

**Case No. 74532**

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

U.S. BANK, N.A., a national banking  
association as Trustee for the Certificate  
Holders of Wells Fargo Asset Securities  
Corporation, Mortgage Pass-Through  
Certificates, Series 2006-AR4; and NV  
WEST SERVICING, LLC, a Nevada  
limited liability company, as Trustee for  
Nashville Trust 2270,

Respondents.

Electronically Filed  
May 22 2018 08:17 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPEAL**

from the Eighth Judicial District Court, Clark County, Nevada  
The Honorable JOANNA S. KISHNER, District Judge  
District Court Case No. A-13-678814-C

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**APPELLANT'S APPENDIX VOLUME 6**

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1 In this case, the Court should set aside the HOA sale as a matter of equity. The  
2 inadequate sales price and violation of the automatic stay have prevented justice from being done.

3 **D. The Clear Inadequacy Of The HOA Sales Price Coupled With Even Slight**  
4 **Unfairness Requires Invalidation Of The HOA Sale.**

5 The authorities cited above, together with those addressed in U.S. Bank's Renewed  
6 Motion for Summary Judgment, demonstrate that the HOA sale in this case should be set aside as  
7 commercially unreasonable. This is especially true given the great inadequacy in the sale price  
8 obtained at the HOA sale<sup>6</sup> and the significant unfairness created by the HOA's violation of the  
9 automatic stay and SFR's retroactive annulment of that stay.

10 At each step of the way, U.S. Bank acted properly and within the rules to protect its deed  
11 of trust and to pursue its foreclosure of the property while honoring policy meant to protect  
12 debtors. U.S. Bank properly halted its foreclosure sale and sought and obtained relief from the  
13 automatic stay. The HOA, on the other hand, violated the automatic stay by selling the property  
14 in open violation of the stay. SFR compounded that initial unfairness by surreptitiously moving  
15 to reopen the bankruptcy and retroactively annul the stay, changing the rules of the game to its  
16 own benefit and to the detriment of U.S. Bank.

17 These acts created a fundamental unfairness which, when coupled with the clear  
18 inadequacy of the HOA sales price, demand that the HOA foreclosure sale be invalidated as  
19 commercially unreasonable.

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28 <sup>6</sup> Here, SFR's purchase price of \$14,000 was just six percent of the \$228,000 fair market value of the property at the time of sale.

1 **III. CONCLUSION**

2 For the foregoing reasons, U.S. Bank respectfully requests that this Court GRANT its  
3 Motion for Summary Judgment in its entirety.

4 DATED July 31, 2017.

SNELL & WILMER L.L.P.

5  
6 By: /s/ John S. Delikanakis

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Securities Corporation, Mortgage Pass-  
Through Certificates, Series 2006-AR4*

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On July 31, 2017, I caused to be served a true and correct copy of the foregoing **U.S. BANK'S SUPPLEMENTAL BRIEF RE UNFAIRNESS** by submitting it to the above-entitled Court for electronic filing and/or service upon the Court's Service list pursuant to the Eighth Judicial District Court's Administrative Order 14-2 dated May 9, 2014.

DATED: July 31, 2017

/s/ Gaylene Kim

An Employee of Snell & Wilmer L.L.P.

4851-1281-0571.3



**EXHIBIT 7**

**EXHIBIT 7**

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Tuesday, March 28, 2017**

**Hearing Room      5B**

10:30 AM

**8:10-21738    Richard Parks and Lucy Parks**

**Chapter 11**

**#6.00    Amended Motion for relief from the automatic stay REAL PROPERTY  
(Cont'd from 2-14-17)**

**SFR INVESTMENTS POOL 1, LLC  
Vs.  
DEBTORS**

Docket      296

**Tentative Ruling:**

This is the continued hearing on SFR Investments Pool, LLC's ("SFR") motion to annul the automatic stay. Some background would be helpful.

**1. Background Facts**

SFR is a third party purchaser at auction sale of real property commonly known as 2270 Nashville Ave, Henderson, Nevada 89052 ("Property"). The motion is opposed by U.S. Bank N.A. ("the Bank"), trustee under a deed of trust recorded against the Property. The Bank asserts that National Default Servicing Corp. ("NDSC"), the predecessor trustee for the deed of trust, recorded a notice of trustee's sale on July 9, 2010. Debtors Richard and Lucy Parks ("Debtors") then filed a chapter 11 petition on August 23, 2010, staying the foreclosure proceeding. On July 2, 2012, U.S. Bank filed a motion for relief from the automatic stay in order to resume foreclosure proceedings on the Property. The motion was granted by order entered on August 7, 2012 relieving the stay only as to NDSC and holders of the trust deed. On March 1, 2013, Copper Ridge Community Association, the homeowners' association for the Property ("Association"), without obtaining relief of stay, held an auction of the Property for unpaid monthly assessments. SFR was the highest bidder at the auction and claims that it had no notice of Debtor's bankruptcy case. SFR also contends that neither Nevada Association Services, Inc. ("NAS")(the entity that conducted the auction) nor Association were included in this case's mailing matrix. A

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deed in favor of SFR was recorded March 3, 2013.

After purchasing the Property, on March 22, 2013 SFR filed an action in Nevada District Court ("the Nevada action") seeking injunctive relief and to quiet title. The Nevada action was initially dismissed but later overturned and reinstated by the Nevada Supreme Court in December 2013. After the dismissal (but before the reinstatement of the Nevada action) the Bank also foreclosed July 18, 2013 and has obtained ostensible title via trustee's deed. The Bank reportedly has filed a motion for summary judgment in the Nevada action raising among other issues that SFR's title is invalid because the sale conducted by NAS was void as it violated the automatic stay. Just to make matters more interesting, on August 12, 2016 the Ninth Circuit issued its ruling in *Bourne Valley Court Tr. V. Wells Fargo Bank, N.A.*, 832 F. 3d 1154, 1159 (9th Cir. 2016) holding that the Nevada statute under which the NAS auction sale was conducted is unconstitutional.

Obviously the parties are now jostling for any advantage that this court might provide to their respective positions in the Nevada action. SFR wants to annul the stay so as to block any continuing argument that the NAS auction was void. In contrast, the Bank argues that the sale is void (not merely voidable) under *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992), that it indeed has standing to oppose the instant motion and that the *Fjeldsted* factors preponderate against annulment of the stay in this case. Unsurprisingly, SFR argues in part that U.S. Bank does not have standing and that the *Fjeldsted* factors weigh in favor of annulment of the stay.

**2. Limited Opinion**

First, it is important to clarify what this court does not say. Nothing in this opinion should be interpreted as any comment upon the constitutionality of the Nevada statute, or as to the efficacy of any question, procedural or substantive, under Nevada law, or of the importance or effect of the Ninth Circuit's ruling. Those decisions are for the Nevada court alone to make. This court's opinion is confined to the question of the automatic stay of 11 U.S.C. §362 and annulment under §362(d).

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**CONT...      Richard Parks and Lucy Parks  
3. Standing?**

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SFR relies heavily on *In re Pecan Groves of Arizona*, 951 F.2d 242 (9th Cir. 1991), citing *Pecan Groves* for the general proposition that a creditor has no standing to oppose a motion to annul the automatic stay. After careful study, this court believes this general proposition is an overstatement on creditor standing and is not supportable. The inquiry is more fact-dependent.

The facts of *Pecan Groves* are complex, but are instructive here. In *Pecan Groves*, the debtor purchased a pecan grove from Pecan Centers of Arizona, Inc. ("PCA"), with debtor executing a promissory note in favor of PCA and its majority shareholder Jerry Skousen ("Skousen"). This note was secured by a deed of trust on the purchased property, with John Hancock Insurance Company also holding a senior lien on the property. Debtor later defaulted, with foreclosure proceedings initiated and debtor filing a chapter 11 petition in response. Skousen, with knowledge of the bankruptcy, but without obtaining relief of stay, purchased the property, recorded the trustee's deed evidencing the sale and later transferred the property to a trust. Debtor's officers later became aware of the sale, but were unaware Skousen recorded the deed and transferred the property to a trust. Nevertheless, debtor never challenged the sale. Debtor and Skousen acted as if debtor owned the property during the pendency of the bankruptcy case, later obtaining an order from the court permitting debtor to acquire financing for irrigation of the property. Clarence Tilley ("Tilley") provided the financing and was supposed to obtain a lien on the property junior only to John Hancock's lien. Tilley never obtained a security interest and began to manage the property. The chapter 11 case was subsequently dismissed, with John Hancock then initiating a foreclosure proceeding against the property. Tilley filed an involuntary chapter 7 petition against the debtor, with the case dismissed on September 4, 1984. Tilley, debotr, and its trustee never challenged the sale to Skousen during the involuntary case, with the involuntary case eventually dismissed. After the involuntary case was dismissed, Skousen sold the property to the Clayton group. The debtor subsequently filed another chapter 7 petition, with the chapter 7 trustee challenging the transfer of title of the property until almost a year later. Tilley and B

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& C Equities, an entity owned by Tilley, acquired assignments of claims against the debtor, and joined the trustee's action. The bankruptcy court held that Tilley, B & C Equities, and the trustee could not prevail because Clayton Group was a good faith purchaser and because laches precluded the claims. Tilley and B & C Equities appealed to the BAP but without the trustee. The BAP affirmed. The Ninth Circuit ultimately held that Tilley and B & C did not have standing "to appeal an adverse decision regarding a violation of the automatic stay." *Id.* at 245.

*Pecan Groves* is distinguishable from the facts here. First, unlike Tilley and the *Pecan Groves* trustee, the Bank has not had multiple opportunities to challenge the automatic stay. In addition the Bank appears to have not had knowledge of the sale to SFR until SFR brought an action to quiet title. In contrast, Tilley had knowledge of the sale to Skousen, yet failed to challenge the sale during the involuntary case. Simply put, there are no facts here suggesting that laches should bar the Bank from opposing SFR's annulment motion. While the Ninth Circuit's reasoning did not expressly rely upon laches in making its determination, it did uphold the BAP and bankruptcy court. Second, it appears that the holding in *Pecan Groves* can be read more narrowly to stand for the proposition that a creditor has no independent standing to appeal an adverse decision with respect to an automatic stay violation. *Id.* ("We therefore hold that a creditor has no independent standing to appeal an adverse decision regarding a violation of the automatic stay"); *Id.* at 246. This understanding has been recognized by other courts. See e.g. *In re Int'l Forex of California, Inc.*, 247 B.R. 284, 290 (Bankr. S.D. Cal. 2000) ("*Pecan Groves*[']...holding appears limited to an instance where a trustee in control of the debtor opts not to pursue an appeal; "); *Id.* at 291 ("In this Court's view, *In re Pecan Groves*' holding has been overstated for the proposition that the automatic stay is solely for the benefit of the debtor").

This court agrees with *Forex*. The automatic stay does, in fact, in some cases serve a purpose beyond the primary purpose. The automatic stay is primarily to give the debtor a breathing spell and to provide protection to the estate; but the stay is also designed to prevent creditors from harming each other. The stay ensures that estate property is properly administered under the Code and that no creditor *vis à vis* one

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another gains an undue advantage, at least until the bankruptcy case is resolved. So, although the facts of *Pecan Groves* suggested that no bankruptcy purpose would have been served by recognizing standing of creditors in that case to appeal, it should not be read quite as broadly as SFR suggests. The same limiting analysis would apply to cases like *In re Globe Investment & Loan*, 867 F. 2d 556 (9th Cir 1989) and *In re Yan*, 2015 WL 845570 (9th Cir. BAP 2015), and indeed to all of the cases cited by SFR. In sum, the court believes that the voidness doctrine of *Schwartz* remains but whether creditors or strangers will be heard to complain of stay violation is highly fact-dependent. A creditor is at its weakest when arguing for relief on account of stay violation as an offensive weapon in a two party dispute between creditors after the bankruptcy and estate are resolved. So, under this view perhaps the Bank has standing to argue in opposition to SFR's motion, or barely so, but that is not the end of the inquiry.

**4. Annulment**

"[V]iolations of the automatic stay are void, not voidable." *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992). However, "[a] bankruptcy court has authority to make exceptions to, and to annul, the automatic stay under § 362(d). *In re Fjeldsted*, 293 B.R. 12, 21 (B.A.P. 9th Cir. 2003). "This authority includes annulment providing retroactive relief, which, if granted, moots any issue as to whether the violating sale was void because, then, there would have been no actionable stay violation." *Id.* "[T]he proper standard for determining 'cause' to annul the automatic stay retroactively is a 'balancing of the equities' test." *Id.* at 24. "While a mechanistic application of factors is inappropriate in making this determination, such factors may be considered as an aid to the court in weighing the equities. The general trend has been to focus on two factors in determining whether cause exists to annul the stay: '(1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor.'" *Id.* at 24. "[But] these two factors are not dispositive." *Id.* Courts may consider the following factors "when deciding whether to annul the stay:

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**Richard Parks and Lucy Parks**

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1. Number of filings;
2. Whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors;
3. A weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser;
4. The Debtor's overall good faith (totality of circumstances test): cf. *Fid. & Cas. Co. of N.Y. v. Warren* (In re Warren), 89 B.R. 87, 93 (9th Cir. BAP 1988)(chapter 13 good faith);
5. Whether creditors knew of stay but nonetheless took action, thus compounding the problem;
6. Whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules;
7. The relative ease of restoring parties to the status quo ante;
8. The costs of annulment to debtors and creditors;
9. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violative conduct;
10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;
11. Whether annulment of the stay will cause irreparable injury to the debtor;
12. Whether stay relief will promote judicial economy or other efficiencies.

"[T]hese items are merely a framework for analysis and not a scorecard. In any given case, one factor may so outweigh the others as to be dispositive." *Id.* at 25. See also *In re Williams*, 323 B.R. 691, 700 (9th Cir BAP 2005).

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Many or perhaps most of the *Fjelsted* factors (1, 2, 4, 6 and 11) appear inapplicable here as the debtors are simply not involved. At least one factor (factor nine) weighs against SFR, as it did wait considerable time to bring this annulment motion. Factor five would be largely inapplicable if SFR is believed that it had no knowledge of the bankruptcy. The court is not inclined to infer (as the Bank suggests) that SFR should have suspected a bankruptcy by the mere happenstance of a foreclosure. But factors seven, eight and twelve (and maybe three) appear to warrant an annulment of the stay. Denying annulment would void the sale to SFR, which would likely complicate matters in the bankruptcy case, but without any compensating benefit for debtors or the estate. Indeed, as the court reads it, the Debtor essentially abandoned any interest in the Property early in the case, seeing no realizable equity. Moreover, SFR has reportedly spent "significant funds to rehabilitate and maintain" the property. Motion at 3, line 12. If the sale is deemed void, is SFR now entitled to reimbursement from Debtor and/or U.S. Bank? Resolving these issues does not appear to be any easy task. Thus, it seems to be difficult to return the parties to the *status quo ante*, invoking factor seven. In addition, it is unclear that any factor twelve judicial economies would be realized if there is not an annulment, but there might well be economy if annulment is granted. The Nevada Supreme Court has apparently found SFR to be a bona fide purchaser (perhaps invoking factor three), while the Ninth Circuit has found the law relied upon by the Nevada Supreme Court unconstitutional. These are the pivotal issues but they are not before this court, nor should they be. As much as the Bank would enjoy using the voidness argument in the Nevada action, the court sees no bankruptcy or estate purpose furthered by such an approach, particularly since the estate, the debtor and all other creditors are (and have been for years) mere uninterested bystanders in this two-party drama.

*Grant*

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Grant. Appearance required to verify service issues.

<b>Party Information</b>
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**CONT...      Richard Parks and Lucy Parks**

**Chapter 11**

**Debtor(s):**

Richard Parks

**Represented By**

Richard A Marshack  
Charles Liu  
J. Alexandra Rhim  
D Edward Hays  
David Wood

**Joint Debtor(s):**

Lucy Parks

**Represented By**

Richard A Marshack  
Charles Liu  
J. Alexandra Rhim  
D Edward Hays  
David Wood

**Movant(s):**

SFR Investments Pool 1, LLC

**Represented By**

David I Brownstein

# EXHIBIT 8

# EXHIBIT 8

SHARON BERGERON  
SFR INVESTMENTS POOL 1 vs. U.S. BANK

June 06, 2016

1-4

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<p>1 DISTRICT COURT 2 CLARK COUNTY, NEVADA 3 SFR INVESTMENTS POOL 1, LLC, 4 a Nevada limited liability 5 company, 6 Plaintiff, CONSOLIDATED CASE NOS. 7 A-13-678814-C 8 vs. A-13-688734-C 9 U.S. BANK, N.A., a national DEPT. NO. XXXI 10 banking association as 11 Trustee for the Certificate 12 Holders of Wells Fargo Asset 13 Securities Corporation, 14 Mortgage Pass-Through 15 Certificates, Series 16 2006-AR4; LUCIA PARKS, an 17 individual; DOES I through 18 X; and ROE CORPORATIONS I 19 through X, inclusive, 20 Defendants. 21 ----- 22 AND RELATED CLAIMS. 23 24 DEPOSITION OF 25 PERSON MOST KNOWLEDGEABLE OF COPPER RIDGE COMMUNITY ASSOCIATION SHARON BERGERON Taken on Monday, June 6, 2016 At 12:35 p.m. At 3883 Howard Hughes Parkway Suite 1100 Las Vegas, Nevada Reported by: John L. Nagle, CCR 211</p>	<p>1 INDEX 2 Examination Further Examination 3 By Mr. Perkins 5 4 By Ms. Schimming 46 5 By Mr. Perkins 48 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
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<p>1 APPEARANCES: 2 3 4 For Plaintiff SFR Investments Pool 1, LLC: 5 KIM GILBERT EBRON 6 7625 Dean Martin Drive 7 Suite 110 8 Las Vegas, Nevada 89139 9 BY: CHANTEL M. SCHIMMING, ESQ. 10 Ph. (702)485-3300; Fax (702)485-3301 11 chantel@kgelegal.com 12 13 For Third-Party Defendant Copper Ridge Community 14 Association: 15 ALVERSON, TAYLOR, MORTENSEN &amp; SANDERS 16 7401 West Charleston Boulevard 17 Las Vegas, Nevada 89117 18 BY: ADAM R. KNECHT, ESQ. 19 Ph. (702)384-7000; Fax (702)385-7000 20 aknecht@alversontaylor.com 21 22 For U.S. Bank, N.A., as Trustee for the Certificate 23 Holders of Wells Fargo Asset Securities Corporation, 24 Mortgage Pass-Through Certificates, Series 2006-AR4: 25 SNELL &amp; WILMER, LLP 3883 Howard Hughes Parkway Suite 1100 Las Vegas, Nevada 89169 BY: CASEY G. PERKINS, ESQ. Ph. (702)784-5200; Fax (702)784-5252 cgperkins@swlaw.com</p>	<p>1 EXHIBITS 2 Deposition Exhibits Page 3 1 - Amended Notice of Deposition of Copper Ridge 5 Community Association Pursuant to Nevada Rule of Civil Procedure 30(b)(b) 4 2 - Resolution of Collections Policy For the 13 Copper Ridge Homeowners Association, Inc., Bates Nos. 000078 and 000079 5 3 - Nevada Association Services Consent and 18 Authorization, dated 11/08/10 6 4 - Documents 26 7 5 - Letter dated 5/07/12 from Megan Molina to 29 Lucia Parks 8 6 - Letter dated 6/01/12 from Pearl Agustin to 31 Lucia Parks 9 7 - Notice of Delinquent Assessment Lien, dated 33 5/21/12 10 8 - Notice of Default and Election to Sell Under 34 Homeowners Association Lien, dated 7/16/12 11 9 - Letter dated 10/12/12, with attachment, from 35 Elissa Hollander to Diane Kelley 12 10 - Letter dated 12/11/12, with attachment, from 37 Elissa Hollander to Diane Kelley 13 11 - Notice of Foreclosure Sale, dated 2/05/13 38 14 12 - Foreclosure Deed, dated 3/01/13 39 15 16 17 18 19 20 21 22 23 24 25</p>

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<p>1 (Deposition Exhibit 1 marked.)</p> <p>2</p> <p>3 SHARON BERGERON,</p> <p>4 having been first duly sworn, was</p> <p>5 examined and testified as follows:</p> <p>6</p> <p>7 EXAMINATION</p> <p>8 BY MR. PERKINS:</p> <p>9 Q. Good afternoon, ma'am. My name is Casey</p> <p>10 Perkins, and I represent U.S. Bank as trustee of -- for</p> <p>11 the certificate holders of Wells Fargo Asset Securities</p> <p>12 Corporation, Mortgage Pass-Through Certificates, Series</p> <p>13 2006-AR4 in this case.</p> <p>14 Could you please state your full name?</p> <p>15 A. Sharon Bergeron.</p> <p>16 Q. Can you spell that, please?</p> <p>17 A. S-h-a-r-o-n B-e-r-g-e-r-o-n.</p> <p>18 Q. Have you had your deposition taken before?</p> <p>19 A. Yes, I have.</p> <p>20 Q. How many times?</p> <p>21 A. About 25 now.</p> <p>22 Q. When was the last time?</p> <p>23 A. Last Thursday.</p> <p>24 Q. Okay. So you understand the rules of the</p> <p>25 deposition and the ground rules and how the court</p>	<p>1 in-house.</p> <p>2 When they get to the collection agencies,</p> <p>3 then we are the contact between the -- liaison between</p> <p>4 the collection agency, the manager, and the boards.</p> <p>5 And I actually handle it all the way through the</p> <p>6 foreclosure sale, and then currently handle all the</p> <p>7 depositions and subpoenas.</p> <p>8 Q. How long have you been working for</p> <p>9 Colonial?</p> <p>10 A. Going on six years.</p> <p>11 Q. And are you an attorney?</p> <p>12 A. No, I'm not.</p> <p>13 Q. How long has Colonial been managing the</p> <p>14 Copper Ridge Homeowners Association?</p> <p>15 A. We took over management on September 1st</p> <p>16 of 2012.</p> <p>17 Q. Did you personally oversee the foreclosure</p> <p>18 of 2270 Nashville Avenue in Henderson?</p> <p>19 A. Yes, I did.</p> <p>20 Q. Were you employed before you started</p> <p>21 working for Colonial?</p> <p>22 A. Yes, I was.</p> <p>23 Q. And where were you employed last?</p> <p>24 A. At Terra West.</p> <p>25 Q. How long were you at Terra West?</p>
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<p>1 reporter works and all those sorts of things?</p> <p>2 A. Yes, I do.</p> <p>3 Q. Okay. So I'll just remind you that you're</p> <p>4 under oath and that the oath that you just took is the</p> <p>5 same oath that you would take if we were in court</p> <p>6 today, and it carries the same penalty of perjury and</p> <p>7 the same solemnity.</p> <p>8 Okay?</p> <p>9 A. Yeah.</p> <p>10 Q. Is there any reason you can think of today</p> <p>11 why you won't be able to give your best testimony?</p> <p>12 A. No, there isn't.</p> <p>13 Q. I don't expect to keep you here too long,</p> <p>14 but if you need a break, let me know.</p> <p>15 A. Okay.</p> <p>16 Q. Who is your current employer?</p> <p>17 A. Colonial Property Management.</p> <p>18 Q. What's your title for Colonial?</p> <p>19 A. Collection specialist.</p> <p>20 Q. What are your job duties as a collection</p> <p>21 specialist?</p> <p>22 A. To handle the -- pull the aging reports</p> <p>23 for each of the homeowners associations, move them when</p> <p>24 they're delinquent per the collection policy. When</p> <p>25 they get to the -- do the collection steps that we do</p>	<p>1 A. For two years.</p> <p>2 Q. What was your job title at Terra West?</p> <p>3 A. I was director of collections.</p> <p>4 Q. And were your job duties as the director</p> <p>5 of collections at Terra West essentially the same as</p> <p>6 they are at Colonial?</p> <p>7 A. And there were some others as well.</p> <p>8 Actually, at Terra West, you could technically say my</p> <p>9 last employer at Terra West was assessment management</p> <p>10 services because I opened up their collection agency.</p> <p>11 Q. Before you were at Terra West, what was</p> <p>12 your job?</p> <p>13 A. I worked for Allied Collection Services.</p> <p>14 I ran their per-rental division and their homeowners</p> <p>15 association division.</p> <p>16 Q. How long would you estimate you've been in</p> <p>17 the collection business?</p> <p>18 A. Too long. No. I started in San Diego at</p> <p>19 a law firm, and that was 20 -- 25 years ago. Too long.</p> <p>20 Q. And I think I asked you before, but you're</p> <p>21 familiar with the real property identified as 2270</p> <p>22 Nashville Avenue in Henderson?</p> <p>23 A. Yes, I am.</p> <p>24 Q. And you're here today to talk about the</p> <p>25 foreclosure of that property, correct?</p>

<p style="text-align: right;">Page 9</p> <p>1 A. Yes, I am.</p> <p>2 Q. I'm handing you what's been marked as</p> <p>3 Exhibit 1 to your deposition transcript. Are you here</p> <p>4 in response to the 30(b)(6) deposition notice that I've</p> <p>5 just handed you?</p> <p>6 A. Yes, I am.</p> <p>7 Q. And you've been designated to speak on</p> <p>8 behalf of the HOA?</p> <p>9 A. Yes, I am.</p> <p>10 Q. And you are authorized to do so?</p> <p>11 A. Yes, I am.</p> <p>12 Q. Who gave you that authorization?</p> <p>13 A. The manager on behalf of the board of</p> <p>14 directors.</p> <p>15 Q. Who is the manager?</p> <p>16 A. Felicia Evans.</p> <p>17 Q. Could you spell that, please?</p> <p>18 A. F-e-l-i-c-i-a E-v-a-n-s.</p> <p>19 Q. Have you had a chance to look through the</p> <p>20 deposition notice yet?</p> <p>21 A. Yes, I have.</p> <p>22 Q. Okay. And in the deposition notice, there</p> <p>23 are -- there's a list of 36 deposition topics.</p> <p>24 Do you see where that is on Exhibit A?</p> <p>25 A. I sure do.</p>	<p style="text-align: right;">Page 11</p> <p>1 that the community stays up to the standard that they</p> <p>2 want.</p> <p>3 Q. So the management company does all of the</p> <p>4 day-to-day operations of the homeowners association?</p> <p>5 A. Correct. That's correct.</p> <p>6 Q. Does it collect assessments?</p> <p>7 A. Correct.</p> <p>8 Q. Where is the Copper Ridge Homeowners</p> <p>9 Association community located? Just, like, major cross</p> <p>10 streets.</p> <p>11 A. It is in Henderson, but I could not tell</p> <p>12 you the major cross streets. I know we're at Wigwam</p> <p>13 and 215, and it's probably within ten minutes of that.</p> <p>14 Q. Are there any subassociations or the</p> <p>15 Cooper Ridge subassociation of another association?</p> <p>16 A. Copper Ridge is actually the</p> <p>17 subassociation of Green Valley Ranch.</p> <p>18 Q. Does the homeowners association have an</p> <p>19 office?</p> <p>20 A. No, they do not.</p> <p>21 Q. Does Colonial have offices?</p> <p>22 A. Yes, we do.</p> <p>23 Q. Where is Colonial's office?</p> <p>24 A. 8595 South Eastern in Las Vegas, Nevada</p> <p>25 89123.</p>
<p style="text-align: right;">Page 10</p> <p>1 Q. And have you had a chance to review those</p> <p>2 topics?</p> <p>3 A. Yes, I have.</p> <p>4 Q. Are you prepared to discuss those topics</p> <p>5 today?</p> <p>6 A. Yes, I am.</p> <p>7 Q. Are there any topics in that list that</p> <p>8 you're not prepared to discuss?</p> <p>9 A. To the best of my knowledge, no, there</p> <p>10 isn't.</p> <p>11 Q. When was the Copper Ridge Homeowners</p> <p>12 Association formed?</p> <p>13 A. You know what? I do not know that answer.</p> <p>14 Never been asked that question.</p> <p>15 Q. What is the primary purpose of the Copper</p> <p>16 Ridge Homeowners Association?</p> <p>17 A. As far as just to keep the community, I</p> <p>18 guess, nice, for lack of a better word. They do not</p> <p>19 have any -- just to maintain the common grounds and to</p> <p>20 keep the property values up.</p> <p>21 Q. What kind of things does the homeowners</p> <p>22 association do to carry out those purposes?</p> <p>23 A. Actually, it's the management company.</p> <p>24 That's why they hired Colonial Property Management. So</p> <p>25 inspections for the CC&amp;Rs, rules and regs, make sure</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Does Colonial maintain the business</p> <p>2 records for the homeowners association?</p> <p>3 A. Yes, we do.</p> <p>4 Q. And when I say "the homeowners</p> <p>5 association" today, you're going to know I'm talking</p> <p>6 about Copper Ridge, correct?</p> <p>7 A. Correct.</p> <p>8 Q. And that includes all of the accounting</p> <p>9 records for the HOA?</p> <p>10 A. Yes.</p> <p>11 Q. And any corporate records?</p> <p>12 A. Yes.</p> <p>13 Q. Has the homeowners association produced</p> <p>14 its entire file related to the property in this case?</p> <p>15 A. Yes, they have.</p> <p>16 Q. Did you review that file before it was</p> <p>17 produced?</p> <p>18 A. Yes, I did.</p> <p>19 Q. Who is the current president of the HOA</p> <p>20 board?</p> <p>21 A. It is -- I'm going to say his last name</p> <p>22 wrong -- Ron King, K-i-n-g.</p> <p>23 Q. How many members are on the board?</p> <p>24 A. Currently, there are five.</p> <p>25 Q. Who are the other members?</p>

<p style="text-align: right;">Page 13</p> <p>1 A. I'm sorry. Let me correct. There's four 2 now. One just left. Jacqueline Lewis, Faith 3 G-o-f-f-s-t-e-i-n, and Robert Nickey. 4 Q. And who just left? 5 A. It was Stephanie F-r-a-n-k-i-e-w-i-c-h. 6 She is the prior treasurer. 7 Q. And why did she leave? 8 A. That, I don't really know. 9 Q. Did her term expire, or did she just quit? 10 A. I believe her term expired. 11 Q. She was the treasurer? 12 A. She was. 13 Q. Does Copper Ridge have a policy relating 14 to foreclosures? 15 A. Other than their collection policy, no, if 16 that's what you mean. It's their collection policy. 17 (Deposition Exhibit 2 marked.) 18 BY MR. PERKINS: 19 Q. I'll hand you Exhibit 2 to your deposition 20 transcript. A minute ago, you mentioned Copper Ridge's 21 collection policy. Do you recognize the document in 22 front of you? 23 A. Yes, I do. 24 Q. And what is that document? 25 A. This is Copper Ridge's -- actually,</p>	<p style="text-align: right;">Page 15</p> <p>1 then because of all the changes in laws. So at 2012, 2 it would have been Ed Boyack's office. 3 Q. You said you've had changes to the 4 collection policy since this one? 5 A. Correct. 6 Q. Is this the policy that was in effect at 7 the time of the foreclosure sale of the 2270 Nashville 8 property? 9 A. It was the one in effect, but it's not the 10 one of why it was placed in collections, because when 11 it was delinquent, it would have been placed off of the 12 2001 policy. And then the 2012 policy -- because it 13 was placed in collections prior to us taking over 14 management. I just want to clarify. 15 Q. Sure. 16 Other than employing Colonial to manage 17 the community, does the HOA or the board members do 18 anything to monitor the community? 19 A. The -- along with Colonial, the board 20 members do, do the inspections with the management 21 company. 22 Q. Who is responsible for the HOA's 23 accounting of amounts owed by homeowners? 24 A. Colonial. 25 Q. And before Colonial, who was it?</p>
<p style="text-align: right;">Page 14</p> <p>1 there's two different collection policies here. 2 Q. Are they both for Copper Ridge? 3 A. Yes, they are. 4 Q. Do you know why there are two? 5 A. The first one was when we took over 6 management from their prior management company, Taylor 7 Associates Management. The one that's -- that was -- 8 I'm looking for a date. I'm sorry. It looks like from 9 2001. And then when we took over in 2012, we updated 10 the collection policy. That's why there's two. 11 Q. Do you know who drafted the 2001 policy? 12 A. That, I do not. 13 Q. Do you know who drafted the 2012 policy? 14 A. That, I do. 15 Q. Okay. Who is that? 16 A. That would have been myself. 17 Q. Did you base this policy on another policy 18 that you have in your file? How did you draft it? 19 A. It's -- we do a template policy that's 20 approved by an attorney, that everything is in 21 compliance with the NRS code. And so that way, we have 22 the same collection policy for each of our HOAs. 23 Q. Who is the attorney who approved this 24 policy? 25 A. I'm sorry. We've had four updates since</p>	<p style="text-align: right;">Page 16</p> <p>1 A. It would have been Taylor Association 2 Management. 3 Q. Who at Colonial in 2012 and 2013 was 4 responsible for the accounting for Copper Ridge? 5 A. Well, that's a little hard to answer, only 6 because it's a computer system that does it. So once 7 it's plugged in there, then it just automatically 8 charges it every month. 9 If you're asking me who the staff 10 accountant was, that was -- would have been Grace, and 11 I cannot remember her last name, and she's still there. 12 I've worked with her the whole time. I apologize for 13 that. It would have been Grace for that. 14 Q. Do you know the name of the computer 15 system? 16 A. It's VMS. 17 Q. Do you know what that stands for? 18 A. Virtual Management System. You know what? 19 I couldn't -- we just call it VMS. 20 Q. So is Grace the staff accountant? Is she 21 the person who would plug the information into VMS? 22 A. She is the person who would have plugged 23 in the opening balances when we took it over, and then 24 puts the initial -- what the reoccurring charge is, and 25 then the computer just automatically does it every</p>

<p style="text-align: right;">Page 17</p> <p>1 month.</p> <p>2 Q. Okay. So just to walk through this</p> <p>3 system --</p> <p>4 A. Yeah.</p> <p>5 Q. -- so when you took over from Taylor</p> <p>6 Management, somebody programs the system to say what</p> <p>7 the opening balance is, and they plug in the number for</p> <p>8 the recurring monthly amount, correct?</p> <p>9 A. Correct.</p> <p>10 Q. How does the system account for payments</p> <p>11 in?</p> <p>12 A. Well, when --</p> <p>13 Q. So when a homeowner makes their payment?</p> <p>14 A. Then it is manually -- well, it depends on</p> <p>15 how -- actually, it's twofold. If it's a payment that</p> <p>16 is sent directly to the P.O. box, which is the HOA's</p> <p>17 bank, then it is the next morning a -- via e-mail --</p> <p>18 well, not e-mail -- download to our system, and it goes</p> <p>19 to the account, and it processes it that way. It's</p> <p>20 considered a lockbox payment.</p> <p>21 If somebody walks into our office, then we</p> <p>22 manually input to that account number, and it goes onto</p> <p>23 the ledger, and then it calculates what's the new</p> <p>24 balance.</p> <p>25 Q. Say, if a payment is late, is the late</p>	<p style="text-align: right;">Page 19</p> <p>1 Q. Does the authorized signature on the form</p> <p>2 appear to you -- based on seeing his signature before,</p> <p>3 appear to be his signature?</p> <p>4 A. Yes, it does.</p> <p>5 Q. What's the purpose of this agreement?</p> <p>6 A. For Copper Ridge to authorize Nevada</p> <p>7 Association Services to handle their collections.</p> <p>8 Q. Are there any limitations in this</p> <p>9 agreement to what Nevada Association Services can do to</p> <p>10 carry out those collection activities?</p> <p>11 A. To the best of my knowledge, no.</p> <p>12 Q. And would you agree that if the HOA</p> <p>13 decides not to proceed with a foreclosure, once it</p> <p>14 started that process, that the HOA is on the hook for</p> <p>15 NAS's fees?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Is the HOA paying NAS's legal fees in this</p> <p>18 action?</p> <p>19 A. No, they are not.</p> <p>20 Q. Is NAS paying the HOA's legal fees in this</p> <p>21 action?</p> <p>22 A. No, they are not.</p> <p>23 Q. Did NAS submit a request to the HOA for</p> <p>24 indemnity for this case?</p> <p>25 A. I believe they did.</p>
<p style="text-align: right;">Page 18</p> <p>1 fee, if any, applied automatically by the system then?</p> <p>2 A. Correct. On when the late date is, yes.</p> <p>3 Q. Does the HOA use an outside company to</p> <p>4 assist with collections?</p> <p>5 A. Yes, they do.</p> <p>6 Q. And who is that?</p> <p>7 A. Nevada Association Services.</p> <p>8 (Deposition Exhibit 3 marked.)</p> <p>9 BY MR. PERKINS:</p> <p>10 Q. Do you recognize the document that's been</p> <p>11 handed to you by the court reporter?</p> <p>12 A. Yes, I do.</p> <p>13 Q. What is that document?</p> <p>14 A. It's the consent and authorization form</p> <p>15 between Nevada Association Services and Copper Ridge.</p> <p>16 Q. And that's been marked as Exhibit 3 to</p> <p>17 your deposition transcript. Do you agree that that's</p> <p>18 dated November 2010?</p> <p>19 A. Yes, I do.</p> <p>20 Q. And it looks like it's signed by R.B.</p> <p>21 King, Sr.</p> <p>22 Do you agree with that?</p> <p>23 A. Yes, I do.</p> <p>24 Q. Have you seen Mr. King's signature before?</p> <p>25 A. Yes, I have.</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. And so, if so, the HOA rejected that</p> <p>2 request?</p> <p>3 A. Correct. Because there is actually a</p> <p>4 consent and authorization form that was signed in 2012</p> <p>5 that took out the indemnification clause from here.</p> <p>6 Q. Do you know if that's been produced in</p> <p>7 this case?</p> <p>8 A. I thought we produced both of them.</p> <p>9 MR. PERKINS: Adam, I did not see that in</p> <p>10 the production. Can you follow up and get that to us?</p> <p>11 MR. KNECHT: Yes.</p> <p>12 BY MR. PERKINS:</p> <p>13 Q. Does -- if I say "NAS," will you</p> <p>14 understand that to be Nevada Association Services?</p> <p>15 A. That's preferred, yes.</p> <p>16 Q. Does NAS have any involvement in the HOA's</p> <p>17 accounting?</p> <p>18 A. No, they do not.</p> <p>19 Q. Did NAS make any promises to the HOA about</p> <p>20 the ability to sell this property?</p> <p>21 A. No, they did not.</p> <p>22 Q. What about HOA properties in general?</p> <p>23 MR. KNECHT: Objection to form.</p> <p>24 THE WITNESS: No.</p> <p>25 ///</p>

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<p>1 BY MR. PERKINS:</p> <p>2 Q. Has NAS ever guaranteed that a property</p> <p>3 would sell to a third party?</p> <p>4 A. No.</p> <p>5 Q. Who communicates with NAS on behalf of the</p> <p>6 HOA with respect to collection activities?</p> <p>7 A. That would be myself.</p> <p>8 Q. And who do you talk to at NAS?</p> <p>9 A. Presently or back during this --</p> <p>10 Q. 2012 and 2013.</p> <p>11 A. It would have been Debbie Koluski.</p> <p>12 Q. Can you spell Debbie's last name?</p> <p>13 A. Don't ask me to spell Koluski. It would</p> <p>14 have been Shea -- and I do not know her last name --</p> <p>15 Misty and Elissa. And Elissa is the only one that's</p> <p>16 currently with NAS.</p> <p>17 Q. Is Misty -- is that Misty Blanchard?</p> <p>18 A. Yes, it is.</p> <p>19 Q. What does the association -- or, I guess,</p> <p>20 what do you do to monitor NAS's collection activities,</p> <p>21 or what were you doing in 2012 and 2013 to do that?</p> <p>22 A. Pull up their online status reports when</p> <p>23 we do our delinquents reports once a month for the</p> <p>24 board. And then any e-mails that come in, monitor</p> <p>25 those and get them to the manager for board review, if</p>	<p>1 the HOA when a homeowner falls behind on their HOA</p> <p>2 payments and the decision is made to proceed with</p> <p>3 collection activities.</p> <p>4 A. Once it's delinquent per the collection</p> <p>5 policy, then the first letter goes out. Well, at the</p> <p>6 time of this sale, though, it was Taylor Management</p> <p>7 that sent out the intent to lien.</p> <p>8 Thirty days after that, then it was placed</p> <p>9 in collections with NAS, which is basically the normal</p> <p>10 protocol still to this day, except two letters go out</p> <p>11 currently because of the new 60-day disclosure letter</p> <p>12 that came in effect in October 2013.</p> <p>13 So that goes out, and an intent to lien</p> <p>14 goes out, and currently Colonial Property Management</p> <p>15 records the liens as well, and then it goes to outside</p> <p>16 collections.</p> <p>17 At the time of this sale, it went --</p> <p>18 Taylor Management did the intent to lien. About 30</p> <p>19 days later, then it was placed in collections at NAS</p> <p>20 for them to record the lien and go forward on the file.</p> <p>21 Q. Okay. And once the file is placed in</p> <p>22 collection with NAS, do you have any involvement with</p> <p>23 it?</p> <p>24 A. Other than if they need an updated ledger</p> <p>25 or making any of the decisions, no. They do the steps,</p>
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<p>1 necessary.</p> <p>2 Q. Has the HOA ever communicated with any</p> <p>3 potential third-party purchasers in advance of a</p> <p>4 foreclosure sale about buying the property?</p> <p>5 A. No, they have not.</p> <p>6 Q. Have you ever talked to anyone from SFR</p> <p>7 Investments Pool 1 or other related SFR entities about</p> <p>8 properties that were coming up for sale?</p> <p>9 A. No, I have not.</p> <p>10 Q. Has the HOA ever guaranteed that a</p> <p>11 particular investor would be the successful bidder at a</p> <p>12 HOA foreclosure sale?</p> <p>13 A. No.</p> <p>14 Q. Does Copper Ridge ever sell HOA liens to</p> <p>15 other parties before a sale?</p> <p>16 A. No, they do not.</p> <p>17 Q. Do you manage other HOAs that engage in</p> <p>18 that?</p> <p>19 A. None that we manage do that.</p> <p>20 Q. Has Copper Ridge ever credit bid at its</p> <p>21 own HOA foreclosure sale and then subsequently sold a</p> <p>22 property to a third party?</p> <p>23 A. None that I can recall.</p> <p>24 Q. Walk me through the process of what you do</p> <p>25 as the -- in your job at Colonial for the manager of</p>	<p>1 and we just -- involvement -- if they need a board</p> <p>2 signature on something or if somebody requests a</p> <p>3 payment plan, that's our involvement. But as far as</p> <p>4 the file moving forward, that's all up to the</p> <p>5 collection agency.</p> <p>6 Q. Why did the HOA commence foreclosure</p> <p>7 proceedings against the 2270 Nashville property?</p> <p>8 A. Because the property was delinquent.</p> <p>9 Q. How is the decision made to proceed with</p> <p>10 foreclosure proceedings?</p> <p>11 A. The -- well, first the board signs the</p> <p>12 ATP, authorization to publish. Sorry. Once that's</p> <p>13 done, about a week to a week and a half prior to the</p> <p>14 set HOA sale date, an e-mail is sent to myself for the</p> <p>15 board's final approval for the actual foreclosure sale.</p> <p>16 I send it to the manager.</p> <p>17 The board members reply back, yes, they're</p> <p>18 going to go forward. It's sent to me, and I forward it</p> <p>19 on to NAS to go forward for an HOA sale for a</p> <p>20 third-party bidder only, as I do not want it to revert</p> <p>21 back to them.</p> <p>22 Q. When you say you do not want it to revert</p> <p>23 back to them, what does that mean?</p> <p>24 A. The credit bid that you said -- they don't</p> <p>25 ever want to do it a credit bid. They don't want a</p>



<p style="text-align: right;">Page 25</p> <p>1 reversion.</p> <p>2 Q. So when the -- so there's a couple of</p> <p>3 steps in there. It sounds like the board has to</p> <p>4 approve or sign off on things; is that right?</p> <p>5 A. That's correct.</p> <p>6 Q. The first is the authorization to publish?</p> <p>7 A. Correct.</p> <p>8 Q. Then the second is an e-mail approval to</p> <p>9 go ahead with the sale?</p> <p>10 A. Correct, a final approval.</p> <p>11 Q. Are either of those steps things that are</p> <p>12 done at a board meeting?</p> <p>13 A. Not normally. Sometimes the ATP is</p> <p>14 ratified at the next board meeting, and sometimes the</p> <p>15 approval of the HOA sale is ratified at the next board</p> <p>16 meeting. But this particular board meets quarterly, so</p> <p>17 it makes it a little difficult to hold it for board</p> <p>18 meetings.</p> <p>19 Q. Do you know if the ATP was ratified at a</p> <p>20 board meeting for this property?</p> <p>21 A. I can't recall that off the top of my</p> <p>22 head.</p> <p>23 Q. Did you review the board meeting minutes</p> <p>24 for 2012 and '13 to determine if there was discussion</p> <p>25 of this property at any of those meetings?</p>	<p style="text-align: right;">Page 27</p> <p>1 Q. And what's that?</p> <p>2 A. It's to refer the delinquent account to</p> <p>3 the collection agencies to start collections against</p> <p>4 the property.</p> <p>5 Q. So would that mean that this account was</p> <p>6 referred to NAS in -- on or around April 26, 2012?</p> <p>7 A. Yes, it does.</p> <p>8 Q. And then turn the page. There's what</p> <p>9 appears to be a letter. Is this the notice of intent</p> <p>10 to lien letter you referenced previously?</p> <p>11 A. Yes, it is.</p> <p>12 Q. Turn the page one more time. It looks</p> <p>13 like page 3 is another copy to a different address of</p> <p>14 the same letter. Do you agree?</p> <p>15 A. Yes, I do.</p> <p>16 Q. The next two pages appear to be a ledger.</p> <p>17 Do you know what those are?</p> <p>18 A. The first one that is marked "intent to</p> <p>19 lien" would have went with the intent to lien notice</p> <p>20 from Taylor to the homeowner as to what the balance was</p> <p>21 at the time they were doing the intent.</p> <p>22 And then the next ledger that has a date</p> <p>23 stamp of April 27, 2012, in the lower right corner,</p> <p>24 that is the placement ledger to NAS, and that's why the</p> <p>25 lines are all crossed out when they entered into their</p>
<p style="text-align: right;">Page 26</p> <p>1 A. I did for discovery, and anything was</p> <p>2 produced that had this property address on it.</p> <p>3 Q. Other than requesting the authorization to</p> <p>4 publish and sending an e-mail requesting approval to go</p> <p>5 ahead with the sale, does the HOA get updates from NAS</p> <p>6 during the foreclosure process?</p> <p>7 A. Other than that portion, no, and it would</p> <p>8 just be their status report. So they don't get</p> <p>9 anything directly from NAS, anyway. It would be from</p> <p>10 myself.</p> <p>11 (Deposition Exhibit 4 marked.)</p> <p>12 (Recess taken.)</p> <p>13 BY MR. PERKINS:</p> <p>14 Q. So before we took a break there, you were</p> <p>15 handed what's been marked as Exhibit 4 to your</p> <p>16 deposition transcript.</p> <p>17 Do you recognize that document? It's</p> <p>18 actually several documents stapled together.</p> <p>19 A. Yes, I do.</p> <p>20 Q. What's the first page?</p> <p>21 A. It's the placement sheet from Taylor</p> <p>22 Management to Nevada Association Services.</p> <p>23 Q. Do you have an understanding of what the</p> <p>24 purpose of that document is?</p> <p>25 A. Yes, I do.</p>	<p style="text-align: right;">Page 28</p> <p>1 system, that's how they do it.</p> <p>2 Q. So the handwritten lines through the</p> <p>3 amount column, those are marked by NAS?</p> <p>4 A. Correct. When they put it into their</p> <p>5 system.</p> <p>6 Q. Set that aside.</p> <p>7 How are the monthly assessments</p> <p>8 determined?</p> <p>9 A. By the annual budget.</p> <p>10 Q. Who determines the annual budget?</p> <p>11 A. The board of directors, and then it's</p> <p>12 ratified.</p> <p>13 Q. Who ratifies it?</p> <p>14 A. At the ratification meeting, if there's</p> <p>15 not any homeowners that dispute the amounts that are</p> <p>16 going -- that they're proposing for the budget for that</p> <p>17 year, then it just automatically becomes the budget.</p> <p>18 Q. Have the monthly assessments for Copper</p> <p>19 Ridge increased since 2012?</p> <p>20 A. Yes, they have.</p> <p>21 Q. And what increases have they had over</p> <p>22 there?</p> <p>23 A. In 2014, they went to \$35, and they are</p> <p>24 currently \$35.</p> <p>25 Q. So a \$2 a month increase?</p>

<p style="text-align: right;">Page 29</p> <p>1 A. That is correct.</p> <p>2 Q. Do you know the reason for the increase?</p> <p>3 A. I wouldn't know that off the top of my</p> <p>4 head, no.</p> <p>5 Q. Is that something the board determined,</p> <p>6 though, was necessary?</p> <p>7 A. Correct. Once they saw what their</p> <p>8 expenses were to the monies that are coming in, yes.</p> <p>9 Q. Do you play any part in helping the board</p> <p>10 determine what the annual budget should be?</p> <p>11 A. No, I do not.</p> <p>12 Q. Is there someone at Colonial that does</p> <p>13 that?</p> <p>14 A. That's twofold. It would be the</p> <p>15 accountant. I forgot that word. Sorry. Grace Secola</p> <p>16 is her last name. I just remembered it. Sorry about</p> <p>17 that. And then the manager, Felicia.</p> <p>18 Q. Do you attend the quarterly board meetings</p> <p>19 for Copper Ridge?</p> <p>20 A. I only go when I'm requested that I need</p> <p>21 to go.</p> <p>22 Q. And that was the same in 2012 and 2013?</p> <p>23 A. Correct.</p> <p>24 (Deposition Exhibit 5 marked.)</p> <p>25 ///</p>	<p style="text-align: right;">Page 31</p> <p>1 Q. Does Copper Ridge get a copy of this</p> <p>2 letter before it's sent to the homeowner?</p> <p>3 A. No, they do not.</p> <p>4 Q. They don't have any opportunity to confirm</p> <p>5 or -- to confirm the amount that's owed before the</p> <p>6 letter goes out?</p> <p>7 A. Correct.</p> <p>8 Q. Does NAS consult with the HOA regarding</p> <p>9 the amount that's put in this letter before they send a</p> <p>10 letter out?</p> <p>11 A. No, they do not.</p> <p>12 (Deposition Exhibit 6 marked.)</p> <p>13 BY MR. PERKINS:</p> <p>14 Q. You've been handed what's been marked as</p> <p>15 Exhibit 6 to your deposition transcript.</p> <p>16 Do you recognize this document?</p> <p>17 A. Yes, I do.</p> <p>18 Q. What is this?</p> <p>19 A. This is the cover letter for when a lien</p> <p>20 is recorded from NAS.</p> <p>21 Q. Do you know who Pearl Agustin is?</p> <p>22 A. She is an employee at Nevada Association</p> <p>23 Services, and she is currently still there.</p> <p>24 Q. And it looks like in the third line of the</p> <p>25 letter, it says the amount due is \$1,063.</p>
<p style="text-align: right;">Page 30</p> <p>1 BY MR. PERKINS:</p> <p>2 Q. You've been handed what's been marked as</p> <p>3 Exhibit 5 to your deposition transcript.</p> <p>4 Are you familiar with this document?</p> <p>5 A. Yes, I am.</p> <p>6 Q. And what is it?</p> <p>7 A. It's NAS's initial correspondence with the</p> <p>8 homeowner when a file is placed with them.</p> <p>9 Q. What's the date of the document?</p> <p>10 A. May 7th, 2012.</p> <p>11 Q. And what is the amount due claimed in this</p> <p>12 letter?</p> <p>13 A. \$654.50.</p> <p>14 Q. Do you know what that amount represents?</p> <p>15 A. It would be what's owed the HOA, as well</p> <p>16 as what's owed the collection company.</p> <p>17 Q. So does that include assessments?</p> <p>18 A. Assessments, correct.</p> <p>19 Q. Would it also include late fees also?</p> <p>20 A. Correct.</p> <p>21 Q. Collection costs?</p> <p>22 A. Correct.</p> <p>23 Q. Any attorneys' fees, if there are any?</p> <p>24 A. If there are any, and late interest and</p> <p>25 any management fees as well.</p>	<p style="text-align: right;">Page 32</p> <p>1 Do you agree?</p> <p>2 A. I agree.</p> <p>3 Q. Do you know what that includes?</p> <p>4 A. What's owed the HOA for assessments, late</p> <p>5 fees, late interest, any management fee, and the</p> <p>6 collection fees.</p> <p>7 Q. Do you know what a superpriority lien is?</p> <p>8 A. Yes, I do.</p> <p>9 Q. What do you understand that to be?</p> <p>10 A. At the time of this loss? Because it has</p> <p>11 changed.</p> <p>12 Q. What was your understanding in 2013 or</p> <p>13 2012 and '13?</p> <p>14 A. It is nine months' worth of assessments,</p> <p>15 late fees, late interest, and all the collection fees.</p> <p>16 Q. And what is your understanding of what</p> <p>17 constitutes a superpriority lien now?</p> <p>18 A. Nine months' worth of assessments from the</p> <p>19 date of the recording of the NOD and a limited amount</p> <p>20 of collection fees of up to \$1,515.</p> <p>21 Q. And what -- what caused you to change your</p> <p>22 understanding of what a superpriority lien was?</p> <p>23 A. When the law changed on October 1st of</p> <p>24 2015.</p> <p>25 Q. That was a statutory change?</p>

<p style="text-align: right;">Page 33</p> <p>1 A. Correct.</p> <p>2 Q. Does this notice identify the</p> <p>3 superpriority amount?</p> <p>4 A. No, it does not.</p> <p>5 Q. I'm sorry. This is the cover letter for</p> <p>6 the notice.</p> <p>7 A. The cover letter for the lien.</p> <p>8 Q. For the notice of lien.</p> <p>9 Does this identify the superpriority</p> <p>10 amount, the letter?</p> <p>11 A. No, it does not.</p> <p>12 (Deposition Exhibit 7 marked.)</p> <p>13 BY MR. PERKINS:</p> <p>14 Q. Okay. You've been handed what's been</p> <p>15 marked as Exhibit 7 to your deposition transcript.</p> <p>16 Do you recognize this document?</p> <p>17 A. Yes, I do.</p> <p>18 Q. What is this document?</p> <p>19 A. The notice of delinquent assessment lien</p> <p>20 that is prepared and recorded by NAS.</p> <p>21 Q. Do you know who drafted the notice of</p> <p>22 delinquent assessment lien?</p> <p>23 A. I would gather it's the same person who</p> <p>24 signed it, which is Yolanda.</p> <p>25 Q. Have you ever talked to Yolanda?</p>	<p style="text-align: right;">Page 35</p> <p>1 A. Yes, I do.</p> <p>2 Q. And what is this document?</p> <p>3 A. It's a notice of default and an election</p> <p>4 to sell prepared and recorded by NAS.</p> <p>5 Q. Do you know who drafted it?</p> <p>6 A. Other than looking at the signature line.</p> <p>7 Q. Except for looking at the signature line?</p> <p>8 A. No, I wouldn't know that.</p> <p>9 Q. What is the total amount due stated on the</p> <p>10 notice of default and election to sell?</p> <p>11 A. \$1,912.50.</p> <p>12 Q. And does that amount include, to your</p> <p>13 knowledge, late fees, collection fees, interest, and</p> <p>14 all of the other things that we talked about before?</p> <p>15 A. To my knowledge, yes, it does.</p> <p>16 Q. It would also include assessments,</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. And does the notice of default and</p> <p>20 election to sell identify the superpriority amount?</p> <p>21 A. No, it does not.</p> <p>22 (Deposition Exhibit 9 marked.)</p> <p>23 BY MR. PERKINS:</p> <p>24 Q. You've been handed what's been marked as</p> <p>25 Exhibit 9 to your deposition transcript.</p>
<p style="text-align: right;">Page 34</p> <p>1 A. Yes, I have.</p> <p>2 Q. Okay. Did NAS send the notice of</p> <p>3 delinquent assessment lien to the HOA before it sent it</p> <p>4 out?</p> <p>5 A. No, they did not.</p> <p>6 Q. Does the HOA have any approval authority</p> <p>7 for the notice of delinquent assessment lien?</p> <p>8 A. No, they do not.</p> <p>9 Q. Any review authority?</p> <p>10 A. No, they do not.</p> <p>11 Q. What's the amount due on the notice of</p> <p>12 lien?</p> <p>13 A. \$1,063.</p> <p>14 Q. And that includes all of the late fees,</p> <p>15 collection fees, all the things we discussed before,</p> <p>16 correct?</p> <p>17 A. Yes, it does.</p> <p>18 Q. And does this notice of delinquent</p> <p>19 assessment lien identify the superpriority amount?</p> <p>20 A. No, it does not.</p> <p>21 (Deposition Exhibit 8 marked.)</p> <p>22 BY MR. PERKINS:</p> <p>23 Q. You've been handed what's been marked as</p> <p>24 Exhibit 8 to your deposition transcript.</p> <p>25 Do you recognize this document?</p>	<p style="text-align: right;">Page 36</p> <p>1 Do you recognize this document?</p> <p>2 A. Yes, I do.</p> <p>3 Q. And what is this document?</p> <p>4 A. It's the cover letter and the ATP,</p> <p>5 authorization to publish. That is reviewed by the</p> <p>6 board to go forward with an HOA sale.</p> <p>7 Q. Okay. And this letter is dated October</p> <p>8 12th, 2012, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And do you know Elissa Hollander?</p> <p>11 A. Yes, I do.</p> <p>12 Q. Is she the one who you said still works at</p> <p>13 NAS?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know Diane Kelley?</p> <p>16 A. She's my counterpart in collections.</p> <p>17 Q. So --</p> <p>18 A. Collections department for Colonial.</p> <p>19 Q. She also works at Colonial?</p> <p>20 A. Yes, she does.</p> <p>21 Q. Still to this day?</p> <p>22 A. Yes, she does.</p> <p>23 Q. So this cover letter is sent in each case</p> <p>24 where the HOA is considering foreclosure to get</p> <p>25 authorization to do so; is that correct?</p>

<p style="text-align: right;">Page 37</p> <p>1 A. Well, even if they're not considering 2 foreclosure, this is the next step in line after the 3 notice of default expires, the 90-day period. So then 4 it's presented to the board if they want to go forward 5 to an HOA sale. 6 Q. So anytime there's a notice of default and 7 election to sell under the HOA lien, once 90 days has 8 passed, NAS sends a prompt to the board? 9 A. Correct. 10 (Deposition Exhibit 10 marked.) 11 BY MR. PERKINS: 12 Q. You've been handed what's been marked as 13 Exhibit 10 to your deposition transcript. 14 Do you recognize this document? 15 A. Yes, I do. 16 Q. And what is this document? 17 A. It's just an updated date of this cover 18 sheet and ATP for the board to review to go forward 19 with an HOA sale. 20 Q. Okay. This one is dated December 11th, 21 2012, correct? 22 A. Correct. 23 Q. Do you know why there were two letters 24 sent? 25 A. Once -- NAS actually sends one once every</p>	<p style="text-align: right;">Page 39</p> <p>1 BY MR. PERKINS: 2 Q. You've been handed what's been marked as 3 Exhibit 11 to your deposition transcript. 4 Do you recognize this document? 5 A. Yes, I do. 6 Q. What is it? 7 A. It's a notice of foreclosure sale that is 8 prepared and recorded by NAS on behalf of the HOA. 9 Q. And other than looking at who signed this 10 document, do you know who drafted it? 11 A. Just an employee of NAS. 12 Q. What is the amount due listed in the 13 notice of foreclosure sale? 14 A. \$3,132.52. 15 Q. And that would include assessments? 16 A. Yes, it would. 17 Q. And would that include all of the late 18 fees, collection fees, and the other things that we 19 talked about before? 20 A. Yes, it would. 21 Q. Does the notice of foreclosure sale 22 identify the superpriority amount? 23 A. No, it does not. 24 (Deposition Exhibit 12 marked.) 25 ///</p>
<p style="text-align: right;">Page 38</p> <p>1 month until they receive one back or a response back 2 from the HOA stating they don't want to go forward. 3 Q. So from the fact that there are two of 4 these letters, we can deduce that nobody responded to 5 the October letter? 6 A. Correct. 7 Q. Turn to page 3 of Exhibit 10, or the third 8 page of Exhibit 10. 9 Do you recognize that document? 10 A. Yes, I do. 11 Q. And what is that document? 12 A. That's the actual signed autho to publish 13 from -- signed by the board president. 14 Q. And the Ronald B. King that appears to 15 have signed this document, is that the same person 16 whose signature we looked at earlier? 17 A. Correct, from the collection policy. Yes, 18 it is. 19 Q. Do you know whose handwriting is at the 20 top of that page? 21 A. That is normally what NAS does when they 22 get it back, so it's an employee of NAS. 23 Q. It's some sort of internal NAS notation? 24 A. Yes. 25 (Deposition Exhibit 11 marked.)</p>	<p style="text-align: right;">Page 40</p> <p>1 BY MR. PERKINS: 2 Q. You've been handed Exhibit 12 to your 3 deposition transcript, which I think will be the last 4 one. Do you recognize this document? 5 A. Yes, I do. 6 Q. What is this document? 7 A. It's the foreclosure deed that's prepared 8 by NAS at the time of the HOA sale. 9 Q. Okay. Did anyone from Copper Ridge or 10 Colonial review this foreclosure deed? 11 A. No, they did not. 12 Q. Did anyone from Copper Ridge or Colonial 13 do anything to confirm that NAS complied with statutory 14 requirements? 15 A. No, they did not. 16 Q. Did Copper Ridge review its file or NAS's 17 file at any time after the HOA foreclosure sale to 18 confirm that NAS followed the appropriate procedures to 19 notice the foreclosure sale? 20 A. The board -- 21 MR. KNECHT: Objection to form. 22 THE WITNESS: No, not really. Other than 23 preparing for the depo and doing the discovery, no. 24 BY MR. PERKINS: 25 Q. Outside of the litigation, nobody reviewed</p>

<p style="text-align: right;">Page 41</p> <p>1 NAS's procedures?</p> <p>2 A. No.</p> <p>3 Q. The trustee's deed says this property was</p> <p>4 sold for \$14,000; is that correct?</p> <p>5 A. That is.</p> <p>6 Q. And is that accurate?</p> <p>7 A. Yes, it is.</p> <p>8 Q. Who determines how the money from the HOA</p> <p>9 foreclosure sale is distributed?</p> <p>10 A. That would be NAS.</p> <p>11 Q. Do you know how much money NAS received</p> <p>12 from the HOA foreclosure sale?</p> <p>13 A. They received \$2,538.89.</p> <p>14 Q. And I see you're looking at some notes.</p> <p>15 A. Yeah. It was actually answered in the</p> <p>16 interrogatories, No. 26 and No. 30. I just wrote down</p> <p>17 the dollar amount because I knew you would ask me that.</p> <p>18 Q. And how much did the HOA receive?</p> <p>19 A. The HOA received \$714.91.</p> <p>20 Q. And what made up the \$714 and change that</p> <p>21 the HOA received?</p> <p>22 A. It would have been assessments, late fees,</p> <p>23 late interest, and then intent to lien fee.</p> <p>24 Q. How many months of assessments would that</p> <p>25 include?</p>	<p style="text-align: right;">Page 43</p> <p>1 would have to say no, because there's not a copy in the</p> <p>2 file.</p> <p>3 Q. And to your knowledge, did Lucia Parks</p> <p>4 cash the check that NAS sent to her?</p> <p>5 A. Not to my knowledge.</p> <p>6 Q. Did the association direct NAS to issue</p> <p>7 funds to Lucia Parks?</p> <p>8 A. No, they did not.</p> <p>9 Q. Based on your experience in the HOA and</p> <p>10 collection arena for more than two decades, do you</p> <p>11 believe it was appropriate for NAS to issue excess</p> <p>12 proceeds to Lucia Parks when there was a deed of trust</p> <p>13 recorded against the property?</p> <p>14 MS. SCHIMMING: Objection. Form.</p> <p>15 MR. KNECHT: I'll join on that.</p> <p>16 THE WITNESS: I've never handled the</p> <p>17 excess proceed portion of it, so I don't really think I</p> <p>18 should -- am qualified to answer that question.</p> <p>19 BY MR. PERKINS:</p> <p>20 Q. Do you know what an interpleader action</p> <p>21 is?</p> <p>22 A. Yes, I do.</p> <p>23 Q. What's your understanding of that?</p> <p>24 A. Understanding interpleaders, excess funds</p> <p>25 from an HOA sale gets interpleaded to the court, and</p>
<p style="text-align: right;">Page 42</p> <p>1 A. I couldn't tell you that without looking</p> <p>2 at a ledger.</p> <p>3 Q. Were there any excess proceeds from the</p> <p>4 sale above the collection costs and assessments and</p> <p>5 late fees and what the HOA received?</p> <p>6 A. Yes, there was.</p> <p>7 Q. And how much was that?</p> <p>8 A. \$10,546.29.</p> <p>9 Q. And what was done with those proceeds?</p> <p>10 A. From the review of the file, NAS, I</p> <p>11 believe, cut a check to Lucia Parks. I'm unaware</p> <p>12 whether that was ever cashed or anything else.</p> <p>13 Q. So you answered my next question, which</p> <p>14 was whether that was cashed, and it was not.</p> <p>15 Do you know why --</p> <p>16 MR. KNECHT: I don't think that's what she</p> <p>17 said.</p> <p>18 MR. PERKINS: I'll ask the question.</p> <p>19 BY MR. PERKINS:</p> <p>20 Q. Do you know why NAS wrote a check or sent</p> <p>21 a check to Lucia Parks?</p> <p>22 A. No.</p> <p>23 Q. Do you know if NAS sent a check to U.S.</p> <p>24 Bank?</p> <p>25 A. There wasn't a copy in the file, so I</p>	<p style="text-align: right;">Page 44</p> <p>1 then people put -- entities, I should say; not</p> <p>2 people -- put in a claim for what they feel they should</p> <p>3 get, and then the court decides who gets the money.</p> <p>4 Q. Who makes the decision whether to file an</p> <p>5 interpleader action after an HOA foreclosure sale when</p> <p>6 there are excess proceeds?</p> <p>7 A. That would be NAS.</p> <p>8 Q. Does NAS have a lien against the property</p> <p>9 that's the subject of the foreclosure sale?</p> <p>10 A. I would say, no, the HOA has the lien.</p> <p>11 Q. No interpleader action was filed with</p> <p>12 respect to this property, correct?</p> <p>13 A. Not that I'm aware, there wasn't one done.</p> <p>14 Q. Did Copper Ridge send anyone to the HOA</p> <p>15 foreclosure sale in this case?</p> <p>16 A. No, they did not.</p> <p>17 MR. PERKINS: Let's go off the record.</p> <p>18 (Discussion off the record.)</p> <p>19 BY MR. PERKINS:</p> <p>20 Q. In preparing for the deposition today, did</p> <p>21 you review any documents?</p> <p>22 A. Yes, I did.</p> <p>23 Q. What did you review?</p> <p>24 A. The -- briefly, the NAS collection file.</p> <p>25 Q. And did you review any documents that have</p>

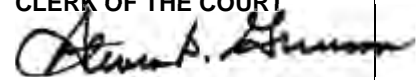
<p style="text-align: right;">Page 45</p> <p>1 not been produced in this case?</p> <p>2 A. No, I did not.</p> <p>3 Q. In preparing for this deposition, did you</p> <p>4 talk to anybody?</p> <p>5 A. Yes, I did.</p> <p>6 Q. Who did you talk to?</p> <p>7 A. My attorney, Adam.</p> <p>8 Q. Anybody else?</p> <p>9 A. The manager, just to let them know that we</p> <p>10 were doing the depo, but not in detail; just that there</p> <p>11 was a deposition notice.</p> <p>12 Q. And I see you brought some documents with</p> <p>13 you today. There's the Post-it notes, and it looks</p> <p>14 like an e-mail?</p> <p>15 A. Actually, it's just an e-mail from Adam's</p> <p>16 office on what the questions are, to make sure --</p> <p>17 Q. So that's from his office?</p> <p>18 A. Yes.</p> <p>19 Q. I don't want to know about that, but I</p> <p>20 would like to make a copy of the Post-it notes.</p> <p>21 A. Yeah.</p> <p>22 MR. KNECHT: Let me look at it. It's</p> <p>23 probably not a problem.</p> <p>24 THE WITNESS: It's everything I gave in</p> <p>25 interrogatories, anyway. It's just so I can remember</p>	<p style="text-align: right;">Page 47</p> <p>1 Q. Based on your review of the file now, do</p> <p>2 you have any reason to believe that NAS did not follow</p> <p>3 the notice requirements?</p> <p>4 A. No.</p> <p>5 Q. Do you have any reason to believe that NAS</p> <p>6 did not follow any other requirements of NRS 116?</p> <p>7 A. None that I'm aware of.</p> <p>8 Q. And to your knowledge, does anyone at</p> <p>9 Colonial have any ownership interest in SFR Investments</p> <p>10 Pool 1, LLC?</p> <p>11 A. No.</p> <p>12 Q. To your knowledge, does anybody at</p> <p>13 Colonial have any management control over SFR</p> <p>14 Investments Pool 1, LLC?</p> <p>15 A. No.</p> <p>16 Q. To your knowledge, does the association</p> <p>17 have any ownership interest in SFR?</p> <p>18 A. Not to my knowledge, no.</p> <p>19 Q. Any management control over SFR?</p> <p>20 A. No.</p> <p>21 Q. Do you know if the board members, who are</p> <p>22 the current board members, were the board members at</p> <p>23 the time of the sale?</p> <p>24 A. Yes, they all were.</p> <p>25 MS. SCHIMMING: I actually have no further</p>
<p style="text-align: right;">Page 46</p> <p>1 them.</p> <p>2 MR. PERKINS: Does anybody else have any</p> <p>3 questions?</p> <p>4 MS. SCHIMMING: I have a couple.</p> <p>5 MR. PERKINS: I'll pass the witness.</p> <p>6</p> <p>7 EXAMINATION</p> <p>8 BY MS. SCHIMMING:</p> <p>9 Q. Based on your review of the file, did you</p> <p>10 see that there was any communication or contact between</p> <p>11 the association and the bank prior to the sale?</p> <p>12 A. No, there wasn't.</p> <p>13 Q. Any communication between Colonial and the</p> <p>14 bank prior to sale?</p> <p>15 A. No, there wasn't.</p> <p>16 Q. In your review of the file, did you see if</p> <p>17 there was any testament by the bank to make a payment</p> <p>18 prior to the sale?</p> <p>19 A. Nothing in the NAS file that indicated</p> <p>20 that.</p> <p>21 Q. And I believe you testified earlier that</p> <p>22 Colonial or the HOA did not review the process that NAS</p> <p>23 went through subsequent to the foreclosure to ensure</p> <p>24 they complied with NRS, correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 48</p> <p>1 questions at this time.</p> <p>2 MR. PERKINS: I just have, I think, two</p> <p>3 more questions.</p> <p>4</p> <p>5 FURTHER EXAMINATION</p> <p>6 BY MR. PERKINS:</p> <p>7 Q. Before authorizing the foreclosure sale to</p> <p>8 go forward, does the board undertake any effort to</p> <p>9 ensure that the homeowner is not an active duty</p> <p>10 military person?</p> <p>11 A. They do if -- yes, from the ability of</p> <p>12 what we have, and we base that off of mailing</p> <p>13 addresses. So if it is an off-site that's an APO, then</p> <p>14 we believe it's military. Other than that, no, they do</p> <p>15 not.</p> <p>16 NAS, I believe, does that. But the HOA</p> <p>17 themselves, they only base it off if it's an off-site</p> <p>18 mailing address that goes to an APO.</p> <p>19 Q. And before authorizing a foreclosure sale</p> <p>20 to go forward, does the board, or Colonial helping the</p> <p>21 board, undertake any efforts to ensure the homeowner is</p> <p>22 not in bankruptcy?</p> <p>23 A. Once the -- no. Because once the file is</p> <p>24 at the outside collection agency, it's up to the</p> <p>25 outside collection agency to make sure that they ran</p>

Page 49	Page 51
<p>1 the bankruptcy to make sure that they're not in</p> <p>2 bankruptcy. We are gathering that they did it.</p> <p>3 MR. PERKINS: No more questions from me.</p> <p>4 MR. KNECHT: I don't have any questions.</p> <p>5 MR. PERKINS: Conclude the deposition.</p> <p>6 THE COURT REPORTER: Do you want to order</p> <p>7 a copy?</p> <p>8 MS. SCHIMMING: E-Tran, please.</p> <p>9 THE COURT REPORTER: Sir?</p> <p>10 MR. KNECHT: Yeah. Just an E, just an</p> <p>11 electronic copy. That's fine.</p> <p>12</p> <p>13 (Whereupon the deposition</p> <p>14 was concluded at 1:36 p.m.)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 DEPOSITION ERRATA SHEET</p> <p>2</p> <p>3 Our Assignment No. J0365506</p> <p>4 Case Caption: SFR Investments Pool 1, LLC vs. U.S.</p> <p>5 Bank, N.A.</p> <p>6</p> <p>7 DECLARATION UNDER PENALTY OF PERJURY</p> <p>8</p> <p>9 I declare under penalty of perjury that I</p> <p>10 have read the entire transcript of my deposition taken</p> <p>11 in the captioned matter or the same has been read to</p> <p>12 me, and the same is true and accurate, save and except</p> <p>13 for changes and/or corrections, if any, as indicated by</p> <p>14 me on the DEPOSITION ERRATA SHEET hereof, with the</p> <p>15 understanding that I offer these changes as if still</p> <p>16 under oath.</p> <p>17 Signed on the ____ day of _____,</p> <p>18 20__.</p> <p>19</p> <p>20 _____</p> <p>21 SHARON BERGERON</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1 REPORTER'S CERTIFICATE</p> <p>2 STATE OF NEVADA )</p> <p>3 ) ss.</p> <p>4 COUNTY OF CLARK )</p> <p>5 I, John L. Nagle, a Certified Court Reporter</p> <p>6 licensed by the State of Nevada, do hereby certify:</p> <p>7 That I reported the taking of the deposition</p> <p>8 of SHARON BERGERON on Monday, June 6, 2016, commencing</p> <p>9 at the hour of 12:35 p.m. That prior to being</p> <p>10 examined, the witness was by me duly sworn to testify</p> <p>11 to the truth, the whole truth, and nothing but the</p> <p>12 truth.</p> <p>13</p> <p>14 That I thereafter transcribed my said</p> <p>15 stenographic notes via computer-aided transcription</p> <p>16 into written form, and that the typewritten transcript</p> <p>17 of said deposition is a complete, true and accurate</p> <p>18 transcription of my said stenographic notes taken down</p> <p>19 at said time. That review of the transcript was</p> <p>20 requested.</p> <p>21</p> <p>22 I further certify that I am not a relative,</p> <p>23 employee or independent contractor of counsel involved</p> <p>24 in said action; nor a person financially interested in</p> <p>25 said action; nor do I have any other relationship that</p> <p>may reasonably cause my impartiality to be questioned.</p> <p>IN WITNESS WHEREOF, I have subscribed my name</p> <p>this 17th day of June, 2016.</p> <p>John L. Nagle, CCR 211</p>	<p>1 DEPOSITION ERRATA SHEET</p> <p>2</p> <p>3 Page No. ____ Line No. ____ Change to: _____</p> <p>4 _____</p> <p>5 Reason for change: _____</p> <p>6 Page No. ____ Line No. ____ Change to: _____</p> <p>7 _____</p> <p>8 Reason for change: _____</p> <p>9 Page No. ____ Line No. ____ Change to: _____</p> <p>10 _____</p> <p>11 Reason for change: _____</p> <p>12 Page No. ____ Line No. ____ Change to: _____</p> <p>13 _____</p> <p>14 Reason for change: _____</p> <p>15 Page No. ____ Line No. ____ Change to: _____</p> <p>16 _____</p> <p>17 Reason for change: _____</p> <p>18 Page No. ____ Line No. ____ Change to: _____</p> <p>19 _____</p> <p>20 Reason for change: _____</p> <p>21 Page No. ____ Line No. ____ Change to: _____</p> <p>22 _____</p> <p>23 Reason for change: _____</p> <p>24 SIGNATURE: _____ DATE: _____</p> <p>25 SHARON BERGERON</p>

<p>1 DEPOSITION ERRATA SHEET</p> <p>2</p> <p>3 Page No. _____ Line No. _____ Change to: _____</p> <p>4 _____</p> <p>5 Reason for change: _____</p> <p>6 Page No. _____ Line No. _____ Change to: _____</p> <p>7 _____</p> <p>8 Reason for change: _____</p> <p>9 Page No. _____ Line No. _____ Change to: _____</p> <p>10 _____</p> <p>11 Reason for change: _____</p> <p>12 Page No. _____ Line No. _____ Change to: _____</p> <p>13 _____</p> <p>14 Reason for change: _____</p> <p>15 Page No. _____ Line No. _____ Change to: _____</p> <p>16 _____</p> <p>17 Reason for change: _____</p> <p>18 Page No. _____ Line No. _____ Change to: _____</p> <p>19 _____</p> <p>20 Reason for change: _____</p> <p>21 Page No. _____ Line No. _____ Change to: _____</p> <p>22 _____</p> <p>23 Reason for change: _____</p> <p>24 SIGNATURE: _____ DATE: _____</p> <p>25 SHARON BERGERON</p>	



# **TAB 34**



**SUPP**

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*Attorneys for SFR Investments Pool 1, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

SFR INVESTMENTS POOL1, LLC a Nevada  
limited liability company,

Plaintiff,

vs.

US BANK, N.A., a national banking  
association as Trustee for the Certificate  
Holders of Wells Fargo Asset Securities  
Corporation, Mortgage Pass-Through  
Certificates, Series 2006-AR4 and LUCIA  
PARKS, an individual, DOES I through X;  
and ROE CORPORATIONS I through X,  
inclusive,

Defendants.

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

Plaintiff,

vs.

U.S. BANK, N.A., a national banking  
association, as Trustee for the Certificate  
Holders of Wells Fargo Asset Securities  
Corporation, Mortgage Pass-Through  
Certificates, Series 2006-AR4; NV WEST  
SERVICING, LLC, a Nevada limited liability  
company, as Trustee for NASHVILLE TRUST  
2270; DOES I-X; and ROES 1-10, inclusive,

Defendants.

NV WEST SERVICING, LLC, a Nevada  
limited liability company, as Trustee for  
NASHVILLE TRUST 2270,

Case No. A-13-678814-C  
Consolidated with  
Case No. A-13-688734-C

Dept. No. XXXI

**SFR INVESTMENTS POOL 1, LLC'S  
SUPPLEMENT RESPONSE IN SUPPORT  
OF ITS MOTION FOR SUMMARY  
JUDGMENT**

Cross-Claimant,  
vs.  
NATIONAL DEFAULT SERVICING  
CORPORATION, an Arizona Corporation;  
DOES XI through XX,  
Third Party Defendant.

SFR Investments Pool 1, LLC (“SFR”) files this Supplemental Response in Support of its Motion for Summary Judgment. This response is based on the papers and pleadings on file herein, the following memorandum of points and authorities, and any oral argument this Court entertains.

In particular, this brief establishes that the borrower’s bankruptcy does not cause the equities to tip into the favor of U.S. BANK, N.A., a national banking association, as Trustee for the Certificate Holders of Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2006 or its predecessor in interest “the Bank.” That is because:; 1) SFR was unaware of the bankruptcy stay and thus a BFP; 2) the Bank took no action to prevent the foreclosure; 3) the Bank has provided no evidence that any purchaser, including SFR, ever considered the bankruptcy in making its bid on the property; and 4) the retroactive annulment of the stay means that no violation of the bankruptcy stay occurred.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. ARGUMENT**

#### **A. SFR’s Previous Arguments Defeats the Bank’s Argument for Equity.**

SFR has already fully briefed the issue that the Bank is not entitled to an equitable remedy. *See* SFR’s MSJ at 11-12, filed on January 24, 2017. Additionally, SFR has briefed how it was a BFP and how SFR was not aware of any defects in the sale, including any alleged unfairness caused by the borrower's bankruptcy. *Id.* at 19-20. In regards to SFR’s BFP status, it should be noted that this Bankruptcy took place in California and no requirement of law requires SFR to make an inquiry of all 50 states in an attempt to uncover potential bankruptcies. *See* Notice of Bankruptcy Order Granting Retroactive Annulment of the Automatic Stay filed on May 19, 2017.<sup>1</sup> Additionally, none of the Bankruptcy documents were record that would have put SFR on notice

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<sup>1</sup> In fact, bankruptcy filings are no even public record; instead, an individual/entity must have a PACER account.

1 of this bankruptcy.

2 Therefore, to the topics of the Bank's lack of an equitable remedy and SFR's status as a  
3 BFP, SFR fully incorporates and spotlights these arguments herein as they are germane to the topic  
4 of if, or how, the equities should be balanced in light of the borrower's bankruptcy and the  
5 subsequent retroactive annulment of the bankruptcy stay.

6 **B. The Retroactive Annulment of the Bankruptcy Does Not Cause Equity to Tip in Favor**  
7 **of the Bank; The Retroactive Annulment of the Bankruptcy Does Not Amount to**  
8 **Fraud Oppression or Unfairness.**

9 This Court can only overturn a foreclosure sale for inadequacy of price if there is some  
10 "addition[al] proof of some element of fraud, unfairness or oppression **as accounts for and brings**  
11 **about the inadequacy of price.**" *Golden v. Tomiyasu*, 79 Nev. 503, 514, 387 P.2d 989, 995  
12 (1963)(emphasis added).<sup>2</sup> A simple review of the facts of this case shows that the Bank took no  
13 action in the foreclosure, and the bankruptcy had zero effect on the outcome of the sale and the  
14 price received at auction.

15 Here, the Bank was mailed all applicable notices of the foreclosure. *See* SFR's Reply in  
16 Support of its MSJ at 5, filed on February 17, 2017. Despite being mailed these notices, the Bank  
17 took no action or steps to protect its interest. In regards to the bankruptcy of the borrower, the  
18 Bank never claimed reliance on the bankruptcy as a reason for its failure to protect the deed of  
19 trust. After all, the Bank can't even claim it was unfair that NAS was able to proceed and it was  
20 not; the Bank did not even move to lift the bankruptcy stay as to this property. As such, any harm  
21 resulting from the Bank's failure to move to lift stay is of its own making. Moreover, if the Bank  
22 truly felt that the Association foreclosure was improper due to a bankruptcy stay violation, it failed  
23 to mitigate its damages by notifying the Association/NAS of this perceived fact. Instead, true to  
24 form, the Bank took no action. As such, equity cannot tip in favor of the Bank.

25 The Bank has also failed to provide evidence that the price SFR paid was influenced by the  
26 bankruptcy stay, nor could they. This is because SFR knew nothing about the borrower's  
27 bankruptcy at the time of the Association sale. What is more, Mr. Michael Brunson, a certified

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28 <sup>2</sup> SFR does not concede that the price it paid was inadequate, but for purposes of this Supplement,  
SFR focuses more on the issue that even if the price was inadequate, the Bank still cannot show  
fraud, oppression or unfairness.

1 residential appraiser, has opined that the disposition value of the property was \$14,000.00. *See*  
2 Exhibit 1 at iii. Mr. Brunson's expert opinion did not take into account an alleged bankruptcy stay  
3 violation on the property. Thus, when SFR purchased the property for \$14,000 dollars (*see* SFR's  
4 MSJ at n.24), SFR did so without any knowledge of any alleged bankruptcy stay or violation of  
5 such a stay. Equally lacking is any evidence that other bidders were affected by this alleged  
6 bankruptcy stay. Thus, even if this amounts to fraud, unfairness or oppression, it could not have  
7 caused the inadequate price of which the Bank complains. At the summary judgment phase, the  
8 Bank cannot simply conjecture that the bidding was chilled; it must present actual evidence. This  
9 the Bank has not done.

10 Simply put, arguing that the price was affected by the stay (which has now been annulled)  
11 is creative after the fact lawyering. The evidence shows, as well as past cases the Bank has been  
12 involved in, that the Bank never intended to do anything to protect its interest. The retroactive  
13 annulment of the bankruptcy stay does not change the fact that the Bank took no action to protect  
14 its interest in the property.

15 **C. There Was No Violation of a Bankruptcy Stay.**

16 Actions taken by a foreclosing trustee which would be in violation of a bankruptcy stay are  
17 ratified by a retroactive annulment of such a stay. *In re Myers*, 491 F.3d 120, 130 (3d Cir. 2007).  
18 In particular, a bankruptcy court has the authority to nullify a stay retroactively to validate a  
19 foreclosure sale. *Khozai v. Resolution Trust Corp.*, 177 B.R. 524, 527 (E.D. Va. 1995) ("The Third,  
20 Fifth, Sixth, Eleventh and Ninth Circuits all agree that actions in violation of an automatic stay are  
21 subject to retroactive relief under § 362(d).")

22 All parties have acknowledged the authenticity of the Order Granting Retroactive  
23 Annulment of the Automatic Stay. *See* Notice of Bankruptcy Order Granting Retroactive  
24 Annulment of the Automatic Stay filed on May 19, 2017. This retroactive annulment makes it so  
25 as if a violation had *never* happened. In fact, the order states that "[a]ny postpetition acts taken by  
26 Movant to enforce its remedies regarding the Property *do not* constitute a violation of the stay" *Id.*  
27 at Exhibit 1 p. 2. (emphasis added). Additionally, the action taken by Copper Ridge Community  
28 Association and/or its agent Nevada Association Services, Inc. also did not constitute a violation

1 of the stay. *Id.* at 3. Therefore, if the stay was never violated by law, it is legally inconsistent to  
2 argue that the violation of the stay caused fraud, unfairness or oppression at the sale.

3 **D. Bona Fide Purchaser Status Trumps Equitable Relief.**

4 The Nevada Supreme Court recognized the superiority of a bona fide purchaser (“BFP”)  
5 when it stated,

6 When sitting in equity, however, courts must consider the entirety of the  
7 circumstances that bear upon the equities...This includes considering the status and  
8 actions of all parties involved, including whether an innocent party may be harmed  
by granting the desired relief.

9 *Shadow Wood*, 366 P.3d at 1114 citing *Smith v. United States*, 373 F.2d 419, 424 (4th Cir. 1966)  
10 (“Equitable relief will not be granted to the possible detriment of innocent third parties.”); *In re*  
11 *Vlasek*, 325 F.3d 955, 963 (7th Cir. 2003) (“[I]t is an age-old principle that in formulating equitable  
12 relief a court must consider the effects of the relief on innocent third parties.”); *Riganti v.*  
13 *McElhinney*, 56 Cal. Rptr. 195, 199 (Ct. App. 1967) (“[E]quitable relief should not be granted  
14 where it would work a gross injustice upon innocent third parties.”)

15 This Court further exhorted that “[c]onsideration of harm to potentially innocent third  
16 parties is especially pertinent here where [the Bank] did not use the legal remedies available to it  
17 to prevent the property from being sold to a third party, such as seeking a temporary restraining  
18 order and preliminary injunction and filing a lis pendens on the property.” *Shadow Wood*, 366 P.3d  
19 at 1114 n. 7 citing *Cf. Barkley’s Appeal. Bentley’s Estate*, 2 Monag. 274, 277 (Pa. 1888) (“in the  
20 case before us, we can see no way of giving the petitioner the equitable relief she asks without  
21 doing great injustice to other innocent parties who would not have been in a position to be injured  
22 by such a decree as she asks if she had applied for relief at an earlier day.”).

23 In emphasizing “the legal remedies available to prevent the property from being sold to a  
24 third party,” this Court placed the burden on the party seeking equitable relief to prevent a potential  
25 purchaser from attaining BFP status. If that party’s inaction allows a purchaser to become a BFP,  
26 then equity cannot be granted to the detriment of the innocent third party. Put another way, BFP  
27 status trumps equitable relief.

28 This seemingly harsh result is reinforced by the fact that not even a due process violation

1 is sufficient to overcome an individual's status as a BFP. *Swartz v. Adams*, 93 Nev. 240, 245–46,  
2 563 P.2d 74, 77 (1977) (finding that where notice of sale was not given to owners, the property  
3 still could not be returned to owners because the property was purchased by a BFP). This Court  
4 remanded *Swartz* to allow the owners to seek compensatory relief against the person who initiated  
5 the sale rather than harm an innocent third party. *Id.* Therein lies the correct form of relief. The so-  
6 called harmed party (Bank) can seek money damages against the party who caused the harm  
7 (Association/Collection Company). But under no set of circumstances can equitable relief, to the  
8 detriment of the innocent purchaser, be granted to a party (Bank) who ignored earlier remedies  
9 and allowed a BFP to purchase the property.

10 This Court summed up this idea when it stated:

11 Where the complaining party has access to all the facts surrounding the questioned  
12 transaction and merely makes a mistake as to the legal consequences of his act,  
13 equity should normally not interfere, especially where the rights of third parties  
14 might be prejudiced thereby.

14 *Shadow Wood*, 366 P.3d at 1116.

15 This is not even a novel idea of jurisprudence. One of the most fundamental principles of  
16 law, whether it be civil or criminal, is that only the party that caused or contributed to the harm  
17 can be held responsible. If BFP status is treated as a mere consolation, then all sales lack finality  
18 and all statutory foreclosures are jeopardized; effectively morphing a non-judicial foreclosure into  
19 a judicial foreclosure. *See Moeller v. Lien*, 25 Cal. App. 4th 822, 830, 30 Cal. Rptr. 2d 777, 782  
20 (1994); *Melendrez v. D & I Investment, Inc.*, 26 Cal.Rptr.3d 413, 428 (Cal.Ct.App. 2005)(Creating  
21 finality to BFPs ‘was to promote certainty in favor of the validity of the private foreclosure sale  
22 because it encouraged the public at large to bid on the distressed property...’)(internal citation  
23 omitted); *6 Angels, Inc. v. Stuart-Wright Mortgage, Inc.*, 85 Cal. App. 4th 1279, 102 Cal. Rptr. 2d  
24 711 (2011); *McNeill Family Trust v. Centura Bank*, 60 P.3d 1277 (Wyo. 2003); *In re Suchy*, 786  
25 F.2d 900 (9th Cir. 1985); and *Miller & Starr, California Real Property* 3d §10:210.

26 What is more, by treating BFP status as a consolation, it effectively rewards the alleged  
27 harmed party who failed to protect itself by either invoking earlier remedies or defeating a BFP  
28 from purchasing the Property. It is a maxim, “he who seeks equity must do equity.” No one is

1 entitled to the aid of the court when that aid is only made necessary by that party's own inactions  
2 or self-created hardship. Equity was not created to relieve a person of the consequences of his own  
3 inactions. This maxim holds true in this case.

4 As already briefed, SFR had no notice of any alleged stay violation, and therefore, was a  
5 BFP at the time of the Association sale.

6 **CONCLUSION**

7 Based on the above, and all the subsequent pleadings on SFR's Motion for Summary  
8 Judgment, this Court should Grant the SFR's Motion for Summary Judgment.

9 DATED this 31st day of July 2017.

**KIM GILBERT EBRON**

10  
11 /s/ Karen L. Hanks  
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28



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 31st day of July 2017, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system the foregoing **SFR INVESTMENTS POOL 1, LLC'S SUPPLEMENT RESPONSE IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**, to:

Adam Knecht .	aknecht@alversontaylor.com
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/s/ Zachary Clayton

An employee of Kim Gilbert Ebron

# **TAB 35**

## Minutes

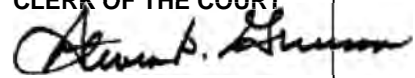
09/08/2017 3:00 AM

- This matter was before the Court on June 6, 2017 on various motions. Present at the hearing was Bohn on behalf of NV West Servicing, LLC ("NV West"), John Delikanakis on behalf of U.S. Bank ("US Bank"), Karen Hanks on behalf of SFR Investments Pool 1, LLC ("SFR"), and Trevor Wai on behalf of Copper Ridge Community Association (the "HOA"). Before the Court was SFR's Motion for Summary Judgment, U.S. Bank's Renewed Motion for Summary Judgment, Third-Party Defendant Copper Ridge Community Association's Renewed Motion for Summary Judgment against U.S. Bank. Third-Party Defendant Copper Ridge filed a Substantive Joinder to SFR's Motion for Summary Judgment, Nevada Association Services, Inc. filed a Joinder to SFR and Copper Ridge for Summary Judgment, and NV West Servicing, LLC filed a Joinder to US Bank's Renewed Motion for Summary Judgment. At the hearing, the Court requested all parties to address their positions regarding the impact of the bankruptcy stay being in place at the time of the March 2013 foreclosure sale in their arguments. In light of the oral argument, the Court allowed the parties to provide supplemental briefing to address whether the bankruptcy of the borrower had any impact as to the equity arguments raised by various parties in their briefs or responded to in their oppositions. Accordingly, the Court allowed supplemental briefing. The matter was then continued for decision after the supplemental briefing. On July 31, 2017, US Bank filed a Supplemental Brief Re: Unfairness, and SFR filed a Supplement in Support of Its Motion for Summary Judgment on the same day. On August 2, 2017, Copper Ridge filed a Joinder to SFR's Supplement Response. After the supplemental briefing was provided but before the instant ruling, the Nevada Supreme Court on August 3, 2017, issued its opinion in *LN Mgmt. LLC v. 5105 Portraits Place v. Green Tree Loan Serv., LLC*, 133 Nev. Adv. Op. No. 55 (August 3, 2017). In that case, the Court addressed the impact of a HOA foreclosure when there is a bankruptcy stay in place. In that case, the Court held that the HOA foreclosure sale at issue in that case was an act in violation of the automatic stay, despite the lack of notice of the homeowners' bankruptcy. As a conflict of laws is present in that case, the Court also found that the immediate effect of the bankruptcy act is the same regardless of which circuit law is applied. In making its holding, the Court cited to *Am. Jur. 2d Bankruptcy* which provides: "The automatic stay takes effect on the date the bankruptcy petition was filed, regardless of whether the creditor or other affected entity has knowledge of the bankruptcy and without the need for any formal service of process or notice to the creditors." 9B Am. Jur. 2d Bankruptcy Sec. 169 (footnotes omitted). Thus, "the automatic stay is effective against the world, regardless of notice or knowledge, considering all the pleadings, supplemental briefs, applicable laws, applicable case law and oral argument by counsel, the Court finds as follows: The Nevada Supreme Court has held that a district court, in exercising its equity, may set aside an otherwise valid foreclosure sale if (1) the sales price was inadequate; and (2) there is evidence of fraud, unfairness, or oppression related to the sale. *Golden v. Tomiyasu*, 79 Nev. 387, P.2d 989 (1963); *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 366 P.3d 1105, 1112, 132 N.W.2d 5 (2016). The Court also noted that there are other published and unpublished cases which address the Court's role in equity and in evaluating the commercial reasonableness / equity argument raised by the parties' pleadings. SFR argues that it is entitled to summary judgment on the quiet title claim because US Bank's First Deed of Trust was extinguished by the HOA's non-judicial foreclosure sale in March 2013. SFR argues that US Bank, as a lienholder, is not entitled to an equitable remedy and that the foreclosure sale was commercially reasonable. The HOA argues that it is entitled to a summary judgment on its claims that US Bank asserted against it. The HOA argues that NAS, the HOA's foreclosure agent, complied with all the notice requirements of NRS Chapter 116. US Bank argued that it is entitled to summary judgment because the HOA foreclosure sale was not conducted in a commercially reasonable manner. It initially argued that the sale was also void as there was a bankruptcy in place and no

requested by the HOA or its agent NAS prior to or at the time of the sale. During the pendency of the motion, SFR obtained an Order lifting the stay nunc pro tunc. After SFR provided a copy of that Order, US Bank contended that it was not notified that a relief from stay was sought nunc pro tunc and that it could not have its rights retroactively taken away given the nunc pro tunc order. In the present case it was undisputed that US Bank's predecessor was aware of there was a pending bankruptcy as it sought and was granted relief from stay timely to move forward with their own foreclosure. There was no evidence presented as to whether the HOA or NAS was aware of the pending bankruptcy at any time prior to the HOA sale. There was no evidence presented that either the HOA or its agent was aware that US Bank's predecessor had sought and received a relief from stay so that it could proceed with its own foreclosure. It is also undisputed that at the time of the HOA foreclosure sale, the bankruptcy stay was in place as to all entities other than US Bank's predecessor which had obtained a lift stay. There was no evidence presented that the information relating to bankruptcy or the lift stay request of US Bank's predecessor was unavailable to SFR, the HOA or NAS prior to or at the foreclosure sale. Thus, it is undisputed that as of the date of HOA sale in 2013, the HOA sale was void. It is also undisputed that litigation commenced later in 2013. It is undisputed that as of the date of commencement of litigation no entity other than US Bank's predecessor had sought any relief from the bankruptcy stay. It is also undisputed that more than three years after litigation commenced regarding the HOA foreclosure sale, the purchaser at the HOA sale, SFR, sought relief from stay nunc pro tunc. It is also undisputed that Plaintiff did not seek a stay annulment until 2017, several years after the HOA foreclosure. It was contended by Defendant that the annulment was not sought until after Defendant had filed a Motion for Summary Judgment. It is also undisputed that Plaintiff paid sales price equal to approximately what Defendant contends is 6 percent of the fair market value of the subject property, or 4.2% of the loan the initial purchaser obtained from Wells Fargo Bank, N.A. for the purchase of the property. Defendant states it was not made aware of the annulment request at the time it was made in 2017, but it became aware of it when it was noted in SFR's Opposition to US Bank's Renewed Motion for Summary Judgment filed on February 13, 2017. Based on the undisputed facts, the Court finds as a matter of law that summary judgment in favor of US Bank is appropriate. As the Nevada Supreme Court and the Nevada Court of Appeals have held in numerous cases involving the statute at issue, courts look at equitable factors. See e.g. *Shadow Wood*. In the present case, the evidence shows that the price paid was inadequate as defined by precedent. The evidence also shows that at the time the HOA foreclosure took place in 2009, the sale was void as there was a bankruptcy stay in place. The fact that the HOA through its agent sold the property at issue while a bankruptcy stay was in place "was an act in violation of the automatic stay" even if the HOA, its agent, and/or SFR were not aware of the homeowners' bankruptcy pursuant to *LN Mgmt. LLC Ser. 5105 Portraits Place v. Green Tree Loan Serv.* The conduct of the HOA and/or its agent in foreclosing on the property while a bankruptcy stay in place would meet the criteria of *Golden v. Tomiyasu* in that that there was "evidence of fraud, unfairness, or oppression related to the sale" in addition to an inadequate price. While Plaintiff obtained relief from stay 2017 nunc pro tunc there was no evidence presented that US Bank or its predecessor would have any knowledge at the time of the HOA foreclosure that several years later an annulment would be sought and obtained. Indeed in order to do equity, the Court must look at what was reasonably foreseeable at the time of the foreclosure sale as to the status of the property at that time. Given US Bank's predecessor had sought relief from stay, it would have a reasonable expectation that if anyone else were seeking to take any action relating to the property, that entity would also need to seek relief from stay pursuant to applicable law. It is undisputed that no one else sought relief from stay at that time. Accordingly, while Plaintiff received a nunc pro tunc Order granting relief from stay, such that the sale was no longer considered void, the Court still needs to balance the equities. In so doing, the Court finds consistent with applicable precedent given the undisputed facts, equity lies in favor of US Bank. Accordingly, the Court GRANTS Defendant U.S. Bank's Motion for

Summary Judgment and DENIES without prejudice Plaintiff's Motion for Summary Judgment as well as any joinders thereto. The Court also DENIES without prejudice Copper Ridge's Renewed Motion for Summary Judgment. This Decision sets forth the Court's intended disposition on the subject but anticipates further Order of the Court to make such disposition effective as an Order or Judgment. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing and argument. Counsel for Defendant U.S. Bank is directed to prepare the Order in accordance with NRCP 56, circulate it to opposing counsel and submit it to Chambers within 10 days pursuant to EDCR 7.21. CLERK'S NOTE: The above minute order has been distributed VIA EMAIL to: Michael Bohn, Esq. (mbohn@bohnlawfirm.com); John Delikanakis, Esq. (jdelikanakis@swlaw.com); Karen Hanks, Esq. (karen@KGElegal.com); and Trevor Waite, Esq. (twaite@alversontaylor.com) (tmj;9/8/17)

# **TAB 36**



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7 *Attorneys for Defendant U.S. BANK, N.A., a national banking*  
8 *association as Trustee for the Certificate Holders of Wells Fargo*  
9 *Asset Securities Corporation, Mortgage Pass-Through*  
10 *Certificates, Series 2006-AR4*

11  
12 **IN THE EIGHTH JUDICIAL DISTRICT COURT**  
13  
14 **CLARK COUNTY, NEVADA**

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

15 Plaintiff,

16 vs.

17 U.S. BANK, N.A., a national banking  
association as Trustee for the Certificate  
18 Holders of Wells Fargo Asset Securities  
Corporation, Mortgage Pass-Through  
19 Certificates, Series 2006-AR4; LUCIA  
PARKS, an individual; DOES I through X;  
20 and ROE CORPORATIONS I through X,  
inclusive,

21 Defendants.

22  
23 AND ALL RELATED MATTERS.

Consolidated Case Nos.  
A-13-678814-C  
A-13-688734-C

Dept. XXXI

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER (1) GRANTING  
U.S. BANK'S RENEWED MOTION FOR  
SUMMARY JUDGMENT (2) DENYING  
SFR'S MOTION FOR SUMMARY  
JUDGMENT AND (3) DENYING  
COPPER RIDGE'S RENEWED  
MOTION FOR SUMMARY JUDGMENT**

24  
25 This matter came on for hearing before The Honorable Joanna Kishner June 6, 2017, in  
26 Department 31 of the Eighth Judicial District Court, in and for Clark County, Nevada. Before the  
27 Court were the following motions: (1) Defendant U.S. Bank, N.A.'s ("U.S. Bank") Renewed  
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

4823-7991-8415

10-03-17 P02:17 IN  
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1 Motion for Summary Judgment; (2) Plaintiff SFR Investments Pool 1, LLC's ("SFR") Motion for  
2 Summary Judgment; (3) Third-Party Defendant Copper Ridge Community Association's  
3 ("Copper Ridge") Renewed Motion for Summary Judgment; (4) Third-Party Defendant Nevada  
4 Association Services, Inc.'s ("NAS") Joinder to SFR's Motion for Summary Judgment and to  
5 Copper Ridge's Renewed Motion for Summary Judgment; and (5) Defendant NV West Servicing,  
6 LLC's ("NV West") Joinder to U.S. Bank's Renewed Motion for Summary Judgment. U.S. Bank  
7 was represented by John S. Delikanakis of Snell & Wilmer L.L.P.; SFR was represented by Karen  
8 L. Hanks of Kim Gilbert Ebron; NV West was represented by Michael F. Bohn of the Law  
9 Offices of Michael F. Bohn, Ltd.; and Copper Ridge was represented by Trevor R. Waite of  
10 Alverson Taylor Mortensen & Sanders.

11 At hearing on these motions, the Court asked the parties to address the impact, if any, of  
12 the bankruptcy stay in place at the time of the subject HOA foreclosure. At the conclusion of oral  
13 argument the Court allowed the parties to submit supplemental briefing on the same issue. On  
14 July 31, 2017, U.S. Bank and SFR filed supplemental briefs. On August 2, 2017, Copper Ridge  
15 filed a Joinder to SFR's supplemental brief.

16 On August 3, 2017, the Nevada Supreme Court issued its decision in *LN Management*  
17 *LLC Series 5015 Portraits Place v. Green Tree Loan Servicing, LLC*, 133 Nev. Adv. Op No. 55,  
18 399 P.3d 359, 360 (2017), which addresses the effect of a bankruptcy stay on an HOA foreclosure  
19 sale. U.S. Bank provided a copy of the decision to the Court and all counsel.

20 After considering the pleadings, the various motions and supplemental briefs, and the  
21 parties' oral argument, the Court makes the following findings of fact and conclusions of law and  
22 enters final judgment as follows:

### 23 **FINDINGS OF FACT**

24 1. This matter involves an HOA foreclosure sale of real property located at 2270  
25 Nashville Avenue, Henderson, Nevada 89052; APN 178-19-712-012 (the "Property").

26 2. On or about December 30, 2005, Defendant Lucia Parks ("Parks") obtained a loan  
27 in the amount of \$331,500.00 from Wells Fargo Bank, N.A. (the "Loan") for the purchase of the  
28 Property.



1           3.       The Loan was secured by a deed of trust, which was recorded on January 5, 2006,  
2 as instrument no. 20060105-0004275, and of which Wells Fargo was the beneficiary (the "Deed  
3 of Trust"). The Deed of Trust was later assigned to U.S. Bank on July 1, 2010.

4           4.       Thereafter, Parks defaulted on the Loan and also stopped paying her HOA  
5 assessments.

6           5.       On February 24, 2010, U.S. Bank's predecessor, through its trustee, filed a Notice  
7 of Default and Election to Sell Under Deed of Trust.

8           6.       On July 9, 2010, U.S. Bank, through its trustee, filed a Notice of Trustee's Sale  
9 under the Deed of Trust.

10          7.       On August 23, 2010, Parks filed for Chapter 11 bankruptcy protection in the  
11 Central District of California, Case No. 8:10-bk-21738-TA.

12          8.       The Property was listed amongst the assets in Parks' bankruptcy estate.

13          9.       On July 2, 2012, U.S. Bank timely filed a motion in Parks' bankruptcy case  
14 seeking relief from the automatic stay so it could resume foreclosure proceedings against the  
15 Property.

16          10.       The bankruptcy court granted U.S. Bank's motion for relief from the automatic  
17 stay on August 7, 2012, permitting U.S. Bank to proceed with foreclosure of the Property  
18 pursuant to the Deed of Trust.

19          11.       There was no evidence presented to the Court that either Copper Ridge or NAS  
20 had knowledge of the bankruptcy at any time prior to the HOA foreclosure sale.

21          12.       There was no evidence presented to the Court that either Copper Ridge or NAS  
22 had knowledge that U.S. Bank had sought and received relief from the automatic stay so that it  
23 could proceed with its own foreclosure.

24          13.       While Parks remained in bankruptcy, Copper Ridge, through its agent NAS,  
25 recorded a Notice of Delinquent Assessment Lien on May 24, 2012; a Notice of Default and  
26 Election to Sell Under HOA Lien on July 16, 2012; and a Notice of Foreclosure Sale on February  
27 5, 2013.

28

1           14. On or about March 1, 2013, NAS, acting on behalf of Copper Ridge, held a  
2 foreclosure sale at which it sold the Property to SFR for the total amount of \$14,000.00 (the  
3 “HOA foreclosure sale”).

4           15. SFR’s purchase price of \$14,000.00 was equal to 6.1% of the \$228,000.00 fair  
5 market value of the property at the time of the HOA foreclosure sale, or 4.2% of the value of the  
6 Loan obtained by Parks.

7           16. A Foreclosure Deed evidencing the HOA foreclosure sale was recorded as  
8 instrument no. 20130306-0001614 on March 6, 2013.

9           17. Neither Copper Ridge nor NAS sought or obtained relief or approval from the  
10 bankruptcy court prior to conducting the HOA foreclosure sale.

11           18. It is undisputed that as of the date of the HOA foreclosure sale on March 1, 2013,  
12 the automatic stay with regard to the Property was in place as to all entities other than U.S. Bank,  
13 which had obtained relief from the stay.

14           19. No evidence was presented to the Court that the information regarding Parks’  
15 bankruptcy or U.S. Bank’s relief from the automatic stay was unavailable to Copper Ridge, NAS,  
16 SFR, or any other party prior to the HOA foreclosure sale.

17           20. Shortly after the HOA foreclosure sale, U.S. Bank proceeded with its own  
18 foreclosure of the Property by recording a Notice of Trustee’s Sale on March 8, 2013.

19           21. It is undisputed that at the time SFR’s complaint for quiet title and injunctive relief  
20 was filed on March 22, 2103, no entity other than U.S. Bank had sought any relief from the  
21 automatic stay regarding the Property.

22           22. The Court denied the request for injunctive relief.<sup>1</sup>

23           23. U.S. Bank foreclosed on the Property on July 18, 2013 and sold it to NV West, as  
24 trustee for Nashville Trust #2270.<sup>2</sup>

25  
26  
27 <sup>1</sup> The Court later dismissed SFR’s Complaint, but that decision was reversed on appeal.

28 <sup>2</sup> On or about September 16, 2013, SFR filed a second lawsuit, naming U.S. Bank and NV West, alleging causes of  
action for declaratory relief/quiet title, wrongful foreclosure (against U.S. Bank only), and injunctive relief. The  
parties later stipulated to consolidate the two cases.

1           24.     Parks remained in bankruptcy until September 17, 2014, more than 18 months  
2 after Copper Ridge and NAS foreclosed on the Property without seeking or receiving relief from  
3 the bankruptcy court and the automatic stay.

4           25.     On or about January 24, 2017, SFR filed a motion with the bankruptcy court to  
5 retroactively annul the automatic stay, nearly four years after the HOA foreclosure sale and more  
6 than three years after litigation commenced in this matter.

7           26.     The bankruptcy court granted SFR's motion on May 15, 2017, and retroactively  
8 annulled the automatic stay as to Copper Ridge and SFR.

9           27.     U.S. Bank contends that SFR did not seek annulment of the stay in the bankruptcy  
10 court until after U.S. Bank had filed its Renewed Motion for Summary Judgment arguing, among  
11 other things, that the HOA foreclosure sale was void for violating the automatic stay.

12           28.     U.S. Bank also contends that it was not made aware of SFR's request to annul the  
13 automatic stay at the time it was made, but instead became aware of it when it was noted in SFR's  
14 Opposition to U.S. Bank's Renewed Motion for Summary Judgment.

15           29.     In its Motion for Summary Judgment, U.S. Bank argued that the HOA foreclosure  
16 sale was void *ab initio* because it was conducted in violation of the automatic stay and neither  
17 Copper Ridge nor NAS obtained relief from the stay prior to foreclosing.

18           30.     U.S. Bank also argued that the HOA foreclosure sale should be set aside as  
19 commercially unreasonable. It argued that SFR's \$14,000.00 purchase price was inadequate  
20 given the Property's fair market value of \$228,000.00 at the time of the sale. U.S. Bank also  
21 argued that the HOA foreclosure sale was marked by substantial unfairness. Specifically, U.S.  
22 Bank argued that it was unfair for Copper Ridge and NAS to proceed with the foreclosure sale in  
23 light of the automatic stay. It was also unfair to conduct the HOA foreclosure sale where U.S.  
24 Bank properly and timely sought relief from the automatic stay, but Copper Ridge, NAS or SFR  
25 did not do so.

26           31.     U.S. Bank also argued that SFR was not a bona fide purchaser, and that even if it  
27 was, the balance of the equities favored U.S. Bank.

28

36. Copper Ridge and NAS joined in SFR's arguments, while NV West joined in the arguments made by U.S. Bank.

39. As of the date of the HOA foreclosure sale in 2013, the HOA sale was void as a violation of the bankruptcy court's automatic stay. See *LN Mgmt. LLC Ser. 5105 Portraits Place*, 399 P.3d at 360.

1           40. While SFR received a *nunc pro tunc* order from the bankruptcy court on May 15,  
2 2017, granting it and Copper Ridge relief from the automatic stay such that the sale is now no  
3 longer considered void, this Court must still balance the equities under *Golden v. Tomiyasu*, 79  
4 Nev. 503, 514 (1963).

5           41. A District court, sitting in equity, may set aside an otherwise valid foreclosure sale  
6 if (1) the sales price was inadequate; and (2) there is evidence of fraud, unfairness, or oppression  
7 related to the sale. *Golden v. Tomiyasu*, 79 Nev. 503, 514 (1963); *Long v. Towne*, 98 Nev. 11, 13  
8 (1982); *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1111  
9 (2016).

10           42. Indeed, in order to do equity, the Court must look to what was reasonably  
11 foreseeable at the time of the HOA foreclosure sale as to the status of the Property. While SFR  
12 obtained *nunc pro tunc* relief from the bankruptcy stay on May 15, 2017, there is no evidence  
13 before the Court that US Bank or its predecessor had any knowledge at the time of the HOA  
14 foreclosure sale to SFR that years later SFR would seek and obtain a retroactive annulment of the  
15 automatic stay.

16           43. Where sales price “inadequacy is palpable and great, very slight additional  
17 evidence of unfairness or irregularity is sufficient to authorize the granting of the relief sought.”  
18 *Golden*, 79 Nev. at 515, 387 P.2d at 995 (internal citation omitted).

19           44. SFR’s purchase price of \$14,000.00 was inadequate in light of the Property’s fair  
20 market value at the time of the HOA foreclosure sale of \$228,000.00. The purchase price was  
21 also inadequate in light of the \$331,500.00 amount originally loaned to Parks to purchase the  
22 Property.

23           45. As of March 1, 2013, the HOA sale was void because it was conducted in violation  
24 of the automatic stay. *LN Mgmt. LLC Ser. 5105 Portraits Place v. Green Tree Serv.*, 399 P.3d at  
25 360.

26           46. Copper Ridge’s sale of the Property through NAS while the automatic stay was in  
27 place “was an act in violation of the automatic stay,” even if Copper Ridge, NAS and/or SFR  
28 were not aware of the bankruptcy. *LN Mgmt. v. Green Tree*, 399 P.3d at 360. The “automatic

1 stay is effective against the world, regardless of notice.” *Id.*, quoting 9B AM. JUR. 2D  
2 BANKRUPTCY § 1698 (2016).

3 47. The HOA foreclosure sale conducted in violation of the automatic stay constitutes  
4 evidence of fraud, unfairness, or oppression related to the sale. *Golden*, 79 Nev. at 514.

5 48. Thus, the inadequate sales price, coupled with Copper Ridge and NAS conducting  
6 the HOA foreclosure sale in violation of the automatic stay, establish that the sale was  
7 commercially unreasonable and should be set aside.

8 49. In order to do equity, the Court must consider what was reasonably foreseeable at  
9 the time of the foreclosure sale as to the status of the Property at that time.

10 50. At the time of the HOA foreclosure sale, it was reasonable for U.S. Bank to expect  
11 that any party seeking to foreclose on the Property would need to first seek relief from the  
12 automatic stay, as U.S. Bank had done.

13 51. Although SFR obtained a retroactive annulment of the automatic stay in 2017, at  
14 the time of the HOA foreclosure sale it was not reasonably foreseeable to U.S. Bank, or indeed  
15 any other creditor, that SFR would seek and obtain an annulment of the stay several years later.

16 52. Thus, in balancing the equities, consistent with applicable precedent and the  
17 undisputed facts, the Court finds that equity lies in favor of U.S. Bank.

18 Based upon the foregoing Findings of Fact and Conclusions of Law,

19 **IT IS ORDERED, ADJUDGED, AND DECREED** that Defendant U.S. Bank’s  
20 Renewed Motion for Summary Judgment, filed January 24, 2017, along with all Joinders thereto,  
21 is **GRANTED**.

22 **IT IS FURTHER ORDERED** that Plaintiff SFR’s Motion for Summary Judgment, filed  
23 January 24, 2017, along with all Joinders thereto, is hereby **DENIED**.

24 **IT IS FURTHER ORDERED** that Third-Party Defendant Copper Ridge’s Renewed  
25 Motion for Summary Judgment, filed January 24, 2017, along with all Joinders thereto, is hereby  
26 **DENIED**.

27 **IT IS FURTHER ORDERED** that the HOA foreclosure sale conducted by Copper Ridge  
28 and NAS on March 1, 2013 is voided and declared a nullity.

**IT IS FURTHER ORDERED** that U.S. Bank's Deed of Trust on the Property was not extinguished by the HOA foreclosure sale, and that U.S. Bank's foreclosure and sale of the Property on July 18, 2013, to NV West Servicing, LLC as Trustee for Nashville Trust #2270, was proper, valid, and enforceable.

**IT IS FURTHER ORDERED** that title to the property commonly known as 2270 Nashville Avenue, Henderson, Nevada Property and legally described as:

Lot Five (5) in Block Five (5) of Final Map of Parcel 40, a common interest community, as shown by map thereof on file in Book 71 of Plats, Page 68, in the Office of the County Recorder of Clark County, Nevada and as amended by that certain Certificate of amendment recorded December 18, 1996 as Instrument/File No. 959 in Book 961218 and shown on the Amended Final Map of a portion of Green Valley Rancho Parcel 40, as shown by map thereof on file in Book 77 of Plats, page 57, in the Office of the County Recorder of Clark County, Nevada.

APN 178-19-712-012

is hereby quieted in the name of NV West, as Trustee for Nashville Trust # 2270.

**IT IS FURTHER ORDERED** Plaintiff SFR has no right, title or interest in the Property.

**IT IS FURTHER ORDERED** that this Order is entered as a final judgment pursuant to NRCF 54(b).

**IT IS SO ORDERED.**

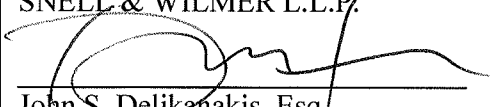
DATED: September 16, 2017.

*October*

  
JOANNA S. KISHNER  
DISTRICT COURT JUDGE

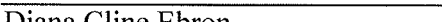
Respectfully submitted by:

SNELL & WILMER L.L.P.

  
John S. Delikanakis, Esq.  
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Daniel S. Ivie, Esq.  
Nevada Bar No. 10090  
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*Attorneys for Wells Fargo Bank, N.A.*

Approved as to form and content:

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Approved as to form and content:

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*Attorneys for NV West Servicing, LLC*

Approved as to form and content:

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*Attorneys for Nevada Association Services,  
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*Attorneys for Copper Ridge Community  
Association*


#13166



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Approved as to form and content:

THE LAW OFFICES OF  
MICHAEL F. BOHN, ESQ. LTD.



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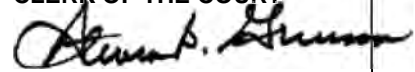
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# **TAB 37**



1 John S. Delikanakis  
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2 Daniel S. Ivie  
Nevada Bar No. 10090  
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6 Email: divie@swlaw.com

7 *Attorneys for Defendant U.S. BANK, N.A., a national banking*  
8 *association as Trustee for the Certificate Holders of Wells Fargo*  
9 *Asset Securities Corporation, Mortgage Pass-Through*  
10 *Certificates, Series 2006-AR4*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

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

15 Plaintiff,

16 vs.

17 U.S. BANK, N.A., a national banking  
18 association as Trustee for the Certificate  
19 Holders of Wells Fargo Asset Securities  
20 Corporation, Mortgage Pass-Through  
21 Certificates, Series 2006-AR4; LUCIA  
22 PARKS, an individual; DOES I through X;  
23 and ROE CORPORATIONS I through X,  
24 inclusive,

25 Defendants.

26 AND ALL RELATED MATTERS.

Consolidated Case Nos.  
A-13-678814-C  
A-13-688734-C

Dept. XXXI

**NOTICE OF ENTRY OF FINDINGS OF  
FACT, CONCLUSIONS OF LAW AND  
ORDER (1) GRANTING U.S. BANK'S  
RENEWED MOTION FOR SUMMARY  
JUDGMENT (2) DENYING SFR'S  
MOTION FOR SUMMARY JUDGMENT  
AND (3) DENYING COPPER RIDGE'S  
RENEWED MOTION FOR SUMMARY  
JUDGMENT**

27 ///

28 ///

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///

PLEASE TAKE NOTICE that the **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (1) GRANTING U.S. BANK'S RENEWED MOTION FOR SUMMARY JUDGMENT (2) DENYING SFR'S MOTION FOR SUMMARY JUDGMENT AND (3) DENYING COOPER RIDGE'S RENEWED MOTION FOR SUMMARY JUDGMENT** was entered in this Court on October 19, 2017. A copy of which is attached hereto.

DATED: October 20, 2017

SNELL & WILMER L.L.P.

By: /s/ Daniel S. Ivie

John S. Delikanakis  
Nevada Bar No. 5928  
Daniel S. Ivie  
Nevada Bar No. 10090  
3883 Howard Hughes Parkway, Ste. 1100  
Las Vegas, NV 89169

*Attorneys for Defendant U.S. BANK, N.A., a national banking association as Trustee for the Certificate Holders of Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4*

**CERTIFICATE OF SERVICE**

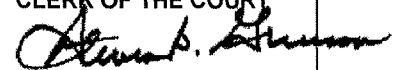
I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (1) GRANTING U.S. BANK'S RENEWED MOTION FOR SUMMARY JUDGMENT (2) DENYING SFR'S MOTION FOR SUMMARY JUDGMENT AND (3) DENYING COOPER RIDGE'S RENEWED MOTION FOR SUMMARY JUDGMENT** by electronic submission: submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

DATED this 20th day of October 2017.

/s/ Tonya C. Stephenson

An employee of Snell & Wilmer L.L.P.

# ATTACHMENT



1 John S. Delikanakis, Esq.  
Nevada Bar No. 5928  
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Nevada Bar No. 10090  
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7 *Attorneys for Defendant U.S. BANK, N.A., a national banking*  
association as Trustee for the Certificate Holders of Wells Fargo  
8 *Asset Securities Corporation, Mortgage Pass-Through*  
Certificates, Series 2006-AR4  
9

10 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12  
13 SFR INVESTMENTS POOL 1, LLC, a  
14 Nevada limited liability company,

15 Plaintiff,

16 vs.

17 U.S. BANK, N.A., a national banking  
association as Trustee for the Certificate  
18 Holders of Wells Fargo Asset Securities  
Corporation, Mortgage Pass-Through  
19 Certificates, Series 2006-AR4; LUCIA  
PARKS, an individual; DOES I through X;  
20 and ROE CORPORATIONS I through X,  
inclusive,

21 Defendants.

22  
23 AND ALL RELATED MATTERS.

Consolidated Case Nos.  
A-13-678814-C  
A-13-688734-C

Dept. XXXI

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER (1) GRANTING  
U.S. BANK'S RENEWED MOTION FOR  
SUMMARY JUDGMENT (2) DENYING  
SFR'S MOTION FOR SUMMARY  
JUDGMENT AND (3) DENYING  
COPPER RIDGE'S RENEWED  
MOTION FOR SUMMARY JUDGMENT**

24  
25 This matter came on for hearing before The Honorable Joanna Kishner June 6, 2017, in  
26 Department 31 of the Eighth Judicial District Court, in and for Clark County, Nevada. Before the  
27 Court were the following motions: (1) Defendant U.S. Bank, N.A.'s ("U.S. Bank") Renewed  
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

4823-7991-8415

10-03-17 P02:17 IN

1 Motion for Summary Judgment; (2) Plaintiff SFR Investments Pool 1, LLC's ("SFR") Motion for  
2 Summary Judgment; (3) Third-Party Defendant Copper Ridge Community Association's  
3 ("Copper Ridge") Renewed Motion for Summary Judgment; (4) Third-Party Defendant Nevada  
4 Association Services, Inc.'s ("NAS") Joinder to SFR's Motion for Summary Judgment and to  
5 Copper Ridge's Renewed Motion for Summary Judgment; and (5) Defendant NV West Servicing,  
6 LLC's ("NV West") Joinder to U.S. Bank's Renewed Motion for Summary Judgment. U.S. Bank  
7 was represented by John S. Delikanakis of Snell & Wilmer L.L.P.; SFR was represented by Karen  
8 L. Hanks of Kim Gilbert Ebron; NV West was represented by Michael F. Bohn of the Law  
9 Offices of Michael F. Bohn, Ltd.; and Copper Ridge was represented by Trevor R. Waite of  
10 Alverson Taylor Mortensen & Sanders.

11 At hearing on these motions, the Court asked the parties to address the impact, if any, of  
12 the bankruptcy stay in place at the time of the subject HOA foreclosure. At the conclusion of oral  
13 argument the Court allowed the parties to submit supplemental briefing on the same issue. On  
14 July 31, 2017, U.S. Bank and SFR filed supplemental briefs. On August 2, 2017, Copper Ridge  
15 filed a Joinder to SFR's supplemental brief.

16 On August 3, 2017, the Nevada Supreme Court issued its decision in *LN Management*  
17 *LLC Series 5015 Portraits Place v. Green Tree Loan Servicing, LLC*, 133 Nev. Adv. Op No. 55,  
18 399 P.3d 359, 360 (2017), which addresses the effect of a bankruptcy stay on an HOA foreclosure  
19 sale. U.S. Bank provided a copy of the decision to the Court and all counsel.

20 After considering the pleadings, the various motions and supplemental briefs, and the  
21 parties' oral argument, the Court makes the following findings of fact and conclusions of law and  
22 enters final judgment as follows:

### 23 FINDINGS OF FACT

24 1. This matter involves an HOA foreclosure sale of real property located at 2270  
25 Nashville Avenue, Henderson, Nevada 89052; APN 178-19-712-012 (the "Property").

26 2. On or about December 30, 2005, Defendant Lucia Parks ("Parks") obtained a loan  
27 in the amount of \$331,500.00 from Wells Fargo Bank, N.A. (the "Loan") for the purchase of the  
28 Property.



1           3.       The Loan was secured by a deed of trust, which was recorded on January 5, 2006,  
2 as instrument no. 20060105-0004275, and of which Wells Fargo was the beneficiary (the "Deed  
3 of Trust"). The Deed of Trust was later assigned to U.S. Bank on July 1, 2010.

4           4.       Thereafter, Parks defaulted on the Loan and also stopped paying her HOA  
5 assessments.

6           5.       On February 24, 2010, U.S. Bank's predecessor, through its trustee, filed a Notice  
7 of Default and Election to Sell Under Deed of Trust.

8           6.       On July 9, 2010, U.S. Bank, through its trustee, filed a Notice of Trustee's Sale  
9 under the Deed of Trust.

10          7.       On August 23, 2010, Parks filed for Chapter 11 bankruptcy protection in the  
11 Central District of California, Case No. 8:10-bk-21738-TA.

12          8.       The Property was listed amongst the assets in Parks' bankruptcy estate.

13          9.       On July 2, 2012, U.S. Bank timely filed a motion in Parks' bankruptcy case  
14 seeking relief from the automatic stay so it could resume foreclosure proceedings against the  
15 Property.

16          10.       The bankruptcy court granted U.S. Bank's motion for relief from the automatic  
17 stay on August 7, 2012, permitting U.S. Bank to proceed with foreclosure of the Property  
18 pursuant to the Deed of Trust.

19          11.       There was no evidence presented to the Court that either Copper Ridge or NAS  
20 had knowledge of the bankruptcy at any time prior to the HOA foreclosure sale.

21          12.       There was no evidence presented to the Court that either Copper Ridge or NAS  
22 had knowledge that U.S. Bank had sought and received relief from the automatic stay so that it  
23 could proceed with its own foreclosure.

24          13.       While Parks remained in bankruptcy, Copper Ridge, through its agent NAS,  
25 recorded a Notice of Delinquent Assessment Lien on May 24, 2012; a Notice of Default and  
26 Election to Sell Under HOA Lien on July 16, 2012; and a Notice of Foreclosure Sale on February  
27 5, 2013.

14. On or about March 1, 2013, NAS, acting on behalf of Copper Ridge, held a foreclosure sale at which it sold the Property to SFR for the total amount of \$14,000.00 (the “HOA foreclosure sale”).

15. SFR’s purchase price of \$14,000.00 was equal to 6.1% of the \$228,000.00 fair market value of the property at the time of the HOA foreclosure sale, or 4.2% of the value of the Loan obtained by Parks.

16. A Foreclosure Deed evidencing the HOA foreclosure sale was recorded as instrument no. 20130306-0001614 on March 6, 2013.

17. Neither Copper Ridge nor NAS sought or obtained relief or approval from the bankruptcy court prior to conducting the HOA foreclosure sale.

18. It is undisputed that as of the date of the HOA foreclosure sale on March 1, 2013, the automatic stay with regard to the Property was in place as to all entities other than U.S. Bank, which had obtained relief from the stay.

19. No evidence was presented to the Court that the information regarding Parks’ bankruptcy or U.S. Bank’s relief from the automatic stay was unavailable to Copper Ridge, NAS, SFR, or any other party prior to the HOA foreclosure sale.

20. Shortly after the HOA foreclosure sale, U.S. Bank proceeded with its own foreclosure of the Property by recording a Notice of Trustee’s Sale on March 8, 2013.

21. It is undisputed that at the time SFR’s complaint for quiet title and injunctive relief was filed on March 22, 2103, no entity other than U.S. Bank had sought any relief from the automatic stay regarding the Property.

22. The Court denied the request for injunctive relief.<sup>1</sup>

23. U.S. Bank foreclosed on the Property on July 18, 2013 and sold it to NV West, as trustee for Nashville Trust #2270.<sup>2</sup>

<sup>1</sup> The Court later dismissed SFR’s Complaint, but that decision was reversed on appeal.

<sup>2</sup> On or about September 16, 2013, SFR filed a second lawsuit, naming U.S. Bank and NV West, alleging causes of action for declaratory relief/quiet title, wrongful foreclosure (against U.S. Bank only), and injunctive relief. The parties later stipulated to consolidate the two cases.

24. Parks remained in bankruptcy until September 17, 2014, more than 18 months after Copper Ridge and NAS foreclosed on the Property without seeking or receiving relief from the bankruptcy court and the automatic stay.

25. On or about January 24, 2017, SFR filed a motion with the bankruptcy court to retroactively annul the automatic stay, nearly four years after the HOA foreclosure sale and more than three years after litigation commenced in this matter.

26. The bankruptcy court granted SFR's motion on May 15, 2017, and retroactively annulled the automatic stay as to Copper Ridge and SFR.

27. U.S. Bank contends that SFR did not seek annulment of the stay in the bankruptcy court until after U.S. Bank had filed its Renewed Motion for Summary Judgment arguing, among other things, that the HOA foreclosure sale was void for violating the automatic stay.

28. U.S. Bank also contends that it was not made aware of SFR's request to annul the automatic stay at the time it was made, but instead became aware of it when it was noted in SFR's Opposition to U.S. Bank's Renewed Motion for Summary Judgment.

29. In its Motion for Summary Judgment, U.S. Bank argued that the HOA foreclosure sale was void *ab initio* because it was conducted in violation of the automatic stay and neither Copper Ridge nor NAS obtained relief from the stay prior to foreclosing.

30. U.S. Bank also argued that the HOA foreclosure sale should be set aside as commercially unreasonable. It argued that SFR's \$14,000.00 purchase price was inadequate given the Property's fair market value of \$228,000.00 at the time of the sale. U.S. Bank also argued that the HOA foreclosure sale was marked by substantial unfairness. Specifically, U.S. Bank argued that it was unfair for Copper Ridge and NAS to proceed with the foreclosure sale in light of the automatic stay. It was also unfair to conduct the HOA foreclosure sale where U.S. Bank properly and timely sought relief from the automatic stay, but Copper Ridge, NAS or SFR did not do so.

31. U.S. Bank also argued that SFR was not a bona fide purchaser, and that even if it was, the balance of the equities favored U.S. Bank.

36. Copper Ridge and NAS joined in SFR's arguments, while NV West joined in the arguments made by U.S. Bank.

39. As of the date of the HOA foreclosure sale in 2013, the HOA sale was void as a violation of the bankruptcy court's automatic stay. See *LN Mgmt. LLC Ser. 5105 Portraits Place*, 399 P.3d at 360.

1           40.     While SFR received a *nunc pro tunc* order from the bankruptcy court on May 15,  
2 2017, granting it and Copper Ridge relief from the automatic stay such that the sale is now no  
3 longer considered void, this Court must still balance the equities under *Golden v. Tomiyasu*, 79  
4 Nev. 503, 514 (1963).

5           41.     A District court, sitting in equity, may set aside an otherwise valid foreclosure sale  
6 if (1) the sales price was inadequate; and (2) there is evidence of fraud, unfairness, or oppression  
7 related to the sale. *Golden v. Tomiyasu*, 79 Nev. 503, 514 (1963); *Long v. Towne*, 98 Nev. 11, 13  
8 (1982); *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1111  
9 (2016).

10          42.     Indeed, in order to do equity, the Court must look to what was reasonably  
11 foreseeable at the time of the HOA foreclosure sale as to the status of the Property. While SFR  
12 obtained *nunc pro tunc* relief from the bankruptcy stay on May 15, 2017, there is no evidence  
13 before the Court that US Bank or its predecessor had any knowledge at the time of the HOA  
14 foreclosure sale to SFR that years later SFR would seek and obtain a retroactive annulment of the  
15 automatic stay.

16          43.     Where sales price “inadequacy is palpable and great, very slight additional  
17 evidence of unfairness or irregularity is sufficient to authorize the granting of the relief sought.”  
18 *Golden*, 79 Nev. at 515, 387 P.2d at 995 (internal citation omitted).

19          44.     SFR’s purchase price of \$14,000.00 was inadequate in light of the Property’s fair  
20 market value at the time of the HOA foreclosure sale of \$228,000.00. The purchase price was  
21 also inadequate in light of the \$331,500.00 amount originally loaned to Parks to purchase the  
22 Property.

23          45.     As of March 1, 2013, the HOA sale was void because it was conducted in violation  
24 of the automatic stay. *LN Mgmt. LLC Ser. 5105 Portraits Place v. Green Tree Serv.*, 399 P.3d at  
25 360.

26          46.     Copper Ridge’s sale of the Property through NAS while the automatic stay was in  
27 place “was an act in violation of the automatic stay,” even if Copper Ridge, NAS and/or SFR  
28 were not aware of the bankruptcy. *LN Mgmt. v. Green Tree*, 399 P.3d at 360. The “automatic

1 stay is effective against the world, regardless of notice.” *Id.*, quoting 9B AM. JUR. 2D  
2 BANKRUPTCY § 1698 (2016).

3 47. The HOA foreclosure sale conducted in violation of the automatic stay constitutes  
4 evidence of fraud, unfairness, or oppression related to the sale. *Golden*, 79 Nev. at 514.

5 48. Thus, the inadequate sales price, coupled with Copper Ridge and NAS conducting  
6 the HOA foreclosure sale in violation of the automatic stay, establish that the sale was  
7 commercially unreasonable and should be set aside.

8 49. In order to do equity, the Court must consider what was reasonably foreseeable at  
9 the time of the foreclosure sale as to the status of the Property at that time.

10 50. At the time of the HOA foreclosure sale, it was reasonable for U.S. Bank to expect  
11 that any party seeking to foreclose on the Property would need to first seek relief from the  
12 automatic stay, as U.S. Bank had done.

13 51. Although SFR obtained a retroactive annulment of the automatic stay in 2017, at  
14 the time of the HOA foreclosure sale it was not reasonably foreseeable to U.S. Bank, or indeed  
15 any other creditor, that SFR would seek and obtain an annulment of the stay several years later.

16 52. Thus, in balancing the equities, consistent with applicable precedent and the  
17 undisputed facts, the Court finds that equity lies in favor of U.S. Bank.

18 Based upon the foregoing Findings of Fact and Conclusions of Law,

19 **IT IS ORDERED, ADJUDGED, AND DECREED** that Defendant U.S. Bank’s  
20 Renewed Motion for Summary Judgment, filed January 24, 2017, along with all Joinders thereto,  
21 is **GRANTED**.

22 **IT IS FURTHER ORDERED** that Plaintiff SFR’s Motion for Summary Judgment, filed  
23 January 24, 2017, along with all Joinders thereto, is hereby **DENIED**.

24 **IT IS FURTHER ORDERED** that Third-Party Defendant Copper Ridge’s Renewed  
25 Motion for Summary Judgment, filed January 24, 2017, along with all Joinders thereto, is hereby  
26 **DENIED**.

27 **IT IS FURTHER ORDERED** that the HOA foreclosure sale conducted by Copper Ridge  
28 and NAS on March 1, 2013 is voided and declared a nullity.

1 **IT IS FURTHER ORDERED** that U.S. Bank's Deed of Trust on the Property was not  
2 extinguished by the HOA foreclosure sale, and that U.S. Bank's foreclosure and sale of the  
3 Property on July 18, 2013, to NV West Servicing, LLC as Trustee for Nashville Trust #2270, was  
4 proper, valid, and enforceable.

5 **IT IS FURTHER ORDERED** that title to the property commonly known as 2270  
6 Nashville Avenue, Henderson, Nevada Property and legally described as:

7 Lot Five (5) in Block Five (5) of Final Map of Parcel 40, a common interest  
8 community, as shown by map thereof on file in Book 71 of Plats, Page 68, in the  
9 Office of the County Recorder of Clark County, Nevada and as amended by that  
10 certain Certificate of amendment recorded December 18, 1996 as Instrument/File  
11 No. 959 in Book 961218 and shown on the Amended Final Map of a portion of  
Green Valley Rancho Parcel 40, as shown by map thereof on file in Book 77 of  
Plats, page 57, in the Office of the County Recorder of Clark County, Nevada.

12 APN 178-19-712-012

13 is hereby quieted in the name of NV West, as Trustee for Nashville Trust # 2270.

14 **IT IS FURTHER ORDERED** Plaintiff SFR has no right, title or interest in the Property.

15 **IT IS FURTHER ORDERED** that this Order is entered as a final judgment pursuant to  
16 NRCP 54(b).

17 **IT IS SO ORDERED.**

18 DATED: ~~September~~ 16, 2017.  
October

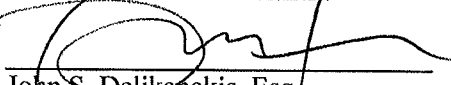
 JOANNA S. KISHNER  
DISTRICT COURT JUDGE

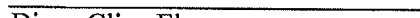
21 Respectfully submitted by:

Approved as to form and content:

22 SNELL & WILMER L.L.P.

KIM GILBERT EBRON

23   
24 John S. Delikanakis, Esq.  
Nevada Bar No. 5928  
25 Daniel S. Ivie, Esq.  
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26 3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, Nevada 89169  
27 Attorneys for Wells Fargo Bank, N.A.

  
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Attorneys for SFR Investments Pool 1, LLC

1 Approved as to form and content:  
2 THE LAW OFFICES OF MICHAEL F.  
3 BOHN, ESQ. LTD.

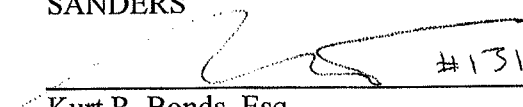
4 \_\_\_\_\_  
5 Michael F. Bohn, Esq.  
6 Nevada Bar No. 1641  
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8 Suite 140  
9 Las Vegas, NV 89119  
10 *Attorneys for NV West Servicing, LLC*

12 Approved as to form and content:  
13 NEVADA ASSOCIATION SERVICES, INC.

14 \_\_\_\_\_  
15 Christopher V. Yergensen, Esq.  
16 Nevada Bar No. 6183  
17 6224 W. Desert Inn Road  
18 Las Vegas, NV 89146  
19 *Attorneys for Nevada Association Services,*  
20 *Inc.*

Approved as to form and content:

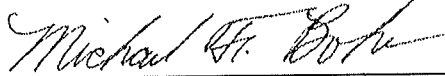
ALVERSON TAYLOR MORTENSEN &  
SANDERS

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Kurt R. Bonds, Esq.  
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*Attorneys for Copper Ridge Community*  
*Association*



1 Approved as to form and content:

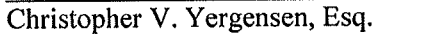
2 THE LAW OFFICES OF  
3 MICHAEL F. BOHN, ESQ. LTD.

4 

5 Michael F. Bohn, Esq.  
6 Nevada Bar No. 1641  
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10 *Attorneys for NV West Servicing, LLC*

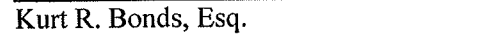
12 Approved as to form and content:

13 NEVADA ASSOCIATION SERVICES, INC.

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16 Christopher V. Yergensen, Esq.  
17 Nevada Bar No. 6183  
18 6224 W. Desert Inn Road  
19 Las Vegas, NV 89146  
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21 *Inc.*

Approved as to form and content:

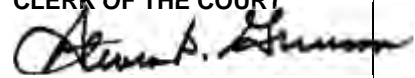
ALVERSON TAYLOR MORTENSEN &  
SANDERS

  
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# **TAB 38**

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Electronically Filed  
11/17/2017 7:40 PM  
Steven D. Grierson  
CLERK OF THE COURT



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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

SFR INVESTMENTS POOL1, LLC a Nevada  
limited liability company,

Plaintiff,

vs.

US BANK, N.A., a national banking  
association as Trustee for the Certificate  
Holders of Wells Fargo Asset Securities  
Corporation, Mortgage Pass-Through  
Certificates, Series 2006-AR4 and LUCIA  
PARKS, an individual, DOES I through X;  
and ROE CORPORATIONS I through X,  
inclusive,

Defendants.

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

Plaintiff,

vs.

U.S. BANK, N.A., a national banking  
association, as Trustee for the Certificate  
Holders of Wells Fargo Asset Securities  
Corporation, Mortgage Pass-Through  
Certificates, Series 2006-AR4; NV WEST  
SERVICING, LLC, a Nevada limited liability  
company, as Trustee for NASHVILLE TRUST  
2270; DOES I-X; and ROES 1-10, inclusive,

Defendants.

NV WEST SERVICING, LLC, a Nevada  
limited liability company, as Trustee for  
NASHVILLE TUST 2270,

Cross-Claimant,

vs.

Case No. A-13-678814-C  
Consolidated with  
Case No. A-13-688734-C

Dept. No. XXXI

**SFR INVESTMENTS POOL 1, LLC'S  
NOTICE OF APPEAL**

NATIONAL DEFAULT SERVICING  
CORPORATION, an Arizona Corporation;  
DOES XI through XX,  
Third Party Defendant.

PLEASE TAKE NOTICE that SFR Investments Pool 1, LLC hereby appeals from the following orders and/or judgments:

1. Findings of Fact, Conclusions of Law and Order (1) Granting U.S. Bank's Renewed Motion for Summary Judgment (2) Denying SFR's Motion for Summary Judgment and (3) Denying Copper Ridge's Renewed Motion for Summary Judgment; and
2. Any and all orders made appealable thereby.

DATED this 17th day of November, 2017.

**KIM GILBERT EBRON**

/s/ Jaqueline A. Gilbert, Esq.  
JACQUELINE A. GILBERT, ESQ.  
Nevada Bar No. 10593  
DIANA S. EBRON, ESQ.  
Nevada Bar No. 10580  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 17th day of November 2017, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system the foregoing **SFR INVESTMENTS POOL 1, LLC'S NOTICE OF APPEAL**, to the following parties.

Adam Knecht . aknecht@alversontaylor.com

Brandon E. Wood . brandon@nas-inc.com

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1       Tomas Valerio .

staff@kgelegal.com

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twaite@alversontaylor.com

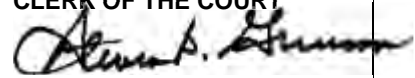
3       Tonya C. Stephenson

tstephenson@swlaw.com

6  
7       DATED this 17th Day of November, 2017

8                               */s/ Jacqueline A. Gilbert*  
9                               \_\_\_\_\_  
10                              An employee of Kim Gilbert Ebron

# **TAB 39**



**ASTA**  
DIANA S. EBRON, ESQ.  
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Facsimile: (702) 485-3301  
*Attorneys for SFR Investments Pool 1, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

SFR INVESTMENTS POOL1, LLC a Nevada  
limited liability company,

Plaintiff,

vs.

US BANK, N.A., a national banking  
association as Trustee for the Certificate  
Holders of Wells Fargo Asset Securities  
Corporation, Mortgage Pass-Through  
Certificates, Series 2006-AR4 and LUCIA  
PARKS, an individual, DOES I through X;  
and ROE CORPORATIONS I through X,  
inclusive,

Defendants.

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

Plaintiff,

vs.

U.S. BANK, N.A., a national banking  
association, as Trustee for the Certificate  
Holders of Wells Fargo Asset Securities  
Corporation, Mortgage Pass-Through  
Certificates, Series 2006-AR4; NV WEST  
SERVICING, LLC, a Nevada limited liability  
company, as Trustee for NASHVILLE TRUST  
2270; DOES I-X; and ROES 1-10, inclusive,

Defendants.

NV WEST SERVICING, LLC, a Nevada  
limited liability company, as Trustee for  
NASHVILLE TUST 2270,

Cross-Claimant,

vs.

Case No. A-13-678814-C  
Consolidated with  
Case No. A-13-688734-C

Dept. No. XXXI

**SFR INVESTMENTS POOL 1, LLC'S  
CASE APPEAL STATEMENT**



NATIONAL DEFAULT SERVICING  
CORPORATION, an Arizona Corporation;  
DOES XI through XX,  
Third Party Defendant.

**CASE APPEAL STATEMENT**

**1. Name of appellant filing this case appeal statement:**

SFR Investments Pool 1, LLC.

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

The Honorable Mark R. Denton

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

Appellant: SFR Investments Pool 1, LLC

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

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

Respondent: U.S. Bank, N.A., a national banking association as Trustee for the certificate Holders of Wells Fargo Asset securities Corporation, Mortgage Pass-Through Certificates, series 2006-AR4

Trial Counsel: John Delikanakis, Esq.  
Daniel S. Ivie, Esq.  
Snell & Wilmer LLP  
3883 Howard Hughes Parkway, Suite 110  
Las Vegas, Nevada 89169

Respondent: NV West, Servicing LLC, as Trustee for Nashville Trust 2270

Trial Counsel: Michael F. Bohn, Esq.  
Adam R. Tippiadi, Esq.  
Law Offices of Michael F. Bohn, Esq., Ltd.

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

N/A

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

3               Retained

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

6               Retained

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

9               N/A

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

12               March 22, 2013

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

16               This case began as a quiet title following a homeowners association foreclosure. When the  
17       Bank sought to foreclose after SFR obtained title to the Property, SFR filed a complaint for quiet  
18       title, seeking injunctive relief to stop the Bank's sale. The district court entered an order denying  
19       the PI, dismissing SFR's complaint, and expunging the lis pendens on June 10-11, 2013. The Bank  
20       had orally postponed its sale and before SFR appealed, the Bank foreclosed. The Nevada Supreme  
21       Court reversed the district court's dismissal. SFR brought a new action for quiet title and the two  
22       cases were consolidated.

23               The prior unit owner had filed bankruptcy. The association sale took place while the  
24       automatic stay was in place. However, US Bank, who knew about the foreclosure, did not object  
25       to the "violation" at the time or any time thereafter, until SFR sought retroactive annulment of the  
26       stay. The Bankruptcy Court granted the retroactive annulment, finding that equity law with SFR  
27       and not the Bank who failed to raise the violation during the bankruptcy case. The district court,  
28       despite the Order Granting Retroactive Annulment, ignored the effect of that order, and used the  
      stay violation in balancing equities. Based on the price paid at auction, which was not influenced

1 by the bankruptcy, and the stay violation, the court vacated the association sale and concluded the  
2 Bank's foreclosure sale was valid.

3  
4 **11. Indicate whether the case has previously been the subject of an appeal to or original**  
5 **writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket**  
6 **number of the prior proceeding:**

7 SFR Investments Pool 1, LLC v. U.S. Bank, N.A., as Trustee, Case No. 63614

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

9 N/A.

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

12 SFR is willing to address settlement but believes that US Bank would be unwilling. SFR  
13 is unsure of NV West Servicing's position.

14 DATED this 17th day of November, 2017.

15 **KIM GILBERT EBRON**

16 /s/ Jacqueline A. Gilbert

17 JACQUELINE A. GILBERT, ESQ.

18 Nevada Bar No. 10593

19 DIANA S. EBRON, ESQ.

20 Nevada Bar No. 10580

21 7625 Dean Martin Drive, Suite 110

22 Las Vegas, Nevada 89139

23 *Attorneys for SFR Investments Pool 1, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 17th day of November 2017, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system the foregoing **SFR INVESTMENTS POOL 1, LLC'S CASE APPEAL STATEMENT**, to the following parties.

Adam Knecht . aknecht@alversontaylor.com

Brandon E. Wood . brandon@nas-inc.com

Daniel Ivie . divie@swlaw.com

Docket . Docket\_LAS@swlaw.com

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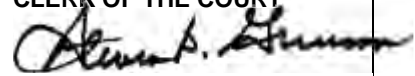
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DATED this 17th Day of November, 2017

*/s/ Jacqueline A. Gilbert*

An employee of Kim Gilbert Ebron

# **TAB 40**

**ERR**

DIANA S. EBRON, ESQ.  
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*Attorneys for SFR Investments Pool 1, LLC*

**DISTRICT COURT****CLARK COUNTY, NEVADA**

SFR INVESTMENTS POOL1, LLC a Nevada  
limited liability company,

Plaintiff,

vs.

US BANK, N.A., a national banking  
association as Trustee for the Certificate  
Holders of Wells Fargo Asset Securities  
Corporation, Mortgage Pass-Through  
Certificates, Series 2006-AR4 and LUCIA  
PARKS, an individual, DOES I through X;  
and ROE CORPORATIONS I through X,  
inclusive,

Defendants.

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

Plaintiff,

vs.

U.S. BANK, N.A., a national banking  
association, as Trustee for the Certificate  
Holders of Wells Fargo Asset Securities  
Corporation, Mortgage Pass-Through  
Certificates, Series 2006-AR4; NV WEST  
SERVICING, LLC, a Nevada limited liability  
company, as Trustee for NASHVILLE TRUST  
2270; DOES I-X; and ROES 1-10, inclusive,

Defendants.

NV WEST SERVICING, LLC, a Nevada  
limited liability company, as Trustee for  
NASHVILLE TUST 2270,

Cross-Claimant,

vs.

Case No. A-13-678814-C

Consolidated with

Case No. A-13-688734-C

Dept. No. XXXI

**ERRATA TO****SFR INVESTMENTS POOL 1, LLC'S  
CASE APPEAL STATEMENT**

NATIONAL DEFAULT SERVICING  
CORPORATION, an Arizona Corporation;  
DOES XI through XX,  
Third Party Defendant.

**ERRATA TO CASE APPEAL STATEMENT**

SFR Investments Pool 1, LLC hereby submits this errata to correct a scrivener's error on the Case Appeal Statement filed on November 17, 2017 in the above-captioned case. SFR inadvertently identified the wrong District Court Judge in #2 of the Case Appeal Statement. SFR's original statement included the following:

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

The Honorable Mark R. Denton

The corrected identification should read as set forth in bold below:

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

**The Honorable Joanna S. Kishner**

DATED this 20th day of November, 2017.

**KIM GILBERT EBRON**

/s/ Jacqueline A. Gilbert  
JACQUELINE A. GILBERT, ESQ.  
Nevada Bar No. 10593  
DIANA S. EBRON, ESQ.  
Nevada Bar No. 10580  
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 17th day of November 2017, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system the foregoing **ERRATA TO SFR INVESTMENTS POOL 1, LLC'S CASE APPEAL STATEMENT**, to the following parties.

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Gaylene Kim . gkim@swlaw.com

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Kurt R. Bonds . efile@alversontaylor.com

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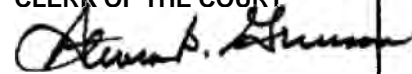
Tonya C. Stephenson

tstephenson@swlaw.com

DATED this 20th Day of November, 2017

/s/ Jacqueline A. Gilbert  
An employee of Kim Gilbert Ebron

# **TAB 41**



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2 MORTENSEN & SANDERS  
3 KURT R. BONDS, ESQ.  
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8 (702) 384-7000  
9 [efile@alversontaylor.com](mailto:efile@alversontaylor.com)  
10 *Attorneys for Third-Party Defendant*  
11 *Copper Ridge Community Association*

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10  
11 SFR INVESTMENTS POOL 1, LLC, a Nevada  
12 limited liability company,

13 Plaintiffs,

14 vs.

15 U.S. BANK, N.A., a national banking  
16 association as Trustee for the Certificate Holders  
17 of U.S. Bank Asset Securities Corporation,  
18 Mortgage Pass-Through Certificates, Series  
19 2006-AR4, a Nevada non-profit corporation and  
20 LUCIA PARKS, an individual; DOES I through  
21 X; and ROE CORPORATIONS I through X,  
22 inclusive,

23 Defendants.

24  
25 SFR INVESTMENTS POOL 1, LLC, a Nevada  
26 limited liability company,

27 Plaintiff,

28 U.S. BANK, N.A., a national banking  
association as Trustee for the Certificate Holders  
of U.S. Bank Asset Securities Corporation,  
Mortgage Pass-Through Certificates, Series  
2006-AR4; NV West Servicing, LLC, a Nevada  
limited liability company, as Trustee for  
NASHVILLE TRUST 2270; DOES I-X; and

Consolidated Case Nos.  
A-13-678814-C  
A-13-688734-C

Dept No.: XXXI

NOTICE OF APPEAL

1 ROE CORPORATIONS I-X, inclusive,  
2 Defendants.

3  
4 U.S. BANK, N.A., a national association, as  
5 Trustee for the Certificate Holders of U.S. Bank  
6 Asset Securities Corporation, Mortgage Pass-  
Through Certificates, Series 2006-AR4,

7 Counterclaimant,

8 vs.

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

11 Counter Defendant.

12  
13 U.S. BANK, N.A., a national association, as  
14 Trustee for the Certificate Holders of U.S. Bank  
15 Asset Securities Corporation, Mortgage Pass-  
Through Certificates, Series 2006-AR4,

16 Third-Party Plaintiff,

17 vs.

18 NEVADA ASSOCIATION SERVICES, INC., a  
19 Nevada corporation; COPPER RIDGE  
20 COMMUNITY ASSOCIATION, a Nevada non-  
profit corporation;

21 Third-Party Defendants.  
22

23 **NOTICE OF APPEAL**

24 **PLEASE TAKE NOTICE** that Third-Party Defendant Copper Ridge Community  
25 Association hereby appeals from the following order and/or judgments:

- 26  
27 1. Findings of Fact, Conclusions of Law and Order (1) Granting U.S. Bank's Renewed  
28 Motion for Summary Judgment (2) Denying SFR's Motion for Summary Judgment

1  
2  
3  
4  
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and (3) Denying Copper Ridge's Renewed Motion for Summary Judgment; and

2. Any and all orders made appealable thereby.

DATED this 22 day of November, 2017.

ALVERSON, TAYLOR,  
MORTENSEN & SANDERS

  
KURT R. BONDS, ESQ.

Nevada Bar #6228

6605 Grand Montecito Parkway  
Suite 200

Las Vegas, Nevada 89149

(702) 384-7000

*Attorneys for Third-Party Defendant  
Copper Ridge Community Association*

**CERTIFICATE OF SERVICE VIA CM/ECF**

I hereby certify that on this 22 day of November, 2017, I did serve, via Case Management/Electronic Case Filing, a copy of the above **NOTICE OF APPEAL** and foregoing addressed to:

Richard C. Gordon, Esq.  
Robin E. Perkins, Esq.  
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Certificate Holders of U.S. Bank Asset Securities  
Corporation, Mortgage Pass-Through Certificates,  
Series 2006-AR4

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NV West Servicing LLC

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Attorneys for Third-Party  
Defendant National Default  
Servicing Corp.

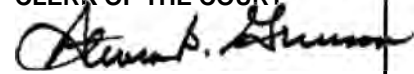


An Employee of ALVERSON, TAYLOR,  
MORTENSEN & SANDERS

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# **TAB 42**





ALVERSON, TAYLOR,  
MORTENSEN & SANDERS  
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*Attorneys for Third-Party Defendant*  
*Copper Ridge Community Association*

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

U.S. BANK, N.A., a national banking  
association as Trustee for the Certificate Holders  
of U.S. Bank Asset Securities Corporation,  
Mortgage Pass-Through Certificates, Series  
2006-AR4, a Nevada non-profit corporation and  
LUCIA PARKS, an individual; DOES I through  
X; and ROE CORPORATIONS I through X,  
inclusive,

Defendants.

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

Plaintiff,

vs.

U.S. BANK, N.A., a national banking  
association as Trustee for the Certificate Holders  
of U.S. Bank Asset Securities Corporation,  
Mortgage Pass-Through Certificates, Series  
2006-AR4; NV West Servicing, LLC, a Nevada  
limited liability company, as Trustee for  
NASHVILLE TRUST 2270; DOES I-X; and  
ROE CORPORATIONS I-X, inclusive,

Defendants.

Consolidated Case Nos.

A-13-678814-C

A-13-688734-C

Dept No.: XXXI

CASE APPEAL STATEMENT

U.S. BANK, N.A., a national association, as  
Trustee for the Certificate Holders of U.S. Bank  
Asset Securities Corporation, Mortgage Pass-  
Through Certificates, Series 2006-AR4,

Counterclaimant,  
vs.

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

Counter Defendant.

U.S. BANK, N.A., a national association, as  
Trustee for the Certificate Holders of U.S. Bank  
Asset Securities Corporation, Mortgage Pass-  
Through Certificates, Series 2006-AR4,

Third-Party Plaintiff,  
vs.

NEVADA ASSOCIATION SERVICES, INC., a  
Nevada corporation; COPPER RIDGE  
COMMUNITY ASSOCIATION, a Nevada non-  
profit corporation;

Third-Party Defendants.

### CASE APPEAL STATEMENT

**1. Name of appellant filing this case appeal statement:**

Copper Ridge Community Association

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

The Honorable Joanna S. Kishner

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

Appellant: Copper Ridge Community Association

Counsel: Kurt Bonds, Esq.,  
Alverson Taylor Mortensen & Sanders  
6605 Grand Montecito Parkway, Suite 200  
Las Vegas, NV 89149

///

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent:

Respondent: U.S. Bank, N.A., a national banking association as Trustee for the certificate Holders of Wells Fargo Asset securities Corporation, Mortgage Pass-Through Certificates, series 2006-AR4

Trial Counsel: John Delikanakis, Esq.  
Daniel S. Ivie, Esq.  
Snell & Wilmer LLP  
3883 Howard Hughes Parkway, Suite 110  
Las Vegas, NV 89169

Respondent: NV West, Servicing LLC, as Trustee for Nashville Trust 2270

Trial Counsel: Michael F. Bohn, Esq.  
Adam R. Tippiadi, Esq.  
Law Offices of Michael F. Bohn, Esq. Ltd.  
376 E Warm Springs Rd # 140  
Las Vegas, NV 89119

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

N/A; All attorneys are licensed in the State of Nevada.

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

Appellant was represented by retained counsel in the District Court.

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

Appellant is represented by retained counsel on appeal.

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

Appellant is not proceeding in forma pauperis.

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

The original complaint was filed on March 22, 2013.

///

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

This case began as a quiet title following Plaintiff SFR Investments Pool 1, LLC's purchase of the subject property at a homeowner's association foreclosure conducted pursuant to NRS 116 et. seq. The Property in question is located within the Copper Ridge Community Association. Shortly after SFR obtained title to the Property the Bank sought to foreclose on its first deed of trust and SFR filed a complaint for quiet title, seeking injunctive relief to stop the Bank's sale. The district court entered an order denying the injunction, dismissing SFR's complaint, and expunging the lis pendens on the Property on June 10-11, 2013. The Bank had orally postponed its sale and before SFR appealed, the Bank foreclosed. The Nevada Supreme Court reversed the district court's dismissal. SFR brought a new action for quiet title and the two cases were consolidated.

The prior unit owner had filed bankruptcy. The association sale took place while the automatic stay was in place. However, US Bank, who knew about the foreclosure, did not object to the "violation" at the time or any time thereafter, until SFR sought retroactive annulment of the stay. The Bankruptcy Court granted the retroactive annulment, finding that equity law with SFR and not the Bank who failed to raise the violation during the bankruptcy case. The district court, despite the Order Granting Retroactive Annulment, ignored the effect of that order, and used the stay violation in balancing equities. Based on the price paid at auction, which was not influenced by the bankruptcy, and the stay violation, the court vacated the association sale and concluded the Bank's foreclosure sale was valid.

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

SFR Investments Pool 1, LLC v. U.S. Bank, N.A., as Trustee, Case No. 63614

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

No.

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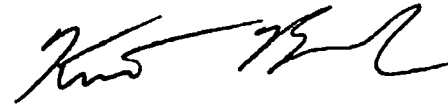
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13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

Unlikely. Copper Ridge is willing to address settlement but believes U.S. Bank would be unwilling. Copper Ridge is unsure of NV West Servicing's position.

DATED this 4<sup>th</sup> day of December, 2017.

ALVERSON, TAYLOR,  
MORTENSEN & SANDERS



KURT R. BONDS, ESQ.  
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6605 Grand Montecito Parkway, Suite 200  
Las Vegas, Nevada 89149  
*Attorneys for Third-Party Defendant  
Copper Ridge Community Association*

### CERTIFICATE OF SERVICE VIA CM/ECF

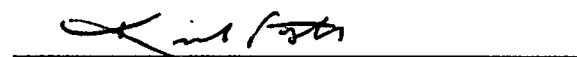
I hereby certify that on this 4<sup>th</sup> day of December, 2017, I did serve, via Case Management/Electronic Case Filing, a copy of the above **CASE APPEAL STATEMENT** and foregoing addressed to:

Richard C. Gordon, Esq.  
Robin E. Perkins, Esq.  
Daniel S. Ivie, Esq.  
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Attorneys for Third-Party  
Defendant National Default  
Servicing Corp.

  
An Employee of ALVERSON, TAYLOR,  
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