

**IN THE SUPREME COURT OF NEVADA**

JPMORGAN CHASE BANK, N.A., a  
national association,

Appellant,

v.

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

Respondent.

Supreme Court No. 77010

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**RESPONSE TO REQUEST TO SUPPLEMENT BRIEFING**

Appellant JP Morgan Chase Bank, N.A. (“Chase”) respectfully opposes Respondent SFR Investments Pool 1, LLC’s (“SFR’s”) request to supplement the briefing in this appeal.

Chase notified this court of a recent Ninth Circuit decision that adopts arguments Chase made in the briefing of this appeal and rejects arguments made by SFR. *See M&T Bank v. SFR Investments Pool 1, LLC*, 963 F.3d 854 (9th Cir. 2020). SFR does not deny that *M&T Bank* is relevant, but instead requests supplemental briefing concerning the decision.

Supplemental briefing is unnecessary and would further delay resolution of this appeal. The parties have already made their respective arguments concerning the statute of limitations, if any, that applies to the invocation of the Federal Foreclosure Bar in this case. *M&T Bank* adopts Chase’s argument on that issue, and

rejects the arguments SFR made both in that appeal and here. Unsurprisingly, SFR’s arguments in both appeals are nearly identical. *M&T Bank* does not add any new interpretation of law that the parties have not already fully explored in their briefing in this case.

SFR’s contention that the Ninth Circuit was “wrong” to conclude that quiet title claims invoking the Federal Foreclosure Bar are *better characterized* as contract, not tort—for the limited purpose of assigning them to one of only two alternative prongs of the *federal* statute of limitations provision in HERA—does not warrant yet another round of briefing here. In its responding brief, SFR has already attempted to counter that legal conclusion and the preexisting authorities that support it. *See* Am. Ans. Br. at 24-27.

Moreover, while SFR references the petitions for rehearing purportedly laying out the errors in *M&T Bank* that it and its counsel (representing another HOA sale purchaser) filed in three appeals before the Ninth Circuit, SFR neglects to inform the Court that the Ninth Circuit unanimously denied all three petitions for rehearing on August 4, 2020. *See* Order, *M&T Bank v. SFR Invs. Pool 1, LLC*, No. 18-17395 (Dkt. 66); Order, *Freddie Mac v. SFR Invs. Pool 1, LLC*, No. 19-15910 (9th Cir. 2020) (Dkt. 50); Order, *Bourne Valley Ct. Tr. v. Wells Fargo Bank*, No. 19-15253 (9th Cir. 2020) (Dkt. 63). Thus, SFR knew that these petitions had been denied for nine days prior to referencing them in its request for supplemental briefing. And, in

the event SFR seeks to reference another appellate motion that has already been denied, this Court should know that the Ninth Circuit also denied SFR's subsequent motion to stay the mandate in *M&T Bank* without even waiting for an opposition to that motion. *See* Order, *M&T Bank*, No. 18-17395 (Aug. 11, 2020) (Dkt. 68). These orders strongly suggest that the Ninth Circuit does not find SFR's arguments that the *M&T Bank* holding requires an interpretation of state law to be credible.

Supplemental briefing on the merits of *M&T Bank* would only serve to give SFR a second bite at the same apple, to waste the parties' resources, and to delay resolution of this appeal, which has been pending since September 2018. Indeed, SFR has every incentive to needlessly prolong this (or any) appeal, as delay in judgment allows SFR to reap substantial profits by renting out the property at market rates while the case is pending. Meanwhile, Freddie Mac—which made a substantial investment in the now-defaulted loan secured by the property here—receives no return whatsoever. Thus, until the case is resolved, SFR will unjustly reap the return on Freddie Mac's investment. In addition, the longer Chase must wait to obtain a judgment (and thus to foreclose on the property on behalf of Freddie Mac) the less funding Freddie Mac has to reinvest in the secondary mortgage market, which furthers its mission of providing affordable housing. *See* 12 U.S.C. § 4501.

Accordingly, Chase respectfully requests that the Court deny SFR's request. In the event that the Court decides to permit supplemental briefing, Chase requests

that the Court limit SFR's supplemental brief to ten pages and permit Chase a ten page supplemental response.

Dated: August 20, 2020.

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**CERTIFICATE OF SERVICE**

I certify that on August 20, 2020, I filed the foregoing **Response to Request to Supplement Briefing**. Service will be made to the following through the Court's electronic filing system:

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