IN THE SUPREME COURT OF NEVADA

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association, Appellant, v. SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Respondent.	Supreme Court No. 71822

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable JIM CROCKETT, District Judge
District Court Case No. A-13-692202-C

APPELLANT'S APPENDIX – VOLUME 3

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CHRONOLOGICAL INDEX

Document	Filing Date	Volume and Bates Number(s)
Complaint	November 26, 2013	1 AA 001-007
Proof of Service of Summons and Complaint	December 31, 2013	1 AA 008-010
Answer, Counterclaim and Cross-Claim	January 27, 2014	1 AA 011-021
Answer to Counterclaim	May 7, 2015	1 AA 022-032
Amended Answer to Counterclaim	May 27, 2015	1 AA 033-043
Amended Complaint	March 18, 2016	1 AA 044-053
SFR Investments Pool 1, LLC's Answer to Amended Complaint	April 4, 2016	1 AA 054-063
SFR Investments Pool 1, LLC's Motion for Summary Judgment (Exhibits Excluded)	July 22, 2016	1 AA 064-088
Excerpts from JPMorgan Chase Bank, N.A.'s Appendix of Exhibits to Motion for Summary Judgment	July 29, 2016	2 AA 089-294
Plaintiff JPMorgan Chase Bank, N.A.'s Opposition to SFR Investments Pool 1, LLC's Motion for Summary Judgment	August 8, 2016	2 AA 295-333
SFR Investments Pool 1, LLC's Reply in Support of Motion for Summary Judgment	August 15, 2016	3 AA 334-350
Order Granting SFR Investments Pool 1, LLC's Motion for Summary Judgment	October 26, 2016	3 AA 351-360
Notice of Entry of Order Granting SFR Investments Pool 1, LLC's Motion for Summary Judgment	October 26, 2016	3 AA 361-372
Notice of Appeal	November 22, 2016	3 AA 373-375

ALPHABETICAL INDEX

Document	Filing Date	Volume and Bates Number(s)
Amended Answer to Counterclaim	May 27, 2015	1 AA 033-043
Amended Complaint	March 18, 2016	1 AA 044-053
Answer to Counterclaim	May 7, 2015	1 AA 022-032
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Complaint	November 26, 2013	1 AA 001-007
Excerpts from JPMorgan Chase Bank, N.A.'s Appendix of Exhibits to Motion for Summary Judgment	July 29, 2016	2 AA 089-294
Notice of Appeal	November 22, 2016	3 AA 373-375
Notice of Entry of Order Granting SFR Investments Pool 1, LLC's Motion for Summary Judgment	October 26, 2016	3 AA 361-372
Order Granting SFR Investments Pool 1, LLC's Motion for Summary Judgment	October 26, 2016	3 AA 351-360
Plaintiff JPMorgan Chase Bank, N.A.'s Opposition to SFR Investments Pool 1, LLC's Motion for Summary Judgment	August 8, 2016	2 AA 295-333
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SFR Investments Pool 1, LLC's Motion for Summary Judgment (Exhibits Excluded)	July 22, 2016	1 AA 064-088
SFR Investments Pool 1, LLC's Reply in Support of Motion for Summary Judgment	August 15, 2016	3 AA 334-350

CERTIFICATE OF SERVICE

I certify that on April 19, 2017, I filed **Appellant's Appendix – Volume 3**. Service will be made on the following through the Court's electronic filing system:

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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 INDIVIDUALS 1 through 10; and ROE BUSINESS ENTITIES 1 through 10, inclusive, Defendants. AND ALL RELATED CLAIMS.	Case No. A-13-692202-C Dept. No. XXIV **SFR INVESTMENTS POOL 1, LLC'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** **Hearing Date: August 23, 2016** **Hearing Time: 9:00 a.m.**

SFR Investments Pool 1, LLC ("SFR") hereby submits its reply in support of its Motion for Summary Judgment against JPMORGAN CHASE BANK, NATIONAL ASSOCIATION's ("the Bank")[1] pursuant to NRCP 56(c). This reply is based on the papers and pleadings on file herein, the following memorandum of points and authorities, and any oral argument this Court may entertain. This reply is also based on SFR's Motion for Summary Judgment ("SFR's Mot."), as well as SFR's Opposition to the Bank's Motion for Summary Judgment ("SFR's Opp."), which are both incorporated fully herein by reference.

[1] Herein, "the Bank" refers to JPMorgan Chase, any predecessors in interest to the First Deed of Trust, as well as any agents acting on behalf of these entities, including but not limited to servicers, trustees and nominee beneficiaries.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Nothing in the Bank's Opposition ("Bank's Opp.") provides a reason against granting summary judgment in favor of SFR: (1) Because there were no irregularities with the sale constituting fraud, unfairness, or oppression, the Bank cannot overcome the presumption that the foreclosure sale and resulting deed are valid, and SFR can rely on the conclusive recitals in the foreclosure deed; (2) Even setting aside the Bank's lack of standing, the Bank has failed to provide any admissible evidence showing that Federal National Mortgage Association ("Fannie Mae") "owns" the deed of trust; even more, 12 U.S.C. § 4617(j)(3) is not applicable, and Nevada law is not preempted by 4617(j)(3); (3) The Bank has presented no evidence which precludes SFR's status as a bona fide purchaser, although not required by Nevada law; (4) Although an equitable remedy is not available to the Bank, even if it were, the equities tip greatly in favor of SFR, an innocent purchaser; (5) The Bank's commercial reasonableness argument lacks merit since **price alone is never enough**, and there is no evidence of fraud, unfairness, or oppression which brought about or accounted for the price paid by SFR (see Golden v. Tomiyasu, 79 Nev. 503, 504, 514, 387 P.2d 989, 995 (1963)); (6) The Bank's constitutional due process argument is a non-starter since due process is not implicated, but even if it were, the Bank lacks standing to assert it because it received actual notice. In addition, the issue was already decided by the Nevada Supreme Court in SFR[2] ("SFR" or "the SFR decision")[3]; (7) Contrary to the Bank's assertions, its unjust

[2] SFR Investments Pool I, LLC v. U.S. Bank, N.A., 130 Nev. ___, ___, 334 P.3d 408, 419 (2014).

