

Electronically Filed  
Aug 14 2018 11:15 a.m.  
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. XI

**AMENDED NOTICE OF APPEAL**

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

1. Decision and Order entered on October 3, 2017;
2. Judgment entered on August 6, 2018; and
3. All other orders made appealable thereby.

DATED this 7th day of August 2018.

**KIM GILBERT EBRON**

/s/ Jacqueline A. Gilbert, Esq.

JACQUELINE A. GILBERT, ESQ.

Nevada Bar No. 10593

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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 7th day of August 2018, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the **SFR'S AMENDED 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

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

DEPARTMENT 11  
**CASE SUMMARY**  
CASE NO. A-16-742327-C

**Marchai BT Trust, Plaintiff(s)**  
**vs.**  
**SFR Investments Pool 1 LLC, Defendant(s)**

§  
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§  
§

Location: **Department 11**  
Judicial Officer: **Gonzalez, Elizabeth**  
Filed on: **08/25/2016**  
Case Number History:  
Cross-Reference Case Number: **A742327**

CASE INFORMATION

**Related Cases**  
A-13-689461-C (Consolidated)

Case Type: **Other Title to Property**  
Case Flags: **Consolidated - Subordinate Case**

DATE

CASE ASSIGNMENT

**Current Case Assignment**

Case Number A-16-742327-C  
Court Department 11  
Date Assigned 07/02/2018  
Judicial Officer Gonzalez, Elizabeth

PARTY INFORMATION

**Plaintiff**      **Marchai BT Trust**

*Lead Attorneys*  
**Merrill, David J**  
*Retained*  
702-566-1935(W)

**Defendant**      **Alessi & Koenig LLC**  
**SFR Investments Pool 1 LLC**

**Ebron, Diana S. Cline**  
*Retained*  
702-485-3300(W)


**Wyeth Ranch Community Association**


**Anderson, Kaleb D.**  
*Retained*  
702-382-1500(W)


DATE


EVENTS & ORDERS OF THE COURT


INDEX

08/25/2016       Complaint  
Filed By: Plaintiff Marchai BT Trust  
*Complaint*

08/25/2016       Initial Appearance Fee Disclosure  
Filed By: Plaintiff Marchai BT Trust  
*Initial Appearance Fee Disclosure*











09/14/2016       Affidavit of Service  
Filed By: Plaintiff Marchai BT Trust  
*Affidavit of Service*

09/14/2016       Affidavit of Service  
Filed By: Plaintiff Marchai BT Trust  
*Affidavit of Service*







09/14/2016       Affidavit of Service  
Filed By: Plaintiff Marchai BT Trust

DEPARTMENT 11  
**CASE SUMMARY**  
**CASE NO. A-16-742327-C**

*Affidavit of Service*

09/28/2016	 Initial Appearance Fee Disclosure Filed By: Defendant Wyeth Ranch Community Association <i>Defendant Wyeth Ranch Community Association's Initial Appearance Fee Disclosure</i>
09/28/2016	 Motion to Dismiss Filed By: Defendant Wyeth Ranch Community Association <i>Defendant Wyeth Ranch Community Association's Motion to Dismiss</i>
10/03/2016	 Certificate of Service Filed by: Plaintiff Marchai BT Trust <i>Certificate of Service</i>
10/05/2016	 Motion to Dismiss Filed By: Defendant SFR Investments Pool 1 LLC <i>SFR Investments Pool 1, LLC's Motion to Dismiss With Prejudice Plaintiff's Complaint Pursuant to NRCPP 12(b)(1) and EDCR 7.10(B) and Motion to Strike Pleading Pursuant to NRCPP 12(f)</i>
10/12/2016	 Joinder To Motion Filed By: Defendant Wyeth Ranch Community Association <i>Wyeth Ranch Community Association's Joinder to SFR Investments Pool 1, LLC's Motion to Dismiss with Prejudice Plaintiff's Complaint Pursuant to NRCPP(12b)(1) and EDCR 7.10(b), and Motion to Strike Pleading Pursuant to NRCPP 12(f)</i>
11/01/2016	 <b>Motion to Dismiss (9:30 AM)</b> (Judicial Officer: Kishner, Joanna S.) <b>11/01/2016, 11/22/2016, 12/06/2016</b> Events: 09/28/2016 Motion to Dismiss <i>Defendant Wyeth Ranch Community Association's Motion to Dismiss</i>
11/09/2016	 Opposition to Motion to Dismiss Filed By: Plaintiff Marchai BT Trust <i>Opposition to SFR Investments Pool 1, LLC's Motion to Dismiss with Prejudice Plaintiff's Complaint Pursuant to NRCPP 12(b)(1) and EDCR 7.10(b) and Motion to Strike Pleading Pursuant to NRCPP 12(f)</i>
11/10/2016	 Opposition to Motion to Dismiss Filed By: Plaintiff Marchai BT Trust <i>Opposition to Defendant Wyeth Ranch Community Association's Motion to Dismiss</i>
11/14/2016	 Reply in Support Filed By: Defendant SFR Investments Pool 1 LLC <i>SFR Investments Pool 1, LLC's Reply in Support of Motion to Dismiss with Prejudice Plaintiff's Complaint Pursuant to NRCPP 12(b)(1) and EDCR 7.10(b) and Motion to Strike Pleading Pursuant to NRCPP 12(f)</i>
11/15/2016	 Reply in Support Filed By: Defendant Wyeth Ranch Community Association <i>Defendant Wyeth Ranch Community Association's Reply in Support of its Motion to Dismiss</i>
11/22/2016	<b>Motion to Dismiss (9:30 AM)</b> (Judicial Officer: Kishner, Joanna S.) <b>11/22/2016, 12/06/2016</b> Events: 10/05/2016 Motion to Dismiss <i>SFR Investments Pool 1, LLC's Motion to Dismiss With Prejudice Plaintiff's Complaint Pursuant to NRCPP 12(b)(1) and EDCR 7.10(B) and Motion to Strike Pleading Pursuant to NRCPP 12(f)</i>

DEPARTMENT 11  
**CASE SUMMARY**  
**CASE NO. A-16-742327-C**

11/22/2016	<b>Joinder</b> (9:30 AM) (Judicial Officer: Kishner, Joanna S.) <b>11/22/2016, 12/06/2016</b> Events: 10/12/2016 Joinder To Motion <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>
11/22/2016	 <b>All Pending Motions</b> (9:30 AM) (Judicial Officer: Kishner, Joanna S.)
12/01/2016	 <b>Minute Order</b> (9:00 AM) (Judicial Officer: Bell, Linda Marie)
12/06/2016	 <b>All Pending Motions</b> (9:30 AM) (Judicial Officer: Kishner, Joanna S.)
12/13/2016	 Notice of Entry of Order Filed By: Plaintiff Marchai BT Trust <i>Notice of Entry of Order</i>
12/20/2016	 Notice of Department Reassignment <i>Notice of Department Reassignment</i>
01/24/2017	<b>Order of Dismissal</b> (Judicial Officer: Bell, Linda Marie) Debtors: Wyeth Ranch Community Association (Defendant) Creditors: Marchai BT Trust (Plaintiff) Judgment: 01/24/2017, Docketed: 01/31/2017 Comment: Certain Claims - Doc filed in A689461
07/02/2018	Case Reassigned to Department 11 <i>Reassigned From Judge Bell - Dept 7</i>
08/07/2018	 Amended Notice of Appeal Party: Defendant SFR Investments Pool 1 LLC <i>Amended Notice of Appeal</i>

DATE	FINANCIAL INFORMATION
	<b>Defendant</b> SFR Investments Pool 1 LLC Total Charges 223.00 Total Payments and Credits 223.00 <b>Balance Due as of 8/10/2018 0.00</b>
	<b>Defendant</b> Wyeth Ranch Community Association Total Charges 223.00 Total Payments and Credits 223.00 <b>Balance Due as of 8/10/2018 0.00</b>
	<b>Plaintiff</b> Marchai BT Trust Total Charges 270.00 Total Payments and Credits 270.00 <b>Balance Due as of 8/10/2018 0.00</b>

## DISTRICT COURT CIVIL COVER SHEET A- 16 - 742327 - C

County, Nevada

Case No. \_\_\_\_\_

XXXI

(Assigned by Clerk's Office)

**I. Party Information** (provide both home and mailing addresses if different)

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

Marchai, B.T.

117 North Fuller

Los Angeles, CA 90036

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

SFR Investments Pool 1, LLC

5030 Paradise Road, Suite B-214

Las Vegas, NV 89119

Attorney (name/address/phone):

David J. Merrill, P.C.

10161 Park Run Drive, Suite 150

Las Vegas, NV 89145

(702) 566-1935

Attorney (name/address/phone):

Kim Gilbert Ebron

7625 Dean Martin Drive, Suite 110

Las Vegas, NV 89139

(702) 485-3300

**II. Nature of Controversy** (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property	Negligence	Torts
<b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input checked="" type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Other Torts</b> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<b>Probate</b> <i>(select case type and estate value)</i> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <b>Estate Value</b> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <b>Civil Writ</b> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		<b>Other Civil Filing</b> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

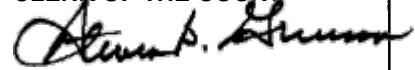
August 25, 2016

Date



Signature of initiating party or representative

See other side for family-related case filings.



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

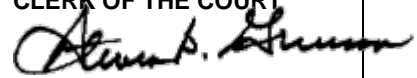
**AFFIRMATION**

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~~



**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:   
David J. Merrill  
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Attorney for Marchai, B.T.

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10161 PARK RUN DRIVE, SUITE 150  
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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**

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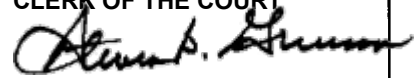
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An employee of David J. Merrill, P.C.





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

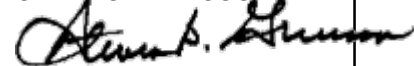
**AFFIRMATION**

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~~



**JUDG**  
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Attorney for Marchai, B.T.

**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**

**JUDGMENT**

On December 13, 2013, the Clerk of the Court entered a default against U.S. Bank, N.A. for its failure to file a response to the Complaint for Judicial Foreclosure of Deed of Trust. On April 22, 2014, the Clerk entered a default against Perez for her failure to serve a response to the complaint. On October 3, 2017, this Court entered a Decision and Order that entered summary judgment in favor of Marchai, B.T. and against SFR Investments Pool 1, LLC and Wyeth Ranch Community Association. Based upon the defaults, the Decision and Order, and good cause appearing therefor:



1       **It is hereby ordered, adjudged, and decreed** that Marchai shall take  
2 judgment in its favor and against SFR, Perez, and U.S. Bank on its claim for judi-  
3 cial foreclosure;

4       **It is further ordered, adjudged, and decreed** that SFR and U.S. Bank's  
5 interests in the property located at 7119 Wolf Rivers Avenue, Las Vegas, Nevada  
6 89131 (APN 125-15-811-013), shall be and hereby are subordinate, subsequent, and  
7 subject to the Deed of Trust recorded on November 9, 2005 as Document No.  
8 20051109-0001385, which is now owned by Marchai;

9       **It is further ordered, adjudged, and decreed** that Perez owes Marchai a  
10 total of \$535,178.50, which includes \$430,113.48 in principal, \$96,566.45 in interest  
11 through August 6, 2018, and \$8,498.57 in late charges;

12       **It is further ordered, adjudged, and decreed** that the Deed of Trust  
13 shall be foreclosed to satisfy the amounts owed by Perez to Marchai;

14       **It is further ordered, adjudged, and decreed** that the Sheriff of Clark  
15 County, or a levying officer appointed by the Court, shall have the authority to sell  
16 the property and apply the proceeds of the sale due to Marchai;

17       **It is further ordered, adjudged, and decreed** that SFR, Wyeth Ranch,  
18 U.S. Bank, Perez, and all persons claiming under them subsequent to the recording  
19 of the Deed of Trust, either as lien claimants, judgment creditors, claimants under a  
20 junior deed of trust, purchasers, encumbrances, and otherwise, be barred and fore-  
21 closed from all rights, claims, interest or equity of redemption of the property and  
22 every part of the property when the time for redemption has lapsed;

23       **It is further ordered, adjudged, and decreed** that Marchai, or any other  
24 party to this action, may bid at the foreclosure sale;

25       **It is further ordered, adjudged, and decreed** that when the time for re-  
26 demption has lapsed, the levying officer or Sheriff shall execute a deed to the pur-  
27 chaser of the property at the sale and the purchaser at the sale shall be given pos-  
28 session of the property upon production of the levying officer's or Sheriff's deed;

1           **It is further ordered, adjudged, and decreed that nothing in this Judg-**  
2 **ment shall prevent Marchai from electing to exercise its non-judicial foreclosure**  
3 **rights under the Deed of Trust;**

4           **It is further ordered, adjudged, and decreed that Marchai shall take**  
5 **judgment in its favor and against SFR and Wyeth Ranch on a claim for declaratory**  
6 **relief;**

7           **It is further ordered, adjudged, and decreed that Marchai holds a valid**  
8 **interest in the property;**

9           **It is further ordered, adjudged, and decreed that Wyeth Ranch's lien on**  
10 **the property was subject to Marchai's deed of trust;**

11           **It is further ordered, adjudged, and decreed that Wyeth Ranch's fore-**  
12 **closure of its lien did not extinguish Marchai's deed of trust;**

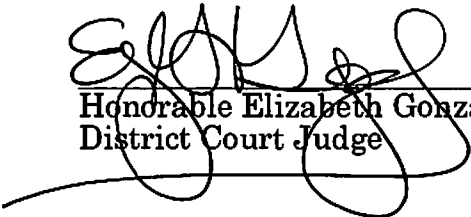
13           **It is further ordered, adjudged, and decreed that SFR's counterclaims**  
14 **and cross claims for quiet title/declaratory relief and preliminary and permanent**  
15 **injunction shall be and hereby are dismissed with prejudice;**

16           **It is further ordered, adjudged, and decreed that Marchai shall take**  
17 **judgment, jointly and severally, in its favor and against SFR and Wyeth Ranch for**  
18 **its reasonable costs in the amount of \$2,752.85; and**

DAVID J. MERRILL, P.C.  
10161 PARK RUN DRIVE, SUITE 150  
LAS VEGAS, NEVADA 89145  
(702) 566-1935

1       **It is further ordered, adjudged, and decreed that this Judgment is in-**  
2 **tended as the final judgment by the Court and any remaining claims against any**  
3 **remaining parties shall be and hereby are dismissed without prejudice.**

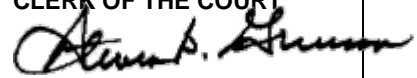
4       Dated this 6 day of August 2018.

5  
6  
7         
8       Honorable Elizabeth Gonzalez  
9       District Court Judge

10       Submitted by:

11       David J. Merrill, P.C.

12       By: David J. Merrill  
13       David J. Merrill  
14       Nevada Bar No. 6060  
15       10161 Park Run Drive, Suite 150  
16       Las Vegas, Nevada 89145  
17       (702) 566-1935  
18       Attorney for Marchai, B.T.



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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. XI

Consolidated with: A-16-742327-C

AND ALL RELATED CLAIMS AND  
ACTIONS

**Notice of Entry of Judgment**

**Take notice** that on the 6th day of August 2018, the Court entered its Judgment, a copy of which is attached.

Dated this 7th day of August 2018.

David J. Merrill, P.C.

By:



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10161 Park Run Drive, Suite 150  
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Attorney for Marchai, B.T.

## Certificate of Service

I hereby certify that on the 7th day of August 2018, a copy of the Notice of Entry of Judgment was served electronically to the following through the Court's electronic service system:

### **Kim Gilbert Ebron**

Diana Cline Ebron  
KGE E-Service List  
Michael L. Sturm  
KGE Legal Staff

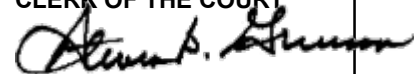
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### **Lipson, Neilson, Cole, Seltzer & Garin, P.C.**

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Attorney for Marchai, B.T.

**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**

**JUDGMENT**

On December 13, 2013, the Clerk of the Court entered a default against U.S. Bank, N.A. for its failure to file a response to the Complaint for Judicial Foreclosure of Deed of Trust. On April 22, 2014, the Clerk entered a default against Perez for her failure to serve a response to the complaint. On October 3, 2017, this Court entered a Decision and Order that entered summary judgment in favor of Marchai, B.T. and against SFR Investments Pool 1, LLC and Wyeth Ranch Community Association. Based upon the defaults, the Decision and Order, and good cause appearing therefor:

DAVID J. MERRILL, P.C.  
10161 PARK RUN DRIVE, SUITE 150  
LAS VEGAS, NEVADA 89145  
(702) 566-1935

1       **It is hereby ordered, adjudged, and decreed** that Marchai shall take  
2 judgment in its favor and against SFR, Perez, and U.S. Bank on its claim for judi-  
3 cial foreclosure;

4       **It is further ordered, adjudged, and decreed** that SFR and U.S. Bank's  
5 interests in the property located at 7119 Wolf Rivers Avenue, Las Vegas, Nevada  
6 89131 (APN 125-15-811-013), shall be and hereby are subordinate, subsequent, and  
7 subject to the Deed of Trust recorded on November 9, 2005 as Document No.  
8 20051109-0001385, which is now owned by Marchai;

9       **It is further ordered, adjudged, and decreed** that Perez owes Marchai a  
10 total of \$535,178.50, which includes \$430,113.48 in principal, \$96,566.45 in interest  
11 through August 6, 2018, and \$8,498.57 in late charges;

12       **It is further ordered, adjudged, and decreed** that the Deed of Trust  
13 shall be foreclosed to satisfy the amounts owed by Perez to Marchai;

14       **It is further ordered, adjudged, and decreed** that the Sheriff of Clark  
15 County, or a levying officer appointed by the Court, shall have the authority to sell  
16 the property and apply the proceeds of the sale due to Marchai;

17       **It is further ordered, adjudged, and decreed** that SFR, Wyeth Ranch,  
18 U.S. Bank, Perez, and all persons claiming under them subsequent to the recording  
19 of the Deed of Trust, either as lien claimants, judgment creditors, claimants under a  
20 junior deed of trust, purchasers, encumbrances, and otherwise, be barred and fore-  
21 closed from all rights, claims, interest or equity of redemption of the property and  
22 every part of the property when the time for redemption has lapsed;

23       **It is further ordered, adjudged, and decreed** that Marchai, or any other  
24 party to this action, may bid at the foreclosure sale;

25       **It is further ordered, adjudged, and decreed** that when the time for re-  
26 demption has lapsed, the levying officer or Sheriff shall execute a deed to the pur-  
27 chaser of the property at the sale and the purchaser at the sale shall be given pos-  
28 session of the property upon production of the levying officer's or Sheriff's deed;

1           **It is further ordered, adjudged, and decreed that nothing in this Judg-**  
2 **ment shall prevent Marchai from electing to exercise its non-judicial foreclosure**  
3 **rights under the Deed of Trust;**

4           **It is further ordered, adjudged, and decreed that Marchai shall take**  
5 **judgment in its favor and against SFR and Wyeth Ranch on a claim for declaratory**  
6 **relief;**

7           **It is further ordered, adjudged, and decreed that Marchai holds a valid**  
8 **interest in the property;**

9           **It is further ordered, adjudged, and decreed that Wyeth Ranch's lien on**  
10 **the property was subject to Marchai's deed of trust;**

11           **It is further ordered, adjudged, and decreed that Wyeth Ranch's fore-**  
12 **closure of its lien did not extinguish Marchai's deed of trust;**

13           **It is further ordered, adjudged, and decreed that SFR's counterclaims**  
14 **and cross claims for quiet title/declaratory relief and preliminary and permanent**  
15 **injunction shall be and hereby are dismissed with prejudice;**

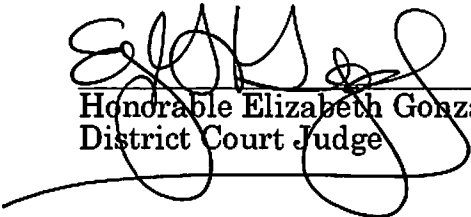
16           **It is further ordered, adjudged, and decreed that Marchai shall take**  
17 **judgment, jointly and severally, in its favor and against SFR and Wyeth Ranch for**  
18 **its reasonable costs in the amount of \$2,752.85; and**



DAVID J. MERRILL, P.C.  
10161 PARK RUN DRIVE, SUITE 150  
LAS VEGAS, NEVADA 89145  
(702) 566-1935

1       **It is further ordered, adjudged, and decreed that this Judgment is in-**  
2 **tended as the final judgment by the Court and any remaining claims against any**  
3 **remaining parties shall be and hereby are dismissed without prejudice.**

4       Dated this 6 day of August 2018.

5  
6  
7         
8       Honorable Elizabeth Gonzalez  
9       District Court Judge

10       Submitted by:

11       David J. Merrill, P.C.

12       By: David J. Merrill  
13       David J. Merrill  
14       Nevada Bar No. 6060  
15       10161 Park Run Drive, Suite 150  
16       Las Vegas, Nevada 89145  
17       (702) 566-1935  
18       Attorney for Marchai, B.T.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Title to Property**

**COURT MINUTES**

**November 01, 2016**

---

A-16-742327-C	Marchai BT Trust, Plaintiff(s)
	vs.
	SFR Investments Pool 1 LLC, Defendant(s)

---

**November 01, 2016     9:30 AM             Motion to Dismiss**

**HEARD BY:** Kishner, Joanna S.

**COURTROOM:** RJC Courtroom 12B

**COURT CLERK:** Sandra Harrell

**RECORDER:** Sandra Pruchnic

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Ebron, Diana Cline	Attorney
	Hummel, Megan	Attorney
	Merrill, David J	Attorney

**JOURNAL ENTRIES**

- DEFENDANT WYETH RANCH COMMUNITY ASSOCIATION'S MOTION TO DISMISS

Ms. Hummel advised of a service issue and Mr. Merrill did not receive a copy of her motion, Mr. Merrill needs opportunity to oppose the motion. All parties agree to continue this motion and other motions currently set on 11/15/16 to 11/22/16 at 9:30 am. COURT ORDERED, matter CONTINUED.

CONTINUED TO: 11/22/16 9:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Title to Property**

**COURT MINUTES**

**November 22, 2016**

---

A-16-742327-C      Marchai BT Trust, Plaintiff(s)  
vs.  
SFR Investments Pool 1 LLC, Defendant(s)

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**November 22, 2016      9:30 AM      All Pending Motions**

**HEARD BY:** Kishner, Joanna S.

**COURTROOM:** RJC Courtroom 12B

**COURT CLERK:** Sandra Harrell

**RECORDER:** Rachelle Hamilton

**REPORTER:**

**PARTIES**

**PRESENT:** Gutierrez, Siria L.      Attorney  
Hanks, Karen      Attorney  
Merrill, David J      Attorney

**JOURNAL ENTRIES**

- DEFENDANT WYETH RANCH COMMUNITY ASSOCIATION'S MOTION TO DISMISS...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)...WYETH RANCH COMMUNITY ASSOCIATION'S JOINDER TO 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)

Court notes case in Department 7 is stayed. Discussion. COURT ORDERED, motions CONTINUED until after stay is lifted in Department 7 and ruling of Judge Bell.

CONTINUED TO: 12/6/16 9:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Title to Property**

**COURT MINUTES**

**December 01, 2016**

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A-16-742327-C      Marchai BT Trust, Plaintiff(s)  
vs.  
SFR Investments Pool 1 LLC, Defendant(s)

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**December 01, 2016      9:00 AM      Minute Order**

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**HEARD BY:** Kishner, Joanna S.      **COURTROOM:** RJC Courtroom 12B  
Bell, Linda Marie

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**COURT CLERK:** Sylvia Perry

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**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

CLERK'S NOTE: FOR ALL FUTURE MINUTES SEE LEAD CASE A689461 - sdp

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Title to Property**

**COURT MINUTES**

**December 06, 2016**

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A-16-742327-C      Marchai BT Trust, Plaintiff(s)  
vs.  
SFR Investments Pool 1 LLC, Defendant(s)

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**December 06, 2016      9:30 AM      All Pending Motions**

**HEARD BY:** Kishner, Joanna S.

**COURTROOM:** RJC Courtroom 12B

**COURT CLERK:** Sandra Harrell

**RECORDER:** Rachelle Hamilton

**REPORTER:**

**PARTIES**

**PRESENT:**      Hanks, Karen      Attorney  
                 Hummel, Megan      Attorney  
                 Merrill, David J      Attorney

**JOURNAL ENTRIES**

- 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)...WYETH RANCH COMMUNITY ASSOCIATION'S JOINDER TO 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)...DEFENDANT WYETH RANCH COMMUNITY ASSOCIATION'S MOTION TO DISMISS

Mr. Merrill advised that Judge Bell granted consolidation. All counsel request that today's motions be heard before Judge Bell, who has the lower case number; COURT SO ORDERED.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Title to Property**

**COURT MINUTES**

**November 04, 2014**

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

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**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**

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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**

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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      Attorney  
                         Merrill, David J      Attorney

**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**

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<b>Title to Property</b>	<b>COURT MINUTES</b>	<b>March 22, 2016</b>
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A-13-689461-C	Marchai B T Bank Trust, Plaintiff(s) vs. Cristela Perez, Defendant(s)
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<b>March 22, 2016</b>	<b>9:40 AM</b>	<b>Minute Order</b>
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<b>HEARD BY:</b> Bell, Linda Marie	<b>COURTROOM:</b> RJC Courtroom 03B
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**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**

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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      Attorney  
                         Merrill, David J      Attorney

**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)

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**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  
Hummel, Megan  
Merrill, David J

Attorney  
Attorney  
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)

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**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**

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<b>Title to Property</b>	<b>COURT MINUTES</b>	<b>September 12, 2017</b>
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A-13-689461-C	Marchai B T Bank Trust, Plaintiff(s) vs. Cristela Perez, Defendant(s)
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<b>September 12, 2017</b>	<b>9:00 AM</b>	<b>Status Check</b>	<b>Status Check: Decision</b>
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<b>HEARD BY:</b>	Bell, Linda Marie	<b>COURTROOM:</b>	RJC Courtroom 15A
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**COURT CLERK:** Sylvia Perry

**RECORDER:** Renee Vincent

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Gilbert, Jacqueline	Attorney
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**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.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Title to Property**

**COURT MINUTES**

**October 03, 2017**

---

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

---

**October 03, 2017**

**5:00 PM**

**Minute Order**

**Decision and Order  
Re: SFR and Wyeth  
Ranch MSJ**

**HEARD BY:** Bell, Linda Marie

**COURTROOM:** RJC Courtroom 15A

**COURT CLERK:** Sylvia Perry

**RECORDER:** Renee Vincent

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- The Court finds that no genuine issues of material fact remain in this case. the Court DENIES SFR and the HOA's Motions for Summary Judgment. As the parties agree on all the material fact in t his case, the resolution of the legal issues presented on the motions for summary judgment necessarily result in a finding in favor of Marchai.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Title to Property**

**COURT MINUTES**

**November 21, 2017**

---

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

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**November 21, 2017      9:00 AM      Motion to Retax**

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

**COURT CLERK:** Phyllis Irby

**RECORDER:** Gail Reiger

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Matter called, no parties present. COURT ORDERED, MOTION DENIED. Mr. Merrill to prepare the Order; counsel was notified no one needed to appear.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Title to Property

# COURT MINUTES

**April 26, 2018**

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

<b>April 26, 2018</b>	<b>9:00 AM</b>	<b>Motion for Default Judgment</b>
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**HEARD BY:** Bell, Linda Marie

**COURTROOM:** RJC Courtroom 15A

**COURT CLERK:**

**RECORDER:** Renee Vincent

**REPORTER:**

## PARTIES

**PRESENT:** Gilbert, Jacqueline Attorney  
Merrill, David J Attorney

## JOURNAL ENTRIES

- Defendant's witness, Christopher John Hardin, SWORN and TESTIFIED. Defendant's Exhibits ADMITTED (See Worksheets). Ms. Gilbert moved for Judgment. COURT ORDERED, Application for Judgment, GRANTED; Judgment ENTERED as requested. Mr. Merrill stated he will be submitting a similar Motion for Summary Judgment. COURT FURTHER ORDERED, Status Check, SET.

05/24/18 9:00 A.M. STATUS CHECK: STATUS OF CASE

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Title to Property**

**COURT MINUTES**

**May 24, 2018**

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

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**May 24, 2018**

**9:00 AM**

**Status Check: Status of  
Case**

**HEARD BY:** Bell, Linda Marie

**COURTROOM:** RJC Courtroom 03B

**COURT CLERK:** Nancy Maldonado

**RECORDER:** Renee Vincent

**REPORTER:**

**PARTIES**

**PRESENT:** Hanks, Karen

Attorney

**JOURNAL ENTRIES**

- Court noted the matter had been vacated.

Matter Recalled. Lisa Zastrow, Esq. now present. Ms. Zastrow requested matter be placed on calendar for a status check in 30 days. COURT SO ORDERED.

06/21/18 9:00 AM STATUS CHECK: STATUS OF CASE

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Title to Property**

**COURT MINUTES**

**June 21, 2018**

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

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**June 21, 2018**

**9:00 AM**

**Status Check: Status of  
Case**

**HEARD BY:** Bell, Linda Marie

**COURTROOM:** RJC Courtroom 15A

**COURT CLERK:** Lauren Kidd

**RECORDER:** Renee Vincent

**REPORTER:**

**PARTIES**

**PRESENT:**      Gilbert, Jacqueline      Attorney  
                         Merrill, David J      Attorney

**JOURNAL ENTRIES**

- Also present, David Markman, Esq. CONFERENCE AT BENCH. Court advised part of the case is now with the Supreme Court and default judgments will be filed for remaining parties. COURT ORDERED, matter CONTINUED for 30 days.

CONTINUED TO: 7/19/18 9:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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<b>Title to Property</b>	<b>COURT MINUTES</b>	<b>July 19, 2018</b>
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A-13-689461-C	Marchai B T Bank Trust, Plaintiff(s) vs. Cristela Perez, Defendant(s)
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<b>July 19, 2018</b>	<b>9:00 AM</b>	<b>Status Check: Status of Case</b>
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<b>HEARD BY:</b> Gonzalez, Elizabeth	<b>COURTROOM:</b> RJC Courtroom 03E
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**COURT CLERK:** Dulce Romea

**RECORDER:** Jill Hawkins

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Gilbert, Jacqueline	Attorney
	Hummel, Megan	Attorney
	Merrill, David J	Attorney

**JOURNAL ENTRIES**

- Order shortening time signed in open court and returned to Mr. Merrill for filing. COURT ORDERED, matter SET for Prove Up on August 6, 2018 at 9:15 AM.



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Title to Property**

**COURT MINUTES**

**August 06, 2018**

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

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**August 06, 2018      9:15 AM      Prove Up**

**HEARD BY:** Gonzalez, Elizabeth      **COURTROOM:** RJC Courtroom 03E

**COURT CLERK:** Dulce Romea

**RECORDER:** Jill Hawkins

**REPORTER:**

**PARTIES**

**PRESENT:**      Gilbert, Jacqueline      Attorney  
                         Merrill, David J      Attorney

**JOURNAL ENTRIES**

- APPEARANCES CONTINUED: Attorney Megan Hummell for the Wyeth Ranch Community Association.

Scott Sawyer, SWORN and TESTIFIED via video conferencing. There being no objection, COURT ORDERED, Plaintiff's Proposed Exhibits 1 through 6 ADMITTED into evidence. (See worksheet.) Counsel for Defendants stated they did not have any cross examination. COURT ORDERED, it appears that counsel has established the amounts due and owing after the deed of trust that was properly transferred to the Plaintiff are as follows: principal in the amount of \$430,113.48, interest in the amount of \$96,566.45, and late charges in the amount of \$8,498.56. The Court ENTERS JUDGMENT in favor of the Plaintiff in those amounts. In addition, previously awarded costs in the amount of \$2,752.85 are REDUCED to JUDGMENT at this time. All remaining issues in the case that have previously not been decided are DISMISSED. Proposed judgment executed in open court and returned to counsel for filing.

# 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):

AMENDED NOTICE OF APPEAL; DISTRICT COURT DOCKET ENTRIES;  
CIVIL COVER SHEET; DECISION AND ORDER; NOTICE OF ENTRY OF DECISION AND  
ORDER; JUDGMENT; NOTICE OF ENTRY OF JUDGMENT; DISTRICT COURT MINUTES

MARCHAI B.T.,

Plaintiff(s),

vs.

SFR INVESTMENTS POOL 1, LLC; WYETH  
RANCH COMMUNITY ASSOCIATION;  
ALESSI & KOENIG, LLC,

Defendant(s),

Case No: A-16-742327-C

*Consolidated with A-13-689461-C*

Dept No: XI

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 10 day of August 2018.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk