

Case No. 74416

IN THE SUPREME COURT OF NEVADA

SFR INVESTMENTS POOL 1, LLC,
A NEVADA LIMITED LIABILITY
COMPANY,

Appellant,

vs.

MARCHAI B.T., A BANK TRUST,

Respondent.

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Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

From the Eighth Judicial District Court, Clark County
The Honorable LINDA MARIE BELL
District Court Case No. A-13-689461-C, Consolidated With A-16-742327-C

JOINT APPENDIX VOLUME 7

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1	3	11/07/2013	Affidavit of Service	JA_0074
1	4	11/12/2013	Affidavit of Service	JA_0076
1	8	12/19/2013	Affidavit of Service	JA_0106
1	9	12/27/2013	Affidavit of Service	JA_0108
5	25	09/14/2016	Affidavit of Service	JA_1118
5	26	09/14/2016	Affidavit of Service	JA_1122
5	27	09/14/2016	Affidavit of Service	JA_1126
3	13	01/14/2016	Appendix of Exhibits to Marchai's Motion for Summary Judgment	JA_0544
2	12	01/14/2016	Appendix of Exhibits to Marchia's Motion for Summary Judgment	JA_0272
5	19	02/22/2016	Certificate of Service	JA_1015
1	1	09/30/2013	Complaint	JA_0001
5	20	03/22/2016	Decision and Order	JA_1017
7	38	10/03/2017	Decision and Order	JA_1483
5	23	08/25/2016	Exempt from Arbitration Action Concerning Title to Real Estate Complaint	JA_1099
5	24	08/25/2016	Initial Appearance Fee Disclosure	JA_1115
7	48	8/6/2018	Judgment	JA_1592
7	46	4/26/2018	Judgment against Cristela Perez and U.S. Bank	JA_1581
1	7	12/03/2013	Marchai's Answer to Counterclaim	JA_0098
1	10	01/14/2016	Marchai's Motion for Summary Judgment	JA_0110
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5	18	02/15/2016	Marchai's Opposition to Counter-Motions to Strike Pursuant to NRCP Rule 37	JA_0993
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4	14	02/03/2016	Marchai's Opposition to SFR's Motion for Summary Judgment	JA_0816
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4	16	02/08/2016	Marchai's Reply in Support of Motion for Summary Judgment	JA_0884
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5	28	12/13/2016	Notice of Entry of Order	JA_1130
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5	33	07/21/2017	SFR's Motion for Summary Judgment	JA_1164
7	41	10/19/2017	SFR's Motion to Retax and Settle Memorandum of Costs and Disbursements	JA_1549
7	42	11/3/2017	SFR's Notice of Appeal	JA_1556

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5	22	03/24/2016	SFR's Notice of Entry of Decision and Order	JA_1071
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4	15	02/04/2016	SFR's Opposition to Marchai's Motion for Summary Judgment	JA_0852
7	44	11/13/2017	SFR's Reply in Support of its Motion to Retax and Settle Memorandum of Costs and Disbursements	JA_1569
4	17	02/09/2016	SFR's Reply in Support of Motion for Summary Judgment and Counter-Motions to Strike	JA_0908
6	36	08/21/2017	SFR's Reply in Support of SFR's Motion for Summary Judgment	JA_1434
5	31	01/31/2017	Wyeth Ranch Community Association's Answer and Affirmative Defenses	JA_1143
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7	37	08/21/2017	Wyeth Ranch's Reply in Support of Motion for Summary Judgment	JA_1470

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1 **I. The Bank's Claim for Intentional Interference with Contractual Relations Fails.**

2 SFR thoroughly set forth its reasoning why the Bank's claim for intentional interference with
3 a contract fails as a matter of law, and summary judgment in favor of SFR is warranted in SFR's MSJ.
4 Rather than restate the argument in its entirety herein, SFR incorporates that argument in its entirety
5 as though set forth fully herein. See SFR's MSJ., 12:2-28. The Bank's intentional interference claim
6 is based on the following accusation, which is wholly unsupported by the record, the law or reality:
7 "Neither SFR nor Wyeth can dispute that Marchai had a valid contract with Perez, they knew of the
8 contract, the contract was disrupted by Wyeth's foreclosure, and that Marchai suffered damage." From
9 this, Marchai baselessly decided that the motives and intent of SFR to interrupt the Marchai's contract
10 are issues of fact precluding summary judgment. In explaining the intent element of an intentional
11 interference with contractual relations claim, the Court in J.J. Indus., LLC v. Bennett, 119 Nev. 269,
12 274, 71 P.3d 1264, 1267 (2003), the Court held that "because the action involves an intentional tort,
13 the inquiry usually concerns the defendant's ultimate purpose or the objective that he or she is seeking
14 to advance. Thus, mere knowledge of the contract is insufficient to establish that the defendant intended
15 or designed to disrupt the plaintiff's contractual relationship; instead, the plaintiff must demonstrate
16 that the defendant intended to induce the other party to breach the contract with the plaintiff.
17 Accordingly, the plaintiff must inquire into the defendant's motive." Id. at 275, 1268.

18 In the present case, Marchai, with nothing to support its position, opines essentially that SFR
19 should have known that the prior homeowner satisfied the superpriority portion of the Association lien
20 (which is not the case). From that, apparently Marchai deduces that because of this alleged knowledge,
21 SFR must have intended to interfere with the contract between Marchai and the prior homeowner when
22 it purchased at the Association foreclosure sale. First, even assuming arguendo that the Bank could
23 prove that SFR had knowledge of the payments, and had improperly concluded those payments
24 satisfied the superpriority portion of the Association's lien, the Bank still cannot prove that SFR
25 intentionally interfered with this contract. Rather, SFR simply attended and bid at a publicly advertised
26 Association foreclosure sale. Ex. 2, ¶ 11. SFR had no involvement in the prior homeowner's failure
27 to pay her Association assessments. Likewise, SFR had absolutely no involvement in the foreclosure
28 process by the Association, other than attending and bidding at the sale. Moreover, SFR definitely had

1 no involvement in the prior homeowner's failure to pay their mortgage payments, leading to a
2 substantial delinquency of almost two years at the time of the foreclosure sale.²⁸ Clearly, SFR cannot
3 be considered to have interfered with a contract between the prior homeowner when she had already
4 been in default of her obligations to the bank for some time before the foreclosure sale. Certainly, SFR
5 does not have the ability to predict the future. As such, there is no genuine issue of material fact as to
6 any intentional conduct on the part of SFR; and, therefore, the Bank's intentional interference with
7 contractual relations claim fails as a matter of law.

8 **IV. CONCLUSION**

9 Based on the above, the Court should deny the Bank's motion for summary judgment and
10 instead, grant summary judgment in favor of SFR, stating that SFR is the title holder of the
11 Property and that the Bank's deed of trust was extinguished when the Association foreclosed its lien
12 containing super priority amounts.

13 DATED this 21st day of August, 2017.

14 **KIM GILBERT EBRON**

15 /s/ Jacqueline A. Gilbert

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17 Nevada Bar No. 10580

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26 *Attorneys for SFR Investments Pool 1, LLC*

27
28 ²⁸ See Bank's Opp., 6:11-12.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of August, 2017, pursuant to NCRP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **REPLY IN SUPPORT OF SFR INVESTMENTS POOL 1, LLC's MOTION FOR SUMMARY JUDGMENT**, to the following parties:

David J. Merrill .	david@djmerrillpc.com
Brenda Correa .	bcorrea@lipsonneilson.com
Kaleb Anderson .	kanderson@lipsonneilson.com
Megan Hummel .	mhummel@lipsonneilson.com
Renee Rittenhouse .	rrittenhouse@lipsonneilson.com
Susana Nutt .	snutt@lipsonneilson.com

/s/ Chantel Schimming
an employee of Kim Gilbert Ebron

EXHIBIT A

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3
4 ALESSI & KOENIG LLC, a Nevada)
5 limited liability company,)
6 Plaintiff,)
7 vs.) CASE NO.:
8) 3:15-cv-00520-RCJ-WGC
9 RICHARD SILVERSTEIN, an)
10 individual; SANDRA SILVERSTEIN,)
11 an individual; COUNTRYWIDE HOME)
12 LOANS, INC., a foreign)
13 corporation; THE CITY OF RENO, a)
14 domestic government entity;)
15 WASTE MANAGEMENT OF NEVADA,)
16 INC., a domestic corporation;)
17 DEPARTMENT OF TREASURY, INTERNAL)
18 REVENUE SERVICE, a domestic)
19 corporation, DOES INDIVIDUALS)
20 I-X, inclusive, and ROE)
21 CORPORATIONS XI-XXX, inclusive,)
22 Defendants.)
23 _____) . . .
24
25

**CERTIFIED
COPY**

17 DEPOSITION OF DAVID ALESSI
18 30(b)(6) REPRESENTATIVE FOR ALESSI & KOENIG, LLC
19 Taken on Wednesday, July 27, 2016
20 At 2:13 p.m.
21 At All-American Court Reporters
22 1160 North Town Center Drive, Suite 300,
23 Las Vegas, Nevada
24
25 Reported by: CINDY K. JOHNSON, RPR, CCR NO. 706

1 BANK OF AMERICA, N.A.,)
2 Counter/Crossclaimant,)
3 vs.)
4 ALESSI & KOENIG LLC, a Nevada)
5 limited liability company; SFR)
6 INVESTMENTS POOL 1, LLC, a)
7 Nevada limited liability)
8 company; DOUBLE DIAMOND RANCH)
9 MASTER ASSOCIATION, a Nevada)
10 entity; Does 1 through 10; and)
11 ROES 1 through 10, inclusive;)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

10 SFR INVESTMENTS POOL 1, LLC,)
11 a Nevada limited liability)
12 company,)
13 Counterclaimant/)
14 Crossclaimant.)
15 vs.)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

14 BANK OF AMERICA, N.A.; UNITED)
15 STATES OF AMERICA; NATIONSTAR)
16 MORTGAGE, LLC, a Delaware)
17 limited liability company; and)
18 RICHARD SILVERSTEIN, an)
19 individual; SANDRA)
20 SILVERSTEIN, an individual;)
21 DOES 1 through 10, and ROE)
22 BUSINESS ENTITIES 1 through)
23 10, inclusive.)
24 Counter/Crossclaimant,)
25 Cross-Defendants.)

21 / / /
22 / / /
23
24
25

1 DEPOSITION OF DAVID ALESSI, taken at
2 All-American Court Reporters, 1160 North Town Center
3 Drive, Suite 300, Las Vegas, Nevada, on Wednesday,
4 July 27, 2016, at 2:13 p.m., before Cindy K. Johnson,
5 Certified Court Reporter on behalf of All-American Court
6 Reporters.

7 APPEARANCES:

8 For the Defendant DEPARTMENT OF TREASURY, INTERNAL
9 REVENUE SERVICE:

10 VIRGINIA CRONAN LOWE, ESQ.
11 U.S. DEPARTMENT OF JUSTICE
12 P.O. Box 683
13 Ben Franklin Station
14 Washington, DC 20044
15 (202)307-6484

16 For the Counter-Claimant/Cross-Claimant/
17 Cross-Defendant BANK OF AMERICA, N.A.:

18 THERA A. COOPER, ESQ.
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24 For the Counterclaimant/Cross-Claimant SFR INVESTMENTS
25 POOL 1, LLC:

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(702)485-3300

* * * * *

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1 Whereupon --

2 (Ms. Lowe not present.)

3 (Exhibits A through C marked for
4 identification.)

5 DAVID ALESSI,

6 having been first duly sworn to tell the truth, the
7 whole truth, and nothing but the truth, was examined and
8 testified as follows:

9 EXAMINATION

10 BY MS. COOPER:

11 Q. Good afternoon. Can you please state and
12 spell your name for the record?

13 A. David Alessi -- A-l-e-s-s-i.

14 Q. And, Mr. Alessi, how many times have you been
15 deposed?

16 A. Approximately, 80, 85.

17 Q. Okay. Are you comfortable waiving the
18 standard admonitions?

19 A. Yes, ma'am.

20 Q. Okay. So it is my understanding that you are
21 a partner of the firm Alessi & Koenig; is that correct?

22 A. I'm a manager. It's an LLC.

23 Q. Okay. So is it a law firm or is it just an
24 LLC?

25 A. It is a law firm LLC. So I think we say we're

1 We used them for -- during this time. You can
2 see the name of the company on there. And then you also
3 have copies of the certified mail receipts.

4 Q. In response to the mailings -- strike that.

5 Other than at the notice of default juncture,
6 was there any other time that Alessi notified anyone
7 else who may have been an interested party other than
8 the homeowner?

9 A. At the notice of trustee's sale stage.

10 Q. And how was that notice given?

11 A. Certified and regular mail.

12 Also, we would publish the notice in the -- we
13 do publish the notice in a newspaper. It is also posted
14 in three conspicuous places, as well as on the door of
15 the property being foreclosed.

16 Q. In response to the mailings done at the notice
17 of default stage, did Alessi receive any communications
18 from the homeowner?

19 A. So I'm looking at the status report. I see a
20 no contact from homeowner. We did see -- it does look
21 like we did receive contact from the homeowner on
22 January 12, 2011, indicating that a payment would be
23 forthcoming. It does not look as though that payment
24 was ever received. It does not look as though any
25 payment was ever received.


1 CERTIFICATE OF COURT REPORTER

2
3 I, Cindy Johnson, a duly certified court
4 reporter in and for the State of Nevada do hereby
5 certify: That I reported the deposition of David
6 Alessi, commencing on Wednesday, July 27, 2016, at
7 2:13 p.m.

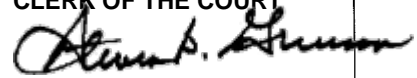
8 That prior to being deposed, the witness was
9 duly sworn by me to testify to the truth. That I
10 thereafter transcribed my said shorthand notes into
11 typewriting and that the typewritten transcript is a
12 complete, true and accurate transcription of my said
13 shorthand notes. Transcript review pursuant to FRCP
14 30(e) was not requested.

15 I further certify that I am not a relative
16 or employee of counsel or any of the parties, nor a
17 relative or employee of the parties involved in said
18 action, nor a person financially interested in the
19 action.

20 IN WITNESS WHEREOF, I have set my hand in my
21 office in the state of Nevada, this 8th day of August
22 2016.

23
24 
Cindy K. Johnson, RPR, CCR No. 706

TAB 37



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Attorneys for Defendant Wyeth Ranch Community Association

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

CRISTELA PEREZ, an individual; *et al.*

Defendants.

AND ALL RELATED CLAIMS

Case No.: A-13-689461-C

Dept. No.: VII

Consolidated with: A-16-742327-C

**DEFENDANT WYETH RANCH
COMMUNITY ASSOCIATION'S
REPLY IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

Hearing Date: 08/22/2017

Hearing Time: 9:00 a.m.

Defendant, WYETH RANCH COMMUNITY ASSOCIATION ("HOA"), by and through its counsel of record at the law firm of LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C., files the following Reply in Support of its Motion for Summary Judgment ("Reply"). This Reply is made and based upon the attached Memorandum of Points and Authorities, the exhibits attached hereto, the pleadings and papers on file herein, and any oral argument that may be presented at any hearing on the underlying Motion.

///

///

///

///

I. INTRODUCTION

According to Marchai, B.T. (“Marchai”), there are two issues of material fact which prevent this Court from granting summary judgment in favor of the HOA. First, Marchai asserts that the payments Cristela Perez (“Borrower”) made on her delinquent homeowners’ assessments satisfied the superpriority portion of the HOA’s lien. Second, Marchai argues that the foreclosure sale was commercially unreasonable because of the low sales price, deficiencies in the way in which Alessi & Koenig, LLC (“Alessi”) handled foreclosure proceedings, and the HOA’s refusal to postpone the sale to allow Marchai to pay off the lien.

None of these issues have a sufficient evidentiary basis on which to deny the HOA's summary judgment motion. To start, Marchai's contention that Borrower paid nine months of past due assessments and therefore satisfied the super-priority portion of the HOA's lien calls for an impermissible expansion of NRS 116. Section 116.3116 was intended to provide guidance to HOAs and mortgagees regarding the priority of their liens in the event of a non-judicial foreclosure. There is no indication in the plain language of the statute that this section was intended to modify a *homeowner's* contractual obligation to pay all assessments due under the CC&Rs.

Borrower's purported "intent" in making payments on her delinquent account is irrelevant because the statute does not account for a homeowner's intent. Even if it did, none of the communications between Borrower, the HOA, and Alessi support the conclusion that Borrower believed nine months of assessments would cure her deficient account. In fact, Borrower and her husband frequently entered into *twelve* month payment plans with Alessi, and in one of her last letters before filing for bankruptcy, Borrower references only her financial hardships and her eagerness to make "\$300.00 per month payments ...to continue the first of every month **continuously**." See MSJ, Ex. 16 (emphasis added).

///

1 Finally, none of the purported deficiencies in the foreclosure proceedings support
2 Marchai's claim that the sale was conducted in a commercially unreasonable manner.
3 This is true even if SFR delivered its cashier check the day after the auction because
4 there was no prejudice to Marchai, the members of which did not attend the sale or bid
5 on the Property. Further, a request to postpone a sale is distinguishable from an actual
6 offer to pay a lien. Marchai has presented no evidence that it tendered payment to
7 Alessi or the HOA, or that it even gave the parties a specific number which it believed
8 would protect its security interest in the Property. Moreover, Marchai's predecessor in
9 interest, U.S. Bank, had actual notice of the pending foreclosure proceedings. Its failure
10 to inform Marchai of the foreclosure, to timely transfer servicing information for
11 Borrower's loan is not a burden the HOA should bear. For all of these reasons, the
12 arguments set forth in Marchai's opposition are without merit and summary judgment
13 should be entered in the HOA's favor accordingly.

14 **II. LEGAL ARGUMENT**

15 **A. Marchai Has Presented No Admissible Evidence that Section 116.3116** 16 **Modified a Homeowner's Obligation to Pay All Delinquent Assessments.**

17 In Nevada, homeowners who live in common interest communities are required
18 to pay assessments according to the terms and conditions of their development's
19 CC&Rs. See Nev. Rev. Stat. § 116.31095; see also Nev. Rev. Stat. § 116.3116(5)
20 ("Recording of the declaration constitutes record notice and perfection of the lien. No
21 further recordation of any claim of lien for assessment under this section is required.") If
22 a homeowner fails to pay assessments when they are due, the HOA has a statutory
23 right to initiate foreclosure proceedings against her property. *Id.*; see also Nev. Rev
24 Stat. 116.3116(1); see also SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 410
25 (2014).

26 ///

27 ///

28 ///

1 When the property in question is unencumbered by any other lien, the HOA is
2 entitled to recover “**any** assessment levied against that unit...” Nev. Rev. Stat. §
3 116.3116(1) (emphasis added). When there are additional liens recorded against the
4 property, the HOA must look to section 116.3116(2) for guidance on the priority of its
5 assessment lien. At the time of the foreclosure sale in question, this section provided
6 that the HOA’s lien was prior to a mortgagee’s first recorded deed of trust “to the extent
7 of any charges incurred by the association on a unit ... which would have become due
8 in the absence of acceleration during the 9 months immediately preceding institution of
9 an action to enforce the lien.” Nev. Rev. Stat. § 116.3116(2).

10 Contrary to Marchai’s representations, no part of section 116.3116(2) modifies a
11 homeowner’s statutory and contractual obligation to pay all of her delinquent
12 assessments in order to bring her account current and to stop a foreclosure sale. The
13 section merely provides guidance to *lienholders* on the priority of their security interest
14 in relation to the HOA’s delinquent assessment lien. The Nevada Supreme Court
15 impliedly recognized this distinction in SFR. See SFR, 334 P.3d at 411, 422 (“As to first
16 deeds of trust, NRS 116.3116(2) thus splits an HOA lien into two pieces, a superpriority
17 piece and a subpriority piece”).

18 To interpret section 116.3116(2) in any other way leads only to absurd results.
19 “An HOA’s sources of revenues are usually limited to common assessments.” Id. at
20 413-14 (internal quotations omitted). “This makes an HOA’s ability to foreclose on
21 unpaid dues portions of its lien essential for common-interest communities.” Id. If
22 homeowners default on their assessments for months or years on end, and are then
23 permitted to “satisfy” the HOA’s lien at the eleventh hour by paying a mere nine months
24 of assessments, HOAs would be unable to cover their expenses and would be forced to
25 reduce their services or increase the assessments on other properties. This was not the
26 intention of section 116.3116(2), which sought only to “give[] an HOA a true
27 superpriority lien, proper foreclosure of which will extinguish a first deed of trust.” Id. at
28 419.

1 **B. Marchai Has Presented No Admissible Evidence Indicating that**
2 **Borrower “Intended” Her Payments to Satisfy the Superpriority Portion**
3 **of the HOA’s Lien.**

4 Borrower’s purported “intent” in making payments to the HOA is irrelevant. Her
5 obligation to pay assessments and the HOA’s right to foreclose on her Property when
6 she didn’t exist independently of any personal belief as to whether she could pay the
7 superpriority portion of the HOA’s lien. Even if, *arguendo*, this Court were to consider
8 admissible evidence of Borrower’s intent, there are no documents indicating that
9 Borrower had any knowledge of superpriority liens, or that she intended to make nine
10 distinct payments to satisfy the same. See Ex. 1, see also MSJ, Ex. 13. In fact,
11 Borrower and her husband entered into multiple *twelve* month payment plans. MSJ, Ex.
12 7. At one point, Borrower’s husband even offered to pay all of the HOA’s fees from a
13 pending settlement, see MSJ, Ex. 13, and in her last letter to Alessi in October 2012,
14 Borrower asks to make “\$300.00 per month payments” and promises “to continue the
15 first of every month **continuously**.” MSJ, Ex. 13 and 16. Neither Borrower’s actions nor
16 her verbal communications indicate Borrower intended to satisfy her debt by paying
17 nine months of assessments according to section 116.3116(2).

18 **C. Marchai Has Presented No Admissible Evidence to Challenge the**
19 **Commercial Reasonableness of the Foreclosure Sale.**

20 There is no commercial reasonableness requirement in a foreclosure sale
21 conducted under NRS Chapter 116, however, a sale may be set aside on equitable
22 grounds when (1) the property sold for an inadequate price; and (2) there is a showing
23 of fraud, unfairness, or oppression. See Shadow Wood HOA v. N.Y. Cmty. Bancorp.,
24 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1111-12 (2016). Marchai contends that the
25 foreclosure proceedings in this case meet these requirements. Specifically, it argues
26 that the Property sold for a grossly inadequate price, that Marchai lacked notice of the
27 sale, that the HOA refused to postpone the sale, that the HOA did not sell the Property
28 in accordance with the statute because it allowed SFR to issue a cashier’s check the
 day after the auction, and that Alessi recorded multiple notices without rescinding prior

1 notices, "which causes confusion in the record." The HOA will address each of these
2 arguments in turn.

3 **i. Inadequate Sales Price**

4 "Commercial reasonableness [] must be assessed as of the time the sale
5 occurred." Bourne Valley Court Trust v. Wells Fargo Bank, N.A., 80 F.Supp. 3d 1131,
6 1136 (D. Nev. 2015), rev'd on other grounds by Bourne Valley Court Trust v. Wells
7 Fargo Bank, NA, 832 F.3d 1154 (9th Cir. 2016). In 2013, buying a property from an
8 HOA at a non-judicial foreclosure sale "was a risky investment, akin to purchasing a
9 lawsuit." Id. "This risk [was] illustrated by the fact that title insurance companies refused
10 to issue title insurance policies on titles received from foreclosures of HOA super priority
11 liens absent a court order quieting title." Id. Against this background, "a large
12 discrepancy between the purchase price ... and the assessed value of the property is to
13 be expected." Id. The sale of Borrower's property was no exception.

14 **ii. Marchai's Lack of Notice**

15 Marchai's statement that it lacked notice of the sale is simply not true. Marchai
16 knew the sale was scheduled for August 28, 2013, as evidenced by the fact that its
17 servicer contacted Alessi and requested that the sale be postponed. See MSJ, Ex. 18.
18 With regards to service of a copy of the July 31, 2013 notice of sale, neither the HOA
19 nor its agent could have known Marchai held a beneficial interest in the Property
20 because the Assignment of Deed of Trust was not recorded until August 12, 2013. See
21 Assignment, attached hereto as **Exhibit 1**. Without any publicly available information
22 indicating otherwise, Alessi properly served numerous foreclosure notices on Marchai's
23 predecessor in interest, U.S. Bank. See MSJ, Ex. 9, 12, and 15.

24 **iii. Postponement of the Sale**

25 The mere fact that the HOA declined to postpone the foreclosure sale is
26 insufficient to support Marchai's claim of unfairness and oppression. Foreclosure
27 proceedings had been ongoing for nearly five years. During that time period, multiple
28 notices had been sent to Marchai's predecessors in interest, but none of them

1 contacted Alessi or made any attempt to pay off the lien. Further, a request to postpone
2 a sale is a far cry from a legally adequate tender. At most, Marchai's loan servicer
3 indicated a willingness to pay, but this alone was insufficient to stop the sale. See
4 Washington Natl. Ins. Co. v. Sherwood Associates, 795 P.2d 665, 670 (Utah. Ct. App.
5 1990) ("Informing an obligee that you are ready and willing to perform a contract is
6 insufficient.") In the absence of any actual offer to pay, the HOA was reasonably
7 justified in proceeding with the sale.

8 **iv. Recording and Rescission of Notices**

9 First and foremost, Alessi was not required to record its notices of delinquent
10 assessment lien because the statute only required that the notice be mailed to the unit
11 owner. See Nev. Rev. Stat. § 116.31162(1)(a). Thus, the fact that Alessi did record such
12 notices and subsequently failed to rescind them is irrelevant. Second, NRS 116 does
13 not require an HOA to rescind its prior notices. Although it may have been best practice
14 to do so, any confusion caused in the record does not amount to fraud, unfairness, or
15 oppression sufficient to set aside the sale, particularly in light of the fact that neither
16 Marchai nor its predecessors attempted to pay any portion of the lien (which is arguably
17 the only circumstance in which the number of notices or the total amount due would
18 have been in dispute). Third, although the entire lien may not have been prior to
19 Marchai's deed of trust under section 116.3116(2), the entire lien was due and owing by
20 Borrower. Therefore, the fact that the February 28, 2012 notice of default and election to
21 sell describes the deficiency as "a default ... of homeowners assessments due from
22 January 1, 2008", see MSJ Ex. 11, is an appropriate description of the deficiency in
23 payment and has no bearing on the parties' current dispute.

24 **v. All Other Purported Defects**

25 In addition to the issues discussed above, Marchai argues that Alessi failed to
26 mail the notice of lien to Borrower at her known address, failed to mail a notice of the
27 default and election to sell to CMG Mortgage, Inc. ("CMG"), failed to mail certain notices
28 by certified mail, and allowed SFR to issue a cashier's check the day after the sale.

1 Marchai concedes that this Court previously concluded that these defects, in and of
2 themselves, do not rise to the level of rendering the sale void. See Opp., p. 25:18-19.
3 To the extent the Court considers these allegations in weighing whether the sale was
4 commercially reasonable, the HOA responds as follows.

5 These issues do not create a genuine issue of material fact for trial. Alessi's
6 alleged failure to serve Borrower at her address has no effect on Marchai or its
7 predecessors, neither of whom receive copies of the notice of delinquent assessment
8 lien in the first place. Regardless of where the notice was mailed, Borrower had actual
9 notice of foreclosure proceedings as evidenced by her multiple payment plans and other
10 communications with Alessi. MSJ, Ex. 7, 13, 9, and 16.

11 Marchai's predecessor, CMG, also received multiple notices of the pending sale.
12 Alessi served CMG with copies of the May 8, 2011 notice of sale. See MSJ, Ex. 9.
13 Although there is no certified mailing receipt, its records indicate that CMG also
14 received a certified copy of the February 28, 2012 notice of default and election to sell.
15 Id., Ex. 12. Marchai has not produced evidence to the contrary. Additionally, Alessi
16 served CMG with copies of the October 31, 2012 notice of sale. Id., Ex. 15.

17 Finally, Marchai has failed to show how it is prejudiced by the possibility that SFR
18 issued a check for the Property the day after the sale. The HOA acknowledges that the
19 statute calls for the Property to be sold to the highest cash bidder, however, Marchai
20 was not a bidder at the sale, nor did it tender payment of the lien to the HOA before the
21 sale. Thus, it is unclear how a short delay in actual payment prejudiced Marchai or
22 otherwise rises to the level necessary to set aside the sale.

23 ///

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Lipson, Neilson, Cole, Seltzer & Garin, P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 – fax (702) 382-1512

1 **III. CONCLUSION**

2 Based on the foregoing arguments, the HOA respectfully requests that summary
3 judgment be entered in its favor on all claims for relief set forth in Marchai's complaint.

4 DATED this 21st day of August, 2017.

5 LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

6 */s/ Megan H. Hummel*
7 By: _____
8 KALEB D. ANDERSON, ESQ.
9 Nevada Bar No. 7582
10 MEGAN H. HUMMEL ESQ.
11 Nevada Bar No. 12404
12 9900 Covington Cross Drive, Suite 120
13 Las Vegas, Nevada 89144
14
15 Attorneys for Defendant
16 Wyeth Ranch Community Association
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CERTIFICATE OF SERVICE

I certify that on the 21st day of August, 2017, I electronically transmitted the foregoing **DEFENDANT WYETH RANCH COMMUNITY ASSOCIATION'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** to the Clerk's Office using the Odyssey eFileNV & Serve system for filing and transmittal to the following Odyssey eFileNV & Serve registrants addressed to:

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LLC*

/s/ Brenda Correa

An employee of
LIPSON, NEILSON, COLE, SELZTER & GARIN, P.C.

EXHIBIT 1

EXHIBIT 1

Inst #: 201308120002562

Fees: \$18.00

N/C Fee: \$25.00

08/12/2013 02:42:09 PM

Receipt #: 1729913

Requestor:

LSI TITLE AGENCY INC.

Recorded By: CDE Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

RECORDING REQUESTED BY AND WHEN
RECORDED MAIL TO:

Peak Loan Servicing
5900 Canoga Ave Suite 200
Woodland Hills CA 91367

Parcel ID#: 125-15-811-013

Ln# 7000035044/PEREZ

SPACE ABOVE THIS LINE FOR RECORDER'S USE

130170768

Assignment of Deed of Trust

Date of Assignment: 8/12/13

"This instrument is being recorded as an
ACCOMMODATION ONLY, with no
Representation as to its effect upon title"

Assignor: : U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR STANWICH MORTGAGE LOAN
TRUST, SERIES 2012-6

Assignee : MARCHAI B.T.

Executed By: CRISTELA PEREZ, A MARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY To
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR CMG MORTGAGE,
INC. and FIDELITY NATIONAL TITLE AGENCY OF NEVADA, as Trustee, Date of Deed of Trust:
10/19/2005 Recorded: 11/09/2005 in Book/Reel/Liber: — Page: —as Instrument/CFN No.: 20051109-0001385 in
Official Records of the CLARK County, State of NEVADA

Property Address: 7119 WOLF RIVERS AVENUE, LAS VEGAS, NEVADA 89131

Parcel ID #: 125-15-811-013

Legal:

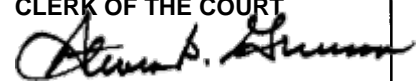
LOT 13 IN BLOCK A OF WYETH RANCH-UNIT 2, AS SHOWN BY MAP THEREOF ON FILE IN BOOK
112 OF PLATS, PAGE 8 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.
A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, USE AND ENJOYMENT OF THE COMMON
LOTS AS SHOWN ON THE ABOVE MAP AND AS SET FORTH IN THE DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED OCTOBER 4, 2002 IN BOOK 20021004 AS
THE SAME MAY BE AMENDED FROM TIME TO TIME.

KNOW ALL MEN BY THESE PRESENTS that in consideration of the sum of TEN and NO/100ths DOLLARS and
other good and valuable consideration, paid to the above named assignor, the receipt and sufficiency of which is hereby
acknowledged, said Assignor here by assigns unto the above-named Assignee, the said Deed of Trust, secured thereby,
which all moneys now owning or that may hereafter become due or owing in respect thereof, and the full benefit of all
the powers and of all the covenants and provisos therein contained, and the said Assignor hereby Grants and conveys
unto the said Assignee, the Assignor's beneficial interest under the Deed of Trust.

MBT0037

JA_1482

TAB 38



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

<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

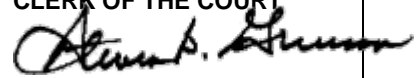
The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A689461 DOES NOT contain the social security number of any person.

/s/ Linda Marie Bell
District Court Judge

Date

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

TAB 39



NOED
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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

v.

CRISTELA PEREZ, an individual; *et al.*

Defendants.

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

Consolidated with: A-16-742327-C


AND ALL RELATED CLAIMS AND
ACTIONS

Notice of Entry of Decision and Order

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

Dated this 4th day of October 2017.

David J. Merrill, P.C.

By: 
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CERTIFICATE OF SERVICE

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

Kim Gilbert Ebron

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

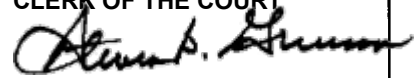
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An employee of David J. Merrill, P.C.



1
2 DAO

3 EIGHTH JUDICIAL DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 MARCHAI B.T.,

7 Plaintiff,

8 vs.

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

11 Defendants.

Case No. A-13-689461-C

Dep't No. VII

12 And all related actions.
13

14 **DECISION AND ORDER**

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

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

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

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I. Factual Background

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

A. First Notice of Delinquent Assessment Lien

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

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

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

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

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

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

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

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

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

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

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

7 **II. Procedural History**

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

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

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

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

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

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

13 III. Discussion

14 A. Motions for Summary Judgment

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

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

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

14 **1. Previously Addressed Issues**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 **a. Tender**

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

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

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

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

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

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

27 ///

1 **IV. Conclusion**

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

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

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

CERTIFICATE OF SERVICE

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

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


TINA HURD
JUDICIAL EXECUTIVE ASSISTANT, DEPARTMENT VII

AFFIRMATION

Pursuant to NRS 239B.030

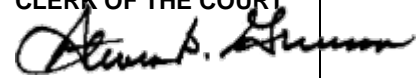
The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A689461 DOES NOT contain the social security number of any person.

/s/ Linda Marie Bell
District Court Judge

Date

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

TAB 40



MEMC
David J. Merrill
Nevada Bar No. 6060
David J. Merrill, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 566-1935
Facsimile: (702) 993-8841
E-mail: david@djmerrillpc.com
Attorney for Marchai, B.T.

DISTRICT COURT
CLARK COUNTY, NEVADA

MARCHAI, B.T., a Nevada business trust,	}	Case No.: A-13-689461-C
Plaintiff,		Dept. No. VII
v.		Consolidated with: A-16-742327-C
CRISTELA PEREZ, an individual; <i>et al.</i>	}	
Defendants.		
<hr/>		
AND ALL RELATED CLAIMS AND ACTIONS		

Memorandum of Costs and Disbursements

Filing Fees	\$918.60
Photocopies	\$174.59
Delivery Services/Service of Process	\$574.80
Postage.....	\$12.51
Travel.....	\$72.35
Expert Witnesses	\$750.00
Arbitrator.....	\$250.00
TOTAL	\$2,752.85

David J. Merrill, declares: that declarant is an attorney employed by David J. Merrill, P.C., counsel of record for Marchai, B.T., and has personal knowledge of the




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

1 above costs and disbursements expended; that the items contained in the above
2 memorandum are true and correct to the best of this declarant's knowledge and
3 belief; and that the said disbursements have been necessarily incurred and paid in
4 this action. A true and correct copy of a detailed spreadsheet with all of the
5 expenses, plus all third-party receipts related to the above expenses is attached
6 hereto.

7 I declare under penalty of perjury under the law of the State of Nevada that
8 the foregoing is true and correct.

9 Dated this 10th day of October 2017.

10 David J. Merrill, P.C.

11
12 By: 
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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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of October 2017, a copy of the foregoing Memorandum of Costs and Disbursements was served electronically to the following through the Court's electronic service system:

Kim Gilbert Ebron

Diana Cline Ebron	diana@kgelegal.com
E-Service for Kim Gilbert Ebron	eservice@hkimlaw.com
Michael L. Sturm	mike@kgelegal.com
Tomas Valerio	staff@kgelegal.com

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

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Renee Rittenhouse	rrittenhouse@lipsonneilson.com
Susana Nutt	snutt@lipsonneilson.com


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

Date	Note	Expense Code	Price
10/3/16	Photocopy of complaint for service upon the Attorney General.	E101 Copying	\$1.50
2/24/16	Clark County Recorder charge for obtaining copy of the CC&R's.	E101 Copying	\$56.33
2/8/16	Copy of CC&R's from the Clark County Recorder.	E101 Copying	\$37.97
1/15/16	Photocopies of the motion for summary judgment and appendix of exhibits.	E101 Copying	\$70.40
1/11/16	Clark County Recorder charge for obtaining copies of documents.	E102 Outside printing	\$8.39
		Photocopies Total	\$174.59
9/26/16	Legal Wings Invoice No. 5661935-504547 for pick up of order from Kim Gilbert Ebron.	E107 Delivery services/messengers	\$32.00
9/20/16	Legal Process Service Invoice No. 1606734 for service of ADR Claim upon SFR Investments Pool 1, LLC.	E107 Delivery services/messengers	\$77.25
9/19/16	Legal Process Service Invoice No. 1606736 for service of ADR claim upon Alessi & Koenig, LLC.	E107 Delivery services/messengers	\$75.00
9/19/16	Invoice No. 1606735 from Legal Process Service for service of ADR claim upon Wyeth Ranch Community Association.	E107 Delivery services/messengers	\$75.00
9/13/16	Invoice No. 1606573 from Legal Process Service for service of process upon Wyeth Ranch Community Association.	E107 Delivery services/messengers	\$77.85
9/13/16	Invoice No. 1606572 from Legal Process Service for service of process upon Alessi & Koenig, LLC.	E107 Delivery services/messengers	\$77.85
9/13/16	Invoice No. 1606571 from Legal Process Service for service of the summons and complaint upon SFR Investments Pool 1, LLC.	E107 Delivery services/messengers	\$77.85
8/19/16	Legal Wings Invoice No. 5661935-501186 for Hand delivery of Motion on Shortened Time	E107 Delivery services/messengers	\$82.00
		Delivery/Service of Process Total	\$574.80
10/3/16	Postage for service of complaint upon the Attorney General.	E108 Postage	\$1.36
1/20/16	Postage for mailing of summary judgment brief to the Attorney General.	E108 Postage	\$11.15

		Postage Total	\$12.51
8/29/17	Lewis Center Garage parking for calendar call.	E109 Local travel	\$12.00
8/22/17	Park Mobile parking for hearing.	E109 Local travel	\$5.35
6/22/17	Lewis Center Garage charge for parking for status conference.	E109 Local travel	\$9.00
1/3/17	Parking at the Lewis Center Garage for hearing on the motions to dismiss.	E109 Local travel	\$6.00
12/6/16	Lewis Center Garage fee for parking for hearing on continued motion to dismiss.	E109 Local travel	\$12.00
12/1/16	Lewis Center Garage fee for parking at courthouse for status check.	E109 Local travel	\$6.00
8/25/16	Lewis Center Garage parking for hearing on motion to amend.	E109 Local travel	\$10.00
2/16/16	Parking for hearing on the motions for summary judgment.	E109 Local travel	\$12.00
		Travel Total	\$72.35
10/4/17	Filing fee for Notice of Entry of Decision and Order.	E112 Court fees	\$3.50
8/14/17	Filing fee for opposition to motion for summary judgment.	E112 Court fees	\$3.50
7/21/17	Filing fee for motion in limine.	E112 Court fees	\$3.50
5/16/17	Filing fee for filing the Supplemental Joint Case Conference Report.	E112 Court fees	\$3.50
1/25/17	Filing fee for the Notice of Entry of Order.	E112 Court fees	\$3.50
1/24/17	Filing fee for the Order Denying, in Part, and Granting, in Part, Defendant Wyeth Ranch Community Association's Motion to Dismiss.	E112 Court fees	\$3.50
1/18/17	Filing fee for filing the Notice of Entry of Order.	E112 Court fees	\$3.50
1/17/17	Order Denying SFR Investments Pool 1, LLC's Motion to Dismiss with Prejudice Plaintiffs Complaint Pursuant to NRCP 12(b)(1) and EDCR 7.10(b) and Motion to Strike Pleading Pursuant to NRCP 12(f) and Wyeth Ranch Community Association's Joinder Thereto.	E112 Court fees	\$3.50
12/13/16	Filing fee for filing the Notice of Entry of Order in Marchai, B.T. v. SFR Investments Pool 1, LLC.	E112 Court fees	\$3.50

12/13/16	Filing fee for filing the Notice of Entry of Order in Marchai, B.T. v. Perez.	E112 Court fees	\$3.50
12/13/16	Filing fee for filing the Order Lifting Stay and Consolidating Cases.	E112 Court fees	\$3.50
11/10/16	Filing fee for filing the Opposition to Defendant Wyeth Ranch Community Association's Motion to Dismiss.	E112 Court fees	\$3.50
11/9/16	Filing fee for filing the Opposition 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).	E112 Court fees	\$3.50
10/3/16	Filing fee for filing the Certificate of Service upon the Attorney General.	E112 Court fees	\$3.50
10/3/16	Filing fee for filing the Notice of Entry of Order.	E112 Court fees	\$3.50
9/30/16	Fee for filing Order Denying Motion.	E112 Court fees	\$3.50
9/14/16	Filing fee for filing the Affidavit of Service for Alessi & Koenig, LLC.	E112 Court fees	\$3.50
9/14/16	Filing fee for filing the Affidavit of Service for Wyeth Ranch Community Association.	E112 Court fees	\$3.50
9/14/16	Filing fee for filing the Affidavit of Service for SFR Investments Pool 1, LLC.	E112 Court fees	\$3.50
8/25/16	Filing fee for filing the Initial Appearance Fee Disclosure.	E112 Court fees	\$3.50
8/25/16	Filing fee for filing the complaint.	E112 Court fees	\$281.60
8/19/16	Filing fee for filing the Certificate of Service.	E112 Court fees	\$3.50
8/18/16	Filing fee for filing the Motion, On Shortened Time, for Leave to File an Amended Complaint.	E112 Court fees	\$3.50
2/16/16	Filing fee for e-filing the opposition to the counter motions.	E112 Court fees	\$3.50
2/8/16	Filing fee for filing the reply in support of the motion for summary judgment.	E112 Court fees	\$3.50
2/4/16	Filing fee for filing the opposition to the motion for summary judgment.	E112 Court fees	\$3.50
1/15/16	Filing fee for the Appendix of Exhibits to Marchai, B.T.'s Motion for Summary Judgment.	E112 Court fees	\$3.50

1/15/16	Filing fee for Marchai, B.T.'s Motion for Summary Judgment.	E112 Court fees	\$209.50
1/4/16	Filing fee for e-filing the Notice of Entry of Order.	E112 Court fees	\$3.50
1/4/16	Filing fee for e-filing the Stipulation and Order to Extend Dispositive Motion Deadline.	E112 Court fees	\$3.50
12/2/15	Substitution of Attorney	E112 Court fees	\$3.50
10/9/15	Subpoena Duces Tecum	E112 Court fees	\$3.50
10/9/15	Subpoena Duces Tecum	E112 Court fees	\$3.50
4/22/14	Default	E112 Court fees	\$3.50
3/11/14	Return of Service	E112 Court fees	\$3.50
2/14/14	Notice of Entry of Order to Extend Time to Serve Summons and Complaint	E112 Court fees	\$3.50
2/13/14	Order to Extend Time to Serve Summons and Complaint	E112 Court fees	\$3.50
1/28/14	Application for an Order to Extend Time to Serve Summons and Complaint	E112 Court fees	\$3.50
1/28/14	Affidavit of Benjamin D. Petiprin in Support of Application for an Order to Extend Time to Serve Summons and Complaint	E112 Court fees	\$3.50
12/13/13	Default	E112 Court fees	\$3.50
12/3/13	Answer to Counterclaim	E112 Court fees	\$3.50
11/13/13	Notice of Lis Pendens	E112 Court fees	\$3.50
11/7/13	Affidavit of Service	E112 Court fees	\$3.50
11/1/13	Return of Service	E112 Court fees	\$3.50
10/25/13	Summons	E112 Court fees	\$3.50
10/25/13	Return of Non-Service	E112 Court fees	\$3.50
10/3/13	Notice of Pendency of Action	E112 Court fees	\$3.50
9/30/13	Complaint for Judicial Foreclosure of Deed of Trust	E112 Court fees	\$270.00
		Filing Fees Total	\$918.60
4/14/17	R. Scott Dugan Appraisal Co., Inc. Invoice for expert report.	E119 Experts	\$750.00
		Experts Total	\$750.00

5/19/17	Invoice from McCullough, Dobberstein & Evans, Ltd. for mediation.	E121 Arbitrators/mediators	\$250.00
		Arbitrator Total	\$250.00
		TOTAL	

[Shopping Cart](#)[Customer Information](#)[Payment Information](#)[Complete](#)**Receipt | ORDER #2952807**

2/24/2016 3:40 PM

Contact Information

DAVID MERRILL
10161 PARK RUN DRIVE SUITE 150
LAS VEGAS, NV 89145
US

7025661935
DAVID@DJMERRILLPC.COM

	Instrument #	Document Type	Qty	Cost
	200210040001353	RESTR	1	\$54.00
	Total			\$56.33

Please take a second to print out your receipt as it has important information regarding your order. Your order will be mailed to you and you should receive it within 7 to 10 business days. (International orders may take up to 6 weeks for standard mail delivery) If you have any questions please contact us by calling 702-455-4336.

[Print your Receipt](#)

[Shopping Cart](#)[Customer Information](#)[Payment Information](#)[Complete](#)**Receipt | ORDER #2937889**

2/8/2016 4:57 PM

Contact Information

DAVID MERRILL
10161 PARK RUN DRIVE SUITE 150
LAS VEGAS, NV 89145
US

7025661935
DAVID@DJMERRILLPC.COM

	Instrument #	Document Type	Qty	Cost
	200209120001611	RESTR	1	\$36.00
	Total			\$37.97

Please take a second to print out your receipt as it has important information regarding your order. Your order will be mailed to you and you should receive it within 7 to 10 business days. (International orders may take up to 6 weeks for standard mail delivery) If you have any questions please contact us by calling 702-455-4336.

[Print your Receipt](#)

[Shopping Cart](#)[Customer Information](#)[Payment Information](#)[Complete](#)**Receipt | ORDER #2912346**

1/11/2016 6:01 PM

Contact Information

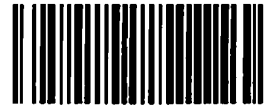
DAVID MERRILL
10161 PARK RUN DRIVE SUITE 150
LAS VEGAS, NV 89145
US

7025661935
DAVID@DJMERRILLPC.COM

	Instrument #	Document Type	Qty	Cost
	200511210000823	SUBREC	1	\$2.00
	200511210002540	SUBREC	1	\$2.00
	200810080003311	L	1	\$1.00
	201103090001741	NTS	1	\$1.00
	201103290002937	NTS	1	\$1.00
			Total	\$8.39

Please take a second to print out your receipt as it has important information regarding your order. Your order will be mailed to you and you should receive it within 7 to 10 business days. (International orders may take up to 6 weeks for standard mail delivery) If you have any questions please contact us by calling 702-455-4336.

[Print your Receipt](#)



5045477

Route #: 205

MERRILL, P.C.
10161 PARK RUN Dr. * Ste. #150
LAS VEGAS NV 89145

Monday September 26, 2016	INVOICE	5661935.504547
---------------------------	----------------	----------------

Work Order #: 01672212
Attorney File #: **MARCHAI, B.T. vs. PEREZ**
Client Matter #: None Given
Case #: A-13-689461-C
Court: DISTRICT COURT CLARK COUNTY, NEVADA
Title: B.T. MARCHAI vs. PEREZ
Description: ORDER DENYING MOTION

Date	Description	Amount
------	-------------	--------

09/22/16 Miscellaneous Job: RUNNER

09/22/16 AREA "D" . 32.00

PICK UP FROM:
KIM GILBERT EBRON, 7625 DEAN MARTIN Dr., Ste. #110
RETURN WHEN COMPLETE

TOTAL: 32.00

1118 FREMONT STREET Las Vegas, NV 89101
Telephone: (702) 384-0305 , FAX: (702) 384-8638 Tax ID: 880223382

JA_1529



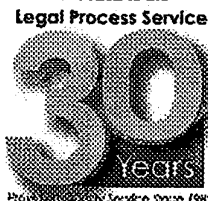
Legal Process Service

Professional Service Since 1982
724 S. Eighth Street, Las Vegas, Nevada 89101-7005

Telephone (702) 471-7255 Fax (702) 471-7248

Tax ID - 88-0293775 State Lic. #604

www.LPSNV.com contact@LPSNV.com



Invoice # **1606734**

Invoice Date: 09/20/2016

Insured: **Marchai, B.T.**

Attention: **DAVID J. MERRILL, ESQ**

David J. Merrill, P.C.
David J. Merrill, Esq
Attention: David J. Merrill, Esq
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145

Service was accepted by Ashley Bougherbi at
Paracorp Incorporated, 318 N. Carson St. Ste. 208,
Carson City, NV 89701. Thank you! Monica
9/19/2016

THANK YOU FOR CHOOSING LPS!

Claimant(s)	<i>Marchai, B.T.</i>	Court: Nevada Real Estate
	vs	
Respondent(s)	<i>Wyeth Ranch Community Association; et al</i>	County: Clark County
Re:	SFR Investments Pool 1, LLC	Case No.: 17-99
Documents Served or Service Provided	<u>Notification to Respondent; Alternative Dispute Resolution (ADR) Claim Form;</u> <u>Alternative Dispute Resolution (ADR) Process Overview; Alternative Dispute Resolution</u> <u>(ADR) Additional Respondent Form; Alternative Dispute Resolution (ADR) Subsidy</u> <u>Application for Mediation {Blank}; Alternative Dispute Resolution (ADR) Respondent</u> <u>Form {Blank}</u>	Dent. No.: Your File Hearing Date Date Served: 09/19/2016 Time Served: 12:45PM

Date	ServiceDescription	Service Fee	Date Paid	Check# / Auth #	Fee Paid
09/19/16	Served Res. Agent c/o Ashley Bougherbi @ 318 N. Carson St. Ste. 208, Carson City	\$75.00			
09/19/16	15 Pages @ \$.15/Page	\$2.25			
		Sub-Totals:		Total Paid:	
		\$77.25			
Terms: Payment is due in full upon receipt; and is not contingent upon client or insurance reimbursement. A past due fee of 15% will be assessed on all outstanding invoices of 30 days or more from the invoice date.					
Total Amount Due =					\$77.25

Please detach and return this section with your payment. Make checks payable to Legal Process Service

David J. Merrill, P.C.
David J. Merrill, Esq
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145

We appreciate your business! Thank You!

Remit Payment to:

Legal Process Service
724 South 8th Street
Las Vegas, NV 89101

Work Order # 1606734

Invoice Date: 09/20/2016

Client ID# A7060

Total Amount Due = \$77.25



Legal Process Service

Professional Service Since 1982

724 S. Eighth Street, Las Vegas, Nevada 89101-7005

Telephone (702) 471-7255 Fax (702) 471-7248

Tax ID - 88-0293775 State Lic. #604

www.LPSNV.com contact@LPSNV.com



Invoice # **1606735**

Invoice Date: 09/19/2016

Insured:

Marchai, B.T.

Attention:

DAVID J. MERRILL, ESQ

David J. Merrill, P.C.

David J. Merrill, Esq

Attention: David J. Merrill, Esq

10161 Park Run Drive, Suite 150

Las Vegas, NV 89145

Service accepted by Dawn Alexander at R/A Complete Association Management Company, LLC, 5980 South Durango Drive, Suite 131 Las Vegas NV 89113. Thank You, Clarice Sizoo 9/14/16

THANK YOU FOR CHOOSING LPS!

Claimant(s)	Marchai, B.T. vs	Court: Nevada Real Estate
Respondent(s)	Wyeth Ranch Community Association; et al	County: Clark County
Re:	Wyeth Ranch Community Association-	Case No.: 17-99
Documents Served or Service Provided	Notification to Respondent: Alternative Dispute Resolution (ADR) Claim Form; Alternative Dispute Resolution (ADR) Process Overview; Alternative Dispute Resolution (ADR) Additional Respondent Form; Alternative Dispute Resolution (ADR) Subsidy Application for Mediation[Blank]; Alternative Dispute Resolution (ADR) Respondent Form [Blank]	Dent. No.: Your File Hearing Date Date Served: 09/14/2016 Time Served: 1:58 PM

Date	ServiceDescription	Service Fee	Date Paid	Check# / Auth #	Fee Paid
09/14/16	Served Res. Agent c/o 5980 South Durango Drive, Suite 131 Las Vegas NV 89113	\$75.00			
					</

Please detach and return this section with your payment. Make checks payable to Legal Process Service

David J. Merrill, P.C.

David J. Merrill, Esq

10161 Park Run Drive, Suite 150

Las Vegas, NV 89145

We appreciate your business! Thank You!

Remit Payment to:

Legal Process Service

724 South 8th Street

Las Vegas, NV 89101

Work Order # 1606735

Invoice Date: 09/19/2016

Client ID# A7060

Total Amount Due = \$75.00

JA_1531



Legal Process Service

Professional Service Since 1982

724 S. Eighth Street, Las Vegas, Nevada 89101-7005

Telephone (702) 471-7255 Fax (702) 471-7248

Tax ID - 88-0293775 State Lic. #604

www.LPSNV.com contact@LPSNV.com



Invoice # **1606736**

Invoice Date: 09/19/2016

Insured:

Marchai, B.T.

Attention:

DAVID J. MERRILL, ESQ

David J. Merrill, P.C.

David J. Merrill, Esq

Attention: David J. Merrill, Esq

10161 Park Run Drive, Suite 150

Las Vegas, NV 89145

Service accepted by Jona Lepoma at R/A Robert A. Koenig, 9500 West Flamingo Road, Suite 101 Las Vegas NV 89147. Thank You, Clarice 9/14/16

THANK YOU FOR CHOOSING LPS!

Claimant(s)	Marchai, B.T. vs	Court: Department of
Respondent(s)	Wyeth Ranch Community Association; et al	County: State of
Re:	Alessi & Koenig, LLC	Case No.: 17-99
Documents Served or Service Provided	Notification to Respondent: Alternative Dispute Resolution (ADR) Claim Form; Alternative Dispute Resolution (ADR) Process Overview; Alternative Dispute Resolution (ADR) Additional Respondent Form; Alternative Dispute Resolution (ADR) Subsidy Application for Mediation [Blank]; Alternative Dispute Resolution (ADR) Respondent Form [Blank]	Dent. No.: Your File Hearing Date Date Served: 09/14/2016 Time Served: 2:14 PM

Date	ServiceDescription	Service Fee	Date Paid	Check# / Auth #	Fee Paid
09/14/16	Served Res. Agent c/o Jona Lepoma at 9500 West Flamingo Road, Suite 101 LV	\$75.00			

Please detach and return this section with your payment. Make checks payable to Legal Process Service

David J. Merrill, P.C.

David J. Merrill, Esq

10161 Park Run Drive, Suite 150

Las Vegas, NV 89145

We appreciate your business! Thank You!

Remit Payment to:

Legal Process Service

724 South 8th Street

Las Vegas, NV 89101

Work Order # 1606736

Invoice Date: 09/19/2016

Client ID# A7060

Total Amount Due = \$75.00

JA_1532



Legal Process Service

Professional Service Since 1982

724 S. Eighth Street, Las Vegas, Nevada 89101-7005

Telephone (702) 471-7255 Fax (702) 471-7248

Tax ID - 88-0293775 State Lic. #604

www.LPSNV.com contact@LPSNV.com



Invoice # **1606573**

Invoice Date: 09/13/2016

Insured:

Marchai, B.T.

Attention:

DAVID J. MERRILL, ESQ

David J. Merrill, P.C.

David J. Merrill, Esq

Attention: David J. Merrill, Esq

10161 Park Run Drive, Suite 150

Las Vegas, NV 89145

***Service accepted by Dawn Alexander at R/A:
Complete Association Management Company, LLC.,
5980 S. Durango Dr., Ste. 131, Las Vegas, NV
89113 . Thank You, Clarice 09/09/2016***

THANK YOU FOR CHOOSING LPS!

Plaintiff(s)	<i>Marchai, B.T., a Nevada business trust</i>	Court: <u>District Court</u>
Defendant(s)	<i>SFR Investments Pool 1, LLC, a Nevada limited liability company, et. al.</i>	County: <u>Clark County</u>
Re:	Wyeth Ranch Community Association, a Nevada non-profit corporation	Case No.: <u>A-16-742327-C</u>
Documents Served or Service Provided	<u>Summons-Civil; Complaint; Initial Appearance Fee Disclosure; District Court Civil Cover Sheet</u>	Dent. No.: <u>XXXXI</u>
		Your File _____
		Hearing Date _____
		Date Served: <u>09/09/2016</u>
		Time Served: <u>9:16 AM</u>

Date	ServiceDescription	Service Fee	Date Paid	Check# / Auth #	Fee Paid
09/09/16	Served Res. Agent c/o Dawn Alexander @ 5980 S. Durango Dr., Ste. 131, Las Vegas,	\$75.00			
09/09/16	19 Pages @ \$.15/Page	\$2.85			

Please detach and return this section with your payment. Make checks payable to Legal Process Service

David J. Merrill, P.C.

David J. Merrill, Esq

10161 Park Run Drive, Suite 150

Las Vegas, NV 89145

We appreciate your business! Thank You!

Remit Payment to:

Legal Process Service

724 South 8th Street

Las Vegas, NV 89101

Work Order # 1606573

Invoice Date: 09/13/2016

Client ID# A7060

Total Amount Due = \$77.85

JA_1533



Legal Process Service

Professional Service Since 1982

724 S. Eighth Street, Las Vegas, Nevada 89101-7005

Telephone (702) 471-7255 Fax (702) 471-7248

Tax ID - 88-0293775 State Lic. #604

www.LPSNV.com contact@LPSNV.com



Invoice # **1606572**

Invoice Date: 09/13/2016

Insured:

Marchai, B.T.

Attention:

DAVID J. MERRILL, ESQ

David J. Merrill, P.C.

David J. Merrill, Esq

Attention: David J. Merrill, Esq

10161 Park Run Drive, Suite 150

Las Vegas, NV 89145

Service accepted by Jade Lepona at R/A Robert Koenig, 9500 W. Flamingo Road, #101, Las Vegas, NV 89147. Thank You, Clarice 09/09/2016

THANK YOU FOR CHOOSING LPS!

Plaintiff(s)	<i>Marchai, B.T., a Nevada business trust</i>	Court: <u>District Court</u>
	vs	
Defendant(s)	<i>SFR Investments Pool 1, LLC, a Nevada limited liability company, et. al.</i>	County: <u>Clark County,</u>
Re:	Alessi & Koenig, LLC, a Nevada limited liability company	Case No.: <u>A-16-742327-C</u>
Documents Served or Service Provided	<u>Summons-Civil; Complaint; Initial Appearance Fee Disclosure; District Court Civil Cover Sheet</u>	Dent. No.: <u>XXXI</u>
		Your File _____
		Hearing Date _____
		Date Served: <u>09/09/2016</u>
		Time Served: <u>9:28 AM</u>

Date	ServiceDescription	Service Fee	Date Paid	Check# / Auth #	Fee Paid
09/09/16	Served Res. Agent c/o Jade Lepona at 9500 W. Flamingo Road, #101, Las Vegas, NV	\$75.00			
09/09/16	19 Pages @ \$.15/Page	\$2.85			
</					

Please detach and return this section with your payment. Make checks payable to Legal Process Service

David J. Merrill, P.C.

David J. Merrill, Esq

10161 Park Run Drive, Suite 150

Las Vegas, NV 89145

We appreciate your business! Thank You!

Remit Payment to:

Legal Process Service

724 South 8th Street

Las Vegas, NV 89101

Work Order # 1606572

Invoice Date: 09/13/2016

Client ID# A7060

Total Amount Due = \$77.85

JA_1534



Legal Process Service

Professional Service Since 1982

724 S. Eighth Street, Las Vegas, Nevada 89101-7005

Telephone (702) 471-7255 Fax (702) 471-7248

Tax ID - 88-0293775 State Lic. #604

www.LPSNV.com contact@LPSNV.com



Invoice # **1606571**

Invoice Date: 09/13/2016

Insured:

Marchai, B.T.

Attention:

DAVID J. MERRILL, ESQ

David J. Merrill, P.C.

David J. Merrill, Esq

Attention: David J. Merrill, Esq

10161 Park Run Drive, Suite 150

Las Vegas, NV 89145

****Thank you for choosing LPS. Attached for your files are the Affidavit and invoice for the above referenced service request. Please note that hard copies of the same will not follow unless requested. We ask that you please remit payment from the**

THANK YOU FOR CHOOSING LPS!

Plaintiff(s)	<i>Marchai, B.T., a Nevada business trust</i>	Court: <u>District Court</u>
Defendant(s)	<i>SFR Investments Pool 1, a Nevada limited liability company; et al</i>	County: <u>Clark County,</u>
Re:	SFR Investments Pool 1, a Nevada limited liability company	Case No.: <u>A-16-742327-C</u>
Documents Served or Service Provided	<u>Summons - Civil; Complaint; Initial Appearance Fee Disclosure; District Court Civil Cover Sheet</u>	Dent. No.: <u>XXXI</u>
		Your File <u> </u>
		Hearing Date <u> </u>
		Date Served: <u>09/12/2016</u>
		Time Served: <u>3:13pm</u>

Date	ServiceDescription	Service Fee	Date Paid	Check# / Auth #	Fee Paid
09/12/16	Served Res. Agent c/o Ashley Bougherbi @ 318 N. Carson St. #208, Carson City	\$75.00			
09/12/16	19 Pages @ \$.15/Page	\$2.85			

Please detach and return this section with your payment. Make checks payable to Legal Process Service

David J. Merrill, P.C.

David J. Merrill, Esq

10161 Park Run Drive, Suite 150

Las Vegas, NV 89145

We appreciate your business! Thank You!

Remit Payment to:

Legal Process Service

724 South 8th Street

Las Vegas, NV 89101

Work Order # 1606571

Invoice Date: 09/13/2016

Client ID# A7060

Total Amount Due = \$77.85

JA_1535



501186,



Route #: 205

MERRILL, P.C.
10161 PARK RUN Dr. * Ste. #150
LAS VEGAS NV 89145

Friday August 19, 2016

INVOICE

5661935.501186

Work Order #: 01715793
Attorney File #: **MARCHAI B T BANK / PEREZ**
Client Matter #: None Given
Case #: A-13-689461-C.
Court: DISTRICT COURT CLARK COUNTY, NEVADA
Title: MARCHAI B T BANK TRUST vs. CRISTELA PEREZ, et al.
Description: MOTION on ORDER SHORTENING TIME

Date	Description	Amount
08/18/16	Miscellaneous Job: RUNNER	
08/18/16	SERVICE on AUGUST 18, 2016	25.00
08/18/16	EXPEDITED AREA "D" RETURN on 08/18/16	57.00
	PICK UP TODAY FROM DISTRICT COURT DEPARTMENT VII RETURN TODAY by 3:00 P.M.	
TOTAL:		82.00

1118 FREMONT STREET Las Vegas, NV 89101
Telephone: (702) 384-0305 , FAX: (702) 384-8638 Tax ID: 880223382

JA_1536

DP LV 13 LEWIS ST GARAGE
321 CASINO CENTER DR
LAS VEGAS, NV 89101
(702) 382-7988

SALE

MID: 5833 Store: 0001 Term: 0005

REF#: 00000051

Batch #: 141 RRN: 724117004070

08/29/17 10:29:00

Trans ID: 387241629417527

APPR CODE: 022907

VISA

Chip

*****5508

/

AMOUNT \$12.00

APPROVED

VISA DEBIT

AID: A0000000031010

TVR: 80 80 00 80 00

TSt: 68 00

CUSTOMER COPY

JA_1537



Kimberly Merrill <kimberly@djmerillpc.com>

Fwd: Parkmobile Payment Processed

1 message

David Merrill <david@djmerillpc.com>
To: Kimberly Merrill <kimberly@djmerillpc.com>

Tue, Aug 22, 2017 at 1:05 PM

Please add to Clio and Quickbooks. Thank you.

----- Forwarded message -----

From: <noreply@parkmobileglobal.com>
Date: Tue, Aug 22, 2017 at 8:39 AM
Subject: Parkmobile Payment Processed
To: david@djmerillpc.com



Parking Session Processed Successfully

Thank you for using Parkmobile. **Your parking session has been processed successfully.**

Payment Date:	08/22/2017 08:39 AM Pacific Standard Time
Auth Id:	117240398
Description:	ParkingAction
PaymentMethod:	VISA ending in 5508
Amount Paid:	\$5.35

Description	Parking in 9821 at 08/22/2017 08:39 AM
Parking Ref	114251798
End time	NA
Parking fee	\$5.00
Non parking fee	\$0.00

JA_1538

Transaction fee	\$0.35
Discounts	\$0.00
Taxes	\$0.00
Total	\$5.35

To manage your account, log in to your app or online at phonixx.parkmobile.us. For questions regarding this charge, email Member Services at helpdesk@parkmobileglobal.com.



Parkmobile, LLC • 1100 Spring Street NW, Suite 200, Atlanta, GA 30309



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<http://us.parkmobile.com/terms-use>.

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To stop receiving ALL notification emails sent by Parkmobile, [click this link](#).

--

David J. Merrill
David J. Merrill, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Office: (702) 566-1935
Mobile: (702) 577-0268
Fax: (702) 993-8841

LEWIS CENTER GARAGE
321 CASINO CENTER DR
LAS VEGAS, NV

Rcpt# 1992

06/22/17 09:48 L# 3 A# 1 Txn# 7213

06/22/17 08:36 In 06/22/17 09:48 Out

Tkt# 073714

VISA \$ 9.00-

XXXXXXXXXXXX5508

Approval No. :015053

Reference No. :0035

PLEASE CALL FOR MONTHLY RATES

DOUGLAS PARKING

(702) 382-7988

VALET SERVICES AVAILABLE

LEWIS CENTER GARAGE
321 CASINO CENTER DR
LAS VEGAS, NV

Rcpt# 1425

01/03/17 09:29 L# 3 A# 1 Txn# 5666

01/03/17 08:33 In 01/03/17 09:29 Out

Tkt# 031221

VISA \$ 6.00-

XXXXXXXXXXXX5153

Approval No. :013126

Reference No. :0018

PLEASE CALL FOR MONTHLY RATES

DOUGLAS PARKING

(702) 382-7988

VALET SERVICES AVAILABLE

LEWIS CENTER GARAGE
321 CASINO CENTER DR
LAS VEGAS, NV

Rcpt# 1116

12/06/16 10:50 L# 3 A# 1 Txn# 4428

12/06/16 08:33 In 12/06/16 10:50 Out

Tkt# 026087

VISA \$ 12.00-

XXXXXXXXXXXX5153

Approval No. :025146

Reference No. :0087

PLEASE CALL FOR MONTHLY RATES

DOUGLAS PARKING

(702) 382-7988

VALET SERVICES AVAILABLE

LEWIS CENTER GARAGE
321 CASINO CENTER DR
LAS VEGAS, NV

Rcpt# 1049

12/01/16 09:48 L# 3 A# 1 Txn# 4179

12/01/16 08:49 In 12/01/16 09:48 Out

Tkt# 025023

VISA \$ 6.00-

XXXXXXXXXXXX5153

Approval No.:014946

Reference No.:0036

PLEASE CALL FOR MONTHLY RATES

DOUGLAS PARKING

(702) 382-7988

VALET SERVICES AVAILABLE

LEWIS CENTER GARAGE
321 CASINO CENTER DR
LAS VEGAS, NV

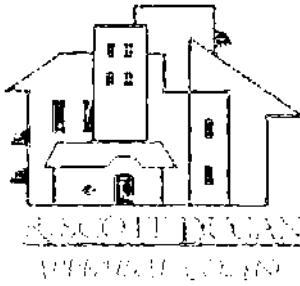
Rcpt# 5737
08/25/16 10:10 L# 4 AH 3 Txn# 11473
08/25/16 08:17 In 08/25/16 10:10 Out
Tkt# 000857
VISA \$ 10.00-
XXXXXXXXXXXX5153
Approval No.:500964
Reference No.:0038
PLEASE CALL FOR MONTHLY RATES
DOUGLAS PARKING
(702) 382-7988

VALET SERVICES AVAILABLE

LEWIS CENTER GARAGE
321 CASINO CENTER DR
LAS VEGAS, NV

Rcpt# 10792
02/16/16 10:44 L# 4 AM 4 Txn# 19525
02/16/16 08:40 In 02/16/16 10:44 Out
Tkt# 597486
VISA \$ 12.00-
XXXXXXXXXXXX2696
Approval No.:096437
Reference No.:0090
PLEASE CALL FOR MONTHLY RATES
DOUGLAS PARKING
(702) 382-7988

VALET SERVICES AVAILABLE



D7
File No. 7119WolfRivers

***** INVOICE *****

File Number: 7119WolfRivers

04/14/2017

ATTN: David

David J Merrill, P.C.
10161 Park Run Drive, Ste 150
Las Vegas, NV 89145

Borrower : Perez
Reference/Case # : D7

FOR THE PROPERTY LOCATED AT:

7119 Wolf Rivers Avenue
Las Vegas, NV 89131

GPAR Exterior (L)

\$ 750.00

Invoice Total
Deposit
Deposit

\$ 750.00
{
\$ }

Amount Due

\$ 750.00

Terms: Due and Payable Upon Receipt - Now accepting Visa, MC & Amex

Please Make Check Payable To:

R. SCOTT DUGAN APPRAISAL CO., INC.
8930 W. TROPICANA AVENUE, SUITE 1
LAS VEGAS, NV 89147-8129

Fed. I.D. #: 88-0222300

REFERENCING THE FILE NUMBER, BORROWER OR CASE NUMBER NOTED ABOVE
WILL HELP US TO PROPERLY CREDIT YOUR ACCOUNT

LAW OFFICES
McCullough, Dobberstein & Evans, Ltd.

601 SOUTH RANCHO DRIVE, SUITE A-10
LAS VEGAS, NEVADA 89106-4898
www.mcpalaw.com

CHRISTOPHER R. McCULLOUGH
ERIC DOBBERSTEIN
JD EVANS
RHONDA R. LONG
CHRIS FELLOWS

(702) 385-7383

May 19, 2017

VIA E-MAIL ONLY

Marchai, B.T.
c/o David J. Merrill, Esq.
david@djmerrillpc.com
(Attorney for Marchai, R.T.)

Lipson Neilson, Cole, Seltzer, Garin, P.C.
c/o Megan H. Hummel, Esq.
mhummel@lipsonneilson.com
(Attorney for Wyeth Ranch Community)

Re: **ADR Control #17-99**
Claimant: Marchai, B.T.
Respondent: Wyeth Ranch Community Association

Dear Counsel:

This letter will serve as Notice of the Telephonic Mediation in the above referenced matter set for **Monday, June 12, 2017 at the hour of 2:30 p.m.** The Mediation will be held telephonically. Please call 641-715-3272 enter code 925416#, be sure to enter the # in order to connect properly.

Mediation Briefs are due on or before June 9, 2017 by 2:30 p.m., email directly to chrislaw@mcpalaw.com and hpalacios@mcpalaw.com. Please do not send hard copy to our office.

A \$250.00 deposit is due by both Claimant and Respondent **before** the Mediation is to commence. Please make checks payable to McCullough, Dobberstein & Evans, Ltd. (TAX ID # 88-0264442)

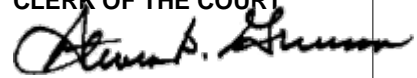
If you have any questions or if there is anything else I can help you with please feel free to contact the undersigned.

Very truly yours,

/s/ Christopher R. McCullough
Christopher R. McCullough, Esq.

CRM:hp

TAB 41



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DISTRICT COURT

CLARK COUNTY, NEVADA

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

vs.

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

Dept. No. VII

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'S MOTION TO RETAX AND SETTLE
MEMORANDUM OF COSTS AND
DISBURSEMENTS**

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.

SFR Investments Pool 1, LLC, by and through its counsel of record, Kim Gilbert Ebron,
hereby files its Motion to Retax and Settle Memorandum of Costs.

...

NOTICE OF HEARING

PLEASE TAKE NOTICE that on 21 day of November, 2017, in Department 7 of the above-entitled Court, at the hour of 9 a.m./p.m., or as soon thereafter as counsel may be heard, the undersigned will bring SFR Investments Pool 1, LLC's Motion To Retax And Settle Memorandum Of Costs And Disbursements before this Court for hearing.

DATED this 19th day of October 2017.

KIM GILBERT EBRON

/s/ Diana S. Ebron, Esq.
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
7625 Dean Martin Drive, Suite 110
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Attorneys for SFR Investments Pool 1, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. LEGAL STANDARD

Documentation is required for costs to be awarded. See *Gibellini v. Klindt*, 110 Nev. 1201, 1205-6, 885 P.2d 540, 543 (1994) (finding that "documentation is precisely what is required under Nevada law to ensure that the costs awarded are only those costs actually incurred."). The necessity for documentation was reaffirmed by the Nevada Supreme Court just recently.

Although cost memoranda were filed in that case, we were unsatisfied with the itemized memorandum and demanded further justifying documentation. **It is clear, then, that "justifying documentation" must mean something more than a memorandum of costs.** In order to retax and settle costs upon motion of the parties pursuant to NRS 18.110, a district court must have before it evidence that the costs were reasonable, necessary, and actually incurred.

Cadle Co. v. Woods & Erickson, LLP, 131 Nev. Adv. Op. 15, 345 P.3d 1049, 1054 (2015)(citations omitted)(emphasis added). *Cadle* went on to say that **"[w]ithout evidence to determine whether a cost was reasonable and necessary, a district court may not award costs."** *Id.* (emphasis added). If a Court award costs without the supporting documentation necessary to find that the costs were reasonable, necessary and actually incurred, such an award will be reversed by the

1 Nevada Supreme Court. Id. (“Thus, costs must be reasonable, necessary, and actually incurred.
2 We will reverse a district court decision awarding costs if the district court has abused its discretion
3 in so determining.”)(citation omitted).

4 In the Nevada Supreme Court’s own words “It is clear ... that “justifying documentation”
5 must mean something more than a memorandum of costs. It requires evidence that the fee was
6 reasonable, necessary and actually incurred. Id. Thus, every cost that is not supported by justifying
7 documentation must be rejected. Any other result would be an abuse of discretion by this Court.
8 That is true even if this Court believes the costs to be reasonable overall.

9 **II. ARGUMENT**

10 Specifically Relating to Plaintiff’s Memorandum of Costs and Disbursement, SFR
11 challenges the following costs.

12 **1) Photocopies of \$174.59.**

13 Plaintiff has failed to provide any invoices or receipts that articulate the costs incurred by
14 Plaintiff in making photocopies. Further, Plaintiff has failed to even identify how many pages were
15 copied in total. While some invoices are attached which may relate to this billed cost, these
16 invoices do not identify the day the job was complete, the job to be completed, the number of
17 pages printed or the price per page printed. Since Plaintiff has failed to identify with “justifying
18 documentation” the actual costs per page copied or the number of pages copied, this cost must be
19 retaxed.

20 **2) Delivery Services/ Services of Process of \$542.80.**

21 On August 25, 2016, Plaintiff filed a second lawsuit which initiated case A-16-742327-C.
22 On October 5, 2016, SFR filed a Motion to Dismiss Plaintiff’s Complaint largely based on this reason.
23 However, prior to the Court hearing this Motion, this Court consolidated A-16-742327-C with the case
24 herein, making SFR’s motion to dismiss moot. Regardless, any costs associated with the second
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lawsuit is not reasonable as it should have never existed in the first place. As such, the following costs must be retaxed as they related to A-16-742327-C.

9/13/16	Invoice No. 1606573 from Legal Process Service for service of process upon Wyeth Ranch Community Association.	E107 Delivery services/messengers	\$77.85
9/13/16	Invoice No. 1606572 from Legal Process Service for service of process upon Alessi & Koenig, LLC.	E107 Delivery services/messengers	\$77.85
9/13/16	Invoice No. 1606571 from Legal Process Service for service of the summons and complaint upon SFR Investments Pool 1, LLC.	E107 Delivery services/messengers	\$77.85

Furthermore, many of these costs are related to service of ADR forums. While the Court usually encourages ADR, this costs is not “necessary” as ADR was not required by this Court. Thus the following service costs must also be retaxed by this Court.

9/20/16	Legal Process Service Invoice No. 1606734 for service of ADR Claim upon SFR Investments Pool 1, LLC.	E107 Delivery services/messengers	\$77.25
9/19/16	Legal Process Service Invoice No. 1606736 for service of ADR claim upon Alessi & Koenig, LLC.	E107 Delivery services/messengers	\$75.00
9/19/16	Invoice No. 1606735 from Legal Process Service for service of ADR claim upon Wyeth Ranch Community Association.	E107 Delivery services/messengers	\$75.00

Lastly, Plaintiff has included the rush delivery of a Motion on Order Shortening Time to Amend its Complaint on August 18, 2016. This Motion was denied and as such was not reasonable or necessary. Thus the following cost must be retaxed.

8/19/16	Legal Wings Invoice No. 5661935.501186 for Hand delivery of Motion on Shortened Time	E107 Delivery services/messengers	\$82.00
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3) Postage of \$12.51.

Plaintiff has failed to provide “justifying documentation” of the costs it incurred relating to postage. While this amount is nominal, this does not excuse Plaintiff from providing the necessary evidence to be entitled to this cost.

4) Travel of \$72.35.

NRS 18.005, as it relates to travel, only allows for “[r]easonable costs for travel and lodging incurred taking depositions and conducting discovery.” NRS 18.005(15). Plaintiff’s parking costs for attending motion and hearing calendar are not recoverable per the law. As a result these costs must be retaxed.

...
...
...

5) Filing Costs of \$306.10.

As stated above, this case was burdened by an unnecessary second lawsuit. As such, any filing fees relating to that case must be retaxed to \$0.00. The following filing fees must be retaxed.

9/14/16	Filing fee for filing the Affidavit of Service for Alessi & Koenig, LLC.	E112 Court fees	\$3.50
9/14/16	Filing fee for filing the Affidavit of Service for Wyeth Ranch Community Association.	E112 Court fees	\$3.50
9/14/16	Filing fee for filing the Affidavit of Service for SFR Investments Pool 1, LLC.	E112 Court fees	\$3.50
8/25/16	Filing fee for filing the Initial Appearance Fee Disclosure.	E112 Court fees	\$3.50
8/25/16	Filing fee for filing the complaint.	E112 Court fees	\$281.60
8/19/16	Filing fee for filing the Certificate of Service.	E112 Court fees	\$3.50

6) Arbitration/Mediation Cost of \$250.00.

SFR did not participate in this arbitration nor was it court ordered. Even the letter attached by Plaintiff is void of any mention of SFR. As such this costs is neither reasonable nor necessary. Additionally, this cost does not relate to the litigation against SFR and as such should not be taxed to SFR.

7) SFR can only be responsible for half the taxable costs.

Plaintiff was actively involved in litigating against SFR *and* Wyeth Ranch Community Association. To the extent this Court awards costs to Plaintiff, it must be split between SFR and Wyeth Ranch Community Association.

III. CONCLUSION

Based on the above, the Court should retax all of the mentioned costs to \$0.00. In regards to Plaintiff remaining costs, this must be split proportionally between SFR and Wyeth Ranch Community Association.

DATED this 19th day of October 2017.

KIM GILBERT EBRON

/s/ Diana S. Cline, Esq.
DIANA S. EBRON, ESQ.
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Las Vegas, Nevada 89139
Attorneys for SFR Investments Pool 1, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of October 2017, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the **SFR'S MOTION TO RETAX AND SETTLE MEMORANDUM OF COSTS AND DISBURSEMENTS** to the following parties:

David Merrill - david@djmerrillpc.com

Kaleb Anderson - kanderson@lipsonneilson.com

Brenda Correa - bcorrea@lipsonneilson.com

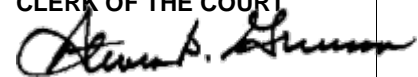
Megan Hummel - mhummel@lipsonneilson.com

Susana Nutt - snutt@lipsonneilson.com

Renee Rittenhouse - rrittenhouse@lipsonneilson.com

/s/ Zachary Clayton, Esq.
an employee of Kim Gilbert Ebron

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Attorneys for SFR Investments Pool 1, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

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

vs.

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

Dept. No. VII

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.

NOTICE OF APPEAL

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.

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

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

2. All other orders made appealable thereby.

DATED this 3rd day of November 2017.

KIM GILBERT EBRON

/s/ Jacqueline A. Gilbert, Esq.
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Attorneys for SFR Investments Pool 1, LLC

CERTIFICATE OF SERVICE

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

David Merrill - david@djmerrillpc.com

Kaleb Anderson - kanderson@lipsonneilson.com

Brenda Correa - bcorrea@lipsonneilson.com

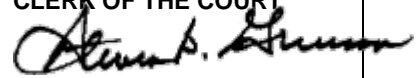
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/s/ Jacqueline A. Gilbert, Esq.
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

**Opposition to SFR's Motion to Retax and Settle
Memorandum of Costs and Disbursements**

Date of Hearing: November 21, 2017

Time of Hearing: 9:00 a.m.

INTRODUCTION

Under Nevada law, this Court has discretion to award costs that are reasonable, necessary, and actually incurred so long as the party seeking costs provides justifying documentation. Here, Marchai, B.T. has provided a Memorandum of Costs and Disbursements with a supporting spreadsheet and receipts that justifies each of the costs it seeks. And the descriptions of the costs demonstrate the reasonableness and necessity of the costs. Should this Court deny SFR Investments Pool 1,

1 LLC's Motion to Retax and Settle Memorandum of Costs and Disbursements and
2 grant Marchai the costs requested in its Memorandum?

3
4 **ARGUMENT**

5 Under Nevada law, Marchai, as the prevailing party, is entitled to recover its
6 costs against SFR and Wyeth Ranch Community Association.¹ Nevada law gives
7 this Court "wide, but not unlimited, discretion to award costs."² The party seeking
8 costs must demonstrate that the requested costs are "reasonable, necessary, and ac-
9 tually incurred."³ To accomplish this, the party must submit not only a memoran-
10 dum of costs and disbursements, but also documentation that justifies the cost.⁴
11 Marchai has complied with Nevada law and submitted the necessary documenta-
12 tion to support its request for costs.

13 **A. Marchai actually incurred \$174.59 in photocopies, which costs are reason-
14 able and necessary.**

15 SFR claims that Marchai "failed to provide any invoices or receipts that ar-
16 ticulate the costs incurred . . . in making photocopies."⁵ SFR's claim is false. The
17 Memorandum of Costs and Disbursements claims \$174.59 in photocopy charges.⁶
18 The fourth page of the Memorandum provides a spreadsheet of the photocopy
19 charges.⁷ Three of those charges (\$56.33, \$37.97, \$8.39) were for costs paid to the
20 Clark County Recorder for copies of recorded documents.⁸ The Memorandum in-

21 ¹ NRS § 18.020.

22 ² *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. Adv. Op. 15, 345 P.3d 1049, 1054 (2015).

23 ³ *Id.*

24 ⁴ *Id.*

25 ⁵ SFR's Mot. to Retax & Settle Mem. of Costs & Disbursements at 3:12–19 (Oct. 19, 2017).

26 ⁶ *See* Mem. of Costs & Disbursements at 1:20 (Oct. 10, 2017).

27 ⁷ *See id.* at 4.

28 ⁸ *See id.*

cludes the receipts from the Clark County Recorder that support each of the charges reflected in the spreadsheet, and identifies the exact documents, by instrument number, ordered from the Recorder.⁹ The remaining two charges (\$1.50 and \$70.40) consist of internal copying costs for which no receipt exists.¹⁰ The Nevada Supreme Court has concluded that providing merely the date of the copies and a total amount is insufficient.¹¹ But Marchai provided not only the date the copy was made, but also a description of what was copied.¹² This Court can easily ascertain the number of pages copied and the charge for those copies (which is \$.10 per page) based upon the information provided. Hence Marchai has provided sufficient justifying documentation to support the photocopy charges.

B. Marchai reasonably incurred \$542.80 in delivery services and for service of process.

Marchai seeks \$542.80 in delivery services and for service of process.¹³ The Memorandum itemizes each charge and provides justifying documentation for the charges.¹⁴ Yet, SFR still objects.

First, SFR objects to the service of process for Case No. A-16-742327-C, claiming that it “should never have existed in the first place.”¹⁵ But the second action was a creation of SFR. SFR opposed Marchai’s motion to amend, which resulted in the filing of the second action.¹⁶ This Court did not dismiss the second action. In-

⁹ See *id.* at 9–11.

¹⁰ See *id.* at 4.

¹¹ *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1353, 971 P.2d 383, 386 (1998).

¹² See *Mem.* at 4.

¹³ See *id.* at 1:21.

¹⁴ See *id.* at 4, 12–19.

¹⁵ See *Mot.* at 3:20–4:5.

¹⁶ See Notice of Intent to Oppose Mot. for Leave to File an Am. Compl. on OST Via Oral Argument at Hr’g (Aug. 24, 2016).

1 stead it consolidated the two cases.¹⁷ SFR cannot be heard to complain about costs
2 necessarily incurred as a result of its unsuccessful procedural maneuvers.

3 Second, SFR objects to costs related to service of the Nevada Real Estate Di-
4 vision's Alternative Dispute Resolution claim.¹⁸ SFR claims that ADR was not re-
5 quired by this Court and thus was not "necessary."¹⁹ But this Court did not reject
6 Wyeth Ranch's argument that Marchai had to submit the claims to mediation until
7 January 24, 2017, well after Marchai incurred the costs.²⁰

8 Third, SFR argues that it should not have to incur the expense for delivery of
9 a motion on shortened time because the motion was denied and thus, not reasonable
10 or necessary.²¹ But SFR provides this Court with no authority that suggests that a
11 party can recover only expenses incurred in connection with successful pretrial mo-
12 tions.²² The motion to amend sought to minimize costs by keeping all claims in one
13 case. SFR opposed. Ultimately, this Court consolidated the two cases, which had the
14 same effect of granting Marchai leave to amend.

15 Hence Marchai's costs of \$542.80 for service of process and delivery charges
16 were actually incurred, reasonable, and necessary.

17 **C. Marchai provided sufficient justifying documentation to support its request**
18 **for \$12.51 in postage costs.**

19 Like its unsubstantiated attack on Marchai's request for photocopy charges,
20 SFR also claims that Marchai did not provide sufficient documentation to justify its
21

22 ¹⁷ See Order Lifting Stay & Consolidating Cases (Dec. 13, 2016).

23 ¹⁸ See Mot. at 4:6–11.

24 ¹⁹ See *id.*

25 ²⁰ See Order Den., in Part, & Granting, in Part, Def. Wyeth Ranch Cmty' Ass'ns Mot. to Dis-
26 miss (Jan. 24, 2017).

27 ²¹ See Mot. at 4:12–16.

28 ²² See *id.*

1 postage charges.²³ SFR's argument lacks merit. The spreadsheet attached to the
2 Memorandum itemizes the date, charge, *and* provides a description of the reason for
3 the postage charge.²⁴ Marchai's description satisfies the documentation require-
4 ments of Nevada law.²⁵

5 **D. Marchai's parking expenses for hearings are recoverable under NRS §**
6 **18.005.**

7 SFR argues that only travel expenses related to taking depositions and con-
8 ducting discovery are recoverable under NRS § 18.005.²⁶ Thus, SFR concludes that
9 Marchai cannot recover its costs connected with parking at the courthouse for hear-
10 ings.²⁷ But Nevada law gives this Court discretion to award "[a]ny other reasonable
11 and necessary expenses incurred in connection with the action."²⁸ As this Court is
12 well aware, persons must pay for parking in Downtown Las Vegas. Hence the costs
13 incurred to park at the courthouse to attend hearings are "reasonable and necessary
14 expenses incurred in connection with the action."²⁹

15 **E. The filing fees Marchai incurred in connection with the second lawsuit it**
16 **was compelled to file because SFR opposed allowing Marchai to amend,**
17 **are reasonable, necessary, and actually incurred.**

18 Like its challenge to the service of process fees Marchai had to incur in filing
19 the second action that this Court consolidated, SFR also argues that it should not
20 have to pay for filing fees incurred in connection with that second action.³⁰ But as

21 ²³ See *id.* at 4:16–20.

22 ²⁴ See Mem. at 4.

23 ²⁵ See *Bobby Berosini, Ltd.*, 114 Nev. at 1353, 971 P.2d at 386.

24 ²⁶ See Mot. at 4:20–25.

25 ²⁷ See *id.*

26 ²⁸ See NRS § 18.005(17).

27 ²⁹ See *id.*

28 ³⁰ See Mot. at 5:1–8.

1 explained above, Marchai had to file the second action because SFR opposed the
2 motion to amend. The second action was not dismissed. Instead it was consolidated
3 with this action. SFR's actions and arguments resulted in these expenses.

4 **F. The mediation cost of \$250.00 was actually incurred and was reasonable**
5 **and necessary.**

6 SFR objects to the \$250.00 charged by the Nevada Real Estate Division me-
7 diator because it did not participate in the mediation.³¹ But SFR could have partici-
8 pated in the mediation. Perhaps if SFR had been willing to mediate the parties
9 could have avoided the further expense of litigation, which ultimately ended in
10 judgment for Marchai. Thus, SFR's argument that the mediation fee is not reasona-
11 ble or necessary lacks merit.

12 **G. Under Nevada law, this Court can apportion the costs between SFR and**
13 **Wyeth Ranch or, if it is impossible to do so because they are inextricably**
14 **intertwined, can order joint and several liability.**

15 SFR argues that regardless of this Court's decision, this Court can award on-
16 ly one-half of the costs against SFR.³² But SFR does not burden this Court with the
17 citation to any authority.³³ Contrary to SFR's position, Nevada law allows this
18 Court to grant joint and several liability for costs when, as here, the claims are so
19 intertwined that apportionment is impracticable or impossible.³⁴ Marchai asks that
20 this Court grant joint and several liability for the costs.

21 **CONCLUSION**

22 Marchai provided adequate justifying documentation for each of the costs it
23 seeks to recover. All of the costs Marchai requested were actually incurred and are
24

25 ³¹ See Mot. at 5:8–12.

26 ³² See *id.* at 5:13–16.

27 ³³ See *id.*


28 ³⁴ *Roberts v. Libby*, No. 66513, 2016 WL 3597421, at *3 (Nev. Ct. App. June 20, 2016).

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

1 reasonable and necessary. Hence Marchai respectfully requests that this Court
2 award the total amount of costs detailed in the Memorandum.

3 Dated this 8th day of November 2017.

4 David J. Merrill, P.C.

5
6 By: 
7 David J. Merrill
8 Nevada Bar No. 6060
9 10161 Park Run Drive, Suite 150
10 Las Vegas, Nevada 89145
11 (702) 566-1935
12 Attorney for Marchai, B.T.
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DAVID J. MERRILL, P.C.
10161 PARK RUN DRIVE, SUITE 150
LAS VEGAS, NEVADA 89145
(702) 566-1935

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of November 2017, a copy of the foregoing Opposition to SFR's Motion to Retax and Settle Memorandum of Costs and Disbursements was served electronically to the following through the Court's electronic service system:

Kim Gilbert Ebron

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

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eservice@hkimlaw.com
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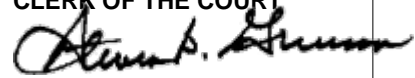
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An employee of David J. Merrill, P.C.

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Attorneys for SFR Investments Pool 1, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

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

vs.

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

Dept. No. VII

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'S REPLY IN SUPPORT OF ITS
MOTION TO RETAX AND SETTLE
MEMORANDUM OF COSTS AND
DISBURSEMENTS**

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.

SFR Investments Pool 1, LLC, by and through its counsel of record, Kim Gilbert Ebron,
hereby files its Reply in Support of its Motion to Retax and Settle Memorandum of Costs.

...

MEMORANDUM OF POINTS AND AUTHORITIES

Marchai, B.T. ("Plaintiff") in its opposition has cited to Cadle Co. v. Woods & Erickson, LLP, 131 Nev. Adv. Op. 15, 345 P.3d 1049, 1054 (2015) and acknowledged that documentation must be provided to justify its costs. See Opposition to Motion at 2. Thus, it should not come as a surprise to Plaintiff that SFR's chief complaint of Plaintiff's memorandum of costs is its lack of supporting documentation.

I. ARGUMENT

1) Photocopies of \$174.59.

The charges of \$56.33, \$37.97 and \$8.39 are allegedly for copy costs of recorded documents from the Clark County Recorded. Taking this information as true, Plaintiff has failed to identify why these documents were needed. In other words, Plaintiff has failed to explain why these documents were necessary to this action. In fact, the record instrument number identifies the documents costing \$56.33 and \$37.97 as being recorded in 2002. However, the earliest document referenced by Plaintiff in its prevailing opposition to SFR's Motion for Summary Judgment was a Grant, Bargain, Sales Deed recorded in 2004. See Plaintiff's Opposition to SFR's MSJ filed on August 14, 201, p. 3 n. 1. Thus, these costs were unnecessary for this case.

In regards to the internal copy costs, Plaintiff admits that no receipt exists thus it cannot be recovered under Cadle which **requires** documentation. These costs must be retaxed to \$0.00.

2) Delivery Services/ Services of Process of \$542.80.

As stated in SFR's Motion, many of these costs were due to the unnecessary second lawsuit that was eventually combined into this lawsuit. All of these costs could have been avoided if Plaintiff had brought the first lawsuit properly. Thus, while this Court combined these cases that does not mean that the costs incurred were reasonable or necessary. These costs must be retaxed to \$0.00.

1 In regards to service costs relating to mediation, if these costs were incurred due to Wyeth's
2 Rach's argument, these costs should be attributed solely to them. SFR did not participate in this
3 mediation nor was it required by this Court in regards to the claims Plaintiff has against SFR.

4 Lastly, in regards to Plaintiff's Motion that was requested on Order Shortening Time, this
5 costs was not reasonable as the Motion was denied. Further, this Motion would not have had been
6 necessary if Plaintiff would have brought all of its claims against all Defendant's in the first case.
7 Thus this cost must be retaxed to \$0.00.

8 **3) Postage of \$12.51.**

9 Cadle made clear that "justifying documentation" meant more than just the memorandum
10 of costs. Further, Plaintiff's spreadsheet is a document generated by Plaintiff and is essentially an
11 extension of the memorandum of costs. Attaching this spreadsheet as an exhibit does not magically
12 change this document into "justifying documentation." This costs must be retaxed to \$0.00.

13 **4) Travel of \$72.35.**

14 NRS 18.005, as it relates to travel, only allows for "[r]easonable costs for travel and lodging
15 incurred taking depositions and conducting discovery." NRS 18.005(15). It is unlikely that the
16 legislature intended parking to be included under NRS 18.005 especially considering that it drafted
17 clear legislation relating directly to travel. This is even further supported by the fact that everyone
18 that attends the Court house in a car probably has to pay for parking somewhere. The legislature
19 by not including a provision allowing for parking fees intended for parking fees to not be
20 recoverable under NRS 18.005.

21 **5) Filing Costs of \$306.10.**

22 For the reasons stated in SFR's Motion and the reasons listed above, the filing fees relating
23 to the second action that was consolidated must be retaxed.

24 **6) Mediation Cost of \$250.00.**

25 SFR did not participate in this arbitration nor was it court ordered. The fact that SFR could
26 have participated in the mediation does not make this costs reasonable or necessary in regards to
27 Plaintiff's causes of action against SFR.
28

1 **7) SFR can only be responsible for half the taxable costs.**

2 This Court has the authority to split any award of costs amongst the Defendants. SFR has
3 pointed clear instances where this must happen as SFR is in no way responsible for the cost. In
4 fact, before this Court can make all defendants joint and severally liable, “the district court must
5 make specific findings, either on the record during oral proceedings or in its order, with regard to
6 the circumstances of the case before it that render apportionment impracticable.” Mayfield v.
7 Koroghli, 124 Nev. 343, 353–54, 184 P.3d 362, 369 (2008). Plaintiff has also failed to articulate
8 why apportionment of the cost would be impracticable.

9 **II. CONCLUSION**

10 For these reasons, SFR asks this Court to retax Plaintiff’s costs as outlined in SFR’s Motion
11 to Retax.

12
13 DATED this 13th day of November 2017.

KIM GILBERT EBRON

/s/ Jacqueline A. Gilbert, Esq.

DIANA S. EBRON, ESQ.

Nevada Bar No. 10580

JACQUELINE A. GILBERT, ESQ.

Nevada Bar No. 10593

KAREN L. HANKS, ESQ.

Nevada Bar No. 9578

7625 Dean Martin Drive, Suite 110

Las Vegas, Nevada 89139

Attorneys for SFR Investments Pool 1, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of November 2017, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the **SFR'S REPLY IN SUPPORT OF ITS MOTION TO RETAX AND SETTLE MEMORANDUM OF COSTS AND DISBURSEMENTS** to the following parties:

David Merrill - david@djmerrillpc.com

Kaleb Anderson - kanderson@lipsonneilson.com

Brenda Correa - bcorrea@lipsonneilson.com

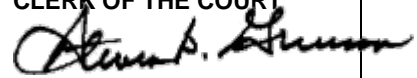
Megan Hummel - mhummel@lipsonneilson.com

Susana Nutt - snutt@lipsonneilson.com

Renee Rittenhouse - rrittenhouse@lipsonneilson.com

/s/ Zachary Clayton, Esq.
an employee of Kim Gilbert Ebron

TAB 45



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6 Las Vegas, Nevada 89145
7 Telephone: (702) 566-1935
8 Facsimile: (702) 993-8841
9 E-mail: david@djmerrillpc.com
10 Attorney for Marchai, B.T.

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

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

12 Plaintiff,

13 v.

14 CRISTELA PEREZ, an individual; *et al.*

15 Defendants.

16 AND ALL RELATED CLAIMS AND
17 ACTIONS

Case No.: A-13-689461-C

Dept. No. VII

Consolidated with: A-16-742327-C


18 **Notice of Entry of Order**

19 **Take Notice** that on the 26th day of December 2017, the Court entered an
20 Order Denying SFR's Motion to Retax and Settle Memorandum of Costs and
21 Disbursements, a true and correct copy of which is attached.

22 Dated this 30th day of December 2017.

23 David J. Merrill, P.C.

24
25 By:

26 
27 David J. Merrill
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(702) 566-1935
Attorney for Marchai, B.T.

DAVID J. MERRILL, P.C.
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LAS VEGAS, NEVADA 89145
(702) 566-1935

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of December 2017, a copy of the foregoing Notice of Entry of Order was served electronically to the following through the Court's electronic service system:

Kim Gilbert Ebron

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

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

Steven D. Grierson

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9 E-mail: david@djmerrillpc.com
10 Attorney for Marchai, B.T.

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 MARCHAI, B.T., a Nevada business } Case No.: A-13-689461-C
11 trust, } Dept. No. VII
12 Plaintiff, } Consolidated with: A-16-742327-C
13 v. }
14 CRISTELA PEREZ, an individual; *et al.* }
15 Defendants. }
16 AND ALL RELATED CLAIMS AND
17 ACTIONS

18 Order Denying SFR's Motion to Retax and Settle
19 Memorandum of Costs and Disbursements

20 SFR's Motion to Retax and Settle Memorandum of Costs and Disbursements
21 came before the Court in chambers without oral argument. The Court, having con-
22 sidered the motion, the Opposition to SFR's Motion to Retax and Settle Memorandum
23 of Costs and Disbursements, and SFR's Reply in Support of its Motion to Retax
24 and Settle Memorandum of Costs and Disbursements, and good cause appearing
25 therefor:

26 It is hereby ordered that SFR's Motion to Retax and Settle Memorandum
27 of Costs and Disbursements is denied because the Court finds that Marchai, B.T.
28

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(702) 566-1935

1 submitted sufficient justifying documentation to support the requested costs and
2 that the costs requested were reasonable, necessary, and actually incurred.

3 It is further ordered that the Court awards Marchai its costs in the
4 amount of \$2,752.85.

5 Dated this 22nd day of December 2017.

6
7
8 Honorable Linda Marie Bell
District Court Judge

9 Submitted by:

10 David J. Merrill, P.C.

11 By: David J. Merrill
12 David J. Merrill
13 Nevada Bar No. 6060
14 10161 Park Run Drive, Suite 150
15 Las Vegas, Nevada 89145
16 (702) 566-1935

17 Attorney for Marchai, B.T.

18 Approved as to form only by:

19 Kim Gilbert Ebron

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

20
21 By: Jacqueline A. Gilbert
22 Jacqueline A. Gilbert
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28 By: Megan H. Hummel
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Attorneys for Wyeth Ranch
Community Association

DAVID J. MERRILL, P.C.
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1 submitted sufficient justifying documentation to support the requested costs and
2 that the costs requested were reasonable, necessary, and actually incurred.

3 It is further ordered that the Court awards Marchai its costs in the
4 amount of \$2,752.85.

5 Dated this ____ day of November 2017.

6
7
8 Honorable Linda Marie Bell
District Court Judge

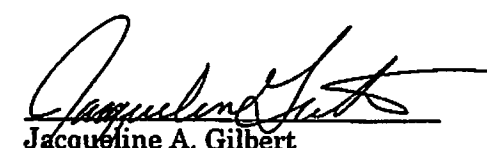
9
10 Submitted by:
11 David J. Merrill, P.C.

12
13 By: _____
14 David J. Merrill
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16 10161 Park Run Drive, Suite 150
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19 Attorney for Marchai, B.T.

20 Approved as to form only by:

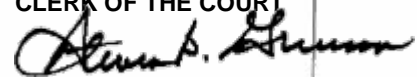
21 Kim Gilbert Ebron

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23 Jacqueline A. Gilbert
24 Nevada Bar No. 10593
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TAB 46



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Attorney for SFR Investments Pool 1, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Case No. A-13-689461-C

Dept. No. VII

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.

JUDGMENT BY DEFAULT AGAINST
CRISTELA PEREZ AND U.S. BANK
NATIONAL ASSOCIATION, N.D. ON
ORDER SHORTENING TIME

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.

This matter came before the Court on SFR Investments Pool 1, LLC's ("SFR") application
for default judgment against Cross-Defendants CRISTELA PEREZ ("Perez") and U.S. BANK

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1 NATIONAL ASSOCIATION, N.D. ("U.S. Bank") (collectively known as "Cross-Defendants").

2 Having considered the application, including the declarations attached thereto, the Court makes
3 the following findings of fact and conclusions of law:

4 1. On November 13, 2013, SFR filed a Counterclaim and Cross-Claim for quiet title and
5 declaratory relief ("Counter/Cross-Claim") against Counter-Defendant Marchai B.T. and
6 Cross-Defendants Perez and U.S. Bank relating to real property located at 7119 Wolf
7 Rivers Avenue, Las Vegas, Nevada 89131; Parcel No. 125-15-811-013 ("Property").

8 2. Cross-Defendants failed to answer the complaint within the 20-day time limit set forth in
9 NRCP 12. The Clerk of the Court appropriately entered a default against Perez and U.S.
10 Bank on February 12, 2014.

11 3. Cross-Defendants are not incompetent, an infant or serving in the United States military.

12 NOW, THEREFORE, pursuant to NRCP 55(b)(2), having considered the evidence and
13 made the foregoing findings of fact and conclusions of law, and finding good cause,

14 4. SFR submitted credible evidence in support of its application in the form of
15 documents obtained from the Official Records of the Clark County Recorder and declarations
16 made under penalty of perjury that demonstrate prima facie grounds sufficient to enter default
17 judgment against the Cross-Defendants.

18 IT IS ORDERED, ADJUDGED AND DECREED that Perez, any successors and assigns,
19 and U.S. Bank, any successors and assigns, have no right, title or interest in the Property and that

20 SFR is the rightful title owner, but takes subject to the deed
21 ... of trust dated October 19, 2005 which
22 ... was recorded in Book No 20051109 as
23 ... Instrument No. 0001385 in the Official
24 ... Records of the Clark County Recorder's
25 ... Office on November 9, 2005. JLM DJM

26 ...

27 ...

28 ...

KIM GILBERT EBRON
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(702) 485-3300 FAX (702) 485-3301

1
2 IT IS FURTHER ORDERED that this judgment does not adjudicate SFR's claims
3 against, or the defenses of, any other party to this case.
4

5
6 
DISTRICT COURT JUDGE

Dated: 4/26/18

7
8 Respectfully submitted by:

9 KIM GILBERT EBRON

10 /s/Jacqueline A. Gilbert

11 JACQUELINE A. GILBERT, Esq.

12 Nevada Bar No. 10593

13 7625 Dean Martin Drive, Suite 110

14 Las Vegas, Nevada 89139

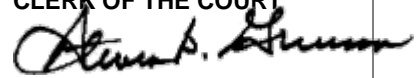
(702) 485-3300

(702) 485-3301 (fax)

Attorneys for SFR Investments Pool I

15 Dated this 21st day of March, 2018.
16
17
18
19
20
21
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26
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28

TAB 47



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Attorneys for SFR Investments Pool 1, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI B.T., a Bank Trust,

Case No. A-13-689461-C

Plaintiff,

Dept. No. VII

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 1 through 10, inclusive,

**NOTICE OF ENTRY OF JUDGMENT BY
DEFAULT AGAINST CRISTELA PEREZ
AND U.S. BANK NATIONAL
ASSOCIATION, N.D. ON ORDER
SHORTENING TIME**

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 1 through 10,
inclusive,

Counter-Defendant/Cross-Defendants.

PLEASE TAKE NOTICE that on April 26, 2018 a **Judgment by Default Against
Cristela Perez and U.S. Bank National Association, N.D. On Order Shortening Time** was

///

1 entered. A copy of said Judgment is attached hereto.

2
3 DATED this 27th day of April, 2018.

4
5 **KIM GILBERT EBRON**

6 /s/Jacqueline A. Gilbert

7 JACQUELINE A. GILBERT, ESQ.

8 Nevada Bar No. 10593

9 7625 Dean Martin Drive, Suite 110

10 Las Vegas, Nevada 89139

11 *Attorney for SFR Investments Pool 1, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April, 2018, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **NOTICE OF ENTRY OF JUDGMENT BY DEFAULT AGAINST CRISTELA PEREZ AND U.S. BANK NATIONAL ASSOCIATION, N.D. ON ORDER SHORTENING TIME** to the following parties:

Brenda Correa . (bcorrea@lipsonneilson.com)

David J. Merrill . (david@djmerillpc.com)

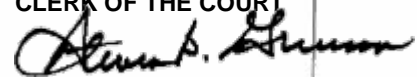
Kaleb Anderson . (kanderson@lipsonneilson.com)

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Renee Rittenhouse . (rrittenhouse@lipsonneilson.com)

Susana Nutt . (snutt@lipsonneilson.com)

/s/ Tomas Valerio
An Employee of KIM GILBERT EBRON



DFJD

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Case No. A-13-689461-C

Dept. No. VII

CRISTELA PEREZ, an individual; SFR
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DOES I through X; and ROE
CORPORATIONS I through 10, inclusive,
Defendants.

**JUDGMENT BY DEFAULT AGAINST
CRISTELA PEREZ AND U.S. BANK
NATIONAL ASSOCIATION, N.D. ON
ORDER SHORTENING TIME**

SFR INVESTMENTS POOL 1, LLC, a Nevada
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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.

This matter came before the Court on SFR Investments Pool 1, LLC's ("SFR") application
for default judgment against Cross-Defendants CRISTELA PEREZ ("Perez") and U.S. BANK

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1 NATIONAL ASSOCIATION, N.D. ("U.S. Bank") (collectively known as "Cross-Defendants").
2 Having considered the application, including the declarations attached thereto, the Court makes
3 the following findings of fact and conclusions of law:

4 1. On November 13, 2013, SFR filed a Counterclaim and Cross-Claim for quiet title and
5 declaratory relief ("Counter/Cross-Claim") against Counter-Defendant Marchai B.T. and
6 Cross-Defendants Perez and U.S. Bank relating to real property located at 7119 Wolf
7 Rivers Avenue, Las Vegas, Nevada 89131; Parcel No. 125-15-811-013 ("Property").

8 2. Cross-Defendants failed to answer the complaint within the 20-day time limit set forth in
9 NRCP 12. The Clerk of the Court appropriately entered a default against Perez and U.S.
10 Bank on February 12, 2014.

11 3. Cross-Defendants are not incompetent, an infant or serving in the United States military.

12 NOW, THEREFORE, pursuant to NRCP 55(b)(2), having considered the evidence and
13 made the foregoing findings of fact and conclusions of law, and finding good cause,

14 4. SFR submitted credible evidence in support of its application in the form of
15 documents obtained from the Official Records of the Clark County Recorder and declarations
16 made under penalty of perjury that demonstrate prima facie grounds sufficient to enter default
17 judgment against the Cross-Defendants.

18 IT IS ORDERED, ADJUDGED AND DECREED that Perez, any successors and assigns,
19 and U.S. Bank, any successors and assigns, have no right, title or interest in the Property and that

20 SFR is the rightful title owner, but takes subject to the deed
21 ... of trust dated October 19, 2005 which
22 ... was recorded in Book No 20051109 as
23 ... Instrument No. 0001385 in the Official
24 ... Records of the Clark County Recorder's
25 ... Office on November 9, 2005. JLM DJM

26 ...

27 ...

28 ...

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

1
2 IT IS FURTHER ORDERED that this judgment does not adjudicate SFR's claims
3 against, or the defenses of, any other party to this case.
4

5
6 
DISTRICT COURT JUDGE

Dated: 4/26/18

7
8 Respectfully submitted by:

9 KIM GILBERT EBRON

10 /s/Jacqueline A. Gilbert

11 JACQUELINE A. GILBERT, Esq.

12 Nevada Bar No. 10593

13 7625 Dean Martin Drive, Suite 110

14 Las Vegas, Nevada 89139

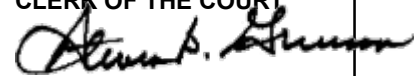
(702) 485-3300

(702) 485-3301 (fax)

Attorneys for SFR Investments Pool I

15 Dated this 21st day of March, 2018.
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TAB 48



JUDG
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E-mail: david@djmerrillpc.com
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;**

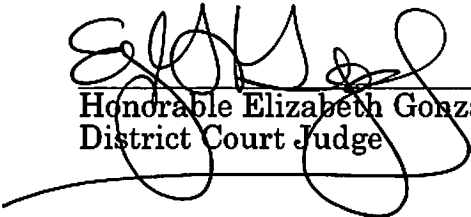
11 **It is further ordered, adjudged, and decreed that Wyeth Ranch's fore-**
12 **closure of its lien did not extinguish Marchai's deed of trust;**

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**

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

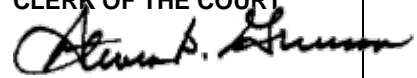
10 Submitted by:

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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TAB 49



NJUD

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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: 
David J. Merrill
Nevada Bar No. 6060
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
(702) 566-1935
Attorney for Marchai, B.T.

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

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

diana@kgelegal.com
eservice@kgelegal.com
mike@kgelegal.com
staff@kgelegal.com

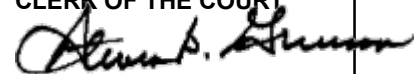
Lipson, Neilson, Cole, Seltzer & Garin, P.C.

Brenda Correa
Kaleb Anderson
Megan Hummel
Renee Rittenhouse
Susana Nutt

bcorrea@lipsonneilson.com
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mhummel@lipsonneilson.com
rrittenhouse@lipsonneilson.com
snutt@lipsonneilson.com



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



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

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CRISTELA PEREZ, an individual; *et al.*

Defendants.

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

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**AND ALL RELATED CLAIMS AND
ACTIONS**

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

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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
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13 shall be foreclosed to satisfy the amounts owed by Perez to Marchai;

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16 the property and apply the proceeds of the sale due to Marchai;

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21 closed from all rights, claims, interest or equity of redemption of the property and
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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;**

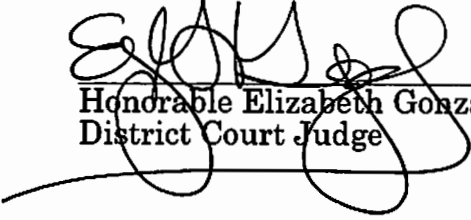
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17 **judgment, jointly and severally, in its favor and against SFR and Wyeth Ranch for**
18 **its reasonable costs in the amount of \$2,752.85; and**

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.

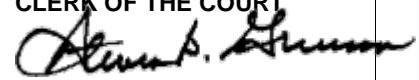
5
6
7 
8 Honorable Elizabeth Gonzalez
9 District Court Judge

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
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18 Attorney for Marchai, B.T.

TAB 50



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Attorneys for SFR Investments Pool 1, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

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

vs.

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

Defendants.

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

Counterclaimant/Cross-Claimant,
vs.

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

Counter-Defendant/Cross-Defendants.

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

Dept. No. 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 8th day of August 2018.

KIM GILBERT EBRON

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th 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

Renee Rittenhouse - rrittenhouse@lipsonneilson.com

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

TAB 51



1 RTRAN

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5 MARCHAI B T BANK TRUST,

6 Plaintiff,

7 vs.

8 CRISTELA PEREZ,

9 Defendant.
10
11
12

CASE NO. A-13-689461-C

DEPT. VII

13 BEFORE THE HONORABLE LINDA MARIE BELL, DISTRICT COURT JUDGE
14 TUESDAY, AUGUST 22, 2017

15 **RECORDER'S TRANSCRIPT OF**
16 **DEFENDANT SFR INVESTMENTS'**
17 **MOTION FOR SUMMARY JUDGMENT**

18 APPEARANCES:

19 For the Plaintiff: DAVID J. MERRILL, ESQ.

20 For Defendant SFR Investments, Pool 1: JACQUELINE GILBERT, ESQ.

21 For Defendant Wyeth Ranch: MEGAN HUMMEL, ESQ.
22
23
24
25

RECORDED BY: RENEE VINCENT, COURT RECORDER

1 Tuesday, August 22, 2017 - 9:47 a.m.

2
3 THE COURT: Marchai B.T. Bank Trust versus Cristela Perez, Case
4 Number A689461.

5 MR. MERRILL: Good morning, Your Honor. David Merrill on behalf of
6 Marchai.

7 THE COURT: I thought you all were coming on a different day.

8 MS. GILBERT: We thought we --

9 MR. MERRILL: We thought we were, too, but then we got a call
10 yesterday saying everything's been moved to today, so --

11 THE COURT: Oh. All right. Are you ready to go with everything
12 today? Because I had signed the -- well, we probably got a little bit of cross-
13 communication. So I had signed -- I had hoped to move everything to today,
14 but then I got your stipulations to move everything to the 29th, and I had
15 actually suggested perhaps -- except the motion in limine -- till the 12th, and
16 then I was -- well, all right.

17 But I can tell you the 29th is a terrible day. So we can either do
18 these today or we can move everything to the September 12th, at your --
19 whatever. If you're ready to go today, I'm ready to go today.

20 MS. GILBERT: Your Honor, the only thing that SFR -- Jacqueline Gilbert
21 on behalf of SFR Investments Pool 1, LLC. Because we were anticipating the
22 29th, SFR didn't file its reply until late last night. I have a copy for you, if you
23 need it.

24 THE COURT: I can look at it right now, if you'd like, and then we can
25 go forward or, again, I will just give you the option of doing it on September

1 12th. I just wouldn't recommend the 29th because that day is terrible.

2 MR. MERRILL: I think we can just go forward, Your Honor. I mean --

3 THE COURT: All right.

4 MR. MERRILL: Your Honor's already heard this --

5 THE COURT: Ms. Gilbert, if you have a copy of the --

6 MS. GILBERT: Reply?

7 THE COURT: -- reply. I know.

8 MS. GILBERT: And, Your Honor, I gave a copy to --

9 MR. MERRILL: I got it moments ago, so --

10 THE COURT: Okay.

11 MS. HUMMEL: Your Honor, Megan Hummel on behalf of the HOA.

12 We also filed our reply yesterday within business hours. I have a copy I can
13 give you, if you need one.

14 THE COURT: If you could, thanks, because it doesn't get into
15 Odyssey for -- I don't know. It's like some black hole.

16 MS. GILBERT: And this was filed last night, so I got the filing --

17 THE COURT: I don't need that.

18 MS. GILBERT: Okay. Just so you know that it was.

19 THE COURT: I just want the copy.

20 MS. GILBERT: It's not filed stamped yet.

21 MS. HUMMEL: Here it is, Your Honor.

22 THE COURT: All right. Okay. Do you need another copy?

23 MS. HUMMEL: No.

24 THE COURT: All right. So let's go -- let's go ahead -- let's see. We
25 have the motion for summary judgment that was filed by SFR. Let's start

1 with that.

2 MS. GILBERT: Thank you, Your Honor. This is, again, one of the many
3 NRS 116 cases, and SFR --

4 THE COURT: Ms. Gilbert, I suppose the first question I have is that the
5 motion for summary judgment -- a motion for summary judgment was denied
6 in March of last year.

7 MS. GILBERT: Correct, Your Honor.

8 THE COURT: And so it was a little difficult for me to tell -- I know that
9 you've done discovery, but it didn't seem like the issues had changed too
10 terribly much.

11 MS. GILBERT: And Your Honor is correct. I think the biggest issues
12 are whether or not there has been any evidence of fraud, oppression or
13 unfairness because without -- without any evidence of fraud, oppression or
14 unfairness -- we don't believe that the bank has showed any -- then there is --
15 then the other issue such as BFP, et cetera, fall by the wayside.

16 You don't need to do an equitable balancing if there's no fraud,
17 oppression or unfairness because value becomes irrelevant absent fraud,
18 oppression or unfairness that led to the price, and -- so it's simply, was there
19 anything wrong with the sale, and unless they have brought any -- and they
20 haven't brought any evidence of fraud, oppression or unfairness in this case.

21 I believe there are only -- the biggest thing they have, they talk
22 about whether something was sent by mail or not by mail -- by first class mail
23 versus certified mail, and we put that in our reply that certified mail is simply
24 another form of first class mail. And, secondly, Marchai did not -- was not the
25 owner of record -- or the beneficiary of record of the deed of trust on the date

1 of the notices.

2 THE COURT: Right, not the date of the notices, but prior to the sale.
3 And then they asked to have the sale stopped, and that request was declined,
4 right? So that -- it's a little bit of a complicated issue in terms of whether that
5 would create unfairness; don't you think?

6 MS. GILBERT: Well, I don't know that it does, Your Honor. They had
7 an interest in this property as of March of that -- March of '13, and yet under
8 the statutes -- and this is what NRS 116.31163 and 116.11635 that
9 everybody complained about, the opt-in statute. This is the person they're for,
10 is a person who has an interest in a recorded -- a benefit -- a recorded lien on
11 the property, to let the HOA know that they're not the recorded person of
12 record; that they want to know what's going on with the property, and they
13 didn't do that.

14 And then later they've come in and say, wait, stop, stop. In the
15 meantime, the HOA has been waiting and waiting and waiting to get its
16 payments, and its predecessors in interest chose to do nothing. And so by not
17 even taking advantage of the opt-in statute to allow them to say, hey, in
18 March of '13, I have an interest in this deed of trust, but I'm not on record, so
19 please send me anything that's relevant, I think that they -- they waived that
20 argument to say, hey, I got it now after you've noticed the sale, and you
21 should stop and do something for me. These things transfer all the time, and
22 that just puts a burden on the HOA.

23 But in any event, SFR shows up at a sale and bids, and just
24 because there's a new owner of record at some point doesn't give it a reason
25 to look into anything. So I don't see that that adds a question of fact for this

1 Court. They chose not to take advantage of statutes, and then they come in
2 at the last minute and say, stop, stop. In the meantime, they're not getting
3 paid. And SFR is simply showing up at a sale and -- and --

4 THE COURT: Well, okay. So if SFR looked in the -- looked at the
5 recordings, though, they would have seen that there was a new recording two
6 weeks before the sale, right?

7 MS. GILBERT: Yes. And SFR is entitled to rely on that people are
8 receiving notices that they're supposed to. And if you look at the statute, part
9 of that is 30 days before because they pull the title report so that they can
10 send them out the 21 days before they can have the sale. So there's nothing
11 that says that if somebody records within those 21 days, everything has to
12 stop and be re-noticed for them. There's nothing there that says that.

13 SFR simply knows that the people who were of record at the
14 time, if somebody changes it, they step into those shoes. Presumably, they
15 got that information from whoever was noticed at that time. That's what they
16 should do, and it shouldn't roll on SFR to say, oh, I have to find out all this
17 stuff. It's presumed that everybody is doing what they're supposed to do.

18 THE COURT: What about their argument -- this is a new one to me, so
19 that's nice, but that SFR didn't pay for the property at the time of the sale?

20 MS. GILBERT: Again, the statute itself states that it has to be paid by
21 SFR. They bring no evidence that SFR wasn't capable of paying, et cetera,
22 and I believe that there was evidence that we have in our -- I think this is in
23 our reply, I'm not sure. That they had shown --

24 THE COURT: This isn't --

25 MS. GILBERT: -- the proof of funds; they went to go get them.

1 THE COURT: Okay.

2 MS. GILBERT: So it wasn't a credit bid. They had shown a proof of
3 funds, and they just simply went to the bank to get them.

4 THE COURT: All right. And then -- okay. The final question that I
5 had was --

6 MS. GILBERT: And, again, the bank did nothing.

7 THE COURT: What about the payments that the homeowner made
8 after the lien?

9 MS. GILBERT: The payments that the homeowner makes -- the
10 homeowner isn't required to pay the entirety of the lien. The only person who
11 has the super priority portion available to it is the first deed of trust. It's a
12 junior lienholder who pays off to protect their interest.

13 And that comports with the policy of the statute, which is, they
14 would pay off the portion that they have to pay to release that lien, and SFR
15 doesn't concede that it's nearly nine months, but pay off whatever's required
16 to release the super priority amount and then move forward.

17 If a homeowner was to be able -- was allowed to come in and
18 say, here's nine -- I'm paying part of this, you have to apply it or it has to be
19 applied to the nine months, they have no reason to continue to pay. They
20 would show up every five years and pay their nine months.

21 THE COURT: Well, the HOA could foreclose on the home if they
22 didn't pay, but wouldn't it put the other lienholders in a different position? I
23 mean, because it doesn't say who has to pay the nine months. It just says
24 nine months, right, after the lien is filed.

25 MS. GILBERT: It says it's an amount equal to that's prior to a first

1 deed of trust, but there's nothing that says that it has to be applied to that. In
2 other words, it's an amount -- it's a time period where you start adding it up,
3 and it's an amount. But, remember, the homeowner owes this, and they have
4 to pay all of it. If they can only come in and pay the nine months, the HOA
5 isn't going to foreclose. They now have a junior lien, if under the hypothetical
6 that Your Honor and their argument that we're saying.

7 The other part of that is, they don't even know what's going on.
8 Remember, they're saying, we don't know what's going on, we want to pay.
9 But even with that, if that is paid by somebody, that person steps into the
10 shoes of the HOA and it gets added to their lien. A junior lienholder pays off a
11 senior lien.

12 The homeowner is not a junior lienholder. They are the debtor.
13 They have an obligation. They don't -- the bank doesn't have an obligation to
14 pay anything if they choose not to protect something. But they step into that,
15 and it's an assignment under the Restatement -- we have this in our papers, an
16 assignment under the Restatement to another person, the junior lienholder. It
17 has to be recorded, otherwise you have people coming in and they see, hey,
18 we've got CC&R's. We have a deed of trust that's recorded. We
19 acknowledge it exists.

20 There's an NODA sometimes recorded. It wasn't required.
21 NOD, the notice of default, which is required to be recorded; a notice of sale,
22 even if there's multiple notices of sale. It just says that the HOA for whatever
23 reason has postponed it, but until there is a release of that super priority
24 amount, the presumption is is that it exists because they can only foreclose on
25 one lien, not a portion of a lien.

1 And while it doesn't say that the homeowner can't come in and
2 pay it, when you look at the policy around it, it's for the junior lienholder who
3 is affected, not -- not for a homeowner --

4 THE COURT: What you're saying makes a lot of sense to me, but I
5 think it's very similar to making the banks go to mediation under 38.310. I
6 mean, it's just not what the statute says, right? The statute doesn't specify
7 that it's not for the homeowner. Just like 38.310 doesn't specify that it's
8 only for the homeowner.

9 MS. GILBERT: And if they wanted to argue that, if you were to accept
10 that -- and we would beg of you not to; we don't believe it comports with the
11 law. But if you were to accept that, then it would be upon them not to say
12 they paid some amount. They would have to show a check that says for
13 super priority payment only.

14 That's intent, and that's when it has to be applied perhaps to
15 something. But without that, I don't think they get to come in here and raise
16 an issue of fact about it, and they haven't done that.

17 THE COURT: All right. Thank you.

18 MS. GILBERT: I think under those -- I think SFR in its position as the
19 bidder at the sale, they raise things that SFR should've looked for, but reality
20 is, everything that they're asking for and trying to put super burden on the
21 buyer would go to 107 sales, I don't think they want that, and I don't think
22 that's the purpose.

23 The last part I wanted to address was who has the burden on a
24 BFP. The burden -- where you have a BFP issue and somebody wants
25 equitable title, which I don't believe they're entitled to, but because they're

1 trying to get equitable relief here, the burden shifts to them. SFR is the legal
2 titleholder. They don't have to prove they were a BFP. They have to prove
3 that we weren't.

4 THE COURT: All right. Thank you.

5 MR. MERRILL: Your Honor, as you noted back in March of 2016 -- you
6 did a pretty extensive 22-page decision and order. So when the dispositive
7 motion deadline came around again, of course, we didn't file a motion for
8 summary judgment because Your Honor had already heard all the arguments
9 and already decided all the arguments. So I was expecting from Wyeth Ranch
10 or from SFR, hey, Judge, here's this new case that cast doubt upon the
11 Court's prior ruling or here's this new piece of evidence that cast doubt upon
12 the Court's prior ruling.

13 There is no such case that they've cited. There is no piece of
14 evidence that they cited. So the Court's prior ruling is the Court's prior ruling,
15 and that Court -- this Court's prior ruling found genuine issues of material fact
16 with respect to whether SFR was a BFP; genuine issues of material fact on the
17 issue of commercial reasonableness.

18 Your Honor, with -- and I don't know where Your Honor exactly
19 wants me to start -- where to start on this, but with respect to the payment by
20 the homeowner and how this case is unique, the homeowner -- after there was
21 an institution of an action to enforce the lien, which there is a new case that
22 tells when that happens now, which we didn't have back then, and that
23 happens when the notice of -- the notice of lien is mailed. That was done, I
24 believe, September 30th of 2008.

25 At that point in time, the super priority portion of the lien is you

1 go back nine months from that date. That's crystal clear in the *SFR* decision.
2 The *SFR* case says is the last nine months. It doesn't say, hey, it's just any
3 nine months. You just kind of take nine months of whatever the dues are, and
4 that's your super priority lien. It's not. It's very specific. It says it is the last
5 nine months of HOA dues.

6 Now, it didn't answer the question the last nine months from
7 when, but now we know the last nine months from the institution of an action
8 to enforce the lien, which is the service of the notice of delinquent lien. So
9 that's the only amount that's entitled to the super priority portion -- to the
10 super priority, that -- at most, nine months from then. There's actually -- in
11 this case there was only two missed quarterly payments, so it would be six
12 months

13 THE COURT: Like \$900?

14 MR. MERRILL: Yeah. 840, I believe is what it was, yes. That's
15 correct, Your Honor. The homeowner after that, after that super priority
16 amount was set paid \$3,230 to the association. Okay? And the Court, based
17 upon that -- and we went through the facts, and I know the facts were
18 extensive, and Your Honor looked at them, the prior decision and order.

19 And, basically, there was a notice that was done. There was a
20 payment made. And then another notice was done and then a payment was
21 made. So in that situation, Your Honor, there is a genuine issue of material
22 fact as to whether the homeowner paid the super priority portion of the lien.

23 Now, Ms. Gilbert says, well, you have to come in and prove
24 that, and, actually, that's not true. Because if we look at the comment -- well,
25 let me back up. The first argument is, well, gee, only the homeowner can pay

1 it. That's just flat-out wrong. NRS 116 actually provides -- I'm sorry, not
2 the -- only the lender could pay the super priority portion of the lien. Sorry,
3 Your Honor --

4 THE COURT: I knew what you meant.

5 MR. MERRILL: -- I misspoke. NRS 116.31162 actually is contrary to
6 that argument. It says, NRS -- it states, "An association can foreclose if,"
7 and I quote, "the unit's owner or his -- his or her successor in interest has
8 failed to pay the amount of the lien for 90 days following the recording of the
9 notice of default and election to sell."

10 So the statute itself says the unit owner can pay the lien. It
11 doesn't even recognize the right of the lender to pay the lien at all. And,
12 actually, the definition of unit owner is defined in NRS 116.095, and the
13 definition of unit owner, and this is a quote, does not include a person having
14 an interest in a unit solely as security for an obligation.

15 So it doesn't include the owner -- a unit owner doesn't include a
16 lender, doesn't include a person with a security interest. So to say that -- that
17 only the bank can pay the super priority portion of the lien is just absolutely
18 not true. It's not supported by the language of the statute.

19 It also would make no sense because, of course, if the
20 homeowner pays the entire lien, would they still say, oh, well, about nine
21 months super priority is still out there, it's still outstanding, the lender still has
22 to pay it? Well, of course not. Of course not.

23 With respect to the purpose of the statute, and we heard
24 arguments on the --

25 THE COURT: I do have a question for you, though --

1 MR. MERRILL: Yeah.

2 THE COURT: -- at this point.

3 MR. MERRILL: Yes.

4 THE COURT: I don't think there's any dispute about the amounts the
5 homeowner paid. Everybody's on the same page with respect to that?

6 MR. MERRILL: Correct.

7 THE COURT: Right? So is it an issue of fact at this point now that
8 discovery has closed or is it a legal issue about the effect of the payments by
9 the homeowner?

10 MR. MERRILL: Well, I mean, I think if they had evidence that -- of how
11 it was applied, it would be an issue of fact, but under the common law, which
12 the Court must apply if the statute is -- says nothing, under the common law,
13 the Court has to apply payments when there's an open account -- and I'll get
14 Your Honor some case citations for this.

15 There is a Second Circuit case, 143 F.3d 88, it's *LB 57th Street*
16 *v. E.M. Blanchard*, "As a general rule, payment is applied to debts in the order
17 in which they accrue." So if you have a general account and you're getting
18 charges on the account and credits on the account and there's money coming
19 in and money going out, typically, generally, under the common law, those
20 payments are paid to the oldest amounts first. Okay?

21 So what are the oldest amounts first? The oldest amounts first
22 were that part in 2008, okay, and the notice of -- the notice of lien, I believe,
23 if Your Honor was -- I believe was -- I'm going from memory. I believe it was
24 1,400 something dollars? 1,475 sticks in my head, and I apologize, I don't
25 have that right in front of me. But that was done on September 30th of 2008.

1 So what they're saying is that date, September 30, 2008, there
2 was \$1,475 owed. And we know -- and that's the oldest amounts owed, and
3 we know only a small portion is entitled to super priority. Okay? Well,
4 \$3,230 was paid after that date. So if \$3,230 is paid -- is applied, as it is
5 under the common law, to the oldest amounts first, the super priority portion
6 is paid. It's paid. So if you want to look at it as a legal question, then as a
7 matter of law --

8 THE COURT: The question is really a -- the question is, I don't know
9 that there are any disputed facts. Isn't this just how the law shakes out on
10 this issue at this point?

11 MR. MERRILL: Yes, other than it does go to the issue -- Your Honor
12 found there was an issue of fact in the prior decision, and order and then also
13 it goes go to the issue of unfairness, about the payment, which it does create
14 a genuine issue of material fact.

15 But if you look at it from a purely legal standpoint, I could have
16 argued and could have filed a motion for summary judgment other than the
17 fact that I thought Your Honor had already decided the issue, that if you apply
18 the amounts to the oldest amount first, that that is, in fact, paid, that it's been
19 satisfied. And because it's been satisfied, the BFP issue, none of that comes
20 into a place.

21 The BFP -- if the homeowners association did not have the
22 authority to foreclose on the super priority portion of the lien, then any
23 foreclosure of the super priority portion of the lien is void. It's not voidable. It
24 is void. It's -- it's done. Okay? It's not an issue of, well, gee, we're a BFP --
25 and I can refer to the Court to -- I apologize one second, Your Honor.

1 There's a -- there's a -- *La Jolla Group II*, which is 28 Cal
2 Reporter 3d, 825. There's a situation in *La Jolla Group II*, the lender began
3 foreclosure proceedings. The lender and the borrower had agreed on a -- to
4 reinstate the loan. If you pay this amount, you'll reinstate the loan. The
5 borrower paid the money to reinstate the loan, and when the borrower did
6 that, the lender forgot to tell the trustee of the deed of trust not to foreclose.
7 So the trustee of the deed of trust went ahead with the foreclosure anyways.

8 And in that situation, in that circumstance, the court said, no,
9 that sale was void. Once it was agreed that the loan was to be reinstated, the
10 trustee lost the power to proceed with the foreclosure, and because of that
11 the sale is void. And the third-party purchaser said, well, I'm a BFP, I'm a
12 BFP, and the court said, no, I'm sorry, it doesn't matter. The sale was void.
13 You had no authority to foreclose.

14 If the super priority portion of the lien was paid, which it was in
15 this case, the HOA had no authority to foreclose upon the super priority
16 portion of the lien; therefore, if they're coming in and saying, we did foreclose
17 on the super priority portion of the lien and, Marchai, your interest is
18 extinguished, then that sale was void. If they're coming in saying, no, we only
19 foreclosed on the sub priority portion of the lien, then, of course, Marchai's
20 deed of trust is still in place.

21 THE COURT: Okay.

22 MR. MERRILL: With respect to -- with respect to -- well, you have to
23 record the release of the super priority portion of the lien, there's nothing in
24 the statute that requires that.

25 And as Ms. Gilbert just stood up and said here a moment ago,

1 it's one lien. Okay? It's one lien. It can't be split. It's one lien. It's what
2 they kept saying. It's one lien. Well, if it's one lien, how could you -- how
3 could you release the super priority portion of the lien? So there's nothing in
4 the statute that requires that. And even if that wasn't recorded, again, there
5 was no authority to go forward; therefore, the sale would be void.

6 With respect to -- again, the purpose or the -- yeah, the purpose
7 of the statute is -- in *SFR*, the *SFR* opinion is clear about this. The purpose of
8 the statute was not to force lenders to pay. Of course, the homeowner is
9 always responsible to pay the lien. It's the homeowner's responsibility to pay
10 the lien.

11 THE COURT: No. It's to make sure -- I mean, because -- it's just to
12 make sure that the HOA gets paid, right, because if you don't pay the HOA
13 fees, you're punishing all the other homeowners in the association.

14 MR. MERRILL: That's exactly correct. And what *SFR* says, and the
15 language -- and I can pull it up for Your Honor -- says, that the super priority
16 was added because, and I quote: Otherwise, when a homeowner walks away
17 from the property and the first deed of trust holder delays foreclosure, the
18 HOA has to either increase the assessment burden on the remaining unit parcel
19 owners or reduce the services the association provides.

20 The homeowner didn't walk away from this case. The
21 homeowner paid \$3,230 after the homeowners association instituted an action
22 to enforce the lien. That's not the situation here -- that's not the situation.
23 The situation in *SFR* is, the homeowner just walks away, and then, bank,
24 you're stuck for nine months. You're not stuck for the whole thing. You're
25 only stuck for the nine months. That's not what happened here. The

1 homeowner continued to pay over years and years and years.

2 Again, I think with -- with respect to being BFP, the Court has
3 already -- the Court has already said there were issues of fact on that. With
4 respect to the commercial reasonableness, there's already issues of fact on
5 that. That is one new argument that I know Your Honor had looked at before,
6 the issue of the payment of the sale. The statute is very clear. The
7 association when it conducts a sale must sell to the highest cash bidder.
8 Okay? It doesn't say, well, you can accept --

9 THE COURT: Well, I mean, are they required to like bring, you know, a
10 suitcase full of like \$20 bills with them to the sale? Because that seems --

11 MR. MERRILL: Well, a cashier's --

12 THE COURT: -- a little bit --

13 MR. MERRILL: A cashier's check, of course, is the same, and so --

14 THE COURT: Well, how would they know what amount to put on a
15 cashier's check until the sale takes place?

16 MR. MERRILL: This is how it is commonly done, and they don't
17 disagree with this. You come in to buy. You come in with -- you come with a
18 cashier's check and -- sorry, Your Honor. You come in with -- you come in
19 with multiple cashier's checks of like 5,000, 10,000, whatever it is, and then
20 you put that in, and then you get a refund. That's how it's commonly done,
21 but that's not what was done in this case.

22 In this case it wasn't sold to the highest cash bidder. SFR was
23 told, hey, you don't have to pay today. We trust you. You can pay tomorrow
24 or some other day. That's not what the statute says. It says, "Shall be sold
25 to the highest cash bidder on the day of the sale."

1 Now, they may not like the fact that they have to give \$25,000
2 and wait a couple days to get -- or wait a week to get their \$4,000 back, but
3 that's not what the statute allows. The statute requires them to pay it on the
4 day of the sale. That's not what happened here.

5 THE COURT: All right. Thank you.

6 MR. MERRILL: Thank Your Honor.

7 THE COURT: Ms. Gilbert, anything else?

8 MS. GILBERT: Yes, Your Honor. The statute actually reads -- NRS
9 116.31162, subsection 2, actually reads, "To the extent of." It does say for
10 the assessments that become due. What we have is a time period where you
11 start counting back up to nine months and an amount. It doesn't say it's
12 those nine months. It is the super priority amount. The super priority amount
13 is an amount up to nine months of assessments to the extent of, but not those
14 nine months.

15 There's nothing in that statute that says that it's -- otherwise it
16 would read, "Security interest described in paragraph B of the assessments
17 that become due." The assessments that become due, not to the extent of.
18 So it's an amount of money that becomes -- that is -- that becomes the super
19 priority amount.

20 As long as a homeowner has not paid their assessments and
21 their lien, the entire amount, there is a super priority amount to the extent of
22 that amount, nine months. And if the bank doesn't pay it and there's
23 something left on it, then there's a super priority lien. There does have to be a
24 release of that portion of the lien because otherwise when you read through
25 and you go to the public documents --

1 THE COURT: Ms. Gilbert, so I have never seen that in one of these
2 cases yet. So are you telling me that every one of these cases that's been
3 filed in the Eighth Judicial District Court, all -- I don't know. You all probably
4 know better than I do how many there are, but where no one has ever filed a
5 notice releasing a super priority lien, that in all of those cases, even if there's
6 been tender that the bank can't --

7 MS. GILBERT: No. We believe that's part of the problem. They
8 don't -- they didn't do it, and there's nothing in the statute that says they do,
9 but if you look at the recording statutes --

10 THE COURT: But nobody did, right? I mean, nobody did it. Let's be
11 fair, nobody has done this ever.

12 MS. GILBERT: Or I can say --

13 THE COURT: This doesn't sound right.

14 MS. GILBERT: -- that NAS and some of the other -- if they receive
15 some kind of a payment from a bank, that they would announce it without
16 putting a legal -- a legal statement on it, in other words, we've received money
17 from the bank at the sale. And that way the buyers who are there can make
18 their own decision about the risks that they're taking at that point in time
19 legally.

20 THE COURT: I have to say I haven't really seen that happen either, but
21 I haven't had, you know, every --

22 MS. GILBERT: I can tell you that at SFR we have, but the recordings --
23 but NRS 116 does not overcome the recording statutes, and the Restatement
24 says the same thing. They want to rely on the Restatement for their
25 commercial reasonableness. The Restatement says the same thing in 6.4, I

1 think, comment G, where it says that if a -- when a junior lienholder pays a
2 senior -- pays off the senior lienholder to protect its own interest, that's
3 essentially an assignment because the amount then goes to the junior
4 lienholder to collect, and they step in. It's subrogation, and they consider that
5 an assignment. And under NRS -- in the recording statutes in Nevada, NRS --
6 I'm sorry, I'm drawing a total blank right now --

7 THE COURT: Right. I can never remember the numbers.

8 MS. GILBERT: I think we have them in our reply brief.

9 THE COURT: Yes.

10 MS. GILBERT: Under the recording statutes, an assignment has to be
11 recorded to be effective against a third party, but what we have is people
12 saying we have all this stuff going on in the background, no reason to look,
13 and then -- and then it's used against a BFP. That's not what foreclosure
14 sales are for. There's supposed to be finality to foreclosure sales. There's a
15 reason for that.

16 THE COURT: And when did the fact that there's a first deed of trust
17 that's recorded put the purchaser on notice that there may be an issue if
18 they're buying at a homeowners association foreclosure sale?

19 MS. GILBERT: I don't believe so, Your Honor. I think that *Shadow*
20 *Wood* took care of that when it said that knowledge that somebody -- well,
21 that was a homeowner. A homeowner may come back in equity and
22 complain. Here we have a lienholder come back in equity and complain at a
23 later date does not defeat -- does not negate BFP, just the knowledge that
24 they may come and complain.

25 And let's be clear, most of these banks weren't complaining

1 about all this stuff we're talking about now until after the *SFR* decision. They
2 spent two years, three years trying to say, oh, it couldn't possibly be this. So
3 all this is new. So how would SFR even know if they're not -- if they weren't
4 even bringing it in their counterclaim at that time? They waited.

5 So I think that that's -- this is a red herring, Your Honor, and I
6 also believe it's a red herring as far as the payment -- I can say the HOA has
7 more information and can talk more coherently about application, et cetera,
8 and how they're applied, but, remember, the HOA is incurring costs during all
9 this, not just the assessments, but all their costs to be able to foreclose. And
10 these payments have to go to that, too, otherwise the HOA is in debt for
11 moving forward to collect on monies it was already owed to them.

12 I think that that's, again, a red herring. And, remember, SFR
13 comes in and they see a notice of delinquent assessments in 2011, and that's
14 the operative notice of delinquent assessments for them. And I truly do
15 believe that -- that the recording statutes, et cetera, go against, and as far as
16 any commercial unreasonableness, et cetera, I don't believe they've shown
17 any. I don't even believe that they're asking on the day of the sale to have
18 it -- to it postponed constitutions fraud, oppression or unfairness that SFR
19 would know about them asking.

20 To the extent that it changed the price, SFR would have paid
21 because, remember, that's what's got to connected. The price SFR paid or
22 the price obtained at auction has to have been affected by this fraud,
23 oppression or unfairness, and I think that's what you have to put together, and
24 they never do.

25 And I understand that you've ruled before, Your Honor. I also

1 understand that you can change your mind because we didn't have a final
2 decision, you know, a final appealable decision, so anytime you can change it
3 if you chose to. And it appears that they're doing a one amount, and I don't
4 know if that's what the argument here was, that they paid it off and there can
5 never be another super priority when there's a new NODA or not. But to that
6 extent, I don't believe that that's the case, that the HOA can have one super
7 priority amount and that's it forever and ever. They instituted a new action to
8 enforce in 2011.

9 THE COURT: Okay. Thank you. Let's go ahead and do the Wyeth
10 Ranch motion for summary judgment.

11 MS. HUMMEL: Okay, Your Honor. Now, the HOA's motion and SFR's
12 motion are really interrelated, so I'm going to piggyback off many of Ms.
13 Gilbert's arguments.

14 THE COURT: Yeah. So just anything you have on top of what we've
15 already talked about.

16 MS. HUMMEL: Right. So let's start with the borrower's payments on
17 the account. I think Ms. Gilbert made an excellent point, that in this case the
18 foreclosure proceedings did take a long time. I mean, we started in 2008.
19 The sale didn't take place until August of 2012. In that period, however,
20 we've recorded to notices of delinquent assessment, one in October of 2008
21 and one in February of 2000 -- I'm sorry, in December of 2011.

22 Between those two notices, the borrower did make payments on
23 the account, and let's talk about those payments a little. At the time the
24 February 28th, 2012, notice of default was recorded, the borrower was -- and
25 I can show you an exhibit to my original motion.

1 THE COURT: I have all that. I mean, the borrower -- homeowner paid
2 what? Like \$595 after the second --

3 MS. HUMMEL: 500 and -- yeah, that's almost exactly right, Your
4 Honor. So at that time, though, there were nine months of assessments, and
5 we're just talking about assessments. We're not talking about collection fees
6 and costs and other payments. There were nine months of assessments
7 outstanding at that time at a rate of \$448.50 per quarter, which breaks down
8 to \$149.50 per month.

9 If you subtracted the one payment that the borrower made --
10 and this is assuming that you're accepting Marchai's argument in the first
11 place -- the borrower didn't pay off nine months of assessments directly
12 before that February 28th, 2012, notice of default or the March 20 -- I'm
13 sorry, December 20th, 2011, notice of delinquent assessments. That wasn't
14 paid off. She didn't -- she only paid 590 something dollars. If you take out
15 her one payment on August 18th, 2011, that leaves 1,217 left on the tab.

16 And, second, Your Honor, Mr. Merrill was talking about this
17 case, *La Jolla Group II*, and I don't know the exact cite, but one of the things
18 that stood out to me is that in the particular case, the borrower and the bank
19 had an agreement, right? There was some intent that the borrower was going
20 to take some action and the bank was going to take some action to help each
21 other out and preserve the security interest in the property. If you look at the
22 communications that Alessi -- I don't think the HOA had --

23 THE COURT: There's definitely no agreement between anyone here.

24 MS. HUMMEL: There is definitely no agreement. The borrower, had
25 she had any understanding that she was paying a super priority portion,

1 whatever she thought that meant, why would she enter into a numerous 12-
2 month payment plan? Why would she offer to make \$300 payments
3 continuously until the balance of her account was paid off?

4 The only intent that I think this Court or any of the parties can
5 reasonably glean from the communications with the borrower and her husband
6 was that they desperately wanted to keep the home and that they were going
7 to pay whatever it took to keep the home. They didn't know anything about
8 first priority lien. There's no -- well, I should say there's no evidence
9 indicating they knew anything about Section 116.31162. They didn't mention
10 super priority. They didn't even say anything about nine months.

11 They paid more than nine months. No consecutively and not,
12 you know, paying off the assessments, but all of those letters that they sent,
13 those requests for payment plans, begging the HOA to just give them one
14 more opportunity to pay 160 here, 140 here, 212 there. That doesn't show
15 any intent whatsoever to protect the bank's interest. That's just the
16 homeowner trying to save their home.

17 And I think there are compelling reasons not to apply -- or not to
18 allow a homeowner to step into the shoes of the bank for purposes of the lien
19 priority sanction because everyone knows, when you buy a home in a common
20 interest community in Nevada, you have a contractual obligation under the
21 CC&R's and a statutory obligation under Chapter 116 to pay all of your
22 homeowner's assessments. I mean, you have to pay those whether or not
23 you read the CC&R's, whether or not you understood them, whether you're
24 broke. I mean, none of that matters. You have to pay those.

25 And if we create a loophole and say, well, you know, the

1 exception is if you're a homeowner and you step into the shoes of your
2 lienholder, you can pay nine months, it would create absolute chaos. HOAs
3 would be going bankrupt. They wouldn't be able to foreclose on the home.
4 And you're saying, yeah, technically they would. They could go forward, they
5 could foreclose on the sub priority, but what would that leave them? It would
6 leave them nothing. They'd be out tons of money. They'd be specially
7 assessing the remaining homeowners to try to make up that difference.

8 I don't think you can read all of the other provisions of Chapter
9 116 governing the payment of assessments outside a lien priority. You can't
10 marry those sections with Marchai's interpretation of the lien priority statute.
11 You can't bring those together without creating a conflict, a dichotomy
12 between when do homeowners have to pay all of their assessments as
13 required by the statute and is required by the CC&R's and when can they just
14 sort of slide into the shoes of the bank, waltzing every couple months, pay
15 nine months, say, oh, no, you can't touch me and leave. I think that would
16 create absolute --

17 THE COURT: It really wouldn't be the -- it's just about whether it's a
18 super or sub priority lien, right? The HOA still has a lien. The HOA is still is
19 owed money by the homeowner. The HOA could still foreclose. It's just a
20 matter of whether what happens after.

21 MS. HUMMEL: Right. But, I mean, let's -- if Your Honor would
22 entertain me, let's walk through that in realty. So if you accept Marchai's
23 argument, the homeowner comes in and pays, I don't know, \$900. That
24 hypothetically satisfied the super priority portion of the lien. We proceed to
25 the sale. We now have a sub priority lien. We likely get nothing. We get

1 nothing. So then what do we do? We take the remaining \$10,000 and we
2 assess it against the remaining 60 homeowners?

3 THE COURT: Well, but the effect would be the same if the
4 homeowner paid nothing and the bank paid the \$900, right?

5 MS. HUMMEL: Well --

6 THE COURT: I mean, it would work the same way in terms of the
7 priority.

8 MS. HUMMEL: In terms of the priority --

9 THE COURT: The HOA would be in the same position.

10 MS. HUMMEL: Arguably, although I know there's been a lot of
11 dispute, and we don't have a tender in this case. But there has been a lot of
12 dispute over the effect of those so-called conditional tenders. Arguably, I
13 would agree with the Court that it has the same effect in that hypothetical.

14 THE COURT: Right. No, and I understand what you're saying.

15 MS. HUMMEL: And that kind of brings me to the second big point,
16 Your Honor, and, that is, there is no offer to pay in this case. The morning of
17 the foreclosure sale, Marchai's loan servicer contacted Alessi and said, can
18 you postpone the sale -- and this isn't even a direct quote from an email or a
19 communication with Marchai. This is an email from Alessi to the HOA saying,
20 we got a call; they want to postpone the sale so they can pay it off.

21 There was no offer to pay. There was no negotiated amount.
22 There was never even a number put on the table. So we're not dealing with a
23 situation like you have had in so many other cases, I know, where an HOA or
24 its trustee had an actual offer from a lienholder and rejected that offer for
25 whatever reason. There was no offer.

1 And a request to postpone the sale is highly distinguishable from
2 an offer to pay any amount. Even a dollar would have shown some sort of
3 good faith effort to stop the sale from going forward, but we don't have that
4 in this case. We just have a request to indefinitely postpone the sale, and I
5 don't think that rises to the level of unfairness that would be required to
6 unwind the sale.

7 THE COURT: Thank you.

8 MR. MERRILL: Your Honor, real briefly. The homeowner -- as you
9 noted in your prior decision and order, the homeowner does have an interest of
10 paying off that super priority portion of the lien because, of course, if the
11 homeowner doesn't pay off the super priority portion of the lien and it's
12 foreclosed upon, the lender gets to go after the homeowner for the whole
13 shebang, for the whole amount of the note, as opposed, you know, reducing it
14 with the -- whereas, if the lender forecloses, that's not -- that's not a situation.

15 One, I want to correct the record. I don't believe it was \$595
16 paid afterwards. I believe there was an additional payment of \$165. I believe.

17 THE COURT: The \$165 was paid in July, I believe, prior to the notice,
18 and then there were two payments in December. That's at least what my
19 notes say.

20 MR. MERRILL: I thought there was one in July of 2012, but maybe
21 I'm wrong on that.

22 THE COURT: I had July of 2011, but I may have -- that may be
23 incorrect, but, I mean, regardless, it's still not --

24 MR. MERRILL: Correct.

25 THE COURT: Even if you add that in, it's still not three-quarters of the

1 assessment.

2 MR. MERRILL: Correct. Correct. But the issue here is, with respect
3 to, oh, no, well, this is the operative one, well, I disagree with that. They did
4 the institution of action to enforce the lien back in 2008. That's when it was
5 done. They never rescinded any of those notices.

6 Even their notice of defaults, I believe, says that the delinquency
7 started in January of 2008. The September 2008 is the operative notice of
8 delinquent assessment. SFR had record notice of that. It was recorded. The
9 notice of default prior to that was recorded. The five notices of sale that were
10 done were recorded as well.

11 With respect to Wyeth Ranch's argument about, you know,
12 well, gee, they could only foreclose on the sub priority, I think what
13 everybody's forgetting in this -- and I think it's easy to forget -- is we're
14 looking at this in a post-2007 time frame. The statute was enacted back in
15 1991. Up until, I guess -- well, I would probably say from roughly after the
16 Great Depression, maybe World War II, up until 2007, property values typically
17 increased. They typically went up in value, and the ability to foreclosure upon
18 a homeowner and that homeowner losing their equity and property is huge.

19 So to say, well, gee, you know, we could just foreclose upon a
20 sub priority like this is no big deal, that's a -- traditionally, typically, that's a
21 big revenue that the homeowner -- that the homeowners association is given.
22 They could throw the homeowner out of their home. So to say that, well, you
23 know, this really is a nothing thing and it doesn't mean much, that's
24 nonsense.

25 And Your Honor's right, if there was payment of nine months, it

1 doesn't matter who paid it. If there's payment of nine months, the super
2 priority lien is taken care of, they're in the same position they would've been
3 in.

4 THE COURT: Okay. Thank you. Folks, I am going to -- I'm going to
5 read -- take the opportunity to read the replies, so I will get you a written
6 decision, and then we'll hear the motion in limine on September 12th.

7 MR. MERRILL: Okay.

8 THE COURT: Because I think there's been not an opportunity to
9 respond to that.

10 MR. MERRILL: They did file an opposition yesterday. I haven't had a
11 chance to --

12 THE COURT: Do you want me -- I can do that now today, too, so you
13 don't have to come back or --

14 MR. MERRILL: And here's our only issue, just by the way. We are on
15 the September 5 trial stack. I know --

16 THE COURT: Oh, all right. So when --

17 MR. MERRILL: I know I am in trial -- I know I am in trial that first week
18 of September, and I know -- I've spoken with Ms. Hanks. It looks like she's in
19 trial a bunch of that. So it looks like the end of the stack will be fine for all of
20 us, but the early part of the stack is an issue --

21 THE COURT: All right.

22 MR. MERRILL: -- which is why we said September 12th because we
23 figure there was no chance --

24 THE COURT: All right.

25 MR. MERRILL: -- we were going to be able to go before that. But if

1 you want to argue it today, I'm happy to.

2 THE COURT: What would you prefer?

3 MS. GILBERT: Well, I would prefer to get Your Honor's ruling on
4 whether or not it's going forward and have Ms. Hanks argue it on the 12th, if
5 possible.

6 THE COURT: Okay. Then let's just leave it on the 12th. That's fine.
7 I'm sorry for all of the confusion about this.

8 MR. MERRILL: No, no, that's okay, Your Honor. And --

9 THE COURT: I was trying to make it easier, and I made it much worse,
10 so I apologize for that.

11 MS. GILBERT: No, it's --

12 MR. MERRILL: And just for housekeeping and kind of timing on this,
13 and I know Your Honor is unbelievably busy, when are we expecting it
14 because we -- I don't want to gear up --

15 THE COURT: I've already written like 22 pages on this, so it shouldn't
16 be taking too long.

17 MR. MERRILL: Yeah.

18 THE COURT: I'll try -- I know that you have stuff coming up, so I'll try
19 to get this done right away.

20 MR. MERRILL: Okay. All right. Yeah, I just --

21 THE COURT: I know.

22 MR. MERRILL: -- spent a bunch of money preparing for trial, but I get
23 it. Thank Your Honor.

24 THE COURT: Thank you.

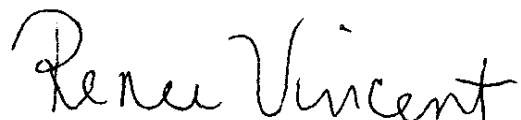
25 MR. MERRILL: I appreciate your hearing the argument this morning.

1 MS. GILBERT: Thank Your Honor.

2 THE COURT: All right.

3 [Proceeding concluded at 10:34 a.m.]
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20 ATTEST: I do hereby certify that I have truly and correctly transcribed the
21 audio-visual recording of the proceeding in the above entitled case to the
22 best of my ability.

23 
24

25 Renee Vincent, Court Recorder/Transcriber