

Case No. 77010
IN THE SUPREME COURT OF NEVADA

JP MORGAN CHASE BANK,
National Association, a national
association

Appellant,

vs.

SFR INVESTMENTS POOL 1, LLC,
Respondent.

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APPEAL

From the Eighth Judicial District Court, Clark County
The Honorable JIM CROCKETT, District Judge
District Court Case No. A-13-692304-C

**SFR INVESTMENTS POOL 1, LLC’S RESPONSE TO SUPPLEMENTAL AUTHORITIES
AND REQUEST FOR SUPPLEMENT BRIEFING**

JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593

DIANA S. EBRON, ESQ.
Nevada Bar No. 10580

KIM GILBERT EBRON
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
Telephone: (702) 485-3300
Facsimile: (702) 485-3301

Respondent SFR Investments Pool 1, LLC (“SFR”), in response to Appellant JPMorgan Chase’s Notice of Supplemental Authorities provides the following information for the Court regarding the cases presented and requests supplemental briefing.

First, *M&T Bank*¹ is not binding on this Court. *M&T Bank* is a Ninth Circuit decision opining on state law claims and statutes which has no binding effect on this Court. *See Ocwen v. U.S.*, 713 F.2d 1461, 1464 (9th Cir. 1983); *Henderson v. Pfizer, Inc.*, 285 F. App’x 370, 373 (9th Cir. 2008); *Bonilla v. Adams*, 423 App’x 738, 740 (9th Cir. 2011).

In *M&T Bank*, simply put, just like *Bourne Valley*,² the Ninth Circuit is, for the second time, wrong when it comes to its interpretation of Nevada law. A quiet title claim brought by a lienholder to challenge an Association foreclosure sale is not a contract action. Regardless of the challenge, whether it be based on HERA, tender, noticing or unfairness, the quiet title claim is never based on a contract. Thus, *M&T Bank* is based on an entirely false premise. Despite SFR asking the Ninth Circuit to stay the proceeding pending this Court’s response to the certified question in *U.S. Bank, N.A. v. Thunder Properties, Inc.*, No. 17-16399, which asks this Court what statute of limitations governs a quiet title claim brought by a lienholder, the Ninth

¹ *M&T Bank v. SFR Investments Pool 1, LLC*, 963 F.3d 854 (9th Cir. 2020).

² *Bourne Valley Court Tr. v. Wells Fargo Bank, N.A.*, 832 F.3d 1154 (9th Cir. 2016).

Circuit decided to move forward, and without any guidance from this Court errantly ruled a quiet title claim brought by a lienholder is a contract action. Not a “contract-like” action like Chase couches it here, but a full-blown contract action. It did so despite this Court couching a quiet title action as “simply a judicial determination of the claimed interests in real property.” *Chapman v. Deutsche Bank Nat’l Tr. Co.*, 129 Nev. 314, 318, 302 P.3d 1103, 1106-07 (2013). Of course, when the quiet title action involves a challenge to a foreclosure, it is a bit more than just simply a judicial determination about interests, but either way, it is under no circumstance a contract action, or can it be deemed a contract-like action.

Second, given the limitations of NRAP 31(e) in terms of not permitting additional argument, SFR asks for permission to supplement its answering brief so as to substantively address *M&T Bank* and all of its errors. On July 9, 2020, SFR filed a petition for rehearing in *M&T Bank* as well as the other two unpublished dispositions that relied on *M&T Bank*.³ The petition sets forth the errors of the decision, and SFR asks that it be permitted to supplement its answering brief so as to apprise this Court of those arguments.

To deny SFR’s request will prejudice SFR as the *M&T Bank* Court reached

³ *Freddie Mac v SFR Invs. Pool 1, LLC*, 810 F. Appx 589, 2020 WL 3469109 (9th Cir. June 25, 2020) (unpublished) (applying *M&T Bank*); *Bourne Valley Ct. Trust v. Wells Fargo Bank, N.A.*, 810 F. Appx. 492, 2020 WL 3467975 (9th Cir. June 9, 2020) (unpublished) (applying *M&T Bank*).

its decision based on cases and arguments not raised by the Bank or the Agency in that case. As such, SFR's answering brief, while it addresses the issue of why Appellants' quiet title claim is not a contract action, it does not directly address the reasoning used by the *M&T Bank* court. Further, this Court has granted a similar request in another case pending before this Court, *Ditech Financial, LLC v. SFR Investments Pool 1, LLC*, Case No. 78430.

DATED this 13th day of August 2020.

KIM GILBERT EBRON

/s/ Jacqueline A. Gilbert

JACQUELINE A. GILBERT, ESQ.

Nevada Bar No. 10593

7625 Dean Martin Drive, Suite 110

Las Vegas, Nevada 89139

Telephone: (702) 485-3300

Facsimile: (702) 485-3301

Attorneys for Respondent SFR

Investments Pool 1, LLC

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 13th day of August 2020. Electronic service of the foregoing **Response to Supplemental Authorities and Request for Supplement Briefing** shall be made in accordance with the Master Service List.

Dated this 13th day of August 2020.

/s/ Jacqueline A. Gilbert
An employee of KIM GILBERT EBRON