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.

Case No. 74532

District Court Case No. A-13-678234-C

APPEAL
From the Eighth Judicial District Court
The Honorable Joanna S. Kishner

RESPONDENT'S ANSWERING BRIEF

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NRAP 26.1 Disclosure Statement

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made so the Justices of this Court may evaluate possible disqualification or recusal.

The following have an interest in the outcome of this case or are related to entities interested in the case:

U.S. Bank National Association is a wholly owned subsidiary of U.S. Bancorp, Inc., which is a publicly traded corporation in which no publicly traded company owns over 10% of its stock.

There are no other known interested parties.

Snell & Wilmer L.L.P. has represented U.S. Bank in this litigation since March 2016. The law firm of Wright Finlay Zak represented U.S. Bank prior to that time.

Routing Statement

This appeal raises important and novel questions concerning the interpretation of NRS Chapter 116 that involve issues of statewide significance in need of resolution, and therefore should be resolved by this Court. *See* NRAP 17(a)(13) & (14).

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Introduction

It is beyond dispute that the HOA and its foreclosure agent violated the automatic stay in the Bankruptcy Code when they foreclosed on the Parks' home during the Parks' bankruptcy. In stark contrast, U.S. Bank – the holder of the first deed of trust – complied with the Bankruptcy Code, obtaining relief from the stay before proceeding with foreclosure efforts.

While SFR convinced a California bankruptcy court last year to retroactively annul the stay violation that occurred when the HOA sold the Property in violation of the automatic bankruptcy stay, that legal fiction neither erases nor mitigates the unfairness and inequity of the sale under Nevada law at the time it occurred. In other words, though the bankruptcy court's ruling after the fact undid legal responsibility for the stay violation, it did not change the fact that when SFR bought the property, it was only able to do so by virtue of a sale that then violated the automatic stay in the Bankruptcy Code. Moreover, the bankruptcy court's ruling only affects the parties' liability for a stay violation and the validity of the sale under bankruptcy law. It was not dispositive of the fairness of the sale under Nevada law – the relevant question here.

The district court below weighed the equities of the HOA foreclosure sale – which occurred in violation of the automatic bankruptcy stay and for approximately 6% of the subject property's fair market value – and concluded that the sale was commercially unreasonable. Analyzed under the standard of fairness this Court articulated by this Court, the district court properly invalidated the HOA sale because it was fundamentally unfair to U.S. Bank and commercially unreasonable.

This Court should affirm.

Statement of the Issues

1. Whether the district court properly considered the totality of the circumstances of the HOA foreclosure sale – including a bankruptcy stay violation undone long after the fact by a nunc pro tunc order requested by SFR – in determining that the sale was commercially unreasonable.

2. Whether the district court correctly declined to find that SFR was a bona fide purchaser, where it took title at an HOA sale that violated the automatic stay in the Bankruptcy Code as of the date it was conducted.

Statement of the Case

I. Nature of the Case.

This appeal arises from an action to quiet title by an investor following an HOA foreclosure sale.

II. Proceedings Below.

SFR filed a Complaint to Quiet Title and for Injunctive Relief on March 22, 2013, naming U.S. Bank and Parks (the "First Action").[1] 1 AA 1-12. SFR filed a Notice of Lis Pendens against the subject property (the "Property") that same day. 2 SA 248-251; 1 RA 1-2. On June 11, 2013, the district court granted U.S. Bank's motion to dismiss SFR's complaint and expunge SFR's Lis Pendens. 3 RA 221-229. SFR filed a notice of appeal challenging both the denial of the motion for preliminary injunction and the grant of the motion to dismiss on July 12, 2013. 3 RA 230-231. On November 3, 2014, this Court issued an order summarily vacating and reversing the previous dismissal, and

[1] On September 16, 2013, SFR filed a second lawsuit (the "Second Action"), 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. 1 SA 25-34. On January 6, 2015, following the Nevada Supreme Court's remand of the First Action, the parties stipulated to consolidate the First and Section Actions. 1 SA 37-41.

remanding the case for further proceedings in light of its then-recent decision in *SFR v. U.S. Bank*. 3 RA 232-236.

On January 24, 2017, SFR filed a Motion for Summary Judgment. 1 AA 97-318. On that same day, U.S. Bank filed its Renewed Motion for Summary Judgment. 3 AA 510-665. Copper Ridge Community Association (the "HOA") also filed a Renewed Motion for Summary Judgment Against U.S. Bank and a Substantive Joinder to SFR's Motion for Summary Judgment on January 24, 2017. 2 AA 320-488; 3 AA 489-508. On May 5, 2017, NV West Servicing, LLC ("NV West Servicing") filed its Joinder to U.S. Bank's Renewed Motion for Summary Judgment. 5 AA 1132-1135.

On June 6, 2017, the district court requested supplemental briefing on the issue of unfairness of the sale. 5 AA 1158-1208. Both U.S. Bank and SFR provided the requested supplemental briefing on July 31, 2017. 5 AA 1209-1248. On October 19, 2017, the district court granted U.S. Bank's Renewed Motion for Summary Judgment and denied the HOA and SFR's motions for summary judgment. 6 AA 1261-1272. The district court entered the order on October 20, 2017. 6 AA 1273-1288.

SFR appealed on November 17, 2017. 6 AA 1289-1293. The HOA appealed on November 22, 2017. 6 AA 1306-1310.

Factual Background

On December 30, 2005, Lucia Parks obtained from Wells Fargo Bank, N.A. a loan of $331,500.00 (the "Loan") for the purchase of the Property, at 2270 Nashville Avenue, Henderson, Nevada. 1 AA 207-232. The Loan was secured by a deed of trust, recorded on January 5, 2006 (the "Deed of Trust"). 1 AA 207-232.

Thereafter, Parks defaulted on the Loan and also apparently stopped paying her HOA assessments. 1 SA 42-154. On February 24, 2010, a Notice of Default and Election to Sell Under Deed of Trust was recorded against the Property in relation to the Deed of Trust ("DOT Notice of Default"). 1 SA 74-77. On July 1, 2010, Wells Fargo executed an Assignment of Mortgage, transferring the beneficial interest in the Deed of Trust to U.S. Bank ("Assignment"). 1 AA 234; 1 SA 78-79. On July 9, 2010, National Default Servicing Corp. ("NDSC"), then the trustee under the Deed of Trust, recorded a Notice of Trustee's Sale ("2010 DOT Notice of Sale"). 1 SA 80-84.

On August 23, 2010, Parks filed for Chapter 11 bankruptcy protection, bringing foreclosure proceedings under the Deed of Trust to a halt. 1 SA 85-104. On May 24, 2012, while Parks remained in bankruptcy, the HOA, through its agent, Nevada Association Services, Inc. ("NAS"), recorded a Notice of Delinquent Assessment Lien ("HOA Lien"). 1 AA 238.

On July 2, 2012, U.S. Bank filed a motion in Parks' bankruptcy case seeking relief from the automatic stay so it could resume proceedings to foreclose on the Property. 1 SA 155-236. The bankruptcy court granted that motion on August 7, 2012. 2 SA 237-243.

On July 16, 2012, NAS recorded a Notice of Default and Election to Sell Under HOA Lien ("HOA Notice of Default"). 1 AA 242-243; 1 SA 105-106. On February 5, 2013, NAS recorded a Notice of Foreclosure Sale ("HOA Sale Notice"). 1 SA 110-112. The HOA Sale Notice set the HOA's foreclosure sale of the Property for March 1, 2013. 1 SA 110-112.

On or about March 1, 2013, NAS, acting on behalf of the HOA and without first seeking leave of the bankruptcy court, held a foreclosure sale at which it purported to sell the Property to SFR Investments Pool

1, LLC ("SFR") for the total amount of $14,000.00 ("HOA Foreclosure Sale"). 2 AA 295-297; 1 SA 151-154. The HOA Foreclosure Sale is evidenced by a Foreclosure Deed recorded on March 6, 2013 ("HOA Foreclosure Deed"). 2 AA 295-297; 1 SA 151-154.

At the time of the HOA Foreclosure Sale, the Property had a fair market value of $228,000.00. 3 AA 541-562. The records of Wells Fargo, which serviced the loan on behalf of U.S. Bank, reflect that Wells Fargo did not receive notice of the HOA Foreclosure Sale until four days after the sale had taken place. AA 580, 599, 603.

On March 8, 2013, two days after the Foreclosure Deed was recorded, NDSC recorded a Notice of Trustee's Sale ("2013 DOT Notice of Sale"). 2 SA 244-247. The 2013 DOT Notice of Sale stated that the Property would be sold on April 1, 2013, under the Deed of Trust, of which U.S. Bank was and is the beneficiary of record (the "DOT Foreclosure Sale"). 2 SA 244-247.

While the First Action was on appeal, U.S. Bank foreclosed on the Property. On July 18, 2013, Nashville Trust #2270, through its trustee, NV West Servicing, purchased the Property at the DOT Foreclosure Sale for $170,000.00. 2 AA 272-276; 2 SA 252-257. Parks remained in

bankruptcy until September 17, 2014, more than 18 months after the HOA foreclosed on the Property without first seeking relief from the automatic stay. 1 SA 113-150.

Almost four years after the foreclosure sale, and almost four years after filing this suit – on January 24, 2017 – SFR finally moved the bankruptcy court to retroactively annul the bankruptcy stay. SFR thus waited until the very day SFR and U.S. Bank simultaneously filed motions for summary judgment to bring that motion. AA 914-83. SFR never notified U.S. Bank of its efforts to reopen the bankruptcy or to retroactively annul the automatic stay and never served copies of its moving papers on U.S. Bank's present counsel. Indeed, counsel for U.S. Bank did not learn of SFR's furtive actions in the bankruptcy court until SFR represented that it had moved to reopen the bankruptcy and moved to annul the stay in its Opposition to U.S. Bank's Renewed Motion for Summary Judgment ***on February 13, 2017*** – more than two months after SFR moved to reopen the bankruptcy ***and less than 24 hours before the scheduled hearing on SFR's motion to retroactively annul the automatic stay on February 14, 2017***.

At no time during the course of its efforts to annul the automatic

stay did counsel for SFR contact current counsel to ascertain whether they were aware of the proceedings in the California bankruptcy court or if U.S. Bank intended to appear, despite the fact that SFR knew that U.S. Bank had raised the bankruptcy issue in its Motion for Summary Judgment filed in August 2016.

U.S. Bank filed an opposition to SFR's motion on March 14, 2017, but the bankruptcy court granted the motion on March 28, 2017 by making selections on a form order. AA 1141-43. As such, the bankruptcy court's ruling did not exist at the time of the initial summary judgment briefing in this case, but was ultimately in place by the time the district court ordered supplemental briefing in June 2017.

Summary of the Argument

This Court should affirm the district court's determination that the HOA foreclosure sale was commercially unreasonable based on the combination of the inadequacy of price and the unfairness of sale's violation of the automatic bankruptcy stay while U.S. Bank complied.

SFR does not dispute the disparity in value, but rather argues in response that there is no such thing as an inadequate price in the context of a forced sale – only the price actually paid. SFR's position is

at odds with more than fifty years of this Court's jurisprudence analyzing adequacy of price in the context of forced sales. This Court has never held that no price can ever be inadequate because value and the actual price paid are necessarily the same thing. SFR's position is incorrect, untenable, and flatly inconsistent with Nevada law.

Regarding the stay violation, SFR's appeal depends on the false premise that the annulment of the bankruptcy stay trumps all other considerations of commercial reasonableness under Nevada law. However, the fact of the retroactive annulment does not control the district court's equitable analysis concerning the fairness of the sale. The bankruptcy court annulled the stay violation years after it happened, but that decision cannot displace the district court's ability to decide whether the otherwise-valid sale should be invalidated under Nevada law.

This Court has held on multiple occasions that where price "inadequacy is palpable and great, very slight additional evidence of unfairness or irregularity is sufficient to authorize the granting of the relief sought." *Golden v. Tomiyasu*, 79 Nev. 503, at 515, 387 P.2d 989, 995 (1963) (internal citation omitted, emphasis supplied); *see also*

Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon, 133 Nev. ---, 405 P.3d 641 (2017). The district court's conclusion that a sale for 6% of the fair market value, with the palpable unfairness of the stay violation in existence at the time of the sale – which remained a stay violation for years thereafter throughout this case – should not be disturbed.

Standard of Review

This Court reviews a grant of summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

Argument

I. The District Court Did Not Err by Invalidating the Sale on Equitable Grounds.

A district court, sitting in 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. 503, 514 (1963); *Long v. Towne*, 98 Nev. 11, 13 (1982); *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1111 (2016).

The Court's task in this matter is to assess whether the HOA sale, including the totality of the facts and circumstances *as they were known*

and considered at the time of the sale, was conducted in a fair and commercially reasonable manner. When analyzed under Nevada Supreme Court authority concerning fairness in this and related contexts, it is clear that the sale was fundamentally unfair and should be invalidated.

This Court has not fully articulated what constitutes "fairness" as it relates to HOA foreclosure sales. Nevada first adopted this rule in *Golden v. Tomiyasu*, where the Nevada Supreme Court held "that inadequacy of price, however gross, is not in itself a sufficient ground for setting aside a trustee's sale legally made; there must be in addition proof of some element of fraud, unfairness, or oppression as accounts for and brings about the inadequacy of price." *Id.* at 514. The *Golden* court went on to clarify that where the price "inadequacy is palpable and great, very slight additional evidence of unfairness or irregularity is sufficient to authorize the granting of the relief sought." *Id.*, at 515, 995 (internal citation omitted, emphasis supplied).

This Court recently reiterated this rule in *Shadow Wood HOA v. N.Y. Cmty. Bancorp*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1112 (2016). In that case, the court confirmed that Nevada law gives courts "the

power, in an appropriate case, to set aside a defective foreclosure sale on equitable grounds." *Id*. at 1111. The *Shadow Wood* court expressly affirmed that an HOA foreclosure sale can be properly set aside where an inadequate price is combined with "a showing of fraud, unfairness or oppression." *Id*. at 1112.

Here, the district court considered the inadequate purchase price, the then-violation of the bankruptcy stay, and, in contrast, U.S. Bank's compliance with the bankruptcy stay to conclude that the sale was unfair, and equity lies in favor of U.S. Bank. This Court should affirm.

A. The District Court Did Not Err in Holding That the Sales Price Was Inadequate.

The district court correctly held that the purchase price of $14,000 was inadequate as a matter of law in light of the Property's fair market value at the time of the HOA Foreclosure Sale – $228,000 as shown by an expert's appraisal – and also by virtue of the $331,500 amount originally loaned to Parks to purchase the Property. AA 1284.

SFR's purchase price of just $14,000 for the Property was a mere 6.1% of the Property's fair market value at the time of the HOA Foreclosure Sale. AA 151-54. Notably, SFR does not even dispute this vast disparity. Instead, it argues that there is no such thing as

inadequate price or fair market value in the context of a forced sale, only the actual foreclosure-sale price paid. Opening Br. at 27.

But SFR's position is at odds with every other decision acknowledging and evaluating adequacy of price in the context of a foreclosure sale. Its claim that there is no such thing as inadequacy of price cannot be squared with Nevada law examining adequacy of price and gross inadequacy of price in this context. *Golden v. Tomiyasu*, 79 Nev. 503, 514, 387 P.2d 989, 994 (1963) (allowing sale to be set aside when inadequacy of price is combined with some evidence of fraud, oppression, or unfairness). *Long v. Towne*, 98 Nev. 11, 13, 639 P.2d 528, 530 (1982) (same); *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1112 (2016) (same); *Nationstar Mortg., LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 405 P.3d 641, 648 (Nev. 2017), reh'g denied (Dec. 13, 2017) (holding that "price/fair-market-value disparity is a relevant consideration because a wide disparity may require less evidence of fraud, unfairness, or oppression to justify setting aside the sale," and that "where the inadequacy is palpable and great, very slight additional evidence of unfairness or irregularity is sufficient to authorize the granting of the relief sought").

These cases all acknowledge that a foreclosure sale price can be inadequate, and if so, that a sale may be invalidated upon a "slight" or modest showing of some evidence of fraud, oppression, or unfairness.

SFR's reliance on *BFP v. Resolution Tr. Corp.*, 511 U.S. 531 (1994) for the proposition that there is no meaningful value other than the price actually paid is misplaced. That decision narrowly analyzed the Bankruptcy Code's requirement that transfers of property by insolvent debtors within one year prior to the filing of a bankruptcy petition be in exchange for "a reasonably equivalent value." *Id.* at 533 (citing 11 U.S.C. § 548(a)(2)). *BFP* explicitly noted that this inquiry was entirely distinct from the question of fair market value.

SFR's position – that there is no such thing as inadequacy of price – is untenable and at odds with more than fifty years of Nevada jurisprudence addressing the validity of forced sales. As such, SFR has offered no sound basis to disturb the district court's ruling that the price SFR paid of 6.1% of the fair market value was inadequate as matter of law. This Court should affirm.

B. It Is Undisputed That the HOA Sale Violated the Bankruptcy Stay at the Time It Occurred.

The Parks, the Property's owners, filed their bankruptcy petition on August 23, 2010. 1 SA 85-104. That filing triggered the automatic stay under 11 U.S.C. § 362(a)(1). *Porter v. Nabors Drilling USA, L.P.*, 854 F.3d 1057, 1059 (9th Cir. 2017). While the Parks remained in bankruptcy, the HOA, through its agent, NAS, recorded the HOA lien, recorded the HOA Notice of Default, recorded the HOA Sale Notice, and in fact sold the Property. It is undisputed that, unlike U.S. Bank, neither the HOA nor NAS sought or obtained relief from the automatic stay. As such, and as the district court correctly held, at the time of the 2013 HOA Foreclosure Sale, it is beyond dispute that the Sale was void as a violation of the automatic stay. AA 1284-85 (citing *LN Mgmt. LLC Ser. 5105 Portraits Place v. Green Tree Serv.*, 133 Nev. Adv. Op. 55, 399 P.3d 359, 360 (2017)).

C. SFR's Lack of Actual Knowledge of the Bankruptcy Is Immaterial.

An "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 necessity of any formal service of process or notice to the creditors." *LN Mgmt. LLC*

Ser. 5105 Portraits Place v. Green Tree Serv., 133 Nev. Adv. Op. 55, 399 P.3d 359, 360 (August 3, 2017). An "automatic stay is effective against the world, regardless of notice." *Id.*

Further, SFR's claim that the district court erred by noting that the existence of the bankruptcy proceedings was "not unavailable" to SFR, the HOA, or NAS is baseless. SFR complains that "to obtain such knowledge, one would need a federal PACER (federal court system) account)." Opening Br. at 9. But a PACER account is "available to anyone who registers for an account." *See* PACER home page, available at https://www.pacer.gov (last visited July 22, 2018). Far from the exclusive membership SFR makes a PACER account out to be, PACER's home page represents "more than one million users," have PACER accounts including "attorneys, pro se filers, government agencies, trustees, data collectors, researchers, educational and financial institutions, commercial enterprises, the media, and the general public." *Id.*

As the sophisticated purchaser of literally hundreds of properties at HOA foreclosure sales, bankruptcy information was well within SFR's access such that its failure to engage in any due diligence is not

for lack of ability. Further, it is widely considered a best practice for any foreclosure or collections agent to check for bankruptcy filings before beginning foreclosure or collection *See, e.g.*, *In re McClure*, 430 B.R. 358, 365 (Bankr. N.D. Tex. 2010) (acknowledging "bankruptcy scrub" was part of prudent debt collection practice); *In re Waswick*, 212 B.R. 350, 353 (Bankr. D.N.D. 1997) ("Thorough and prudent collection practices include checking the bankruptcy court's records for those who have filed bankruptcy.")

While SFR did not conduct the sale, it certainly had the means to determine whether the Property was subject to a bankruptcy stay, and whether it should elect to purchase a Property in violation of the stay at the time. It did not do so, and this Court should disregard its current protestations of a lack of actual knowledge as irrelevant to the policy the automatic stay.

D. The Bankruptcy Court's Retroactive Annulment Order Is Neither Dispositive, Nor Evidence That the HOA Foreclosure Sale Was Conducted Fairly.

SFR's entire appeal hangs on the false premise that the annulment of the bankruptcy stay governs every aspect of the district court's analysis. This argument overstates the reach of the bankruptcy

court's ruling. The bankruptcy court's decision to retroactively annul the automatic stay does not remove the basis for U.S. Bank's position that the HOA sale was void, nor is it evidence that the HOA sale was conducted fairly.

1. The Bankruptcy Court's Annulment Order Is of Limited Scope and Effect.

Bankruptcy courts have authority to make exceptions to, or to annul an automatic stay under 11 U.S.C. § 362(d). *In re Fjeldsted*, 293 B.R. 12, 24–25 (9th Cir. B.A.P. 2003). Here, without timely notice to U.S. Bank's current counsel, the California bankruptcy court retroactively annulled the stay. AA 1142. That court ultimately held that "[a]s to Movant, its successors, transferees and assigns, the stay of 11 U.S.C. § 362(a) is: "[t]erminated as to the Debtor and the Debtor's bankruptcy estate" and "[a]nnulled retroactively to the bankruptcy petition date. Any post-petition acts taken by Movant to enforce its remedies regarding the Property do not constitute a violation of the stay." AA 1142. The bankruptcy court further held that those holdings applied not only to Movant (SFR), but to the HOA and NAS. AA 1143.

SFR's position – that the bankruptcy court's order is dispositive as to the legality of the sale under Nevada law – is incorrect and

overstates its effect. SFR first correctly claims that retroactive annulment means that it is not liable for any stay violation. However, SFR goes on to extrapolate that the situation "is the same as if the Association had obtained the Bankruptcy Court's permission to lift the stay and then proceeded with the its [sic] foreclosure. Put simply, no stay violation ever occurred." Opening Br. at 11. This is inaccurate. By virtue of the retroactive annulment, SFR is no longer subject to liability for a stay violation, and the sale is no longer void under bankruptcy law, but that ruling does not undo the past or determine the reasonability of the sale at the time it occurred under Nevada law. That is up to the Nevada state courts, not the federal bankruptcy courts. Nothing prevented the district court from considering the fairness of the sale under Nevada law – as it actually occurred.

2. Bankruptcy Court's Weighing of the Equities in the Stay Relief Does Not Displace the District Court's Analysis, and Is Not Binding on This Court.

Bankruptcy courts in the Ninth Circuit evaluate whether cause exists for annulment of the automatic stay by using a "balancing of equities" test. *Fjeldsted*, 293 B.R. at 24–25. The *Fjeldsted* court

articulated twelve factors that are to be used as a "framework and not a scorecard to be mechanistically applied." *Id*. at 25.

In this case, the bankruptcy court noted that several of the *Fjeldsted* factors simply did not apply to this case because the debtors (the Parks) were not involved in the reopened bankruptcy case. The bankruptcy court also noted that the ninth factor (how quickly SFR moved for annulment) weighed against SFR as it waited a considerable time to file its annulment motion after realizing that it had violated the automatic stay. AA 1231. However, the bankruptcy court noted that the seventh (ease of restoring parties to status quo ante), eighth (cost of annulment to debtors and creditors), and twelfth (judicial economy and other efficiencies) factors favored annulment because denying annulment would result in voiding the sale to SFR, which would then create a chain of events and complications to undo the sale. AA 1231. The bankruptcy court was apparently concerned that if the sale was deemed void, SFR might seek reimbursement from the debtor and/or U.S. Bank for the alleged funds it expended in rehabilitating the property.

The Bankruptcy Court concluded that it would be difficult to restore the status quo ante. That factor, coupled with the fact that the debtors themselves had no position on the outcome of the annulment motion, and that the bankruptcy estate, the debtor, and all other creditors were bystanders to the two party dispute between SFR and U.S. Bank, led the Court to grant annulment as it saw ***no bankruptcy purpose*** furthered by the denial of the annulment motion. Indeed, the bankruptcy court made clear that its decision on the stay relief was narrow, noting that the "pivotal issues" in the dispute between SFR and U.S. Bank "are not before this court, nor should they be." The bankruptcy court went on to comment that, "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."

These factors, however, are irrelevant here. The district court's inquiry is not whether a retroactive annulment of the stay serves bankruptcy objectives, but rather the very different inquiry of the commercial reasonableness of the sale under Nevada law, even if the

sale was otherwise made valid by annulment of the bankruptcy stay. The bankruptcy court applied a distinct and wholly irrelevant standard annulling the automatic stay, an analysis that does not bind this Court.

II. SFR Is Not a Bona Fide Purchaser.

The burden of proof is upon the party alleging that it was a bona fide purchaser for value. *See Berge v. Fredericks*, 95 Nev. 183, 186, 591 P.2d 246, 247 (1979) (holding that the "party claiming title to land by subsequent conveyance must show that purchase was made in good faith and for valuable consideration and that conveyance of legal title was received before notice of any equities of prior grantee"). A subsequent purchaser is bona fide under common-law principles if it takes the property "for valuable consideration and without notice of the prior equity, and without notice of facts which upon diligent inquiry would be indicated and from which notice would be imputed to him, if he failed to make such inquiry." *Shadow Wood*, 366 P.3d at 1115.

"The bona fide doctrine protects a subsequent purchaser's title against competing legal or equitable claims of which the purchaser had no notice at the time of the conveyance." *25 Corp., Inc. v. Eisenman Chemical Co.*, 101 Nev. 664, 675, 709 P.2d 164, 172 (1985). The

purchaser is also required to demonstrate that "the purchase was made in good faith, for a valuable consideration." *Berge v. Fredericks*, 95 Nev. 183, 186, 591 P.2d 246, 247 (1979).

SFR could not and cannot show that it lacked notice of the Deed of Trust at the time it purchased the Property. "Very little information is necessary to give actual or constructive knowledge to a purchaser sufficient to defeat a bona fide purchaser defense." *Time Warner v. Steadfast Orchard Park, L.P.*, 2008 WL 4350054, *10 (C.D. Cal. Sept. 23, 2008). Indeed, "proper recording of a property interest is generally sufficient under state law to provide constructive notice sufficient to defeat a bona fide purchaser." *Wonder-Bowl Props. v. Kim*, 161 B.R. 831, 836 (B.A.P. 9th Cir. 1993).

SFR undoubtedly had notice of the Deed of Trust because it was properly recorded against the Property years before it acquired its interest in the Property. It is not a BFP.

III. As This Is a Quiet Title Action, SFR Is an Appropriate Party.

SFR's arguments that U.S. Bank has no recourse against SFR is inaccurate. SFR sued U.S. Bank to quiet title in itself. U.S. Bank, a defendant in this action, was entitled to raise any arguments or

defenses to establish that its lien was not extinguished. Further SFR's argument presupposes that it is a BFP, which it is not. SFR's claim that it is not properly the subject of any aspect of the quiet title claim it brought is unsupported, and has never gained support in this or other Nevada courts.

Conclusion

For the foregoing reasons, this Court should affirm the decision of the district court granting summary judgment in U.S. Bank's favor.

DATED: July 30, 2018

SNELL & WILMER L.L.P.

/s/ Kelly H. Dove

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CERTIFICATE OF COMPLIANCE

I hereby certify that the **RESPONDENT'S ANSWERING BRIEF** complies with the typeface and type style requirements of NRAP 32(a)(4)-(6), because this brief has been prepared in a proportionally spaced typeface using a Microsoft Word 2010 processing program in 14-point Century Schoolbook type style. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because it contains approximately 4,902 words.

Finally, I hereby certify that I have read the **RESPONDENT'S ANSWERING BRIEF**, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. 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.

DATED: July 30, 2018

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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 30, 2018, I caused to be served a true and correct copy of the foregoing **RESPONDENT'S ANSWERING BRIEF** upon the following by the method indicated:

☐ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.

☐ **BY OVERNIGHT MAIL: by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.**

☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below:

☒ **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.

/s/Ruby Lengsavath
An Employee of SNELL & WILMER L.L.P.

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