

IN THE SUPREME COURT OF THE STATE OF NEVADA

SFR INVESTMENTS POOL 1, LLC, A
NEVADA LIMITED LIABILITY
COMPANY; AND COPPER RIDGE
COMMUNITY ASSOCIATION,

Appellants,

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.

Supreme Court No.: 74532

Electronically Filed
May 29 2018 04:11 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

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

**APPELLANT COPPER RIDGE COMMUNITY ASSOCIATION'S
SUBSTANTIVE JOINDER TO APPELLANT SFR INVESTMENTS
POOL 1, LLC'S OPENING BRIEF**

Kurt R. Bonds, Esq.
Nevada Bar No. 6228
E-mail: Kbonds@alversontaylor.com

Trevor R. Waite, Esq.
Nevada Bar No. 13779
E-mail: twaite@alversontaylor.com

6605 Grand Montecito Pkwy, Suite 200
Las Vegas, NV 89149
Telephone: (702) 384-7000

Attorneys for Appellant Copper Ridge Community Association

APPELLANT COPPER RIDGE COMMUNITY ASSOCIATION'S
SUBSTANTIVE JOINDER TO APPELLANT SFR INVESTMENTS
POOL 1, LLC'S OPENING BRIEF

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

The Association adds that it is important to recognize that inasmuch as the Association's foreclosure sale took place in 2013, the version of NRS 116.3116 against which the Association's foreclosure actions must be analyzed is the version of NRS Chapter 116 in existence at that time. As this Court is well aware, during the 78th Legislative session in 2015, NRS Chapter 116 underwent specific changes regarding notice requirements applicable to common interest communities and non-judicial foreclosures ("S.B. 306"). Prior to the S.B. 306 additions, NRS § 116.31162 read in relevant part:

1. Except as otherwise provided in subsection 4,5, in a condominium, in a planned community, in a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, or in a cooperative where the owner's interest in a unit is personal property under NRS 116.1105 and the declaration provides that a lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive, the association may foreclose its lien by sale after all of the following occur:

(a) The association has mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest, at his or her address, if known, and at the address of the unit, a notice of delinquent assessment which states the amount of the assessments and other sums which are due in accordance with subsection 1 of NRS 116.3116, a description of the unit against which the lien is imposed and the name of the record owner of the unit.

(b) Not less than 30 days after mailing the notice of delinquent assessment pursuant to paragraph (a), the association or other person conducting the sale has executed and caused to be recorded, with the county recorder of the county in which the common-interest community or any part of it is situated, a notice of default and election to sell the unit to satisfy the lien which must contain the same information as the notice of delinquent assessment and which must also comply with the following:

(1) Describe the deficiency in payment.

(2) State the name and address of the person authorized by the association to enforce the lien by sale.

(3) Contain, in 14-point bold type, the following warning:

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!

Thus, pursuant to NRS 116.31162 as it stood at the time of the Association's

foreclosure sale, a homeowners' association was authorized to foreclose its assessment lien by non-judicial sale after the association had (1) sent a notice of delinquent assessment to the record owner of a unit or his/her successor in interest; and (2) recorded with the county recorder a notice of default and election to sell. Further, this Court has already found NRS 116 to be constitutional after both a facial and as applied analysis. *SFR Investments Pool I, LLC v. US. Bank, NA.*, 334 P.3d 417-22 (Nev. 2014). Both the majority and dissent in *SFR Investments* recognized that notice must be sent to all junior lienholders, noting the incorporation of NRS 107.090(3)(b), (4), which, in the case of a bank foreclosure sale, requires notice of sale to “[e]ach other person with an interest whose interest or claimed interest is subordinate to the deed of trust.” *Id.* at 411, 422. Further, the majority in *SFR Investments* noted that since Chapter 116 was adopted in 1991, the lender “was on notice that by operation of the statute, the [earlier recorded] CC&R’s might entitle the HOA to a super priority lien at some future date which would take priority over a [later recorded] first deed of trust.” *Id.* at 418 (quoting with approval 7912 *Limbwood Court Trust v. Wells Fargo Bank, N.A.*, 979 F.Supp.2d 1142, 1152 (D. Nev. 2013) (rejecting a due process challenge to a nonjudicial foreclosure of a superpriority lien).

Here, the Association complied with all applicable notice requirements under

NRS 116.3116 et. seq. and *SFR Investments*.¹ As a result

[T]he [Association's] foreclosure was properly noticed including the recording and mailing, and posting of all applicable notices. Additionally, the auction was publicly held, and SFR placed the winning bid at auction. ... The Association had to follow the elaborate statutory requirements to foreclosure. **It did.**^[2]

The Association did everything legally required of it to foreclose on its lien.

DATED this 29 day of May, 2018.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS

A large, stylized handwritten signature in black ink, appearing to read 'Kurt R. Bonds', is written over a horizontal line.

Kurt R. Bonds, Esq.

Nevada Bar No. 6228

Trevor R. Waite, Esq.

Nevada Bar No. 13779

6605 Grand Montecito Pkwy, Suite 200

Las Vegas, NV 89149

(702) 384-7000

*Attorneys for Appellant Copper Ridge
Community Association*

¹ 2AA_245-261; 2AA_303-313, 51:10-16; Id. at 28:19 – 29:15; 2AA_253-266; 2AA_307 at 32:10 – 33:7.

² Document 2018-19386 at p. 26. (Internal footnotes omitted and emphasis added).

VERIFIED CERTIFICATE OF COMPLIANCE

STATE OF NEVADA
COUNTY OF CLARK

I, Trevor R. Waite, being duly sworn, do hereby depose and say:

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

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

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

4. I further certify that Appellant Copper Ridge Community Association's Substantive Joinder to SFR Investment Pool 1, LLC's Opening Brief is not frivolous or interposed for any improper purpose and complies with the applicable Nevada

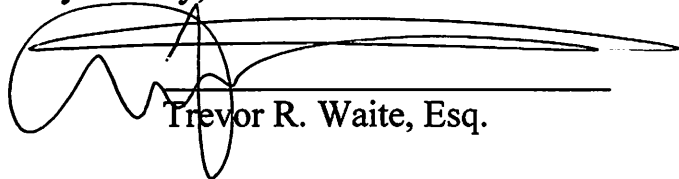
Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by reference to the page of the Appendix where the matter relied on is to be found.

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

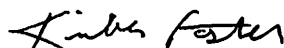
6. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

7. I make this verification on behalf of Appellant Copper Ridge Community Association.

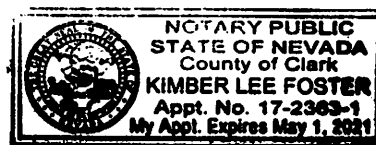
EXECUTED this 29th day of May, 2018.


Trevor R. Waite, Esq.

SUBSCRIBED AND SWORN to before
me this 29th day of May, 2018.



Notary Public



Appt. No. 17-2363-1 Exp. May 1, 2021

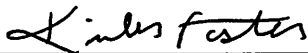
CERTIFICATE OF SERVICE VIA CM/ECF

I hereby certify that on this 29th day of May, 2018, I did serve, via Case Management/Electronic Case Filing, a copy of the above and foregoing Appellant Copper Ridge Community Association's Substantive Joinder to SFR Investment Pool 1, LLC's Opening Brief addressed to:

Richard C. Gordon, Esq.
Robin E. Perkins, Esq.
Daniel S. Ivie, Esq.
SNELL & WILMER L.L.P.
3883 Howard Hughes Pkwy., Suite 1100
Las Vegas, NV 89169
*Attorneys for U.S. Bank, N.A. as Trustee for the
Certificate Holders of U.S. Bank Asset Securities
Corporation, Mortgage Pass-Through Certificates,
Series 2006-AR4*

Michael F. Bohn, Esq.
Bohn Law Firm
376 E. Warm Springs Rd.
Suite 140
Las Vegas, NV 89119
Attorneys for Defendant
NV West Servicing LLC

Diane Cline Ebron, Esq.
Jacqueline A. Gilbert, Esq.
Karen L. Hanks, Esq.
KIM GILBERT EBRON
7625 Dean Martin Drive, Suite 110
Las Vegas, NV 89139
Attorneys for Plaintiff SFR Investments Pool 1, LLC



An Employee of ALVERSON, TAYLOR,
MORTENSEN & SANDERS