

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

JPMorgan Chase Bank, National Association,
Appellant,
vs.
SFR Investments Pool 1, LLC,
Respondent.

No. 71337

Electronically Filed
Oct 12 2016 04:12 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 24
County Clark Judge Jim Crockett
District Ct. Case No. A-13-692304-C

2. Attorney filing this docketing statement:

Attorney Matthew D. Lamb Telephone (702) 471-7000
Firm Ballard Spahr LLP
Address 100 North City Parkway, Suite 1750
Las Vegas, Nevada 89106

Client(s) Appellant JPMorgan Chase Bank, National Association ("Chase")

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Diana Cline Ebron Telephone (702) 485-3300
Firm Kim Gilbert Ebron
Address 7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139

Client(s) Respondent SFR Investments Pool 1, LLC ("SFR")

Attorney _____ Telephone _____
Firm _____
Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

8. Nature of the action. Briefly describe the nature of the action and the result below:

This is a quiet title action arising from a foreclosure sale under NRS Chapter 116. The subject property is located at 3263 Morning Springs Drive, Henderson, Nevada, 89074 (the "Property"). SFR was the highest bidder at the foreclosure sale. Chase is the beneficiary of record and servicer of a deed of trust recorded against the Property. During the sale, Chase was servicing the loan associated with the Property on behalf of the Federal Home Loan Mortgage Corporation, the owner of the loan and deed of trust. Robert M. Hawkins and Christine V. Hawkins were the record owners of the Property at the time of the sale. Chase brought claims against SFR for declaratory relief, quiet title, and unjust enrichment. Chase argues the deed of trust survived the sale for a variety of reasons. SFR brought claims against Chase and the Hawkinses for declaratory relief and quiet title. SFR argues the sale extinguished the deed of trust and the Hawkinses' ownership interest in the Property. The Hawkinses were dismissed by stipulation on April 23, 2014. SFR moved for summary judgment against Chase on all remaining claims on July 7, 2016. The district court granted SFR's motion in an order filed August 23, 2016. Chase timely appealed.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

- 1) Under the Housing and Economic Recovery Act of 2008, can a foreclosure sale under NRS Chapter 116 extinguish a deed of trust owned by the Federal Home Loan Mortgage Corporation without the consent of its conservator, the Federal Housing Finance Agency?
- 2) Do the notice provisions of NRS Chapter 116 satisfy due process?
- 3) Does the holding of SFR Invs. Pool 1, LLC v. U.S. Bank, N.A. apply retroactively?
- 4) Under Shadow Wood Homeowners Ass'n v. N.Y. Cmty. Bancorp. Inc., did the district court properly reject Chase's equitable challenge to the HOA sale at the summary judgment stage?
- 5) Did the district court properly reject Chase's alternative claim for unjust enrichment at the summary judgment stage?

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

See Exhibit 1.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☒ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☐ An issue of public policy

☒ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: Issues 1 and 2 identified in Chase's response to Question 9 raise questions under the United States and Nevada Constitutions. Issues 1, 2, and 3 are substantial issues of first impression. Issues 2, 3, and 4 require en banc consideration to maintain uniformity of the Court's decisions.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This case is presumptively retained by the Nevada Supreme Court because it raises as principal issues questions of first impression involving the United States and Nevada Constitutions. NRAP 17(a)(13). It also raises as principal issues questions of statewide public importance. NRAP 17(a)(14).

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Aug 23, 2016

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served Aug 24, 2016

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed Sep 16, 2016

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The Hawkinses were dismissed from the case in a stipulation and order filed April 23, 2014. Therefore, the district court's August 23, 2016 order entering summary judgment in favor of SFR and against Chase is an appealable final judgment.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

JPMorgan Chase Bank, National Association - Plaintiff/Counter-Defendant
SFR Investments Pool 1, LLC - Defendant/Counter-Claimaint
Robert Hawkins - Counter-Defendant
Christine Hawkins - Counter-Defendant

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Robert and Christine Hawkins were dismissed in a stipulation and order filed April 23, 2014.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Chase's operative complaint filed March 9, 2016 includes claims against SFR for declaratory relief, quiet title, and unjust enrichment. These claims were resolved by the August 23, 2016 summary judgment order. SFR's operative counterclaim filed March 20, 2014 includes claims for "declaratory relief/quiet title" and "preliminary and permanent injunction" against Chase and the Hawkinses. SFR's claims against the Hawkinses were resolved by the April 23, 2014 stipulation and order. SFR's claims against Chase were resolved by the August 23, 2016 summary judgment order.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

JPMorgan Chase Bank, Nat'l Ass'n
Name of appellant

Matthew D. Lamb
Name of counsel of record

Oct 12, 2016
Date

/s/ Matthew D. Lamb
Signature of counsel of record

Washington, D.C.
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 12th day of October, 2016, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Diana Cline Ebron
Jacqueline A. Gilbert
Karen L. Hanks
7625 Dean Martin Drive, Suite 110
Las Vegas, NV 89139

Counsel for Respondent

Dated this 12th day of October, 2016

/s/ Sarah Walton
Signature

EXHIBIT 1

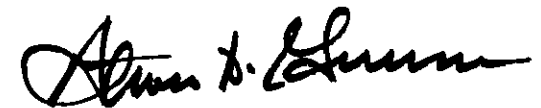
EXHIBIT 1

Pending Cases in this Court Raising the Same or Similar Issues

- Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortg., No. 68630 – Issue 2 from Response to Question 9.
- G&P Inv. Enters., LLC v. Mortg. Elec. Reg. Systems, Inc., No. 68842 – Issue 2.
- Chase Home Fin. LLC v. 10224 Black Friar Ct Trust, No. 69040 – Issue 2.
- Navy Fed. Credit Union v. Saticoy Bay LLC Series 1916 Summer Point, No. 69308 – Issue 2.
- Nationstar Mortg., LLC v. SFR Invs. Pool 1, LLC, No. 69400 – Issue 1.
- Saticoy Bay LLC Series 9641 Christine View v. Fed. Nat'l Mortg. Assoc., No. 69419 – Issue 1.
- BDJ Investments, LLC v. U.S. Bank NA, No. 70229 – Issue 2.
- Citimortgage, Inc. v. SFR Invs. Pool 1, LLC, No. 70237 – Issues 1, 2, & 4.
- JPMorgan Chase Bank, N.A. v. SFR Invs. Pool 1, LLC, No. 70423 – Issues 1, 2, 3, & 4.
- Nevada New Builds LLC v. Wells Fargo Bank, No. 70523 – Issues 2 & 3.
- JPMorgan Chase Bank, N.A. v. Holm International Properties, LLC, No. 70608 – Issues 2, 3, & 4.
- The Bank of New York Mellon v. NV Eagles, LLC, No. 70707 – Issues 2, 3, & 4.
- Deutsche Bank Nat'l Trust Co. v. Whittington Holdings 1, LLC, No. 70889 – Issues 2, 3, & 4.
- U.S. Bank Nat'l Ass'n v. Hillsboro Heights HOA, No. 71188 – Issues 2, 3, & 4.
- JPMorgan Mortg. v. Bourne Valley Court Trust, No. 71198 – Issues 2, 3, & 4.
- Wilmington Trust v. SFR Invs. Pool 1, LLC, No. 71236 – Issues 2, 3, & 4.

EXHIBIT 2

EXHIBIT 2



CLERK OF THE COURT

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9 *Attorneys for Plaintiff and Counter-Defendant*
10 *JPMorgan Chase Bank N.A.*

DISTRICT COURT
CLARK COUNTY, NEVADA

11 JPMORGAN CHASE BANK, NATIONAL)
12 ASSOCIATION, a national association,)

CASE NO. A-13-692304-C

13 Plaintiff,

DEPT NO. XXIV

14 vs.

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

Defendants.

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

19 Counter-Claimant,

20 vs.

21 JPMORGAN CHASE BANK NATIONAL)
ASSOCIATION, a national association;)
22 ROBERT M. HAWKINS, an individual;)
CHRISTINE V. HAWKINS, an individual;)
23 DOES 1-10 and ROE BUSINESS)
ENTITIES 1 through 10, inclusive,)

24 Counter-Defendant/Cross-)
25 Defendants.)
26)
27)
28)

BALLARD SPAHR LLP
100 NORTH CITY PARKWAY, SUITE 1750
LAS VEGAS, NEVADA 89106
(702) 471-7000 FAX (702) 471-7070

1 AMENDED COMPLAINT

2 Plaintiff JPMorgan Chase Bank, N.A. ("Chase"), by and through its counsel of
3 record, hereby complain against Defendant SFR Investments Pool 1, LLC ("SFR") in
4 this Amended Complaint as follows:

5 I.

6 PARTIES, JURISDICTION AND VENUE

7 1. Chase is a national banking association headquartered in Ohio and
8 doing business in Clark County.

9 2. Upon information and belief, SFR is a Nevada limited liability company
10 whose principal place of business in Nevada.

11 3. The real property that is the subject matter of this action is situated in
12 Clark County, Nevada.

13 4. This Court has personal jurisdiction over SFR because SFR is a Nevada
14 limited liability company and because this lawsuit arises out of and is connected with
15 SFR's purposeful purchase of an interest in real property situated in Clark County,
16 Nevada.

17 5. Venue is proper with this district pursuant to NRS 13.010 because the
18 property at issue in this action is located in Clark County.

19 6. Venue is also proper in this district pursuant to NRS 13.040 because
20 SFR resides in this district.

21 II.

22 GENERAL ALLEGATIONS

23 *The Property and the Deed of Trust*

24 7. This action related to the parties' rights in that certain real property
25 commonly described as 3263 Morning Springs Dr., Henderson, Nevada, 89074; APN
26 177-24-514-043 (the "Property"). The Property is legally described as:
27 Lot Fifty (50) in Block Ten (10) of SEASONS AT PEBBLE
28 CANYON, as shown by map thereof on file in Book 53 of
Plats, Page 45, in the Office of the County Recorded of
Clark County, Nevada.

11. On or about June 12, 2006, upon information and belief, the Property was conveyed from Nathan Van Noy to Robert and Christine Hawkins (the "Borrowers").

12. On or about June 12, 2006, a Deed of Trust (the "Deed of Trust") securing a loan in the amount of \$240,000 (the "Hawkins Loan") was recorded as Book and Instrument Number 20060612-0003526 in the Official Records of the Clark County Recorder, showing: the Borrowers as borrowers; GreenPoint Mortgage Funding, Inc. as lender; Mortgage Electronic Registration Systems, Inc. ("MERS") as the beneficiary as nominee for Lender and Lender's successor and assigns; and Marin Conveyancing Corp. as trustee.

13. On or about June 20, 2006, Federal Home Loan Mortgage Corporation ("Freddie Mac") purchased the Hawkins Loan, and thereby acquired ownership of both the note and Deed of Trust. Chase became Freddie Mac's servicer for the Hawkins Loan.

a. The relationship between Chase, as the servicer of the Loan, and Freddie Mac, as owner of the Loan, was governed by Freddie Mac's Single-Family Seller/Servicer Guide (the "Guide"). The Guide serves as a central governing document for Freddie Mac's relationship with servicers nationwide. See Guide at 1.2(a), www.freddiemac.com/singlefamily/guide.

b. The Guide provides that:
For each Mortgage purchased by Freddie Mac, the Seller and the Servicer agree that *Freddie Mac may, at any time and without limitation, require the Seller or the Servicer, at the Seller's or the Servicer's expense, to make such endorsements to and assignments and recordations of any of the Mortgage documents so as to reflect the interests of Freddie Mac.*

Guide at 6.6 (emphasis added), www.freddiemac.com/singlefamily/guide.

c. The Guide also provides that:
The Seller/Servicer is not required to prepare an assignment of the Security

1 Instrument to the Federal Home Loan Mortgage Corporation (Freddie Mac).
2 However, *Freddie Mac may, at its sole discretion and at any time, require a*
3 *Seller/Servicer, at the Seller/Servicer's expense, to prepare execute and/or record*
4 *assignments of the Security Instrument to Freddie Mac.*

5 Guide at 22.14 (emphasis added), www.freddiemac.com/singlefamily/guide.

6 14. On or about July 1, 2009, the Borrowers defaulted under the Hawkins
7 Loan and Deed of Trust.

8 15. On or about October 27, 2009, an Assignment of Deed of Trust was
9 recorded as Book and Instrument Number 20091027-0000618 in the Official Records
10 of the Clark County Recorder whereby MERS assigned the Deed of Trust to Chase.

11 ***The HOA Foreclosure and SFR's Purported Acquisition of the Property***

12 16. Upon information and belief, the Property is subject to a Declaration of
13 Covenants, Conditions, and Restrictions (the "CC&Rs") for Pebble Canyon
14 Homeowners Association ("HOA"). The CC&Rs were recorded in the Official Records
15 of the Clark County Recorder on or about November 8, 1991, as Book and Instrument
16 Number 911108-01962.

17 17. Upon information and belief, Nevada Association Services, Inc. ("NAS")
18 is the agent of the HOA and acted as the foreclosure trustee and/or agent, which
19 allegedly mailed and served the foreclosure notices, if any.

20 18. On or about August 3, 2012, a Notice of Delinquent Assessment Lien
21 was recorded by NAS as Book and Instrument Number 20120803-0002972 in the
22 Official Records of the Clark County Recorder. The Notice of Delinquent Assessment
23 Lien states that the "[t]otal amount due as of today's date is \$1,333.00. This amount
24 includes late fees, collection fees and interest in the amount of \$982.00."

25 19. On or about September 20, 2012, a Notice of Default and Election to Sell
26 Under Homeowners Association Lien was recorded by NAS as Book and Instrument
27 Number 20120920-0001446 in the Official Records of the Clark County Recorder.
28 The Notice of Default and Election to Sell Under Homeowners Association Lien

1 states in part that the allegedly past due "amount is \$2,126.00 as of September 15,
2 2012."

3 20. On or about February 7, 2013, NAS recorded a Notice of Foreclosure
4 Sale as Book and Instrument Number 20130207-0000892 in the Official Records of
5 the Clark County Recorder. The Notice of Sale states that the "[t]otal amount of the
6 unpaid balance of the obligation secured by the property to be sold and reasonable
7 estimated costs, expenses and advances at the time of the initial publication of the
8 Notice of Sale is \$3,142.43."

9 21. On or about March 1, 2013, NAS conducted a foreclosure sale of the
10 Property ("HOA Sale").

11 22. Upon information and belief, SFR bid \$3,700 for the Property at the
12 foreclosure sale.

13 23. Upon information and belief, at the time of the HOA Sale, the fair
14 market value of the Property was approximately \$123,000.

15 24. The amount that SFR paid for the Property was grossly inadequate
16 when compared to the fair market value of the Property at the time of the HOA Sale.

17 24. On or about March 6, 2013, NAS recorded a Foreclosure Deed on the
18 Property as Book and Instrument Number 20130306-0001648 in the Official Records
19 of the Clark County Recorder.

20 26. After the date of the HOA Sale and recordation of the Foreclosure Deed,
21 Chase continued to advance property preservation payments, including but not
22 limited to payment of taxes and homeowners' insurance.

23 27. Neither the Notice of Delinquent Assessment Lien, Notice of Default
24 and Election to Sell Under Homeowners Association Lien, or the Notice of Sale
25 (collectively, the "HOA Assessment Lien and Foreclosure Notices") provided any
26 notice of a right to cure by Plaintiff.

27 28. None of the HOA Assessment Lien and Foreclosure Notices specified
28 what portion, if any, that the HOA claimed constituted a "super-priority."

1 29. None of the HOA Assessment Lien and Foreclosure Notices specified
2 whether the HOA was foreclosing on the "super-priority" portion of its lien, if any, or
3 under the sub-priority lien.

4 30. Upon information and belief, Chase did not receive notice of all of the
5 HOA Assessment Lien and Foreclosure Notices prior to the HOA Sale.

6 31. The HOA Sale deprived Chase of its right to due process.

7 32. The HOA is estopped from claiming that the first Deed of Trust was
8 extinguished by the HOA Sale.

9 33. Under NRS Chapter 116, a lien under NRS 116.3116(1) can only include
10 costs and fees that are specifically enumerated in the statute.

11 34. A homeowners association may only collect as a part of the super-
12 priority lien (a) nuisance abatement charges incurred by the association pursuant to
13 NRS 116.310312 and (b) nine months of common assessments which became due
14 prior to the institution of an action to enforce the lien.

15 35. Upon information and belief, the HOA Assessment Lien and Foreclosure
16 Notices included improper fees and costs in the amount demanded.

17 36. The attorney's fees and costs of collecting on a homeowners association
18 lien cannot be included in the super-priority lien amount.

19 37. Upon information and belief, the HOA Assessment Lien and Foreclosure
20 Notices included fines, interest, late fees, dues, attorney's fees, and costs of collection
21 that are not properly included in a super-priority lien under Nevada law and that are
22 not permissible under NRS 116.3102 *et seq.*

23 38. Upon information and belief, the unpaid principle balance under the
24 Hawkins Loan and Deed of Trust is at least \$198,136.50.

25 39. SFR maintains that it has an interest in the Property.
26
27
28

III.

FIRST CAUSE OF ACTION

(Declaratory Relief)

40. Chase repeats and re-alleges the preceding paragraphs as fully set forth herein and incorporates the same by reference.

41. Pursuant to NRS 40.010, this Court has the power and authority to declare Chase's rights and interest in the Property.

42. The Deed of Trust is a first secured interest on the Property and is superior to the interest, if any, acquired by SFR.

43. SFR claims an interest in the Property adverse to the interest of Chase and Freddie Mac.

44. SFR did not comply with NRS Chapter 116, including, but not limited to, providing notice of the HOA Sale to Chase. The HOA Sale is void and should be rescinded on that basis.

45. The HOA Sale is void and should be rescinded on the basis that it did not provide due process to Chase.

46. SFR's claim of free and clear title to the Property is barred by 12 U.S.C. § 4617(j)(3), which precludes a homeowners association sale from extinguishing Freddie Mac's interest in the Deed of Trust and preempts any state law to the contrary.

47. The amount paid by SFR for the Property is grossly inadequate when compared to the fair market value of the Property at the time of the HOA Sale.

48. For all the reasons set forth above in the General Allegations, Chase is entitled to a declaration from this Court, pursuant to NRS 40.010, that a first position Deed of Trust encumbered the Property and Chase's interest is superior to the interest held by SFR, if any, and all other parties.

SECOND CAUSE OF ACTION

(Quiet Title)

49. Chase repeats and re-alleges the preceding paragraphs as though fully set forth herein and incorporates the same by reference.

50. Pursuant NRS 40.010, this Court has the power and authority to declare Chase's rights and interests in the Property.

51. The Deed of Trust is a first secured interest on the Property and is superior to the interest, if any, acquired by SFR.

52. SFR claims an interest in the Property that is adverse to the interest of Chase and Freddie Mac.

53. SFR did not comply with NRS Chapter 116, including, but not limited to, providing notice of the HOA Sale.

54. SFR's claim of free and clear title to the Property is barred by 12 U.S.C. § 4617(j)(3), which precludes a homeowners association sale from extinguishing Freddie Mac's interest in the Deed of Trust and preempts any state law to the contrary.

55. For all the reasons set forth above in the General Allegations, Chase is entitled to a declaration from this Court, pursuant NRS 40.010, that a Deed of Trust encumbered the Property and is superior to the interest held by SFR, if any, and all other parties. Chase has furthermore been required to retain counsel and is entitled to recover reasonable attorney's fees and costs.

THIRD CAUSE OF ACTION

(Unjust enrichment)

56. Chase repeats and re-alleges the preceding paragraphs as though fully set forth herein and incorporate the same by reference.

57. The HOA Sale unjustly enriched SFR, in that it obtained real property secured by the Deed of Trust with a grossly inadequate purchase price of \$3,700 to

1 the detriment of Chase, and contrary to fundamental principles of fairness, justice,
2 and fair dealing.

3 58. If it is determined that the Deed of Trust has been extinguished by the
4 HOA Sale, SFR has been unjustly enriched, in that Chase (as servicer) has continued
5 to expend funds and resources to maintain and preserve the Property, including but
6 not limited to funds for taxes and insurance to the detriment of Chase, and contrary
7 to fundamental principles of fairness, justice, and fair dealing.

8 59. Chase is entitled to recoup the reasonable amount of benefits obtained
9 by SFR based on the theory of unjust enrichment.

10 60. Chase has furthermore been required to retain counsel and is entitled to
11 recover reasonable attorney's fees and costs.

12 IV.

13 PRAYER

14 Wherefore, Chase prays for judgment against SFR, as follows:

- 15 1. For a declaration and determination that the first position Deed of Trust
16 was not extinguished by the HOA sale.
- 17 2. For a declaration and determination that the HOA sale did not convey
18 the Property free and clear to SFR;
- 19 3. For a declaration and determination that Chase's interest is superior to
20 the interest of SFR;
- 21 4. For a preliminary and permanent injunction that SFR, its successors,
22 assigns, and agents are prohibited from conducting any sale, transfer or
23 encumbrance of the Property;
- 24 5. For a preliminary injunction that SFR, its successors and assigns, be
25 required to pay all taxes, insurance and homeowners association dues
26 during the pendency of this action;
- 27 6. For a preliminary and permanent injunction that SFR, its successors
28 and assigns, pay all taxes, insurance and homeowners association dues

during the pendency of this action;

7. If it is determined that the Deed of Trust has been extinguished by the HOA sale, for special damages in the amount of the fair market value of the Property or the unpaid balance of the Loan and Deed of Trust, at the time of the HOA sale, whichever is greater;
8. For all fees and costs of court incurred herein, including post-judgment costs; and
9. For any and all further relief deemed appropriate by this Court.

DATED this 8 day of March, 2016.

BALLARD SPAHR LLP

By: 

Abran E. Vigil
Nevada Bar No. 7548
Russell J. Burke
Nevada Bar No. 12710
Holly Ann Priest
Nevada Bar No. 13226
BALLARD SPAHR LLP
100 North City Parkway, Suite 1750
Las Vegas, Nevada 89106-4617

*Attorneys for Plaintiff and Counter-
Defendant JPMorgan Chase Bank N.A.*

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 9th day of March, 2016, and pursuant to N.R.C.P. 5(b), a true and correct copy of the foregoing Amended Complaint, was served to the following parties in the manner set forth below:

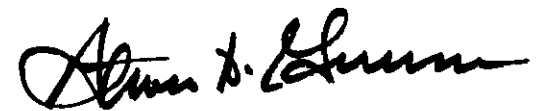
Howard Kim & Associates Howard C. Kim, Esq. Nevada Bar No. 10386 Diana S. Cline, Esq. Nevada Bar No. 10580 Jacqueline A. Gilbert, Esq. Nevada Bar No. 10593 1055 Whitney Ranch Drive, Suite 110 Henderson, Nevada 89014 Attorneys for SFR Investments Pool, LLC	
--	--

- ☐ HAND DELIVERY
- ☐ E-MAIL TRANSMISSION
- ☐ U.S. MAIL, POSTAGE PREPAID
- ☐ Certified Mail, Receipt No. _____,
Return receipt requested
- ☒ Via the Wiznet E-Service-generated "Service Notification of Filing" upon all counsel set up to receive notice via electronic service in this matter


An employee of BALLARD SPAHR LLP

EXHIBIT 3

EXHIBIT 3



CLERK OF THE COURT

1 **AANS**
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Telephone: (702) 485-3300
8 Facsimile: (702) 485-3301
Attorneys for Defendant/Counter-claimant
9 SFR Investments Pool 1, LLC

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 JPMORGAN CHASE BANK, NATIONAL
13 ASSOCIATION, a national association,

14 Plaintiff,

15 vs.

16 SFR INVESTMENTS POOL 1, LLC, a
17 Nevada limited liability company; DOES 1
through 10; and ROE BUSINESS ENTITIES
18 1 through 10, inclusive,

19 Defendants.

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

22 Counter-Claimant,

23 vs.

24 JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association;
25 ROBERT M. HAWKINS, an individual;
CHRISTINE V. HAWKINS, an individual;
26 DOES 1 10 and ROE BUSINESS ENTITIES
1 through 10 inclusive,

27 Counter-Defendant/Cross-Defendants.
28

Case No. A-13-692304-C

Dept. No. XVIII

**AMENDED ANSWER, COUNTERCLAIM
AND CROSS-CLAIM**

HOWARD KIM & ASSOCIATES
1055 WHITNEY RANCH DRIVE, SUITE 110
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

Plaintiff SFR INVESTMENTS POOL 1, LLC (“SFR” or “Defendant”), hereby files an amended answer to JPMORGAN CHASE BANK, NATIONAL ASSOCIATION’s (“Chase”) Complaint as follows:

PARTIES AND JURISDICTION

1. Answering paragraph 1 of the complaint, SFR admits upon information and belief, that the subject matter of Chase’s complaint is real property commonly known as **3263 Morning Springs Drive, Henderson, NV 89074**. The remaining allegations in paragraph 1 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR denies the factual allegations contained in paragraph 1 of the complaint.

2. SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in paragraph 2 of the complaint, and therefore denies said allegations.

3. SFR admits the factual allegations contained in paragraph 3 of the complaint.

4. SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in paragraphs 4 and 5 of the complaint, and therefore denies said allegations.

5. SFR admits the factual allegations contained in paragraphs 6 and 7 of the complaint.

GENERAL ALLEGATIONS

6. SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in paragraphs 8, 9, 10 and 11 of the complaint, and therefore denies said allegations.

7. SFR admits the factual allegations contained in paragraph 12 of the complaint.

8. SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in paragraph 13 of the complaint, and therefore denies said allegations.

9. SFR admits the factual allegations contained in paragraph 14 of the complaint.

FIRST CAUSE OF ACTION

(Declaratory Relief)

10. SFR repeats and realleges its answers to paragraphs 1 through 14 of the complaint as though fully set forth herein.

11. SFR admits the factual allegations contained in paragraphs 16 and 17 of the complaint.

12. The allegations contained in paragraphs 18, 19 and 20 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR denies the factual allegations contained in paragraphs 18, 19 and 20 of the complaint.

13. SFR denies the factual allegations contained in paragraph 21 of the complaint.

SECOND CAUSE OF ACTION

(Quiet Title)

14. SFR repeats and realleges its answers to paragraphs 1 through 21 of the complaint as though fully set forth herein.

15. The allegations contained in paragraphs 23 and 24 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR denies the factual allegations contained in paragraphs 23 and 24 of the complaint.

16. SFR denies the factual allegations contained in paragraph 25 of the complaint.

AFFIRMATIVE DEFENSES

1. Chase fails to state a claim upon which relief may be granted.

2. Chase is not entitled to relief from or against SFR, as Chase has not sustained any loss, injury, or damage that resulted from any act, omission, or breach by SFR.

3. The occurrence referred to in the Complaint, and all injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of Chase.

4. The occurrence referred to in the Complaint, and all injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of a third party or parties over whom SFR had no control.

5. SFR did not breach any statutory or common law duties allegedly owed to Chase.

6. Chase's claims are barred because SFR complied with applicable statutes and with the

requirements and regulations of the State of Nevada.

7. Chase's causes of action are barred in whole or in part by the applicable statutes of limitations or repose, or by the equitable doctrines of laches, waiver, estoppel, and ratification.

8. Chase is not entitled to equitable relief because it has an adequate remedy at law.

9. Chase has no standing to enforce the first deed of trust and the underlying promissory note.

10. The first deed of trust and other subordinate interests in the Property were extinguished by the Association foreclosure sale held in accordance with NRS Chapter 116.

11. Pursuant to Nevada Rule of Civil Procedure 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry at the time of filing this Answer. Therefore, SFR reserves the right to amend this Answer to assert any affirmative defenses if subsequent investigation warrants.

COUNTERCLAIM AND CROSS-CLAIM
FOR QUIET TITLE AND INJUNCTIVE RELIEF

SFR INVESTMENTS POOL 1, LLC ("SFR"), hereby demands quiet title and requests injunctive relief against Counter-Defendant, JPMORGAN CHASE BANK, NATIONAL ASSOCIATION's ("Chase"), Counter Defendant and ROBERT M. HAWKINS, an individual; CHRISTINE V. HAWKINS, an individual; DOES 1 10 and ROE BUSINESS ENTITIES 1 through 10 inclusive, Cross-Defendants as follows:

I. PARTIES

1. SFR is a Nevada limited liability company with its principal place of business in Clark County, Nevada and the current title owner of the property commonly known as **3263 Morning Springs Drive, Henderson, NV 89074; Parcel No. 177-24-514-043** (the "Property").

2. Upon information and belief, Counter-Defendant JPMORGAN CHASE BANK, NATIONAL ASSOCIATION ("Chase"), is a national association that may claim an interest in the Property via a 2006 deed of trust originated by GreenPoint Mortgage Funding, Inc.

3. Upon information and belief, Cross-Defendants, ROBERT M. HAWKINS and CHRISTINE V. HAWKINS (the “Hawkinses”) as husband and wife, are individuals who are the former homeowners that may claim an interest in the Property.

4. Upon information and belief, each of the Cross-Defendants sued herein as DOES I through X, inclusive claim an interest in the Property or are responsible in some manner for the events and action that SFR seeks to enjoin; that when the true names capacities of such defendants become known, SFR will ask leave of this Court to amend this counterclaim to insert the true names, identities and capacities together with proper charges and allegations.

5. Upon information and belief, each of the Cross-Defendants sued herein as ROES CORPORATIONS I through X, inclusive claim an interest in the Property or are responsible in some manner for the events an happenings herein that SFR seeks to enjoin; that when the true names capacities of such defendants become known, SFR will ask leave of this Court to amend this counterclaim to insert the true names, identities and capacities together with proper charges and allegations.

II. GENERAL ALLEGATIONS

SFR Acquired Title to the Property through Foreclosure of an Association Lien with Super Priority Amounts

6. SFR acquired the Property on March 1, 2013 by successfully bidding on the Property at a publicly-held foreclosure auction in accordance with NRS 116.3116, et. seq. (“Association foreclosure sale”). Since the Association foreclosure sale, SFR has expended additional funds and resources in relation to the Property.

7. On or about March 6, 2013, the resulting foreclosure deed was recorded in the Official Records of the Clark County Recorder as Instrument Number 201303060001648 (“Association Foreclosure Deed”).

8. The Pebble Canyon Homeowners Association (“Association”) had a lien pursuant to NRS 116.3116(1) (“Association Lien”) that was perfected at the time the Association recorded its declaration of CC&Rs.

9. The foreclosure sale was conducted by Nevada Association Services, Inc. (“NAS”), agent

1 for the Association pursuant to the powers conferred by the Nevada Revised Statutes 116.3116,
2 116.31162-116.31168, the Association's governing documents (CC&R's) and a Notice of
3 Delinquent Assessments, recorded on August 3, 2012 in the Official Records of the Clark
4 County Recorder as Instrument Number 201208030002872.

5 10. As recited in the Association Foreclosure Deed, the Association foreclosure sale
6 complied with all requirements of law, including but not limited to, recording and mailing of
7 copies of Notice of Delinquent Assessment and Notice of Default, and the recording, posting and
8 publication of the Notice of Sale.

9 11. Pursuant to NRS 116.3116(2), the entire Association Lien

10 is prior to all other liens and encumbrances of unit except:

11 (a) Liens and encumbrances recorded before the recordation of the declaration
12 and, in a cooperative, liens and encumbrances which the association creates,
assumes or takes subject to;

13 (b) A first security interest on the unit recorded before the date on which the
14 assessment sought to be enforced became delinquent or, in a cooperative, the first
security interest encumbering only the unit's owner's interest and perfected before
the date on which the assessment sought to be enforced became delinquent; and

15 (c) Liens for real estate taxes and other governmental assessments or charges
against the unit or cooperative.

16 12. NRS 116.3116(2) further provides that a portion of the Association Lien has priority over
17 even a first security interest in the Property:

18 [the Association Lien] is also prior to all security interests described in paragraph
19 (b) to the extent of any charges incurred by the association on a unit pursuant to
NRS 116.310312 and to the extent of the assessments for common expenses
20 based on the periodic budget adopted by the association pursuant to NRS
116.3115 which would have become due in the absence of acceleration during the
9 months immediately preceding institution of an action to enforce the lien[.]

21 13. Pursuant to NRS 116.1104, the provisions of NRS 116.3116(2) granting priority cannot
22 be waived by agreement or contract, including any subordination clause in the CC&Rs.

23 14. According to NRS 116.1108, real property law principles supplement the provisions of
24 NRS 116.

25
26 15. Upon information and belief, the Association took the necessary action to trigger the
27 super-priority portion of the Association Lien.

28 16. Upon information and belief, no party still claiming an interest in the Property recorded a

1 lien or encumbrance prior to the declaration creating the Association.

2 17. Upon information and belief, SFR's bid on the Property was in excess of the amount
3 necessary to satisfy the costs of sale and the super-priority portion of the Association Lien.

4 18. Upon information and belief, the Association or its agent NAS has distributed or are
5 attempting to distribute the excess funds to lien holders in order of priority pursuant to NRS
6 116.31164(c).

7 19. Upon information and belief, Counter-Defendant and Cross-Defendants had actual or
8 constructive notice of the requirement to pay assessments to the Association and of the
9 Association Lien.

10 20. Upon information and belief, Counter-Defendant and Cross-Defendants had actual or
11 constructive notice of the Association's foreclosure proceedings.

12 21. Upon information and belief, prior to the Association foreclosure sale, no individual or
13 entity paid the full amount of delinquent assessments described in the Notice of Default.

14 22. Upon information and belief, Counter-Defendant Chase had actual or constructive notice
15 of the super-priority portion of the Association Lien.

16 23. Upon information and belief, Counter-Defendant Chase knew or should have known that
17 its interest in the Property could be extinguished through foreclosure if he failed to cure the
18 super-priority portion of the Association Lien representing 9 months of assessments for common
19 expenses based on the periodic budget adopted by the association which would have become due
20 in the absence of acceleration for the relevant time period.

21 24. Upon information and belief, prior to the Association foreclosure sale, no individual or
22 entity paid the super-priority portion of the Association Lien representing 9 months of
23 assessments for common expenses based on the periodic budget adopted by the association
24 which would have become due in the absence of acceleration for the relevant time period.

25 25. SFR learned of the Association foreclosure sale through public notices.

26 26. Multiple bidders attended the public auction, which was held at the same time, day and
27 place that NAS generally conducts such auctions.

28 27. SFR is a bona fide purchaser.

28. Pursuant to NRS 116.31166, the foreclosure sale vested title in SFR “without equity or right of redemption,” and the Foreclosure Deed is conclusive against the Property’s “former owner, his or her heirs and assigns, and all other persons.”

Interests, Liens and Encumbrances Extinguished by the Super-Priority Association Lien

29. Upon information and belief, the Hawkinses, first obtained title to the Property in June of 2006 through a Grant, Bargain Sale Deed from Nathan VanNoy recorded against the Property in the Official Records of the Clark County Recorder as Instrument No. 200606120003525.

30. On or about June 12, 2006, GreenPoint Mortgage Funding, Inc. (“GreenPoint”) recorded a deed of trust against the Property in the Official Records of the Clark County Recorder as Instrument No. 200606120003526 (“First Deed of Trust”).

31. Upon information and belief, the Association was formed and its declaration of CC&Rs was recorded in the Official Records of the Clark County Recorder before the First Deed of Trust was recorded.

32. Upon information and belief, GreenPoint had actual or constructive notice of the Association Lien and NRS 116.3116 before it funded the loan secured by the First Deed of Trust.

33. The First Deed of Trust contains a Planned Unit Development Rider recognizing the applicability of Association’s declaration of CC&Rs that were recorded.

34. Upon information and belief, on October 26, 2009, Colleen Irby, Officer for Mortgage Electronic Registration Systems, Inc. (“MERS”) executed an assignment that transferred the beneficial interest in the First Deed of Trust, together with the underlying promissory note to Chase. The assignment was recorded on October 27, 2009 against the Property in Official Records of the Clark County Recorder as Instrument No. 200910270000618.

35. Upon information and belief, Chase had actual or constructive notice of the Association Lien and NRS 116.3116 before it obtained an interest in the First Deed of Trust.

36. On or about October 27, 2009, Chase recorded a document substituting California Reconveyance Company (“CRC”) as trustee of the First Deed of Trust.

37. On or about October 27, 2009, CRC recorded a notice of default pursuant to the First Deed of Trust for amounts that became due on July 1, 2009 in the Official Records of the Clark

County Recorder as Instrument No. 200910270000620.

38. On or about, November 27, 2013, Chase filed a Complaint for declaratory relief and quiet title.

39. Counter-Defendant Chase's interest in the Property was extinguished by the foreclosure of the Association Lien.

40. Cross Defendants, the Hawkinses' interest in the Property was extinguished by the foreclosure of the super priority portion of the Association Lien.

III. FIRST CLAIM FOR RELIEF
(Declaratory Relief/Quiet Title Pursuant to NRS 30.010, et. seq., NRS 40.10 & NRS 116.3116)

41. SFR repeats and realleges the allegations of paragraphs 1-40 as though fully set forth herein and incorporates the same by reference.

42. Pursuant to NRS 30.010, et. seq. and NRS 40.10, this Court has the power and authority to declare the SFR's rights and interests in the Property and to resolve the Counter-Defendant and Cross-Defendants' adverse claims in the Property.

43. SFR acquired the Property on March 1, 2013 by successfully bidding on the Property at a publicly-held foreclosure auction in accordance with NRS 116.3116, et. seq. and the resulting Association Foreclosure Deed vesting title in SFR was recorded on March 6, 2013.

44. Upon information and belief, Counter Defendant, Chase may claim an interest in the Property via the First Deed of Trust against the Property even after the Association foreclosure sale.

45. Upon information and belief, Cross-Defendants, the Hawkinses, may claim an ownership interest in the Property.

46. A foreclosure sale conducted pursuant to NRS 116.31162, 116.31163 and 116.31164, like all foreclosure sales, extinguishes the title owner's interest in the Property and all junior liens and encumbrances, including deeds of trust.

47. Pursuant to NRS 116.3116(2), the super-priority portion of the Association Lien has priority over the First Deed of Trust.

48. Counter-Defendant and Cross-Defendants were duly notified of the Association

1 foreclosure sale and failed to act to protect their interests in the Property, if any legitimately
2 existed.

3 49. SFR is entitled to a declaratory judgment from this Court finding that: (1) SFR is the title
4 owner of the Property; (2) the Association Foreclosure Deed is valid and enforceable; (3) the
5 Association foreclosure sale extinguished Counter-Defendant and Cross-Defendants' ownership
6 and security interests in the Property; and (4) SFR's rights and interest in the Property are
7 superior to any adverse interest claimed by Counter-Defendant and Cross-Defendants.

8 50. SFR seeks an order from the Court quieting title to the Property in favor of SFR.

9 **IV. SECOND CLAIM FOR RELIEF**
10 **(Preliminary and Permanent Injunction)**

11 51. SFR repeats and realleges the allegations of paragraphs 1-50 as though fully set forth
12 herein and incorporates the same by reference.

13 52. SFR properly acquired title to the Property at the Association foreclosure sale on March
14 1, 2013.

15 53. Counter-Defendant Chase may claim that it maintained an interest in the Property
16 through the First Deed of Trust which was extinguished by the Association foreclosure sale.

17 54. Cross-Defendants, the Hawkinses, may claim an ownership interest in the Property.

18 55. A foreclosure sale based on the First Deed of Trust is invalid as Counter-Defendant
19 Chase lost its interest in the Property, if any, at the Association foreclosure sale.

20 56. Any sale or transfer of title to the Property by Counter-Defendant and Cross-Defendants
21 would be invalid because their interest in the Property, if any, was extinguished by the
22 Association foreclosure sale.

23 57. Any attempt to take or maintain possession of the Property by Counter-Defendant and
24 Cross-Defendants would be invalid because their interest in the Property, if any, was
25 extinguished by the Association foreclosure sale.

26 58. Any attempt to sell, transfer, encumber or otherwise convey the Property by the Counter-
27 Defendant and Cross-Defendants would be invalid because their interest in the Property, if any,
28 was extinguished by the Association foreclosure sale.

59. On the basis of the facts described herein, SFR has a reasonable probability of success on the merits of its claims and has no other adequate remedies at law.

60. SFR is entitled to a preliminary injunction and permanent injunction prohibiting Counter-Defendant and Cross-Defendants from beginning or continuing any eviction proceedings that would affect SFR's possession of the Property.

61. SFR is entitled to a preliminary injunction and permanent injunction prohibiting Counter-Defendant and Cross-Defendants from any sale or transfer that would affect the title to the Property.

V. PRAYER FOR RELIEF

SFR requests judgment against Counter-Defendant and Cross-Defendants as follows:

1. For a declaration and determination that SFR Investments Pool 1, LLC is the rightful owner of title to the Property, and that Counter Defendant and Cross-Defendants be declared to have no right, title or interest in the Property.

2. For a preliminary and permanent injunction that Counter-Defendant and Cross-Defendants are prohibited from initiating or continuing foreclosure proceedings, and from selling or transferring the Property;

3. For an award of attorney's fees and costs of suit; and

4. For any further relief that the Court may deem just and proper.

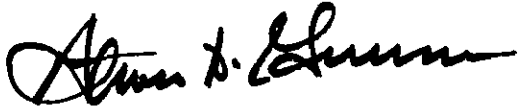
DATED March 20th, 2014.

HOWARD KIM & ASSOCIATES

/s/Diana S. Cline
HOWARD C. KIM, ESQ.
Nevada Bar No. 10386
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Attorneys for SFR Investments Pool 1, LLC

EXHIBIT 4

EXHIBIT 4



CLERK OF THE COURT

SAO

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*Attorneys for Defendant/Counter-claimant
SFR Investments Pool 1, LLC*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company; DOES 1
through 10; and ROE BUSINESS ENTITIES
1 through 10, inclusive,

Defendants.

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

Counter-Claimant,

vs.

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association;
ROBERT M. HAWKINS, an individual;
CHRISTINE V. HAWKINS, an individual;
DOES 1 10 and ROE BUSINESS ENTITIES
1 through 10 inclusive,

Counter-Defendant/Cross-Defendants.

Case No. A-13-692304-C

Dept. No. XVIII

**STIPULATION AND ORDER
DISMISSING DEFENDANTS ROBERT M.
HAWKINS AND CHRISTINE V.
HAWKINS WITHOUT PREJUDICE**

Defendants ROBERT M. HAWKINS and CHRISTINE V. HAWKINS ("Hawkins")

HOWARD KIM & ASSOCIATES

1055 WHITNEY RANCH DRIVE, SUITE 110

HENDERSON, NEVADA 89014

(702) 485-3300 FAX (702) 485-3301

1 stipulate and agree that any ownership interest they may have had in the real property
2 commonly known as **3263 Morning Springs Drive, Henderson, NV 89074; Parcel No. 177-**
3 **24-514-043** (the "Property") was extinguished on March 1, 2013, by the foreclosure sale
4 conducted by Nevada Association Services, Inc. ("NAS"), agent for Pebble Canyon
5 Homeowners Association. Further, Defendants stipulate and agree that they surrendered any
6 interest in the Property in their Chapter 7 Bankruptcy, Case No. 12-13397-bam, filed on
7 March 23, 2012 in the U.S. Bankruptcy Court, District of Nevada, and from which they
8 received a discharge on June 26, 2012, and which case was closed on June 29, 2012.

9 Defendants Hawkins further stipulate and agree that they will not contest the validity of
10 the foreclosure deed recorded in the Official Records of the Clark County Recorder as
11 Instrument Number 201303060001648, or any subsequent transactions, including SFR
12 Investments Pool 1, LLC's ("SFR") ownership interest in the Property.

13 Based on these representations, SFR and Defendants Hawkins stipulate and agree that
14 Hawkins shall be dismissed from this action, without prejudice, each party to bear its own fees
15 and costs.

16 DATED this 8 day of April, 2014.

17 HOWARD KIM & ASSOCIATES

18 
Diana S. Cline, Esq.

19 Nevada Bar No. 10580

20 1055 Whitney Ranch Drive, Suite 110

21 Henderson, Nevada 89014

22 Phone: (702) 485-3300

23 Fax: (702) 485-3301

24 Attorneys for SFR Investments Pool 1, LLC

25 ///

DATED this 18 day of April, 2014.



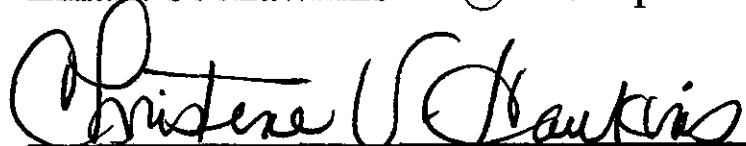
Robert M. Hawkins

4138 Ridgewood Avenue

Las Vegas, Nevada 89120

Phone: (702) 524-5821

Email: bobhawkins265@embarqmail.com



Christine V. Hawkins

4138 Ridgewood Avenue

Las Vegas, Nevada 89120

HOWARD KIM & ASSOCIATES

1055 WHITNEY RANCH DRIVE, SUITE 110

HENDERSON, NEVADA 89014

(702) 485-3300 FAX (702) 485-3301

1 DATED this _____ day of _____, 2014.

2 TIFFANY & BOSCO P.A.

3 _____
4 Gregory L. Wilde, Esq.
5 Nevada Bar No. 4417
6 212 South Jones Blvd.
7 Las Vegas, Nevada 89107
8 Phone: (702) 258-8200
9 Fax: (702) 258-8787
10 *Attorneys for Plaintiff*

ORDER

11 IT IS SO ORDERED, that Robert Hawkins and Christine Hawkins are
12 dismissed from case number A692304

13 Dated this _____ day of _____, 2014.

14 *Dated: 4-21-14*

15 _____
16 DISTRICT COURT JUDGE *JB*

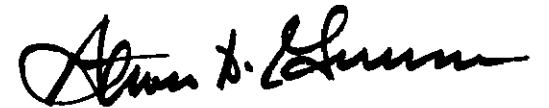
17 Respectfully Submitted by:

18 **HOWARD KIM & ASSOCIATES**

19 _____
20 HOWARD C. KIM, ESQ.
21 Nevada Bar No. 10386
22 DIANA S. CLINE, ESQ.
23 Nevada Bar No. 10580
24 JACQUELINE A. GILBERT, ESQ.
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27 Henderson, Nevada 89014
28 Phone: (702) 485-3300
Fax: (702) 485-3301
Attorneys for SFR Investments Pool 1, LLC

EXHIBIT 5

EXHIBIT 5



CLERK OF THE COURT

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4 E-mail: diana@hkimlaw.com
JACQUELINE A. GILBERT, ESQ.
5 Nevada Bar No. 10593
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Telephone: (702) 485-3300
8 Facsimile: (702) 485-3301
Attorneys for Defendant/Counter-claimant
9 *SFR Investments Pool 1, LLC*

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association,

13
14 Plaintiff,

15 vs.

16 SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company; DOES 1
17 through 10; and ROE BUSINESS ENTITIES
1 through 10, inclusive,

18
19 Defendants.

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

21 Counter-Claimant,

22 vs.

23 JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association;
24 ROBERT M. HAWKINS, an individual;
25 CHRISTINE V. HAWKINS, an individual;
DOES 1 10 and ROE BUSINESS ENTITIES
26 1 through 10 inclusive,

27 Counter-Defendant/Cross-Defendants.
28

Case No. A-13-692304-C

Dept. No. XVIII

**NOTICE OF ENTRY OF STIPULATION
AND ORDER**

HOWARD KIM & ASSOCIATES
1055 WHITNEY RANCH DRIVE, SUITE 110
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

1 PLEASE TAKE NOTICE that a **STIPULATION AND ORDER DISMISSING**
2 **DEFENDANTS ROBERT M. HAWKINS AND CHRISTINE V. HAWKINS WITHOUT**
3 **PREJUDICE** was entered by this Court on April 23, 2014. A copy of said order is attached
4 hereto.

5 DATED April 24, 2014.

6 **HOWARD KIM & ASSOCIATES**

7 /s/ Diana S. Cline

Howard C. Kim, Esq.

Nevada Bar No. 10386

Diana S. Cline, Esq.

Nevada Bar No. 10580

1055 Whitney Ranch Dr., Suite 110

Henderson, Nevada 89014

Phone: (702) 485-3300

Fax: (702) 485-330

Attorneys for Plaintiff

12 **CERTIFICATE OF SERVICE**

13 I HEREBY CERTIFY that on this 24th day of April, 2014, pursuant to NRCP 5(b), I
14 served the following parties listed below by depositing via U.S. mail first class a true and
15 correct copy of the foregoing **NOTICE OF ENTRY OF STIPULATION AND ORDER**,
16 postage prepaid and addressed to:

17 Gregory Wilde, Esq.

18 Tiffany & Bosco P.A.

19 212 S. Jones Blvd.

20 Las Vegas, NV 89107

Attorney for JPMorgan Chase Bank

21 *National Association*

22 /s/ Tommie Dooley

An employee of Howard Kim & Associates



CLERK OF THE COURT

SAO

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*Attorneys for Defendant/Counter-claimant
SFR Investments Pool 1, LLC*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company; DOES 1
through 10; and ROE BUSINESS ENTITIES
1 through 10, inclusive,

Defendants.

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

Counter-Claimant,

vs.

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association;
ROBERT M. HAWKINS, an individual;
CHRISTINE V. HAWKINS, an individual;
DOES 1 10 and ROE BUSINESS ENTITIES
1 through 10 inclusive,

Counter-Defendant/Cross-Defendants.

Case No. A-13-692304-C

Dept. No. XVIII

**STIPULATION AND ORDER
DISMISSING DEFENDANTS ROBERT M.
HAWKINS AND CHRISTINE V.
HAWKINS WITHOUT PREJUDICE**

Defendants ROBERT M. HAWKINS and CHRISTINE V. HAWKINS ("Hawkins")

HOWARD KIM & ASSOCIATES

1055 WHITNEY RANCH DRIVE, SUITE 110

HENDERSON, NEVADA 89014

(702) 485-3300 FAX (702) 485-3301

1 stipulate and agree that any ownership interest they may have had in the real property
2 commonly known as **3263 Morning Springs Drive, Henderson, NV 89074; Parcel No. 177-**
3 **24-514-043** (the "Property") was extinguished on March 1, 2013, by the foreclosure sale
4 conducted by Nevada Association Services, Inc. ("NAS"), agent for Pebble Canyon
5 Homeowners Association. Further, Defendants stipulate and agree that they surrendered any
6 interest in the Property in their Chapter 7 Bankruptcy, Case No. 12-13397-bam, filed on
7 March 23, 2012 in the U.S. Bankruptcy Court, District of Nevada, and from which they
8 received a discharge on June 26, 2012, and which case was closed on June 29, 2012.

9 Defendants Hawkins further stipulate and agree that they will not contest the validity of
10 the foreclosure deed recorded in the Official Records of the Clark County Recorder as
11 Instrument Number 201303060001648, or any subsequent transactions, including SFR
12 Investments Pool 1, LLC's ("SFR") ownership interest in the Property.

13 Based on these representations, SFR and Defendants Hawkins stipulate and agree that
14 Hawkins shall be dismissed from this action, without prejudice, each party to bear its own fees
15 and costs.

16 DATED this 8 day of April, 2014.

17 HOWARD KIM & ASSOCIATES

18 
Diana S. Cline, Esq.

19 Nevada Bar No. 10580

20 1055 Whitney Ranch Drive, Suite 110

21 Henderson, Nevada 89014

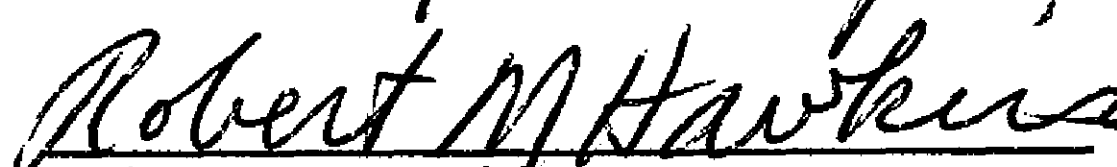
22 Phone: (702) 485-3300

23 Fax: (702) 485-3301

24 Attorneys for SFR Investments Pool 1, LLC

25 ///

DATED this 18 day of April, 2014.



Robert M. Hawkins

4138 Ridgewood Avenue

Las Vegas, Nevada 89120

Phone: (702) 524-5821

Email: bobhawkins265@embarqmail.com



Christine V. Hawkins

4138 Ridgewood Avenue

Las Vegas, Nevada 89120

HOWARD KIM & ASSOCIATES

1055 WHITNEY RANCH DRIVE, SUITE 110

HENDERSON, NEVADA 89014

(702) 485-3300 FAX (702) 485-3301

1 DATED this _____ day of _____, 2014.

2 TIFFANY & BOSCO P.A.

3 _____
4 Gregory L. Wilde, Esq.
5 Nevada Bar No. 4417
6 212 South Jones Blvd.
7 Las Vegas, Nevada 89107
8 Phone: (702) 258-8200
9 Fax: (702) 258-8787
10 *Attorneys for Plaintiff*

ORDER

11 IT IS SO ORDERED, that Robert Hawkins and Christine Hawkins are
12 dismissed from case number A692304

13 Dated this _____ day of _____, 2014.

14 *Dated: 4-21-14*

15 _____
16 DISTRICT COURT JUDGE

17 *JB*

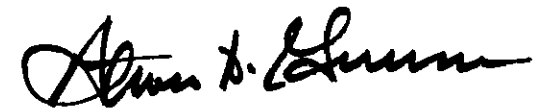
18 Respectfully Submitted by:

19 **HOWARD KIM & ASSOCIATES**

20 _____
21 HOWARD C. KIM, ESQ.
22 Nevada Bar No. 10386
23 DIANA S. CLINE, ESQ.
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EXHIBIT 6

EXHIBIT 6



CLERK OF THE COURT

1 **ORDR**
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16 *Attorneys for SFR Investments Pool 1, LLC*

17 **EIGHTH JUDICIAL DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 JPMORGAN CHASE BANK, NATIONAL
20 ASSOCIATION, a national association,

21 Plaintiff,

22 vs.

23 SFR INVESTMENTS POOL 1, LLC, a
24 Nevada limited liability company; DOES 1
25 through 10; and ROE BUSINESS ENTITIES
26 1 through 10, inclusive,

27 Defendants.

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

Counter-Claimant,

vs.

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association;
ROBERT M. HAWKINS, an individual;
CHRISTINE V. HAWKINS, an individual;
DOES 1 10 and ROE BUSINESS ENTITIES
1 through 10 inclusive,

Counter-Defendant/Cross-Defendants

Case No. A-13-692304-C

Dept. No. XXIV

**ORDER GRANTING SFR INVESTMENTS
POOL 1, LLC'S MOTION FOR
SUMMARY JUDGMENT**

This matter came before the Court on SFR Investments Pool 1, LLC ("SFR") Motion for Summary Judgment ("SFR MSJ"), filed on July 7, 2016, seeking judgment on its claims against JPMorgan Chase Bank, National Association ("Chase") for quiet title/declaratory relief and on Chase's claims against SFR for quiet title/declaratory relief and unjust enrichment. Chase filed

1 its opposition to SFR's MSJ on July 26, 2016, and SFR filed its reply on August 1, 2016. Karen
2 L. Hanks, Esq. of Kim Gilbert Ebron appeared on behalf of SFR and Abran E. Vigil, Esq. of
3 Ballard Spahr LLP appeared on behalf of Chase. No other parties or counsel appeared.

4 Having reviewed and considered the full briefing and arguments of counsel, for the
5 reasons stated on the record and in the pleadings, and good cause appearing, this Court makes the
6 following findings of fact and conclusions of law.¹

7 FINDINGS OF FACT

8 1. In 1991, Nevada adopted the Uniform Common Interest Ownership Act as NRS
9 116, including NRS 116.3116(2).²

10 2. On November 8, 1991, Pebble Canyon Homeowners Association (the
11 "Association"), recorded in the Official Records of the Clark County Recorder, its Declaration
12 of Covenants, Conditions and Restrictions ("CC&Rs") as Instrument No. 01962 in Book
13 911108 of the Official Records of the Clark County Recorder.³

14 3. The Hawkinses took title to the real property commonly known as 3263 Morning
15 Springs Drive, Henderson, Nevada 89074; Parcel No. 177-24-514-043 (the "Property"), by way
16 of a Grant, Bargain, sale Deed recorded as Instrument No. 01962 in Book 911108 on June 12,
17 2006.

18 4. On June 12, 2006, a Deed of Trust was recorded against the Property in favor of
19 GreenPoint Mortgage Funding, Inc. as Instrument No. 200606120003526 ("Deed of Trust").
20 The Deed of Trust was executed by the Hawkinses to secure a promissory note in the amount of
21 \$240,000.00. The Deed of Trust designated Mortgage Electronic Registration Systems, Inc.
22 ("MERS") as beneficiary in a nominee capacity for the lender and the lender's successors and
23 assigns.

24 5. As part of the loan transaction, the lender prepared and the Hawkinses signed, a

25
26 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.

27 ² Unless otherwise noted, the findings set forth herein are undisputed.

28 ³ When a document is stated to have been recorded, it refers to being recorded in the Official
records of the Clark County Recorder.

1 Planned United Development Rider ("PUD Rider") a rider to the Deed of Trust, recognizing that
2 the Property was located in a sub-common interest community within the Association.

3 6. On October 27, 2009, an Assignment of Deed of Trust was recorded as
4 Instrument No. 200910270000618, stating that the MERS was assigning the Deed of Trust to
5 Chase, together with underlying promissory note.

6 7. On October 27, 2009, California Reconveyance Company ("CRC") as trustee,
7 recorded a Notice of Default and Election to Sell Under Deed of Trust, stating the Hawkinses
8 had become delinquent on their payments under the note as of July 1, 2009.

9 8. On August 3, 2012, Nevada Association Services ("NAS") recorded on behalf of
10 the Association a Notice of Delinquent Assessment Lien as Instrument No. 201208030002972
11 ("NODA"). The NODA was mailed to the Hawkinses.

12 9. On September 20, 2012, NAS recorded on behalf of the Association a Notice of
13 Default and Election to Sell Under Homeowners Association Lien as Instrument No.
14 201209200001446 ("NOD"). The NOD was mailed to Chase and CRC, and Chase admits
15 receipt of the NOD.

16 10. On February 7, 2013, NAS recorded on behalf of the Association a Notice of
17 Trustee's Sale as Instrument No. 201109290002672 stating a sale date of March 1, 2013
18 ("NOS"). The NOS was mailed to Chase, CRC, MERS, and GreenPoint. Chase admits receipt
19 of the NOS. The NOS was posted and published pursuant to statutory requirements.

20 11. On March 1, 2013, NAS held the Association foreclosure sale at which SFR
21 placed the highest bid of \$3,700.00 ("Association foreclosure sale").

22 12. The Trustee's Deed Upon Sale vesting title in SFR was recorded on March 6,
23 2013 as Instrument No. 201303060001648. The Trustee's Deed included the following recitals:

24 This conveyance is made pursuant to the powers conferred upon [NAS] by
25 Nevada Revised Statutes, the Pebble Canyon HOA governing documents
26 (CC&Rs) and that certain Notice of Delinquent Assessment Lien, described
27 herein. Default occurred as set forth in a Notice of Default and Election, recorded
28 on 9/20/2012. . . . Nevada Association Services, Inc. has complied with all
requirements of law including, but not limited to, the elapsing of 90 days,
mailing of copies of [NODA] and [NOD] and the posting and publication of the
Notice of Sale.

13. Chase is charged with knowledge of NRS 116 since its adoption in 1991.

14. Despite being fully aware of the Association's foreclosure sale, neither Chase, its predecessors in interest, nor their agents attempted to pay any amount of the Association's lien. Neither did they take any action to enjoin the sale or seek some intervention to determine an amount to pay.

15. In the Nevada Supreme Court's SFR Investments Pool 1, LLC v. U.S. Bank, N.A., decision, the Court was unanimous in its interpretation that a homeowners association foreclosure sale could extinguish a first deed of trust, and the only disagreement being in whether the foreclosure could be non-judicial or must be judicial. 130 Nev. ____, 332 P.3d 408, 419 (2014) (majority holding and first paragraph of the concurring in part, dissenting in part by C.J. Gibbons).

16. There is no suggestion of fraud, oppression or unfairness in the conduct of the sale. Thus, whether the price was inadequate or grossly inadequate, is immaterial.

17. In its opposition, Chase argued the loan was FHA insured through the Department of Housing and Urban Development ("HUD") and, therefore, this Court should use the Supremacy Clause to preempt NRS 116 and declare that the Association's foreclosure sale did not extinguish Chase's FDOT. This Court finds that an insurer does not have an interest in the Property that is protected under the Property Clause or Supremacy Clause until title is transferred to HUD.

18. Chase also argued that the SFR Decision should not be applied retroactively.

19. Chase provided no evidence that its alleged payments for taxes or insurance were made in defense of property. There was no evidence that SFR was a named additional insured on any insurance policy on the Property obtained by Chase, nor did Chase provide evidence that the Property was in danger of being sold for delinquent taxes.

CONCLUSIONS OF LAW

A. Summary judgment is appropriate "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 a judgment as a matter of law." Wood v. Safeway, 121 Nev. 724, 729, 121 P.3d

1 1026, 1029 (2005). Additionally, “[t]he purpose of summary judgment ‘is to avoid a needless
2 trial when an appropriate showing is made in advance that there is no genuine issue of fact to be
3 tried, and the movant is entitled to judgment as a matter of law.’” McDonald v. D.P. Alexander
4 & Las Vegas Boulevard, LLC, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005) quoting Coray v.
5 Home, 80 Nev. 39, 40-41, 389 P.2d 76, 77 (1964). Moreover, the non-moving party “must, by
6 affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for
7 trial or have summary judgment entered against [it].” Wood, 121 Nev. at 32, 121 P.3d at 1031.
8 The non-moving party “is not entitled to build a case on the gossamer threads of whimsy,
9 speculation, and conjecture.” Id. Rather, the non-moving party must demonstrate specific facts
10 as opposed to general allegations and conclusions. LaMantia v. Redisi, 118 Nev. 27, 29, 38 P.3d
11 877, 879 (2002); Wayment v. Holmes, 112 Nev. 232, 237, 912 P.2d 816, 819 (1996). Though
12 inferences are to be drawn in favor of the non-moving party, an opponent to summary judgment,
13 must show that it can produce evidence at trial to support its claim or defense. Van Cleave v.
14 Kietz-Mill Minit Mart, 97 Nev. 414, 417, 633 P.2d 1220, 222 (1981).

15 B. While the moving party generally bears the burden of proving there is no genuine
16 issue of material fact, in this case there are a number of presumptions that this Court must
17 consider in deciding the issues, including:

18 1. That foreclosure sales and the resulting deeds are presumed valid. NRS
19 47.250(16)-(18) (stating that there are disputable presumptions “[t]hat the law has been
20 obeyed[]”; “[t]hat a trustee or other person, whose duty it was to convey real property to
21 a particular person, has actually conveyed to that person, when such presumption is
22 necessary to perfect the title of such person or a successor in interest[]”; “[t]hat private
23 transactions have been fair and regular”; and “[t]hat the ordinary course of business has
24 been followed.”).

25 2. That a foreclosure deed “reciting compliance with notice provisions of
26 NRS 116.31162 through NRS 116.31168 “is conclusive” as to the recitals “against the
27 unit’s former owner, his or her heirs and assigns and all other persons.” SFR Investments
28 Pool 1 v. U.S. Bank, 130 Nev. Adv. Op. 75, 334 P.3d at 411-12.

1 3. That "[i]f the trustee's deed recites that all statutory notice requirements
2 and procedures required by law for the conduct of the foreclosure have been satisfied, a
3 rebuttable presumption arises that the sale has been conducted regularly and properly;
4 this presumption is conclusive as to a bona fide purchaser." Moeller v. Lien, 30
5 Cal.Rptr.2d 777, 783 (Ct. App. 1994); see also, 4 Miller & Starr, Cal. Real Estate (3d ed.
6 2000) Deeds of Trust and Mortgages § 10:211, pp. 647-652; 2 Bernhardt, Cal. Mortgage
7 and Deed of Trust Practice (Cont.Ed.Bar 2d ed. 1990) § 7:59, pp. 476-477).

8 C. "A presumption not only fixes the burden of going forward with evidence, but it
9 also shifts the burden of proof." Yeager v. Harrah's Club, Inc., 111 Nev. 830, 834, 897 P.2d
10 1093, 1095 (1995)(citing Vancheri v. GNLV Corp., 105 Nev. 417, 421, 777 P.2d 366, 368
11 (1989)). "These presumptions impose on the party against whom it is directed the burden of
12 proving that the nonexistence of the presumed fact is more probable than its existence." Id.
13 (citing NRS 47.180).

14 D. Thus, Chase bore the burden of proving it was more probable than not that the
15 Association Foreclosure Sale and the resulting Foreclosure Deed were invalid.

16 E. Chase has the burden to overcome the conclusive presumption of the foreclosure
17 deed recitals with evidence of fraud, unfairness and oppression.

18 F. Pursuant to the SFR Decision, NRS 116.3116(2) gives associations a true super-
19 priority lien, the non-judicial foreclosure of which extinguishes a first deed of trust. SFR, 334
20 P.3d at 419.

21 G. According to the SFR Decision, "together, NRS 116.3116(1) and NRS
22 116.31162 provide for the nonjudicial foreclosure of the whole of the HOA's lien, not just the
23 subpriority piece of it." SFR, 334 P.3d at 414-15.

24 H. The Association foreclosure sale vested title in SFR "without equity or right of
25 redemption." SFR, 334 P.3d at 419 (citing NRS 116.31166(3)).

26 I. "If the sale is properly, lawfully and fairly carried out, [the bank] cannot
27 unilaterally create a right of redemption in [itself]." Golden v. Tomiyasu, 387 P.2d 989, 997
28 (Nev. 1963).

1 J. As the SFR Decision did not announce a new rule of law but merely interpreted
2 the provisions set forth in NRS 116 *et seq.*, it does not raise an issue of retroactivity. The SFR
3 Decision provided “an authoritative statement of what the statute mean before as well as after
4 the decision of the case giving rise to that construction.” Morales-Izquierdo v. Dep’t of
5 Homeland Sec., 600 F.3d 1076, 1087 (9th Cir. 2010), overruled in part on other grounds by
6 Garfias-Rodriguez v. Holder, 702 F.3d 504, 516 (9th Cir. 2010), quoting Rivers v. Roadway
7 Express, Inc., 511 U.S. 298, 312-313 (1994). Thus, this Court rejects Chase’s retroactivity
8 argument.

9 K. NRS 116 does not require a purchaser at an association foreclosure sale be a
10 bona fide purchaser, but in any case, without evidence to the contrary, when an association’s
11 foreclosure sale complies with the statutory foreclosure rules, as evident by the recorded notices
12 and with the admission of knowledge of the sale, and without any facts to the contrary,
13 knowledge of a FDOT and that Chase retained the ability to bring an equitable claim to
14 challenge the foreclosure sale is not enough in itself to demonstrate that SFR took the property
15 with notice of a potential dispute to title, the basis of which is unknown to SFR, and therefore,
16 does is not sufficient to defeat SFR’s ability to claim BFP status. Shadow Wood HOA v. N.Y.
17 Cnty Bancorp, 132 Nev. ____, 366 P.3d 1105, 1116 (2016).

18 L. Shadow Wood reaffirmed Nevada’s adoption of the California rule that
19 “inadequacy of price, however gross, is not in itself a sufficient ground for setting aside a
20 trustee’s sale legally made; there must be in addition proof of some element of fraud, unfairness
21 or oppression as accounts for and brings about the inadequacy of price[.]” Shadow Wood,
22 2016 WL 347979 at*5 (quoting Golden, 79 Nev. at 504 (internal citations omitted) (emphasis
23 added)).

24 M. Because there is no suggestion of fraud, oppression or unfairness in the sale
25 process or that SFR knowingly participated in fraud, oppression or unfairness in the sale, even if
26 the purchase price paid by SFR was seen as inadequate or grossly inadequate, price alone is
27 insufficient to invalidate the sale.

28 N. Chase admits it received the required notices and knew the sale had been

1 scheduled, yet it did nothing to protect its interest in the Property. Furthermore, as a mere
2 lienholder, as opposed to homeowner like the bank in Shadow Wood, Chase is not entitled to
3 equitable relief as it has an adequate remedy at law for damages against any party that may have
4 injured it. Las Vegas Valley Water Dist. V. Curtis Park Manor Water Users Ass'n, 646 P.2d
5 549, 551 (Nev. 1982) ("courts lack authority to grant equitable relief when an adequate remedy
6 at law exists."). Thus, even if this Court had found some facts suggesting fraud, unfairness or
7 oppression, it would not need to weigh the equities. However, because Chase has presented no
8 evidence, other than the alleged "low price" paid by SFR, suggesting that the sale was anything
9 other than properly conducted, the Court would not need to weigh the equities in this case.

10 O. The Court rejects Chase's arguments on the Supremacy Clause because Chase, a
11 private litigant, cannot use the Supremacy Clause to displace state law under Armstrong v.
12 Exceptional Child Care Ctr., Inc., 575 U.S. ____, 135 S.Ct. 1378, 1383-85 (2015). Furthermore,
13 Chase lacks standing to enforce the National Housing Act. Finally, HUD's insurance interest is
14 too attenuated to raise a supremacy clause issue, where the FDOT has not been assigned to
15 HUD.

16 P. The Court rejects Chase's argument that an association must have accumulated
17 either six or nine months of delinquent assessments before it can begin the foreclosure process.
18 Nothing in NRS 116.3116 requires such, and the reference to six or nine months in NRS
19 116.3116 refers only to the amount that would be prior to a first security interest. NRS
20 116.3116(4) provides that the notice of delinquent assessments can be sent as early as ninety
21 (90) days of a delinquency.

22 Q. Chase failed to demonstrate an exception to the voluntary payment doctrine: (a)
23 coercion or duress caused by a business necessity, or (2) payment in defense of property.
24 Nevada Association Services, Inc. v. The Eighth Judicial District, 130 Nev. ____, ____, 338 P.3d
25 1250 (2014). Without showing one of these exceptions applies, one cannot recover voluntary
26 payments. Best Buy Stores v. Benderson-Wainberg Assocs., 668 F.3d 1019, 1030 (8th Cir.
27 2012) ("one who makes a payment voluntarily, cannot recover it on the ground that he was
28 under no legal obligation to make the payment."). Here, Chase failed to provide any facts

1 raising a material question as to whether any alleged payments were made under one of the
2 exceptions.

3 R. The Deed of Trust was extinguished by the Association's foreclosure sale.

4 S. SFR is entitled to quiet title in its name free and clear of the Deed of Trust.

5 T. SFR is entitled to a permanent injunction enjoining Chase, its successors and
6 assigns from taking any action on the extinguished

7 **ORDER**

8 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the SFR MSJ is
9 **GRANTED.**

10 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Deed of Trust
11 recorded against the real property commonly known as 3263 Morning Springs Drive, Henderson,
12 Nevada 89074; Parcel No. 177-24-514-043, was extinguished by the Association Foreclosure
13 Sale.

14 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Chase, its
15 predecessors in interest and its successors, agents, and assigns, have no further interest in real
16 property located at 3263 Morning Springs Drive, Henderson, Nevada 89074; Parcel No. 177-24-
17 514-043 and are hereby permanently enjoined from taking any further action to enforce the now
18 extinguished Deed of Trust.

19 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that title to real
20 property located 3263 Morning Springs Drive, Henderson, Nevada 89074; Parcel No. 177-24-
21 514-043 is hereby quieted in favor of SFR.

22 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that SFR is entitled to
23 summary judgment on Chase's claim for unjust enrichment and that Chase is not entitled to relief
24 as to that claim.

25 ///

26 ///

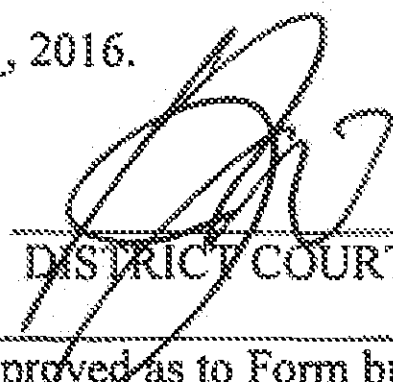
27 ///

28 ///

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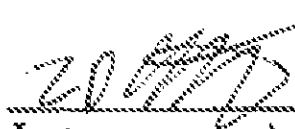
1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Order shall
2 resolve all claims as to all parties.⁴

3
4 DATED this 23 day of August, 2016.

5
6 
DISTRICT COURT JUDGE

7 Respectfully Submitted By:

8 **KIM GILBERT EBRON**

9  SSN 13464 for
10 JACQUELINE A. GILBERT, ESQ.

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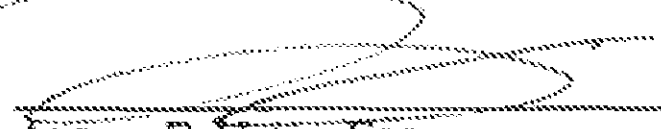
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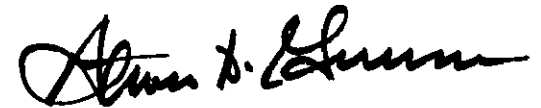
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⁴ SFR dismissed its claims against the Hawkinses by way of Stipulation and Order entered on April 23, 2014, notice of entry of which was served on April 24, 2014.

EXHIBIT 7

EXHIBIT 7



CLERK OF THE COURT

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association,

Case No. A-13-692304-C

Dept. No. XXIV

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company; DOES 1
through 10; and ROE BUSINESS ENTITIES 1
through 10, inclusive,

**NOTICE OF ENTRY OF ORDER
GRANTING SFR INVESTMENTS POOL
1, LLC'S MOTION FOR SUMMARY
JUDGMENT**

Defendants.

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

Counter-Claimant,

vs.

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association;
ROBERT M. HAWKINS, an individual;
CHRISTINE V. HAWKINS, an individual;
DOES 1 10 and ROE BUSINESS ENTITIES 1
through 10 inclsuvie,

Counter-Defendant/Cross-Defendants.

PLEASE TAKE NOTICE that on August 23, 2016 this Court entered an **Order**

///

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Granting SFR Investments Pool 1, LLC’s Motion for Summary Judgment. A copy of said Order is attached hereto.

DATED this 24th day of August, 2016.

KIM GILBERT EBRON

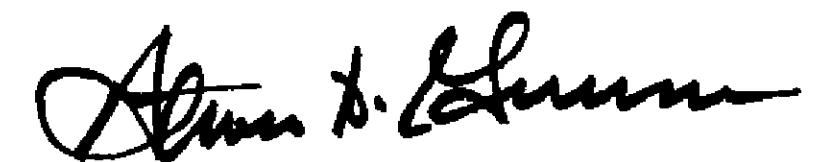
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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of August, 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **NOTICE OF ENTRY OF ORDER GRANTING SFR INVESTMENTS POOL 1, LLC’S MOTION FOR SUMMARY JUDGMENT** to the following parties:

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An Employee of Kim Gilbert Ebron



CLERK OF THE COURT

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17 **EIGHTH JUDICIAL DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 JPMORGAN CHASE BANK, NATIONAL
20 ASSOCIATION, a national association,

21 Plaintiff,

22 vs.

23 SFR INVESTMENTS POOL 1, LLC, a
24 Nevada limited liability company; DOES 1
25 through 10; and ROE BUSINESS ENTITIES
26 1 through 10, inclusive,

27 Defendants.

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

Counter-Claimant,

vs.

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association;
ROBERT M. HAWKINS, an individual;
CHRISTINE V. HAWKINS, an individual;
DOES 1 10 and ROE BUSINESS ENTITIES
1 through 10 inclusive,

Counter-Defendant/Cross-Defendants

Case No. A-13-692304-C

Dept. No. XXIV

**ORDER GRANTING SFR INVESTMENTS
POOL 1, LLC'S MOTION FOR
SUMMARY JUDGMENT**

This matter came before the Court on SFR Investments Pool 1, LLC ("SFR") Motion for Summary Judgment ("SFR MSJ"), filed on July 7, 2016, seeking judgment on its claims against JPMorgan Chase Bank, National Association ("Chase") for quiet title/declaratory relief and on Chase's claims against SFR for quiet title/declaratory relief and unjust enrichment. Chase filed

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Defects	<input type="checkbox"/> Judgment of Arbitration

1 its opposition to SFR's MSJ on July 26, 2016, and SFR filed its reply on August 1, 2016. Karen
2 L. Hanks, Esq. of Kim Gilbert Ebron appeared on behalf of SFR and Abran E. Vigil, Esq. of
3 Ballard Spahr LLP appeared on behalf of Chase. No other parties or counsel appeared.

4 Having reviewed and considered the full briefing and arguments of counsel, for the
5 reasons stated on the record and in the pleadings, and good cause appearing, this Court makes the
6 following findings of fact and conclusions of law.¹

7 FINDINGS OF FACT

8 1. In 1991, Nevada adopted the Uniform Common Interest Ownership Act as NRS
9 116, including NRS 116.3116(2).²

10 2. On November 8, 1991, Pebble Canyon Homeowners Association (the
11 "Association"), recorded in the Official Records of the Clark County Recorder, its Declaration
12 of Covenants, Conditions and Restrictions ("CC&Rs") as Instrument No. 01962 in Book
13 911108 of the Official Records of the Clark County Recorder.³

14 3. The Hawkinses took title to the real property commonly known as 3263 Morning
15 Springs Drive, Henderson, Nevada 89074; Parcel No. 177-24-514-043 (the "Property"), by way
16 of a Grant, Bargain, sale Deed recorded as Instrument No. 01962 in Book 911108 on June 12,
17 2006.

18 4. On June 12, 2006, a Deed of Trust was recorded against the Property in favor of
19 GreenPoint Mortgage Funding, Inc. as Instrument No. 200606120003526 ("Deed of Trust").
20 The Deed of Trust was executed by the Hawkinses to secure a promissory note in the amount of
21 \$240,000.00. The Deed of Trust designated Mortgage Electronic Registration Systems, Inc.
22 ("MERS") as beneficiary in a nominee capacity for the lender and the lender's successors and
23 assigns.

24 5. As part of the loan transaction, the lender prepared and the Hawkinses signed, a

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

28 ² Unless otherwise noted, the findings set forth herein are undisputed.

³ When a document is stated to have been recorded, it refers to being recorded in the Official
records of the Clark County Recorder.

1 Planned United Development Rider ("PUD Rider") a rider to the Deed of Trust, recognizing that
2 the Property was located in a sub-common interest community within the Association.

3 6. On October 27, 2009, an Assignment of Deed of Trust was recorded as
4 Instrument No. 200910270000618, stating that the MERS was assigning the Deed of Trust to
5 Chase, together with underlying promissory note.

6 7. On October 27, 2009, California Reconveyance Company ("CRC") as trustee,
7 recorded a Notice of Default and Election to Sell Under Deed of Trust, stating the Hawkinses
8 had become delinquent on their payments under the note as of July 1, 2009.

9 8. On August 3, 2012, Nevada Association Services ("NAS") recorded on behalf of
10 the Association a Notice of Delinquent Assessment Lien as Instrument No. 201208030002972
11 ("NODA"). The NODA was mailed to the Hawkinses.

12 9. On September 20, 2012, NAS recorded on behalf of the Association a Notice of
13 Default and Election to Sell Under Homeowners Association Lien as Instrument No.
14 201209200001446 ("NOD"). The NOD was mailed to Chase and CRC, and Chase admits
15 receipt of the NOD.

16 10. On February 7, 2013, NAS recorded on behalf of the Association a Notice of
17 Trustee's Sale as Instrument No. 201109290002672 stating a sale date of March 1, 2013
18 ("NOS"). The NOS was mailed to Chase, CRC, MERS, and GreenPoint. Chase admits receipt
19 of the NOS. The NOS was posted and published pursuant to statutory requirements.

20 11. On March 1, 2013, NAS held the Association foreclosure sale at which SFR
21 placed the highest bid of \$3,700.00 ("Association foreclosure sale").

22 12. The Trustee's Deed Upon Sale vesting title in SFR was recorded on March 6,
23 2013 as Instrument No. 201303060001648. The Trustee's Deed included the following recitals:

24 This conveyance is made pursuant to the powers conferred upon [NAS] by
25 Nevada Revised Statutes, the Pebble Canyon HOA governing documents
26 (CC&Rs) and that certain Notice of Delinquent Assessment Lien, described
27 herein. Default occurred as set forth in a Notice of Default and Election, recorded
28 on 9/20/2012. . . . Nevada Association Services, Inc. has complied with all
requirements of law including, but not limited to, the elapsing of 90 days,
mailing of copies of [NODA] and [NOD] and the posting and publication of the
Notice of Sale.

13. Chase is charged with knowledge of NRS 116 since its adoption in 1991.

14. Despite being fully aware of the Association's foreclosure sale, neither Chase, its predecessors in interest, nor their agents attempted to pay any amount of the Association's lien. Neither did they take any action to enjoin the sale or seek some intervention to determine an amount to pay.

15. In the Nevada Supreme Court's SFR Investments Pool 1, LLC v. U.S. Bank, N.A., decision, the Court was unanimous in its interpretation that a homeowners association foreclosure sale could extinguish a first deed of trust, and the only disagreement being in whether the foreclosure could be non-judicial or must be judicial. 130 Nev. ____, 332 P.3d 408, 419 (2014) (majority holding and first paragraph of the concurring in part, dissenting in part by C.J. Gibbons).

16. There is no suggestion of fraud, oppression or unfairness in the conduct of the sale. Thus, whether the price was inadequate or grossly inadequate, is immaterial.

17. In its opposition, Chase argued the loan was FHA insured through the Department of Housing and Urban Development ("HUD") and, therefore, this Court should use the Supremacy Clause to preempt NRS 116 and declare that the Association's foreclosure sale did not extinguish Chase's FDOT. This Court finds that an insurer does not have an interest in the Property that is protected under the Property Clause or Supremacy Clause until title is transferred to HUD.

18. Chase also argued that the SFR Decision should not be applied retroactively.

19. Chase provided no evidence that its alleged payments for taxes or insurance were made in defense of property. There was no evidence that SFR was a named additional insured on any insurance policy on the Property obtained by Chase, nor did Chase provide evidence that the Property was in danger of being sold for delinquent taxes.

CONCLUSIONS OF LAW

A. Summary judgment is appropriate "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 a judgment as a matter of law.'" Wood v. Safeway, 121 Nev. 724, 729, 121 P.3d

1 1026, 1029 (2005). Additionally, “[t]he purpose of summary judgment ‘is to avoid a needless
2 trial when an appropriate showing is made in advance that there is no genuine issue of fact to be
3 tried, and the movant is entitled to judgment as a matter of law.’” McDonald v. D.P. Alexander
4 & Las Vegas Boulevard, LLC, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005) quoting Coray v.
5 Home, 80 Nev. 39, 40-41, 389 P.2d 76, 77 (1964). Moreover, the non-moving party “must, by
6 affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for
7 trial or have summary judgment entered against [it].” Wood, 121 Nev. at 32, 121 P.3d at 1031.
8 The non-moving party “is not entitled to build a case on the gossamer threads of whimsy,
9 speculation, and conjecture.” Id. Rather, the non-moving party must demonstrate specific facts
10 as opposed to general allegations and conclusions. LaMantia v. Redisi, 118 Nev. 27, 29, 38 P.3d
11 877, 879 (2002); Wayment v. Holmes, 112 Nev. 232, 237, 912 P.2d 816, 819 (1996). Though
12 inferences are to be drawn in favor of the non-moving party, an opponent to summary judgment,
13 must show that it can produce evidence at trial to support its claim or defense. Van Cleave v.
14 Kietz-Mill Minit Mart, 97 Nev. 414, 417, 633 P.2d 1220, 222 (1981).

15 B. While the moving party generally bears the burden of proving there is no genuine
16 issue of material fact, in this case there are a number of presumptions that this Court must
17 consider in deciding the issues, including:

18 1. That foreclosure sales and the resulting deeds are presumed valid. NRS
19 47.250(16)-(18) (stating that there are disputable presumptions “[t]hat the law has been
20 obeyed[]”; “[t]hat a trustee or other person, whose duty it was to convey real property to
21 a particular person, has actually conveyed to that person, when such presumption is
22 necessary to perfect the title of such person or a successor in interest[]”; “[t]hat private
23 transactions have been fair and regular”; and “[t]hat the ordinary course of business has
24 been followed.”).

25 2. That a foreclosure deed “reciting compliance with notice provisions of
26 NRS 116.31162 through NRS 116.31168 “is conclusive” as to the recitals “against the
27 unit’s former owner, his or her heirs and assigns and all other persons.” SFR Investments
28 Pool 1 v. U.S. Bank, 130 Nev. Adv. Op. 75, 334 P.3d at 411-12.

1 3. That "[i]f the trustee's deed recites that all statutory notice requirements
2 and procedures required by law for the conduct of the foreclosure have been satisfied, a
3 rebuttable presumption arises that the sale has been conducted regularly and properly;
4 this presumption is conclusive as to a bona fide purchaser." Moeller v. Lien, 30
5 Cal.Rptr.2d 777, 783 (Ct. App. 1994); see also, 4 Miller & Starr, Cal. Real Estate (3d ed.
6 2000) Deeds of Trust and Mortgages § 10:211, pp. 647-652; 2 Bernhardt, Cal. Mortgage
7 and Deed of Trust Practice (Cont.Ed.Bar 2d ed. 1990) § 7:59, pp. 476-477).

8 C. "A presumption not only fixes the burden of going forward with evidence, but it
9 also shifts the burden of proof." Yeager v. Harrah's Club, Inc., 111 Nev. 830, 834, 897 P.2d
10 1093, 1095 (1995)(citing Vancheri v. GNLV Corp., 105 Nev. 417, 421, 777 P.2d 366, 368
11 (1989)). "These presumptions impose on the party against whom it is directed the burden of
12 proving that the nonexistence of the presumed fact is more probable than its existence." Id.
13 (citing NRS 47.180).

14 D. Thus, Chase bore the burden of proving it was more probable than not that the
15 Association Foreclosure Sale and the resulting Foreclosure Deed were invalid.

16 E. Chase has the burden to overcome the conclusive presumption of the foreclosure
17 deed recitals with evidence of fraud, unfairness and oppression.

18 F. Pursuant to the SFR Decision, NRS 116.3116(2) gives associations a true super-
19 priority lien, the non-judicial foreclosure of which extinguishes a first deed of trust. SFR, 334
20 P.3d at 419.

21 G. According to the SFR Decision, "together, NRS 116.3116(1) and NRS
22 116.31162 provide for the nonjudicial foreclosure of the whole of the HOA's lien, not just the
23 subpriority piece of it." SFR, 334 P.3d at 414-15.

24 H. The Association foreclosure sale vested title in SFR "without equity or right of
25 redemption." SFR, 334 P.3d at 419 (citing NRS 116.31166(3)).

26 I. "If the sale is properly, lawfully and fairly carried out, [the bank] cannot
27 unilaterally create a right of redemption in [itself]." Golden v. Tomiyasu, 387 P.2d 989, 997
28 (Nev. 1963).

1 J. As the SFR Decision did not announce a new rule of law but merely interpreted
2 the provisions set forth in NRS 116 *et seq.*, it does not raise an issue of retroactivity. The SFR
3 Decision provided “an authoritative statement of what the statute mean before as well as after
4 the decision of the case giving rise to that construction.” Morales-Izquierdo v. Dep’t of
5 Homeland Sec., 600 F.3d 1076, 1087 (9th Cir. 2010), overruled in part on other grounds by
6 Garfias-Rodriguez v. Holder, 702 F.3d 504, 516 (9th Cir. 2010), quoting Rivers v. Roadway
7 Express, Inc., 511 U.S. 298, 312-313 (1994). Thus, this Court rejects Chase’s retroactivity
8 argument.

9 K. NRS 116 does not require a purchaser at an association foreclosure sale be a
10 bona fide purchaser, but in any case, without evidence to the contrary, when an association’s
11 foreclosure sale complies with the statutory foreclosure rules, as evident by the recorded notices
12 and with the admission of knowledge of the sale, and without any facts to the contrary,
13 knowledge of a FDOT and that Chase retained the ability to bring an equitable claim to
14 challenge the foreclosure sale is not enough in itself to demonstrate that SFR took the property
15 with notice of a potential dispute to title, the basis of which is unknown to SFR, and therefore,
16 does is not sufficient to defeat SFR’s ability to claim BFP status. Shadow Wood HOA v. N.Y.
17 Cnty Bancorp, 132 Nev. ____, 366 P.3d 1105, 1116 (2016).

18 L. Shadow Wood reaffirmed Nevada’s adoption of the California rule that
19 “inadequacy of price, however gross, is not in itself a sufficient ground for setting aside a
20 trustee’s sale legally made; there must be in addition proof of some element of fraud, unfairness
21 or oppression as accounts for and brings about the inadequacy of price[.]” Shadow Wood,
22 2016 WL 347979 at*5 (quoting Golden, 79 Nev. at 504 (internal citations omitted) (emphasis
23 added)).

24 M. Because there is no suggestion of fraud, oppression or unfairness in the sale
25 process or that SFR knowingly participated in fraud, oppression or unfairness in the sale, even if
26 the purchase price paid by SFR was seen as inadequate or grossly inadequate, price alone is
27 insufficient to invalidate the sale.

28 N. Chase admits it received the required notices and knew the sale had been

1 scheduled, yet it did nothing to protect its interest in the Property. Furthermore, as a mere
2 lienholder, as opposed to homeowner like the bank in Shadow Wood, Chase is not entitled to
3 equitable relief as it has an adequate remedy at law for damages against any party that may have
4 injured it. Las Vegas Valley Water Dist. V. Curtis Park Manor Water Users Ass'n, 646 P.2d
5 549, 551 (Nev. 1982) ("courts lack authority to grant equitable relief when an adequate remedy
6 at law exists."). Thus, even if this Court had found some facts suggesting fraud, unfairness or
7 oppression, it would not need to weigh the equities. However, because Chase has presented no
8 evidence, other than the alleged "low price" paid by SFR, suggesting that the sale was anything
9 other than properly conducted, the Court would not need to weigh the equities in this case.

10 O. The Court rejects Chase's arguments on the Supremacy Clause because Chase, a
11 private litigant, cannot use the Supremacy Clause to displace state law under Armstrong v.
12 Exceptional Child Care Ctr., Inc., 575 U.S. ____, 135 S.Ct. 1378, 1383-85 (2015). Furthermore,
13 Chase lacks standing to enforce the National Housing Act. Finally, HUD's insurance interest is
14 too attenuated to raise a supremacy clause issue, where the FDOT has not been assigned to
15 HUD.

16 P. The Court rejects Chase's argument that an association must have accumulated
17 either six or nine months of delinquent assessments before it can begin the foreclosure process.
18 Nothing in NRS 116.3116 requires such, and the reference to six or nine months in NRS
19 116.3116 refers only to the amount that would be prior to a first security interest. NRS
20 116.31162(4) provides that the notice of delinquent assessments can be sent as early as ninety
21 (90) days of a delinquency.

22 Q. Chase failed to demonstrate an exception to the voluntary payment doctrine: (a)
23 coercion or duress caused by a business necessity, or (2) payment in defense of property.
24 Nevada Association Services, Inc. v. The Eighth Judicial District, 130 Nev. ____, ____, 338 P.3d
25 1250 (2014). Without showing one of these exceptions applies, one cannot recover voluntary
26 payments. Best Buy Stores v. Benderson-Wainberg Assocs., 668 F.3d 1019, 1030 (8th Cir.
27 2012) ("one who makes a payment voluntarily, cannot recover it on the ground that he was
28 under no legal obligation to make the payment."). Here, Chase failed to provide any facts

1 raising a material question as to whether any alleged payments were made under one of the
2 exceptions.

3 R. The Deed of Trust was extinguished by the Association's foreclosure sale.

4 S. SFR is entitled to quiet title in its name free and clear of the Deed of Trust.

5 T. SFR is entitled to a permanent injunction enjoining Chase, its successors and
6 assigns from taking any action on the extinguished

7 ORDER

8 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the SFR MSJ is
9 GRANTED.

10 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Deed of Trust
11 recorded against the real property commonly known as 3263 Morning Springs Drive, Henderson,
12 Nevada 89074; Parcel No. 177-24-514-043, was extinguished by the Association Foreclosure
13 Sale.

14 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Chase, its
15 predecessors in interest and its successors, agents, and assigns, have no further interest in real
16 property located at 3263 Morning Springs Drive, Henderson, Nevada 89074; Parcel No. 177-24-
17 514-043 and are hereby permanently enjoined from taking any further action to enforce the now
18 extinguished Deed of Trust.

19 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that title to real
20 property located 3263 Morning Springs Drive, Henderson, Nevada 89074; Parcel No. 177-24-
21 514-043 is hereby quieted in favor of SFR.

22 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that SFR is entitled to
23 summary judgment on Chase's claim for unjust enrichment and that Chase is not entitled to relief
24 as to that claim.

25 ///

26 ///

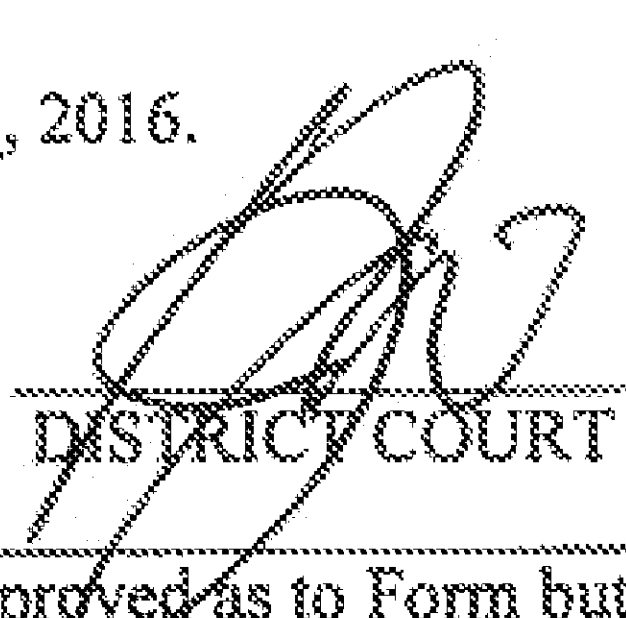
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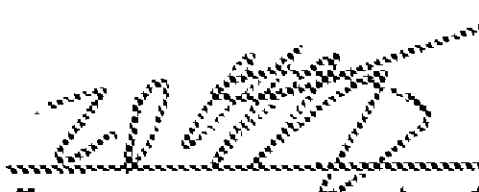
1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Order shall
2 resolve all claims as to all parties.⁴

3
4 DATED this 23 day of August, 2016.

5
6 
DISTRICT COURT JUDGE

7 Respectfully Submitted By:

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⁴ SFR dismissed its claims against the Hawkinses by way of Stipulation and Order entered on April 23, 2014, notice of entry of which was served on April 24, 2014.