

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

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A-13-678 Elizabeth A. Brown

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APPEAL

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

**RESPONDENT'S MOTION FOR LEAVE TO FILE SUR-REPLY
BRIEF**

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association as Trustee for the Certificate Holders of Wells Fargo Asset
Securities Corporation, Mortgage Pass-Through Certificates,
Series 2006-AR4*

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, by and through its counsel Snell & Wilmer L.L.P., hereby moves this Court for leave to file a Sur-Reply Brief under NRAP 27. This Motion is based upon the following Memorandum of Points and Authorities and the papers and pleadings on file herein.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Appellant SFR Investment Pool 1, LLC's Reply Brief raises a brand new argument not raised in its Opening Brief or in the district court. Accordingly, U.S. Bank respectfully requests that this Court grant U.S. Bank leave to file a short Sur-Reply Brief that responds to the newly-raised issue.

ARGUMENT

I. Legal Standard.

Courts allow the filing of a sur-reply where a valid reason for additional briefing exists. *Trs. of Constr. Indus. & Laborers Health & Welfare Tr. v. Archie*, 2012 WL 6645204 (D. Nev. Dec. 20, 2012). A

party “seeking to file a sur-reply should generally seek permission to do so through a properly filed motion.” *In re Estate of Klein*, No. 57259, 2011 WL 1599633, at *1 n.1 (Nev. Apr. 26, 2011) (citing NRAP 27); *see also Padilla v. Nevada*, 2012 WL 380003, at *1 (D. Nev. Feb. 6, 2012) (noting that the Court may grant permission for a party to file a sur-reply if requested and if there are grounds for it); *Zhi Yuan Gong v. Nat’l Mortg. Ass’n*, 2015 WL 1865423, at *1 n.1 (Nev. Apr. 17, 2015) (granting motion to file sur-reply).

A sur-reply is appropriate where a party raises new issues or arguments in a reply. *See United States v. \$42,989.76 in U.S. Currency*, 2009 WL 3497824, at *3 (D. Nev. Oct. 29, 2009) (granting leave to file a sur-reply where the reply raised new issues not raised in the original motion). A court may properly consider new information in a reply only when the non-moving party has an opportunity to respond. *Fireman’s Fund Ins. Co. v. Sloan Valve Co.*, 2012 WL 4962957, at *2 (D. Nev. Oct. 16, 2012) (citing *Provenz v. Miller*, 102 F.3d 1478, 1483 (9th Cir.1996)).

II. This Court Should Grant U.S. Bank’s Motion to File a Limited Sur-Reply.

Appellant’s Reply Brief raises a new argument not even mentioned in the Opening Brief—specifically that the district court

lacked subject matter jurisdiction due to what SFR characterizes as U.S. Bank's lack of standing to enforce a bankruptcy stay. Reply Br. 3–14. U.S. Bank respectfully seeks permission to file a limited sur-reply addressing only this new argument.

There is no sound reason to deny the limited relief U.S. Bank seeks, and Appellant has no reasonable basis to oppose a sur-reply. In fact, Appellant concedes that U.S. Bank should be entitled to address the new argument.¹ Reply Br. 4.

Moreover, this is no new argument to Appellant. As Appellant itself concedes, this Court has already rejected Appellant's argument at least once in a prior case. Reply Br. 4–5 (citing *SFR Invests. Pool 1, LLC v. Green Tree Servicing, LLC*, 385 P.3d 582 (Nev. Oct. 18, 2016) (unpublished)). Appellant therefore cannot explain its failure to raise

¹ Appellant's Reply Brief inaccurately states that Appellant "offered to stipulate with the Bank to supplemental" briefing on this issue to allow U.S. Bank to address the new argument, and that Appellant "received no response" to the offer. *Id.* In fact, counsel for U.S. Bank and Appellant had a phone conversation, during which counsel for Appellant informed counsel for U.S. Bank that Appellant would be raising a new argument in the Reply Brief and indicated that U.S. Bank should be afforded an opportunity to respond to the new argument. However, no concrete proposal was ever extended. U.S. Bank appropriately filed this Motion to address the new issues, which is the only procedurally appropriate option for U.S. Bank to be heard on this new argument. See \$42,989.76 in U.S. Currency, 2009 WL 3497824, at *3.

this argument in its Opening Brief on the basis that the argument is somehow new or novel.

By Appellant's failure to make this new argument in its Opening Brief, U.S. Bank had no opportunity to address the issue in its Answering Brief, especially since, as U.S. Bank's proposed sur-reply shows, this new argument fails badly. Thus, this Court should permit U.S. Bank leave to file a short sur-reply that responds only to this new argument, for this Court to make a fully informed decision on this appeal.

CONCLUSION

Based upon the foregoing, U.S. Bank respectfully requests the Court permit it to file a short sur-reply brief.

DATED: October 31, 2018

SNELL & WILMER L.L.P.

/s/ Kelly H. Dove
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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 October 31, 2018, I caused to be served a true and correct copy of the foregoing **RESPONDENT'S MOTION FOR LEAVE TO FILE SUR-REPLY 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.