[3] Anticipating that the Bank will argue the recent Ninth Circuit decision of Bourne Valley Court Trust v. Wells Fargo Bank. N.A., ___ F.3d ___, 2016 WL 4254983 (9th Cir. Aug. 12, 2016), is binding on this Court, this is flatly wrong. Lower federal courts, including the circuit courts of appeal, "exercise no appellate jurisdiction over state tribunals, [and] decisions of lower federal courts are not conclusive on state courts." United States ex rel. Lawrence v. Woods, 432 F.2d 1072, 1076 (7th Cir. 1970). "In passing on federal constitutional questions, the state courts and the lower federal courts have the same responsibility and occupy the same position; there is a parallelism but not paramountcy for both sets of courts are governed by the same reviewing authority of the [United States] Supreme Court." State v. Coleman, 214 A.2d 393, 402-403 (N.J. 1965); Iowa Nat. Bank v. Stewart, 232 N.W. 445, 454 (Iowa 1930). A federal court of appeals holding is not binding on a state court. Coleman, 214 A.2d at 402-403 (declining to follow Third Circuit decision involving identical question of law, and recognizing "that the United States Supreme Court 'is the final arbiter on all questions of federal constitutional law'"); see also Bromley v. Crisp, 561 F.2d 1351, 1354 (10th Cir. 1977) (cert. denied, 435 U.S. 908, 98 S.Ct. 1458, 55 L.Ed.2d 499 (1978); Thompson v. Village of Hales Corners, 115 Wis.2d 289, 307, 340 N.W.2d 704 (1983); City of Chicago v. Groffman, 368 Ill.2d 112, 368 N.E.2d 891 (1977); People v. Brisbon, 129 Ill.2d 200, 544 N.E.2d 297, 135 Ill. Dec. 801

enrichment claim fails because the deed of trust was extinguished, and therefore there is no property interest to defend; and finally, notwithstanding waiver of this argument as it was never alleged or asserted by the Bank in its pleadings, NRCP 8(a)-(c) and 12(b), the Bank's retroactivity argument fails since the central case that the Bank relies upon is not even germane to the issues in this case. For these reasons, summary judgment should be granted in favor of SFR.

II. STATEMENT OF DISPUTED AND UNDISPUTED FACTS

SFR fully incorporates herein the Statement of Undisputed Facts from SFR's Mot. and the Statement of Disputed Facts from SFR's Opp. Additionally, SFR disputes the following from the Bank's Opp.:

The Bank's arguments in its section entitled, "SFR's Motion Relies on Inadmissible Evidence" are nonsensical. See Bank's Opp., 3:11-4:21. The Bank first challenges the admissibility of the Declaration of Jacqueline Gilbert ("Gilbert Decl."), specifically paragraph 6, which incorporates by reference Exhibits A-6 and A-7 to SFR's Mot. Bank's Opp., 3:18-4:6. These are true and correct copies of documents recorded by the Bank, specifically a Notice of Lis Pendens and Request for Notice. Noticeably absent in the Bank's objection is an indication of whether it disputes the authenticity of said recorded documents retrieved from the Clark County Recorder. Regardless, the court may take judicial notice of said recorded documents as facts "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." NRS 47.130(2).

Next, the Bank challenges the admissibility of the Gilbert Decl. to the extent it relies on documents disclosed by the Bank during the course of discovery. Bank's Opp., 4:6-15. The challenged paragraphs are 8, 9 and 11, which incorporate by reference Exhibits A-2, A-3 and A-5 of SFR's Mot. Specifically, these are "excerpts from documents included in" the Bank's initial and first supplemental disclosures, as well as excerpts from the Bank's Responses to Requests for

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(Ill. 1989); Breckline v. Metropolitan Life Ins. Co., 406 Pa. 573, 178 A.2d 748 (1962); see generally Note, Authority in State Courts of Lower Federal Court Decisions on National Law, 48 Colum.L.Rev. 943 (1948). Additionally, a petition for rehearing is currently being prepared and the Nevada Supreme Court has scheduled oral argument on September 8, 2016, on the same issue in Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo, Docket No. 68630.

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Admissions, all documents disclosed and/or produced by the Bank itself during the course of discovery. Further, there is a prefatory recital which stablishes foundation by stating that Gilbert is "knowledgeable about how Kim Gilbert Ebron maintains its records associated with litigation, including litigation in this case. In connection with this litigation **2824 Begonia Court, Henderson, NV 89074; Parcel No. 177-12-410-074** (the "Property"), [Gilbert] reviewed the documents attached hereto as **Exhibits A-1 through A-5**." SFR is entitled to "cit[e] the particular portions of any pleading, affidavit, deposition, interrogatory, answer, admission, or other evidence upon which the party relies." NRCP 56(c).

Next, the Bank argues that the Declaration of Christopher Hardin ("Hardin Decl.") lacks foundation and relies on hearsay. Bank's Opp., 4:16-21. However, in response to the Bank's claim that Hardin "has no foundation to testify about whether the Association had a super-priority lien[,]" SFR directs this Court to the plain language of the Hardin Decl., which provides that "Based on NRS 116.3116(2), ***it was my understanding and belief*** that the homeowner's association liens being foreclosed upon at the auctions I attended include amounts that were prior to any first security interest recorded on the properties." SFR's Mot., Ex. B, ¶ 8 (emphasis added). Nowhere is a super-priority lien mentioned. Id. Further, Hardin can testify as to his understanding and belief; in fact, what better foundation that one's own personal understanding.

Lastly, the Bank argues that Hardin lacks foundation to testify as to whether a lis pendens was recorded against the Property prior to the sale. Bank's Opp., 4: 19-20. However, again a plain reading of the referenced paragraph reveals that this conclusion was "based upon [his] research." SFR's Mot., Ex. B, ¶ 18. Since Hardin testified that he attended the sale and typically researched properties before sales, foundation for this statement cannot get any better. Id. at ¶¶ 9-11. These evidentiary arguments by the Bank fail.

Additionally, briefly responding to the Bank's Responses to Undisputed Facts (Bank's Opp., 4:22-10:12), SFR notes the following:

1. Indeed, the evidence attached to SFR's Motion and cited thereto does reflect that the foreclosure notices were sent to the Bank and/or its agent several times. For example, the Bank,

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its predecessor in interest, its foreclosure agent, NDSC, and MERS (3-4 times per notice) were mailed the notices by both regular and certified mail. See SFR's Mot., fn. 13, 15, 21.

2. Regarding the Bank's claim regarding the borrower's payment and credit, see SFR's Opp., Disputed Fact #5. In short, the Bank's produced no admissible evidence to substantiate the claim that the borrower paid in full; this is belied by the evidence produced by the Bank in its Opposition. Further, the Bank fails to account for how partial payments are applied to the various categories on an account.

3. The Second Notice of Sale is not "an action taken after the foreclosure sale." Bank's Opp., 6:25-28.

4. The Association did not convey only a lien interest. This is discussed fully in SFR's Opp., at Disputed Fact #7, and 20:4-8.

5. SFR's position/ understanding of the law was that the Association foreclosure sale would extinguish the deed of trust, but it was also aware of the potential that lenders may later challenge title. See Bank's Opp., Ex. 30. The deposition testimony speaks for itself. Nonetheless, the risk of litigation due to lenders' inability to accept the law does not preclude BFP status. Shadow Wood, 366 P.3d at 1115-1116. SFR did not have a duty of inquiry. This is discussed more fully below.

6. Hardin's statements regarding SFR's relationship with the Association and NAS are not hearsay. Indeed, they are based on Hardin's personal knowledge as a representative of SFR.

While the disputes over these facts defeat the Bank's motion for summary judgment, the truth or falsity of these facts have no bearing on SFR's Motion for Summary Judgment, which can still be granted even if these facts were true.

III. ARGUMENT

A. The Evidence Shows that the Association Foreclosed on a Superpriority Lien.

The Bank alleges that SFR's "entire Motion is premised on the conclusion that the Association foreclosed on a superpriority lien." Bank's Opp., 10:18-19. However, this conclusion is based upon the law and the facts of this case.

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NRS 116.3116(2) provides that a portion of the Association's lien is prior to the First Deed of Trust. The Nevada Supreme Court held that NRS 116.3116(2) gives associations a true super priority lien, the non-judicial foreclosure of which extinguishes a first deed of trust. SFR, 334 P.3d at 419. The SFR Court further noted that NRS 116.3116(1) and 116.31162 "provide for the nonjudicial foreclosure of the *whole* of an HOA's lien, not just the subpriority piece of it." SFR, 334 P.3d at 414-415 (emphasis added).

So long as there are delinquent assessments, unpaid by the first secured, there is a super-priority lien. Here, it is undisputed that the Bank did not pay or attempt to pay the superpriority portion of the lien, and thus the Association foreclosed on the whole of the lien.

The Bank's argument that the foreclosure notices did not specify whether the lien included a superpriority portion, or how much that amount would be, is quickly dispelled. Bank's Opp., 10:23-26. Not only was what constituted the superpriority amount still "open" at that time (Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp, Inc., 132 Nev. ___, ___, 366 P.3d 1105, 1113 (2016)), but the foreclosure notices appropriately "describe[d] the deficiency" and "the amount necessary to satisfy the lien" as was required by law. NRS 116.31162(1)(b)(1)); NRS 116.311635(3)(a). Lastly, the Bank presumes that a superpriority specification was required by law, which it was not, as was confirmed by the Nevada Supreme Court. SFR, 334 P.3d at 418 (because foreclosure notices go to a number of parties, it is proper to state the entire amount of the lien). All told, this argument fails.

B. The Bank has not Rebutted the Conclusive Proof and Presumptions Attached to the Association Foreclosure Sale.

As discussed fully in SFR's Motion[4] and Opposition,[5] foreclosure sales and the resulting deeds are presumed valid. NRS 47.250(16)-(18); see also Breliant v. Preferred Equities Corp., 112 Nev. 663, 670, 918 P.2d 314, 319 (1996). "A presumption not only fixes the burden of going forward with evidence, but it also shifts the burden of proof." Yeager v. Harrah's Club, Inc., 111 Nev. 830, 835, 897 P.2d 1093, 1095 (1995) (citing Vancheri v. GNLV Corp., 105 Nev. 417, 421,

[4] SFR's Mot., pp. 9-12.

[5] SFR's Opp., pp. 11-12.

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777 P.2d 366, 368 (1989).) "These presumptions impose on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence." Id. (citing NRS 47.180.).

Here, for the Bank to prevail, it has the burden to prove that it is more probable than not that the Association foreclosure sale and the resulting foreclosure deed conveying title to SFR are invalid. Yet the Bank has not produced any admissible evidence to prove such an allegation that would allow the sale to be set aside. Furthermore, a foreclosure deed "*reciting* compliance with notice provisions of NRS 116.31162 through NRS 116.31168 'is conclusive' as to the recitals 'against the unit's former owner, his or her heirs and assigns and all other persons.'" SFR, 334 P.3d at 411-412 (quoting NRS 116.31166(2)). Thus, the Bank would have to prove that the recitals were incorrect to even advance its arguments further; it cannot, since **it received actual notice** of the Association's foreclosure several times. In addition, while here SFR is a bona fide purchaser for value (BFP),[6] under Nevada law, it need not be a BFP to rely on the recitals as conclusive proof. See Pro-Max Corp. v. Feenstra, 16 P.3d 1074, 1077-78 (Nev. 2001), opinion reinstated on reh'g (Jan. 31, 2001).

C. The Bank cannot use the Supremacy Clause or HERA

SFR fully incorporates herein its arguments regarding the Supremacy Clause from its Opposition. SFR's Opp., pp. 12-16. In short, (1) private parties cannot use the Supremacy Clause to displace Nevada law; (2) the Bank lacks standing to assert such a claim on behalf of Fannie Mae or the FHFA; and (3) there is no conflict between 12 U.S.C. 4617 (j)(3) and NRS 116.

D. The Bank has an Adequate Remedy at Law, and Thus is Not Entitled to Equity.

In arguing that the Bank is entitled to an equitable remedy, the Bank understates the significance of its position as a lienholder with a collateral interest in the Property. Bank's Opp., pp. 12013. In other words, while in some cases "courts retain the power to grant equitable relief from a defective foreclosure sale[,]" Shadow Wood, 366 P.3d at 1110, it is also well-settled in Nevada that district courts lack authority to grant equitable relief when an adequate remedy at law

[6] See SFR's Mot., pp. 18-21; see also Sec. III(G) infra.

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exists. Las Vegas Valley Water Dist. v. Curtis Park Manor Water Users Ass'n, 646 P.2d 549, 551 (Nev. 1982). Thus, even if the Bank could prove some irregularity, which SFR does not concede, it would have an adequate remedy at law – money damages against those who harmed it, not SFR, an innocent purchaser - and equitable relief is not available herein. See Munger v. Moore, 89 Cal.Rptr. 323 (Ct. App. 1970); see also Brown v. Holder, 763 F.3d 1141, 1152 (9th Cir. 2014) (quoting Morales v. Trans World Airlines, 504 U.S. 374, 381, 112 S.Ct. 2031 (1992)("[a] 'court[ ] of equity should not act ... when the moving party has an adequate remedy at law".') To the extent the Bank suggests that taking title subject to the first deed of trust is an option, the statute does not provide such an option. Unless the Bank can demonstrate actual fraud, unfairness, or oppression **by the purchaser** at the publicly advertised and held auction, the purchaser should not be subject to any acts that would set aside its unencumbered deed.

E. The Sale was Commercially Reasonable.

As discussed fully in SFR's Motion[7] and Opposition,[8] NRS 116 does not require sales conducted pursuant to those provisions be commercially unreasonable. However, even if commercial reasonableness were required, the subject sale herein was commercially reasonable. Nonetheless, fair market value has no applicability to a forced sale transaction. Bourne Valley Court Trust v. Wells Fargo Bank, N.A., 80 F.Supp.3d 1131, 1136 (D.Nev. 2015); BFP v. Resolution Trust Corporation, 511 U.S. 531, 537, 114 S.Ct. 1757 (1994).

It is perplexing that the Bank characterizes SFR's "reliance" on Golden and Long as "misplaced." Bank's Opp., 14:2-11. Rather, the Nevada Supreme Court re-affirmed – and re-re-affirmed - Nevada's long standing law set forth in Long and Golden, that in order to prove a sale was not commercially reasonable, a party must show (1) "inadequate" price, and (2) fraud, unfairness or oppression that accounted for and brought about the "inadequate" price. Shadow Wood, 366 P.3d at 1110 (citing Long v. Towne, 98 Nev. 11, 13, 639 P.2d 528, 530 (1982) and Golden, 79 Nev. at 504, 514, 387 P.2d at 995 (adopting the California rule that " inadequacy of price, **however gross**, is not in itself a sufficient ground for setting aside a trustee's sale legally

[7] SFR's Mot., pp. 14-18.

[8] SFR's Opp., pp. 16-20.

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made; there must be in addition proof of some element of fraud, unfairness or oppression as **accounts for and brings about the inadequacy of price**" (internal citations omitted) (emphasis added); see also Centeno v. JP Morgan Chase Bank, N.A., Nevada Supreme Ct. Case No. 67365 (unpublished Order Vacating and Remanding) (Nev. Mar. 18, 2016) (reaffirmance of the holding in Shadow Wood).[9] The Nevada Supreme Court's mere dicta in citing the Restatement did not introduce a new rule of law abrogating Nevada's long standing law set forth in Long and Golden.[10]

As fully discussed in SFR's Opposition, the Bank has failed to show that the price paid by SFR was "inadequate." The Bank's Broker's Price Opinion dated several months before the Association foreclosure sale is improper as both not an expert opinion and irrelevant. The Bank's expert, Craig Morley, ignored the realities of this case, provided an utterly meaningless opinion of value, and failed to conduct a comparison of **like** properties sold at Association foreclosure sales must be compared to the subject Property, in order to determine what price a property similar to the Property in this case would likely fetch at an NRS 116 sale, so that one could analyze whether the price paid by SFR here was "inadequate." In contrast, this is exactly what SFR's expert, Michael Brunson, did. See SFR's Opp., Ex. D. Thus, having failed to meet the first element of the commercially reasonable standard, the Bank's claim fails.

However, as to the second prong, the Bank failed to show that any fraud, unfairness or oppression brought about or accounted for the allegedly "inadequate" price. Golden, 79 Nev. at 504, 514, 387 P.2d at 995; see also Iama Corp. v. Wham, 99 Nev. 730, 735-738, 669 P.2d 1076, 1079 (1983) (must look to the sale process, i.e., "whether proper notice was given, whether the bidding was competitive, and whether the sale was conducted pursuant to . . . normal procedures") (emphasis added). It is undisputed that here the Association complied with the notice requirements of NRS 116; the Bank actually received notice of the Association non-judicial foreclosure sale several times; the sale was publicly noticed; the sale was held in a public place; and multiple bidders attended the sale. As fully discussed in SFR's Opp., even if the Bank's proffered

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[9] Available at http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=35567, as Doc. 16-08672.

[10] Unlike SFR, which dealt with statutory interpretation of an existing law, adopting the Restatement Third would be creating a new rule of law to which Chevron Oil analysis would apply and potentially prevent application this new rule of law retroactively. Chevron Oil Co. v. Huson, 404 U.S. 97, 106-107 (1971).

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"evidence" of fraud, oppression or unfairness in the sale process held water, which it does not,[11] **these facts were not known to SFR** and thus under no set of circumstances could this have accounted for or brought about the price paid by SFR. SFR's Opp., 19:3-20:8.[12]

In sum, because (1) there is no requirement that NRS 116 sales be commercially reasonable, (2) the price paid by SFR was not "inadequate," and (3) the Bank failed to demonstrate any fraud, oppression or unfairness which brought about and accounted for the price paid by SFR, the Bank's commercial unreasonableness argument fails.

F. SFR is a Bona Fide Purchaser for Value; Equity Lies in SFR's Favor.

As discussed in SFR's Motion,[13] SFR's Opposition,[14] and herein, because the Bank did not proffer admissible evidence that SFR had any knowledge precluding it from BFP status, SFR has the valid defense of being a BFP. As a result, the sale cannot be unwound; nor can SFR be said to have taken the Property subject to the First Deed of Trust.[15]

To reiterate, Nevada law does not require a purchaser at an Association foreclosure sale to be a BFP in the first instance (even though SFR is a BFP). Instead, this is merely a defense alleged by SFR in the event the Bank claims a pre-sale dispute occurred. Shadow Wood stood for the proposition that if the Bank claims that a pre-sale dispute occurred between it and the Association/ NAS, and SFR had no knowledge of this pre-sale dispute, then the sale cannot be

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[11] It is particularly worth repeating, however, that (1) the Bank's noticing compliance arguments are predicated on Fannie Mae's purported "ownership" of the loan, which is not supported by the evidence and is belied by the documents recorded by the Bank against the Property; (2) there is no evidence that the homeowner paid off the assessments in their entirety, when the Bank produces nothing which lends to the application of partial payments and the evidence proffered by the Bank show that the borrower paid less than allegedly agreed to; and (3) the Bank's arguments regarding the timeline of the CC&R's (as occurring after the deed of trust) are a farce; the Association recorded prior CC&R's in 1983, and restated these in 2002. NRS 116 (including 116.3116(2) and 116.1104) was enacted in 1991, well prior to the Bank's deed of trust. Furthermore, in 1999,

[12] The Bank's waiver arguments fail. While the Bank may have intended to vaguely dance around the issue (compliance with noticing provisions and the HOA's violation of good faith under NRS 116.1113 are not the standard), again, the Bank failed to specifically allege fraud, oppression and unfairness in the sale process, and this argument is waived. NRCP 8(a)-(c), 12(b).

[13] SFR's Mot., pp. 18-21.

[14] SFR's Opp., pp. 20-22.

[15] To the extent the Bank suggests, even by inference, that taking title subject to the first deed of trust is an option, the statute does not provide such an option.

unwound or SFR be forced to take subject to the deed of trust. So, essentially, even if there were any irregularities with the Association sale, as long as these irregularities were not known to SFR, they cannot be imputed to SFR, as SFR is a BFP.

"Where the complaining party has access to all the facts surrounding the questioned transaction and merely makes a mistake as to the legal consequences of his act, equity should normally not interfere, especially where the rights of third parties might be prejudiced thereby." Shadow Wood, 366 P.3d at 1116 (quoting Nussbaumer v. Sup. Ct. in & for Yuma Cty., 107 Ariz. 504, 489 P.2d 843, 846 (Ariz.1971)). This is consistent with the Restatement's commentary regarding those non-judicial foreclosure jurisdictions where price alone is not enough to set aside a sale: the wronged junior lienholder must seek a remedy from someone other than the purchaser:

> If the real estate is unavailable because title has been acquired by a bona fide purchaser, the issue of price inadequacy may be raised by the [former title holder] or junior lienholder in a suit for wrongful foreclosure. . . . In addition, the [foreclosing lienholder] must be responsible for a defect in the foreclosure process of the type described in Comment *c* of this section.

Restatement (Third) Property: Mortgages, §8.3, Comment *b*, at 584. This is also consistent with California law that precludes unwinding a foreclosure sale once title has transferred to a BFP. See Melendrez v. D & I Investments, Inc., 26 Cal.Rptr.3d 413, 431-432 (2005) ("courts have sustained a number of foreclosure sale challenges where the actions have been brought before the transfer of the transfer of the trustee's deed to the buyer[]" but not after delivery of the trustee's deed) (internal citations omitted)). This policy of protecting purchasers at foreclosure sales is to encourage such persons to attend and bid. Id. at 426. Failing to protect BFPs simply because they buy "property for substantially less than its value would chill participation at trustees' sales by this entire class of buyers, and, ultimately, could have the undesired effect of reducing sales prices at foreclosure." Id. Thus, weighing of equities should always fall in favor of the BFP for policy reasons.

That SFR is a BFP is unquestionable. A BFP is one who "takes the property 'for a valuable consideration and without notice of the prior equity. . . .'" Shadow Wood, 366 P.3d at 1115 (internal citations omitted). The fact that SFR "paid 'valuable consideration' cannot be contested.'" Id. (citing Fair v. Howard, 6 Nev. 304, 308 (1871). The Bank has provided no

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evidence that SFR had any knowledge of specific facts of a superior interest, or that a superior interest survived the sale.

Further, contrary to the Bank's contention regarding SFR's purported knowledge of the risk of litigation (Bank's Opp., p. 17), the Nevada Supreme Court has held that notice by a potential purchaser that an association is conducting a sale pursuant to NRS 116, and that the potential exists for challenges to the sale "post hoc[,]" do not preclude that purchaser from BFP status. Shadow Wood, 366 P.3d at 1115-1116. In other words, the risk of litigation due to lenders' inability to accept the law does not preclude BFP status. Id. This is especially so when the lenders created the market of which they now complain. They cannot use it as a shield and a sword.

Additionally, as fully discussed, the experience of the purchaser does not automatically defeat bona fide purchaser status; neither does a purportedly "low" price, (Melendrez, 26 Cal.Rptr.3d at 425-426), and general knowledge by a purchaser is not enough to defeat BFP – it is the **specific facts** of that sale, particularly **insider knowledge** by the purchaser, that reasonably puts a purchaser on inquiry notice. See, *e.g.*, Berge v. Fredericks, 591 P.2d 246, 247-250 (Nev. 1979) (purchaser knew person without recorded interest was residing in property, and conveyance made to her by grantor who had a "reason to conceal" prior unrecorded interest); Tai-Si Kim v. Kearney, 838 F. Supp. 2d 1077, 1088 (D. Nev. 2012) (although purchase of real property through option agreement, not foreclosure, purchaser had actual notice of superior interest because purchaser specifically arranged with lender's facilitator to obtain financing, and admitted understanding that seller would obtain financing to facilitate purchase); 25 Corp., Inc. v. Eisenman Chem. Corp., 709 P.2d 164, 168, 172 (Nev. 1985) (not a BFP where it conducted title search in advance; had notice that claims to mineral rights and another party's purported interests in the land were void, and that other party was conducting "extensive mining" on the property; knew of mining conducted on property because it had further demanded to vacate the premises after securing the lease).

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In regards to SFR's duty of inquiry regarding the association sale, Shadow Wood provides guidance:

> [W]hen an association's foreclosure sale complies with the statutory foreclosure rules, as evidenced by the recorded notices, such as is the case here, and without any facts to indicate the contrary, th**e purchaser would have only "notice" that the former owner had the ability to raise an equitably based post-sale challenge**, the basis of which is unknown to that purchaser.
>
> That [the Bank] retained the ability to bring an equitable claim to challenge [the association's] foreclosure sale **is not enough in itself to demonstrate that [the purchaser] took the property with notice of any potential future dispute as to title.**

Shadow Wood, 366 P.3d at 1116. Thus, SFR did not have a duty to inquire further than investigating the documents recorded against the Property. The Bank's attempt to require SFR to inquire further about the restated 2003 CC&R's is flawed; as discussed in SFR's Opposition, a simple review of the first page of that document references the prior CC&R's recorded in 1983. Further, NRS 116 (including the priority statute, and the statute rendering mortgage protection clauses unenforceable) had already been enacted well before this time. Despite the fact that SFR has purchased many properties at foreclosure sales, the Bank has failed to present any facts that should be imputed to SFR that go to show that the Bank's interest in the property would have survived the Association foreclosure.

As fully discussed in SFR's Motion[16] and Opposition,[17] the Bank had "access to all the facts surrounding the questioned transaction and merely [made] a mistake as to the legal consequences of his act." Shadow Wood, 366 P.3d at 1116 (quoting Nussbaumer, 489 P.2d at 846.) Thus, equity should not interfere here, especially where SFR's rights would be prejudiced by this erroneous act by the Bank. Id.

In sum, the Bank has failed to present any facts that should be imputed to SFR that go to show that the Bank's interest in the property would have survived the foreclosure. Although not required, a balancing of the equities tips greatly in favor of SFR, a BFP. For these reasons, SFR's Motion should be granted.

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[16] SFR's Mot., p. 20.

[17] SFR's Opp., pp. 21-22.

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G. The Bank's Facial Unconstitutionality Arguments Fail.

SFR fully responded to the Bank's facial unconstitutionality arguments in its Opposition, and fully incorporates those arguments herein. SFR's Opp., pp. 2, n. 3, pp. 22-29.

However, it is worth repeating that the Ninth Circuit's recent decision, Bourne Valley Court Trust v. Wells Fargo Bank. N.A., ___ F.3d ___, 2016 WL 4254983 (9th Cir. Aug. 12, 2016), is not binding on this Court. See State v. Coleman, 214 A.2d 393, 402-403 (N.J. 1965) (a federal court of appeals holding is not binding on a state court, recognizing "that the United States Supreme Court 'is the final arbiter on all questions of federal constitutional law'"); see also Bromley v. Crisp, 561 F.2d 1351, 1354 (10th Cir. 1977) (cert. denied, 435 U.S. 908, 98 S.Ct. 1458, 55 L.Ed.2d 499 (1978); Thompson v. Village of Hales Corners, 115 Wis.2d 289, 307, 340 N.W.2d 704 (1983); City of Chicago v. Groffman, 368 Ill.2d 112, 368 N.E.2d 891 (1977); People v. Brisbon, 129 Ill.2d 200, 544 N.E.2d 297, 135 Ill. Dec. 801 (Ill. 1989); Breckline v. Metropolitan Life Ins. Co., 406 Pa. 573, 178 A.2d 748 (1962); see generally Note, Authority in State Courts of Lower Federal Court Decisions on National Law, 48 Colum.L.Rev. 943 (1948). Additionally, a petition for rehearing is currently being prepared and the Nevada Supreme Court has scheduled oral argument on September 8, 2016, on the same issue in Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo, Docket No. 68630.

Further, the Bank lacks standing to assert a facial challenge because it received actual notice of the foreclosure proceedings several times. See SFR's Mot., Ex. A-3 at [Chase-Bell_NAS0087-98, 137, 179-180]; Ex. A-4, at 28:10-29:9 (and Deposition Exh. 8), 38:8-39:4 (and Deposition Exh. 15), 56:14-21, and 65:4-12; see also Wiren v. Eide, 542 F.2d 757, 762 (9th Cir. 1976) ("receipt of actual notice deprives [appellant] of standing to raise the claim" that the statutory notice scheme violated due process); Green Tree Servicing, LLC v. Random Antics, LLC, 869 N.E.2d 464, 470-71 (Ind. Ct. App. 2007) (where one receives actual notice cannot claim that the noticing provisions of the statute are unconstitutional).

Lastly, in its Opposition, the Bank references incorporation of its "takings" argument from its Motion. Bank's Opp. 19:1-5. However, no such argument was raised in the Motion, and

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nothing was argued in the Bank's Opposition; therefore, there is nothing to respond to. In excess of caution, and to be clear, SFR opposes any such inference.

H. The Deed Recitals Are Sufficient.

The Bank argues that the "vague statements" in the Foreclosure Deed recitals "are not sufficient to dispose of this case." Bank's Opp., 19:6-16. However, as explained fully, the deed is presumed valid unless the Bank could bring forth admissible evidence to overcome the presumption, i.e., with evidence of fraud, oppression or unfairness. See discussion in Section III(B) above. It has failed to do so. In fact, the actual evidence presented in this case shows the Association's compliance with the law (rendering support for the recitals). Further, the Bank does not dispute notice; it can't, since the evidence shows that it received the Notice of Default and two Notices of Sale. Regardless, these recitals are conclusive as to a BFP. Pro-Max, 16 P.3d at 1077-78. This argument falls flat.

I. *Chevron Oil* is Not Applicable to the SFR decision.

SFR fully responded to the Bank's untimely retroactivity argument in its Opposition, and fully incorporates those arguments herein. SFR's Opp., pp. 29-30. In short, Chevron Oil is inapplicable because it dealt with retroactively applying new rules of law. Chevron Oil, 404 U.S. at 106-107; see also Harper v. Va. Dep't of Taxation, 509 U.S. 86, 90, 94-95, 113 S.Ct. 2510 (1993). Contrastingly, SFR involved statutory construction, an issue devoid of the retroactivity concerns discussed in Chevron Oil. Here, SFR construed NRS 116.3116. Consistent with the aforementioned authorities, SFR can—and should—be applied retroactively.

J. Chase's Unjust Enrichment Claim Fails.

SFR fully incorporates its unjust enrichment argument from its Motion[18] and Opposition[19] herein by reference.

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[18] SFR's Mot., pp. 21-23.

[19] SFR's Opp., p. 30.

SFR has already argued that any alleged payments made by the Bank were subject to the voluntary payment doctrine. The burden then shifted to the Bank to prove that one of the exceptions to the voluntary payment doctrine applies: (1) coercion or duress caused by a business necessity and (2) payment in the defense of property. Nevada Association Services, Inc. v. The Eighth Judicial District, 130 Nev. ___, ___, 338 P.3d 1250, 1254 (2014). However, noticably absent from the Bank's Opp. is a demonstration that such an exception applies here. Randazo v. Harris Palatine, N.A., 262 F.3d 663, 666 (7th Cir. 2001).

The Bank attempts to argue that the voluntary payment doctrine is only limited in application as to taxing and assessing authorities. Bank's Opp., 20:6-20. However, no such limitation is present in the rule, which is clear: "one who makes a payment voluntarily cannot recover it on the ground that he was under no legal obligation to make the payment." Best Buy Stores v. Benderson–Wainberg Assocs., 668 F.3d 1019, 1030 (8th Cir.2012) (internal quotations omitted). The voluntary nature of the payment is "the willingness of a person to pay a bill ***without protest as to its correctness or legality***." Putnam v. Time Warner Cable of Se. Wis., 255 Wis.2d 447, 649 N.W.2d 626, 633 (2002) (emphasis added). The Bank has not alleged that it made any purported payments "under protest" despite its challenge to the "correctness" of the law extinguishing first deeds of trust (hence, this litigation).

Thus, without the Bank's assertion of an exception to the doctrine, and without evidence of any purported "protest," the Bank's unjust enrichment argument fails.

IV. CONCLUSION

Based on the above, the Court should grant summary judgment in favor of SFR as requested in its Motion.

DATED this 15th day of August, 2016.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of August, 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system the foregoing **SFR INVESTMENTS POOL 1, LLC'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**, to the following parties:

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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 INDIVIDUALS 1 through 10; and ROE BUSINESS ENTITIES 1 through 10, inclusive, Defendants. AND ALL RELATED CLAIMS.	Case No. A-13-692202-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") on August 23, 2016 @ 9AM, filed on July 22, 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 its opposition to SFR's MSJ on August 8, 2016, and SFR filed its reply on August 15, 2016. Zachary Clayton, Esq. of Kim Gilbert Ebron appeared on behalf of SFR and Holly Priest, Esq. of Ballard Spahr LLP appeared on behalf of Chase. No other parties or counsel appeared.

- ☐ Voluntary Dismissal
- ☐ Involuntary Dismissal
- ☐ Stipulated Dismissal
- ☐ Motion to Dismiss by Deft(s)
- ☑ Summary Judgment
- ☐ Stipulated Judgment
- ☐ Default Judgment
- ☐ Judgment of Arbitration

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

FINDINGS OF FACT

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

2. Kylan T. Bell took title to the real property commonly known as **2824 Begonia Court, Henderson, NV 89074; Parcel No. 177-12-410-074** (the "Property"), by way of a Grant, Bargain, sale Deed recorded as Instrument No. 19950421000151 2 on April 21, 1995.

3. On February 5, 2003, Eastbridge Gardens Condominiums' (the "Association"), recorded in the Official Records of the Clark County Recorder, its Second Restated Declaration of Covenants, Conditions and Restrictions ("CC&Rs") as Instrument No. 20020206000100 1 of the Official Records of the Clark County Recorder.[3]

4. On November 25, 2002, a Deed of Trust was recorded against the Property as Instrument No. 200211250002874 ("Deed of Trust"). The Deed of Trust was executed by Bell to secure a promissory note in the amount of $68,000.00. The Deed of Trust designated Mortgage Electronic Registration Systems, Inc. ("MERS") as beneficiary in a nominee capacity for the original lender, Republic Mortgage, LLC, and the original lender's successors and assigns.

5. As part of the loan transaction, the original lender prepared and Bell signed, a Condominium Rider to the Deed of Trust, recognizing that the Property was located in a sub-common interest community within the Association.

6. On April 1, 2011, Nevada Association Services ("NAS") recorded on behalf of the Association a Notice of Delinquent Assessment Lien as Instrument No. 20110401000137 1

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[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.

[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.

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("NODA"). The NODA was mailed to Bell.

7. On May 31, 2012, NAS recorded on behalf of the Association a Notice of Trustee's Sale as Instrument No. 201206010001979 ("NOS"). The NOS was mailed to Chase and Bell. Chase admits receipt of the NOS. The NOS was posted and published pursuant to statutory requirements.

8. On September 21, 2012, NAS recorded on behalf of the Association a Notice of Default and Election to Sell Under Homeowners Association Lien as Instrument No. 201109210000506 ("NOD"). The NOD was mailed to Chase and Bell.

9. On October 25, 2012, an Assignment of Deed of Trust was recorded as Instrument No. 201210250002057, pursuant to which MERS, in its capacity as beneficiary in a nominee capacity for the lender and the lender's successors and assigns, assigned the Deed of Trust to Chase.

10. On April 29, 2013, Assignment of First Deed of Trust to Chase Bank is re-recorded as Instrument No. 201304290002908.

11. On May 2, 2013, NAS sent on behalf of the Association a Second Notice of Trustee's Sale ("SNOS"). This notice was recorded as instrument No. 201305070000894. The SNOS was mailed to Chase and Bell. Chase admits receipt of the SNOS. The SNOS was posted and published pursuant to statutory requirements. Per the notice, the sale was set for May 31, 2013.

12. On May 9, 2013, National Default Services Corp. ("NDSC") as trustee, recorded a Notice of Default and Election to Sell Under Deed of Trust, stating the Bell had become delinquent on payments under the note.

13. On May 31, 2013, NAS held the Association foreclosure sale at which SFR placed the highest bid of $10,100.00 ("Association foreclosure sale").

14. The Trustee's Deed Upon Sale vesting title in SFR was recorded on June 10, 2013 as Instrument No. 201306100002206. The Trustee's Deed included the following recitals:

> This conveyance is made pursuant to the powers conferred upon [NAS] by Nevada Revised Statutes, the Eastbride Gardens Condominiums governing documents (CC&Rs) and that certain Notice of Delinquent Assessment Lien,

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> described herein. Default occurred as set forth in a Notice of Default and Election, recorded on 9/21/2011. . . . 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.

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

16. 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.

17. 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) ("SFR Decision").

18. 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.

19. In its opposition, Chase argued the loan was owned by the Federal National Mortgage Association ("Fannie Mae") and Chase was the servicer of the loan for Fannie Mae at the time of the subject HOA foreclosure sale. Chase further argued that due to Fannie Mae's interest, SFR's alleged interest was subject to the Deed of Trust pursuant to the Housing and Economic Recovery Act of 2008 ("HERA") specifically, 12 U.S.C. § 4617(j)(3).

20. In its reply, SFR argued that if the Court were to overturn the sale, the sale must be voided and that SFR cannot be made to take title subject to the Bank's Deed of Trust.

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

22. 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.

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

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

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

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been followed.").

2. That a foreclosure deed "reciting compliance with notice provisions of NRS 116.31162 through NRS 116.31168 "is conclusive" as to the recitals "against the unit's former owner, his or her heirs and assigns and all other persons." SFR, 334 P.3d at 411-12.

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

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

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

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

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

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

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

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

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

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

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

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

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

O. This Court did not make a determination as to Fannie Mae's interest in the property. The Court found that Chase lacks standing to enforce 12 U.S.C. § 4617(j)(3).

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

Q. Chase failed to demonstrate an exception to the voluntary payment doctrine: (a) coercion or duress caused by a business necessity, or (2) payment in defense of property. Nevada Association Services, Inc. v. The Eighth Judicial District, 130 Nev. ___, ___, 338 P.3d 1250 (2014). Without showing one of these exceptions applies, one cannot recover voluntary payments. Best Buy Stores v. Benderson-Wainberg Assocs., 668 F.3d 1019, 1030 (8th Cir. 2012) ("one who makes a payment voluntarily, cannot recover it on the ground that he was

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under no legal obligation to make the payment."). Here, Chase failed to provide any facts raising a material question as to whether any alleged payments were made under one of the exceptions.

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

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

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

ORDER

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Deed of Trust recorded against the real property commonly known as **2824 Begonia Court, Henderson, NV 89074; Parcel No. 177-12-410-074**, was extinguished by the Association Foreclosure Sale.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Chase, its predecessors in interest and its successors, agents, and assigns, have no further interest in real property located at **2824 Begonia Court, Henderson, NV 89074; Parcel No. 177-12-410-074** and are hereby permanently enjoined from taking any further action to enforce the now extinguished Deed of Trust.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that title to real property located **2824 Begonia Court, Henderson, NV 89074; Parcel No. 177-12-410-074** is hereby quieted in favor of SFR.

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

///

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IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Order shall

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- Notice
- Order Granting SFR's motion to Dismiss Complaint

resolve all claims as to all parties.[4]

DATED this 25 day of October, 2016.

DISTRICT COURT JUDGE

Respectfully Submitted By:	Approved as to Form but Not Content By:
KIM GILBERT EBRON	**~~BALLARD SPAHR LLP~~**
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[4] SFR dismissed its claims against Bell by way of Stipulation and Order entered on August 6, 2014, notice of entry of which was served on August 8, 2014.

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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 INDIVIDUALS 1 through 10; and ROE BUSINESS ENTITIES 1 through 10, inclusive, Defendants. AND ALL RELATED CLAIMS.	Case No. A-13-692202-C Dept. No. XXIV **NOTICE OF ENTRY OF ORDER GRANTING SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that on October 26, 2016 this Court entered an **Order Granting SFR Investments Pool 1, LLC's Motion for Summary Judgment.** A copy of said Order is attached hereto.

DATED this 26th day of October, 2016.

KIM GILBERT EBRON

/s/ Diana Cline Ebron
DIANA CLINE EBRON, ESQ.
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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of October, 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:

Ballard Spahr

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/s/ Tomas Valerio
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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 INDIVIDUALS 1 through 10; and ROE BUSINESS ENTITIES 1 through 10, inclusive, Defendants. AND ALL RELATED CLAIMS.	Case No. A-13-692202-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") on August 23, 2016 at 9 AM, filed on July 22, 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 its opposition to SFR's MSJ on August 8, 2016, and SFR filed its reply on August 15, 2016. Zachary Clayton, Esq. of Kim Gilbert Ebron appeared on behalf of SFR and Holly Priest, Esq. of Ballard Spahr LLP appeared on behalf of Chase. No other parties or counsel appeared.

☐ Voluntary Dismissal	☑ Summary Judgment
☐ Involuntary Dismissal	☐ Stipulated Judgment
☐ Stipulated Dismissal	☐ Default Judgment
☐ Motion to Dismiss by Deft(s)	☐ Judgment of Arbitration

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

FINDINGS OF FACT

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

2. Kylan T. Bell took title to the real property commonly known as **2824 Begonia Court, Henderson, NV 89074; Parcel No. 177-12-410-074** (the "Property"), by way of a Grant, Bargain, sale Deed recorded as Instrument No. 19950421000151 2 on April 21, 1995.

3. On February 5, 2003, Eastbridge Gardens Condominiums' (the "Association"), recorded in the Official Records of the Clark County Recorder, its Second Restated Declaration of Covenants, Conditions and Restrictions ("CC&Rs") as Instrument No. 20020206000 1001 of the Official Records of the Clark County Recorder.[3]

4. On November 25, 2002, a Deed of Trust was recorded against the Property as Instrument No. 200211250002874 ("Deed of Trust"). The Deed of Trust was executed by Bell to secure a promissory note in the amount of $68,000.00. The Deed of Trust designated Mortgage Electronic Registration Systems, Inc. ("MERS") as beneficiary in a nominee capacity for the original lender, Republic Mortgage, LLC, and the original lender's successors and assigns.

5. As part of the loan transaction, the original lender prepared and Bell signed, a Condominium Rider to the Deed of Trust, recognizing that the Property was located in a sub-common interest community within the Association.

6. On April 1, 2011, Nevada Association Services ("NAS") recorded on behalf of the Association a Notice of Delinquent Assessment Lien as Instrument No. 20110401000 1371

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[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.

[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.

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("NODA"). The NODA was mailed to Bell.

7. On May 31, 2012, NAS recorded on behalf of the Association a Notice of Trustee's Sale as Instrument No. 201206010001979 ("NOS"). The NOS was mailed to Chase and Bell. Chase admits receipt of the NOS. The NOS was posted and published pursuant to statutory requirements.

8. On September 21, 2012, NAS recorded on behalf of the Association a Notice of Default and Election to Sell Under Homeowners Association Lien as Instrument No. 201109210000506 ("NOD"). The NOD was mailed to Chase and Bell.

9. On October 25, 2012, an Assignment of Deed of Trust was recorded as Instrument No. 201210250002057, pursuant to which MERS, in its capacity as beneficiary in a nominee capacity for the lender and the lender's successors and assigns, assigned the Deed of Trust to Chase.

10. On April 29, 2013, Assignment of First Deed of Trust to Chase Bank is re-recorded as Instrument No. 20130429000290 8.

11. On May 2, 2013, NAS sent on behalf of the Association a Second Notice of Trustee's Sale ("SNOS"). This notice was recorded as instrument No. 20130507000894. The SNOS was mailed to Chase and Bell. Chase admits receipt of the SNOS. The SNOS was posted and published pursuant to statutory requirements. Per the notice, the sale was set for May 31, 2013.

12. On May 9, 2013, National Default Services Corp. ("NDSC") as trustee, recorded a Notice of Default and Election to Sell Under Deed of Trust, stating the Bell had become delinquent on payments under the note.

13. On May 31, 2013, NAS held the Association foreclosure sale at which SFR placed the highest bid of $10,100.00 ("Association foreclosure sale").

14. The Trustee's Deed Upon Sale vesting title in SFR was recorded on June 10, 2013 as Instrument No. 20130610000220 6. The Trustee's Deed included the following recitals:

> This conveyance is made pursuant to the powers conferred upon [NAS] by Nevada Revised Statutes, the Eastbride Gardens Condominiums governing documents (CC&Rs) and that certain Notice of Delinquent Assessment Lien,

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> described herein. Default occurred as set forth in a Notice of Default and Election, recorded on 9/21/2011. . . . 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.

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

16. 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.

17. 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) ("SFR Decision").

18. 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.

19. In its opposition, Chase argued the loan was owned by the Federal National Mortgage Association ("Fannie Mae") and Chase was the servicer of the loan for Fannie Mae at the time of the subject HOA foreclosure sale. Chase further argued that due to Fannie Mae's interest, SFR's alleged interest was subject to the Deed of Trust pursuant to the Housing and Economic Recovery Act of 2008 ("HERA") specifically, 12 U.S.C. § 4617(j)(3).

20. In its reply, SFR argued that if the Court were to overturn the sale, the sale must be voided and that SFR cannot be made to take title subject to the Bank's Deed of Trust.

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

22. 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.

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

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

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

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been followed.").

2. That a foreclosure deed "reciting compliance with notice provisions of NRS 116.31162 through NRS 116.31168 "is conclusive" as to the recitals "against the unit's former owner, his or her heirs and assigns and all other persons." SFR, 334 P.3d at 411-12.

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

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

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

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

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

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

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

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

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

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

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

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

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

O. This Court did not make a determination as to Fannie Mae's interest in the property. The Court found that Chase lacks standing to enforce 12 U.S.C. § 4617()(3).

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

Q. Chase failed to demonstrate an exception to the voluntary payment doctrine: (a) coercion or duress caused by a business necessity, or (2) payment in defense of property. Nevada Association Services, Inc. v. The Eighth Judicial District, 130 Nev. ___, ___, 338 P.3d 1250 (2014). Without showing one of these exceptions applies, one cannot recover voluntary payments. Best Buy Stores v. Benderson-Wainberg Assocs., 668 F.3d 1019, 1030 (8th Cir. 2012) ("one who makes a payment voluntarily, cannot recover it on the ground that he was

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under no legal obligation to make the payment."). Here, Chase failed to provide any facts raising a material question as to whether any alleged payments were made under one of the exceptions.

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

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

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

ORDER

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Deed of Trust recorded against the real property commonly known as **2824 Begonia Court, Henderson, NV 89074; Parcel No. 177-12-410-074**, was extinguished by the Association Foreclosure Sale.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Chase, its predecessors in interest and its successors, agents, and assigns, have no further interest in real property located at **2824 Begonia Court, Henderson, NV 89074; Parcel No. 177-12-410-074** and are hereby permanently enjoined from taking any further action to enforce the now extinguished Deed of Trust.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that title to real property located **2824 Begonia Court, Henderson, NV 89074; Parcel No. 177-12-410-074** is hereby quieted in favor of SFR.

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

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IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Order shall

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resolve all claims as to all parties.[4]

DATED this 25 day of October, 2016.

- AOTLAUR
- ORDER granting SFR's motion for summary judgment

DISTRICT COURT JUDGE

Respectfully Submitted By:	Approved as to Form but Not Content By:
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Attorneys for SFR Investments Pool 1, LLC	*Attorneys for JPMorgan Chase Bank, National Association*

[4] SFR dismissed its claims against Bell by way of Stipulation and Order entered on August 6, 2014, notice of entry of which was served on August 8, 2014.

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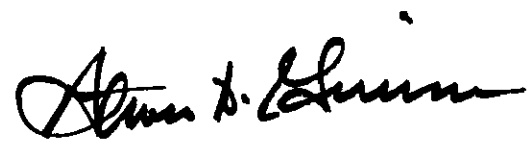

CLERK OF THE COURT

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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 I through X, ROE CORPORATIONS I through X, inclusive, Defendants.	CASE NO. A-13-692202-C DEPT. NO. XXIV
SFR INVESTMENTS POOL 1, LLC a Nevada limited liability company, Counter-Claimant/Cross-Claimant, vs. JPMORGAN CHASE BANK N.A., a national association; KYLEEN T. BELL, an individual; DOES I through X, ROE CORPORATIONS I through X, inclusive, Counter-Defendant/Cross-Defendants.	

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NOTICE OF APPEAL

Plaintiff/Counter-Defendant JPMorgan Chase Bank, National Association appeals to the Nevada Supreme Court from the *Order Granting SFR Investments Pool 1, LLC's Motion for Summary Judgment* entered October 26, 2016 and from all interlocutory judgments and orders made appealable thereby.

Dated: November 22, 2016.

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By: /s/ Holly Ann Priest
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 22, 2016, I filed a copy of the foregoing NOTICE OF APPEAL. The following individuals will be served by the Eighth Judicial District Court's E-Filing system:

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