

IN THE SUPREME COURT OF THE STATE OF NEVADA

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SFR INVESTMENTS POOL 1, LLC;
and STAR HILL HOMEOWNERS
ASSOCIATION,

Appellant,

vs.

THE BANK OF NEW YORK
MELLON F/K/A/ THE BANK OF
NEW YORK, AS TRUSTEE FOR
THE CERTIFICATEHOLDERS OF
THE CWABS, INC., ASSET-
BACKED CERTIFICATES, SERIES
2006-6,

Respondent.

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Clerk of Supreme Court
Supreme Court No. 72931
Case No.: 2:16-cv-02561

Certified Question From the United States District Court, District of Nevada The
Honorable RICHARD F. BOULWARE, II, UNITED STATES District Judge

**APPELLANT STAR HILL HOMEOWNERS ASSOCIATION'S
SUBSTANTIVE JOINDER TO APPELLANT SFR INVESTMENTS POOL
1, LLC'S OPENING BRIEF**

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**APPELLANT STAR HILL HOMEOWNERS
ASSOCIATION'S SUBSTANTIVE JOINDER TO
APPELLANT SFR INVESTMENTS POOL 1, LLC'S
OPENING BRIEF**

COMES NOW, Appellant, Star Hill Homeowners Association (the "Association"), by and through their attorneys of record, Kurt R. Bonds, Esq., and Adam R. Knecht, Esq., of the law firm Alverson, Taylor, Mortensen & Sanders, and hereby joins in, adopts, and affirms the Point and Authorities, the legal argument, and any and all exhibits in support of Appellant SFR Investment Pool 1, LLC's Opening Brief (the "Opening Brief"). This Joinder to the Opening Brief is made and based upon the papers and pleading on file herein as well as any argument the Court may entertain.

The Association adds that it is important to look at the statutes in question as they were at before they were amended in 2015. NRS 116.31168(1) before it was amended in 2015 read as follows:

The provisions of NRS 107.090 apply to the foreclosure of an association's lien as if a deed of trust were being foreclosed. The request must identify the lien by stating the names of the unit's owner and the common-interest community.

NRS 107.090 before it was amended in 2015 read as follows:

As used in this section, "person with an interest" means any person who has or claims any right, title or interest in, or lien or charge upon, the real property described in the deed of trust, as evidenced by any document or instrument recorded in the office of the county recorder of the county in which any part of the real property is situated.

Indeed, this Court has already found NRS 116 to be

constitutional after both a facial and as applied analysis. *SFR Investments Pool I, LLC v. US. Bank, NA.*, 334 P.3d 417-22 (Nev. 2014). Both the majority and dissent in *SFR Investments* recognized that notice must be sent to all junior lienholders, noting the incorporation of NRS 107.090(3)(b), (4), which, in the case of a bank foreclosure sale, requires notice of sale to “[e]ach other person with an interest whose interest or claimed interest is subordinate to the deed of trust.” *Id.* at 411, 422. Further, the majority in *SFR Investments* rejected the lender’s due process arguments as “protean,” and “nonstarters”, noting that since Chapter 116 was adopted in 1991, the lender “was on notice that by operation of the statute, the [earlier recorded] CC&R’s might entitle the HOA to a super priority lien at some future date which would take priority over a [later recorded] first deed of trust.” *Id.* at 418 (quoting with approval *7912 Limbwood Court Trust v. Wells Fargo Bank, N.A.*, 979 F.Supp.2d 1142, 1152 (D. Nev. 2013) (rejecting a due process challenge to a nonjudicial foreclosure of a superpriority lien).

