

IN THE SUPREME COURT OF THE STATE OF NEVADA

BANK OF AMERICA, N.A.,
SUCCESSOR BY MERGER TO BAC
HOME LOANS SERVICING, LP, fka
COUNTRYWIDE HOME LOANS,
LP, a national association

Appellant,

vs.

SFR INVESTMENTS POOL 1, LLC,

Respondent.

CASE NO. 70501

FILED

OCT 19 2018

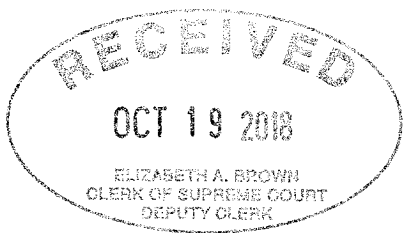
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

APPEAL

From the Eighth Judicial District Court, Department XXI, Clark County
The Honorable Valarie Adair, District Judge
District Court Case No. A-13-684501-C

**MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE, *Pro Se*
ANTHONY S. NOONAN, IN SUPPORT OF RESPONDENT SFR
INVESTMENTS POOL 1, LLC'S PETITION FOR REHEARING**

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Pro Se Interested Party



18-41289

Under well settled principles of equity, if the purchaser at a public foreclosure sale is bona fide, only one of two things should happen to her when there is a defect in the sale. If the defect is so severe that the sale is void, then equity demands that all participants be put back in the position they would be in if the sale had never taken place. For the bona fide purchaser, this means she is entitled to a refund of her money. Biancalana v. TD Service Co., 56 Cal.4th 807 (2016).

If, however, the defect is not severe enough to invalidate the sale, then the bona fide purchaser takes good title. See Shadow Wood Homeowners Ass'n v. N.Y. Cmty. Bancorp. Inc., 366 P.3d 1105, 1107 (Nev. 2016), Swartz v. Adams, 563 P.2d 74 (Nev. 1977).

However, in this decision, in a case of first impression, the Court holds that a single foreclosure sale can be both void and valid. The Court proceeds to hold that the purchaser, even if bona fide, must be denied a return of her funds because the sale is valid, but also must be denied clear title because the same sale is void.¹ In doing so, the Court breaks with centuries of equitable precedent by denying a just

¹ The Court arguably would be more correct to hold the other way around, i.e., that, because the purchaser is the only innocent party, she receives a return of her funds because the sale is void and gets good title to the property because the sale is valid. Petitioner is not arguing for this result, but rather using it to illustrate the depth of unfairness the Court's decision causes to the only innocent party involved in the sale.

result to an acknowledged innocent party. As the Court recently declared in *Shadow Wood*, quiet title is an equitable proceeding, and the Court should use its equitable power to correct an injustice the law would otherwise require. If the law indeed requires the result described above, then this Court should use its equitable power to correct that injustice and the other injustices (described below) that necessarily follow from the Court's decision.

First, the HOA, which the Court determined acted improperly in denying the lender's tender offer, suffers no adverse consequences for its behavior, and in fact is made whole with the innocent purchaser's funds. Second, the lender, which the Court admonished in *Shadow Wood* for failing to use the remedies available to it to prevent the sale from proceeding, and/or warning innocent parties to be wary, is also made whole by retaining its lien. Finally, the former homeowner **with negative equity in the property at the time of sale** gets the excess proceeds from the innocent purchaser's funds as an unmerited windfall.² The only one to suffer is the party who is innocent. Each of these results are anathema to long standing principles of equity.

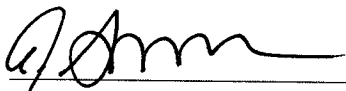
A Court sitting in equity should do all it can to prevent unjust enrichment of the type described above, yet this Court's interpretation of NRS 116 creates the very

² Alternatively, a subordinate lienholder, also with substantial negative equity, will reap the unmerited windfall. See NRS 116.31164.

circumstances that allow for these unjust results, and then declines to use its equitable power to correct it. The Court should reconsider its decision and use its equitable authority, as it did in *Shadow Wood* when it denied purchasers the blanket protections mandated by NRS 116.31166, to this time shield the bona fide purchaser from an obviously unfair result under a related statute. The Court should refuse to do so only if it truly believes it is equitable for non-innocent parties, as well as subordinate lienholders and former homeowners who clearly should not be entitled to excess proceeds from the many HOA sales that occurred at this time, to benefit at the expense of innocent purchasers.

Respectfully submitted,

DATED this 15th day of October, 2018.



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