

Case No. 76457

IN THE SUPREME COURT OF NEVADA

KENNETH BERBERICH,

Appellant,

vs.

BANK OF AMERICA, N.A.; and
MORTGAGE ELECTRONIC
REGISTRATIONS SYSTEMS, INC.,

Respondents.

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**MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF
IN SUPPORT OF APPELLANT'S OPENING BRIEF**

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NRAP 26.1 DISCLOSURE

The undersigned counsel to amicus SFR Investments Pool 1, LLC (“SFR”) certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made so the judges of this court may evaluate possible disqualification or recusal.

SFR is a privately held Nevada limited liability company and there is no publicly held company that owns 10% or more of SFR Investments Pool 1, LLC’s stock.

Amicus SFR is represented by Jacqueline A. Gilbert, Esq., and Karen L. Hanks, Esq. of Kim Gilbert Ebron fka Howard Kim & Associates.

DATED this 20th day of December, 2018.

KIM GILBERT EBRON

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OPENING BRIEF**

Pursuant to NRAP 29(c), SFR Investments Pool 1, LLC (“SFR”) respectfully requests leave to file an *amicus brief* in support of Kenneth Berberich’s Opening Brief.

I. SFR’S INTEREST¹

SFR buys properties at association non-judicial foreclosure sales. *See SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. ___, 334 P.3d 408, 409-10 (2014). Many of these properties are the subject of lawsuits in Nevada’s state and federal courts.

In cases where SFR has sought to bar a bank’s challenge to an NRS 116 sale on the basis that the bank’s claim was time-barred, SFR’s opponents, relying on *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JP Morgan Chase Bank, N.A.*, 133 Nev. Adv. Op. 3, 388 P.3d 226 (Jan. 26, 2017) and/or *Weeping Hollow Ave., Trust v. Spencer*, 831 F.3d 1110, 1114 (9th Cir. 2016), have argued that the statute of limitations which applies to any “quiet title” claim is five-years. Some Courts have agreed with this, while others have adopted SFR’s analysis that neither apply to the bank’s claim. *See Christina Trust v. SFR Investments Pool 1, LLC*, Case No. 2:16-cv-1226-JCM-GWF, 2017 WL 663055 (D.Nev. February 17, 2017) (finding five-

¹ NRAP 29(c)

year statute of limitations based on NRS 11.070); *Deutsche Bank National Trust Company v. SFR Investments Pool 1, LLC*, Case No. 2:17-cv-2683-GMN-GWF, 2018 WL 3758569 (D. Nev. August 8, 2018) (finding five-year statute of limitations based on NRS 11.070); *Bank of America, N.A. v. Country Garden Owners Association*, Case No. 2:17-cv-01850-APG-CWH, 2018 WL 4305761 (D. Nev. March 14, 2018) (finding NRS 11.070 does not apply to bank's claim); *Ocwen Loan Servicing, LLC v. SFR Investments Pool 1, LLC*, Case No. 2:17-cv-01757-JAD-VCF, 2018 WL 2292807 (D. Nev. May 18, 2018) (finding neither NRS 11.070 nor 11.080 apply to the bank's claim).

Such contentions prove that the reliance on *Gray Eagle*, like the District Court did in this case, has impacted SFR's interests. Consequently, this Court should allow SFR to file an amicus brief.

II. THE REASONS WHY AN AMICUS BRIEF IS DESIRABLE IN SUPPORT OF APPELLANT'S OPENING BRIEF

The District Court in this case, like other courts, relied on dicta in *Gray Eagle*, an unpublished disposition that did not consider whether NRS 11.080 was in fact a time-bar statute as opposed to a standing statute. *Gray Eagle*, 388 P.3d at 232. Likewise, courts like the District Court here, have found that NRS 11.080 provides a five-year statute of limitations for all "quiet title" claims regardless of who is asserting the claim and without any analysis as to when the accrual date of such claim would begin to run.

Additionally, courts have relied on dicta in *Weeping Hollow*, that under NRS 11.070, a former homeowner could have brought claims within five years of the Association foreclosure sale. *Weeping Hollow*, 831 F.3d at 1114. But like that of *Gray Eagle*, the Ninth Circuit did no analysis as to whether NRS 11.070 was a standing statute as opposed to a time-bar statute. To be clear, SFR is not faulting the courts for the conclusions they drew as the issues in both cases did not directly implicate whether NRS 11.070 and 11.080 were standing statutes or time-bar statutes or whether such statutes even applied in the given circumstances. But be that as it may, the fact remains that the dicta from both cases has been spouted as gospel, and some courts have agreed.

Therefore, SFR's proposed amicus brief is desirable because it addresses the rules of statutory interpretation that neither *Gray Eagle* nor *Weeping Hollow* did, and shows how neither NRS 11.070 nor 11.080 are time-bar statutes that would bar a title holder or possessor of real property from asserting a claim that is either founded upon title or for the recovery of real property. Additionally, the amicus brief addresses how NRS 11.070 and/or 11.080 can never apply to a bank, who as a lienholder, challenges an NRS 116 sale.

CONCLUSION

Based on the foregoing, SFR respectfully requests this Court grant it permission to file its amicus brief, a copy of which is being filed concurrently pursuant to NRAP 29(c) and this Court's instruction.

Respectfully submitted this 20th day of December, 2018.

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/s/ Karen L. Hanks

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 20th day of December, 2018. Electronic service of the foregoing **MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT’S OPENING BRIEF** was made pursuant to the Master Service List.

Dated this 20th day of December, 2018.

/s/ Karen L. Hanks
An employee of KIM GILBERT EBRON