To quote this Court, “[t]o the extent U.S. Bank argues that a statutory scheme that gives an HOA a superpriority lien that can be foreclosed nonjudicially, thereby extinguishing an earlier filed deed of trust, offends due process, the argument is a nonstarter.” *Id.*

Further, the Ninth Circuit’s reasoning in *Bourne Valley* goes against long standing canons of statutory construction. It is not disputed that “it is a commonplace of statutory construction that the specific governs the general.” *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384, 112 S.Ct. 2031, 119 L.Ed.2d 157; *RadLAX*

Gateway Hotel, LLC v. Amalgamated Bank, 132 S. Ct. 2065, 2068, 182 L. Ed. 2d 967 (2012). “Where general and specific methods exist side-by-side, the general/specific canon *avoids* rendering superfluous a specific provision that is swallowed by the general one.” *See D. Ginsberg & Sons, Inc. v. Popkin*, 285 U.S. 204, 208, 52 S.Ct. 322, 76 L.Ed. 704. (emphasis added).

The Ninth Circuit’s decision in *Bourne Valley* to dismiss NRS 107.090 as superfluous to NRS 116.31168 is unreasonable. These statutes are clearly not superfluous and such an interpretation goes against the statutory construction that the “specific governs the general” as set forth by the United States Supreme Court. *D. Ginsberg & Sons, Inc. v. Popkin*, 285 U.S. 204, 208, 52 S.Ct. 322, 76 L.Ed. 704. While NRS 107 generally provides that notice must be given to anyone who has recorded an interest in the property, NRS 116’s “opt-in” provision specifically provides additional notice to anyone else who requests it. *Compare* NRS 107.090 *with* NRS 116.31168.

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In other words, a mortgage lender does not have to be aware of a lien to request notice, it merely must want to protect its interest and record it.

DATED this 5th day of September, 2017.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS

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VERIFIED CERTIFICATE OF COMPLIANCE

STATE OF NEVADA
COUNTY OF CLARK

I, Adam R. Knecht, being duly sworn, do hereby depose and say:

1. I am an attorney with the law firm of Alverson Taylor Mortensen & Sanders, counsel of record for Appellant name in the foregoing Star Hill Homeowners Association's Substantive Joinder to SFR Investment Pool 1, LLC's Opening Brief.

2. I am licensed in the State of Nevada and competent to testify to the matters set forth in this Affidavit.

3. Pursuant to NRAP, I hereby certify that I have read Star Hill Homeowners Association's Substantive Joinder to SFR Investment Pool 1, LLC's Opening Brief, and to the best of my knowledge, information, and belief verify that the facts stated therein are true, and to those matters that are on information and belief, such matters I believe to be true.

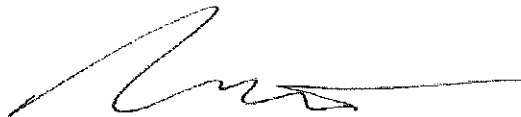
4. I further certify that Star Hill Homeowners Association's Substantive Joinder to SFR Investment Pool 1, LLC's Opening Brief is not frivolous or interposed for any improper purpose and complies with the applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by reference to the page of the Appendix where the matter relied on is to be found.

5. Star Hill Homeowners Association's Substantive Joinder to SFR Investment Pool 1, LLC's Opening Brief complies with the type-volume limitations of NRAP 32(a)(7)(A)(ii), in that it contains no more than 7,000 words. Further, Star Hill Homeowners Association's Joinder to SFR Investment Pool 1, LLC's Opening Brief complies with the formatting requirements of NRS 32(a)(4-6).

6. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.


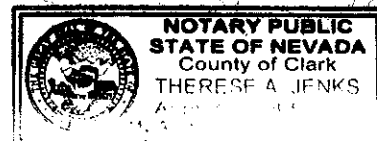
7. I make this verification on behalf of Appellant Star Hills Homeowners Association.

EXECUTED this 5th day of September, 2017.




Adam R. Knecht, Esq.

SUBSCRIBED AND SWORN to before
me this 5th day of September, 2017.


Notary Public

CERTIFICATE OF SERVICE VIA CM/ECF

I hereby certify that on this 5th day of September, 2017, I did serve, via Case Management/Electronic Case Filing, a copy of the above and foregoing APPELLANT STAR HILL HOMEOWNERS ASSOCIATION'S SUBSTANTIVE JOINDER TO APPELLANT SFR INVESTMENTS POOL 1, LLC'S OPENING BRIEF addressed to:


An Employee of ALVERSON, TAYLOR,
MORTENSEN & SANDERS