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8 SUPREME COURT

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10 STATE OF NEVADA

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

No. 74532

13 Appellant,

14 vs.

15
16 U.S. BANK, N.A, a National Banking
Association as Trustee for the
17 Certificate Holders of Wells Fargo
Asset Securities Corporation, Mortgage
18 Pass-Through Certificates, Series 2006-
AR4; and NV WEST SERVICING,
19 LLC, a Nevada Limited Liability
Company, as Trustee for Nashville
20 Trust 2270,

21 Respondents.

22
23 **RESPONDENT NV WEST SERVICING, LLC'S ANSWERING BRIEF**

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VI. ARGUMENT 11

 1. The HOA foreclosure sale held on March 1, 2013 was void and
 did not convey any interest in the Property to plaintiff 11

 2. Plaintiff did not properly obtain retroactive annulment of the
 automatic stay from the Bankruptcy Court 12

1 **Federal and other cases**

2 BFP v. Resolution Trust Corp., 511 U.S. 531 (1994) 16

3

4 Fjeldsted v. Lien (In re Fjeldsted), 293 B.R. 12 (B.A.P. 9th Cir. 2003) 13

5

6 Schwartz v. United States (In re Schwartz), 954 F.2d 569 (9th Cir. 1992) .. 12, 13

7

8 Smith v. United States, 373 F.2d 419 (4th Cir. 1966) 19

9 **STATUTES AND RULES:**

10 NRCP 62 20

11

12 NRS 30.010 1

13

14 NRS 107.090 17, 18

15

16 NRS 116.31168 17, 18

17

18 11 U.S.C. § 362 1, 4,10

19 **OTHER AUTHORITIES:**

20 1 Grant S. Nelson, Dale A. Whitman, Ann M. Burkhart & R. Wilson

21 Freyermuth, *Real Estate Finance Law* § 7:21 (6th ed. 2014) 15

22

23 **ROUTING STATEMENT**

24 This case is a quiet title action. Rule 17 does not list quiet title matters as one

25

26 of the cases retained by the Supreme Court. Counsel for defendant/respondent

27

28 therefore believes that this appeal should be assigned to the Court of Appeals.

1 determining that plaintiff owned the property located at 2270 Nashville Avenue,
2 Henderson, Nevada 89052 (hereinafter "Property") free of all liens and
3 encumbrances, including the deed of trust recorded on January 5, 2006 (Appellant's
4 Appendix (hereinafter "AA") Vol. 1 Part 2, pgs. 207-232) and assigned to U.S. Bank
5 by the corporation assignment of deed of trust recorded on July 12, 2010 (AA Vol.
6 1 Part 2, pg. 234); 2) entry of an injunction against U.S. Bank and the former owner;
7 and 3) unjust enrichment for funds and resources expended by plaintiff to acquire
8 and maintain the Property. (AA Vol. 1 Part 1, pgs. 2-12)
9
10
11
12

13 On March 22, 2013, plaintiff filed a notice of lis pendens. (Respondent's
14 Appendix (hereinafter "RA") Vol. I, pgs. 1-2)
15

16 On April 30, 2013, U.S. Bank filed a motion to dismiss with prejudice the
17 plaintiff's complaint. (RA Vol. I, pgs. 3-22)
18

19 On April 23, 2013, U.S. Bank filed a motion to expunge lis pendens. (RA
20 Vol. I, pgs. 23-29)
21

22 On May 15, 2013, plaintiff filed an opposition to motion to expunge lis
23 pendens. (RA Vol. I, pgs. 30-35)
24

25 On May 23, 2013, U.S. Bank filed a reply in support of its motion to expunge
26 lis pendens. (RA Vol. II, Part B, pgs. 186-189)
27

1 On May 24, 2013, plaintiff filed an opposition to U.S. Bank's motion to
2 dismiss. (RA Vol. II, Part A, pg. 36 to RA Vol. II, Part B, pg. 185)
3

4 On May 31, 2013, plaintiff filed a supplement to opposition to motion to
5 dismiss. (RA Vol. II, Part B, pgs. 190-220)
6

7 On June 11, 2013, the district court entered an order for dismissal and
8 cancellation of notice of pendency of action. (RA Vol. III, pgs. 221-223)
9

10 Notice of entry of this order was served and filed on June 12, 2013. (RA Vol.
11 III, pgs. 224-229)
12

13 Plaintiff filed a notice of appeal on July 12, 2013. (RA Vol. III, pgs. 230-231)

14 The Nevada Supreme Court Clerks Certificate/Judgment Remanded was filed
15 on December 10, 2014 with the order vacating, reversing, and remanding entered by
16 this Court in Case No. 63614 on November 3, 2014. (RA Vol. III, pgs. 232- 236)
17
18

19 On February 10, 2015, U.S. Bank filed an answer to the complaint. (AA Vol.
20 1 Part 1, pgs. 20-30)
21

22 On September 10, 2015, U.S. Bank filed an amended answer, counterclaim
23 and third party complaint in response to the complaint. (AA Vol. 1 Part 1, pgs. 32-
24 58)
25

26 On October 1, 2015, plaintiff filed an answer to counterclaim. (AA Vol. 1 Part
27

1, pgs. 66-76)

On October 9, 2015, Copper Ridge Community Association (hereinafter “HOA”) filed an answer to third-party complaint (AA Vol. 1 Part 1, pgs. 78-86)

On November 11, 2015, Nevada Association Services, Inc. (hereinafter “NAS”) filed an answer to the third-party complaint (AA Vol. 1 Part 1, pgs. 88-96)

On January 24, 2017, plaintiff filed a motion for summary judgment. (AA Vol. 1 Part 1, pg. 119 to AA Vol. 2 Part 1, pg. 318)

On January 24, 2017, the HOA filed a renewed motion for summary judgment. (AA Vol. 2 Part 1, pg. 320 to AA Vol. 3 Part 1, pg. 503)

On January 24, 2017, the HOA filed a joinder to plaintiff’s motion for summary judgment. (AA Vol. 3 Part 1, pgs. 505-508)

On January 24, 2017, U.S. Bank filed a renewed motion for summary judgment. (AA Vol. 3 Part 1, pg. 510 to AA Vol. 4, pg. 766)

On January 24, 2017, plaintiff also filed a motion for relief from automatic stay under 11 U.S.C. § 362 in the Chapter 11 bankruptcy case that had been filed by Richard Parks and Lucy Parks on August 23, 2010. (AA Vol. 4, pg. 915 to AA Vol. 5, pg. 983)

Although paragraph 12 at page 5 of the points and authorities filed in support

1 of its motion stated that U.S. Bank had foreclosed on the Property and a trustee's
2 deed upon sale had been recorded on July 31, 2013, plaintiff did not advise the
3 bankruptcy court that the Property had been sold to NV West Servicing, LLC, as
4 trustee for Nashville Trust 2270 (hereinafter "NV West") on July 18, 2013. (AA
5 Vol. 4, pg. 932, ¶12)
6

7
8 At page 9, lines 7-10, of the points and authorities (AA Vol. 4, pg. 936),
9 plaintiff represented to the Bankruptcy Court that:
10

11 To date, the Bank has done nothing to try to foreclose on the Property.
12 Thus, even if the Association had moved to lift stay, it still would have
13 beaten the Bank in conducting the foreclosure sale. Thus, any prejudice
14 to the Bank by granting retroactive relief would not be unjust.

15 The proof of service of document attached to the motion (AA Vol. 5, pgs. 977-
16 983) proves that no copy of the motion was mailed to NV West even though its
17 address in Laguna Beach, CA was publicly disclosed in the trustee's deed upon sale
18 recorded on July 31, 2013. (AA Vol. 2, Part 1, pgs. 272, 276)
19

20 On February 8, 2017, U.S. Bank filed an opposition to the HOA's renewed
21 motion for summary judgment. (AA Vol. 4, pgs. 768-817)
22

23 On February 10, 2017, the HOA filed an opposition to U.S. Bank's motion for
24 summary judgment. (AA Vol. 4, pgs. 826-834)
25

26 On February 13, 2017, plaintiff filed an opposition to U.S. Bank's motion for
27

1 summary judgment. (AA Vol. 4, pg. 836 to AA Vol. 5, pg. 992)

2
3 On February 14, 2017, NAS filed a joinder to the oppositions by SFR and the
4 HOA to U.S. Bank's motion for summary judgment. (AA Vol. 5, pgs. 994-998)

5
6 On February 17, 2017, plaintiff filed a reply in support of its motion for
7 summary judgment. (AA Vol. 5, pgs. 1000-1123)

8
9 On May 5, 2017, NV West filed a joinder to U.S. Bank's opposition to
10 plaintiff's motion for summary judgment (AA Vol. 5, pgs. 1125-1127), a joinder to
11 U.S. Bank's opposition to the HOA's motion for summary judgment (AA Vol. 5,
12 pgs. 1129 -1131 and a joinder to U.S. Bank's renewed motion for summary
13 judgment. (AA Vol. 5, pgs. 1133-1135)

14
15 On May 19, 2017, plaintiff filed a notice of bankruptcy order granting
16 retroactive annulment of the automatic stay. (AA Vol. 5, pgs. 1137-1143)

17
18 On May 19, 2017, plaintiff filed an opposition to NV West's joinder to U.S.
19 Bank's renewed motion for summary judgment. (AA Vol. 5, pgs. 1145-1148)

20
21 On June 2, 2017, U.S. Bank filed a reply in support of its renewed motion for
22 summary judgment. (AA Vol. 5, pgs. 1150-1157)

23
24 On July 31, 2017, U.S. Bank filed a supplemental brief re: unfairness of the
25 HOA foreclosure sale. (AA Vol. 5, pg. 1210 to AA Vol. 6, pg. 1247)

1 On July 31, 2017, plaintiff filed a supplement response in support of its
2 motion for summary judgment. (AA Vol. 6, pgs. 1249-1256)
3

4 On October 19, 2017, the court entered its findings of fact, conclusions of law
5 and order granting U.S. Bank's renewed motion for summary judgment and denying
6 the motions for summary judgment filed by plaintiff and the HOA. (AA Vol. 6, pgs.
7 1262-1272)
8
9

10 On October 20, 2017, U.S. Bank served and filed notice of entry of the
11 findings of fact, conclusions of law and order granting U.S. Bank's renewed motion
12 for summary judgment. (AA Vol. 6, pgs. 1274-1288)
13

14 Plaintiff filed its notice of appeal on November 17, 2017. (AA Vol. 6, pgs.
15 1290-1293)
16

17 HOA filed its notice of appeal on November 22, 2017. (AA Vol. 6, pgs. 1307-
18 1310)
19

20 STATEMENT OF FACTS

21 Lucia Parks acquired title to the Property on January 5, 2006. See copies of
22 grant, bargain, sale deeds at AA Vol. 1, Part 2, pgs. 200-205.
23

24 Wells Fargo Bank, N.A. (hereinafter "Wells Fargo") was named as the
25 Lender and beneficiary in a deed of trust recorded against the Property on January
26
27

1 5, 2006. See copy of deed of trust at AA Vol. 1, Part 2, pgs. 207-232.

2
3 Wells Fargo assigned the deed of trust to U.S. Bank by a corporation
4 assignment of deed of trust recorded on July 12, 2010. (AA Vol. 1, Part 2, pg. 234)
5
6 The only mailing address that appeared in the assignment was an address for
7 National Default Servicing Corporation (hereinafter "NDSC") in Phoenix, AZ that
8 appeared in the upper left hand corner of the assignment.
9

10 On May 24, 2012, NAS recorded a notice of delinquent assessment lien for
11 \$1,063.00 against the Property. (AA Vol. 1, Part 2, pg. 238)
12

13 On June 7, 2012, Wells Fargo recorded an assignment of mortgage assigning
14 the deed of trust to U.S. Bank. This assignment included a mailing address for U.S.
15 Bank at 60 Livingston Ave., St. Paul, MN 55107. (AA Vol. 1, Part 2, pg. 240)
16

17 On July 9, 2012, NAS recorded a notice of default and election to sell for
18 \$1,912.50 against the Property. (AA Vol. 1, Part 2, pgs. 242-243)
19

20 The record on appeal does not contain any evidence proving that NAS mailed
21 a copy of the notice of default to U.S. Bank at either the address for NDSC in
22 Phoenix, AZ or the address for U.S. Bank in St. Paul, MN. (AA Vol. 2, Part 1, pgs.
23 245-251)
24
25

26 On February 6, 2013, NAS mailed copies of a notice of foreclosure sale for
27

1 \$3,132.52 to interested parties. A copy of this notice was mailed to NDSC in
2 Phoenix, AZ, and to U.S. Bank in St. Paul, MN. (AA Vol. 2, Part 1, pg. 261)
3

4 Beginning on February 7, 2013, copies of the notice of foreclosure sale were
5 posted in three public places located in Clark County, Nevada and three public
6 places in Henderson, Nevada. (AA Vol. 2, Part 1, pgs. 263-264)
7

8 A copy of the notice of foreclosure sale was also served upon the former
9 owner posting a copy of the notice in a conspicuous place on the Property on
10 February 6, 2013. (AA Vol. 2, Part 1, pg. 265)
11

12 The notice of foreclosure sale was published in the Nevada Legal News on
13 February 8, 2013, February 15, 2013 and February 22, 2013. (AA Vol. 2, Part 1, pg.
14 266)
15

16 According to the foreclosure deed recorded on March 6, 2013, plaintiff
17 purchased the Property for \$14,000.00 at a public auction held on March 1, 2013.
18 (AA Vol. 2, Part 1, pgs. 295-297)
19

20 On July 18, 2013, NV West purchased the Property for \$170,000.01 at a
21 public auction conducted by NDSC pursuant to the first deed of trust recorded on
22 January 5, 2006. See copy of trustee's deed upon sale at AA Vol. 2, Part 1, pgs. 272-
23 276.
24
25
26
27

1 On January 24, 2017, plaintiff filed a motion for relief from automatic stay
2
3 under 11 U.S.C. § 362 in the Chapter 11 bankruptcy case that had been filed by
4 Richard Parks and Lucy Parks on August 23, 2010. (AA Vol. 4, pg. 915 to AA Vol.
5 5, pg. 983) Although paragraph 12 at page 5 of the points and authorities filed in
6 support of its motion stated that U.S. Bank had foreclosed on the Property and a
7 trustee's deed upon sale had been recorded on July 31, 2013, plaintiff did not advise
8 the bankruptcy court that the Property had been sold to NV West on July 18, 2013.
9
10 (AA Vol. 4, pg. 932, ¶12)
11

12
13 At page 9, lines 7-10, of the points and authorities (AA Vol. 4, pg. 936),
14 plaintiff represented to the Bankruptcy Court that:
15

16 To date, the Bank has done nothing to try to foreclose on the Property.
17 Thus, even if the Association had moved to lift stay, it still would have
18 beaten the Bank in conducting the foreclosure sale. Thus, any prejudice
19 to the Bank by granting retroactive relief would not be unjust.

20 The proof of service of document attached to the motion (AA Vol. 5, pgs. 977-
21 983) proves that no copy of the motion was mailed to NV West even though its
22 address in Laguna Beach, CA was publicly disclosed in the trustee's deed upon sale
23 recorded on July 31, 2013. (AA Vol. 2, Part 1, pgs. 272, 276)
24

25 ///

26 ///
27

1 Court expunged any such violation.”

2
3 On the other hand, plaintiff does not dispute that Richard Parks and Lucy
4 Parks filed a Chapter 11 bankruptcy petition on August 23, 2010 and that the HOA
5 did not obtain relief from the automatic stay prior to holding the HOA foreclosure
6 sale on March 1, 2013.

7
8 In Schwartz v. United States (In re Schwartz), 954 F.2d 569, 572 (9th Cir.
9 1992), the Ninth Circuit Court of Appeals adopted the position by the majority of
10 courts that “violations of the automatic state are void and of no effect.”
11

12
13 The Court of Appeals also stated:

14 Some courts have reasoned that the power to grant retroactive stay
15 relief means that actions which violate section 362(a) cannot be
16 absolutely void, for if they were, section 362(d) would be meaningless.
17 See, e.g., Sikes, 881 F.2d at 178-79; Oliver, 38 B.R. at 248.

18 However, section 362(d) is not inconsistent with the conclusion that
19 any action in violation of the automatic stay is void and of no effect.
20 Id. at 572-573.

21 Because the HOA foreclosure sale held on March 1, 2013 was “void,” plaintiff
22 did not obtain any interest in the Property by entering the high bid at the sale.

23
24 **2. Plaintiff did not properly obtain retroactive annulment of the
25 automatic stay from the Bankruptcy Court.**

26 At page 14 of Appellant’s Opening Brief, plaintiff quotes the statement in
27

1 Schwartz v. United States (In re Schwartz) that “section 362 gives the bankruptcy
2 court wide latitude in crafting relief from the automatic stay, including the power to
3 grant retroactive relief from the stay.” 954 F.2d at 572.
4

5 At page 15 of Appellant’s Opening Brief, plaintiff states that in granting
6 retroactive annulment of the automatic stay in the order entered on May 5, 2017
7 (JA5, pgs. 1141-1143), “the Bankruptcy Court necessarily considered the equities”
8 and “concluded that the equities weighed in favor of retroactive annulment.”
9

10 At page 7 of the points and authorities filed by plaintiff in support of its
11 motion for relief from automatic stay (AA Vol. 4, pg. 934), however, plaintiff cited
12 the 12 factor test adopted in Fjeldsted v. Lien (In re Fjeldsted), 293 B.R. 12, 25
13 (B.A.P. 9th Cir. 2003), and highlighted in bold the seventh factor stating: “The
14 relative ease of restoring parties to the *status quo ante*.”
15
16
17

18 In the present case, plaintiff did not reveal to the Bankruptcy Court that it
19 would be impossible to restore the parties to the *status quo ante* because the Property
20 had been sold to an innocent third party, NV West, at a time when the sale by which
21 plaintiff claimed to own the Property was void.
22

23 As noted above, U.S. Bank filed a supplemental brief re: unfairness of the
24 HOA foreclosure sale on July 31, 2017, which advised the district court that in
25
26
27

1 addition to violating the automatic stay, “SFR compounded that initial unfairness by
2 surreptitiously moving to reopen the bankruptcy and retroactively annul the stay,
3 changing the rules of the game to its own benefit and to the detriment of U.S. Bank.”
4 (AA Vol. 6, pg. 1221)
5

6
7 The proof of service for plaintiff’s bankruptcy motion (AA Vol. 5, pgs. 977-
8 983) proves that no copy of the motion was mailed to NV West even though its
9 address in Laguna Beach, CA was publicly disclosed in the trustee’s deed upon sale
10 recorded on July 31, 2013. (AA Vol. 2, Part 1, pgs. 272, 276)
11

12
13 At page 18 of Appellant’s Opening Brief, plaintiff cites footnote 3 in the
14 unpublished order in Bank of New York Mellon v. K&P Homes, LLC, 404 P.3d 403
15 (Table), 2017 WL 4790995 (Nev. Oct. 20, 2017)(unpublished disposition), to prove
16 that it made a difference to this Court that the bankruptcy court had granted the
17 “respondent’s request to retroactively annul the stay.” In that case, however, the
18 “only proffered evidence of unfairness was the fact that the 2008 Notice of Default
19 was recorded during the pendency of the former homeowners’ bankruptcy case.” Id.
20 at *1. In the present case, every notice recorded by the HOA’s foreclosure agent and
21 the HOA foreclosure sale itself violated the automatic stay, and the Property was
22 sold to an innocent third party before the purchaser at the void sale (i.e. plaintiff)
23
24
25
26
27

1 sought retroactive relief from the automatic stay.

2
3 At page 21 of Appellant’s Opening Brief, plaintiff states that “the record
4 demonstrates SFR is a BFP” and that paragraph 8 in the declaration of Christopher
5 J. Hardin (AA Vol. 4, pg. 938, ¶8) proves that “SFR had no knowledge of this
6 bankruptcy case.” On the other hand, plaintiff’s assistant manager, Pauline Kelso,
7 testified in her deposition that Mr. Hardin does not check to see if a unit owner has
8 filed bankruptcy. (AA Vol. 4, pg. 749, ll. 8-20 of transcript pg. 27)
9

10
11 Plaintiff’s status as a bona fide purchaser is also not relevant because where
12 a sale is void, “neither legal nor equitable title transfers to the sale purchaser or
13 subsequent grantees, except perhaps by adverse possession.” 1 Grant S. Nelson, Dale
14 A. Whitman, Ann M. Burkhart & R. Wilson Freyermuth, *Real Estate Finance Law*
15 § 7:21, pp. 953-954 (6th ed. 2014).
16

17
18
19 **3. U.S. Bank proved that the HOA foreclosure sale was not valid**
20 **based on the California rule.**

21 At page 22 of Appellant’s Opening Brief, plaintiff quotes the California rule
22 stated in Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227 Shadow
23 Canyon, 133 Nev., Adv. Op. 91, 405 P.3d 641(2017)(hereinafter “Shadow Canyon”),
24 and at page 23 of Appellant’s Opening Brief, plaintiff states that Golden v.
25 Tomiyasu, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963), set forth a “four-factor
26
27

1 approach.” At page 24 of Appellant’s Opening Brief, plaintiff states that because
2 U.S. Bank did not prove that the bankruptcy stay affected the sale price, it does not
3 matter that the HOA foreclosure sale was void.
4

5 On the other hand, the appraisal report prepared by R. Scott Dugan, SRA (AA
6 Vol. 3, part 1, pgs. 541-562), proved that the Property had a fair market value of
7 \$228,000 on March 1, 2013. Under the California rule, plaintiff’s high bid of
8 \$14,000 was grossly inadequate because it was approximately six percent of the
9 Property’s fair market value.
10
11

12 At the top of page 25 of Appellant’s Opening Brief, plaintiff cites BFP v.
13 Resolution Trust Corp., 511 U.S. 531 (1994), as authority that “fair market value has
14 no applicability to a forced sale situation,” but the California rule measures “gross
15 inadequacy” based on the fair market value of the Property. Plaintiff also cites three
16 federal court decisions that followed BFP v. Resolution Trust Corp. even though the
17 California rule is the rule adopted by this Court.
18
19
20

21 Plaintiff also states that “NRS 116 requires an NOD is mailed to all interested
22 parties and subordinate claim holders.” As noted at page 7 above, however, Exhibit
23 1-J to plaintiff’s motion for summary judgment (AA Vol. 2, Part 1, pgs. 245-251)
24 proved that NAS did not mail a copy of the notice of default to either the address for
25
26
27

1 NDSC in Phoenix, AZ stated in the corporation assignment of deed of trust recorded
2 on July 12, 2010 (AA Vol. 1, Part 2, pg. 234) or the address for U.S. Bank in St.
3 Paul, MN stated in the assignment of mortgage recorded on June 7, 2012(AA Vol.
4 1, Part 2, pg. 240). The proof of mailing also proves that both of the notices mailed
5 by NAS to Wells Fargo Bank, N.A. were returned to the sender marked as “unable
6 to forward.” (AA Vol. 2, Part 1, pgs. 249, 251)
7
8
9

10 In footnote 11 in Shadow Canyon, this Court stated in part:

11 While not an exhaustive list, irregularities that may rise to the level of
12 fraud, unfairness, or oppression include **an HOA's failure to mail a**
13 **deed of trust beneficiary the statutorily required notices**, see SFR
14 Invs. Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d
15 408, 418 (2014) (observing that NRS 116.31168 incorporates NRS
16 107.090, which requires that notices be sent to a deed of trust
17 beneficiary); *id.* at 422 (Gibbons, C.J., dissenting) (same) (emphasis
18 added)

19 405 P.3d at 649, n. 11.

20 At page 26 of Appellant’s Opening Brief, plaintiff states that “the Association
21 did everything required of it under the law to foreclose on its lien including meeting
22 all requirements of NRS 116.” The evidence in the record on appeal instead proves
23 that the foreclosure sale was conducted in violation of the automatic stay and without
24 complying with the mandatory requirements of NRS 107.090(3)(b), as incorporated
25 by NRS 116.31168(1).
26
27

1 Plaintiff also states that “[l]egally, it is as if NAS never was in violation of the
2 bankruptcy stay.” Plaintiff cites no authority for this statement. As discussed above,
3 retroactive annulment of the automatic stay would only be appropriate if plaintiff
4 fully complied with the notice requirements in the Bankruptcy Code and properly
5 represented the facts to the Bankruptcy Court, which plaintiff did not.
6

7
8 Plaintiff also states that “[t]he Association had to follow the elaborate
9 statutory requirements to foreclosure” and that “[i]t did.” The evidence in the record
10 on appeal instead proves that NAS failed to properly mail a copy of the notice of
11 default to U.S. Bank. Plaintiff also obtained retroactive relief from the automatic
12 stay without any notice to the record owner of the Property – NV West.
13

14
15 At the bottom of page 27 of Appellant’s Opening Brief, plaintiff again states
16 that “the Association foreclosure complied with all requirements of NRS 116” even
17 though the notice of default was not mailed to U.S. Bank as required by NRS
18 107.090(3)(b), as incorporated by NRS 116.31168(1).
19

20
21 **4. Plaintiff is not entitled to equitable relief against NV West**
22 **altering the legal effect of U.S. Bank’s foreclosure sale.**
23

24 At page 28 of Appellant’s Opening Brief, plaintiff states that “SFR was a BFP
25 when it purchased the Property,” but as stated at page 15 above, plaintiff’s status as
26 a bona fide purchaser is not relevant because the HOA foreclosure sale was void.
27

1 At page 29 of Appellant’s Opening Brief, plaintiff quotes from footnote 7 in
2 Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp,
3 Inc., 132 Nev. Adv. Op. 5, 366 P.3d 1105 (2016), where this Court stated that:

4
5 Consideration of harm to potentially innocent third parties is especially
6 pertinent here where NYCB did not use the legal remedies available to
7 it to prevent the property from being sold to a third party, such as by
8 seeking a temporary restraining order and preliminary injunction and
9 filing a lis pendens on the property. *See* NRS 14.010; NRS 40.060. *Cf.*
10 *Barkley’s Appeal. Bentley’s Estate*, 2 Monag. 274, 277 (Pa. 1888) (“In
11 the case before us, we can see no way of giving the petitioner the
12 equitable relief she asks without doing great injustice to other innocent
13 parties who would not have been in a position to be injured by such a
14 decree as she asks if she had applied for relief at an earlier day.”).

15 366 P.3d at 1115, n. 7.

16 In Shadow Wood, this Court also stated that Gogo Way’s “putative status as
17 a bona fide purchaser” had a bearing on the bank’s request for equitable relief and
18 that “[e]quitable relief will not be granted to the possible detriment of innocent third
19 parties.” 366 P.3d at 1115 (quoting Smith v. United States, 373 F.2d 419, 424 (4th
20 Cir. 1966)).

21
22 As noted at page 3 above, on June 11, 2013, the district court entered an order
23 for dismissal and cancellation of notice of pendency of action. (RA Vol. III, pgs.
24 221-223) Plaintiff filed a notice of appeal from the June 11 order on July 12, 2013.
25 (RA Vol. III, pgs. 230-231) Plaintiff, however, did not apply to the district court
26
27

1 pursuant to NRCP 62(d) or to this Court pursuant to NRCP 62(g) for a stay of the
2
3 June 11, 2013 order pending appeal.

4 Plaintiff also took no action to prevent the Property from being sold to NV
5
6 West for \$170,000.01 at the trustee's sale held on July 18, 2013.

7 Because defendant allowed the Property to be sold to an innocent purchaser
8
9 without objection, plaintiff cannot now obtain equitable relief against NV West
10
11 modifying the rights acquired by NV West on July 18, 2013.

12 At page 30 of Appellant's Opening Brief, plaintiff states that U.S. Bank waited
13
14 five years before raising any issue regarding the HOA's violation of the automatic
15
16 stay, but plaintiff does not cite any authority holding that this delay made the HOA
foreclosure sale any less void.

17 At page 30 of Appellant's Opening Brief, plaintiff cites Swartz v. Adams, 93
18
19 Nev. 240, 563 P.2d 74 (1977), as authority that "not even a due process violation is
20
21 sufficient to overcome an individual's status as a BFP." As a bona fide purchaser,
22
23 NV West is therefore protected from plaintiff's attempt to retroactively restore the
validity of the HOA foreclosure sale without notice to NV West.

24 At page 31 of Appellant's Opening Brief, plaintiff states that the only
25
26 appropriate remedy is money damages and "not equitable relief that harms SFR, the
27

1 innocent purchaser.” At page 33 of Appellant’s Opening Brief, plaintiff also states
2 that “[o]ne of the most fundamental principles of law, whether it be civil or criminal,
3 is that only the party that caused or contributed to the harm can be held responsible.”
4

5
6 In the present case, plaintiff acquired its rights in the Property by entering a
7 grossly inadequate bid at an improperly noticed HOA foreclosure sale held in
8 violation of the automatic stay. Then, after allowing the Property to be sold to an
9 innocent purchaser, plaintiff sought retroactive relief from the automatic stay
10 **without notice** to that purchaser.
11

12
13 On the other hand, plaintiff admits that U.S. Bank complied with the
14 Bankruptcy Code and obtained relief from the automatic stay on August 7, 2012
15 before U.S. Bank foreclosed its deed of trust on July 18, 2013 and sold the Property
16 to NV West. Because plaintiff purchased the Property at a void sale, plaintiff’s
17 remedy is to recover the amount of its high bid from the HOA and/or NAS.
18

19
20 The district court properly found that “U.S. Bank’s foreclosure and sale of the
21 Property on July 18, 2013, to NV West Servicing, LLC as Trustee for Nashville
22 Trust #2270, was proper, valid, and enforceable.” (AA, Vol. 6, pg. 270) The district
23 court also properly quieted title to the Property in the name of NV West. (AA, Vol.
24 6, pg. 270)
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CONCLUSION

By reason of the foregoing, NV West respectfully requests that this Court affirm the district court's order granting summary judgment in favor of U.S. Bank and NV West.

DATED this 26th day of June, 2018.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word Perfect X6 14 point Times New Roman.

2. I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7), it is proportionately spaced and has a typeface of 14 points and contains

1 5,179 words.

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3 3. I hereby certify that I have read this appellate brief, and to the best of my
4 knowledge, information, and belief, it is not frivolous or interposed for any improper
5 purpose. I further certify that this brief complies with all applicable Nevada Rules
6 of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion
7 in the brief regarding matters in the record to be supported by a reference to the page
8 of the transcript or appendix where the matter relied on is to be found.
9
10

11 DATED this 27th day of June, 2018.

12
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14
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