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Elizabeth A. Brown
Clerk of Supreme Court

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DISTRICT COURT
CLARK COUNTY, NEVADA

MARCHAI B.T., a Bank Trust,
Plaintiff,

vs.

CRISTELA PEREZ, an individual; SFR
INVESTMENTS POOL 1, LLC, a limited
liability company; U.S. BANK NATIONAL
ASSOCIATION, N.D., a national association;
DOES I through X; and ROE CORPORATIONS
I through 10, inclusive,

Defendants.

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

Counterclaimant/Cross-Claimant,
vs.

MARCHAI B.T., a Bank Trust; U.S. BANK
NATIONAL ASSOCIATION, N.D., a national
association; CRISTELA PEREZ, an individual;
and DOES I through X; and ROE
CORPORATIONS I through 10, inclusive,

Counter-Defendant/Cross-Defendants.

Case No. A-13-689461-C
Consolidated with: A-16-742327-C

Dept. No. VII

NOTICE OF APPEAL

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

1. Decision and Order entered on October 3, 2017; and

2. All other orders made appealable thereby.

DATED this 3rd day of November 2017.

KIM GILBERT EBRON

/s/ Jacqueline A. Gilbert, Esq.
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
Phone: (702) 485-3300
Fax: (702) 485-3301
Attorneys for SFR Investments Pool 1, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of November 2017, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the **SFR'S NOTICE OF APPEAL** to the following parties:

David Merrill - david@djmerrillpc.com

Kaleb Anderson - kanderson@lipsonneilson.com

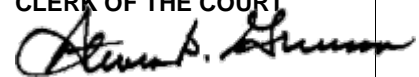
Brenda Correa - bcorrea@lipsonneilson.com

Megan Hummel - mhummel@lipsonneilson.com

Susana Nutt - snutt@lipsonneilson.com

Renee Rittenhouse - rrittenhouse@lipsonneilson.com

/s/ Jacqueline A. Gilbert, Esq.
an employee of Kim Gilbert Ebron



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Facsimile: (702) 485-3301
Attorneys for SFR Investments Pool 1, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

MARCHAI B.T., a Bank Trust,

Plaintiff,

vs.

CRISTELA PEREZ, an individual; SFR INVESTMENTS POOL 1, LLC, a limited liability company; U.S. BANK NATIONAL ASSOCIATION, N.D., a national association; DOES I through X; and ROE CORPORATIONS I through 10, inclusive,

Defendants.

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

Counterclaimant/Cross-Claimant,
vs.

MARCHAI B.T., a Bank Trust; U.S. BANK NATIONAL ASSOCIATION, N.D., a national association; CRISTELA PEREZ, an individual; and DOES I through X; and ROE CORPORATIONS I through 10, inclusive,

Counter-Defendant/Cross-Defendants.

Case No. A-13-689461-C
Consolidated with: A-16-742327-C

Dept. No. VII

CASE APPEAL STATEMENT

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CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

SFR Investments Pool 1, LLC.

2. Identify the judge issuing the decision, judgment, or order appealed from:

The Honorable Linda Marie Bell

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

Appellant: SFR Investments Pool 1, LLC (SFR)

Counsel: Jacqueline A. Gilbert, Esq.
Diana Cline Ebron, Esq.
Karen L. Hanks, Esq.
KIM GILBERT EBRON
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139

Possible Appellant: Wyeth Ranch Community Association

Trial Counsel: Kaleb D. Anderson, Esq.
Megan H. Hummel, Esq.
Lipson, Neilson, Cole, Seltzer & Garin, P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144

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

Respondent: Marchai, B.T. (Marchai)

Trial Counsel: David J. Merrill, Esq.
DAVID J. MERRILL, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada, 89145

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

N/A

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

Retained

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

3 Retained

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

6 N/A

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

9 September 1, 2013

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

13 The case started as one for judicial foreclosure filed by Marchai on September 1, 2013 after
14 the Association's foreclosure sale on August 28, 2013 at which SFR was the highest bidder and
15 obtained title to the subject property. Three years later, Marchai filed a second suit related to the
16 same property against some of the same defendants, but adding additional defendants. These
17 actions were consolidated. SFR and the association answered and SFR cross-claimed for quiet
18 title. Following full briefing on motions for summary judgment, the district court found that post
19 notice partial payments by the homeowner in excess of the purported superpriority portion of the
20 association's lien satisfied that portion of the lien and preserved the first deed of trust. The district
21 court found that it was SFR's burden to prove otherwise as to the homeowner's intent as to the
22 payments. Thus, the Court found in favor of Marchai.

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

26 N/A.

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

28 N/A.

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KIM GILBERT EBRON
7625 DEAN MARTIN DRIVE, SUITE 110
LAS VEGAS, NEVADA 89139
(702) 485-3300 FAX (702) 485-3301

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

SFR is willing to address settlement but is unsure of Marchai's position.

KIM GILBERT EBRON

/s/ Jacqueline A. Gilbert, Esq.

JACQUELINE A. GILBERT, ESQ.

Nevada Bar No. 10593

7625 Dean Martin Drive, Suite 110

Las Vegas, Nevada 89139

Phone: (702) 485-3300

Fax: (702) 485-3301

Attorneys for SFR Investments Pool 1, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of November 2017, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the **SFR'S CASE APPEAL STATEMENT** to the following parties:

David Merrill - david@djmerrillpc.com

Kaleb Anderson - kanderson@lipsonneilson.com

Brenda Correa - bcorrea@lipsonneilson.com

Megan Hummel - mhummel@lipsonneilson.com

Susana Nutt - snutt@lipsonneilson.com

Renee Rittenhouse - rrittenhouse@lipsonneilson.com

/s/ Jacqueline A. Gilbert, Esq.
an employee of Kim Gilbert Ebron

DEPARTMENT 7
CASE SUMMARY
CASE NO. A-13-689461-C

Marchai B T Bank Trust, Plaintiff(s)
vs.
Cristela Perez, Defendant(s)

§
§
§
§
§

Location: **Department 7**
Judicial Officer: **Bell, Linda Marie**
Filed on: **09/30/2013**
Case Number History:
Cross-Reference Case Number: **A689461**

CASE INFORMATION

Related Cases
A-16-742327-C (Consolidated)

Statistical Closures
10/03/2017 Stipulated Judgment

Case Type: **Title to Property**
Subtype: **Foreclosure**
Case Flags: **Consolidated - Lead Case**
Appealed to Supreme Court
Automatically Exempt from Arbitration

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-13-689461-C
Court Department 7
Date Assigned 03/02/2015
Judicial Officer Bell, Linda Marie

PARTY INFORMATION

		<i>Lead Attorneys</i>
Plaintiff	Marchai B T Bank Trust	Merrill, David J <i>Retained</i> 702-566-1935(W)
Defendant	Perez, Cristela	
	SFR Investments Pool I LLC	Gilbert, Jacqueline <i>Retained</i> 702-485-3300(W)
	U S Bank National Association ND	
Consolidated Case Party	Wyeth Ranch Community Association	Anderson, Kaleb D. <i>Retained</i> 702-382-1500(W)
Counter Claimant	SFR Investments Pool I LLC	Gilbert, Jacqueline <i>Retained</i> 702-485-3300(W)
Counter Defendant	Marchai B T Bank Trust	Merrill, David J <i>Retained</i> 702-566-1935(W)
Cross Claimant	SFR Investments Pool I LLC	Gilbert, Jacqueline <i>Retained</i> 702-485-3300(W)
Cross Defendant	Perez, Cristela	
	U S Bank National Association ND	

DATE

EVENTS & ORDERS OF THE COURT

INDEX

09/30/2013
















Complaint

Filed By: Counter Defendant Marchai B T Bank Trust

DEPARTMENT 7
CASE SUMMARY
CASE NO. A-13-689461-C

Complaint for Judicial Foreclosure of Deed of Trust














09/30/2013	Case Opened
10/03/2013	 Notice of Pendency of Action Filed By: Counter Defendant Marchai B T Bank Trust <i>Notice of Pendency of Action</i>
10/25/2013	 Return Party: Counter Defendant Marchai B T Bank Trust <i>Return of Non-Service</i>
10/25/2013	 Summons Filed by: Counter Defendant Marchai B T Bank Trust <i>Summons - Civil</i>
11/01/2013	 Return Party: Counter Defendant Marchai B T Bank Trust <i>Return of Service</i>
11/07/2013	 Affidavit of Service Filed By: Counter Defendant Marchai B T Bank Trust <i>Affidavit of Service</i>
11/12/2013	 Affidavit of Service Filed By: Cross Defendant Perez, Cristela Party Served: Cross Defendant U S Bank National Association ND
11/13/2013	 Notice of Lis Pendens Filed by: Counter Defendant Marchai B T Bank Trust <i>Notice of Lis Pendens</i>
11/13/2013	 Answer and Counterclaim Filed By: Cross Claimant SFR Investments Pool I LLC <i>Answer, Counterclaim, and Cross Claim</i>
12/03/2013	 Answer to Counterclaim Filed By: Counter Defendant Marchai B T Bank Trust <i>Answer to Counterclaim</i>
12/13/2013	 Default Filed By: Counter Defendant Marchai B T Bank Trust <i>Default</i>
12/19/2013	 Affidavit of Service Filed By: Counter Defendant Marchai B T Bank Trust <i>Affidavit of Service</i>
12/27/2013	 Affidavit of Service Filed By: Counter Defendant Marchai B T Bank Trust <i>Affidavit of Service</i>
01/28/2014	 Application Filed By: Counter Defendant Marchai B T Bank Trust

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Application for an Order to Extend Time to Serve Summons and Complaint

01/28/2014	 Affidavit in Support Filed By: Counter Defendant Marchai B T Bank Trust <i>Affidavit of Benjamin D. Petiprin in Support of Application for an Order to Extend Time to Serve Summons and Complaint</i>
02/13/2014	 Order Extending Time to Serve Filed By: Counter Defendant Marchai B T Bank Trust <i>Order to Extend Time to Serve Summons and Complaint</i>
02/13/2014	 Joint Case Conference Report Filed By: Counter Defendant Marchai B T Bank Trust <i>Joint Case Conference Report</i>
02/13/2014	 Default Filed By: Counter Defendant Marchai B T Bank Trust <i>Default Against Cross-Defendant Cristela Perez</i>
02/13/2014	 Default Filed By: Counter Defendant Marchai B T Bank Trust <i>Default Against Cross-Defendant U.S. Bank National Association, N.D.</i>
02/14/2014	 Notice of Entry of Order Filed By: Counter Defendant Marchai B T Bank Trust <i>Notice of Entry of Order to Extend Time to Serve Summons and Complaint</i>
02/19/2014	 Scheduling Order <i>Scheduling Order</i>
03/11/2014	 Return Party: Counter Defendant Marchai B T Bank Trust <i>Return of Service</i>
04/22/2014	 Default Filed By: Counter Defendant Marchai B T Bank Trust <i>Default</i>
07/09/2014	 Notice of Entry of Stipulation and Order Filed By: Counter Defendant Marchai B T Bank Trust <i>Notice of Entry of Stipulation and Order</i>
07/09/2014	 Stipulation and Order Filed by: Cross Claimant SFR Investments Pool I LLC <i>Stipulation and Order Staying Litigation</i>
09/25/2014	CANCELED Calendar Call (11:00 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated - per Order</i>
10/20/2014	CANCELED Bench Trial (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated - per Order</i>
11/04/2014	 Status Check (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Status Check: Stay</i>













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CASE SUMMARY
CASE NO. A-13-689461-C

12/05/2014	 Recorders Transcript of Hearing <i>Recorder's Transcript of Proceeding: Status Check November 4, 2014</i>
01/28/2015	 Notice of Entry Filed By: Counter Defendant Marchai B T Bank Trust <i>Notice of Entry of Order Lifting Stay</i>
01/28/2015	 Order Filed By: Cross Claimant SFR Investments Pool I LLC <i>Order Lifting Stay</i>
02/12/2015	 Stipulation and Order to Extend Discovery Deadlines Filed By: Cross Claimant SFR Investments Pool I LLC <i>Stipulation and Order to Extend Discovery Deadline Dates (First Request)</i>
02/17/2015	 Notice of Entry of Stipulation and Order Filed By: Counter Defendant Marchai B T Bank Trust <i>Notice of Entry of Stipulation and Order to Extend Discovery Deadline Dates</i>
02/25/2015	 Order Setting Civil Bench Trial <i>Second Order Setting Bench Trial</i>
03/02/2015	Case Reassigned to Department 7 <i>District Court Case Reassignment 2015</i>
07/27/2015	 Motion Filed By: Cross Claimant SFR Investments Pool I LLC <i>Motion for Pre-Trial Coordination on Shortening Time</i>
08/11/2015	 Motion to Coordinate (10:30 AM) (Judicial Officer: Bare, Rob) <i>Defendant SFR Investments Pool 1 LLC's Motion for Pre-Trial Coordination on Order Shortening Time</i>
08/25/2015	 Document Filed Filed by: Cross Claimant SFR Investments Pool I LLC <i>Proposed Case Management Order (unsigned)</i>
10/09/2015	 Subpoena Duces Tecum Filed by: Counter Defendant Marchai B T Bank Trust <i>Subpoena Duces Tecum</i>
10/09/2015	 Subpoena Duces Tecum Filed by: Counter Defendant Marchai B T Bank Trust <i>Subpoena Duces Tecum</i>
12/02/2015	 Substitution of Attorney Filed by: Counter Defendant Marchai B T Bank Trust <i>Substitution of Attorney</i>
12/18/2015	 Notice of Change of Address Filed By: Cross Claimant SFR Investments Pool I LLC <i>Notice of Change of Address and Notice of Change of Firm Name</i>

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CASE NO. A-13-689461-C











01/04/2016	 Stipulation and Order Filed by: Cross Claimant SFR Investments Pool I LLC <i>Stipulation and Order to Extend Dispositive Motion Deadlines</i>
01/04/2016	 Notice of Entry of Order Filed By: Counter Defendant Marchai B T Bank Trust <i>Notice of Entry of Order</i>
01/14/2016	 Motion for Summary Judgment Filed By: Cross Claimant SFR Investments Pool I LLC <i>SFR Investments Pool I, LLC's Motion For Summary Judgment</i>
01/14/2016	 Motion for Summary Judgment Filed By: Counter Defendant Marchai B T Bank Trust <i>Marchai, B.T.'s Motion for Summary Judgment</i>
01/14/2016	 Appendix Filed By: Cross Defendant U S Bank National Association ND <i>Appendix of Exhibits to Marchai, B.T.'s Motion for Summary Judgment</i>
01/14/2016	 Appendix Filed By: Cross Defendant U S Bank National Association ND <i>Appendix of Exhibits to Marchai, B.T.'s Motion for Summary Judgment</i>
01/19/2016	 Pre-Trial Disclosure Party: Cross Claimant SFR Investments Pool I LLC <i>SFR Investments Pool I, LLC's Pre-Trial Disclosures</i>
01/21/2016	CANCELED Calendar Call (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated - On in Error</i>
02/03/2016	 Opposition to Motion Filed By: Counter Defendant Marchai B T Bank Trust <i>Marchai, B.T.'s Opposition to SFR Investments Pool I, LLC's Motion for Summary Judgment</i>
02/04/2016	 Opposition to Motion For Summary Judgment Filed By: Cross Claimant SFR Investments Pool I LLC <i>SFR Investments Pool I, LLC'S Opposition to Marchai B.T.'S Motion for Summary Judgment</i>
02/08/2016	 Reply in Support Filed By: Counter Defendant Marchai B T Bank Trust <i>Marchai, B.T.'s Reply in Support of Motion for Summary Judgment</i>
02/09/2016	 Reply in Support Filed By: Cross Claimant SFR Investments Pool I LLC <i>Reply in Support of Motion for Summary Judgment and Counter-Motions to Strike Pursuant TO NRCP RULE 37(d) and Eighth Judicial District Court Rule 2.20(a)</i>
02/15/2016	 Opposition to Motion Filed By: Counter Defendant Marchai B T Bank Trust <i>Marchai, B.T.'s Opposition to Counter-Motions to Strike Pursuant to NRCP 37(d) and Eighth Judicial District Court Rule 2.20(a)</i>
02/16/2016	CANCELED Bench Trial (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated - On in Error</i>

DEPARTMENT 7
CASE SUMMARY
CASE NO. A-13-689461-C













02/16/2016	Motion for Summary Judgment (9:00 AM) (Judicial Officer: Bell, Linda Marie) <i>SFR Investments Pool I, LLC's Motion For Summary Judgment</i>
02/16/2016	Motion for Summary Judgment (9:00 AM) (Judicial Officer: Bell, Linda Marie) <i>Marchai, B.T.'s Motion for Summary Judgment</i>
02/16/2016	Status Check: Reset Trial Date (9:00 AM) (Judicial Officer: Bell, Linda Marie)
02/16/2016	Response and Countermotion (9:00 AM) (Judicial Officer: Bell, Linda Marie) <i>Reply in Support of Motion for Summary Judgment and Counter-Motions to Strike Pursuant TO NRCF RULE 37(d) and Eighth Judicial District Court Rule 2.20(a)</i>
02/16/2016	 All Pending Motions (9:00 AM) (Judicial Officer: Bell, Linda Marie)
02/22/2016	 Certificate of Service Filed by: Counter Defendant Marchai B T Bank Trust <i>Certificate of Service</i>
03/22/2016	 Decision and Order <i>Decision and Order</i>
03/22/2016	 Minute Order (9:40 AM) (Judicial Officer: Bell, Linda Marie)
03/23/2016	 Notice of Entry of Decision and Order Filed By: Cross Claimant SFR Investments Pool I LLC <i>Notice of Entry of Decision and Order</i>
03/24/2016	 Notice of Entry of Decision and Order Filed By: Cross Claimant SFR Investments Pool I LLC <i>Notice of Entry of Decision and Order</i>
08/18/2016	 Motion for Leave to File Party: Counter Defendant Marchai B T Bank Trust <i>Motion, On Shortened Time, for Leave to File an Amended Complaint</i>
08/19/2016	 Certificate of Service Filed by: Counter Defendant Marchai B T Bank Trust <i>Certificate of Service</i>
08/24/2016	 Opposition to Motion Filed By: Cross Claimant SFR Investments Pool I LLC <i>Notice of Intent to Oppose Motion for Leave to File an Amended Complaint on OST Via Oral Argument at Hearing</i>
08/25/2016	 Motion for Leave (9:00 AM) (Judicial Officer: Hardcastle, Kathy) <i>Marchai, B.T.'s Motion, On Shortened Time, for Leave to File an Amended Complaint</i>
09/30/2016	 Order Denying Motion Filed By: Counter Defendant Marchai B T Bank Trust <i>Order Denying Motion</i>
10/03/2016	 Notice of Entry of Order Filed By: Counter Defendant Marchai B T Bank Trust

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Notice of Entry of Order












10/04/2016	 Recorders Transcript of Hearing <i>Recorder's Transcript of Plaintiff's Motion on Shortened Time for Leave to File an Amended Complaint - 8-25-2016</i>
10/05/2016	 Recorders Transcript of Hearing <i>Recorder's Transcript of Plaintiff's Motion on Shortened Time for Leave to File an Amended Complaint- 8-25-2016</i>
12/01/2016	 Status Check (9:00 AM) (Judicial Officer: Bell, Linda Marie) <i>Status Check: Status of Case / Stay</i>
12/13/2016	 Order Filed By: Counter Defendant Marchai B T Bank Trust <i>Order Lifting Stay and Consolidating Cases</i>
12/13/2016	 Notice of Entry of Order Filed By: Cross Defendant U S Bank National Association ND <i>Notice of Entry of Order</i>
01/03/2017	Status Check: Trial Setting (9:00 AM) (Judicial Officer: Bell, Linda Marie)
01/03/2017	Motion to Dismiss (9:00 AM) (Judicial Officer: Bell, Linda Marie) <i>Defendant Wyeth Ranch Community Association's Motion to Dismiss</i>
01/03/2017	Motion to Dismiss (9:00 AM) (Judicial Officer: Bell, Linda Marie) <i>SFR Investments Pool 1, LLC's Motion to Dismiss With Prejudice Plaintiff's Complaint Pursuant to NRCP 12(b)(1) and EDCR 7.10(B) and Motion to Strike Pleading Pursuant to NRCP 12(f)</i>
01/03/2017	Joinder (9:00 AM) (Judicial Officer: Bell, Linda Marie) <i>Wyeth Ranch Community Association's Joinder to SFR Investments Pool 1, LLC's Motion to Dismiss with Prejudice Plaintiff's Complaint Pursuant to NRCP(12b)(1) and EDCR 7.10(b), and Motion to Strike Pleading Pursuant to NRCP 12(f)</i>
01/03/2017	 All Pending Motions (9:00 AM) (Judicial Officer: Bell, Linda Marie)
01/17/2017	 Order Denying Motion Filed By: Counter Defendant Marchai B T Bank Trust <i>Order Denying Motion SFR Investments Pool 1, LLC's Motion to Dismiss with Prejudice Plaintiff's Complaint Pursuant to NRCP 12(b)(1) and EDCR 7.10(b) and Motion to Strike Pleading Pursuant to NRCP 12(f) and Wyeth Ranch Community Association's Joinder Thereto</i>
01/18/2017	 Notice of Entry of Order Filed By: Counter Defendant Marchai B T Bank Trust <i>Notice of Entry of Order</i>
01/24/2017	 Order Filed By: Counter Defendant Marchai B T Bank Trust <i>(A689461) Order Denying, in Part, and Granting, in Part, Defendant Wyeth Ranch Community Association's Motion to Dismiss</i>
01/25/2017	 Notice of Entry of Order Filed By: Counter Defendant Marchai B T Bank Trust <i>Notice of Entry of Order</i>

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01/31/2017	 Answer to Complaint Filed by: Consolidated Case Party Wyeth Ranch Community Association <i>Defendant Wyeth Ranch Community Association's Answer and Affirmative Defenses</i>
01/31/2017	 Notice of Bankruptcy Filed By: Consolidated Case Party Wyeth Ranch Community Association <i>Notice of Bankruptcy and Suggestion of Stay</i>
02/06/2017	 Answer to Complaint Filed by: Cross Claimant SFR Investments Pool I LLC <i>SFR Investments Pool I, LLC's Answer to Complaint</i>
02/14/2017	 Order Setting Civil Bench Trial <i>Third Order Setting Civil Bench Trial</i>
05/16/2017	 Supplemental Joint Case Conference Report Party: Counter Defendant Marchai B T Bank Trust <i>Supplemental Joint Case Conference Report</i>
06/22/2017	 Status Conference (9:00 AM) (Judicial Officer: Bell, Linda Marie)
07/21/2017	 Motion for Summary Judgment Filed By: Cross Claimant SFR Investments Pool I LLC <i>SFR Investments Pool I, LLC's Motion for Summary Judgment</i>
07/21/2017	 Motion for Summary Judgment Filed By: Consolidated Case Party Wyeth Ranch Community Association <i>Defendant Wyeth Ranch Community Association's Motion for Summary Judgment</i>
07/21/2017	 Motion in Limine to Exclude Expert Witness Filed by: Counter Defendant Marchai B T Bank Trust <i>Motion in Limine to Exclude Testimony from Michael Brunson</i>
08/14/2017	 Opposition to Motion For Summary Judgment Filed By: Counter Defendant Marchai B T Bank Trust <i>Marchai, B.T. s Opposition to SFR Investments Pool I, LLC and Wyeth Ranch Community Association s Motions for Summary Judgment</i>
08/21/2017	 Opposition to Motion in Limine Filed By: Cross Claimant SFR Investments Pool I LLC <i>Opposition to Motion in Limine to Exclude Testimony from Michael Brunson</i>
08/21/2017	 Reply in Support Filed By: Consolidated Case Party Wyeth Ranch Community Association <i>Defendant Wyeth Ranch Community Association's Reply in Support of Motion for Summary Judgment</i>
08/21/2017	 Reply in Support Filed By: Cross Claimant SFR Investments Pool I LLC <i>Reply in Support of SFR Investments Pool I, LLC's Motion for Summary Judgment</i>
08/21/2017	 Joinder to Opposition to Motion Filed by: Consolidated Case Party Wyeth Ranch Community Association

DEPARTMENT 7
CASE SUMMARY
CASE NO. A-13-689461-C

*Defendant Wyeth Ranch Community Association's Joinder to SFR Investments Pool I, LLC's
Opposition to Motion in Limine to Exclude Testimony from Michael Brunson*

08/22/2017	Motion for Summary Judgment (9:00 AM) (Judicial Officer: Bell, Linda Marie) <i>SFR Investments Pool I LLC's Motion for Summary Judgment</i>
08/22/2017	 All Pending Motions (9:00 AM) (Judicial Officer: Bell, Linda Marie)
08/23/2017	 Reporters Transcript <i>Court Reporters transcript of Proceedings - 2-16-2016</i>
08/24/2017	 Pre-Trial Disclosure Party: Cross Claimant SFR Investments Pool I LLC <i>SFR Investments Pool I, LLC's Pre-Trial Disclosures</i>
08/25/2017	 Objection <i>Objections to Pre-Trial Disclosures</i>
08/29/2017	 Calendar Call (9:00 AM) (Judicial Officer: Bell, Linda Marie)
08/29/2017	CANCELED Motion for Summary Judgment (9:00 AM) (Judicial Officer: Bell, Linda Marie) <i>Vacated - Previously Decided</i> <i>Defendant Wyeth Ranch Community Association's Motion for Summary Judgment</i>
08/29/2017	 Reporters Transcript <i>Court Reporters transcript of Proceedings (Civil) - 8-22-17</i>
09/05/2017	CANCELED Bench Trial (9:00 AM) (Judicial Officer: Bell, Linda Marie) <i>Vacated</i>
09/05/2017	 Reporters Transcript <i>Court Reporters transcript of Proceedings - 8-29-17</i>
09/12/2017	CANCELED Motion in Limine (9:00 AM) (Judicial Officer: Bell, Linda Marie) <i>Vacated</i> <i>Motion in Limine to Exclude Testimony from Michael Brunson</i>
09/12/2017	 Status Check (9:00 AM) (Judicial Officer: Bell, Linda Marie) <i>Status Check: Decision</i>
10/03/2017	Summary Judgment (Judicial Officer: Bell, Linda Marie) Debtors: SFR Investments Pool I LLC (Defendant) Creditors: Marchai B T Bank Trust (Plaintiff) Judgment: 10/03/2017, Docketed: 10/04/2017
10/03/2017	 Decision and Order <i>Decision and Order</i>
10/04/2017	 Notice of Entry of Decision and Order Filed By: Counter Defendant Marchai B T Bank Trust <i>Notice of Entry of Decision and Order</i>
10/10/2017	 Memorandum of Costs and Disbursements Filed By: Counter Defendant Marchai B T Bank Trust <i>Memorandum of Costs and Disbursements</i>

DEPARTMENT 7
CASE SUMMARY
CASE NO. A-13-689461-C

10/19/2017	 Motion to Retax Filed By: Cross Claimant SFR Investments Pool I LLC <i>SFR s Motion To Retax And Settle Memorandum Of Costs And Disbursements</i>
11/03/2017	 Notice of Appeal Filed By: Cross Claimant SFR Investments Pool I LLC <i>Notice of Appeal</i>
11/03/2017	 Case Appeal Statement Filed By: Cross Claimant SFR Investments Pool I LLC <i>Case Appeal Statement</i>
11/21/2017	Motion to Retax (9:00 AM) (Judicial Officer: Bell, Linda Marie) <i>SFR s Motion To Retax And Settle Memorandum Of Costs And Disbursements</i>

DATE	FINANCIAL INFORMATION
	Consolidated Case Party Wyeth Ranch Community Association Total Charges 200.00 Total Payments and Credits 200.00 Balance Due as of 11/7/2017 0.00
	Cross Claimant SFR Investments Pool I LLC Total Charges 647.00 Total Payments and Credits 647.00 Balance Due as of 11/7/2017 0.00
	Counter Defendant Marchai B T Bank Trust Total Charges 470.00 Total Payments and Credits 470.00 Balance Due as of 11/7/2017 0.00

CIVIL COVER SHEET

Clark County, Nevada

Case No. _____

(Assigned by Clerk's Office)

A- 1 3 - 689461 - C

XXVI

I. Party Information

Plaintiff(s) (name/address/phone):

MARCHI B.T.

Attorney (name/address/phone):

Benjamin D. Petiprin, Esq. (NV Bar 11681)
 Law Offices of Les Zieve
 3753 Howard Hughes Parkway, Suite 200
 Las Vegas, Nevada 89169
 Tel: (702) 948-856 Fax: (702) 446-989

Defendant(s) (name/address/phone):

CRISTELA PEREZ, ET. AL.

Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input checked="" type="checkbox"/> Title to Property <input checked="" type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	Negligence <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence – Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition

Probate	Other Civil Filing Types	
Estimated Estate Value: _____ <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

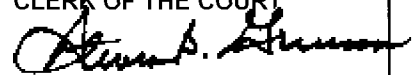
<input type="checkbox"/> NRS Chapters 78-88 <input type="checkbox"/> Commodities (NRS 90) <input type="checkbox"/> Securities (NRS 90)	<input type="checkbox"/> Investments (NRS 104 Art. 8) <input type="checkbox"/> Deceptive Trade Practices (NRS 598) <input type="checkbox"/> Trademarks (NRS 600A)	<input type="checkbox"/> Enhanced Case Mgmt/Business <input type="checkbox"/> Other Business Court Matters
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September 30, 2013

Date

/s/ Benjamin D. Petiprin

Signature of initiating party or representative



1
2 DAO

3 EIGHTH JUDICIAL DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 MARCHAI B.T.,

7 Plaintiff,

8 vs.

9 CRISTELA PEREZ; SFR INVESTMENTS POOL 1, LLC;
10 U.S. BANK NATIONAL ASSOCIATION, N.D.; DOES I
through X; and ROE CORPORATIONS 1 through 10,
inclusive,

11 Defendants.

Case No. A-13-689461-C

Dep't No. VII

12 And all related actions.
13

14 **DECISION AND ORDER**

15 This case arises from a homeowners' association's non-judicial foreclosure sale of
16 residential real property located at 7119 Wolf Rivers Avenue in Las Vegas, Nevada. The
17 HOA sold the Wolf Rivers property to satisfy the two recorded Notices of Defaults which
18 included a superpriority lien over the holder of the deed of trust. The HOA sold the Wolf
19 Rivers property to SFR. Upon the homeowners' association's foreclosure sale of the
20 property, Marchai B.T., the holder of the deed of trust and promissory note, filed suit
21 alleging that the sale did not extinguish their deed of trust pursuant to NRS Chapter 116.
22 SFR and the homeowners' association counter that Marchai's lien is extinguished. Now
23 before the Court are Defendant SFR Investments Pool 1's and Defendant Wyeth Ranch
24 Community Association's ("the HOA") Motions for Summary Judgment and Plaintiff
25 Marchai's opposition. These matters came before the Court on August 22, 2017. The Court
26 denies SFR and the HOA's Motions for Summary Judgment and after resolution of the legal
27 matters presented, finds in favor of Plaintiff Marchai.
28

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

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

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I. Factual Background

In 2004, Cristela Perez entered into two loan agreements with Countrywide Home Loans in order to purchase the property. The loans were secured by two deeds of trust on the Wolf Rivers property at 2119 Wolf Rivers Avenue. The property was subject to the terms of the Wyeth Ranch Community Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs). After the initial purchase, Perez refinanced the two Countrywide loans through an agreement with CMG Mortgage. CMG Mortgage recorded a deed of trust against the property on November 9, 2005. Ultimately, there were three active Notices of Default. The October 8, 2008 notice was rescinded, leaving the unrescinded notices at issue in this matter.

A. First Notice of Delinquent Assessment Lien

The HOA recorded its first Notice of Delinquent Assessment Lien on October 8, 2008. At that time, the HOA charged \$140.00 per month in association dues, collected quarterly. At the beginning of 2009, the HOA increased its monthly dues to \$152.50. The HOA recorded a Notice of Default and Election to Sell on January 7, 2009. The HOA recorded a Notice of Trustee's Sale on January 14, 2010. In 2010, the HOA increased its monthly dues to \$159.50.

On February 3, 2010, the HOA sent a demand letter to Perez. On February 12, 2010, Perez paid the HOA \$900.00, which more than covered all outstanding HOA dues, but did not cover remaining fees and costs. On April 13, 2010, the HOA proposed a payment plan to Perez. On May 11, 2010, Perez paid the HOA \$300.00. Perez failed, however to comply with the payment plan. The Trustee on behalf of the HOA applied payments as partial payments on the account for the duration of the resident transaction detail. See Exhibit 2-H of Appendix of Exhibits to Marchai, B.T.'s Motion for Summary Judgment.

On July 13, 2010, the HOA mailed a Pre-Notice of Trustee Sale and Notice of Default and Election to Sell to Perez. Perez paid the HOA \$645.00 between August 2 and November 30, 2010. The HOA recorded a Rescission of Notice of Sale on March 9, 2011. Perez paid the HOA \$160.00 on March 10, 2011.

1 On March 29, 2011, the HOA recorded a second Notice of Sale. On July 27, 2011, the
2 HOA sent Perez a letter stating Perez was in breach of the payment plan. On August 4,
3 2011, Perez paid the HOA \$165.00.

4 **B. Second Notice of Delinquent Assessment Lien**

5 On December 20, 2011, the HOA recorded a second Notice of Delinquent
6 Assessment lien. The original Notice was not rescinded. The HOA recorded a Notice of
7 Default and Election to Sell on February 28, 2012. Perez paid the HOA \$760.00 between
8 March 19 and July 26, 2012. CMG Mortgage assigned its deed of trust to CitiMortgage in
9 May of 2012. CitiMortgage assigned the deed to U.S. Bank in July of 2012. The HOA
10 recorded a Notice of Trustee's Sale on October 31, 2012. Perez paid the HOA \$300.00 on
11 November 13, 2012.

12 In March of 2013, U.S. Bank assigned its deed of trust to Marchai. Neither U.S.
13 Bank nor Marchai recorded the transfer of interest for approximately five months. During
14 this gap, U.S. Bank did not inform Marchai of the HOA's foreclosure proceedings. The
15 HOA mailed a Notice of Trustee's sale to CMG Mortgage, CitiMortgage, and U.S. Bank on
16 July 29, 2013. Marchai finally recorded its interest in the Wolf Rivers property on August
17 12, 2013. Marchai's loan servicer received notice of the trustee's sale on August 27, 2013,
18 the day before the sale was scheduled to take place. The servicer contacted the HOA's
19 trustee conducting the sale, Alessi & Koenig, to ask that the sale be postponed. The HOA
20 declined.

21 Alessi & Koenig conducted a foreclosure sale of the Wolf Rivers property on August
22 28, 2013. SFR purchased the property for \$21,000.00. SFR recorded a trustee's deed upon
23 sale on September 9, 2013 identifying SFR as the grantee and the HOA as the foreclosing
24 beneficiary. The trustee's deed states:

25 Alessi & Koenig, LLC (herein called Trustee), as the duly appointed
26 Trustee under that certain Notice of Delinquent Assessment Lien...
27 does hereby grant, without warranty expressed or implied to: SFR... all
28 its right, title and interest in the property...

1 This conveyance is made pursuant to the powers conferred upon the
2 Trustee by NRS 116 et seq... All requirements of law regarding the
3 mailing of copies of notices and the posting and publication of the
4 copies of the Notice of Sale have been complied with.

5 At the time of sale, Perez owed the HOA \$14,677.80. As of January 14, 2016, Perez owed
6 Marchai \$489,372.77 based the agreement secured by the deed of trust.

7 **II. Procedural History**

8 On September 30, 2013, Marchai filed a complaint against Perez, SFR, and U.S.
9 Bank. Marchai sought to judicially foreclose on the Wolf Rivers property based on Perez's
10 breach of the agreement secured by the deed of trust. The Court entered defaults against
11 Perez and U.S. Bank in this case. On November 13, 2013, SFR filed an answer,
12 counterclaim, and crossclaim. SFR brought counterclaims and crossclaims for declaratory
13 relief/quiet title and injunctive relief. Specifically, SFR alleged Marchai's interest in the
14 Wolf Rivers property was extinguished by the non-judicial foreclosure of the HOA's super-
15 priority lien established pursuant to NRS Chapter 116.

16 On July 9, 2014, the Court ordered that the case be stayed pending a ruling from the
17 Nevada Supreme Court on an HOA foreclosure's effect on a first deed of trust. The Nevada
18 Supreme Court issued its ruling in SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408
19 (Nev. 2014) on September 18, 2014. The Nevada Supreme Court denied a rehearing on
20 October 16, 2014. The Court lifted the stay in the instant case on January 28, 2015.

21 Both Marchai and SFR filed motions for summary judgment on January 14, 2016.
22 The parties dispute whether NRS Chapter 116 is constitutional and whether the HOA
23 foreclosure procedure in the instant case complied with NRS Chapter 116. The parties filed
24 oppositions to each other's motions on February 3 and 4, 2016. The parties filed replies on
25 February 8 and 9, 2016. SFR's reply contained a countermotion to strike portions of
26 Marchai's motion for summary judgment and opposition. SFR asserts Marchai's motion
27 exceeded the appropriate page limit. SFR also argues Marchai's opposition contains
28 evidence not properly disclosed in the discovery process.

On March 22, 2016, this Court issued its Decision and Order denying both SFR and

1 Marchai their respective Motions for Summary Judgment as well as denying SFR's Motion
2 to Strike. This Court found that the technical failings of Marchai's compliance with EDCR
3 2.20(a) did not rise to the level of sanctions and thus denied SFR's Motion to Strike. As
4 discovery was ongoing, this Court also found in its March 22, 2016 Decision and Order that
5 there remained genuine issues of fact for both Motions for Summary Judgment to be
6 denied. The Court resolved constitutionality issues of NRS chapter 116 raised in Marchai's
7 Motion for Summary Judgment involving due process. These sub issues include notice
8 provisions, whether there is state action involved, violations of the Taking Clause, and
9 vagueness.

10 Discovery concluded on August 15, 2017. Upon completion of discovery, the HOA
11 and SFR renewed their Motions for Summary Judgment. The resolution of the issues in the
12 summary judgment motion necessarily results in a decision in favor of Marchai.

13 III. Discussion

14 A. Motions for Summary Judgment

15 Summary judgment is appropriate "when the pleadings and other evidence on file
16 demonstrate that no genuine issue as to any material fact remains and that the moving
17 party is entitled to a judgment as a matter of law." Wood v. Safeway, Inc., 121 P.3d 1026,
18 1029 (Nev. 2005) (internal quotation marks and alterations omitted). "If the party moving
19 for summary judgment will bear the burden of persuasion at trial, that party 'must present
20 evidence that would entitle it to a judgment as a matter of law in the absence of contrary
21 evidence.'" Francis v. Wynn Las Vegas, LLC, 262 P.3d 705, 714 (Nev. 2011) (citing Cuzze v.
22 Univ. & Cmty. Coll. Sys. of Nev., 172 P.3d 131, 134 (Nev. 2007)). "When requesting
23 summary judgment, the moving party bears the initial burden of production to
24 demonstrate the absence of a genuine issue of material fact. If the moving party meets its
25 burden, then the nonmoving party bears the burden of production to demonstrate that
26 there is a genuine issue of material fact. Las Vegas Metro. Police Dep't v. Coregis Ins. Co.,
27 256 P.3d 958, 961 (Nev. 2011) (internal citations omitted).
28

1 The HOA and SFR seek summary judgment on each of their claims against Marchai.
2 As previously argued, SFR holds the HOA foreclosure sale extinguished Marchai's interest
3 in the Wolf Rivers property. Marchai argues its interest survived the foreclosure sale and is
4 superior to SFR's interest. In the current motions for summary judgment, parties
5 reintroduce the same issues after the close of discovery along with a few new arguments.
6 Upon the close of discovery, the Court finds no further evidence presented that lends itself
7 to a genuine dispute over material facts. The only issues to be decided are legal issues.

8 These issues include whether the nonjudicial foreclosure sale constituted unfairness
9 when Marchai requested the HOA to halt the sale the night before the sale and whether
10 buyers are required to pay US currency the day of the sale. In addition, whether there is
11 Perez's payments to the HOA satisfy the procedural tender requirements of NRS Chapter
12 116. To determine the answers to these questions, the Court must evaluate NRS Chapter
13 116 and the foreclosure process in this particular case.

14 **1. Previously Addressed Issues**

15 Issues including commercial reasonableness, SFR as a bona fide purchaser,
16 constitutionality of Chapter 116, and whether the Trustee was the grantor in the HOA
17 foreclosure sale were resolved this Court's Decision of Order of March 22, 2016. The Court
18 found that Marchai failed to establish that the HOA sale was commercially unreasonable as
19 a matter of law because absent fraud, unfairness, or oppression, an inadequate price is not
20 dispositive of unreasonableness. Further, the Court found that SFR was not able to
21 establish as a matter of law that it was a bona fide purchaser and that the HOA's years of
22 foreclosure notice proceedings including delinquency notices, defaults, and sale documents
23 would be a matter for a fact finder. Marchai raised constitutionality revolving around NRS
24 Chapter 116 involving due process, takings, and void for vagueness. The Court found that
25 Marchai could not show that requirements under Chapter 116 did not meet the notice
26 requirements that would set off due process issues or the legislative enactment of Chapter
27 116 was a governmental taking or a meant to serve a public purpose. Nor could Marchai
28 show that Chapter 116 meets the high standard for unconstitutionally vagueness. Lastly,

1 the Court found that an inartfully drafted foreclosure deed could not be resolved in favor of
2 Marchai. This Court finds that there is no new law to decide in favor of granting summary
3 judgment on these same arguments and the Court will not reconsider these issues already
4 resolved.

5 **2. A Nonjudicial Foreclosure Sale is Not Unfair if the HOA Proceeds**
6 **with the Sale After the Lender Requests a Halt to the Sale.**

7 Here, the HOA foreclosed upon the Wolf Rivers property, which they ultimately sold
8 at a foreclosure sale after failure of the homeowner to pay dues. Marchai alleges that there
9 are no material disputed issues of fact regarding the foreclosure as the parties agree to the
10 circumstances. Parties agree that notice of the sale was given to U.S. Bank as the recorded
11 holder of the deed of trust and that Marchai did not record their interest until after that
12 notice of sale had been sent out to interested parties. Further, parties agree that there was
13 no firm offer from Marchai to pay the superpriority amount of the loan prior to the sale
14 when they made the request to halt the sale. Marchai now moves the Court to find that the
15 HOA did not comply with NRS Chapter 116.

16 **a. Procedural Requirements of NRS Chapter 116**

17 Nevada Revised Statute Chapter 116 provides the procedural requirements for
18 homeowners' associations seeking to secure a lien for unpaid assessments and fees. "NRS
19 116.3116(2)... splits an HOA lien into two pieces, a superpriority piece and a subpriority
20 piece. The superpriority piece, consisting of the last nine months of unpaid HOA dues and
21 maintenance and nuisance-abatement charges, is 'prior to' a first deed of trust." SFR
22 Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 411 (Nev. 2014), reh'g denied (Oct. 16,
23 2014). That super-priority portion of the lien was held by the Nevada Supreme Court to be
24 a true super-priority lien, which will extinguish a first deed of trust if foreclosed upon
25 pursuant to Chapter 116's requirements. Id. at 419. Specifically, "[t]he sale of a unit
26 pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the
27 unit's owner without equity or right of redemption." NRS 116.31166(3); see also SFR v. U.S.
28 Bank, 334 P.3d at 412.

1 To initiate foreclosure under Chapter 116, a Nevada homeowner association must
2 first notify the owner of the delinquent assessments. See NRS 116.31162(1)(a). If the owner
3 does not pay within thirty days, the homeowner association must then provide the owner a
4 notice of default and election to sell. See NRS 116.31162(1)(b). Then, if the lien has not
5 been paid off within 90 days, the homeowner association may continue with the foreclosure
6 process. See NRS 116.31162(1)(c). The homeowner association must next mail a notice of
7 sale to all those who were entitled to receive the prior notice of default and election to sell,
8 as well as the holder of a recorded security interest if the security interest holder “has
9 notified the association, before the mailing of the notice of sale of the existence of the
10 security interest.” See NRS 116.311635(1)(a)(1), (b)(2). As this Court interprets the
11 “notified-the-association” provision, this additional notice requirement simply means the
12 homeowner association must mail the notice of sale to any holder of a security interest who
13 has recorded its interest prior to the mailing of the notice of sale.

14 Marchai asserts they became aware of the sale late but had made overtures to paying
15 the superpriority lien. Marchai further asserts that after requesting that the HOA halt the
16 sale, the HOA and the Trustee’s refusal to halt the sale constituted unfairness to Marchai.
17 The HOA and SFR argues Marchai had constructive notice through the notice served to US
18 Bank and as a result is precluded from asking to halt the sale the night before for lack of
19 notice.

20 Generally, absent a showing of fraud, unfairness, or oppression, a foreclosure sale
21 will stand. The Nevada Supreme Court states, “demonstrating that an association sold a
22 property at its foreclosure sale for an inadequate price is not enough to set aside that sale;
23 there must also be a showing of fraud, unfairness, or oppression. Shadow Wood HOA v.
24 N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5 at *6 (2016). In the next sentence, the Nevada
25 Supreme Court appears to distinguish a merely inadequate price from a price that is
26 “grossly inadequate as a matter of law” and indicates that gross inadequacy may be
27 sufficient grounds to set aside a sale. Id. The Court finds that some other evidence of
28 fraud, unfairness or oppression is still required to set aside an HOA foreclosure sale,

1 regardless of the price. Shadow Wood cites Golden v. Tomiyasu, 387 P.2d 989, 995 (Nev.
2 1963) which required some showing of fraud “in addition to gross inadequacy of price” for a
3 court to set aside a transaction.

4 Marchai alleges that it did not have notice of the sale. Neither side disputes that
5 Marchai was not served with a notice of the foreclosure sale, but rather its predecessor, U.S.
6 Bank. It is also undisputed that after the transfer from US Bank to Marchai, both U.S. Bank
7 and Marchai waited months before recording their interest. Marchai recorded its interest
8 after the HOA’s statutory requirement of thirty days for notice to interested parties under
9 NRS 16.31164. The HOA properly noticed U.S. Bank, the recorded holder of the deed of
10 trust at the time of the notice. Upon learning of the sale, Marchai contacted Alessi to halt
11 the sale. SFR and the HOA argue that there is no ongoing affirmative duty by the movant of
12 a sale to check for new interest parties once the statutory deadline has passed, but Marchai
13 argues that there was a continuing duty.

14 The HOA had no continuing legal duty to notify Marchai under the statute. Nor is
15 there any obligation of the HOA to halt a properly noticed sale when Marchai notified them
16 that they were the current holder in interest. It was Marchai’s responsibility to record its
17 interest to protect itself. Failing to record rests solely on Marchai and the repercussions
18 cannot be held against the foreclosing party. Further, there was no firm offer to pay off the
19 superpriority lien.

20 Therefore, this Court finds that although Marchai was not directly notified, its
21 predecessor, U.S. Bank, had actual notice of both existing Notices of Default. The HOA
22 properly noticed the entity on record as the holder of the first deed of trust. Had Marchai
23 promptly recorded its interest in the property, the notice would have been sent to Marchai.
24 This leaves the issues of whether a purchaser at a foreclosure sale was required to present
25 cash at a nonjudicial foreclosure sale, whether Perez’s payments intended to and satisfied
26 the HOA’s superpriority lien and whether having more than one Notice of Default was
27 consequential.
28

1 **3. A Purchaser is Not Required to Present Cash at a Nonjudicial**
2 **Foreclosure Sale.**

3 Marchai presents that NRS 116.31164 requires that “on the day of the sale. . . the
4 person conducting the sale may sell the unit at public auction to the highest cash bidder.”
5 It is undisputed that SFR provided proof of funds on the day of the sale, then tendered a
6 cashier’s check to Alessi on August 29, 2013, one day after the sale. Marchai argues that
7 this procedurally does not comply with the statute, interpreting the statute to require a
8 payment in U.S. currency at the time of the sale. The Court is not swayed by this argument.
9 The statute specifically requires a cash purchase rather than a credit purchase, but the
10 statute is silent as to timing of payment. A cashier’s check in this context constitutes a cash
11 payment. It is simply infeasible in practice to expect bidders to carry large amounts of U.S.
12 currency, often in the many tens of thousands of dollars to an auction. SFR submitted
13 proof of funds to Alessi at the time of the sale and then tendered a cashier’s check to Alessi
14 for the full price of purchase of the property. Consequently, the sale complied with NRS
15 116.31164. Notwithstanding procedural issues raised under NRS 116.31164, the Court finds
16 that a first notice of default is the operative notice when multiple notices are filed and prior
17 notices are unwithdrawn.

18 **4. A Second Notice of Default Results in a Supplement of the First**
19 **Notice of Default when a First Notice of Default has not been Rescinded.**

20 A superpriority lien consists of the nine months of unpaid homeowner assessments
21 prior to a notice of default. Without satisfaction or withdrawal of the first notice of default
22 a second notice of default serves only as a supplement to the first notice. A homeowner’s
23 association is entitled to one superpriority lien on a single property without the rescission
24 of the prior notice of default. Pursuant to the Nevada Supreme Court’s holding in Property
25 Plus Investments, LLC v. Mortgage Electronic Registration Systems, Inc., et. al., 133 Nev.
26 Adv. Opinion 62 (Sept. 14, 2017), this Court adopts the Nevada federal court’s holding in
27 JPMorgan Chase Bank, N.A. v. SFR Investments Pool 1, LLC. JPMorgan held that a second
28 noticed super priority lien must have separate set of unpaid months of homeowner

1 association assessments to be considered a separate superpriority lien. PropertyPlus, citing
2 JPMorgan, also holds that “when a HOA rescinds a superpriority lien on a property, the
3 HOA may subsequently assert a separate superpriority lien on the same property . . .
4 accruing after the rescission of the previous superpriority lien.” Without the satisfaction or
5 withdrawal of the first superpriority lien, the second notice of superpriority lien then acts as
6 a supplement or update of the first notice.

7 Here, there are two unrescinded Notices of Default filed against Perez, one on March
8 29, 2011 and one on February 28, 2012. The 2011 Notice of Default was never withdrawn.
9 Based on the holding in PropertyPlus, the operative notice of default is the 2011 Notice.
10 Therefore, the Court finds that the HOA’s would only be entitled to one superpriority
11 amount on both Notices of Defaults. This leaves only the question as to Perez’s intent as to
12 the application of payments to the HOA.

13 **5. Perez’s Intent Regarding Application of Payments to the HOA**

14 Perez maintained sporadic payments over the period starting from the first Notice of
15 Default to the foreclosure totaling \$2,390.24 Perez would receive a notice of a deficiency
16 and make a payment toward her obligations to the HOA. Despite these payments, she was
17 thousands of dollars behind in her HOA obligations.

18 The super-priority lien brands certain homeowner association liens as “prior to all
19 other liens and encumbrances,” excluding those recorded before the applicable CC&Rs. See
20 NRS 116.3116(2)(a)-(b). Nevada Revised Statutes 116.3116 is silent on who must satisfy the
21 lien and if they must make their intent regarding those payments known before an HOA’s
22 superpriority lien is extinguished. The public policy principle behind NRS Chapter 116 is to
23 ensure that homeowner association dues are paid first.

24 Here, the HOA had two recorded and unrescinded Notices of Default on the Wolf
25 Rivers property and ultimately sold the property at a foreclosure sale. Perez made post
26 Notice of Default payments prior to the sale totaling \$2,390.24. There are no material
27 disputed issues of fact: the parties agree regarding the timing and amounts of payments by
28 the homeowner and to the circumstances surrounding the Notices of Default. The question

1 remaining is the effect of the homeowner paying towards the lien as opposed to the holder
2 of the deed of trust. The HOA and SFR argue that these payments by Perez had no
3 intention of satisfying the superpriority lien, thus the first deed of trust was extinguished
4 upon the foreclosure sale. Marchai asserts the homeowner's payments were intended to
5 satisfy the HOA lien's superpriority amount prior to the HOA foreclosure sale. Marchai
6 argues this tender causes Marchai's deed of trust to survive the HOA foreclosure sale.

7 **a. Tender**

8 The foreclosure process, from the first unrescinded notice of delinquent
9 assessment in 2009 to the actual foreclosure sale spanned a few years. During this period,
10 Perez, paid the HOA \$2,390.24. This is more than the value of nine months of assessment
11 fees. For the nine months preceding the operative 2009 Notice of Default, Perez's
12 assessments totaled \$1,280.00. This would have satisfied the superpriority and left a
13 balance of \$1,110.24. Perez still owed the HOA \$14,677.80 and nothing precluded the HOA
14 from seeking the full amount from the borrower. The question is whether the HOA
15 superpriority lien was satisfied. If satisfied, it allows Marchai's lien to survive the
16 nonjudicial foreclosure sale to SFR. If not, then Marchai's first deed is extinguished by the
17 sale to SFR.

18 As suggested by SFR, the beneficiary of a deed of trust need only "determin[e] the
19 precise superpriority amount in advance of the sale," and then "pay the [nine] months'
20 assessments demanded by the association." SFR, 334 P.3d at 413, 418. Satisfying the
21 superpriority amount of the lien, not the amounts incurred by any particular months,
22 preserves the deed of trust. See Stone Hollow Ave. Trust v. Bank of America, N.A., 382
23 P.3d 911 (Nev. Aug. 11, 2016) (unpublished disposition) (finding tender of \$198 effective to
24 discharge the lien when "\$198 was adequate to pay off the superpriority portion of" the
25 HOA's lien.)

26 Different from SFR, here the Court must determine whether the homeowner's
27 payments to an HOA in this case constitutes tender of the superpriority amount or whether
28 the payments were meant to keep up with current assessment obligations. The Court finds

1 that absent contrary evidence, it is a distinction without a difference. The public policy and
2 stated legislative intent behind Chapter 116 is to ensure payment of homeowner liens, hence
3 the superpriority. Nevada Revised Statutes 116.3116(2) states the HOA lien is prior to first
4 deeds of trust, but does not limit who can satisfy the superpriority portion of the lien. Nor
5 does the statute or case law dictate that payments from a homeowner must first be applied
6 to obligations other than the superpriority.

7 Marchai alleges that it was Perez's intention to apply her payments to the HOA lien's
8 superpriority amounts that were recorded in its two Notices of Default. The HOA and SFR
9 allege that Perez's payments only represent her intention to keep up with her monthly dues
10 and not intended to satisfy the amounts noticed. This Court held in its March 22, 2016
11 Decision and Order that there were genuine issues of material fact regarding what Perez's
12 intention was in the application of her payments. Absent evidence showing that Perez only
13 meant to maintain her monthly assessments, she tendered payment in an amount that
14 would satisfy more than eighteen months' worth of payments.

15 Upon the close of discovery, SFR and the HOA have not presented any evidence that
16 shows Perez did not pay off the superpriority liens. Regardless of whether Perez meant to
17 pay off the superpriority lien or apply to the balance with the payment of oldest balances
18 first, the superpriority lien is satisfied. So whether she had the intention to pay off
19 obligations other than the superpriority first or whether the HOA applied them to
20 obligations other than the superpriority, the amount making up the superpriority was paid
21 off. Thus, regardless of which months a payor may request a payment be applied to, any
22 payment which is at least equal to the amount incurred in the nine months preceding the
23 notice of delinquent assessment lien is sufficient to satisfy the superpriority lien. As there
24 are no undisputed facts at the close of discovery as to the intention of payment or the effect
25 of multiple Notice of Defaults, this Court must deny the HOA and SFR's Motions for
26 Summary Judgment. As a result, this Court finds in favor of Marchai.

27 ///

1 **IV. Conclusion**

2 The Court finds that no genuine issues of material fact remain in this case. The
3 Court denies SFR and the HOA's Motions for Summary Judgment. As the parties agree on
4 all the material fact in this case, the resolution of the legal issues presented on the motions
5 for summary judgment necessarily result in a finding in favor of Marchai.

6
7 DATED this 2nd October day of ~~September~~, 2017.

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11 LINDA MARIE BELL
12 DISTRICT COURT JUDGE
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LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date of filing, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system or, if no e-mail was provided, by facsimile, U.S. Mail and/or placed in the Clerk's Office attorney folder(s) for:

Name	Party
David J. Merrill, Esq. David J. Merrill, P.C.	Counsel for Marchai, B.T.
Diana Cline Ebron, Esq. Jacqueline A. Gilbert, Esq. Karen L. Hanks, Esq. Kim Gilbert Ebron	Counsel for SFR Investments Pool 1, LLC
Kaleb D. Anderson, Esq. Megan Hummel, Esq.	Counsel for Wyeth Ranch Community Association


TINA HURD
JUDICIAL EXECUTIVE ASSISTANT, DEPARTMENT VII

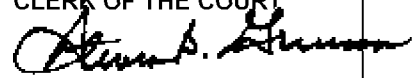
AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A689461 DOES NOT contain the social security number of any person.

/s/ Linda Marie Bell
District Court Judge

Date 10/2/2017
~~9/8/2017~~



NOED
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DISTRICT COURT
CLARK COUNTY, NEVADA

MARCHAI, B.T., a Nevada business
trust,

Plaintiff,

v.

CRISTELA PEREZ, an individual; *et al.*

Defendants.

Case No.: A-13-689461-C
Dept. No. VII

Consolidated with: A-16-742327-C


AND ALL RELATED CLAIMS AND
ACTIONS

Notice of Entry of Decision and Order

Take Notice that on the 3rd day of October 2017, the Court entered a
Decision and Order, a true and correct copy of which is attached.

Dated this 4th day of October 2017.

David J. Merrill, P.C.

By: 
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(702) 566-1935
Attorney for Marchai, B.T.

DAVID J. MERRILL, P.C.
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(702) 566-1935

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of October 2017, a copy of the foregoing Notice of Entry of Decision and Order was served electronically to the following through the Court's electronic service system:

Kim Gilbert Ebron

Diana Cline Ebron
E-Service for Kim Gilbert Ebron
Michael L. Sturm
Tomas Valerio

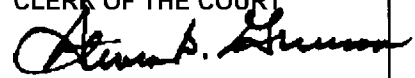
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An employee of David J. Merrill, P.C.



1
2 DAO

3 EIGHTH JUDICIAL DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 MARCHAI B.T.,

7 Plaintiff,

8 vs.

9 CRISTELA PEREZ; SFR INVESTMENTS POOL 1, LLC;
10 U.S. BANK NATIONAL ASSOCIATION, N.D.; DOES I
through X; and ROE CORPORATIONS 1 through 10,
inclusive,

11 Defendants.

Case No. A-13-689461-C

Dep't No. VII

12 And all related actions.
13

14 **DECISION AND ORDER**

15 This case arises from a homeowners' association's non-judicial foreclosure sale of
16 residential real property located at 7119 Wolf Rivers Avenue in Las Vegas, Nevada. The
17 HOA sold the Wolf Rivers property to satisfy the two recorded Notices of Defaults which
18 included a superpriority lien over the holder of the deed of trust. The HOA sold the Wolf
19 Rivers property to SFR. Upon the homeowners' association's foreclosure sale of the
20 property, Marchai B.T., the holder of the deed of trust and promissory note, filed suit
21 alleging that the sale did not extinguish their deed of trust pursuant to NRS Chapter 116.
22 SFR and the homeowners' association counter that Marchai's lien is extinguished. Now
23 before the Court are Defendant SFR Investments Pool 1's and Defendant Wyeth Ranch
24 Community Association's ("the HOA") Motions for Summary Judgment and Plaintiff
25 Marchai's opposition. These matters came before the Court on August 22, 2017. The Court
26 denies SFR and the HOA's Motions for Summary Judgment and after resolution of the legal
27 matters presented, finds in favor of Plaintiff Marchai.
28

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

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

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I. Factual Background

In 2004, Cristela Perez entered into two loan agreements with Countrywide Home Loans in order to purchase the property. The loans were secured by two deeds of trust on the Wolf Rivers property at 2119 Wolf Rivers Avenue. The property was subject to the terms of the Wyeth Ranch Community Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs). After the initial purchase, Perez refinanced the two Countrywide loans through an agreement with CMG Mortgage. CMG Mortgage recorded a deed of trust against the property on November 9, 2005. Ultimately, there were three active Notices of Default. The October 8, 2008 notice was rescinded, leaving the unrescinded notices at issue in this matter.

A. First Notice of Delinquent Assessment Lien

The HOA recorded its first Notice of Delinquent Assessment Lien on October 8, 2008. At that time, the HOA charged \$140.00 per month in association dues, collected quarterly. At the beginning of 2009, the HOA increased its monthly dues to \$152.50. The HOA recorded a Notice of Default and Election to Sell on January 7, 2009. The HOA recorded a Notice of Trustee's Sale on January 14, 2010. In 2010, the HOA increased its monthly dues to \$159.50.

On February 3, 2010, the HOA sent a demand letter to Perez. On February 12, 2010, Perez paid the HOA \$900.00, which more than covered all outstanding HOA dues, but did not cover remaining fees and costs. On April 13, 2010, the HOA proposed a payment plan to Perez. On May 11, 2010, Perez paid the HOA \$300.00. Perez failed, however to comply with the payment plan. The Trustee on behalf of the HOA applied payments as partial payments on the account for the duration of the resident transaction detail. See Exhibit 2-H of Appendix of Exhibits to Marchai, B.T.'s Motion for Summary Judgment.

On July 13, 2010, the HOA mailed a Pre-Notice of Trustee Sale and Notice of Default and Election to Sell to Perez. Perez paid the HOA \$645.00 between August 2 and November 30, 2010. The HOA recorded a Rescission of Notice of Sale on March 9, 2011. Perez paid the HOA \$160.00 on March 10, 2011.

