) Judgment: 04/18/2016, Docketed: 04/25/2016
04/26/2016	 Memorandum of Costs and Disbursements Filed By: Counter Claimant SFR Investments Pool 1 LLC <i>SFR Investments Pool 1, LLC's Memorandum of Costs and Distributions</i>
04/27/2016	 Notice of Entry of Order Filed By: Counter Claimant SFR Investments Pool 1 LLC <i>Notice of Entry of Order Denying Bank of America, N.A.'s Motion for Summary Judgment and Granting SFR Investments Pool 1, LLC's Motion for Summary Judgment</i>
04/27/2016	 Errata Filed By: Counter Claimant SFR Investments Pool 1 LLC <i>SFR Investments Pool 1, LLC's Errata To Memorandum Of Costs And Distributions</i>
05/16/2016	 Motion Filed By: Defendant Bank of America <i>Bank of America, N.A.'s Motion for Reconsideration</i>
05/24/2016	 Notice of Appeal Filed By: Defendant Bank of America <i>Bank Of America, N.A.'S Notice Of Appeal</i>
05/24/2016	 Case Appeal Statement Filed By: Counter Defendant Bank of America N A <i>Bank Of America, N.A.'S Case Appeal Statement</i>
06/20/2016	Motion For Reconsideration (3:00 AM) (Judicial Officer: Adair, Valerie) <i>Bank of America, N.A.'s Motion for Reconsideration</i>

DATE	FINANCIAL INFORMATION
	Cross Defendant Sutter Creek Homeowners Association
	Total Charges 223.00
	Total Payments and Credits 223.00
	Balance Due as of 5/26/2016 0.00
	Defendant Bank of America
	Total Charges 582.00
	Total Payments and Credits 582.00
	Balance Due as of 5/26/2016 0.00
	Cross Defendant Alessi & Koenig LLC
	Total Charges 470.00
	Total Payments and Credits 470.00
	Balance Due as of 5/26/2016 0.00
	Counter Claimant SFR Investments Pool 1 LLC
	Total Charges 423.00
	Total Payments and Credits 423.00
	Balance Due as of 5/26/2016 0.00

DEPARTMENT 21
CASE SUMMARY
CASE NO. A-13-684501-C

CIVIL COVER SHEET

A- 13- 684501- C

- Clark County, Nevada

Case No.

(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone): Alessi & Koenig

Attorney (name/address/phone):Huong Lam, Esq. & Brad Bace,
Esq., ALESSI & KOENIG, 9500 W. Flamingo Rd., Ste. 205, Las
Vegas, NV 89147 Phone: (702) 222-4033Defendant(s) (name/address/phone): ARMANDO A. CARIAS,
BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO
BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE
HOME LOANS SERVICING, LP

Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> Negligence <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence – Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition

Probate**Other Civil Filing Types**

Estimated Estate Value: _____ <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input checked="" type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input checked="" type="checkbox"/> Other Civil Matters
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III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

- | | | |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104 Art. 8) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Trademarks (NRS 600A) | |

7/11/13

Date



Signature of initiating party or representative

See other side for family-related case filings.

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ORDER

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Attorneys for SFR Investments Pool 1, LLC

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

ALESSI & KOENIG, LLC, a Nevada limited liability company,

Plaintiff,

vs.

ARMANDO A. CARIAS, an individual; BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP, unknown entity, DOES INDIVIDUALS I-X, inclusive, and ROE CORPORATIONS XI-XXX, inclusive,

Defendants.

Case No. A-13-684501-C

Dept. No. XXI

ORDER DENYING BANK OF AMERICA, N.A.'S MOTION FOR SUMMARY JUDGMENT AND GRANTING SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT

AND RELATED CLAIMS.

This matter came before the Court on Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP's ("BANA") Motion for Summary Judgment ("BANA MSJ"), filed on October 30, 2015, and SFR Investments Pool 1, LLC's ("SFR") Motion for Summary Judgment ("SFR MSJ"), filed on November 2, 2015. Alessi & Koenig, LLC ("Alessi") and Sutter Creek Homeowners Association ("Association") filed a Joinder to the SFR MSJ on November 20, 2015. SFR filed an Opposition to the BANA MSJ on November 20, 2015, to which Alessi and the Association filed a Joinder on November 21, 2015.

1 BANA filed its Opposition to the SFR MSJ on December 17, 2015, to which SFR filed its Reply
2 on January 27, 2016.¹ BANA filed its Reply to the SFR Opposition and Alessi and the
3 Association's Joinder on January 28, 2016. This Court heard arguments on the BANA MSJ, the
4 SFR MSJ, and Alessi and Association's Joinder on February 3, 2016 at 9:30 a.m. Ariel E. Stern,
5 Esq. appeared on behalf of BANA. Jacqueline A. Gilbert, Esq. appeared on behalf of SFR.
6 Chantel M. Schimming, Esq. appeared on behalf of Alessi and the Association.

7 Having reviewed and considered the full briefing and arguments of counsel, for the reasons
8 stated on the record, and good cause appearing, this Court makes the following findings of fact
9 and conclusions of law.

10 FINDINGS OF FACT²

11 1. In 1991, Nevada adopted the Uniform Common Interest Ownership Act as NRS
12 116.

13 2. On July 15, 1998, the Association recorded its Declaration of Covenants,
14 Conditions & Restrictions and Reservation of Easements ("CC&Rs"). Pursuant to NRS
15 116.3116, the recordation of the CC&Rs constituted record notice and perfection of the
16 Association's lien.

17 3. On November 3, 2010, a Grant, Bargain and Sale Deed was recorded in the
18 Official Records of the Clark County Recorder as Instrument No. 201011030002713
19 transferring real property located at 3617 Diamond Spur Avenue, North Las Vegas, Nevada
20 89032; Parcel No. 139-08-410-014 (the "Property") to Armando A. Carias.

21 4. On November 3, 2010, a Deed of Trust in favor of W.J. Bradley Mortgage
22 Capital Corp. was recorded in the Official Records of the Clark County Recorder as Instrument
23 No. 201011030002714 ("First Deed of Trust").

24 5. On January 26, 2012, an Assignment was recorded in the Official Records of the
25 Clark County Recorder as Instrument No. 201201260003419 transferring the First Deed of
26 Trust to BANA.

27 ¹ SFR filed an Errata to its Reply on January 27, 2016.

28 ² Any finding of fact that should be a conclusion of law is deemed a conclusion of law.

6. On February 23, 2012, Alessi, on behalf of the Association, recorded a Notice of Delinquent Assessment (Lien) in the Official Records of the Clark County Recorder as Instrument No. 201202230001691.

7. On May 8, 2012, Alessi, on behalf of the Association, recorded a Notice of Default and Election to Sell Under Homeowners Association Lien in the Official Records of the Clark County Recorder as Instrument No. 201205080002884 ("NOD"). Pursuant to the NOD, the amount due as of April 4, 2012 was \$2,290.00.

8. Alessi, on behalf of the Association, mailed the NOD to BANA.

9. On June 5, 2012, BANA, through its counsel Miles Bauer Bergstrom & Winters ("Miles Bauer"), sent a letter Alessi, as the Association's agent, in response to the NOD, which contained the following language:

Based on Section 2(b), a portion of your HOA lien is arguably senior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment dated April 4, 2012. For purposes of calculating the nine-month period, the trigger date is the date the HOA sought to enforce its lien. It is unclear, based upon the information known to date, what amount the nine months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount BANA should be required to rightfully pay to fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA.

10. On June 15, 2012, Alessi, as agent for the Association, sent a letter to Miles Bauer, BANA's counsel, stating that the foreclosure process would continue unless \$2,930.00 was paid. Alessi also sent Miles Bauer a ledger setting forth the unpaid assessments to date.

11. On June 28, 2012, Miles Bauer sent Alessi a check for \$720.00, representing 9 months' worth of delinquent assessments, and a letter containing the following language:

Our client has authorized us to make payment to you in the amount of \$720.00 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Alessi & Koenig, LLC in the sum of \$720.00, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein

1 and express agreement that BANA's financial obligations towards the HOA in regards to
2 the real property located at 3617 Diamond Spur Avenue have now been "paid in full".

3 12. On or around July 16, 2012, Alessi rejected and returned the check for \$720.00 to
4 Miles Bauer.

5 13. After its check was rejected on or around July 16, 2012, BANA did nothing
6 further to protect its interest in the Property.

7 14. On January 22, 2013, Alessi, on behalf of the Association, recorded a Notice of
8 Trustee's Sale in the Official Records of the Clark County Recorder as Instrument No.
9 201301220003107 ("NOS"). Pursuant to the NOS, the Property was to be sold on February 20,
10 2013 at 2:00 p.m. at 9500 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147 (Alessi &
11 Koenig, LLC Office Building, 2nd Floor).

12 15. Alessi, on behalf of the Association, mailed the NOS to BANA.

13 16. On February 20, 2013, SFR was the highest bidder at the Association's public
14 non-judicial foreclosure auction and purchased the Property for \$21,000.00 ("Association
15 Foreclosure Sale").

16 17. On February 26, 2013, a Trustee's Deed Upon Sale was recorded in the Official
17 Records of the Clark County Recorder as Instrument No. 201302260003889 ("Foreclosure
18 Deed"). The Foreclosure Deed contains the following recitals:

19 This conveyance is made pursuant to the powers conferred upon Trustee by NRS
20 116 et seq., and that certain Notice of Delinquent Assessment Lien, described
21 herein. Default occurred as set forth in a Notice of Default and Election to Sell
22 which was recorded in the office of the recorder of said county. All requirements
23 of law regarding the mailing of copies of notices and the posting and publication
24 of the Notice of Sale have been complied with. Said property was sold by said
25 Trustee at public auction on February 20, 2013 at the place indicated on the
26 Notice of Trustee's Sale.

27 18. No release of the super-priority lien or lis pendens was recorded by BANA
28 against the Property prior to the Association Foreclosure Sale.

19. As such, SFR was not aware of BANA's attempt to pay a portion of the
Association's lien prior to the Association Foreclosure Sale.

20. Neither SFR nor its manager, Christopher Hardin, has any relationship or interest in the Association other than owning property within the community.

21. Neither SFR nor its manager, Christopher Hardin, has any relationship or interest in Alessi outside its attendance at auctions, bidding, and occasionally purchasing properties at publicly-held auctions conducted by Alessi.

22. On September 18, 2014, the Nevada Supreme Court issued its opinion in SFR Investments Pool 1 v. U.S. Bank, concluding that NRS 116.3116(2) gives associations a true super-priority lien, the non-judicial foreclosure of which extinguishes a first deed of trust. SFR Investments Pool 1 v. U.S. Bank, 130 Nev. Adv. Op. 75, 334 P.3d 408, 419 (2014), reh'g denied (Oct. 16, 2014).

23. On January 28, 2016, the Nevada Supreme Court issued its opinion in Shadow Wood HOA v. N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5 (2016) (herein after "Shadow Wood").

24. BANA argued that the noticing provisions of NRS 116.3116 et seq. for non-judicial foreclosure are facially unconstitutional as they do not require notice to the holder of a first deed of trust. Further, BANA also argued that the loan that underlies the first deed of trust is FHA insured and, therefore, HUD has an interest in the deed of trust. Therefore, BANA argued that federal law preempts state law and precludes extinguishment of the insured first deed of trust.

25. SFR argued that the statutes are constitutional both as applied and facially, requiring notice to recorded first security lienholders through the incorporation of NRS 107.090 through NRS 116.31168. SFR also argued that BANA lacks standing to assert the Supremacy Clause as it is not HUD or the FHA and that preemption does not apply because the federal and state policies are not in conflict.

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CONCLUSIONS OF LAW³

1
2 1. Summary judgment is appropriate where there is no remaining question of
3 material fact such that the moving party is entitled to judgment as a matter of law. Wood v.
4 Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

5 2. NRS 116 is facially constitutional.

6 3. NRS 116 is not preempted by federal law.

7 4. The Association Foreclosure Sale was conducted pursuant to the Association's
8 lien, which contained super-priority amounts.

9 5. Pursuant to Shadow Wood, the recitals set forth in the Foreclosure Deed that
10 notices were properly provided is conclusive proof of the same. Alternatively, SFR has
11 provided evidence that the Association Foreclosure Sale was properly noticed in this case.

12 6. In considering the price paid for the Property, one must also consider the market
13 at the time, including but not limited to, the increased expenses purchasers at NRS 116
14 foreclosure sales faced after buying properties at these sales.

15 7. A sale pursuant to NRS 116 cannot be commercially unreasonable as a matter of
16 law based on price alone.

17 8. NRS 116 has no requirement that sales be commercially reasonable. As such,
18 purchasers at NRS 116 foreclosure sales have no burden to prove the commercial
19 reasonableness of any such sale.

20 9. A commercial reasonableness analysis would only come into play if there was
21 evidence that the sale was not properly noticed, that the bidding at the public auction was in
22 some way chilled, or if there was evidence of fraud, collusion, or some other impropriety in the
23 sale process. In those situations, commercial reasonableness may come into play under
24 the Shadow Wood balancing of the equities test.

25 ///

26 ///

27

28 ³ Any conclusion of law that should be a finding of fact is deemed a finding of fact.

1 10. As BANA's payment of \$720.00 was conditional, requiring the Association to
2 waive its rights as to a currently undecided matter—namely, what amounts are included in a
3 super-priority lien pursuant to NRS 116—this payment attempt did not constitute a sufficient
4 tender to protect BANA's interest in the Property.

5 11. Pursuant to Shadow Wood, equity does not favor granting BANA relief in this
6 case.

- 7 a. BANA was in a better position than SFR, a mere purchaser at a public sale,
8 and could have done more to protect its interest in the Property.
- 9 b. After it submitted its payment to the Association, BANA should have done
10 something to put potential purchasers, such as SFR, on notice of its attempted
11 payment and corresponding belief that the super-priority lien was
12 extinguished prior to the Association Foreclosure Sale.
- 13 c. SFR is a bona fide purchaser ("BFP").
- 14 d. The fact that SFR had record notice of the First Deed of Trust does not defeat
15 its BFP status, particularly when there is no evidence to suggest SFR had
16 actual knowledge of BANA's attempt to pay a portion of the Association's
17 lien prior to Association Foreclosure Sale.
- 18 e. Additionally, as SFR purchased the Property for value, low price alone is not
19 enough to deprive it of its status as a BFP.

20 12. As BANA has provided no admissible evidence of fraud, collusion, or other
21 impropriety with the Association's non-judicial foreclosure process, it cannot show that
22 there is a question of material fact remaining for trial.

23 Good cause appearing therefore,

24 ORDER

25 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the BANA MSJ is
26 DENIED.

27 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the SFR MSJ is
28 GRANTED.

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LAS VEGAS, NEVADA 89139
(702) 485-3300 FAX (702) 485-3301

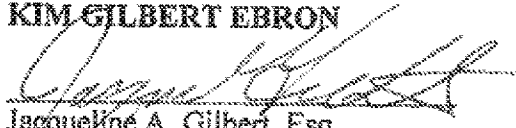
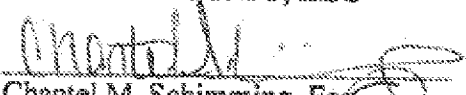
1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Alessi and the
2 Association's Joinder to the SFR MSJ is GRANTED.

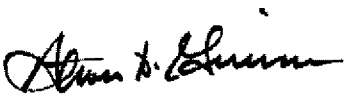
3 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that title to real property
4 located at 3617 Diamond Spur Avenue, North Las Vegas, Nevada 89032; Parcel No. 139-08-410-
5 014 is quieted in favor of SFR Investments Pool 1, LLC.

6 IT IS SO ORDERED.

7 Dated this 31st day of March, 2016.

8 
9 DISTRICT COURT JUDGE 

12 Respectfully Submitted By: KIM GILBERT EBRON 13  14 Jacqueline A. Gilbert, Esq. 15 Nevada Bar No. 10593 16 7625 Dean Martin Drive, Suite 110 17 Las Vegas, Nevada 89139 18 Attorney for SFR Investments Pool 1, LLC	Approved as to Form and Content: AKERMAN LLP Ariel E. Stern, Esq. Nevada Bar No. 8276 1160 Town Center Drive, Suite 330 Las Vegas, Nevada 89144 Attorney for Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP
19 Approved as to Form and Content: ALESSI & KOENIG, LLC 20  21 Chantel M. Schimming, Esq. 22 Nevada Bar No. 8886 23 9500 W. Flamingo Road, Suite 205 24 Las Vegas, Nevada 89147 Attorney for Alessi & Koenig, LLC and Sutter Creek Homeowners Association	


CLERK OF THE COURT

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Attorneys for SFR Investment Pool 1, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

ALESSI & KOENIG, LLC, a Nevada limited
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Plaintiff,

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ARMANDO A. CARIAS, an individual;
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BY MERGER TO BAC HOME LOANS
SERVICING, LP FKA COUNTRYWIDE
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entity, DOES INDIVIDUALS I-X, inclusive,
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inclusive,

Defendants.

AND RELATED CLAIMS.

Case No. A-13-684501-C

Dept. No. XXI

**NOTICE OF ENTRY OF ORDER
DENYING BANK OF AMERICA, N.A.'S
MOTION FOR SUMMARY JUDGMENT
AND GRANTING SFR INVESTMENTS
POOL 1, LLC'S MOTION FOR
SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that on April 18, 2016 this Court entered an **Order Denying
Bank of America, N.A.'s Motion for Summary Judgment and Granting SFR Investments**

///

Pool 1, LLC's Motion for Summary Judgment. A copy of said Order is attached hereto.

DATED this 27th day of April, 2016.

KIM GILBERT EBRON

/s/ Diana Cline Ebron

DIANA CLINE EBRON, ESQ.

Nevada Bar No. 10580

7625 Dean Martin Drive, Suite 110

Las Vegas, Nevada 89139

Attorney for SFR Investments Pool 1, LLC.

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April, 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **NOTICE OF ENTRY OF ORDER DENYING BANK OF AMERICA, N.A.'S MOTION FOR SUMMARY JUDGMENT AND GRANTING SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT** to the following parties:

Akerman LLP

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Akerman Las Vegas Office

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Steven G. Shevorski, Esq.

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/s/ Tomas Valerio

An Employee of Kim Gilbert Ebron

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Attorneys for SFR Investments Pool 1, LLC

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Our client has authorized us to make payment to you in the amount of \$720.00 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Alessi & Koenig, LLC in the sum of \$720.00, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein

1 and express agreement that BANA's financial obligations towards the HOA in regards to
2 the real property located at 3617 Diamond Spur Avenue have now been "paid in full".

3 12. On or around July 16, 2012, Alessi rejected and returned the check for \$720.00 to
4 Miles Bauer.

5 13. After its check was rejected on or around July 16, 2012, BANA did nothing
6 further to protect its interest in the Property.

7 14. On January 22, 2013, Alessi, on behalf of the Association, recorded a Notice of
8 Trustee's Sale in the Official Records of the Clark County Recorder as Instrument No.
9 201301220003107 ("NOS"). Pursuant to the NOS, the Property was to be sold on February 20,
10 2013 at 2:00 p.m. at 9500 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147 (Alessi &
11 Koenig, LLC Office Building, 2nd Floor).

12 15. Alessi, on behalf of the Association, mailed the NOS to BANA.

13 16. On February 20, 2013, SFR was the highest bidder at the Association's public
14 non-judicial foreclosure auction and purchased the Property for \$21,000.00 ("Association
15 Foreclosure Sale").

16 17. On February 26, 2013, a Trustee's Deed Upon Sale was recorded in the Official
17 Records of the Clark County Recorder as Instrument No. 201302260003889 ("Foreclosure
18 Deed"). The Foreclosure Deed contains the following recitals:

19 This conveyance is made pursuant to the powers conferred upon Trustee by NRS
20 116 et seq., and that certain Notice of Delinquent Assessment Lien, described
21 herein. Default occurred as set forth in a Notice of Default and Election to Sell
22 which was recorded in the office of the recorder of said county. All requirements
23 of law regarding the mailing of copies of notices and the posting and publication
24 of the Notice of Sale have been complied with. Said property was sold by said
25 Trustee at public auction on February 20, 2013 at the place indicated on the
26 Notice of Trustee's Sale.

27 18. No release of the super-priority lien or lis pendens was recorded by BANA
28 against the Property prior to the Association Foreclosure Sale.

19. As such, SFR was not aware of BANA's attempt to pay a portion of the
Association's lien prior to the Association Foreclosure Sale.

20. Neither SFR nor its manager, Christopher Hardin, has any relationship or interest in the Association other than owning property within the community.

21. Neither SFR nor its manager, Christopher Hardin, has any relationship or interest in Alessi outside its attendance at auctions, bidding, and occasionally purchasing properties at publicly-held auctions conducted by Alessi.

22. On September 18, 2014, the Nevada Supreme Court issued its opinion in SFR Investments Pool 1 v. U.S. Bank, concluding that NRS 116.3116(2) gives associations a true super-priority lien, the non-judicial foreclosure of which extinguishes a first deed of trust. SFR Investments Pool 1 v. U.S. Bank, 130 Nev. Adv. Op. 75, 334 P.3d 408, 419 (2014), reh'g denied (Oct. 16, 2014).

23. On January 28, 2016, the Nevada Supreme Court issued its opinion in Shadow Wood HOA v. N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5 (2016) (herein after "Shadow Wood").

24. BANA argued that the noticing provisions of NRS 116.3116 et seq. for non-judicial foreclosure are facially unconstitutional as they do not require notice to the holder of a first deed of trust. Further, BANA also argued that the loan that underlies the first deed of trust is FHA insured and, therefore, HUD has an interest in the deed of trust. Therefore, BANA argued that federal law preempts state law and precludes extinguishment of the insured first deed of trust.

25. SFR argued that the statutes are constitutional both as applied and facially, requiring notice to recorded first security lienholders through the incorporation of NRS 107.090 through NRS 116.31168. SFR also argued that BANA lacks standing to assert the Supremacy Clause as it is not HUD or the FHA and that preemption does not apply because the federal and state policies are not in conflict.

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CONCLUSIONS OF LAW³

1
2 1. Summary judgment is appropriate where there is no remaining question of
3 material fact such that the moving party is entitled to judgment as a matter of law. Wood v.
4 Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

5 2. NRS 116 is facially constitutional.

6 3. NRS 116 is not preempted by federal law.

7 4. The Association Foreclosure Sale was conducted pursuant to the Association's
8 lien, which contained super-priority amounts.

9 5. Pursuant to Shadow Wood, the recitals set forth in the Foreclosure Deed that
10 notices were properly provided is conclusive proof of the same. Alternatively, SFR has
11 provided evidence that the Association Foreclosure Sale was properly noticed in this case.

12 6. In considering the price paid for the Property, one must also consider the market
13 at the time, including but not limited to, the increased expenses purchasers at NRS 116
14 foreclosure sales faced after buying properties at these sales.

15 7. A sale pursuant to NRS 116 cannot be commercially unreasonable as a matter of
16 law based on price alone.

17 8. NRS 116 has no requirement that sales be commercially reasonable. As such,
18 purchasers at NRS 116 foreclosure sales have no burden to prove the commercial
19 reasonableness of any such sale.

20 9. A commercial reasonableness analysis would only come into play if there was
21 evidence that the sale was not properly noticed, that the bidding at the public auction was in
22 some way chilled, or if there was evidence of fraud, collusion, or some other impropriety in the
23 sale process. In those situations, commercial reasonableness may come into play under
24 the Shadow Wood balancing of the equities test.

25 ///

26 ///

27
28 ³ Any conclusion of law that should be a finding of fact is deemed a finding of fact.

1 10. As BANA's payment of \$720.00 was conditional, requiring the Association to
2 waive its rights as to a currently undecided matter—namely, what amounts are included in a
3 super-priority lien pursuant to NRS 116—this payment attempt did not constitute a sufficient
4 tender to protect BANA's interest in the Property.

5 11. Pursuant to Shadow Wood, equity does not favor granting BANA relief in this
6 case.

- 7 a. BANA was in a better position than SFR, a mere purchaser at a public sale,
8 and could have done more to protect its interest in the Property.
- 9 b. After it submitted its payment to the Association, BANA should have done
10 something to put potential purchasers, such as SFR, on notice of its attempted
11 payment and corresponding belief that the super-priority lien was
12 extinguished prior to the Association Foreclosure Sale.
- 13 c. SFR is a bona fide purchaser ("BFP").
- 14 d. The fact that SFR had record notice of the First Deed of Trust does not defeat
15 its BFP status, particularly when there is no evidence to suggest SFR had
16 actual knowledge of BANA's attempt to pay a portion of the Association's
17 lien prior to Association Foreclosure Sale.
- 18 e. Additionally, as SFR purchased the Property for value, low price alone is not
19 enough to deprive it of its status as a BFP.

20 12. As BANA has provided no admissible evidence of fraud, collusion, or other
21 impropriety with the Association's non-judicial foreclosure process, it cannot show that
22 there is a question of material fact remaining for trial.

23 Good cause appearing therefore,

24 ORDER

25 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the BANA MSJ is
26 DENIED.

27 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the SFR MSJ is
28 GRANTED.

KIM GILBERT EBRON
7625 DEAN MARTIN DRIVE, SUITE 110
LAS VEGAS, NEVADA 89139
(702) 485-3300 FAX (702) 485-3301

1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Alessi and the
2 Association's Joinder to the SFR MSJ is GRANTED.


3 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that title to real property
4 located at 3617 Diamond Spur Avenue, North Las Vegas, Nevada 89032; Parcel No. 139-08-410-
5 014 is quieted in favor of SFR Investments Pool 1, LLC.

6 IT IS SO ORDERED.

7 Dated this 31st day of March, 2016.

8 
9 DISTRICT COURT JUDGE 

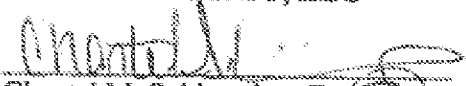
12 Respectfully Submitted By:
13 KIM GILBERT EBRON

14 
15 Jacqueline A. Gilbert, Esq.
16 Nevada Bar No. 10593
17 7625 Dean Martin Drive, Suite 110
18 Las Vegas, Nevada 89139
19 Attorney for SFR Investments Pool 1, LLC

Approved as to Form and Content:
AKERMAN LLP

Ariel E. Stern, Esq.
Nevada Bar No. 8276
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
Attorney for Bank of America, N.A.,
Successor by Merger to BAC Home Loans
Servicing, LP FKA Countrywide Home
Loans Servicing, LP

Approved as to Form and Content:
ALESSI & KOENIG, LLC

20 
21 Chantel M. Schimming, Esq.
22 Nevada Bar No. 8886
23 9500 W. Flamingo Road, Suite 205
24 Las Vegas, Nevada 89147
Attorney for Alessi & Koenig, LLC and Sutter
Creek Homeowners Association

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

March 23, 2015

A-13-684501-C Alessi & Koenig LLC , Plaintiff(s)
vs.
Armando Carias , Defendant(s)

March 23, 2015 3:00 AM Motion to Amend

HEARD BY: Adair, Valerie **COURTROOM:**

COURT CLERK: Denise Husted

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT ORDERED, Defendant Bank of America's Motion to Amend Pleadings and Add Parties is GRANTED.

CLERK'S NOTE: A copy of this minute order placed in the attorney folder of:

Darren Bremmer (ACKERMAN LLP)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

May 18, 2015

A-13-684501-C Alessi & Koenig LLC , Plaintiff(s)
vs.
Armando Carias , Defendant(s)

May 18, 2015	3:00 AM	Motion to Interplead	Plaintiff's Motion to Interplead Excess Proceeds, for Attorney's Fees and Costs, and to Dismiss Plaintiff from Case
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HEARD BY: Adair, Valerie

COURTROOM: RJC Courtroom 11C

COURT CLERK: Denise Husted

RECORDER:

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- MATTER TAKEN UNDER ADVISEMENT.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

June 01, 2015

A-13-684501-C Alessi & Koenig LLC , Plaintiff(s)
vs.
Armando Carias , Defendant(s)

**June 01, 2015 3:00 AM Decision Plaintiff's Motion to
Interplead Excess
Funds**

HEARD BY: Adair, Valerie

COURTROOM: RJC Courtroom 11C

COURT CLERK: Denise Husted

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT ORDERED, Plaintiff's Motion to Interplead Excess Funds, etc. is GRANTED IN PART, DENIED IN PART. The Plaintiff is directed to interplead all of the excess funds, less its costs; the remainder of Plaintiff's motion is DENIED WITHOUT PREJUDICE based on Bank of America's counterclaims.

CLERK'S NOTE: A copy of this minute order placed in the attorney folder of:
Steven Loizzi, Jr., Esq. (ALESSI & DOENIG LLC)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

August 11, 2015

A-13-684501-C Alessi & Koenig LLC , Plaintiff(s)
vs.
Armando Carias , Defendant(s)

August 11, 2015 10:30 AM Motion to Coordinate

HEARD BY: Bare, Rob **COURTROOM:** RJC Courtroom 03C

COURT CLERK: Billie Jo Craig

RECORDER: Carrie Hansen

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- THIRD PARTY DEFENDANT SFR INVESTMENTS POOL 1 LLC'S MOTION FOR PRE-TRIAL COORDINATION ON ORDER SHORTENING TIME

Attorneys Edgar Smith, Richard Vilkin, Diana Cline, Karen Hanks present.

Sign-up sheets Left Side Filed in A662394: Robert Anderlik, Taylor Anello, Thomas N. Beckom, Jonathan D. Blum, Darren Brenner, Michael Brooks, Diana Cline, Britannica Collins, Chelsea Crowton, Peter Dunkley, Jessica Friedman, Charles Geisendorf, David Gluth, Karen Hanks, Joshua O. Igeleke, Michael Li, Steven Loizzi Jr., Elizabeth Lowell, Erica D. Loyd, Matthew McAlonis, David J. Merrill, Patrick Orme, Robin Perkins, Benjamin Petiprin (appeared telephonically), Edgar C. Smith, Kevin S. Soderstrom, Ashlie Surer, Abe Vigil, Richard Vilkin, Shawn Walkenshaw, David Winterton.

Upon inquiry of the Court, Ms. Hanks advised the Motion was filed and heard in this Court as this Court had the lowest case number. Colloquy regarding coordinating the HOA cases as to Discovery, Trials, and witness availability. Counsel suggested a more specific Case Management Plan for a Special Discovery Master to deal with these cases as the various District Court Judges thoughts vary. Court noted he talked briefly with Chief Judge David Barker and Chief Civil Judge Betsy Gonzalez. The Court noted Court Administration would be interested in addressing this issue. Court inquired if Ms. Hanks would be the point of contact, and she advised she would. She provided her E-mail

address:

Karen@hkimlaw.com

Statement by Mr. Vilkin regarding having a meeting first to determine what counsel will agree on as to the Case Management Plan.

Statements from Attorney Surur regarding coordination for Discovery procedures and noted her two cases where one was Dismissed and the other was pending a Motion to Dismiss where the Court had no jurisdiction.

Statements from Attorney Brooks, who had multiple cases, regarding setting deadlines for counsel to submit a plan to in-house counsel, which may take 2 to 3 weeks.

Attorney Brenner advised a Case Management Plan would first be needed as there are 10 different banks and in-house counsel. He would then be in a position to respond.

COURT ORDERED, Ms. Hanks to submit a Proposed Case Management Plan to counsel by 8/25/15. Counsel to respond by 9/29/15. Matter SET for Status Check: Proposed Case Management Plan to determine when a Continued Hearing on this Motion to Coordinate to be heard.

9/1/15 10:30 AM STATUS CHECK: PROPOSED CASE MANAGEMENT PLAN
(IN A662394 ONLY)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

February 03, 2016

A-13-684501-C Alessi & Koenig LLC , Plaintiff(s)
vs.
Armando Carias , Defendant(s)

February 03, 2016 9:30 AM All Pending Motions

HEARD BY: Adair, Valerie COURTROOM: RJC Courtroom 11C

COURT CLERK: Nora Pena

RECORDER: Susan Schofield

REPORTER:

PARTIES

PRESENT: Gilbert, Jacqueline Attorney
 Schimming, Chantel Attorney
 Stern, Ariel E. Attorney

JOURNAL ENTRIES

- DEFENDANT BANK OF AMERICA, N.A.'S MOTION FOR SUMMARY JUDGMENT....SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT.....ALESSI & KOENIG, LLC AND SUTTER CREEK HOMEOWNERS ASSOCIATION'S JOINDER TO SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT

Upon Court's inquiry, Mr. Stern advised this is a factual dispute over the nine months and the nine months is correct but there was a math error; hence, it was over paid. Court asked did it include fees and costs. Mr. Stern advised that part is undisputed. Ms. Schimming advised it should be 80.00 through that time period. Argument by Mr. Stern on commercial reasonableness and he addressed the new decision. Colloquy. Mr. Stern read from the opinion. Comments by the Court on fraud and collusion. Mr. Stern stated they need more discovery and summary judgment is appropriate for B of A not SFR because they paid the lien and they paid the nine months and it was not rejected. Court believed there is a suggestion that the Bank should do more. Further argument by Mr. Stern. Colloquy. Mr. Stern stated summary judgment as to SFR is improper. Court asked if he can make a showing of collusion and given the right for discovery. Mr. Stern stated he wants to take discovery as those issues. Court asked what are we going to trial on. Mr. Stern advised if denied then would

request to re-open discovery and allow to flush out issues on the new decision. Opposition by Ms. Gilbert, she believed summary judgment can be granted and SFR can be given summary judgment. She advised the status of liens has changed and they have the right to the money and sell the property. Colloquy regarding the letter from the Bank. Ms. Schimming read the language from the Bank. Further argument by Ms. Gilbert. Argument by Ms. Schimming on her joinder. Comments by the Court and noted the letter speaks for itself. Ms. Schimming advised they accepted payment. Response by Mr. Stern regarding the letter on the law. COURT ORDERED, Matter set for DECISION on chamber calendar on 2/8/16.

CONTINUED TO: 2/8/16 DECISION - Chamber calendar

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

February 17, 2016

A-13-684501-C Alessi & Koenig LLC , Plaintiff(s)
s.
Armando Carias , Defendant(s)

February 17, 2016 3:00 PM Decision

HEARD BY: Adair, Valerie

COURT CLERK: Denise Husted

RECORDER:

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- COURT ORDERED, Defendant BANA s Motion for Summary Judgment is DENIED as the BANA s tender of the superpriority portion of the lien was conditional so as not to extinguish the HOA s superpriority lien; the COURT ALSO REJECTS the Bank s arguments regarding facial unconstitutionality and commercial reasonableness. SFR Investment s Motion for Summary Judgment is GRANTED. The Court finds that SFR is a bona fide purchaser. The fact that SFR was on record notice of BANA s deed of trust, without knowledge of an actual tender, does not defeat its status as a BFP. Counsel for SFR to prepare detailed orders.

CLERK'S NOTE: Copies of this minute order placed in the attorney folders of:

Darren T. Brennen (AKERMAN)
Diana Cline Ebron (KIM GILBERT EBRON)
Steven Loizz (ALESSI & KOENING)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

February 22, 2016

A-13-684501-C Alessi & Koenig LLC , Plaintiff(s)
vs.
Armando Carias , Defendant(s)

February 22, 2016 9:00 AM Calendar Call

HEARD BY: Adair, Valerie **COURTROOM:** RJC Courtroom 11C

COURT CLERK: Denise Husted

RECORDER: Susan Schofield

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- There being no communication with Chambers and no appearances, COURT ORDERED, trial date VACATED and CASE CLOSED.



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

ARIEL E. STERN, ESQ.
1160 TOWN CENTER DR., SUITE 330
LAS VEGAS, NV 89144

DATE: May 26, 2016
CASE: A-13-684501-C

RE CASE: ALESSI & KOENIG, LLC vs. ARMANDO A. CARIAS; BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP

NOTICE OF APPEAL FILED: May 24, 2016

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

BANK OF AMERICA, N.A.'S NOTICE OF APPEAL; BANK OF AMERICA, N.A.'S CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER DENYING BANK OF AMERICA, N.A.'S MOTION FOR SUMMARY JUDGMENT AND GRANTING SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT; NOTICE OF ENTRY OF ORDER DENYING BANK OF AMERICA, N.A.'S MOTION FOR SUMMARY JUDGMENT AND GRANTING SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

ALESSI & KOENIG, LLC,

Plaintiff(s),

vs.

ARMANDO A. CARIAS; BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP,

Defendant(s),

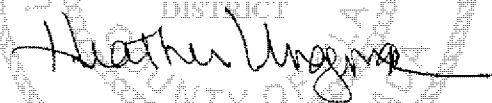
Case No: A-13-684501-C

Dept No: XXI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 26 day of May 2016.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk