

CLERK OF THE COURT

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Sep 22 2016 02:36 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

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DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company,

Plaintiff,

vs.

FIRST HORIZON HOME LOANS, A
DIVISION OF FIRST TENNESSEE BANK,
A NATIONAL ASSOCIATION; ANA
TORRES, an individual; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No. A-13-679329-C

Dept. No. XXVI

NOTICE OF APPEAL

PLEASE TAKE NOTICE that SFR Investments Pool 1, LLC, by and through its counsel of record, Kim Gilbert Ebron, hereby appeals from the following orders and judgments of the district court:

1. Order Granting First Horizon Home Loan's Motion for Summary Judgment and Denying SFR Investments Pool 1, LLC's Motion for Summary Judgment, entered on August 17, 2016, notice of entry of which was served on August 17, 2016; and

...

...

...

2. Any and all orders made appealable thereby.


DATED this 16th day of September, 2016.

KIM GILBERT EBRON

/s/ Jacqueline A. Gilbert
DIANA CLINE EBRON, ESQ.
Nevada Bar No. 10580
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
KAREN L. HANKS, ESQ.
Nevada Bar No. 9578
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
Attorneys for SFR Investments Pool 1, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of September 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **NOTICE OF APPEAL**, to the following parties:

<u>Select All</u> <u>Select None</u>			
Akerman LLP			
Name	Email		Select
Akerman Las Vegas Office	akermanlas@akerman.com		<input checked="" type="checkbox"/>
Melanie D. Morgan, Esq.	melanie.morgan@akerman.com		<input checked="" type="checkbox"/>
Alessi & Koenig			
Name	Email		Select
A&K eserve	eserve@alessikoenig.com		<input checked="" type="checkbox"/>
Ballard Spahr			
Name	Email		Select
Abran Vigil	vigila@ballardspahr.com		<input checked="" type="checkbox"/>
Sylvia Semper	sempers@ballardspahr.com		<input checked="" type="checkbox"/>
Ballard Spahr LLP			
Name	Email		Select
Las Vegas Docketing	lvdoCKET@ballardspahr.com		<input checked="" type="checkbox"/>

/s/Jacqueline A. Gilbert
An employee of Kim Gilbert Ebron


CLERK OF THE COURT

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Attorneys for SFR Investments Pool 1, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company,

Case No. A-13-679329-C

Plaintiff,

Dept. No. XXVI

vs.

CASE APPEAL STATEMENT

FIRST HORIZON HOME LOANS, A
DIVISION OF FIRST TENNESSEE BANK,
A NATIONAL ASSOCIATION; ANA
TORRES, an individual; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement: Plaintiff SFR Investments Pool 1, LLC (SFR).

2. Identify the judge issuing the decision, judgment, or order appealed from:
The Honorable Gloria Sturman

3. Identify each appellant and the name and address of counsel for each appellant:

Appellant: SFR Investments Pool 1, LLC
Counsel: Jacqueline A. Gilbert, Esq.
Diana Cline Ebron, Esq.
Zachary Clayton, Esq.

KIM GILBERT EBRON
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

Respondent: First Horizon Home Loans, a Division of First Tennessee Bank, a National Association

Trial Counsel: Melanie D. Morgan, Esq.
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, Nevada, 89144

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

N/A

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Retained

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

N/A

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed):

April 2, 2013

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

This is one of many appeals arising from a homeowners association's ("Association") non-judicial foreclosure sale pursuant to NRS 116. Here, both First Horizon (the "Bank") and

1 Association were proceeding with non-judicial foreclosure sales. The Bank foreclosed first, with
2 the Property reverting to the Bank. However, the bank did not record its foreclosure deed, nor did
3 it pay the Association the super-priority portion of the Association's lien that remained after the
4 Bank sale prior to the Association holding its foreclosure sale, at which SFR purchased the
5 Property. SFR filed the instant lawsuit seeking quiet title/declaratory relief, for unjust enrichment,
6 and to obtain permanent injunctive relief against the Bank. The Association and Alessi & Koenig
7 intervened, and joined SFR's motion.

8 The parties filed cross-motions for summary judgment. Following full briefing and a
9 hearing, the district court granted the Bank's motion and denied SFR's and the joinders thereto,
10 concluding that after title transferred to the Bank, the Association had to begin the foreclosure
11 process anew on the super-priority portion of the lien. The resulting order voided the Association's
12 sale, which the district court stayed pending appeal.

13
14 **11. Indicate whether the case has previously been the subject of an appeal to or original**
15 **writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket**
16 **number of the prior proceeding:**

17 N/A.

18 **12. Indicate whether this appeal involves child custody or visitation:**

19 N/A.

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...


28 ...

7625 DEAN MARTIN DRIVE, SUITE 110
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(702) 485-3300 FAX (702) 485-3301

/s/ Jacqueline A. Gilbert
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KAREN L. HANKS, ESQ.
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7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
Attorneys for SFR Investments Pool 1, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of September 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **CASE APPEAL STATEMENT**, to the following parties:

<u>Select All</u> <u>Select None</u>			
Akerman LLP			
Name	Email		Select
Akerman Las Vegas Office	akermanlas@akerman.com		<input checked="" type="checkbox"/>
Melanie D. Morgan, Esq.	melanie.morgan@akerman.com		<input checked="" type="checkbox"/>
Alessi & Koenig			
Name	Email		Select
A&K eserve	eserve@alessikoenig.com		<input checked="" type="checkbox"/>
Ballard Spahr			
Name	Email		Select
Abran Vigil	vigila@ballardspahr.com		<input checked="" type="checkbox"/>
Sylvia Semper	sempers@ballardspahr.com		<input checked="" type="checkbox"/>
Ballard Spahr LLP			
Name	Email		Select
Las Vegas Docketing	lvdoCKET@ballardspahr.com		<input checked="" type="checkbox"/>

/s/Jacqueline A. Gilbert
An employee of Kim Gilbert Ebron

DEPARTMENT 26
CASE SUMMARY
CASE NO. A-13-679329-C

SFR Investments Pool 1, LLC, Plaintiff(s)
vs.
First Horizon Home Loans, Defendant(s)

§
§
§
§
§

Location: **Department 26**
Judicial Officer: **Sturman, Gloria**
Filed on: **04/02/2013**
Cross-Reference Case Number: **A679329**

CASE INFORMATION

Case Type: **Title to Property**
Subtype: **Quiet Title**
Case Flags: **Appealed to Supreme Court**
Automatically Exempt from Arbitration

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	A-13-679329-C
Court	Department 26
Date Assigned	04/02/2013
Judicial Officer	Sturman, Gloria




PARTY INFORMATION

Plaintiff	SFR Investments Pool 1, LLC	<i>Lead Attorneys</i> Kim, Howard C. <i>Retained</i> 702-485-3300(W)
Defendant	First Horizon Home Loans	Morgan, Melanie D. <i>Retained</i> 702-362-6666(W)
	Torres, Ana	
Intervenor	Alessi & Koenig LLC	Lam, Huong <i>Retained</i> 702-222-4033(W)
	Squire Village at Silver Springs Community Association	Lam, Huong <i>Retained</i> 702-222-4033(W)
















DATE

EVENTS & ORDERS OF THE COURT













INDEX

04/02/2013	 Notice of Lis Pendens Filed by: Plaintiff SFR Investments Pool 1, LLC <i>Notice of Lis Pendens</i>	
04/02/2013	 Complaint Filed By: Plaintiff SFR Investments Pool 1, LLC <i>Complaint</i>	
04/02/2013	Case Opened	
04/05/2013	 Summons Filed by: Plaintiff SFR Investments Pool 1, LLC <i>Summons - First Horizon Home Loans, a Division of First Tennessee Bank</i>	

DEPARTMENT 26
CASE SUMMARY
CASE NO. A-13-679329-C














04/05/2013	 Summons Issued <i>Summons</i>
04/22/2013	 Affidavit of Service Filed By: Plaintiff SFR Investments Pool 1, LLC <i>Affidavit of Service</i>
05/13/2013	 Answer Filed By: Defendant First Horizon Home Loans <i>First Horizon Home Loans' Answer to Plaintiff's Complaint</i>
06/14/2013	 Affidavit of Service Filed By: Plaintiff SFR Investments Pool 1, LLC <i>Affidavit of Service - Ana Torres</i>
07/16/2013	 Application for Entry of Default Filed By: Plaintiff SFR Investments Pool 1, LLC <i>Application for Entry of Default against Ana Torres</i>
08/26/2013	 Joint Case Conference Report Filed By: Plaintiff SFR Investments Pool 1, LLC <i>Joint Case Conference Report</i>
08/27/2013	 Amended Joint Case Conference Report Filed By: Plaintiff SFR Investments Pool 1, LLC <i>Amended Joint Case Conference Report</i>
09/09/2013	 Scheduling Order <i>Scheduling Order</i>
09/11/2013	 Order Setting Civil Bench Trial <i>Order Setting Civil Bench Trial</i>
09/19/2013	 Notice of Change of Address Filed By: Plaintiff SFR Investments Pool 1, LLC <i>Notice of Change of Address and Notice of Change of Attorney</i>
10/04/2013	 Certificate of Service Filed by: Plaintiff SFR Investments Pool 1, LLC <i>Certificate of Service</i>
04/07/2014	 Amended Order <i>Amended Order Setting Bench Trial</i>
04/30/2014	 Default Filed By: Plaintiff SFR Investments Pool 1, LLC <i>Default Against Ana Torres</i>
05/19/2014	 Motion to Intervene Party: Intervenor Alessi & Koenig LLC <i>Motion to Intervene</i>
05/19/2014	 Certificate of Service

DEPARTMENT 26
CASE SUMMARY
CASE NO. A-13-679329-C












	Filed by: Intervenor Alessi & Koenig LLC <i>Certificate of Service</i>
05/22/2014	 Affidavit of Service Filed By: Plaintiff SFR Investments Pool 1, LLC <i>Affidavit of Service</i>
06/09/2014	 Notice of Withdrawal Filed By: Intervenor Alessi & Koenig LLC <i>Notice of Withdrawal of Motion to Intervene</i>
06/19/2014	 Motion to Intervene (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Alessi & Koenig's, LLC, Motion to Intervene</i>
06/24/2014	 Reporters Transcript <i>Recorder's Transcript of Proceedings: Motion to Intervene Thursday, June 19, 2014</i>
07/08/2014	 Stipulation and Order Filed by: Defendant First Horizon Home Loans <i>Stipulation and Order to Stay Litigation</i>
07/09/2014	 Notice of Entry of Stipulation and Order Filed By: Defendant First Horizon Home Loans <i>Notice of Entry of Stipulation and Order to Stay Litigation</i>
08/14/2014	CANCELED Calendar Call (11:00 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated - per Stipulation and Order</i>
08/21/2014	CANCELED Pre Trial Conference (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated - Moot</i>
09/15/2014	CANCELED Bench Trial (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated - per Stipulation and Order</i>
11/04/2014	 Status Check (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Status Check: Stay</i>
11/20/2014	 Supplemental Case Conference Report <i>First Supplemental Case Conference Report</i>
12/08/2014	 Recorders Transcript of Hearing Party: Plaintiff SFR Investments Pool 1, LLC <i>Recorder's Transcript of Proceeding: Status Check Tuesday, November 4, 2014</i>
02/24/2015	 Stipulation and Order Filed by: Plaintiff SFR Investments Pool 1, LLC <i>Stipulation and Order to Extend Discovery Deadlines and Re-Set Trial Date</i>
02/26/2015	 Notice of Entry of Stipulation and Order Filed By: Plaintiff SFR Investments Pool 1, LLC <i>Notice of Entry of Stipulation and Order</i>
02/27/2015	 Transcript of Proceedings <i>Transcript of Proceedings At Request of Court Re: Supreme Court Order Tuesday, December</i>

DEPARTMENT 26
CASE SUMMARY
CASE NO. A-13-679329-C

9, 2014

03/06/2015	 Order Setting Civil Bench Trial <i>Order Setting Bench Trial</i>
05/28/2015	 Notice of Association of Counsel Filed By: Defendant First Horizon Home Loans <i>Notice of Association of Counsel</i>
06/11/2015	 Substitution of Attorney Filed by: Defendant First Horizon Home Loans <i>Substitution of Counsel on behalf of First Horizon Home Loans</i>
07/27/2015	 Motion Filed By: Plaintiff SFR Investments Pool 1, LLC <i>Motion for Pre-Trial Coordination on Order Shortening Time</i>
08/07/2015	 Opposition to Motion Filed By: Defendant First Horizon Home Loans <i>Defendant's Response in Opposition to Plaintiff 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>Plaintiff's Motion for Pre-Trial Coordination on Order Shortening Time</i>
08/26/2015	 Document Filed Filed by: Plaintiff SFR Investments Pool 1, LLC <i>Proposed Case Management Order</i>
10/01/2015	 Joinder to Opposition to Motion Filed by: Defendant First Horizon Home Loans <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>
12/16/2015	 Notice of Change of Address Filed By: Plaintiff SFR Investments Pool 1, LLC <i>Notice of Change of Address and Notice of Change of Firm Name</i>
12/16/2015	 Notice of Change of Address Filed By: Plaintiff SFR Investments Pool 1, LLC <i>Notice of Change of Address and Notice of Change of Firm Name</i>
12/24/2015	 Stipulation and Order Filed by: Defendant First Horizon Home Loans <i>Stipulation and Order To Extend Discovery Deadlines (Second Request)</i>
12/29/2015	 Notice of Entry of Stipulation and Order Filed By: Defendant First Horizon Home Loans <i>Notice of Entry of Stipulation and Order</i>
01/22/2016	 Notice of Entry of Stipulation and Order Filed By: Defendant First Horizon Home Loans <i>Notice Of Entry Of Stipulation And Order To Extend Discovery Deadlines (Third Request)</i>

DEPARTMENT 26
CASE SUMMARY
CASE NO. A-13-679329-C

01/22/2016	 Stipulation and Order Filed by: Defendant First Horizon Home Loans <i>Stipulation And Order To Extend Discovery Deadlines (Third Request)</i>
01/27/2016	 Order Setting Civil Bench Trial <i>3rd Order Setting Bench Trial</i>
02/25/2016	CANCELED Calendar Call (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated - per Stipulation and Order</i>
03/02/2016	 Motion for Summary Judgment Filed By: Defendant First Horizon Home Loans <i>First Horizon Home Loan's Motion For Summary Judgment</i>
03/02/2016	 Motion for Summary Judgment Filed By: Plaintiff SFR Investments Pool 1, LLC <i>SFR Investments Pool 1, LLC's Motion for Summary Judgment</i>
03/03/2016	 Notice of Hearing Filed By: Plaintiff SFR Investments Pool 1, LLC <i>Notice of Hearing on SFR's Investments Pool 1, LLC's Motion for Summary Judgment</i>
03/21/2016	 Opposition to Motion For Summary Judgment Filed By: Plaintiff SFR Investments Pool 1, LLC <i>SFR Investments Pool 1, LLC's Opposition to First Horizon Home Loans' Motion for Summary Judgment</i>
03/21/2016	 Opposition to Motion Filed By: Defendant First Horizon Home Loans <i>First Horizon Home Loan's Opposition to SFR Investment Pool 1 LLC 's Motion for Summary Judgment</i>
03/21/2016	CANCELED Bench Trial (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated - per Stipulation and Order</i>
03/29/2016	 Reply Filed by: Plaintiff SFR Investments Pool 1, LLC <i>SFR Investments Pool 1, LLC's Reply in Support of Motion for Summary Judgment</i>
04/05/2016	Motion for Summary Judgment (9:30 AM) (Judicial Officer: Sturman, Gloria) <i>First Horizon Home Loan's Motion For Summary Judgment</i>
04/05/2016	Motion for Summary Judgment (9:30 AM) (Judicial Officer: Sturman, Gloria) <i>SFR's Investments Pool 1, LLC's Motion for Summary Judgment</i>
04/05/2016	 All Pending Motions (9:30 AM) (Judicial Officer: Sturman, Gloria)
06/21/2016	 Recorders Transcript of Hearing <i>Transcript of Proceedings First Horizon Home Loan's Motion for Summary Judgment; SFR's Investments Pool 1, LLC's Motion for Summary Judgment Tuesday, April 5, 2016</i>
07/07/2016	 Notice <i>Notice of Status Check</i>
07/14/2016	CANCELED Calendar Call (9:00 AM) (Judicial Officer: Israel, Ronald J.)

DEPARTMENT 26
CASE SUMMARY
CASE NO. A-13-679329-C

Vacated - per Judge

07/19/2016



Memorandum

Filed By: Intervenor Alessi & Koenig LLC

Memorandum of Points and Authorities in Support of Declaration of Non-Monetary Status (NRS 107/SB 239)

08/08/2016

CANCELED Bench Trial (10:00 AM) (Judicial Officer: Sturman, Gloria)

Vacated - per Judge

08/16/2016



Status Check (9:00 AM) (Judicial Officer: Sturman, Gloria)

Status Check

08/17/2016



Order

Filed By: Defendant First Horizon Home Loans

Order Granting First Horizon Home Loan's Motion For Summary Judgment And Denying SFR Investments Pool 1, LLC's Motion For Summary Judgment

08/17/2016

Summary Judgment (Judicial Officer: Sturman, Gloria)

Debtors: SFR Investments Pool 1, LLC (Plaintiff)

Creditors: First Horizon Home Loans (Defendant)

Judgment: 08/17/2016, Docketed: 08/24/2016

08/19/2016



Notice of Entry of Order

Filed By: Defendant First Horizon Home Loans

Notice Of Entry Of Order Granting First Horizon Home Loan's Motion For Summary Judgment And Denying Sfr Investment Pool 1, Llc's Motion For Summary Judgment

09/13/2016



Recorders Transcript of Hearing

Transcript of Proceedings Status Check Tuesday, August 16, 2016

09/16/2016



Notice of Appeal

Filed By: Plaintiff SFR Investments Pool 1, LLC

Notice of Appeal

09/16/2016



Case Appeal Statement

Filed By: Plaintiff SFR Investments Pool 1, LLC

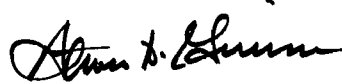
Case Appeal Statement

ORDR

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Attorneys for First Horizon Home Loans

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08/17/2016 05:27:17 PM



CLERK OF THE COURT

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a Nevada
limited liability company,

Plaintiff,

v.

FIRST HORIZON HOME LOANS, A
DIVISION OF FIRST TENNESSEE BANK,
N.A., a national association; ANA TORRES, an
individual; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,
Defendants.

Case No.: A-13-679329-C

Dept. No. XXVI

**ORDER GRANTING FIRST HORIZON
HOME LOAN'S MOTION FOR
SUMMARY JUDGMENT AND DENYING
SFR INVESTMENT POOL 1, LLC'S
MOTION FOR SUMMARY JUDGMENT**

This matter came before the court on First Horizon Home Loans, a Division of First Tennessee Bank, N.A.'s (**First Horizon**) and SFR Investments Pool 1, LLC's (**SFR**) cross motions for summary judgment, and Intervenor's oral joinder to SFR's motion. Following full briefing, the court heard argument of counsel on April 5, 2016. Steven Shevorski, Esq. appeared on behalf of First Horizon, Diana Cline Ebron, Esq. appeared on behalf of SFR, and Steve Loizzi, Esq. appeared on behalf of Intervenor Squire Village at Silver Springs Community Association (**HOA**) and Alessi & Koenig, LLC (**Alessi**). The Court, having considered the full briefing on the motions, the pleadings and papers on file herein, and argument of counsel, makes the following Findings of Facts and Conclusions of Law:¹

¹ Any findings of fact that are more appropriately conclusions of law shall be so deemed. Any conclusions of law that are more appropriately findings of fact shall be so deemed.

FINDINGS OF FACT

1
2 1. Ana Torres borrowed \$136,9213 from First Horizon to acquire the property located at
3 5069 Midnight Oil Drive, Las Vegas, Nevada 89122, APN 161-26-111-017 in 2008. The loan was
4 secured by a deed of trust recorded in the Official Records of the Clark County Recorder on July 25,
5 2008 as Instrument Number 20080725-0003028. Torres defaulted on the loan, and First Horizon
6 recorded a notice of default and election to sale on October 30, 2012.

7 2. On February 1, 2013, the certificate of compliance with Nevada's Foreclosure
8 Mediation Program was recorded. Thereafter, on February 7, 2013, First Horizon recorded a notice
9 of sale setting the date for public auction of the property for February 26, 2013.

10 3. At the February 26, 2013 trustee's sale, First Horizon credit bid for the property and
11 purchased it for \$151,283.09. First Horizon recorded its trustee's deed in the Official Records of the
12 Clark County Recorder on March 7, 2013, as Instrument Number 20130307003168.

13 4. Alessi, the HOA's collection agent, recorded a notice of delinquent (lien) on February
14 22, 2012. Thereafter, Alessi recorded a notice of default and election to sell on April 20, 2012.
15 Alessi did not record a notice of sale until February 5, 2013.

16 5. On March 6, 2013, after First Horizon purchased the property at its foreclosure,
17 Alessi purported to sell the property to SFR for \$7,000. SFR recorded its trustee's deed in the
18 Official Records of the Clark County Recorder on March 18, 2013 as Instrument Number
19 20130318003508.

20 6. At the time of the HOA foreclosure sale, First Horizon owned the property and was
21 not in default on its obligation to pay the HOA's assessments.

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7. Alessi's NRCP 30(b)(6) witness testified as to Alessi's procedures where a lender forecloses and becomes owner prior to a homeowner's association foreclosure:

Q. Okay. If Alessi had known that the lender had foreclosed days before the HOA foreclosure sale, would it have moved forward with the sale?

Ms. Ebron: Calls for speculation, incomplete hypothetical.

Mr. Loizzi: Join. Go Ahead.

A. I would answer the question that in general we would not.

Q. And why not.

A. Because there would have been a new -- well, would have been a trustee's deed recorded by the bank and we would have known of the foreclosure and probably would have sought payment by the bank of the amounts due. We probably would have restarted the collection process if there had been a trustee's deed recorded into the bank's name. That is my recollection of our policy at that time.

(Deposition of David Alessi at 49:9-25 and 50:1).²

8. Section 7.7 of the HOA's CC&Rs required the HOA to give First Horizon, as owner, thirty days' written notice of any amount due and owing. Specifically, section 7.7 provides, in part:

The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed as set forth Section 7.10 below until the Member has been given not less than thirty (30) days written notice prior to such foreclosure that that the Assessment or any installation thereof is or will be due and of the amount owing.

9. The HOA did not provide First Horizon with written notice of the amount of its liability as owner, as required by section 7.7 of the CC&Rs.

10. First Horizon's February 26, 2013 foreclosure extinguished the sub priority piece of the HOA's lien. First Horizon received none of the statutory notices that the former owner, Torres, received.

...

...

² The question that prompted Mr. Alessi to describe Alessi's collection policies where a new owner attains title was not objected to during the deposition.

11. Alessi did not send, and First Horizon as homeowner did not receive, a notice of delinquent assessment. NRS 116.31162(1)(a). Alessi did not send, and First Horizon as homeowner did not receive, a notice of default and election to sell. NRS 116.31162(1)(b). Alessi did not send, and First Horizon as homeowner did not receive, a notice of sale. NRS 116.31165.

CONCLUSIONS OF LAW

1. Summary judgment is proper "when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to judgment as a matter of law.'" *Wood v. Safeway*, (2005) 121 Nev. 724, 729; 121 P.3d 1026, 1029, NRCP 56(c). Materiality is dependent on the underlying substantive law, and includes only those factual disputes that could change the ultimate outcome of a case. *Id.*

2. CC&Rs are restrictive covenants. *Horizons at Seven Hills Homeowners Association v. Ikon Holdings, LLC*, 132 Nev. Adv. Opn. 35, pg. 14 (2016). As such, CC&Rs run with the land and provide a burden and a benefit of rights to the property owner. *Boulder Oaks Cmty. Ass'n v. B & J Andrews*, 169 P.3d 1155, 1160-1161 (Nev. 2007). The burden of this association's CC&Rs is the obligation to pay assessments. The benefit of the CC&Rs is that the HOA must comply with the notice provisions that govern how the HOA enforces its right to collect assessments.

3. In *Shadow Wood Homeowners Assoc., et al. v. New York Comm. Bancorp.*, 132 Nev. Adv. Opn. 5, 11 (2016) the Nevada Supreme Court determined recitals regarding statutory compliance are not irrebuttable conclusions. Specifically, the Court held trial courts retain equitable power to set aside a foreclosure sale equating foreclosures under NRS Chapter 116 to foreclosures under NRS Chapter 107. *Shadow Wood Homeowners Assoc.*, 132 Nev. Adv. Opn. at 14-15. The Court stated, "The conclusive recital provisions in NRS 107.030(8) have never been argued to carry the preemptive effect that [Appellants] attribute to NRS 116.31166." *Id.* at 12-13. Thus, a foreclosure cannot stand where no default occurred despite the recitals in the deed. *Id.* at 11.

4. The HOA violated its own CC&Rs. First Horizon was not in default of any obligation to pay assessments. The HOA's CC&Rs mandate that First Horizon, as homeowner, be given notice of the amount of assessments owed and 30 days' notice in order to pay that amount prior to any foreclosure proceedings.

1 5. The HOA did not serve First Horizon with the notice required by Sec. 7.7 of the
2 CC&Rs and instead proceeded immediately to foreclosure.

3 6. First Horizon's February 26, 2014 foreclosure extinguished its deed of trust causing
4 the super-priority lien to be rendered moot. The HOA's foreclosure could not have extinguished
5 First Horizon's deed of trust because it no longer encumbered the property following First Horizon's
6 foreclosure.

7 7. The Due Process Clause of the U.S. Constitution requires that, "at a minimum, [the]
8 deprivation of life, liberty, or property by adjudication be preceded by notice and an opportunity for
9 hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.*, 339
10 U.S. 306, 314 (1950) An "elementary and fundamental requirement of due process ... is notice
11 reasonably calculated, *under all circumstances*, to apprise interested parties of the pendency of the
12 action and afford them an opportunity to present their objections." *Tulsa Prof'l Collection Services,*
13 *Inc. v. Pope*, 458 U.S. 478, 484 (1988) (quoting *Mullane*, 339 U.S. at 314) (emphasis added). ^{Enl}

14 8. First Horizon, as homeowner, did not receive any of the notices required by NRS
15 Chapter 116. Alessi did not send, and First Horizon did not receive, a notice of delinquent
16 assessment after First Horizon took title to the Property. NRS 116.31162(1)(a). Alessi did not send,
17 and First Horizon did not receive, a notice of default and election to sell after First Horizon took title
18 to the Property. NRS 116.31162(1)(b). Alessi did not send, and First Horizon did not receive, a
19 notice of sale after First Horizon took title to the Property. NRS 116.31165. The HOA's sale is void
20 because it should have re-noticed the foreclosure sale to First Horizon.

21 9. Because First Horizon, after it took title to the Property, did not receive any
22 foreclosure notices required by NRS Chapter 116, the statute is unconstitutional as-applied.

23 10. The March 6, 2013, HOA foreclosure sale is void.

24 11. No genuine issues of material fact remain, and First Horizon is entitled to summary
25 judgment as a matter of law. SFR's motion for summary judgment, and Alessi's and the HOA's
26 joinder thereto, are denied with prejudice, in part. SFR's claim for unjust enrichment, only, is denied
27 without prejudice.

28 (1) The 9th Cir. opinion in *Bourne Valley Wells Fargo* decided 8/12/16 having
... having been stayed, ^{reportedly} therefore does not impact this ruling.

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the August 8, 2016 bench trial is vacated.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the March 6, 2013, HOA foreclosure sale is void, and the remedy for the voided sale is stayed pending appeal.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties preserve the status quo with respect to the property, and SFR is not to transfer title to, sell or encumber the Property pending the resolution of any appeal.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that First Horizon's Motion for Summary Judgment is **GRANTED**. SFR's motion for summary judgment, along with Alessi's and the HOA's joinder thereto is **DENIED**, with prejudice. SFR's claim for unjust enrichment, only, is **DENIED**, without prejudice.

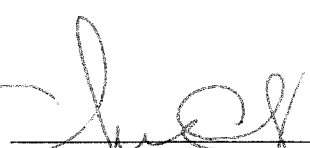
DATED and Done this ____ day of August, 2016.

THE HONORABLE GLORIA STURMAN

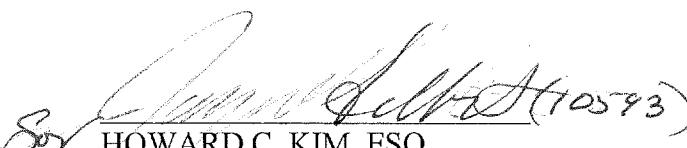

DISTRICT COURT JUDGE

Submitted by:
AKERMAN LLP

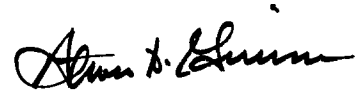
Approved as to content and form by:
KIM GILBERT EBRON


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Las Vegas, NV 89139

Attorneys for Plaintiff



CLERK OF THE COURT

1 **NEO**
2 MELANIE D. MORGAN, ESQ.
3 Nevada Bar No. 8215
4 CHRISTINE M. PARVAN, ESQ.
5 Nevada Bar No. 10711
6 AKERMAN LLP
7 1160 Town Center Drive, Suite 330
8 Las Vegas, Nevada 89144
9 Telephone: (702) 634-5000
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11 Email: melanie.morgan@akerman.com
12 Email: christine.parvan@akerman.com

13 *Attorneys for First Horizon Home Loans*

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 SFR INVESTMENTS POOL 1, LLC, a Nevada
17 limited liability company,

18 Plaintiff,

19 v.

20 FIRST HORIZON HOME LOANS, A
21 DIVISION OF FIRST TENNESSEE BANK,
22 N.A., a national association; ANA TORRES, an
23 individual; DOES I through X; and ROE
24 CORPORATIONS I through X, inclusive,
25 Defendants.

Case No.: A-13-679329-C
Dept. No. XXVI

**NOTICE OF ENTRY OF ORDER
GRANTING FIRST HORIZON HOME
LOAN'S MOTION FOR SUMMARY
JUDGMENT AND DENYING SFR
INVESTMENT POOL 1, LLC'S MOTION
FOR SUMMARY JUDGMENT**

26 TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

27 ///

28 ///

///

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///

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1 PLEASE TAKE NOTICE that an **ORDER GRANTING FIRST HORIZON HOME**
2 **LOAN'S MOTION FOR SUMMARY JUDGMENT AND DENYING SFR INVESTMENT**
3 **POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT** has been entered on the 17th day of
4 August, 2016, in the above-captioned matter. A copy of said Order is attached hereto as Exhibit A.
5 DATED this 19th day of August, 2016.

6 **AKERMAN LLP**

7 /s/ Christine M. Parvan

8 MELANIE D. MORGAN, ESQ.

9 Nevada Bar No. 8210

10 CHRISTINE M. PARVAN, ESQ.

11 Nevada Bar No. 10711

12 1160 Town Center Drive, Suite 330

13 Las Vegas, Nevada 89144

14 *Attorneys for First Horizon Home Loans*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of August, 2016 and pursuant to NRCP 5(b), I served through this Court's electronic service notification system ("Wiznet") a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING FIRST HORIZON HOME LOAN'S MOTION FOR SUMMARY JUDGMENT AND DENYING SFR INVESTMENT POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT** addressed to:

Alessi & Koenig	Contact	Email
	A&K eserve	eserve@alessikoenig.com
Ballard Spahr	Contact	Email
	Abran Vigil Sylvia Semper	vigila@ballardspahr.com sempers@ballardspahr.com
Ballard Spahr LLP	Contact	Email
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Kim Gilbert Ebron	Contact	Email
	Diana Cline Ebron	diana@kgelegal.com
	E-Service for Kim Gilbert Ebron	eservice@hkimlaw.com
	Michael L. Sturm	mike@kgelegal.com
	Tomas Valerio	staff@kgelegal.com

/s/ Doug J. Layne

An employee of AKERMAN LLP

EXHIBIT A

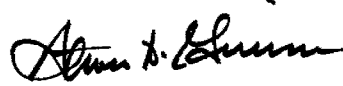
EXHIBIT A

ORDR

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Attorneys for First Horizon Home Loans

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CLERK OF THE COURT

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a Nevada
limited liability company,

Plaintiff,

v.

FIRST HORIZON HOME LOANS, A
DIVISION OF FIRST TENNESSEE BANK,
N.A., a national association; ANA TORRES, an
individual; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,
Defendants.

Case No.: A-13-679329-C

Dept. No. XXVI

**ORDER GRANTING FIRST HORIZON
HOME LOAN'S MOTION FOR
SUMMARY JUDGMENT AND DENYING
SFR INVESTMENT POOL 1, LLC'S
MOTION FOR SUMMARY JUDGMENT**

This matter came before the court on First Horizon Home Loans, a Division of First Tennessee Bank, N.A.'s (**First Horizon**) and SFR Investments Pool 1, LLC's (**SFR**) cross motions for summary judgment, and Intervenor's oral joinder to SFR's motion. Following full briefing, the court heard argument of counsel on April 5, 2016. Steven Shevorski, Esq. appeared on behalf of First Horizon, Diana Cline Ebron, Esq. appeared on behalf of SFR, and Steve Loizzi, Esq. appeared on behalf of Intervenor Squire Village at Silver Springs Community Association (**HOA**) and Alessi & Koenig, LLC (**Alessi**). The Court, having considered the full briefing on the motions, the pleadings and papers on file herein, and argument of counsel, makes the following Findings of Facts and Conclusions of Law:¹

¹ Any findings of fact that are more appropriately conclusions of law shall be so deemed. Any conclusions of law that are more appropriately findings of fact shall be so deemed.

FINDINGS OF FACT

1
2 1. Ana Torres borrowed \$136,9213 from First Horizon to acquire the property located at
3 5069 Midnight Oil Drive, Las Vegas, Nevada 89122, APN 161-26-111-017 in 2008. The loan was
4 secured by a deed of trust recorded in the Official Records of the Clark County Recorder on July 25,
5 2008 as Instrument Number 20080725-0003028. Torres defaulted on the loan, and First Horizon
6 recorded a notice of default and election to sale on October 30, 2012.

7 2. On February 1, 2013, the certificate of compliance with Nevada's Foreclosure
8 Mediation Program was recorded. Thereafter, on February 7, 2013, First Horizon recorded a notice
9 of sale setting the date for public auction of the property for February 26, 2013.

10 3. At the February 26, 2013 trustee's sale, First Horizon credit bid for the property and
11 purchased it for \$151,283.09. First Horizon recorded its trustee's deed in the Official Records of the
12 Clark County Recorder on March 7, 2013, as Instrument Number 20130307003168.

13 4. Alessi, the HOA's collection agent, recorded a notice of delinquent (lien) on February
14 22, 2012. Thereafter, Alessi recorded a notice of default and election to sell on April 20, 2012.
15 Alessi did not record a notice of sale until February 5, 2013.

16 5. On March 6, 2013, after First Horizon purchased the property at its foreclosure,
17 Alessi purported to sell the property to SFR for \$7,000. SFR recorded its trustee's deed in the
18 Official Records of the Clark County Recorder on March 18, 2013 as Instrument Number
19 20130318003508.

20 6. At the time of the HOA foreclosure sale, First Horizon owned the property and was
21 not in default on its obligation to pay the HOA's assessments.

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1 7. Alessi's NRCP 30(b)(6) witness testified as to Alessi's procedures where a lender
2 forecloses and becomes owner prior to a homeowner's association foreclosure:

3 Q. Okay. If Alessi had known that the lender had foreclosed days
4 before the HOA foreclosure sale, would it have moved forward
5 with the sale?

6 Ms. Ebron: Calls for speculation, incomplete hypothetical.

7 Mr. Loizzi: Join. Go Ahead.

8 A. I would answer the question that in general we would not.

9 Q. And why not.

10 A. Because there would have been a new -- well, would have been
11 a trustee's deed recorded by the bank and we would have
12 known of the foreclosure and probably would have sought
13 payment by the bank of the amounts due. We probably would
14 have restarted the collection process if there had been a
15 trustee's deed recorded into the bank's name. That is my
16 recollection of our policy at that time.

17 (Deposition of David Alessi at 49:9-25 and 50:1).²

18 8. Section 7.7 of the HOA's CC&Rs required the HOA to give First Horizon, as owner,
19 thirty days' written notice of any amount due and owing. Specifically, section 7.7 provides, in part:

20 The failure of the Association to send a bill to a Member shall not
21 relieve any Member of his liability for any Assessment or charge
22 under this Declaration, but the Assessment Lien therefor shall not be
23 foreclosed as set forth Section 7.10 below until the Member has been
24 given not less than thirty (30) days written notice prior to such
25 foreclosure that that the Assessment or any installation thereof is or
26 will be due and of the amount owing.

27 9. The HOA did not provide First Horizon with written notice of the amount of its
28 liability as owner, as required by section 7.7 of the CC&Rs.

1 10. First Horizon's February 26, 2013 foreclosure extinguished the sub priority piece of
2 the HOA's lien. First Horizon received none of the statutory notices that the former owner, Torres,
3 received.

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² The question that prompted Mr. Alessi to describe Alessi's collection policies where a new owner attains title was not objected to during the deposition.

11. Alessi did not send, and First Horizon as homeowner did not receive, a notice of delinquent assessment. NRS 116.31162(1)(a). Alessi did not send, and First Horizon as homeowner did not receive, a notice of default and election to sell. NRS 116.31162(1)(b). Alessi did not send, and First Horizon as homeowner did not receive, a notice of sale. NRS 116.31165.

CONCLUSIONS OF LAW

1. Summary judgment is proper "when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to judgment as a matter of law.'" *Wood v. Safeway*, (2005) 121 Nev. 724, 729; 121 P.3d 1026, 1029, NRCP 56(c). Materiality is dependent on the underlying substantive law, and includes only those factual disputes that could change the ultimate outcome of a case. *Id.*

2. CC&Rs are restrictive covenants. *Horizons at Seven Hills Homeowners Association v. Ikon Holdings, LLC*, 132 Nev. Adv. Opn. 35, pg. 14 (2016). As such, CC&Rs run with the land and provide a burden and a benefit of rights to the property owner. *Boulder Oaks Cmty. Ass'n v. B & J Andrews*, 169 P.3d 1155, 1160-1161 (Nev. 2007). The burden of this association's CC&Rs is the obligation to pay assessments. The benefit of the CC&Rs is that the HOA must comply with the notice provisions that govern how the HOA enforces its right to collect assessments.

3. In *Shadow Wood Homeowners Assoc., et al. v. New York Comm. Bancorp.*, 132 Nev. Adv. Opn. 5, 11 (2016) the Nevada Supreme Court determined recitals regarding statutory compliance are not irrebuttable conclusions. Specifically, the Court held trial courts retain equitable power to set aside a foreclosure sale equating foreclosures under NRS Chapter 116 to foreclosures under NRS Chapter 107. *Shadow Wood Homeowners Assoc.*, 132 Nev. Adv. Opn. at 14-15. The Court stated, "The conclusive recital provisions in NRS 107.030(8) have never been argued to carry the preemptive effect that [Appellants] attribute to NRS 116.31166." *Id.* at 12-13. Thus, a foreclosure cannot stand where no default occurred despite the recitals in the deed. *Id.* at 11.

4. The HOA violated its own CC&Rs. First Horizon was not in default of any obligation to pay assessments. The HOA's CC&Rs mandate that First Horizon, as homeowner, be given notice of the amount of assessments owed and 30 days' notice in order to pay that amount prior to any foreclosure proceedings.

1 5. The HOA did not serve First Horizon with the notice required by Sec. 7.7 of the
2 CC&Rs and instead proceeded immediately to foreclosure.

3 6. First Horizon's February 26, 2014 foreclosure extinguished its deed of trust causing
4 the super-priority lien to be rendered moot. The HOA's foreclosure could not have extinguished
5 First Horizon's deed of trust because it no longer encumbered the property following First Horizon's
6 foreclosure.

7 7. The Due Process Clause of the U.S. Constitution requires that, "at a minimum, [the]
8 deprivation of life, liberty, or property by adjudication be preceded by notice and an opportunity for
9 hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.*, 339
10 U.S. 306, 314 (1950) An "elementary and fundamental requirement of due process ... is notice
11 reasonably calculated, *under all circumstances*, to apprise interested parties of the pendency of the
12 action and afford them an opportunity to present their objections." *Tulsa Prof'l Collection Services,*
13 *Inc. v. Pope*, 458 U.S. 478, 484 (1988) (quoting *Mullane*, 339 U.S. at 314) (emphasis added). ^{Enl}

14 8. First Horizon, as homeowner, did not receive any of the notices required by NRS
15 Chapter 116. Alessi did not send, and First Horizon did not receive, a notice of delinquent
16 assessment after First Horizon took title to the Property. NRS 116.31162(1)(a). Alessi did not send,
17 and First Horizon did not receive, a notice of default and election to sell after First Horizon took title
18 to the Property. NRS 116.31162(1)(b). Alessi did not send, and First Horizon did not receive, a
19 notice of sale after First Horizon took title to the Property. NRS 116.31165. The HOA's sale is void
20 because it should have re-noticed the foreclosure sale to First Horizon.

21 9. Because First Horizon, after it took title to the Property, did not receive any
22 foreclosure notices required by NRS Chapter 116, the statute is unconstitutional as-applied.

23 10. The March 6, 2013, HOA foreclosure sale is void.

24 11. No genuine issues of material fact remain, and First Horizon is entitled to summary
25 judgment as a matter of law. SFR's motion for summary judgment, and Alessi's and the HOA's
26 joinder thereto, are denied with prejudice, in part. SFR's claim for unjust enrichment, only, is denied
27 without prejudice.

28 (1) The 9th Cir. opinion in *Bourne v. Wells Fargo* decided 8/12/16 having
... having been stayed, ^{reportedly} therefore does not impact this ruling.

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the August 8, 2016 bench trial is vacated.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the March 6, 2013, HOA foreclosure sale is void, and the remedy for the voided sale is stayed pending appeal.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties preserve the status quo with respect to the property, and SFR is not to transfer title to, sell or encumber the Property pending the resolution of any appeal.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that First Horizon's Motion for Summary Judgment is **GRANTED**. SFR's motion for summary judgment, along with Alessi's and the HOA's joinder thereto is **DENIED**, with prejudice. SFR's claim for unjust enrichment, only, is **DENIED**, without prejudice.

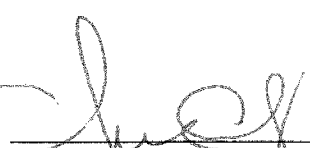
DATED and Done this ____ day of August, 2016.

THE HONORABLE GLORIA STURMAN



DISTRICT COURT JUDGE

Submitted by:
AKERMAN LLP

Approved as to content and form by:
KIM GILBERT EBRON


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Attorneys for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

June 19, 2014

A-13-679329-C SFR Investments Pool 1, LLC, Plaintiff(s)
vs.
First Horizon Home Loans, Defendant(s)

June 19, 2014 9:00 AM Motion to Intervene

HEARD BY: Sturman, Gloria **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Linda Denman

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT: Cline, Diana S. Attorney

JOURNAL ENTRIES

- Court called ALESSI & KOENIG'S, LLC, MOTION TO INTERVENE. Ms. Cline, on behalf of plaintiff, advised Alessi & Koenig had filed a motion to withdraw as all the issues were resolved. Ms. Cline advised the parties are in discussion to extend Discovery but there is no stay. Court noted the bench trial is scheduled for September, 2014 and stated trial dates will stand unless and until the Court receives a formal notice to continue or stay. COURT ORDERED Motion to Intervene WITHDRAWN.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

November 04, 2014

A-13-679329-C SFR Investments Pool 1, LLC, Plaintiff(s)
vs.
First Horizon Home Loans, Defendant(s)

November 04, 2014 9:00 AM Status Check

HEARD BY: Sturman, Gloria **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Linda Denman

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT: Cline, Diana S. Attorney
Jung, Rock K Attorney
Lamb, Matthew Attorney

JOURNAL ENTRIES

- At STATUS CHECK: STAY, counsel requested stay be lifted and parties intend to continue settlement discussions and proceed in ordinary course. COURT ORDERED stay LIFTED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

August 11, 2015

A-13-679329-C	SFR Investments Pool 1, LLC, Plaintiff(s) vs. First Horizon Home Loans, 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

- PLAINTIFF'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**

Title to Property

COURT MINUTES

April 05, 2016

A-13-679329-C SFR Investments Pool 1, LLC, Plaintiff(s)
vs.
First Horizon Home Loans, Defendant(s)

April 05, 2016 9:30 AM All Pending Motions

HEARD BY: Sturman, Gloria **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Linda Denman

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT: Cline, Diana S. Attorney
Loizzi, Steven Jr Attorney
Shevorski, Steven G. Attorney

JOURNAL ENTRIES

- FIRST HORIZON HOME LOAN'S MOTION FOR SUMMARY JUDGMENT . . . SFR'S INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT

Mr. Loizzi made an oral joinder to SFR's Motion for Summary Judgment. There being no objection, COURT ORDERED oral joinder SUBMITTED. Court disclosed the law clerk did not work on this case due to a conflict of interest. Counsel discussed the time line of events; specifically, that the Bank foreclosed on 2/26 and recorded on 3/7, and the HOA foreclosed on 3/6 and recorded on 3/18. Counsel argued whether proper notice was given to opposing sides. Following argument, COURT ORDERED First Horizon's Motion for Summary Judgment GRANTED; FINDING the Bank's foreclosure acted to extinguish the deed of trust causing the super-priority lien to be rendered moot. FURTHER FINDING, the HOA sale void as the HOA should have renoticed any foreclosure sale to the new owner. COURT FURTHER ORDERED SFR's Motion for Summary Judgment and oral joinder thereto DENIED. COURT FURTHER ORDERED bench trial VACATED.

Ms. Cline then inquired about SFR's unjust enrichment claim against the bank, which Mr. Shevorski objected saying unjust enrichment was not argued in the brief. COURT ORDERED unjust

enrichment claim DENIED WITHOUT PREJUDICE to be determined at a later time. Counsel advised they would work together to preserve the status quo during any appeal that may be filed.

Mr. Shevorski to prepare proposed Order; opposing counsel to review as to form and content.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

August 16, 2016

A-13-679329-C	SFR Investments Pool 1, LLC, Plaintiff(s) vs. First Horizon Home Loans, Defendant(s)
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August 16, 2016

9:00 AM

Status Check

HEARD BY: Sturman, Gloria

COURTROOM: RJC Courtroom 03H

COURT CLERK: Linda Denman

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT:	Bodoff, Rebekkah B.	Attorney
	Gilbert, Jacqueline	Attorney
	Lam, Huong	Attorney

JOURNAL ENTRIES

- STATUS CHECK: STATUS OF CASE

Court noted that an Order was submitted yesterday but wanted to see if counsel had any argument to make regarding the Bourne Valley decision. After discussion, counsel asked the Court to sign the Order as submitted and the parties will proceed to the next level.



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

DIANA CLINE EBRON, ESQ.
7625 DEAN MARTIN DRIVE, SUITE 110
LAS VEGAS, NV 89139

DATE: September 20, 2016
CASE: A-13-679329-C

RE CASE: SFR INVESTMENTS POOL 1, LLC vs. FIRST HORIZON HOME LOANS, A
DIVISION OF FIRST TENNESSEE BANK, A NATIONAL ASSOCIATION; ANA TORRES

NOTICE OF APPEAL FILED: September 16, 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):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING FIRST HORIZON HOME LOAN'S MOTION FOR SUMMARY JUDGMENT AND DENYING SFR INVESTMENT POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT; NOTICE OF ENTRY OF ORDER GRANTING FIRST HORIZON HOME LOAN'S MOTION FOR SUMMARY JUDGMENT AND DENYING SFR INVESTMENT POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

SFR INVESTMENTS POOL 1, LLC,

Plaintiff(s),

vs.

FIRST HORIZON HOME LOANS, A
DIVISION OF FIRST TENNESSEE BANK, A
NATIONAL ASSOCIATION; ANA TORRES,

Defendant(s),

Case No: A-13-679329-C

Dept No: XXVI

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 20 day of September 2016.

Steven D. Grierson, Clerk of the Court

Chaunte Pleasant

Chaunte Pleasant, Deputy Clerk