

**IN THE SUPREME COURT OF NEVADA**

JPMORGAN CHASE BANK, N.A.,  
SUCCESSOR BY MERGER TO  
CHASE HOME FINANCE LLC,

Appellant,

v.

SFR INVESTMENTS POOL 1, LLC,

Respondent.

Supreme Court No. 71839

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Elizabeth A. Brown  
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**REPLY IN SUPPORT OF MOTION TO EXTEND  
DEADLINE TO FILE OPENING BRIEF AND APPENDIX**

Appellant JPMorgan Chase Bank, N.A., as Successor by Merger to Chase Home Finance LLC (“Chase”) files the following reply in support of its Motion to Extend Deadline to File Opening Brief and Appendix (the “Motion”).

1. Respondent SFR Investments Pool 1, LLC (“SFR”) acknowledges the Court has scheduled oral arguments in K & P Homes to address the retroactive application of SFR Invs. If the Court holds in K & P Homes that SFR Invs. does not apply retroactively to sales conducted before September 18, 2014—including the sale in this case—then Chase’s deed of trust against the subject property will survive. In that instance, the parties will not have to litigate this appeal. Even if the Court holds that SFR Invs. does apply retroactively, that will at least eliminate the need for the parties to brief this particular issue.

2. SFR tries to pre-litigate the merits of this issue by arguing that SFR Invs. applies retroactively. Rather than try to predict how it might rule in K & P Homes, the Court should simply await the final decision in K & P Homes to avoid duplicative briefing in this case.

3. SFR also argues that the Court should not wait for the disposition of the certiorari petitions in Bourne Valley and Saticoy Bay. As noted in the Motion, Bourne Valley held that (1) the foreclosure of an HOA's government-created lien implicates due process, and (2) the notice provisions of NRS Chapter 116 violate due process by requiring mortgage lenders to opt in for notice. 832 F.3d at 1158-60. In Saticoy Bay, this Court disagreed with the Ninth Circuit on the first issue and therefore did not reach the second issue. 388 P.3d at 972-74.

4. According to SFR, the petition in Bourne Valley is “narrowly focused on the state actor issue” and any petition in Saticoy Bay “would necessarily be similarly focused.” SFR's postulation does not change the fact that the petitions will directly impact the briefing in this case. If the U.S. Supreme Court denies certiorari, or if it grants certiorari and affirms Saticoy Bay, then Saticoy Bay will remain in place and there will be no need to brief either of the two issues noted in Paragraph 3. However, if the U.S. Supreme Court grants certiorari and reverses Saticoy Bay, the parties will need to brief the second issue—i.e., whether Chapter

116 requires mortgage lenders to opt in for notice. Therefore, Chase cannot know which issues to address in its opening brief until the petitions are resolved.

5. According to SFR, because Chase allegedly received notice of the sale in this case, Chase cannot bring a facial challenge to Chapter 116's notice provisions. Notably, the Ninth Circuit rejected this argument in Bourne Valley. See 832 F.3d at 1157-58. It noted the lender in Bourne Valley received actual notice of the sale, but then proceeded to hold Chapter 116's notice provisions facially unconstitutional and to reverse a summary judgment against the lender. See id. Therefore, if the U.S. Supreme Court adopts the Ninth Circuit's reasoning, it will reject SFR's actual notice argument. SFR will not be able to re-litigate the actual notice issue here. In other words, the actual notice issue will not provide a separate basis for this Court to rule for SFR in the event that Bourne Valley is affirmed and Saticoy Bay is reversed.

6. Even if SFR's actual notice argument is a standalone issue—and it is not—there is little reason to pre-litigate the issue now. Any intervening briefing on the enumerated issues may be unnecessary and a waste of resources.

7. Further, SFR's actual notice argument fails on the merits. If Chase is correct that an HOA foreclosure implicates due process, and that Chapter 116 unconstitutionally requires a mortgagee to opt in for notice, then an HOA cannot cure this defect by voluntarily giving notice to a mortgagee. See Wuchter v.

Pizzutti, 276 U.S. 13, 24 (1928) (where statute violated due process by failing to ensure notice of lawsuit to out-of-state defendant, actual notice to defendant could not “supply constitutional validity to the statute or to service under it” because it “was not required by the statute.”); Ezell v. City of Chicago, 651 F.3d 684, 697 (7th Cir. 2011) (in context of facial challenge, “individual application of the facts do[es] not matter” and “the plaintiff’s personal situation becomes irrelevant. It is enough that we have only the statute itself and the statement of basis and purpose that accompanied its promulgation.”).

8. SFR claims it would be “prejudiced” by an extension of the briefing schedule. However, in another recent appeal involving an HOA foreclosure, SFR consented to (and this Court granted) an identical six-month extension of Chase’s opening brief deadline. See JPMorgan Chase Bank, Nat’l Ass’n v. SFR Invs. Pool 1, LLC, No. 71337. SFR consented to this extension before the Court had even set oral arguments in K & P Homes.

9. At one point, SFR accuses Chase of trying “to delay final judgement on the case while it looks for more issues to throw at the courts to see what sticks.” This makes little sense. Chase seeks to avoid duplicative briefing on two familiar issues that were raised in the district court and have been raised in numerous other appeals before this Court. Chase does not seek to invent new arguments.

10. SFR's proposed 30-day extension would not provide enough time for a decision in K & P Homes. Further, it might not provide enough time for the U.S. Supreme Court to decide whether to grant certiorari in Bourne Valley and Saticoy Bay. It will certainly not provide enough time for the U.S. Supreme Court to issue a decision on the state action issue in the event it grants certiorari.

Dated: April 18, 2017.

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**CERTIFICATE OF SERVICE**

I certify that on April 18, 2017, I filed the foregoing *Reply in Support of Motion to Extend Deadline to File Opening Brief and Appendix*. The following participants will be served electronically:

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