1 On March 29, 2011, the HOA recorded a second Notice of Sale. On July 27, 2011, the
2 HOA sent Perez a letter stating Perez was in breach of the payment plan. On August 4,
3 2011, Perez paid the HOA \$165.00.

4 **B. Second Notice of Delinquent Assessment Lien**

5 On December 20, 2011, the HOA recorded a second Notice of Delinquent
6 Assessment lien. The original Notice was not rescinded. The HOA recorded a Notice of
7 Default and Election to Sell on February 28, 2012. Perez paid the HOA \$760.00 between
8 March 19 and July 26, 2012. CMG Mortgage assigned its deed of trust to CitiMortgage in
9 May of 2012. CitiMortgage assigned the deed to U.S. Bank in July of 2012. The HOA
10 recorded a Notice of Trustee's Sale on October 31, 2012. Perez paid the HOA \$300.00 on
11 November 13, 2012.

12 In March of 2013, U.S. Bank assigned its deed of trust to Marchai. Neither U.S.
13 Bank nor Marchai recorded the transfer of interest for approximately five months. During
14 this gap, U.S. Bank did not inform Marchai of the HOA's foreclosure proceedings. The
15 HOA mailed a Notice of Trustee's sale to CMG Mortgage, CitiMortgage, and U.S. Bank on
16 July 29, 2013. Marchai finally recorded its interest in the Wolf Rivers property on August
17 12, 2013. Marchai's loan servicer received notice of the trustee's sale on August 27, 2013,
18 the day before the sale was scheduled to take place. The servicer contacted the HOA's
19 trustee conducting the sale, Alessi & Koenig, to ask that the sale be postponed. The HOA
20 declined.

21 Alessi & Koenig conducted a foreclosure sale of the Wolf Rivers property on August
22 28, 2013. SFR purchased the property for \$21,000.00. SFR recorded a trustee's deed upon
23 sale on September 9, 2013 identifying SFR as the grantee and the HOA as the foreclosing
24 beneficiary. The trustee's deed states:

25 Alessi & Koenig, LLC (herein called Trustee), as the duly appointed
26 Trustee under that certain Notice of Delinquent Assessment Lien...
27 does hereby grant, without warranty expressed or implied to: SFR... all
28 its right, title and interest in the property...

1 This conveyance is made pursuant to the powers conferred upon the
2 Trustee by NRS 116 et seq... All requirements of law regarding the
3 mailing of copies of notices and the posting and publication of the
4 copies of the Notice of Sale have been complied with.

5 At the time of sale, Perez owed the HOA \$14,677.80. As of January 14, 2016, Perez owed
6 Marchai \$489,372.77 based the agreement secured by the deed of trust.

7 **II. Procedural History**

8 On September 30, 2013, Marchai filed a complaint against Perez, SFR, and U.S.
9 Bank. Marchai sought to judicially foreclose on the Wolf Rivers property based on Perez's
10 breach of the agreement secured by the deed of trust. The Court entered defaults against
11 Perez and U.S. Bank in this case. On November 13, 2013, SFR filed an answer,
12 counterclaim, and crossclaim. SFR brought counterclaims and crossclaims for declaratory
13 relief/quiet title and injunctive relief. Specifically, SFR alleged Marchai's interest in the
14 Wolf Rivers property was extinguished by the non-judicial foreclosure of the HOA's super-
15 priority lien established pursuant to NRS Chapter 116.

16 On July 9, 2014, the Court ordered that the case be stayed pending a ruling from the
17 Nevada Supreme Court on an HOA foreclosure's effect on a first deed of trust. The Nevada
18 Supreme Court issued its ruling in SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408
19 (Nev. 2014) on September 18, 2014. The Nevada Supreme Court denied a rehearing on
20 October 16, 2014. The Court lifted the stay in the instant case on January 28, 2015.

21 Both Marchai and SFR filed motions for summary judgment on January 14, 2016.
22 The parties dispute whether NRS Chapter 116 is constitutional and whether the HOA
23 foreclosure procedure in the instant case complied with NRS Chapter 116. The parties filed
24 oppositions to each other's motions on February 3 and 4, 2016. The parties filed replies on
25 February 8 and 9, 2016. SFR's reply contained a countermotion to strike portions of
26 Marchai's motion for summary judgment and opposition. SFR asserts Marchai's motion
27 exceeded the appropriate page limit. SFR also argues Marchai's opposition contains
28 evidence not properly disclosed in the discovery process.

On March 22, 2016, this Court issued its Decision and Order denying both SFR and

1 Marchai their respective Motions for Summary Judgment as well as denying SFR's Motion
2 to Strike. This Court found that the technical failings of Marchai's compliance with EDCR
3 2.20(a) did not rise to the level of sanctions and thus denied SFR's Motion to Strike. As
4 discovery was ongoing, this Court also found in its March 22, 2016 Decision and Order that
5 there remained genuine issues of fact for both Motions for Summary Judgment to be
6 denied. The Court resolved constitutionality issues of NRS chapter 116 raised in Marchai's
7 Motion for Summary Judgment involving due process. These sub issues include notice
8 provisions, whether there is state action involved, violations of the Taking Clause, and
9 vagueness.

10 Discovery concluded on August 15, 2017. Upon completion of discovery, the HOA
11 and SFR renewed their Motions for Summary Judgment. The resolution of the issues in the
12 summary judgment motion necessarily results in a decision in favor of Marchai.

13 III. Discussion

14 A. Motions for Summary Judgment

15 Summary judgment is appropriate "when the pleadings and other evidence on file
16 demonstrate that no genuine issue as to any material fact remains and that the moving
17 party is entitled to a judgment as a matter of law." Wood v. Safeway, Inc., 121 P.3d 1026,
18 1029 (Nev. 2005) (internal quotation marks and alterations omitted). "If the party moving
19 for summary judgment will bear the burden of persuasion at trial, that party 'must present
20 evidence that would entitle it to a judgment as a matter of law in the absence of contrary
21 evidence.'" Francis v. Wynn Las Vegas, LLC, 262 P.3d 705, 714 (Nev. 2011) (citing Cuzze v.
22 Univ. & Cmty. Coll. Sys. of Nev., 172 P.3d 131, 134 (Nev. 2007)). "When requesting
23 summary judgment, the moving party bears the initial burden of production to
24 demonstrate the absence of a genuine issue of material fact. If the moving party meets its
25 burden, then the nonmoving party bears the burden of production to demonstrate that
26 there is a genuine issue of material fact. Las Vegas Metro. Police Dep't v. Coregis Ins. Co.,
27 256 P.3d 958, 961 (Nev. 2011) (internal citations omitted).
28

1 The HOA and SFR seek summary judgment on each of their claims against Marchai.
2 As previously argued, SFR holds the HOA foreclosure sale extinguished Marchai's interest
3 in the Wolf Rivers property. Marchai argues its interest survived the foreclosure sale and is
4 superior to SFR's interest. In the current motions for summary judgment, parties
5 reintroduce the same issues after the close of discovery along with a few new arguments.
6 Upon the close of discovery, the Court finds no further evidence presented that lends itself
7 to a genuine dispute over material facts. The only issues to be decided are legal issues.

8 These issues include whether the nonjudicial foreclosure sale constituted unfairness
9 when Marchai requested the HOA to halt the sale the night before the sale and whether
10 buyers are required to pay US currency the day of the sale. In addition, whether there is
11 Perez's payments to the HOA satisfy the procedural tender requirements of NRS Chapter
12 116. To determine the answers to these questions, the Court must evaluate NRS Chapter
13 116 and the foreclosure process in this particular case.

14 **1. Previously Addressed Issues**

15 Issues including commercial reasonableness, SFR as a bona fide purchaser,
16 constitutionality of Chapter 116, and whether the Trustee was the grantor in the HOA
17 foreclosure sale were resolved this Court's Decision of Order of March 22, 2016. The Court
18 found that Marchai failed to establish that the HOA sale was commercially unreasonable as
19 a matter of law because absent fraud, unfairness, or oppression, an inadequate price is not
20 dispositive of unreasonableness. Further, the Court found that SFR was not able to
21 establish as a matter of law that it was a bona fide purchaser and that the HOA's years of
22 foreclosure notice proceedings including delinquency notices, defaults, and sale documents
23 would be a matter for a fact finder. Marchai raised constitutionality revolving around NRS
24 Chapter 116 involving due process, takings, and void for vagueness. The Court found that
25 Marchai could not show that requirements under Chapter 116 did not meet the notice
26 requirements that would set off due process issues or the legislative enactment of Chapter
27 116 was a governmental taking or a meant to serve a public purpose. Nor could Marchai
28 show that Chapter 116 meets the high standard for unconstitutionally vagueness. Lastly,

1 the Court found that an inartfully drafted foreclosure deed could not be resolved in favor of
2 Marchai. This Court finds that there is no new law to decide in favor of granting summary
3 judgment on these same arguments and the Court will not reconsider these issues already
4 resolved.

5 **2. A Nonjudicial Foreclosure Sale is Not Unfair if the HOA Proceeds**
6 **with the Sale After the Lender Requests a Halt to the Sale.**

7 Here, the HOA foreclosed upon the Wolf Rivers property, which they ultimately sold
8 at a foreclosure sale after failure of the homeowner to pay dues. Marchai alleges that there
9 are no material disputed issues of fact regarding the foreclosure as the parties agree to the
10 circumstances. Parties agree that notice of the sale was given to U.S. Bank as the recorded
11 holder of the deed of trust and that Marchai did not record their interest until after that
12 notice of sale had been sent out to interested parties. Further, parties agree that there was
13 no firm offer from Marchai to pay the superpriority amount of the loan prior to the sale
14 when they made the request to halt the sale. Marchai now moves the Court to find that the
15 HOA did not comply with NRS Chapter 116.

16 **a. Procedural Requirements of NRS Chapter 116**

17 Nevada Revised Statute Chapter 116 provides the procedural requirements for
18 homeowners' associations seeking to secure a lien for unpaid assessments and fees. "NRS
19 116.3116(2)... splits an HOA lien into two pieces, a superpriority piece and a subpriority
20 piece. The superpriority piece, consisting of the last nine months of unpaid HOA dues and
21 maintenance and nuisance-abatement charges, is 'prior to' a first deed of trust." SFR
22 Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 411 (Nev. 2014), reh'g denied (Oct. 16,
23 2014). That super-priority portion of the lien was held by the Nevada Supreme Court to be
24 a true super-priority lien, which will extinguish a first deed of trust if foreclosed upon
25 pursuant to Chapter 116's requirements. Id. at 419. Specifically, "[t]he sale of a unit
26 pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the
27 unit's owner without equity or right of redemption." NRS 116.31166(3); see also SFR v. U.S.
28 Bank, 334 P.3d at 412.

1 To initiate foreclosure under Chapter 116, a Nevada homeowner association must
2 first notify the owner of the delinquent assessments. See NRS 116.31162(1)(a). If the owner
3 does not pay within thirty days, the homeowner association must then provide the owner a
4 notice of default and election to sell. See NRS 116.31162(1)(b). Then, if the lien has not
5 been paid off within 90 days, the homeowner association may continue with the foreclosure
6 process. See NRS 116.31162(1)(c). The homeowner association must next mail a notice of
7 sale to all those who were entitled to receive the prior notice of default and election to sell,
8 as well as the holder of a recorded security interest if the security interest holder “has
9 notified the association, before the mailing of the notice of sale of the existence of the
10 security interest.” See NRS 116.311635(1)(a)(1), (b)(2). As this Court interprets the
11 “notified-the-association” provision, this additional notice requirement simply means the
12 homeowner association must mail the notice of sale to any holder of a security interest who
13 has recorded its interest prior to the mailing of the notice of sale.

14 Marchai asserts they became aware of the sale late but had made overtures to paying
15 the superpriority lien. Marchai further asserts that after requesting that the HOA halt the
16 sale, the HOA and the Trustee’s refusal to halt the sale constituted unfairness to Marchai.
17 The HOA and SFR argues Marchai had constructive notice through the notice served to US
18 Bank and as a result is precluded from asking to halt the sale the night before for lack of
19 notice.

20 Generally, absent a showing of fraud, unfairness, or oppression, a foreclosure sale
21 will stand. The Nevada Supreme Court states, “demonstrating that an association sold a
22 property at its foreclosure sale for an inadequate price is not enough to set aside that sale;
23 there must also be a showing of fraud, unfairness, or oppression. Shadow Wood HOA v.
24 N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5 at *6 (2016). In the next sentence, the Nevada
25 Supreme Court appears to distinguish a merely inadequate price from a price that is
26 “grossly inadequate as a matter of law” and indicates that gross inadequacy may be
27 sufficient grounds to set aside a sale. Id. The Court finds that some other evidence of
28 fraud, unfairness or oppression is still required to set aside an HOA foreclosure sale,

1 regardless of the price. Shadow Wood cites Golden v. Tomiyasu, 387 P.2d 989, 995 (Nev.
2 1963) which required some showing of fraud “in addition to gross inadequacy of price” for a
3 court to set aside a transaction.

4 Marchai alleges that it did not have notice of the sale. Neither side disputes that
5 Marchai was not served with a notice of the foreclosure sale, but rather its predecessor, U.S.
6 Bank. It is also undisputed that after the transfer from US Bank to Marchai, both U.S. Bank
7 and Marchai waited months before recording their interest. Marchai recorded its interest
8 after the HOA’s statutory requirement of thirty days for notice to interested parties under
9 NRS 16.31164. The HOA properly noticed U.S. Bank, the recorded holder of the deed of
10 trust at the time of the notice. Upon learning of the sale, Marchai contacted Alessi to halt
11 the sale. SFR and the HOA argue that there is no ongoing affirmative duty by the movant of
12 a sale to check for new interest parties once the statutory deadline has passed, but Marchai
13 argues that there was a continuing duty.

14 The HOA had no continuing legal duty to notify Marchai under the statute. Nor is
15 there any obligation of the HOA to halt a properly noticed sale when Marchai notified them
16 that they were the current holder in interest. It was Marchai’s responsibility to record its
17 interest to protect itself. Failing to record rests solely on Marchai and the repercussions
18 cannot be held against the foreclosing party. Further, there was no firm offer to pay off the
19 superpriority lien.

20 Therefore, this Court finds that although Marchai was not directly notified, its
21 predecessor, U.S. Bank, had actual notice of both existing Notices of Default. The HOA
22 properly noticed the entity on record as the holder of the first deed of trust. Had Marchai
23 promptly recorded its interest in the property, the notice would have been sent to Marchai.
24 This leaves the issues of whether a purchaser at a foreclosure sale was required to present
25 cash at a nonjudicial foreclosure sale, whether Perez’s payments intended to and satisfied
26 the HOA’s superpriority lien and whether having more than one Notice of Default was
27 consequential.
28

1 **3. A Purchaser is Not Required to Present Cash at a Nonjudicial**
2 **Foreclosure Sale.**

3 Marchai presents that NRS 116.31164 requires that “on the day of the sale. . . the
4 person conducting the sale may sell the unit at public auction to the highest cash bidder.”
5 It is undisputed that SFR provided proof of funds on the day of the sale, then tendered a
6 cashier’s check to Alessi on August 29, 2013, one day after the sale. Marchai argues that
7 this procedurally does not comply with the statute, interpreting the statute to require a
8 payment in U.S. currency at the time of the sale. The Court is not swayed by this argument.
9 The statute specifically requires a cash purchase rather than a credit purchase, but the
10 statute is silent as to timing of payment. A cashier’s check in this context constitutes a cash
11 payment. It is simply infeasible in practice to expect bidders to carry large amounts of U.S.
12 currency, often in the many tens of thousands of dollars to an auction. SFR submitted
13 proof of funds to Alessi at the time of the sale and then tendered a cashier’s check to Alessi
14 for the full price of purchase of the property. Consequently, the sale complied with NRS
15 116.31164. Notwithstanding procedural issues raised under NRS 116.31164, the Court finds
16 that a first notice of default is the operative notice when multiple notices are filed and prior
17 notices are unwithdrawn.

18 **4. A Second Notice of Default Results in a Supplement of the First**
19 **Notice of Default when a First Notice of Default has not been Rescinded.**

20 A superpriority lien consists of the nine months of unpaid homeowner assessments
21 prior to a notice of default. Without satisfaction or withdrawal of the first notice of default
22 a second notice of default serves only as a supplement to the first notice. A homeowner’s
23 association is entitled to one superpriority lien on a single property without the rescission
24 of the prior notice of default. Pursuant to the Nevada Supreme Court’s holding in Property
25 Plus Investments, LLC v. Mortgage Electronic Registration Systems, Inc., et. al., 133 Nev.
26 Adv. Opinion 62 (Sept. 14, 2017), this Court adopts the Nevada federal court’s holding in
27 JPMorgan Chase Bank, N.A. v. SFR Investments Pool 1, LLC. JPMorgan held that a second
28 noticed super priority lien must have separate set of unpaid months of homeowner

1 association assessments to be considered a separate superpriority lien. PropertyPlus, citing
2 JPMorgan, also holds that “when a HOA rescinds a superpriority lien on a property, the
3 HOA may subsequently assert a separate superpriority lien on the same property . . .
4 accruing after the rescission of the previous superpriority lien.” Without the satisfaction or
5 withdrawal of the first superpriority lien, the second notice of superpriority lien then acts as
6 a supplement or update of the first notice.

7 Here, there are two unrescinded Notices of Default filed against Perez, one on March
8 29, 2011 and one on February 28, 2012. The 2011 Notice of Default was never withdrawn.
9 Based on the holding in PropertyPlus, the operative notice of default is the 2011 Notice.
10 Therefore, the Court finds that the HOA’s would only be entitled to one superpriority
11 amount on both Notices of Defaults. This leaves only the question as to Perez’s intent as to
12 the application of payments to the HOA.

13 **5. Perez’s Intent Regarding Application of Payments to the HOA**

14 Perez maintained sporadic payments over the period starting from the first Notice of
15 Default to the foreclosure totaling \$2,390.24 Perez would receive a notice of a deficiency
16 and make a payment toward her obligations to the HOA. Despite these payments, she was
17 thousands of dollars behind in her HOA obligations.

18 The super-priority lien brands certain homeowner association liens as “prior to all
19 other liens and encumbrances,” excluding those recorded before the applicable CC&Rs. See
20 NRS 116.3116(2)(a)-(b). Nevada Revised Statutes 116.3116 is silent on who must satisfy the
21 lien and if they must make their intent regarding those payments known before an HOA’s
22 superpriority lien is extinguished. The public policy principle behind NRS Chapter 116 is to
23 ensure that homeowner association dues are paid first.

24 Here, the HOA had two recorded and unrescinded Notices of Default on the Wolf
25 Rivers property and ultimately sold the property at a foreclosure sale. Perez made post
26 Notice of Default payments prior to the sale totaling \$2,390.24. There are no material
27 disputed issues of fact: the parties agree regarding the timing and amounts of payments by
28 the homeowner and to the circumstances surrounding the Notices of Default. The question

1 remaining is the effect of the homeowner paying towards the lien as opposed to the holder
2 of the deed of trust. The HOA and SFR argue that these payments by Perez had no
3 intention of satisfying the superpriority lien, thus the first deed of trust was extinguished
4 upon the foreclosure sale. Marchai asserts the homeowner's payments were intended to
5 satisfy the HOA lien's superpriority amount prior to the HOA foreclosure sale. Marchai
6 argues this tender causes Marchai's deed of trust to survive the HOA foreclosure sale.

7 **a. Tender**

8 The foreclosure process, from the first unrescinded notice of delinquent
9 assessment in 2009 to the actual foreclosure sale spanned a few years. During this period,
10 Perez, paid the HOA \$2,390.24. This is more than the value of nine months of assessment
11 fees. For the nine months preceding the operative 2009 Notice of Default, Perez's
12 assessments totaled \$1,280.00. This would have satisfied the superpriority and left a
13 balance of \$1,110.24. Perez still owed the HOA \$14,677.80 and nothing precluded the HOA
14 from seeking the full amount from the borrower. The question is whether the HOA
15 superpriority lien was satisfied. If satisfied, it allows Marchai's lien to survive the
16 nonjudicial foreclosure sale to SFR. If not, then Marchai's first deed is extinguished by the
17 sale to SFR.

18 As suggested by SFR, the beneficiary of a deed of trust need only "determin[e] the
19 precise superpriority amount in advance of the sale," and then "pay the [nine] months'
20 assessments demanded by the association." SFR, 334 P.3d at 413, 418. Satisfying the
21 superpriority amount of the lien, not the amounts incurred by any particular months,
22 preserves the deed of trust. See Stone Hollow Ave. Trust v. Bank of America, N.A., 382
23 P.3d 911 (Nev. Aug. 11, 2016) (unpublished disposition) (finding tender of \$198 effective to
24 discharge the lien when "\$198 was adequate to pay off the superpriority portion of" the
25 HOA's lien.)

26 Different from SFR, here the Court must determine whether the homeowner's
27 payments to an HOA in this case constitutes tender of the superpriority amount or whether
28 the payments were meant to keep up with current assessment obligations. The Court finds

1 that absent contrary evidence, it is a distinction without a difference. The public policy and
2 stated legislative intent behind Chapter 116 is to ensure payment of homeowner liens, hence
3 the superpriority. Nevada Revised Statutes 116.3116(2) states the HOA lien is prior to first
4 deeds of trust, but does not limit who can satisfy the superpriority portion of the lien. Nor
5 does the statute or case law dictate that payments from a homeowner must first be applied
6 to obligations other than the superpriority.

7 Marchai alleges that it was Perez's intention to apply her payments to the HOA lien's
8 superpriority amounts that were recorded in its two Notices of Default. The HOA and SFR
9 allege that Perez's payments only represent her intention to keep up with her monthly dues
10 and not intended to satisfy the amounts noticed. This Court held in its March 22, 2016
11 Decision and Order that there were genuine issues of material fact regarding what Perez's
12 intention was in the application of her payments. Absent evidence showing that Perez only
13 meant to maintain her monthly assessments, she tendered payment in an amount that
14 would satisfy more than eighteen months' worth of payments.

15 Upon the close of discovery, SFR and the HOA have not presented any evidence that
16 shows Perez did not pay off the superpriority liens. Regardless of whether Perez meant to
17 pay off the superpriority lien or apply to the balance with the payment of oldest balances
18 first, the superpriority lien is satisfied. So whether she had the intention to pay off
19 obligations other than the superpriority first or whether the HOA applied them to
20 obligations other than the superpriority, the amount making up the superpriority was paid
21 off. Thus, regardless of which months a payor may request a payment be applied to, any
22 payment which is at least equal to the amount incurred in the nine months preceding the
23 notice of delinquent assessment lien is sufficient to satisfy the superpriority lien. As there
24 are no undisputed facts at the close of discovery as to the intention of payment or the effect
25 of multiple Notice of Defaults, this Court must deny the HOA and SFR's Motions for
26 Summary Judgment. As a result, this Court finds in favor of Marchai.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date of filing, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system or, if no e-mail was provided, by facsimile, U.S. Mail and/or placed in the Clerk's Office attorney folder(s) for:

Name	Party
David J. Merrill, Esq. David J. Merrill, P.C.	Counsel for Marchai, B.T.
Diana Cline Ebron, Esq. Jacqueline A. Gilbert, Esq. Karen L. Hanks, Esq. Kim Gilbert Ebron	Counsel for SFR Investments Pool 1, LLC
Kaleb D. Anderson, Esq. Megan Hummel, Esq.	Counsel for Wyeth Ranch Community Association


TINA HURD
JUDICIAL EXECUTIVE ASSISTANT, DEPARTMENT VII

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A689461 DOES NOT contain the social security number of any person.

/s/ Linda Marie Bell
District Court Judge

Date 10/2/2017
~~9/8/2017~~

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

November 04, 2014

A-13-689461-C Marchai B T Bank Trust, Plaintiff(s)
vs.
Cristela Perez, Defendant(s)

November 04, 2014 9:00 AM Status Check

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

COURT CLERK: Linda Denman

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT: Cline, Diana S. Attorney
Petiprin, Benjamin D., ESQ Attorney

JOURNAL ENTRIES

- At STATUS CHECK: STAY, counsel requested Court lift stay and allow them to proceed in ordinary course. COURT SO ORDERED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

August 11, 2015

A-13-689461-C	Marchai B T Bank Trust, Plaintiff(s) vs. Cristela Perez, Defendant(s)
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August 11, 2015 10:30 AM Motion to Coordinate

HEARD BY: Bare, Rob **COURTROOM:** RJC Courtroom 03C

COURT CLERK: Billie Jo Craig

RECORDER: Carrie Hansen

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- DEFENDANT SFR INVESTMENTS POOL 1 LLC'S MOTION FOR PRE-TRIAL COORDINATION
ON ORDER SHORTENING TIME

Attorneys Edgar Smith, Richard Vilkin, Diana Cline, Karen Hanks present.
Sign-up sheets Left Side Filed in A662394: Robert Anderlik, Taylor Anello, Thomas N. Beckom, Jonathan D. Blum, Darren Brenner, Michael Brooks, Diana Cline, Britannica Collins, Chelsea Crowton, Peter Dunkley, Jessica Friedman, Charles Geisendorf, David Gluth, Karen Hanks, Joshua O. Igeleke, Michael Li, Steven Loizzi Jr., Elizabeth Lowell, Erica D. Loyd, Matthew McAlonis, David J. Merrill, Patrick Orme, Robin Perkins, Benjamin Petiprin (appeared telephonically), Edgar C. Smith, Kevin S. Soderstrom, Ashlie Surer, Abe Vigil, Richard Vilkin, Shawn Walkenshaw, David Winterton.

Upon inquiry of the Court, Ms. Hanks advised the Motion was filed and heard in this Court as this Court had the lowest case number. Colloquy regarding coordinating the HOA cases as to Discovery, Trials, and witness availability. Counsel suggested a more specific Case Management Plan for a Special Discovery Master to deal with these cases as the various District Court Judges thoughts vary. Court noted he talked briefly with Chief Judge David Barker and Chief Civil Judge Betsy Gonzalez. The Court noted Court Administration would be interested in addressing this issue. Court inquired if Ms. Hanks would be the point of contact, and she advised she would. She provided her E-mail

address:

Karen@hkimlaw.com

Statement by Mr. Vilkin regarding having a meeting first to determine what counsel will agree on as to the Case Management Plan.

Statements from Attorney Surur regarding coordination for Discovery procedures and noted her two cases where one was Dismissed and the other was pending a Motion to Dismiss where the Court had no jurisdiction.

Statements from Attorney Brooks, who had multiple cases, regarding setting deadlines for counsel to submit a plan to in-house counsel, which may take 2 to 3 weeks.

Attorney Brenner advised a Case Management Plan would first be needed as there are 10 different banks and in-house counsel. He would then be in a position to respond.

COURT ORDERED, Ms. Hanks to submit a Proposed Case Management Plan to counsel by 8/25/15. Counsel to respond by 9/29/15. Matter SET for Status Check: Proposed Case Management Plan to determine when a Continued Hearing on this Motion to Coordinate to be heard.

9/1/15 10:30 AM STATUS CHECK: PROPOSED CASE MANAGEMENT PLAN
(IN A662394 ONLY)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

February 16, 2016

A-13-689461-C	Marchai B T Bank Trust, Plaintiff(s) vs. Cristela Perez, Defendant(s)
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February 16, 2016 9:00 AM

All Pending Motions

HEARD BY: Bell, Linda Marie

COURTROOM: RJC Courtroom 03B

COURT CLERK: Sylvia Perry

RECORDER: Renee Vincent

REPORTER:

PARTIES

PRESENT:	Hanks, Karen Merrill, David J	Attorney Attorney
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JOURNAL ENTRIES

- Colloquy regarding transfer of the case. Court advised when this case was transferred from department 26, the trial date remained on that calendar; as trial should be scheduled in department 7. Mr. Merrill advised the Court's view on the summary judgment and any issues of fact will decide when trial should be set. No opposition by Ms. Hanks.

Following extensive arguments by Counsel as to SFR Investments Pool 1, LLC's Motion for Summary Judgment and Marchai, B.T.'s Motion for Summary Judgment, COURT ORDERED, MATTERS TAKEN UNDER ADVISEMENT.

Reply in Support of Motion for Summary Judgment and Counter - Motion for Summary Judgment and Counter - Motions to Strike Pursuant to NRCP Rule 37(d) and EDCR 2.20 (a); OFF CALENDAR

Court further advised following a decision on the motions for summary judgment, trial date will be discussed. Parties so noted.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

March 22, 2016

A-13-689461-C Marchai B T Bank Trust, Plaintiff(s)
vs.
Cristela Perez, Defendant(s)

March 22, 2016

9:40 AM

Minute Order

HEARD BY: Bell, Linda Marie

COURTROOM: RJC Courtroom 03B

COURT CLERK: Sylvia Perry

RECORDER: Renee Vincent

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Decision

The Court finds that genuine issues of material fact remain in this case. the Court DENIES SFR and Marchai's Motions for Summary Judgment and SFR's Motion to Strike.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

August 25, 2016

A-13-689461-C	Marchai B T Bank Trust, Plaintiff(s) vs. Cristela Perez, Defendant(s)
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August 25, 2016 9:00 AM Motion for Leave

HEARD BY: Hardcastle, Kathy

COURTROOM: RJC Courtroom 03B

COURT CLERK: Sylvia Perry

RECORDER: Renee Vincent

REPORTER:

PARTIES

PRESENT:	Hanks, Karen Merrill, David J	Attorney Attorney
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JOURNAL ENTRIES

- Marchai, BT's Motion on Order Shortening Time, for Leave to File and Amended Complaint

Ms. Hanks advised she misread the order and is orally opposing the motion at this time. Mr. Merrill advised the statute comes into play in three years which runs on Sunday. COURT ORDERED, case STAYED three (3) months and a status check will be SET. Colloquy regarding bring in additional parties. Mr. Merrill advised he will file a complaint and move to consolidate. Court so noted.

12/1/16 9:00 AM STATUS CHECK: STATUS OF CASE / STAY

12/1/16 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

December 01, 2016

A-13-689461-C Marchai B T Bank Trust, Plaintiff(s)
vs.
Cristela Perez, Defendant(s)

December 01, 2016 9:00 AM Status Check

HEARD BY: Bell, Linda Marie

COURTROOM: RJC Courtroom 03B

COURT CLERK: Sylvia Perry

RECORDER: Renee Vincent

REPORTER:

PARTIES

PRESENT: Gilbert, Jacqueline Attorney
Merrill, David J Attorney

JOURNAL ENTRIES

- Status Check: Status of Case / Stay

Court advised it is not inclined to wait for the decision by the Nevada Supreme Court and ORDERED, stay LIFTED and trial date SET.

Mr. Merrill advised a motion to amend was filed then the case was stayed, to preserve the claims, a new action was filed in DC XXXI. COURT ORDERED, this case CONSOLIDATED with A-16-742327-C. Ms. Gilbert advised no opposition to consolidation. Colloquy regarding trial setting. COURT FURTHER ORDERED, a status check date SET.

1/3/17 9:00 AM STATUS CHECK: TRIAL SETTING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

January 03, 2017

A-13-689461-C Marchai B T Bank Trust, Plaintiff(s)
vs.
Cristela Perez, Defendant(s)

January 03, 2017 9:00 AM All Pending Motions

HEARD BY: Bell, Linda Marie

COURTROOM: RJC Courtroom 03B

COURT CLERK: Sylvia Perry

RECORDER: Renee Vincent

REPORTER:

PARTIES

PRESENT: Gilbert, Jacqueline Attorney
Merrill, David J Attorney

JOURNAL ENTRIES

- Ms. J. Funai Esq. present on behalf of Wyeth ranch Community Association

Following extensive arguments by Counsel, COURT ORDERED as follows:

Defendnat Wyeth Ranch Community Associations Motion to Dismiss; DENIED as to Failure to Medicate under 38.310(1)(a) and GRANTED as to Quiet Title.

SFR Investments Pool 1, LLC's Motion to Dismiss With Prejudice Plaintiff's Complaint Pursuant to NRCP 12(b)(1) and EDCR 7.10(B) and Motion to Strike Pleading Pursuant to NRCP 12(f); MOOT

Wyeth Ranch Community Association's Joinder to SFR Investments Pool 1, LLC's Motion to Dismiss With Prejudice Plaintiff's Complaint Pursuant to NRP 12(b)(1) and EDCR 7.10(B) and Motion to Strike Pleading Pursuant to NRCP 12(f); MOOT.

8/29/17 9:00 AM CALENDAR CALL

9/5/17 9:00 AM BENCH TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property**COURT MINUTES****June 22, 2017**

A-13-689461-C Marchai B T Bank Trust, Plaintiff(s)
 vs.
 Cristela Perez, Defendant(s)

June 22, 2017**9:00 AM****Status Conference****HEARD BY:** Bell, Linda Marie**COURTROOM:** RJC Courtroom 15A**COURT CLERK:** Sylvia Perry**RECORDER:** Renee Vincent**REPORTER:****PARTIES****PRESENT:**

Gilbert, Jacqueline

Attorney

Hummel, Megan

Attorney

Merrill, David J

Attorney

JOURNAL ENTRIES

- Status Conference

Mr. Merrill advised discovery is completed and responses and answers will be filed next week. Upon the Court's inquiry, dispositive motions are due by July 21 which Mr. Merrill does not anticipate. As to the supplemental joint case conference report requesting a settlement conference, parties advised they have not had discussions as such. Court advised although a settlement conference is encouraged, the trial will not be continued thereto; further stating parties can contact departments individually to schedule the conference. Court reviewed the DC VII trial handout.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

August 22, 2017

A-13-689461-C Marchai B T Bank Trust, Plaintiff(s)
vs.
Cristela Perez, Defendant(s)

August 22, 2017 9:00 AM All Pending Motions

HEARD BY: Bell, Linda Marie **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Sylvia Perry

RECORDER: Renee Vincent

REPORTER:

PARTIES

PRESENT: Gilbert, Jacqueline Attorney
 Hummel, Megan Attorney
 Merrill, David J Attorney

JOURNAL ENTRIES

- SFR Investments Pool I LLC's Motion for Summary Judgment... Defendant Wyeth Ranch Community Association's Motion for Summary Judgment...

Colloquy regarding scheduling as there was a discrepancy as to setting the motions on calendar. Both Ms. Gilbert and Ms. Hummel advised the reply was filed yesterday, but are ready to proceed. Court reviewed the reply.

Following extensive arguments by Counsel, COURT ORDERED, the following:

SFR Investments Pool I LLC's Motion for Summary Judgment; MATTER TAKEN UNDER ADVISEMENT.

Defendant Wyeth Ranch Community Association's Motion for Summary Judgment; MATTER TAKEN UNDER ADVISEMENT.

As to the Motion in Limine set on 8/29/17, COURT ORDERED, matter to be heard 9/12/17.

9/12/17 9:00 AM STATUS CHECK: DECISION

9/12/17 9:00 AM MOTION IN LIMINE TO EXCLUDE TESTIMONY FROM MICHAEL BRUNSON

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

August 29, 2017

A-13-689461-C Marchai B T Bank Trust, Plaintiff(s)
vs.
Cristela Perez, Defendant(s)

August 29, 2017 9:00 AM Calendar Call

HEARD BY: Bell, Linda Marie **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Sylvia Perry
Elizabeth Vargas

RECORDER: Renee Vincent

REPORTER:

PARTIES

PRESENT:	Gilbert, Jacqueline	Attorney
	Kim, Howard C.	Attorney
	Merrill, David J	Attorney

JOURNAL ENTRIES

- COURT ORDERED, pending Motion for Summary Judgment GRANTED; trial date and Motion in Limine VACATED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

September 12, 2017

A-13-689461-C Marchai B T Bank Trust, Plaintiff(s)
vs.
Cristela Perez, Defendant(s)

September 12, 2017 9:00 AM

Status Check

**Status Check:
Decision**

HEARD BY: Bell, Linda Marie

COURTROOM: RJC Courtroom 15A

COURT CLERK: Sylvia Perry

RECORDER: Renee Vincent

REPORTER:

PARTIES

PRESENT: Gilbert, Jacqueline

Attorney

JOURNAL ENTRIES

- Court advised a decision is pending. Colloquy regarding the order of the summary judgment. Court advised it will be written that the summary judgment is denied but the resolution and legal issues necessarily wraps up the case. Ms. Gilbert so noted and advised she will inform Mr. Merrill.



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

DIANA S. EBRON, ESQ.
7625 DEAN MARTIN DR., STE 110
LAS VEGAS, NV 89139

DATE: November 7, 2017
CASE: A-13-689461-C
C/W A-16-742327-C

RE CASE: MARCHAI B.T. BANK TRUST vs. CRISTELA PEREZ; SFR INVESTMENTS POOL 1, LLC; U.S. BANK NATIONAL ASSOCIATION, N.D.

NOTICE OF APPEAL FILED: November 3, 2017

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.**

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; CIVIL COVER SHEET; DECISION AND ORDER; NOTICE OF ENTRY OF
DECISION AND ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

MARCHAI B.T. BANK TRUST,

Plaintiff(s),

vs.

CRISTELA PEREZ; SFR INVESTMENTS
POOL 1, LLC; U.S. BANK NATIONAL
ASSOCIATION, N.D.,

Defendant(s),

Case No: A-13-689461-C

Consolidated with A-16-742327-C

Dept No: VII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 7 day of November 2017.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk