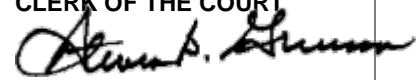


NOAS

HOWARD C. KIM, ESQ.
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Attorneys for Plaintiff

Electronically Filed
5/14/2018 11:59 AM
Steven D. Grierson
CLERK OF THE COURT



Electronically Filed
May 22 2018 01:32 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

DISTRICT COURT

CLARK COUNTY, NEVADA

IGNACIO GUTIERREZ, an individual,

Plaintiff,

v.

SFR INVESTMENTS POOL 1, LLC;
NEVADA ASSOCIATION SERVICES INC.,
HORIZON HEIGHTS HOMEOWNERS
ASSOCIATION, KB HOME MORTGAGE
COMPANY, a foreign corporation, DOE
Individuals I through X; ROE Corporations
and Organizations I through X,

Defendants.

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

Counter-Claimant and Third Party Plaintiff,

vs.

IGNACIO GUTIERREZ, an individual;
NATIONSTAR MORTGAGE, LLC., a
Delaware limited liability company;
COUNTRYWIDE HOME LOANS, INC., a
foreign corporation; DOES I-X; and ROES 1-
10, inclusive,

Counter-Defendant/ Third Party Defendants.

Case No. A-13-684715-C

Dept. No. XVII

NOTICE OF APPEAL

PLEASE TAKE NOTICE that SFR INVESTMENTS POOL 1, LLC hereby appeals from the following orders:

1. Order Granting Nationstar Mortgage LLC's Renewed Motion for Summary Judgment, entered on April 11, 2018; and
2. All orders made appealable thereby.

DATED May 14, 2018.

HOWARD KIM & ASSOCIATES

/s/ Jacqueline A. Gilbert
Howard C. Kim, Esq.
Nevada Bar No. 10386
Jacqueline A. Gilbert, Esq.
Nevada Bar No. 10593
Diana S. Cline, Esq.
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Phone: (702) 485-3300
Fax: (702) 485-3300
Attorneys for SFR Investments Pool 1, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of May 2018, pursuant to NRCP 5(b)(2)(D), I caused service of a true and correct copy of the foregoing **NOTICE OF APPEAL** to be made electronically via the Eighth Judicial District Court's electronic filing system upon the following parties at the e-mail addresses listed below:

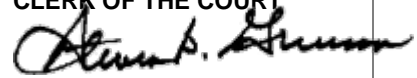
"Darren T. Brenner, Esq." . darren.brenner@akerman.com

Akerman Las Vegas Office . akermanlas@akerman.com

P. Sterling Kerr . psklaw@aol.com

Richard J. Vilkin . richard@vilkinlaw.com

/s/ Jessica E. Brown
An employee of KIM GILBERT EBRON



ASTA

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Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

IGNACIO GUTIERREZ, an individual,

Plaintiff,

v.

SFR INVESTMENTS POOL 1, LLC;
NEVADA ASSOCIATION SERVICES INC.,
HORIZON HEIGHTS HOMEOWNERS
ASSOCIATION, KB HOME MORTGAGE
COMPANY, a foreign corporation, DOE
Individuals I through X; ROE Corporations
and Organizations I through X,

Defendants.

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

Counter-Claimant and Third Party Plaintiff,

vs.

IGNACIO GUTIERREZ, an individual;
NATIONSTAR MORTGAGE, LLC., a
Delaware limited liability company;
COUNTRYWIDE HOME LOANS, INC., a
foreign corporation; DOES I-X; and ROES 1-
10, inclusive,

Counter-Defendant/ Third Party Defendants.

Case No. A-13-684715-C

Dept. No. XVII

CASE APPEAL STATEMENT

CASE APPEAL STATEMENT

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

2 Defendant/Counter-claimant/Third Party Plaintiff SFR Investment Pool 1, LLC

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

4 The Honorable Michael P. Villani

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

6 *Attorneys for Appellant SFR Investment Pool 1, LLC*

7 JACQUELINE A. GILBERT, ESQ.

8 DIANA S. CLINE, ESQ.

9 KAREN L. HANKS, ESQ.

10 HOWARD KIM & ASSOCIATES

11 1055 Whitney Ranch Dr., Suite 110

12 Henderson, Nevada 89014

13 (702) 485-3300

14 **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):**

15 *Appellate Counsel Unknown; Trial Counsel for Respondent Nationstar Mortgage, LLC*

16 ARIEL E. STERN, ESQ.

17 MELANIE D. MORGAN, ESQ.

18 TENESA SCATURRO POWELL, ESQ.

19 AKERMAN, LLP

20 1160 Town Center Drive, Suite 330

21 Las Vegas, Nevada 89144

22 (702) 634-5000

23 **5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed 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):**

24 N/A

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

26 Retained counsel

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

28 Retained counsel

///

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

3 N/A

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

6 Complaint filed July 8, 2013

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

10 Former homeowner Ignacio Gutierrez filed a complaint for wrongful foreclosure
11 and declaratory judgment after defendant Horizon Heights Homeowners
12 Association ("Association") foreclosed on the subject property pursuant to NRS
13 116.3116 et seq, and SFR purchased the property at a publically held-foreclosure
14 auction. SFR filed an answer and brought counter-claims against Gutierrez and
15 third-party complaint against third-party defendants Nationstar Mortgage, LLC and
16 Countrywide Home Loans, LLC for quiet title/declaratory judgment, injunctive
17 relief, and, in the alternative, unjust enrichment. Mr. Gutierrez was eventually
18 dismissed from the case.

19 The district court originally entered summary judgment in favor of SFR, which the
20 Bank appealed. This Court authored a published opinion in that case, *Nationstar*
21 *Mortgage, LLC v. SFR Investments Pool 1, LLC*, 133 Adv. Op. 34 (June 22, 2017).

22 Following remittitur, both parties moved for summary judgment and the District
23 Court heard arguments on the motions on January 3, 2018. On April 11, 2018, the
24 District Court granted Nationstar's Motion for Summary Judgment, and a notice of
25 the order was served the same day.

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

Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC, Case No.: 69400

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

N/A

///

///

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///

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

SFR is always willing to talk settlement but believes the likelihood is low in this case, as there are legal issues of first impression remaining regarding whether § 4617(j)(3) applies to this case.

DATED May 14, 2018.

HOWARD KIM & ASSOCIATES

/s/ Jacqueline A. Gilbert

Howard C. Kim, Esq.

Nevada Bar No. 10386

Jacqueline A. Gilbert, Esq.

Nevada Bar No. 10593

Diana S. Cline, Esq.

Nevada Bar No. 10580

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Henderson, Nevada 89014

Phone: (702) 485-3300

Fax: (702) 485-330

Attorneys for SFR Investments Pool 1, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of May 2018, pursuant to NRCP 5(b)(2)(D), I caused service of a true and correct copy of the foregoing **CASE APPEAL STATEMENT** to be made electronically via the Eighth Judicial District Court's electronic filing system upon the following parties at the e-mail addresses listed below:

"Darren T. Brenner, Esq." . darren.brenner@akerman.com

Akerman Las Vegas Office . akermanlas@akerman.com

P. Sterling Kerr . psklaw@aol.com

Richard J. Vilkin . richard@vilkinlaw.com

/s/ Jessica E. Brown

An employee of KIM GILBERT EBRON

DEPARTMENT 17
CASE SUMMARY
CASE NO. A-13-684715-C

Ignacio Gutierrez, Plaintiff(s)
vs.
SFR Investments Pool 1 LLC, Defendant(s)

§
§
§
§
§
§

Location: **Department 17**
Judicial Officer: **Villani, Michael**
Filed on: **07/08/2013**
Cross-Reference Case Number: **A684715**
Supreme Court No.: **69400**

CASE INFORMATION

Statistical Closures

05/09/2014 Stipulated Dismissal

Case Type: **Title to Property**
Subtype: **Quiet Title**

Case Flags: **Appealed to Supreme Court**
Automatically Exempt from Arbitration

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-13-684715-C
Court Department 17
Date Assigned 07/08/2013
Judicial Officer Villani, Michael

PARTY INFORMATION

		<i>Lead Attorneys</i>
Plaintiff	Gutierrez, Ignacio	Kerr, Preston S. <i>Retained</i> 702-451-2055(W)
Defendant	Horizon Heights Homeowners Association Removed: 02/14/2014 Dismissed	Ashby, Anthony L <i>Retained</i> 702-408-3800(W)
	KB Home Mortgage Company	
	Nevada Association Services, Inc. Removed: 02/14/2014 Dismissed	Vilkin, Richard J. <i>Retained</i> 702-873-5868(W)
	SFR Investments Pool 1 LLC	Kim, Howard C. <i>Retained</i> 702-485-3300(W)
Counter Claimant	Nevada Association Services, Inc.	Vilkin, Richard J. <i>Retained</i> 702-873-5868(W)
	SFR Investments Pool 1 LLC	Kim, Howard C. <i>Retained</i> 702-485-3300(W)
Counter Defendant	Countrywide Home Loans Inc	Brenner, Darren T. <i>Retained</i> 702-634-5000(W)
	Gutierrez, Ignacio Removed: 05/09/2014 Dismissed	Kerr, Preston S. <i>Retained</i> 702-451-2055(W)
	Nationstar Mortgage LLC	Stern, Ariel E. <i>Retained</i>

DEPARTMENT 17
CASE SUMMARY
CASE NO. A-13-684715-C

702-634-5000(W)

**Third Party
Defendant**

Countrywide Home Loans Inc

Brenner, Darren T.
Retained
702-634-5000(W)











Nationstar Mortgage LLC

Stern, Ariel E.
Retained
702-634-5000(W)















**Third Party
Plaintiff**

SFR Investments Pool 1 LLC

Kim, Howard C.
Retained
702-485-3300(W)














DATE	EVENTS & ORDERS OF THE COURT	INDEX
07/08/2013	 Complaint Filed By: Plaintiff Gutierrez, Ignacio <i>Complaint</i>	
07/08/2013	Case Opened	
07/12/2013	 Notice of Service Party: Plaintiff Gutierrez, Ignacio <i>Notice of Filing Affidavit of Service</i>	
07/12/2013	 Notice of Service Party: Plaintiff Gutierrez, Ignacio <i>Notice of Filing Affidavit of Service - Nevada Association Services Inc</i>	
07/12/2013	 Notice of Service Party: Plaintiff Gutierrez, Ignacio <i>Notice of Filing Affidavit of Service - Horizon Heights Homeowners Association</i>	
08/01/2013	 Notice of Lis Pendens Filed by: Third Party Plaintiff SFR Investments Pool 1 LLC <i>Notice of Lis Pendens</i>	
08/02/2013	 Answer and Counterclaim Filed By: Third Party Plaintiff SFR Investments Pool 1 LLC <i>Answer, Counterclaim and Third Party Complaint for Quiet Title and Injunctive Relief</i>	
08/05/2013	 Initial Appearance Fee Disclosure Filed By: Third Party Plaintiff SFR Investments Pool 1 LLC <i>Initial Appearance Fee Disclosure</i>	
08/06/2013	 Initial Appearance Fee Disclosure Filed By: Defendant Horizon Heights Homeowners Association <i>Initial Appearance Fee Disclosure</i>	
08/06/2013	 Motion to Dismiss Filed By: Defendant Horizon Heights Homeowners Association <i>Horizon Heights HOA's Motion to Dismiss Plaintiff's Complaint</i>	
08/07/2013	 Application for Entry of Default Filed By: Plaintiff Gutierrez, Ignacio <i>Application for Entry of Default</i>	

DEPARTMENT 17
CASE SUMMARY
CASE NO. A-13-684715-C

08/08/2013	 Certificate of Service Filed by: Plaintiff Gutierrez, Ignacio <i>Certificate of Service</i>
08/12/2013	 Answer and Counterclaim Filed By: Counter Claimant Nevada Association Services, Inc. <i>Answer Of Defendant Nevada Association Services, Inc. And Counterclaim</i>
08/15/2013	 Answer Filed By: Plaintiff Gutierrez, Ignacio <i>Answer to Defendant Nevada Association Services, Inc. And Counterclaim</i>
08/15/2013	 Opposition Filed By: Plaintiff Gutierrez, Ignacio <i>Opposition to Defendant Horizon Heights HOA's Motion to Dismiss Plaintiffs Complaint</i>
08/19/2013	 Answer and Counterclaim Filed By: Plaintiff Gutierrez, Ignacio <i>Answer to Defendant SFR Investment Pool 1, LLC's Counterclaim and Third Party Complaint</i>
08/21/2013	 Affidavit of Service Filed By: Third Party Plaintiff SFR Investments Pool 1 LLC <i>Affidavit of Service - Countrywide Home Loans, Inc.</i>
08/26/2013	 Default Filed By: Plaintiff Gutierrez, Ignacio <i>Default</i>
08/26/2013	 Joinder to Opposition to Motion Filed by: Third Party Plaintiff SFR Investments Pool 1 LLC <i>Limited Joinder to Plaintiff's Opposition to Horizon Heights Homeowner's Association's Motion to Dismiss.</i>
08/27/2013	 Notice of Entry of Default Party: Plaintiff Gutierrez, Ignacio <i>Notice of Entry of Default</i>
08/27/2013	 Certificate of Service Filed by: Third Party Plaintiff SFR Investments Pool 1 LLC <i>Certificate of Service</i>
08/29/2013	 Notice of Appearance Party: Counter Defendant Nationstar Mortgage LLC <i>Notice of Appearance</i>
08/29/2013	 Initial Appearance Fee Disclosure Filed By: Counter Defendant Nationstar Mortgage LLC <i>Initial Appearance Fee Disclosure</i>
09/05/2013	 Affidavit of Service Filed By: Third Party Plaintiff SFR Investments Pool 1 LLC <i>Affidavit of Service</i>
09/11/2013	 Motion to Dismiss (8:30 AM) (Judicial Officer: Villani, Michael)








DEPARTMENT 17
CASE SUMMARY
CASE NO. A-13-684715-C

Events: 08/06/2013 Motion to Dismiss
Horizon Heights HOA's Motion to Dismiss Plaintiff's Complaint

09/18/2013	 Motion to Dismiss Filed By: Counter Defendant Nationstar Mortgage LLC <i>Motion to Dismiss Third Party Complaint</i>
09/19/2013	 Notice of Change of Address Filed By: Third Party Plaintiff SFR Investments Pool 1 LLC <i>Notice of Change of Address and Notice of Change of Attorney</i>
09/19/2013	 Certificate of Service Filed by: Counter Defendant Nationstar Mortgage LLC <i>Certificate of Service</i>
10/09/2013	 Opposition to Motion to Dismiss Filed By: Third Party Plaintiff SFR Investments Pool 1 LLC <i>Opposition to Nationstar Mortgage, LLC's Motion to Dismiss Third Party Complaint</i>
10/14/2013	 Certificate of Service Filed by: Third Party Plaintiff SFR Investments Pool 1 LLC <i>Certificate of Service</i>
10/16/2013	 Reply in Support Filed By: Counter Defendant Nationstar Mortgage LLC <i>Reply in Support of Motion to Dismiss Third Party Complaint</i>
10/23/2013	 Motion to Dismiss (8:30 AM) (Judicial Officer: Villani, Michael) <i>Third Party Defendant Nationstar Mortgage LLC's Motion to Dismiss Third Party Complaint</i>
11/07/2013	 Recorders Transcript of Hearing <i>Transcript of Proceedings Re: Third Party Defendant Nationstar Mortgage LLC'S Moton to Dismiss Third Party Complaint October 23, 2013</i>
11/07/2013	 Notice of Change of Firm Name Filed By: Counter Defendant Nationstar Mortgage LLC <i>Notice of Change of Firm Name</i>
11/12/2013	 Order for Dismissal With Prejudice Filed By: Counter Defendant Nationstar Mortgage LLC <i>(Vacated 11/25/14) Order Granting Nationstar Mortgage LLC's Motion to Dismiss Third Party Complaint</i>
11/13/2013	 Notice of Entry of Order Filed By: Counter Defendant Nationstar Mortgage LLC <i>Notice of Entry of Order</i>
11/22/2013	 Certificate of Mailing Filed By: Counter Claimant Nevada Association Services, Inc. <i>Certificate Of Mailing</i>
11/22/2013	 Motion to Dismiss Filed By: Counter Claimant Nevada Association Services, Inc. <i>Motion By Defendant Nevada Association Services, Inc. To Dismiss Plaintiff's Complaint And</i>













DEPARTMENT 17
CASE SUMMARY
CASE NO. A-13-684715-C

For Attorneys Fees And Costs





01/02/2014	 Joinder Filed By: Defendant Horizon Heights Homeowners Association <i>Defendant Horizon Heights Homeowners Association's Joinder to Nevada Associations Motion to Dismiss</i>
01/08/2014	Motion to Dismiss (8:30 AM) (Judicial Officer: Villani, Michael) Events: 11/22/2013 Motion to Dismiss <i>Motion By Defendant Nevada Association Services, Inc. To Dismiss Plaintiff's Complaint And For Attorneys Fees And Costs</i>
01/08/2014	Joinder (8:30 AM) (Judicial Officer: Villani, Michael) Events: 01/02/2014 Joinder <i>Defendant Horizon Heights Homeowners Association's Joinder to Nevada Associations Motion to Dismiss</i>
01/08/2014	 All Pending Motions (8:30 AM) (Judicial Officer: Villani, Michael) <i>Nevada Accosiation Services' Motion to Dismiss Plaintiff's Complant and for Attorney's Fees and Costs . . . Horizon Heights Homeowners Association's Joinder</i>
01/17/2014	 Recorders Transcript of Hearing <i>Transcript of Proceedings Re: Third Party Defendant Nationstar Mortgage LLC'S Motion to Dismiss Third Party Complaint 10/23/13</i>
02/14/2014	 Order Granting Motion Filed By: Counter Claimant Nevada Association Services, Inc. <i>Order Granting Motion By Defendants Nevada Association Services, Inc. And Horizon Heights Homeowners Association To Dismiss Plaintiff's Complaint</i>
02/14/2014	Order of Dismissal Without Prejudice (Judicial Officer: Villani, Michael) Debtors: Ignacio Gutierrez (Plaintiff) Creditors: Horizon Heights Homeowners Association (Defendant), Nevada Association Services, Inc. (Defendant) Judgment: 02/14/2014, Docketed: 02/24/2014
02/14/2014	Judgment for Attorney's Fees (Judicial Officer: Villani, Michael) Debtors: Ignacio Gutierrez (Plaintiff) Creditors: Nevada Association Services, Inc. (Defendant) Judgment: 02/14/2014, Docketed: 02/24/2014 Total Judgment: 1,650.56
02/15/2014	 Notice of Entry of Order Filed By: Third Party Plaintiff SFR Investments Pool 1 LLC <i>Notice Of Entry Of Order</i>
03/28/2014	 Recorders Transcript of Hearing <i>Transcript of Proceedings Re: All Pending Motions January 8, 2014</i>
05/09/2014	 Stipulation and Order for Dismissal Without Prejudice Filed By: Plaintiff Gutierrez, Ignacio <i>Stipulation and Order Dismissing Ignacio Gutierrez without Prejudice</i>
05/09/2014	Order of Dismissal Without Prejudice (Judicial Officer: Villani, Michael) Debtors: SFR Investments Pool 1 LLC (Defendant) Creditors: Ignacio Gutierrez (Plaintiff) Judgment: 05/09/2014, Docketed: 12/08/2014 Debtors: SFR Investments Pool 1 LLC (Counter Claimant)

DEPARTMENT 17
CASE SUMMARY
CASE NO. A-13-684715-C











Creditors: Ignacio Gutierrez (Counter Defendant)
Judgment: 05/09/2014, Docketed: 12/08/2014

05/12/2014	 Notice of Entry of Stipulation & Order for Dismissal Filed By: Third Party Plaintiff SFR Investments Pool 1 LLC <i>Notice of Entry of Stipulation and Order</i>
10/08/2014	 Initial Appearance Fee Disclosure Filed By: Counter Defendant Countrywide Home Loans Inc <i>Initial Appearance Fee Disclosure</i>
10/08/2014	 Notice of Appearance Party: Counter Defendant Countrywide Home Loans Inc <i>Notice of Appearance</i>
10/08/2014	 Answer to Third Party Complaint Filed By: Counter Defendant Countrywide Home Loans Inc
11/25/2014	 Stipulation and Order Filed by: Counter Defendant Nationstar Mortgage LLC <i>Stipulation and Order Vacating Order Granting Nationstar Mortgage, LLC's Motion To Dismiss with Prejudice and Entering an Order Denying the Motion To Dismiss</i>
11/25/2014	Amended Judgment Vacated (Judicial Officer: Villani, Michael) Debtors: SFR Investments Pool 1 LLC (Third Party Plaintiff) Creditors: Nationstar Mortgage LLC (Third Party Defendant), Countrywide Home Loans Inc (Third Party Defendant) Judgment: 11/25/2014, Docketed: 11/19/2013
11/26/2014	 Notice of Entry of Stipulation and Order Filed By: Counter Defendant Countrywide Home Loans Inc <i>Notice of Entry of Stipulation and Order</i>
12/22/2014	 Joint Case Conference Report Filed By: Third Party Plaintiff SFR Investments Pool 1 LLC <i>Joint Case Conference Report</i>
12/31/2014	 Scheduling Order <i>Scheduling Order</i>
01/12/2015	 Order Setting Civil Non-Jury Trial <i>Order Setting Civil Non-Jury Trial</i>
06/15/2015	 Designation of Expert Witness Filed By: Third Party Plaintiff SFR Investments Pool 1 LLC <i>SFR Investments Pool 1, LLC's Rebuttal Expert Witness Disclosure</i>
07/21/2015	 Answer to Third Party Complaint Filed By: Counter Defendant Nationstar Mortgage LLC <i>Nationstar Mortgage, LLC's Answer To SFR Investments Pool 1, LLC's Third-Party Complaint</i>
07/27/2015	 Motion Filed By: Third Party Plaintiff SFR Investments Pool 1 LLC <i>Motion for Pre-Trial Coordination on Order Shortening Time</i>

DEPARTMENT 17
CASE SUMMARY
CASE NO. A-13-684715-C

08/07/2015	 Opposition to Motion Filed By: Counter Defendant Countrywide Home Loans Inc <i>Nationstar Mortgage, LLC and Countrywide Home Loans, Inc.'s Response in Opposition to SFR Investment Pool 1, LLC's Motion for Pre-Trial Coordination on Order Shortening Time</i>
08/11/2015	 Motion to Coordinate (10:30 AM) (Judicial Officer: Bare, Rob) <i>Defendant's Motion for Pre-Trial Coordination on Order Shortening Time</i>
08/25/2015	 Document Filed Filed by: Third Party Plaintiff SFR Investments Pool 1 LLC <i>Proposed Case Management Order</i>
08/26/2015	 Affidavit of Due Diligence Filed By: Counter Defendant Countrywide Home Loans Inc <i>Affidavit Of Due Diligence</i>
08/26/2015	 Affidavit of Service Filed By: Counter Defendant Countrywide Home Loans Inc <i>Affidavit Of Service</i>
09/08/2015	 Motion for Summary Judgment Filed By: Third Party Plaintiff SFR Investments Pool 1 LLC <i>SFR Investments Pool 1, LLC's Motion for Summary Judgment</i>
09/21/2015	 Motion in Limine Filed By: Third Party Plaintiff SFR Investments Pool 1 LLC <i>SFR Investments Pool 1, LLC's Motion in Limine to Strike Bank's Expert</i>
09/28/2015	 Opposition to Motion For Summary Judgment Filed By: Counter Defendant Countrywide Home Loans Inc <i>Bank of America, NA and Nationstar Mortgage, LLC's Opposition to Motion for Summary Judgment</i>
09/28/2015	 Countermotion For Summary Judgment Filed By: Counter Defendant Countrywide Home Loans Inc <i>Bank of America, N.A., as Successor By Merger To BAC Home Loans Servicing, LP fka Countrywide Home Loans, Inc. and Nationstar Mortgage, LLC's Countermotion For Summary Judgment</i>
10/01/2015	 Joinder to Opposition to Motion Filed by: Counter Defendant Countrywide Home Loans Inc <i>Joinder To Opposition and Notice of Opposition To SFR Investment Pool 1, LLC's Motion For Pre-Trial Coordination on Order Shortening Time</i>
10/08/2015	 Opposition to Motion in Limine Filed By: Counter Defendant Countrywide Home Loans Inc <i>Opposition to SFR Investments Pool 1, LLC's Motion in Limine to Exclude Expert</i>
10/14/2015	 Reply in Support Filed By: Third Party Plaintiff SFR Investments Pool 1 LLC <i>SFR Investments Pool 1, LLC's Reply in Support of Motion for Summary Judgment, Motion to Strike Countermotion for Summaary Judgment, and Opposition to Countermotion for summary judgment</i>

DEPARTMENT 17
CASE SUMMARY
CASE NO. A-13-684715-C

10/15/2015	 Reply in Support <i>Bank of America, NA AND Nationstar Mortgage, LLC's Reply in Support of Countermotion for Summary Judgment and Opposition to Motion to Strike</i>
10/16/2015	 Pre-Trial Disclosure Party: Third Party Plaintiff SFR Investments Pool 1 LLC <i>SFR Investments Pool 1, LLC's Pre-Trial Disclosures</i>
10/21/2015	Motion for Summary Judgment (8:30 AM) (Judicial Officer: Bixler, James) <i>SFR Investments Pool 1, LLC's Motion for Summary Judgment</i>
10/21/2015	Countermotion (8:30 AM) (Judicial Officer: Bixler, James) <i>Bank of America, N.A., as Successor By Merger To BAC Home Loans Servicing, LP fka Countrywide Home Loans, Inc. and Nationstar Mortgage, LLC's Countermotion For Summary Judgment</i>
10/21/2015	 All Pending Motions (8:30 AM) (Judicial Officer: Bixler, James)
10/28/2015	CANCELED Motion in Limine (8:30 AM) (Judicial Officer: Bixler, James) <i>Vacated</i> <i>SFR Investments Pool 1, LLC's Motion in Limine to Strike Bank's Expert</i>
10/29/2015	 Recorders Transcript of Hearing <i>Recorder's Transcript of Hearing Re All Pending Motions October 21, 2015</i>
11/04/2015	CANCELED Calendar Call (9:00 AM) (Judicial Officer: Villani, Michael) <i>Vacated - per Law Clerk</i>
11/10/2015	 Order Granting Filed By: Third Party Plaintiff SFR Investments Pool 1 LLC <i>Order Granting SFR Investments Pool 1, LLC's Motion for Summary Judgment and Denying Bank of America, N.A. and Nationstar Mortgage, LLC's Countermotion for Summary Judgment</i>
11/10/2015	 Notice of Entry of Order Filed By: Third Party Plaintiff SFR Investments Pool 1 LLC <i>Notice of Entry of Order Granting SFR Investments Pool 1, LLC's Motion for Summary Judgment and Denying Bank of America, N.A. and Nationstar Mortgage, LLC's Countermotion for Summary Judgment</i>
11/16/2015	CANCELED Bench Trial (9:00 AM) (Judicial Officer: Villani, Michael) <i>Vacated - per Law Clerk</i>
12/09/2015	 Notice of Appeal Filed By: Counter Defendant Nationstar Mortgage LLC <i>Notice of Appeal</i>
12/09/2015	 Case Appeal Statement Filed By: Counter Defendant Nationstar Mortgage LLC <i>Case Appeal Statement</i>
12/16/2015	 Notice of Change of Address Filed By: Third Party Plaintiff SFR Investments Pool 1 LLC <i>Notice of Change of Address and Notice of Change of Firm Name</i>
12/28/2015	 Request

DEPARTMENT 17
CASE SUMMARY
CASE NO. A-13-684715-C

Filed by: Counter Defendant Countrywide Home Loans Inc
Request for Transcript of Proceedings

07/19/2017



Status Check (8:30 AM) (Judicial Officer: Villani, Michael)
Status Check: Supreme Court Remand

07/28/2017



NV Supreme Court Clerks Certificate/Judgment -Remanded
Nevada Supreme Court Clerk's Certificate Judgment - Reversed and Remand

07/28/2017

Clerk's Certificate (Judicial Officer: Villani, Michael)
Debtors: SFR Investments Pool 1 LLC (Third Party Plaintiff)
Creditors: Nationstar Mortgage LLC (Third Party Defendant)
Judgment: 07/28/2017, Docketed: 08/04/2017
Comment: Supreme Court No. 69400 APPEAL REVERSED AND REMANDED

08/01/2017



Recorders Transcript of Hearing
Transcript of Proceedings Status Check: Supreme Court Remand

11/15/2017



Motion for Summary Judgment
Filed By: Counter Defendant Nationstar Mortgage LLC; Counter Defendant Countrywide Home Loans Inc
Nationstar Mortgage, LLC's Renewed Motion For Summary Judgment

11/16/2017



Motion for Summary Judgment
Filed By: Third Party Plaintiff SFR Investments Pool 1 LLC
SFR Investments Pool 1, LLC's Motion for Summary Judgment

12/11/2017



Motion
Filed By: Counter Defendant Nationstar Mortgage LLC
Nationstar Mortgage, Llc's Motion To Reopen Discovery

12/12/2017



Stipulation and Order
Filed by: Counter Defendant Nationstar Mortgage LLC
Stipulation and Order to Extend Time to File Oppositions to Motions for Summary Judgment

12/14/2017



Opposition and Countermotion
Filed By: Third Party Plaintiff SFR Investments Pool 1 LLC
SFR Investments Pool 1, LLC's Opposition to Nationstar Mortgage, LLC's Motion for Summary Judgement and Counter Motion to Strike

12/14/2017



Opposition to Motion For Summary Judgment
Filed By: Counter Defendant Nationstar Mortgage LLC
Nationstar Mortgage, LLC's Response in Opposition to SFR Investment Pool 1, LLC's Motion for Summary Judgment

12/20/2017













Notice of Entry of Stipulation and Order
Filed By: Counter Defendant Nationstar Mortgage LLC; Counter Defendant Countrywide Home Loans Inc
Notice Of Entry Of Stipulation And Order To Extend Time To Dile Oppositions To Motions For Summary Judgment

12/26/2017














Notice of Intent
Filed By: Counter Defendant Nationstar Mortgage LLC
Notice of Intent to Reply in Support of Motion for Summary Judgment and to Oppose Countermotion To Strike

DEPARTMENT 17
CASE SUMMARY
CASE NO. A-13-684715-C

12/28/2017	 Reply in Support Filed By: Third Party Plaintiff SFR Investments Pool 1 LLC <i>SFR Investments Pool 1, LLC's Reply in Support of its Motion for Summary Judgment</i>
12/29/2017	 Errata Filed By: Counter Defendant Nationstar Mortgage LLC <i>Errata of Notice of Intent to Reply in Support of Motion for Summary Judgment and to Oppose Countermotion to Strike</i>
12/29/2017	 Opposition Filed By: Third Party Plaintiff SFR Investments Pool 1 LLC <i>SFR Investments Pool 1, LLC s Opposition to Nationstar Mortgage, LLC s Motion to Reopen Discovery</i>
01/03/2018	Motion for Summary Judgment (8:30 AM) (Judicial Officer: Villani, Michael) 01/03/2018, 01/17/2018 <i>Third Party Defendant Nationstar Mortgage, LLC's Renewed Motion For Summary Judgment</i>
01/03/2018	Motion for Summary Judgment (8:30 AM) (Judicial Officer: Villani, Michael) 01/03/2018, 01/17/2018 <i>Defendant SFR Investments Pool 1 LLC's Motion for Summary Judgment</i>
01/03/2018	Opposition and Countermotion (8:30 AM) (Judicial Officer: Villani, Michael) 01/03/2018, 01/17/2018 <i>Defendant SFR Investments Pool 1, LLC's Opposition to Nationstar Mortgage, LLC's Motion for Summary Judgement and Counter Motion to Strike</i>
01/03/2018	 All Pending Motions (8:30 AM) (Judicial Officer: Villani, Michael)
01/08/2018	 Notice of Change of Address Filed By: Counter Defendant Nationstar Mortgage LLC <i>Notice Of Change Of Address</i>
01/08/2018	 Errata Filed By: Counter Defendant Nationstar Mortgage LLC <i>Nationstar Mortgage LLC s Errata To Motion For Summary Judgment</i>
01/09/2018	 Reply in Support Filed By: Counter Defendant Nationstar Mortgage LLC <i>Reply in Support of Motion to Reopen Discovery</i>
01/10/2018	 Reply in Support Filed By: Counter Defendant Nationstar Mortgage LLC <i>Nationstar's Reply In Support Of Motion For Summary Judgment And To Oppose Countermotion To Strike</i>
01/11/2018	 Motion Filed By: Counter Defendant Nationstar Mortgage LLC <i>Nationstar Mortgage LLC's Motion to Reopen Discovery</i>
01/12/2018	 Reply in Support Filed By: Third Party Plaintiff SFR Investments Pool 1 LLC <i>SFR Investments Pool 1, LLC s Reply in Support Of Countermotion to Strike</i>
01/17/2018	CANCELED Motion (3:00 AM) (Judicial Officer: Villani, Michael) <i>Vacated - per Law Clerk</i>

DEPARTMENT 17
CASE SUMMARY
CASE NO. A-13-684715-C

Third Party Defendant Nationstar Mortgage LLC's Motion to Reopen Discovery

01/17/2018	 All Pending Motions (8:30 AM) (Judicial Officer: Villani, Michael)
01/23/2018	 Recorders Transcript of Hearing <i>Transcript of Proceedings All Pending Motions Heard on January 17, 2018</i>
01/31/2018	 Decision (3:00 AM) (Judicial Officer: Villani, Michael) <i>Third Party Defendant Nationstar Mortgage, LLC's Renewed Motion For Summary Judgment Defendant SFR Investments Pool 1, LLC's Opposition to Nationstar Mortgage, LLC's Motion for Summary Judgement and Counter Motion to Strike</i>
02/01/2018	 Opposition Filed By: Third Party Plaintiff SFR Investments Pool 1 LLC <i>SFR Investments Pool 1, LLC'S Opposition to Nationstar Mortgage, LLC'S Motion to Reopen Discovery</i>
02/07/2018	 Reply in Support Filed By: Counter Defendant Nationstar Mortgage LLC <i>Reply in Support of Moiton to Reopen Discovery</i>
02/14/2018	CANCELED Motion (9:00 AM) (Judicial Officer: Bulla, Bonnie) <i>Vacated - per Letter</i> <i>Nationstar Mortgage LLC's Motion to Reopen Discovery</i>
04/11/2018	Summary Judgment (Judicial Officer: Villani, Michael) Debtors: SFR Investments Pool 1 LLC (Third Party Plaintiff) Creditors: Nationstar Mortgage LLC (Third Party Defendant) Judgment: 04/11/2018, Docketed: 04/11/2018
04/11/2018	 Order Granting Filed By: Counter Defendant Nationstar Mortgage LLC <i>Order Granting Nationstar Mortgage LLC's Renewed Motion for Summary Judgment</i>
04/11/2018	 Notice of Entry of Judgment Filed By: Counter Defendant Nationstar Mortgage LLC <i>Notice Of Entry Order Granting Nationstar Mortgage Llc s Renewed Motion For Summary Judgment</i>
05/14/2018	 Notice of Appeal Filed By: Third Party Plaintiff SFR Investments Pool 1 LLC <i>Notice of Appeal</i>
05/14/2018	 Case Appeal Statement Filed By: Third Party Plaintiff SFR Investments Pool 1 LLC <i>Case Appeal Statement</i>
05/14/2018	 Amended Notice of Appeal <i>Amended Notice of Appeal</i>
05/14/2018	 Amended Case Appeal Statement <i>Amended Case Appeal Statement</i>

CIVIL COVER SHEET

A - 13 - 684715 - C

Clark County, Nevada

XVII

Case No. _____

(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone):

Ignacio Gutierrez

Attorney (name/address/phone):

Law Offices of P. Sterling Kerr

2450 St. Rose Parkway #120

Henderson, NV 89074

Defendant(s) (name/address/phone): SFR INVESTMENTS POOL 1, LLC

Attorney (name/address/phone):

Howard C. Kim, Esq.

400 N. Stephanie St, Suite 160

Henderson, NV 89014

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input checked="" type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input checked="" type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> Negligence <input type="checkbox"/> Negligence - Auto <input type="checkbox"/> Negligence - Medical/Dental <input type="checkbox"/> Negligence - Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence - Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition

Probate	Other Civil Filing Types	
Estimated Estate Value: _____ <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment - Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

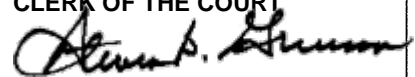
III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

- | | | |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104 Art. 8) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Trademarks (NRS 600A) | |

7/8/13

Date

Signature of initiating party or representative



ORD

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Attorneys for Nationstar Mortgage, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

IGNACIO GUTIERREZ, an individual,
Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC; NEVADA
ASSOCIATION SERVICES, INC.; HORIZON
HEIGHTS HOMEOWNERS ASSOCIATION;
KB HOME MORTGAGE COMPANY, a foreign
corporation; DOE Individuals I through X; ROE
Corporations and Organizations I through X,

Defendants.

SFR INVESTMENTS POOL 1, LLC, Nevada
Limited Liability Company,

Counter-Claimant and Third Party Plaintiff,

vs.

IGNACIO GUTIERREZ, an individual;
NATIONSTAR MORTGAGE, LLC, a Delaware
limited liability company; COUNTRYWIDE
HOME LOANS, INC., a foreign corporation;
DOES I through X; and ROES 1-10, inclusive,

Counter-Defendant and Third Party Defendants.

Case No.: A-13-684715-C
Dept.: XVII

**[PROPOSED] ORDER GRANTING
NATIONSTAR MORTGAGE LLC'S
RENEWED MOTION FOR SUMMARY
JUDGMENT**

On January 17, 2018, Nationstar Mortgage LLC's (**Nationstar**) renewed motion for summary judgment; SFR Investments Pool 1, LLC's (**SFR**) motion for summary judgement; and SFR's countermotion to strike came for hearing before the Court. Melanie D. Morgan, Esq. of Akerman

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 - FAX: (702) 380-8572

1 LLP appeared on behalf of Nationstar and Diana Cline Ebron, Esq. and Karen Hanks, Esq. of Kim
2 Gilbert Ebron, appeared on behalf of SFR. No appearances were made on behalf of plaintiff or
3 Nevada Association Services, Inc. (**NAS**).

4 Having heard the oral arguments presented by Nationstar and SFR, and having read and
5 considered all briefs, the Court makes the following Findings of Fact, Conclusions of Law and
6 Judgment.

7 FINDINGS OF FACT

8 1. A Deed of Trust listing Ignacio Gutierrez as the borrower (**Borrower**); KB Home
9 Mortgage Company (**KB Home**) as the lender (**Lender**); and Mortgage Electronic Registration
10 System (**MERS**), as beneficiary solely as nominee for Lender and Lender's successors and assigns,
11 was executed on July 6, 2005, and recorded on July 20, 2005. The Deed of Trust granted Lender a
12 security interest in real property known as 668 Moonlight Stroll Street, Henderson, NV 89015 (the
13 **Property**) to secure the repayment of a loan in the original amount of \$271,638.00 to the Borrowers.
14 *Id.* The Note and Deed of Trust are collectively referred to as the **Loan**.

15 2. Freddie Mac purchased the Loan and thereby obtained a property interest in the Deed
16 of Trust on or about August 22, 2005. Freddie Mac maintained that ownership at the time of the
17 HOA Sale (as defined below) on April 5, 2013.

18 3. In July 2008, Congress passed the Housing and Economic Recovery Act of 2008
19 (**HERA**), Pub. L. No. 110-289, 122 Stat. 2654, codified at 12 U.S.C. § 4511 *et seq.*, which
20 established the Federal Housing Finance Agency (**FHFA**) to regulate Freddie Mac, the Federal
21 National Mortgage Association, and the Federal Home Loan Banks.

22 4. On September 6, 2008, FHFA's Director placed Freddie Mac into conservatorship.

23 5. On April 23, 2012, MERS, as nominee for Lender and Lenders successors and
24 assigns, recorded an assignment of the Deed of Trust to Bank of America, N.A.

25 6. On November 28, 2012, Bank of America, N.A. recorded an assignment of the Deed
26 of Trust to Nationstar.

1 7. At the time of the HOA Sale on April 5, 2013, Nationstar was the servicer of the
2 Loan for Freddie Mac.

3 8. The relationship between Nationstar, as the servicer of the Loan, and Freddie Mac, as
4 owner of the Loan, is governed by the Freddie Mac Single-Family Seller/Servicer Guide (the
5 **Guide**), a central governing document for Freddie Mac's relationship with servicers nationwide.
6 Among other things, the Guide provides that Freddie Mac's servicers may act as record beneficiaries
7 for the deeds of trust owned by Freddie Mac and requires that servicers assign these deeds of trust to
8 Freddie Mac upon Freddie Mac's demand. Guide at 1101.2(a).

9 9. The Guide provides:

10 For each Mortgage purchased by Freddie Mac, the Seller and the Servicer
11 agree that Freddie Mac may, at any time and without limitation, require
12 the Seller or the Servicer, at the Seller's or the Servicer's expense, to make
13 such endorsements to and assignments and recordations of any of the
14 Mortgage documents so as to reflect the interests of Freddie Mac.

15 Guide at 1301.10.

16 10. The Guide also provides:

17 The Seller/Servicer is not required to prepare an assignment of the
18 Security Instrument to Freddie Mac. However, *Freddie Mac may, at its
19 sole discretion and at any time, require a Seller/Servicer, at the
20 Seller/Servicer's expense, to prepare, execute and/or record assignments
21 of the Security Instrument to Freddie Mac.*

22 Guide at 6301.6 (emphasis added).

23 11. The Guide authorizes servicers to foreclose on deeds of trust on behalf of Freddie
24 Mac. *See, e.g.,* Guide at 8105.3, 9301.1, 9301.12, 9401.1.

25 12. Accordingly, the Guide also provides for a temporary transfer of possession of the
26 note when necessary for servicing, including foreclosure. *See* Guide at 8107.1, 8107.2, 9301.11.
27 However, when in "physical or constructive possession of a Note," the Servicer must "follow
28 prudent business practices" to ensure that the note is "identif[ied] as a Freddie Mac asset." *Id.* at
29 8107.1(b). Furthermore, when transferring documents in a mortgage file, including a note, the
30 servicer must ensure the receiver acknowledges that the note is "Freddie Mac's property." Guide at
31 3302.5.

13. The Guide also includes chapters regarding how and when servicers should appear as parties to litigation involving Freddie Mac loans. See Guide at 9402.2 ("Routine and non-routine litigation"), 9501 ("Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters.").

14. The Guide provides:

All documents in the Mortgage file, . . . and all other documents and records related to the Mortgage of whatever kind or description . . . will be, and will remain at all times, the property of Freddie Mac. All of these records and Mortgage data in the possession of the Servicer are retained by the Servicer in a custodial capacity only.

Guide at 1201.9.

15. The Guide provides that a transferee servicer undertakes all responsibilities under the Guide. See Guide at 7101.15(c).

16. Finally, the Guide provides:

When a Transfer of Servicing occurs, the Transferor Servicer may not . . . further endorse the Note, but must prepare and complete assignments . . .

To prepare and complete an assignment of a Security Instrument for a Subsequent Transfer of Servicing for a Mortgage not registered with MERS, the Transferor Servicer must . . . [a]ssign the Security Instrument to the Transferee Servicer and record the assignment.

Guide at 7101.6.

17. On July 10, 2012, the HOA recorded a Notice of Delinquent Assessment Lien.

18. On August 30, 2012, the HOA recorded a Notice of Default and Election to Sell under the Deed of Trust.

19. On February 20, 2013, the HOA recorded a Notice of Foreclosure Sale.

20. On April 5, 2013, the HOA sold the Property to SFR for \$11,000.00 (HOA Sale). A foreclosure deed was recorded against the Property on April 8, 2013. The fair market value of the Property at the time of the sale was \$138,000.00 utilizing the "Sales Comparison approach."

21. The HOA's agent, NAS, did not mail a copy of the Notice of Foreclosure Sale to Nationstar.

22. At no time did the FHFA consent to the HOA Sale extinguishing or foreclosing Freddie Mac's interest in the Property. See FHFA's Statement on HOA Super-Priority Lien Foreclosures (Apr. 21, 2015), www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx.

CONCLUSIONS OF LAW

1. Summary judgment is appropriate when the pleadings and other evidence on file demonstrate "no genuine issue as to any material fact [remains] and the moving party is entitled to judgment as a matter of law." See NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). In ruling upon a motion for summary judgment, the Court must view all evidence and inferences in the light most favorable to the non-moving party. See *Torrealba v. Kesmetis*, 124 Nev. 95, 178 P.3d 716 (2008). To rebut a motion for summary judgment, the nonmoving party must present some specific facts to demonstrate that a genuine issue of material fact exists. *Forouzan, Inc. v. Bank of George*, 128 Nev. 896, 381 P.3d 612 (2012).

2. "While the pleadings and other evidence must be construed in the light most favorable to the nonmoving party, that party has the burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts to defeat a motion for summary judgment." *Wood*, 121 P.3d at 1031 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586 (1986)). The governing law determines which "factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant." *Id.*

3. SFR's previous motion for summary judgment was granted by Senior Judge Bixler on October 21, 2015, and the order granting the same was entered on November 10, 2015. Judge Bixler's decision was appealed, and the Nevada Supreme Court remanded the case back to this Court on July 28, 2017. The issues on remand are whether Freddie Mac owned the loan in question at the time of the HOA Sale, ^{or} and whether Nationstar had a contractual relationship with Freddie Mac to service the loan in question.

Freddie Mac Ownership / Federal Foreclosure Bar

1 4. The Nevada Supreme Court held in *Nationstar Mortgage, LLC v. SFR Investments*
2 *Pool 1, LLC*, that in order "to have standing, 'the party seeking relief [must have] a sufficient interest
3 in the litigation,' so as to ensure 'the litigant will vigorously and effectively present his or her case
4 against an adverse party.'" 396 P.3d 754, 756 Nev. (2017) (citing *Schwartz v. Lopez*, 132 Nev. Adv.
5 Op. 73, 382 P.3d 886, 894 (2016). The Nevada Supreme Court also held that mortgage loan
6 servicers for Freddie Mac or Fannie Mae could assert the Federal Foreclosure Bar in litigation like
7 this one, and that none of FHFA, Fannie Mae, or Freddie Mac need be joined as a party. *Id.* at 758.

8 5. With regard to Nationstar's argument that NRS 116, *et seq.* (**State Foreclosure**
9 **Statute**) is preempted by 12 U.S.C. § 4617(j)(3), this Court finds that Nationstar, as servicer for
10 Freddie Mac, has an interest in the Property through its contractual servicing relationship with
11 Freddie Mac and as the beneficiary of record of the Deed of Trust. Nationstar's status as servicer of
12 the loan for Freddie Mac is evidenced by Nationstar and Freddie Mac's business records from
13 Freddie Mac's MIDAS database, which Freddie Mac uses in its ordinary course of business to
14 manage the millions of loans nationwide, as well as the testimony of Freddie Mac's employee [].
15 Thus, Nationstar may raise the preemptive effect of 12 U.S.C. § 4617(j)(3) on state law in order to
16 defend its interests and Freddie Mac's interests in the Deed of Trust.

17 6. Section 4617(j)(3) preempts the State Foreclosure Statute and, therefore, a
18 homeowner association's foreclosure of its super-priority lien cannot extinguish a property interest of
19 Freddie Mac while it is under FHFA's conservatorship unless FHFA consents to that extinguishment.
20 *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir. 2017).

21 7. Unless FHFA gives its consent, the federal protection shall be given full effect, which
22 includes preemption of state law. SFR bears the burden of proof to establish that FHFA expressly
23 consented to extinguish Freddie Mac's ownership interest in the Deed of Trust. Nevada has a policy
24 against requiring a party to prove a negative, such as proving a lack of consent. *Andrews v. Harley*
25 *Davidson, Inc.*, 106 Nev. 533, 539, 796 P.2d 1092, 1096-97 (1990) (even where a plaintiff bears the
26 burden of proving his or her strict liability claim, "it is unfair to force the plaintiff consumer to prove
27 a negative, i.e., that the product was not altered.")

1 8. FHFA's April 21, 2015 statement confirms that there was no such consent here. In
2 the absence of express consent, the Court cannot imply FHFA's consent, as doing so would ignore
3 the plain text of the Federal Foreclosure Bar. *See Berezovsky*, 869 F.3d 923 (holding that FHFA's
4 consent can only be manifested affirmatively); *see also Alessi & Koenig, LLC v. Dolan, Jr.*, No.
5 2:15-cv-00805-JCM-CWH, 2017 WL 773872, *3 (D. Nev. Feb. 27, 2017) (citing and relying on
6 cases in which FHFA's statement was sufficient to show FHFA's lack of consent).

7 9. At the time of the HOA Sale, Freddie Mac was the owner of the Deed of Trust and
8 Note, and its servicer, Nationstar, was the record beneficiary of the Deed of Trust. Freddie Mac's
9 interest in the Property was established by admissible evidence, namely Freddie Mac's business.
10 Under Nevada law, Freddie Mac had a secured property interest at the time of the HOA Sale. *See In*
11 *re Montierth*, 354 P.3d 648, 651 (Nev. 2015); Restatement (Third) of Property: Mortgages § 5.4
12 cmt. c. In citing *Montierth* and the Nevada Supreme Court's adoption of the Restatement (Third) of
13 Property: Mortgages, the Ninth Circuit held that a loan-owner servicer relationship "preserves the
14 note owner's power to enforce its interest under the security instrument, because the note owner can
15 direct the beneficiary to foreclose on its behalf." *Berezovsky*, 869 F.3d at 931. Under these
16 circumstances, the loan owner maintains a secured property interest. *Id.*

17 10. Freddie Mac's interest in Property secured by the Deed of Trust was a property
18 interest protected by 12 U.S.C. § 4617(j)(3). SFR failed to provide proof Freddie Mac or the FHFA
19 consented to the HOA Sale extinguishing or foreclosing Freddie Mac's interest in the Property.
20 Accordingly, the HOA sale here did not extinguish the Deed of Trust.

21 11. Because the Court grants summary judgment in Nationstar's favor based upon 12
22 U.S.C. § 4617 (j)(3), the Court need not reach Nationstar's remaining arguments.

23 **Fraud, Unfairness, or Oppression Surrounding the Sale**

24 10. Nationstar contends that the sales price obtained at the HOA Sale was grossly
25 inadequate and was commercially unreasonable.

26 11. To set aside an association foreclosure sale on a theory of commercial
27 unreasonableness there must be "a showing of grossly inadequate price, plus, fraud, unfairness, or
28

1 oppression.” *Shadow Wood Homeowners Ass’n, Inc. v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5,
2 366 P.3d 1105, 1112 (Nev. 2016) (citing *Long v. Towne*, 98 Nev. 11, 13, 639, P.2d 528, 530 (1982));
3 see also *Centeno v. JP Morgan Chase Bank, N.A.*, 67365, 2016 WL 1122449, at *1 (Nev. Mar. 18,
4 2016) (unpublished Order Vacating and Remanding) (holding “a low sales price is not a basis for
5 voiding a foreclosure sale absent fraud, unfairness, oppression”); see also *Golden v. Tomiyasu*, 79
6 Nev. 503, 514, 387 P.2d 989, 995 (1963) (stating that, while a power-of-sale foreclosure may not be
7 set aside for mere inadequacy of price, it may be if the price is grossly inadequate and there is “in
8 addition proof of some element of fraud, unfairness, or oppression”) (internal quotations omitted).

9 12. The Supreme Court of Nevada recently clarified that in Nevada, “courts retain the
10 power to grant equitable relief from a defective [association] foreclosure sale when appropriate.”
11 *Shadow Wood Homeowners Ass’n, Inc.*, 366 P.3d at 1110. “[D]emonstrating that an association sold
12 a property at its foreclosure sale for an inadequate price is not enough to set aside a foreclosure sale;
13 there must also be a showing of fraud, unfairness, or oppression.” *Id.* (citing *Long*, 98 Nev. 11, 639
14 P.2d 530). In considering whether equity supports setting aside the sale in question, the Court is to
15 consider any other factor bearing on the equities, including actions or inactions of both parties
16 seeking to set aside the sale and the impact on a bona fide purchaser for value. *Id.* at 1114 (finding
17 “courts must consider the entirety of the circumstances that bear upon the equities”).

18 13. Nationstar contends that in addition to the grossly inadequate sales price, the lack of
19 notice of the sale to Nationstar rendering the HOA Sale unfair and oppressive. The Court, however,
20 does not find this argument persuasive. The analysis for finding fraud, unfairness, or oppression
21 applies to the seller (HOA) and purchaser (plaintiff), not whatever mistake may have been made by
22 the HOA. See *Golden*, 79 Nev. at 513, 387 P.2d at 994 (reviewing fraud and collusion between the
23 foreclosing trustee and bidders, not fraud, unfairness, or oppression in the underlying trustee’s
24 substantive actions); see also *Centeno*, 2016 WL 1122449, at *1 (holding “a low sales price is not a
25 basis for voiding a foreclosure sale absent fraud, unfairness, oppression”).
26
27
28

14. Because Nationstar failed to assert sufficient facts to demonstrate that there was fraud, unfairness, or oppression with regard to conduct of the HOA Sale, the Court finds the sale in question was commercially reasonable.

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ORDER

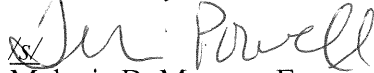
IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Nationstar's renewed motion for summary judgment is Granted and SFR's motion for summary judgment is Denied.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that SFR's interest in the Property, if any, is subject to the Deed of Trust.



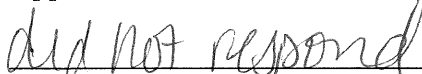
DISTRICT COURT JUDGE

Submitted by:

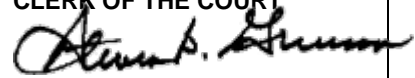


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Attorneys for SFR Investments Pools 1, LLC



1 **NOE**

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13 *Attorneys for Nationstar Mortgage, LLC*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 IGNACIO GUTIERREZ, an individual,

17 Plaintiff,

18 vs.

19 SFR INVESTMENTS POOL 1, LLC; NEVADA
20 ASSOCIATION SERVICES, INC.; HORIZON
21 HEIGHTS HOMEOWNERS ASSOCIATION;
22 KB HOME MORTGAGE COMPANY, a foreign
23 corporation; DOE Individuals I through X; ROE
24 Corporations and Organizations I through X,

25 Defendants.

26 SFR INVESTMENTS POOL 1, LLC, Nevada
27 Limited Liability Company,

28 Counter-Claimant and Third Party Plaintiff,

29 vs.

30 IGNACIO GUTIERREZ, an individual;
31 NATIONSTAR MORTGAGE, LLC, a Delaware
32 limited liability company; COUNTRYWIDE
33 HOME LOANS, INC., a foreign corporation;
34 DOES I through X; and ROES 1-10, inclusive,

35 Counter-Defendant and Third Party Defendants.

Case No.: A-13-684715-C

Dept.: XVII

**NOTICE OF ENTRY OF ORDER
GRANTING NATIONSTAR MORTGAGE
LLC'S RENEWED MOTION FOR
SUMMARY JUDGMENT**

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 – FAX: (702) 380-8572

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that an **ORDER GRANTING NATIONSTAR MORTGAGE**
3 **LLC’S RENEWED MOTION FOR SUMMARY JUDGMENT** was entered on this 11th day of
4 April, 2018 a copy of which is attached hereto as **Exhibit A**.

5 DATED: April 11, 2018

7 **AKERMAN LLP**

9 /s/Tenesa Powell

Melanie D. Morgan, Esq.

Nevada Bar No. 8215

Tenesa Powell, Esq.

Nevada Bar No. 12488

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Attorneys for Nationstar Mortgage LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 11th day of April, 2018 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY [PROPOSED] ORDER GRANTING NATIONSTAR MORTGAGE LLC'S RENEWED MOTION FOR SUMMARY JUDGMENT**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & served through the Notice Of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

P. Sterling Kerr, Esq.
LAW OFFICES OF P. STERLING KERR
2450 St. Rose Parkway, Suite 120
Henderson, NV 89074

Attorneys for Ignacio Gutierrez

Diana S. Ebron, Esq.
KIM GILBERT EBRON
7625 Dean Martin Drive, Suite 200
Las Vegas, Nevada 89139

Attorneys for Nevada Association Services, Inc.

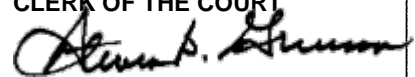
Richard J. Vilkin, Esq.
LAW OFFICES OF RICHARD J. VILKIN, P.C.
1286 Crimson Sage Ave.
Henderson, NV 89012

Attorneys for Nevada Association Services, Inc.

/s/Christine Weiss
An employee of Akerman LLP

EXHIBIT A

EXHIBIT A



ORD

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Attorneys for Nationstar Mortgage, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

IGNACIO GUTIERREZ, an individual,
Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC; NEVADA
ASSOCIATION SERVICES, INC.; HORIZON
HEIGHTS HOMEOWNERS ASSOCIATION;
KB HOME MORTGAGE COMPANY, a foreign
corporation; DOE Individuals I through X; ROE
Corporations and Organizations I through X,

Defendants.

SFR INVESTMENTS POOL 1, LLC, Nevada
Limited Liability Company,

Counter-Claimant and Third Party Plaintiff,

vs.

IGNACIO GUTIERREZ, an individual;
NATIONSTAR MORTGAGE, LLC, a Delaware
limited liability company; COUNTRYWIDE
HOME LOANS, INC., a foreign corporation;
DOES I through X; and ROES 1-10, inclusive,

Counter-Defendant and Third Party Defendants.

Case No.: A-13-684715-C
Dept.: XVII

**[PROPOSED] ORDER GRANTING
NATIONSTAR MORTGAGE LLC'S
RENEWED MOTION FOR SUMMARY
JUDGMENT**

On January 17, 2018, Nationstar Mortgage LLC's (**Nationstar**) renewed motion for summary judgment; SFR Investments Pool 1, LLC's (**SFR**) motion for summary judgement; and SFR's countermotion to strike came for hearing before the Court. Melanie D. Morgan, Esq. of Akerman

AKERMAN LLP

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1 LLP appeared on behalf of Nationstar and Diana Cline Ebron, Esq. and Karen Hanks, Esq. of Kim
2 Gilbert Ebron, appeared on behalf of SFR. No appearances were made on behalf of plaintiff or
3 Nevada Association Services, Inc. (**NAS**).

4 Having heard the oral arguments presented by Nationstar and SFR, and having read and
5 considered all briefs, the Court makes the following Findings of Fact, Conclusions of Law and
6 Judgment.

7 FINDINGS OF FACT

8 1. A Deed of Trust listing Ignacio Gutierrez as the borrower (**Borrower**); KB Home
9 Mortgage Company (**KB Home**) as the lender (**Lender**); and Mortgage Electronic Registration
10 System (**MERS**), as beneficiary solely as nominee for Lender and Lender's successors and assigns,
11 was executed on July 6, 2005, and recorded on July 20, 2005. The Deed of Trust granted Lender a
12 security interest in real property known as 668 Moonlight Stroll Street, Henderson, NV 89015 (the
13 **Property**) to secure the repayment of a loan in the original amount of \$271,638.00 to the Borrowers.
14 *Id.* The Note and Deed of Trust are collectively referred to as the **Loan**.

15 2. Freddie Mac purchased the Loan and thereby obtained a property interest in the Deed
16 of Trust on or about August 22, 2005. Freddie Mac maintained that ownership at the time of the
17 HOA Sale (as defined below) on April 5, 2013.

18 3. In July 2008, Congress passed the Housing and Economic Recovery Act of 2008
19 (**HERA**), Pub. L. No. 110-289, 122 Stat. 2654, codified at 12 U.S.C. § 4511 *et seq.*, which
20 established the Federal Housing Finance Agency (**FHFA**) to regulate Freddie Mac, the Federal
21 National Mortgage Association, and the Federal Home Loan Banks.

22 4. On September 6, 2008, FHFA's Director placed Freddie Mac into conservatorship.

23 5. On April 23, 2012, MERS, as nominee for Lender and Lenders successors and
24 assigns, recorded an assignment of the Deed of Trust to Bank of America, N.A.

25 6. On November 28, 2012, Bank of America, N.A. recorded an assignment of the Deed
26 of Trust to Nationstar.

1 7. At the time of the HOA Sale on April 5, 2013, Nationstar was the servicer of the
2 Loan for Freddie Mac.

3 8. The relationship between Nationstar, as the servicer of the Loan, and Freddie Mac, as
4 owner of the Loan, is governed by the Freddie Mac Single-Family Seller/Servicer Guide (the
5 **Guide**), a central governing document for Freddie Mac's relationship with servicers nationwide.
6 Among other things, the Guide provides that Freddie Mac's servicers may act as record beneficiaries
7 for the deeds of trust owned by Freddie Mac and requires that servicers assign these deeds of trust to
8 Freddie Mac upon Freddie Mac's demand. Guide at 1101.2(a).

9 9. The Guide provides:

10 For each Mortgage purchased by Freddie Mac, the Seller and the Servicer
11 agree that Freddie Mac may, at any time and without limitation, require
12 the Seller or the Servicer, at the Seller's or the Servicer's expense, to make
13 such endorsements to and assignments and recordations of any of the
14 Mortgage documents so as to reflect the interests of Freddie Mac.

15 Guide at 1301.10.

16 10. The Guide also provides:

17 The Seller/Servicer is not required to prepare an assignment of the
18 Security Instrument to Freddie Mac. However, *Freddie Mac may, at its*
19 *sole discretion and at any time, require a Seller/Servicer, at the*
20 *Seller/Servicer's expense, to prepare, execute and/or record assignments*
21 *of the Security Instrument to Freddie Mac.*

22 Guide at 6301.6 (emphasis added).

23 11. The Guide authorizes servicers to foreclose on deeds of trust on behalf of Freddie
24 Mac. *See, e.g.,* Guide at 8105.3, 9301.1, 9301.12, 9401.1.

25 12. Accordingly, the Guide also provides for a temporary transfer of possession of the
26 note when necessary for servicing, including foreclosure. *See* Guide at 8107.1, 8107.2, 9301.11.
27 However, when in "physical or constructive possession of a Note," the Servicer must "follow
28 prudent business practices" to ensure that the note is "identif[ied] as a Freddie Mac asset." *Id.* at
29 8107.1(b). Furthermore, when transferring documents in a mortgage file, including a note, the
30 servicer must ensure the receiver acknowledges that the note is "Freddie Mac's property." Guide at
31 3302.5.

13. The Guide also includes chapters regarding how and when servicers should appear as parties to litigation involving Freddie Mac loans. *See* Guide at 9402.2 ("Routine and non-routine litigation"), 9501 ("Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters.").

14. The Guide provides:

All documents in the Mortgage file, . . . and all other documents and records related to the Mortgage of whatever kind or description . . . will be, and will remain at all times, the property of Freddie Mac. All of these records and Mortgage data in the possession of the Servicer are retained by the Servicer in a custodial capacity only.

Guide at 1201.9.

15. The Guide provides that a transferee servicer undertakes all responsibilities under the Guide. *See* Guide at 7101.15(c).

16. Finally, the Guide provides:

When a Transfer of Servicing occurs, the Transferor Servicer may not . . . further endorse the Note, but must prepare and complete assignments . . .

To prepare and complete an assignment of a Security Instrument for a Subsequent Transfer of Servicing for a Mortgage not registered with MERS, the Transferor Servicer must . . . [a]ssign the Security Instrument to the Transferee Servicer and record the assignment.

Guide at 7101.6.

17. On July 10, 2012, the HOA recorded a Notice of Delinquent Assessment Lien.

18. On August 30, 2012, the HOA recorded a Notice of Default and Election to Sell under the Deed of Trust.

19. On February 20, 2013, the HOA recorded a Notice of Foreclosure Sale.

20. On April 5, 2013, the HOA sold the Property to SFR for \$11,000.00 (**HOA Sale**). A foreclosure deed was recorded against the Property on April 8, 2013. The fair market value of the Property at the time of the sale was \$138,000.00 *utilizing the "Sales Comparison approach."*

21. The HOA's agent, NAS, did not mail a copy of the Notice of Foreclosure Sale to Nationstar.

22. At no time did the FHFA consent to the HOA Sale extinguishing or foreclosing Freddie Mac's interest in the Property. See FHFA's Statement on HOA Super-Priority Lien Foreclosures (Apr. 21, 2015), www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx.

CONCLUSIONS OF LAW

1. Summary judgment is appropriate when the pleadings and other evidence on file demonstrate "no genuine issue as to any material fact [remains] and the moving party is entitled to judgment as a matter of law." See NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). In ruling upon a motion for summary judgment, the Court must view all evidence and inferences in the light most favorable to the non-moving party. See *Torrealba v. Kesmetis*, 124 Nev. 95, 178 P.3d 716 (2008). To rebut a motion for summary judgment, the nonmoving party must present some specific facts to demonstrate that a genuine issue of material fact exists. *Forouzan, Inc. v. Bank of George*, 128 Nev. 896, 381 P.3d 612 (2012).

2. "While the pleadings and other evidence must be construed in the light most favorable to the nonmoving party, that party has the burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts to defeat a motion for summary judgment." *Wood*, 121 P.3d at 1031 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586 (1986)). The governing law determines which "factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant." *Id.*

3. SFR's previous motion for summary judgment was granted by Senior Judge Bixler on October 21, 2015, and the order granting the same was entered on November 10, 2015. Judge Bixler's decision was appealed, and the Nevada Supreme Court remanded the case back to this Court on July 28, 2017. The issues on remand are whether Freddie Mac owned the loan in question at the time of the HOA Sale, ^{or} and whether Nationstar had a contractual relationship with Freddie Mac to service the loan in question.

Freddie Mac Ownership / Federal Foreclosure Bar

1 4. The Nevada Supreme Court held in *Nationstar Mortgage, LLC v. SFR Investments*
2 *Pool 1, LLC*, that in order "to have standing, 'the party seeking relief [must have] a sufficient interest
3 in the litigation,' so as to ensure 'the litigant will vigorously and effectively present his or her case
4 against an adverse party.'" 396 P.3d 754, 756 Nev. (2017) (citing *Schwartz v. Lopez*, 132 Nev. Adv.
5 Op. 73, 382 P.3d 886, 894 (2016). The Nevada Supreme Court also held that mortgage loan
6 servicers for Freddie Mac or Fannie Mae could assert the Federal Foreclosure Bar in litigation like
7 this one, and that none of FHFA, Fannie Mae, or Freddie Mac need be joined as a party. *Id.* at 758.

8 5. With regard to Nationstar's argument that NRS 116, *et seq.* (**State Foreclosure**
9 **Statute**) is preempted by 12 U.S.C. § 4617(j)(3), this Court finds that Nationstar, as servicer for
10 Freddie Mac, has an interest in the Property through its contractual servicing relationship with
11 Freddie Mac and as the beneficiary of record of the Deed of Trust. Nationstar's status as servicer of
12 the loan for Freddie Mac is evidenced by Nationstar and Freddie Mac's business records from
13 Freddie Mac's MIDAS database, which Freddie Mac uses in its ordinary course of business to
14 manage the millions of loans nationwide, as well as the testimony of Freddie Mac's employee [].
15 Thus, Nationstar may raise the preemptive effect of 12 U.S.C. § 4617(j)(3) on state law in order to
16 defend its interests and Freddie Mac's interests in the Deed of Trust.

17 6. Section 4617(j)(3) preempts the State Foreclosure Statute and, therefore, a
18 homeowner association's foreclosure of its super-priority lien cannot extinguish a property interest of
19 Freddie Mac while it is under FHFA's conservatorship unless FHFA consents to that extinguishment.
20 *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir. 2017).

21 7. Unless FHFA gives its consent, the federal protection shall be given full effect, which
22 includes preemption of state law. SFR bears the burden of proof to establish that FHFA expressly
23 consented to extinguish Freddie Mac's ownership interest in the Deed of Trust. Nevada has a policy
24 against requiring a party to prove a negative, such as proving a lack of consent. *Andrews v. Harley*
25 *Davidson, Inc.*, 106 Nev. 533, 539, 796 P.2d 1092, 1096-97 (1990) (even where a plaintiff bears the
26 burden of proving his or her strict liability claim, "it is unfair to force the plaintiff consumer to prove
27 a negative, i.e., that the product was not altered.")

1 8. FHFA's April 21, 2015 statement confirms that there was no such consent here. In
2 the absence of express consent, the Court cannot imply FHFA's consent, as doing so would ignore
3 the plain text of the Federal Foreclosure Bar. *See Berezovsky*, 869 F.3d 923 (holding that FHFA's
4 consent can only be manifested affirmatively); *see also Alessi & Koenig, LLC v. Dolan, Jr.*, No.
5 2:15-cv-00805-JCM-CWH, 2017 WL 773872, *3 (D. Nev. Feb. 27, 2017) (citing and relying on
6 cases in which FHFA's statement was sufficient to show FHFA's lack of consent).

7 9. At the time of the HOA Sale, Freddie Mac was the owner of the Deed of Trust and
8 Note, and its servicer, Nationstar, was the record beneficiary of the Deed of Trust. Freddie Mac's
9 interest in the Property was established by admissible evidence, namely Freddie Mac's business.
10 Under Nevada law, Freddie Mac had a secured property interest at the time of the HOA Sale. *See In*
11 *re Montierth*, 354 P.3d 648, 651 (Nev. 2015); Restatement (Third) of Property: Mortgages § 5.4
12 cmt. c. In citing *Montierth* and the Nevada Supreme Court's adoption of the Restatement (Third) of
13 Property: Mortgages, the Ninth Circuit held that a loan-owner servicer relationship "preserves the
14 note owner's power to enforce its interest under the security instrument, because the note owner can
15 direct the beneficiary to foreclose on its behalf." *Berezovsky*, 869 F.3d at 931. Under these
16 circumstances, the loan owner maintains a secured property interest. *Id.*

17 10. Freddie Mac's interest in Property secured by the Deed of Trust was a property
18 interest protected by 12 U.S.C. § 4617(j)(3). SFR failed to provide proof Freddie Mac or the FHFA
19 consented to the HOA Sale extinguishing or foreclosing Freddie Mac's interest in the Property.
20 Accordingly, the HOA sale here did not extinguish the Deed of Trust.

21 11. Because the Court grants summary judgment in Nationstar's favor based upon 12
22 U.S.C. § 4617 (j)(3), the Court need not reach Nationstar's remaining arguments.

23 **Fraud, Unfairness, or Oppression Surrounding the Sale**

24 10. Nationstar contends that the sales price obtained at the HOA Sale was grossly
25 inadequate and was commercially unreasonable.

26 11. To set aside an association foreclosure sale on a theory of commercial
27 unreasonableness there must be "a showing of grossly inadequate price, plus, fraud, unfairness, or
28

1 oppression.” *Shadow Wood Homeowners Ass’n, Inc. v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5,
2 366 P.3d 1105, 1112 (Nev. 2016) (citing *Long v. Towne*, 98 Nev. 11, 13, 639, P.2d 528, 530 (1982));
3 *see also Centeno v. JP Morgan Chase Bank, N.A.*, 67365, 2016 WL 1122449, at *1 (Nev. Mar. 18,
4 2016) (unpublished Order Vacating and Remanding) (holding “a low sales price is not a basis for
5 voiding a foreclosure sale absent fraud, unfairness, oppression”); *see also Golden v. Tomiyasu*, 79
6 Nev. 503, 514, 387 P.2d 989, 995 (1963) (stating that, while a power-of-sale foreclosure may not be
7 set aside for mere inadequacy of price, it may be if the price is grossly inadequate and there is “in
8 addition proof of some element of fraud, unfairness, or oppression”) (internal quotations omitted).

9 12. The Supreme Court of Nevada recently clarified that in Nevada, “courts retain the
10 power to grant equitable relief from a defective [association] foreclosure sale when appropriate.”
11 *Shadow Wood Homeowners Ass’n, Inc.*, 366 P.3d at 1110. “[D]emonstrating that an association sold
12 a property at its foreclosure sale for an inadequate price is not enough to set aside a foreclosure sale;
13 there must also be a showing of fraud, unfairness, or oppression.” *Id.* (citing *Long*, 98 Nev. 11, 639
14 P.2d 530). In considering whether equity supports setting aside the sale in question, the Court is to
15 consider any other factor bearing on the equities, including actions or inactions of both parties
16 seeking to set aside the sale and the impact on a bona fide purchaser for value. *Id.* at 1114 (finding
17 “courts must consider the entirety of the circumstances that bear upon the equities”).

18 13. Nationstar contends that in addition to the grossly inadequate sales price, the lack of
19 notice of the sale to Nationstar rendering the HOA Sale unfair and oppressive. The Court, however,
20 does not find this argument persuasive. The analysis for finding fraud, unfairness, or oppression
21 applies to the seller (HOA) and purchaser (plaintiff), not whatever mistake may have been made by
22 the HOA. *See Golden*, 79 Nev. at 513, 387 P.2d at 994 (reviewing fraud and collusion between the
23 foreclosing trustee and bidders, not fraud, unfairness, or oppression in the underlying trustee's
24 substantive actions); *see also Centeno*, 2016 WL 1122449, at *1 (holding “a low sales price is not a
25 basis for voiding a foreclosure sale absent fraud, unfairness, oppression”).
26
27
28


14. Because Nationstar failed to assert sufficient facts to demonstrate that there was fraud, unfairness, or oppression with regard to conduct of the HOA Sale, the Court finds the sale in question was commercially reasonable.

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...
...
...
...

ORDER


IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Nationstar's renewed motion for summary judgment is Granted and SFR's motion for summary judgment is Denied.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that SFR's interest in the Property, if any, is subject to the Deed of Trust.

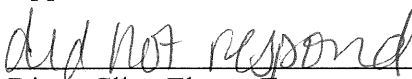


DISTRICT COURT JUDGE

Submitted by:


Melanie D. Morgan, Esq.
Nevada Bar No. 8215
Tenesa Powell, Esq.
Nevada Bar No. 12488
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Attorneys for Nationstar Mortgage LLC

Approved as to form and content by:


Diana Cline Ebron, Esq.
Karen Hanks, Esq.
KIM GILBERT EBRON
7625 Dean Martin Drive, Suite 200
Las Vegas, Nevada 89139
Attorneys for SFR Investments Pools 1, LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

September 11, 2013

A-13-684715-C Ignacio Gutierrez, Plaintiff(s)
vs.
SFR Investments Pool 1 LLC, Defendant(s)

**September 11, 2013 8:30 AM Motion to Dismiss Horizon Heights
HOA's Motion to
Dismiss Plaintiff's
Complaint**

HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: Carol Donahoo

RECORDER: Michelle Ramsey

REPORTER:

PARTIES

PRESENT: Ashby, Anthony L Attorney

JOURNAL ENTRIES

- Mr. Ashby advised this matter is set for hearing on his client's Motion to Dismiss; however, he spoke with Preston Kerr, Esq., counsel for Plaintiff, and he has agreed to dismiss the case. Mr. Ashby will be preparing and circulating a Stipulation based on those representations. COURT ORDERED, matter OFF CALENDAR.

MATTER RECALLED: Only Diana Cline, Esq., is present. Court informed Ms. Cline that Mr. Ashby was present and he represented that the Plaintiff had agreed to dismiss the Complaint; a Stipulation and Order is being prepared. Ms. Cline inquired as to whether the whole case was being dismissed or just the association; colloquy. Court directed Ms. Cline to contact Mr. Ashby and if any problems arise, to put the matter back on calendar.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

October 23, 2013

A-13-684715-C Ignacio Gutierrez, Plaintiff(s)
vs.
SFR Investments Pool 1 LLC, Defendant(s)

**October 23, 2013 8:30 AM Motion to Dismiss Third Party
Defendant Nationstar
Mortgage LLC's
Motion to Dismiss
Third Party
Complaint**

HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: Carol Donahoo

RECORDER: Michelle Ramsey

REPORTER:

PARTIES

PRESENT: Cline, Diana S. Attorney
Vilkin, Richard J. Attorney

JOURNAL ENTRIES

- Counsel submitted the matter on their pleadings. COURT ORDERED, Motion GRANTED

COURT FINDS, that the Statute in question sets forth the priority for repayment on the HOA lien, it does not extinguish the prior recorded security interest.

Ms. Schmidt to prepare the Order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

January 08, 2014

A-13-684715-C Ignacio Gutierrez, Plaintiff(s)
vs.
SFR Investments Pool 1 LLC, Defendant(s)

January 08, 2014

8:30 AM

All Pending Motions

HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: Carol Donahoo

RECORDER: Michelle Ramsey

REPORTER:

PARTIES

PRESENT: Vilkin, Richard J. Attorney

JOURNAL ENTRIES

- This is the time set for hearing on the Motion by Defendant Nevada Association Services, Inc., to Dismiss Plaintiff's Complaint and for Attorney's Fees and Costs. Defendant Horizon Heights Homeowners Association filed a JOINDER.

Mr. Vilkin advised that he received no opposition so he spoke to Plaintiff's counsel, Sterling Kerr, last night; he represented that he was not opposing said motion. COURT ORDERED, Motion and Joinder GRANTED. Mr. Vilkin to prepare the Order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

August 11, 2015

A-13-684715-C Ignacio Gutierrez, Plaintiff(s)
vs.
SFR Investments Pool 1 LLC, Defendant(s)

August 11, 2015 10:30 AM Motion to Coordinate

HEARD BY: Bare, Rob **COURTROOM:** RJC Courtroom 03C

COURT CLERK: Billie Jo Craig

RECORDER: Carrie Hansen

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- DEFENDANT'S MOTION FOR PRE-TRIAL COORDINATION ON ORDER SHORTENING TIME

Attorneys Edgar Smith, Richard Vilkin, Diana Cline, Karen Hanks present.
Sign-up sheets Left Side Filed in A662394: Robert Anderlik, Taylor Anello, Thomas N. Beckom, Jonathan D. Blum, Darren Brenner, Michael Brooks, Diana Cline, Britannica Collins, Chelsea Crowton, Peter Dunkley, Jessica Friedman, Charles Geisendorf, David Gluth, Karen Hanks, Joshua O. Igeleke, Michael Li, Steven Loizzi Jr., Elizabeth Lowell, Erica D. Loyd, Matthew McAlonis, David J. Merrill, Patrick Orme, Robin Perkins, Benjamin Petiprin (appeared telephonically), Edgar C. Smith, Kevin S. Soderstrom, Ashlie Surer, Abe Vigil, Richard Vilkin, Shawn Walkenshaw, David Winterton.

Upon inquiry of the Court, Ms. Hanks advised the Motion was filed and heard in this Court as this Court had the lowest case number. Colloquy regarding coordinating the HOA cases as to Discovery, Trials, and witness availability. Counsel suggested a more specific Case Management Plan for a Special Discovery Master to deal with these cases as the various District Court Judges thoughts vary. Court noted he talked briefly with Chief Judge David Barker and Chief Civil Judge Betsy Gonzalez. The Court noted Court Administration would be interested in addressing this issue. Court inquired if Ms. Hanks would be the point of contact, and she advised she would. She provided her E-mail address:

Karen@hkimlaw.com

Statement by Mr. Vilkin regarding having a meeting first to determine what counsel will agree on as to the Case Management Plan.

Statements from Attorney Surur regarding coordination for Discovery procedures and noted her two cases where one was Dismissed and the other was pending a Motion to Dismiss where the Court had no jurisdiction.

Statements from Attorney Brooks, who had multiple cases, regarding setting deadlines for counsel to submit a plan to in-house counsel, which may take 2 to 3 weeks.

Attorney Brenner advised a Case Management Plan would first be needed as there are 10 different banks and in-house counsel. He would then be in a position to respond.

COURT ORDERED, Ms. Hanks to submit a Proposed Case Management Plan to counsel by 8/25/15. Counsel to respond by 9/29/15. Matter SET for Status Check: Proposed Case Management Plan to determine when a Continued Hearing on this Motion to Coordinate to be heard.

9/1/15 10:30 AM STATUS CHECK: PROPOSED CASE MANAGEMENT PLAN
(IN A662394 ONLY)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property**COURT MINUTES****October 21, 2015**

A-13-684715-C	Ignacio Gutierrez, Plaintiff(s)
	vs.
	SFR Investments Pool 1 LLC, Defendant(s)

October 21, 2015	8:30 AM	All Pending Motions
------------------	---------	---------------------

HEARD BY: Bixler, James	COURTROOM: RJC Courtroom 11A
-------------------------	------------------------------

COURT CLERK: Louisa Garcia

RECORDER: Michelle Ramsey

REPORTER:

PARTIES

PRESENT:	Gilbert, Jacqueline	Attorney
	Hanks, Karen	Attorney
	Stern, Ariel E.	Attorney

JOURNAL ENTRIES

- Mr. Stern stated the issue was the first deed of trust noting Nationstar had the first deed. Statement by Court regarding Supreme Court decision. Colloquy regarding recitals. Mr. Stern argued parties were required to provide proper notice of sale; the sale was not proper because the interested party did not receive notice. The Defendant's claim was Bank of America received notice and signed attorney of fact; it does not mean that Nationstar received notice. Upon Court's inquiry regarding issue of fact, Ms. Gilbert argued it was not disputed because conclusive recitals were just that; they do not know other than from the recitals that the collection company did not mail it. Further argued the statute does not require you actually receive it just that notice of sale be given. As a purchaser they have to rely on the recital deed; counsel does not get to look behind the recitals and say it was not done properly. Ms. Gilbert stated if counsel wants to allege it was not done properly their relief is under NRS 21.140. Counsel stated they were the purchaser and had nothing to do with the foreclosure sale; they have to go after the trustee. Statement by Court regarding remedy. Mr. Stern cited relief under 116. Further argument regarding trust deed recital, Freddie Mac loan and federal statute. Colloquy regarding Judge Pro's opinion. Colloquy regarding late filing of motion. Ms. Gilbert requested motion be stricken. COURT ORDERED, Motion for Summary Judgment GRANTED; Countermotion DENIED. At the request of Ms. Gilbert, FURTHER ORDERED, Motion

to Strike Experts MOOT. Mr. Stern requested oral Motion to Stay. Upon Court's Inquiry, Mr. Stern requested Stay to allow FHFA to intervene. Court advised counsel he may appeal the matter. Ms. Gilbert to prepare Order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property**COURT MINUTES****July 19, 2017**

A-13-684715-C Ignacio Gutierrez, Plaintiff(s)
 vs.
 SFR Investments Pool 1 LLC, Defendant(s)

July 19, 2017 8:30 AM Status Check

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Kory Schlitz

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT: Brenner, Darren T. Attorney
 Clayton, Zachary Attorney

JOURNAL ENTRIES

- Mr. Brenner indicated there are two factual issues that remain, ownership and servicing relationship between the servicer and the GSE and the legal issue that remains is the Supreme Court decided it was still going to leave whether the legal issue of Federal Preemption to the District Court and not resolve that issue. Mr. Brenner further stated this is one of the first cases that addressed that issue, and the matter is not briefed the same way and the same evidence is not used and requested to present the evidence in the form it would today based upon the actual issues presented and decided by the Supreme Court and then brief the matter which would require some additional disclosures. Mr. Brenner stated if the Court was not inclined to do that, he would request time for additional briefing to explain why 56f relief is appropriate in this circumstance. Mr. Clayton stated he agrees with the description of the case, however, the factual issues are servicing relationship, and ownership that is evidence should be presented at the trial. Mr. Clayton stated he agrees with briefing, however does not believe Discovery needs to be reopened. Colloquy regarding Discovery. Upon Court's inquiry, Mr. Brenner requested 90 days for additional Discovery. COURT ORDERED, Discovery REOPENED for NINETY (90) days, thereafter parties are allowed to file additional briefing in this matter.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

January 03, 2018

A-13-684715-C Ignacio Gutierrez, Plaintiff(s)
vs.
SFR Investments Pool 1 LLC, Defendant(s)

January 03, 2018 8:30 AM All Pending Motions

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Cynthia Moleres

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT: Cline, Diana S. Attorney
 Hanks, Karen Attorney

JOURNAL ENTRIES

- Ms. Morgan, Esq., appearing on behalf of NationStar Mortgage, LLC.

THIRD PARTY DEFENDANT NATIONSTAR MORTGAGE, LLC'S RENEWED MOTION FOR SUMMARY JUDGMENT...DEFENDANT SFR INVESTMENTS POOL 1, LLC'S OPPOSITION TO NATIONSTAR MORTGAGE, LLC'S MOTION FOR SUMMARY JUDGMENT AND COUNTER MOTION TO STRIKE...DEFENDANT SFR INVESTMENTS POOL 1 LLC'S MOTION FOR SUMMARY JUDGMENT

Ms. Morgan advised a Motion to Extend Time to file an Opposition to the Countermotion to Strike and a Reply in support of the Motion for Summary Judgment. Arguments by Ms. Morgan pertaining to the Motion to Extend. Arguments by Ms. Eborn. COURT NOTED these matters would be continued, discovery would not be re-opened at this point, all deadlines stand and DIRECTED NationStar Mortgage, LLC to have their reply brief in support of summary judgment and opposition to the countermotion filed by 01/10/18 at noon. COURT ORDERED, matters CONTINUED.

CONTINUED TO: 01/17/18 8:30 A.M.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

January 17, 2018

A-13-684715-C Ignacio Gutierrez, Plaintiff(s)
vs.
SFR Investments Pool 1 LLC, Defendant(s)

January 17, 2018 8:30 AM All Pending Motions

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Natalie Ortega

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT: Cline, Diana S. Attorney
 Hanks, Karen Attorney

JOURNAL ENTRIES

- THIRD PARTY DEFENDANT NATIONSTAR MORTGAGE, LLC'S RENEWED MOTION FOR SUMMARY JUDGMENT DEFENDANT SFR INVESTMENTS POOL 1 LLC'S MOTION FOR SUMMARY JUDGMENT DEFENDANT SFR INVESTMENTS POOL 1, LLC'S OPPOSITION TO NATIONSTAR MORTGAGE, LLC'S MOTION FOR SUMMARY JUDGEMENT AND COUNTER MOTION TO STRIKE

Arguments by counsel regarding the merits of the motions. COURT ORDERED, matter UNDER ADVISEMENT; a written decision shall issue.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property**COURT MINUTES****January 31, 2018**

A-13-684715-C Ignacio Gutierrez, Plaintiff(s)
 vs.
 SFR Investments Pool 1 LLC, Defendant(s)

January 31, 2018**3:00 AM****Decision****HEARD BY:** Villani, Michael**COURTROOM:** Chambers**COURT CLERK:** Olivia Black**RECORDER:****REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- Nationstar Mortgage, LLC s (Nationstar) Renewed Motion for Summary Judgment and SFR Investments Pool 1, LLC s (SFR) Motion for Summary Judgment and Countermotion to Strike came before this Court on the January 17, 2018 oral calendar. The Court having further reviewed the pleadings, files, and argument finds as follows:

Summary judgment is appropriate when the pleadings and other evidence on file demonstrate no genuine issue as to any material fact [remains] and the moving party is entitled to judgment as a matter of law. See NRCP 56(c); Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). In ruling upon a motion for summary judgment, the Court must view all evidence and inferences in the light most favorable to the non-moving party. See Torrealba v. Kesmetis, 124 Nev. 95, 178 P.3d 716 (2008). To rebut a motion for summary judgment, the nonmoving party must present some specific facts to demonstrate that a genuine issue of material fact exists. Forouzan, Inc. v. Bank of George, 128 Nev. 896, 381 P.3d 612 (2012).

SFR s previous Motion for Summary Judgment was granted by Senior Judge Bixler on October 21, 2015, and the Order granting the same was entered on November 10, 2015. Judge Bixler s decision was appealed, and the Nevada Supreme Court remanded the case back to this Court on July 28, 2017. The question on remand is whether Freddie Mac owned the loan in question, or whether Nationstar had a contract with Freddie Mac or the FHFA to service the loan in question.

Nationstar s Renewed Motion for Summary Judgment

Freddie Mac Ownership / Federal Foreclosure Bar

The Nevada Supreme Court held in *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, that in order to have standing, the party seeking relief [must have] a sufficient interest in the litigation, so as to ensure the litigant will vigorously and effectively present his or her case against an adverse party. 133 Nev. Adv. Op. 34 (2017)(citing *Schwartz v. Lopez*, 132 Nev. Adv. Op. 73, 382 P.3d 886, 894 (2016)). Here, Nationstar had standing to bring the instant action because it was the servicer of the loan as evidenced with the screen shots provided of Freddie Mac's computer data base.

The Court FIND ownership of the property in question was established in the Deed of Trust recorded on 7/20/05, attached as Exhibit A to Nationstar's instant motion, identifies Freddie Mac (at the bottom of each page) and puts all parties on notice of Freddie Mac's interest. Additionally, this Deed of Trust was disclosed previously during the discovery period. Finally, in its opposition, SFR failed to provide proof that Fannie May consented to the sale.

The Court FURTHER FINDS, based upon the Federal Foreclosure Bar (12 U.S.C. 4617(j)(3)), the foreclosure at issue was preempted by Federal law.

Commercially Unreasonable Sale

Nationstar contends the sales price at the HOA foreclosure sale was grossly inadequate and was commercially unreasonable. To set aside an association foreclosure sale on a theory of commercial unreasonableness there must be a showing of grossly inadequate price, plus, fraud, unfairness, or oppression. *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1112 (2016) (citing *Long v. Towne*, 98 Nev. 11, 13, 639, P.2d 528, 530 (1982)) See also *Centeno v. JP Morgan Chase Bank, N.A.*, 67365, 2016 WL 1122449, at *1 (Nev. Mar. 18, 2016)(unpublished Order Vacating and Remanding)(Holding a low sales price is not a basis for voiding a foreclosure sale absent fraud, unfairness, oppression...) See also *Golden v. Tomiyasu*, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963) (stating that, while a power-of-sale foreclosure may not be set aside for mere inadequacy of price, it may be if the price is grossly inadequate and there is in addition proof of some element of fraud, unfairness, or oppression (internal quotation omitted))).

The Supreme Court of Nevada recently clarified that in Nevada, courts retain the power to grant equitable relief from a defective [association] foreclosure sale when appropriate *Shadow Wood Homeowners Ass'n, Inc. v. New York Cmty. Bancorp, Inc.*, 366 P.3d 1105, 1110 (Nev.2016) (en banc). [D]emonstrating that an association sold a property at its foreclosure sale for an inadequate price is not enough to set aside a foreclosure sale; there must also be a showing of fraud, unfairness, or oppression. *Id.* (citing *Long*, 98 Nev. 11, 639 P.2d 530). In considering whether equity supports setting aside the sale in question, the Court is to consider any other factor bearing on the equities, including actions or inactions of both parties seeking to set aside the sale and the impact on a bona fide purchaser for value. *Id.* at 1114 (finding courts must consider the entirety of the circumstances that bear upon the equities).

Here, Nationstar contends that in addition to the grossly inadequate sales price, the lack of notice of the sale to Nationstar made the sale unfair and oppressive. The Court, however, does not find this argument to be persuasive. The analysis for finding fraud, unfairness, or oppression applies to the seller (HOA) and purchaser (Plaintiff), not whatever mistake may have occurred by the HOA. See *Golden v. Tomiyasu*, 79 Nev. 503, 513, 387 P.2d 989, 994 (reviewing fraud and collusion between the foreclosing trustee and bidders, not fraud, unfairness, or oppression in the underlying trustee's substantive actions). See also *Centeno v. JP Morgan Chase Bank, N.A.*, 67365, 2016 WL 1122449, at *1

(Nev. Mar. 18, 2016)(unpublished Order Vacating and Remanding)(Holding a low sales price is not a basis for voiding a foreclosure sale absent fraud, unfairness, oppression...)

Because Nationstar failed to set forth material issues of fact demonstrating some fraud, unfairness, or oppression with the actual sale to demonstrate commercial unreasonableness, the COURT FINDS the sale in question was commercially reasonable.

However, as previously mentioned, the Federal Foreclosure Bar applies in the instant matter, and the foreclosure at issue was preempted by Federal law.

Therefore, COURT ORDERED Nationstar Mortgage, LLC s Motion for Summary Judgment GRANTED.

SFR s Motion for Summary Judgment

For the reasons stated in granting Nationstar s motion, SFR s Motion for Summary Judgment is DENIED.

SFR s Countermotion to Strike

Finally, SFR s Countermotion to Strike the declaration from the Freddie Mac employee is MOOT.

Counsel for Nationstar is directed to submit a proposed order consistent with the foregoing within ten (10) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing and be approved as to form and content by all parties.

CLERK'S NOTE: A copy of the foregoing minute order has been electronically distributed to all registered parties.//ob/02/07/18.



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

HOWARD C. KIM, ESQ.
1055 WHITNEY RANCH DR., STE 110
HENDERSON, NV 89014

DATE: May 16, 2018
CASE: A-13-684715-C

RE CASE: IGNACIO GUTIERREZ vs. SFR INVESTMENTS POOL 1, LLC; KB HOME
MORTGAGE COMPANY

NOTICE OF APPEAL FILED: May 14, 2018

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; [PROPOSED] ORDER GRANTING NATIONSTAR MORTGAGE LLC'S RENEWED MOTION FOR SUMMARY JUDGMENT; NOTICE OF ENTRY OF ORDER GRANTING NATIONSTAR MORTGAGE LLC'S RENEWED MOTION FOR SUMMARY JUDGMENT; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

IGNACIO GUTIERREZ,

Plaintiff(s),

vs.

SFR INVESTMENTS POOL 1, LLC; KB
HOME MORTGAGE COMPANY,

Defendant(s),

Case No: A-13-684715-C

Dept No: XVII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 16 day of May 2018.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk