IN THE SUPREME COURT OF THE STATE OF NEVADA

BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP, a National Association. Appellant, vs. SFR INVESTMENTS POOL 1, LLC, a Nevada Limited Liability Company, Respondent.	Case No. 70501

APPEAL

from the Eighth Judicial District Court, Department XXI
The Honorable Valerie Adair, District Judge
District Court Case No. A-13-684501-C

APPELLANT'S ANSWER TO RESPONDENT'S PETITION FOR REVIEW

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NRAP 26.1 DISCLOSURE

Pursuant to NRAP 26.1, the undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed:

Bank of America, N.A.

Bank of America Holding Corporation

BAC North America Holding Company

NB Holdings Corporation

Bank of America Corporation

Akerman LLP has been counsel for the Appellant since the case's beginning.

These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Rules

Statutes

Other Authorities

INTRODUCTION

Respondent SFR Investments Pool 1, LLC (**SFR**) seeks review of the Court of Appeals' decision. Appellant Bank of America, N.A. (**BANA**) does not believe the decision requires review by this Court, but would welcome an opinion from this Court affirming that the superpriority portion of a homeowner's association (HOA) lien is discharged when the deed of trust holder sends a check for the correct amount, and the check is rejected because the HOA refuses to accept anything less than a payoff of the entire lien.

Here, the Court of Appeals overturned the district court ruling that BANA had not made effective tender of the superpriority portion of a homeowner's association (**HOA**) lien when it mailed a check to the HOA's agent Alessi & Koenig (the **HOA Trustee**) for the nine months of unpaid assessments that came due before the HOA recorded its notice of delinquent assessment lien. The district court based its decision on the determination that language in the letter accompanying the check made the tender "conditional." The Court of Appeals rejected that rationale, holding that BANA had a right to include that language. As a result, the Court of Appeals remanded the case for fact-finding on whether the amount of the check was sufficient in light of what the Court deemed to be a lack of clarity in the record.[1]

[1] BANA will explain how the evidence clearly shows that the superpriority portion comprised only nine months of assessments, and that this amount was equal to

The Court of Appeals decided correctly. BANA satisfied the legal requirements for a tender when it presented a check to the HOA's agent for the full superpriority amount. SFR fails to point out any error in that holding.

ARGUMENT

I. Standard Of Review

A petition for review must "state the question(s) presented for review and the reason(s) review is warranted." NRAP 40B(a). This Court considers, among other things,

> (1) Whether the question presented is one of first impression of general statewide significance;
>
> (2) Whether the decision of the Court of Appeals conflicts with a prior decision of the Court of Appeals, the Supreme Court, or the United States Supreme Court; or
>
> (3) Whether the case involves fundamental issues of statewide public importance.

NRAP 40B(a).

BANA's check. Therefore, if this Court does grant review, it should modify the holding to order judgment in BANA's favor.

II. The Court of Appeals Correctly Applied *Ikon Holdings*.

Under the guise of critiquing the Court of Appeals' application of *Horizons at Seven Hills Homeowners Ass'n v. Ikon Holdings, LLC,* 373 P.3d 66 (Nev. 2016), SFR makes the puzzling assertion that to tender the superpriority portion of an HOA lien, a lender must also pay costs and fees from the subpriority portion. SFR criticizes the Court of Appeals for not "considering if the Bank had to pay more [than the superpriority amount] to obtain a release of the superpriority portion of the Association's lien." Petition at 7. However, this Court has already stated that paying off **exactly** the superpriority amount will preserve the priority of a deed of trust. *See SFR Investments Pool 1, LLC v. Bank of America, N.A.*, 334 P.3d 408, 414 (Nev. 2014) ("[A]s junior lienholder, [the holder of the first deed of trust] could have paid off the [HOA] lien **to avert loss of its security**[.]") (emphasis added); *id.* at 413 ("As a practical matter, secured lenders will most likely **pay the [9] months' assessments** demanded by the association **rather than having the association foreclose on the unit**."). SFR provides no authority that a lender has to pay **more than** the superpriority amount.

In reality, SFR is making a backdoor attempt to modify the statutory composition of the superpriority portion. There is no functional difference between the pre-*Ikon Holdings* argument made by investors (including SFR) that collection costs and fees must be paid because they have superpriority and SFR's post-*Ikon*

Holdings argument that they must be paid along with the superpriority amount for some unexplained reason. SFR provides no examples where in order to have a lienholder release the lien, a payor is also required to tender additional money beyond the lien.

SFR ignores *Ikon Holdings* to make the unsustainable argument that the amount required to pay off an HOA's superpriority lien under the pre-amendment version of NRS 116.3116 varies based on the timing of the HOA's and lender's foreclosures. SFR asserts (without any authority) that the holder of a deed of trust must pay an HOA's collection costs and fees to tender the superpriority portion if the HOA attempts to foreclose first, but not when the holder first forecloses on the deed of trust. SFR describes a footnote in *Ikon Holdings* as recognizing a "distinction between these two scenarios." Petition at 7.

However, SFR misread *Ikon Holdings*. In fact, that footnote states,

> When an HOA forecloses on a property, the pre–2015 amendments of NRS 116.31164(3)(c) and NRS 116.3116(8) allowed for the recoupment of fees and costs. However, because [theHOA] did not foreclose on the property, NRS 116.31164(3)(c) and NRS 116.3116(8) are not implicated in this decision.

Ikon Holdings, 373 P.3d at 69 n.4. This merely explains why two statutory provisions addressing fees and collection costs when an HOA forecloses did not apply to the case at hand. This Court did not draw any distinction regarding the amount required to preserve the priority of a deed of trust. Furthermore, that footnote

actually undermines SFR's argument, because it illustrates how the Legislature enacted rules to allow HOAs to receive collection costs and fees without extinguishing deeds of trust. *See id*.

SFR's argument that BANA had to pay more than the superpriority amount to tender that portion of the lien does not merit review.[2]

III. The Record Demonstrates BANA Tendered The Superpriority Amount.

SFR persistently asserts that BANA only made an "offer" to pay the superpriority amount. That is false. BANA sent a check to the HOA Trustee. The accompanying letter explained that the check covered the nine months of assessments that constituted the superpriority portion of the lien. The district court adopted SFR's argument that the language in the letter rendered the payment "conditional" and therefore not effective tender. (4JA_794). The Court of Appeals disagreed.

[2] SFR also describes *Shadow Wood* as distinguishing between foreclosures by a deed of trust holder and by an HOA, but that case concerned "fees and costs incurred after NYCB became the owner of the property." 366 P.3d at 1113. This was confirmed in *Ikon Holdings*: "in *Shadow Wood,* the HOA was entitled to recover the superpriority lien amounts accrued for nine months prior to the bank's foreclosure, and **it was entitled to assessments, fees, and costs accrued after the bank purchased the property**." *Ikon Holdings*, 373 P.3d at 72 (emphasis added)

The Court of Appeals remanded the case solely for determination on whether the amount of the check equaled nine months of assessments. If this Court does grant review, it should modify the holding to order judgment in BANA's favor. The record contains a complete ledger sent by the HOA Trustee detailing each month's assessment: $75.00 per month through January 1, 2012 and $80.00 per month after. (1JA_199-204). BANA sent $720.00, which covered nine $80.00 assessments. (1JA_206-208). The ledger did not indicate nuisance or abatement charges, which would also qualify for statutory superpriority (1JA_200), and these charges have never been alleged. Therefore, the record leaves no doubt that the funds were sufficient; no further fact-finding is required.

Regardless, however, SFR fails to provide a basis for disturbing the Court of Appeals' holding on tender.

A. The HOA Trustee rejected BANA's tender because it was unwilling to accept a superpriority payoff, not on the basis of any of the objections asserted by SFR.

In the petition, SFR asserts that "conditional" language in the letter accompanying the check motivated the HOA Trustee's rejection of BANA's tender. *See* Petition at 15. However, there is no evidence that the HOA Trustee actually made such an objection when it rejected the check. The record not only fails to support SFR's argument, it actually **contradicts** it. The record contains a letter from the HOA Trustee after BANA offered to pay the superpriority amount but before

BANA sent its check, which demanded that BANA send $2,930.00—the entire lien, both subpriority and superpriority—to avoid foreclosure. (1JA_199). Nothing in the record indicates that the HOA Trustee rejected the payment for any other reason (including SFR's speculative "conditional language" objection). Therefore, without contrary evidence, the only reasonable inference is that the HOA rejected the check solely because it did not cover the subpriority portion of the lien.

Any assertion that the HOA Trustee refused the check because of language in the letter is entirely speculative. The record, as noted above, establishes that the HOA Trustee would not accept any superpriority payoff; even though BANA's counsel explained the superpriority statute, the HOA Trustee demanded BANA pay the entire lien. (1JA_199). SFR had the opportunity to depose the HOA Trustee and ask whether it rejected the check because of the letter, but never did so. Instead, SFR asserted this at summary judgment **without evidentiary support**. *See* (2JA_340-41; 3JA_678-679). As the movant, it was SFR's burden to demonstrate the absence of material facts. Upon summary judgment, "any reasonable inference" from the evidence had to be drawn in favor of the nonmovant (*i.e.*, BANA). *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1029 (Nev. 2005). Summary judgment is the time "to put up or shut up," and "unsupported allegations do not create a material issue of fact." *Weinstock v. Columbia Univ.*, 224 F.3d 33, 41 (2d Cir. 2000). SFR cannot be entitled

to summary judgment due to these unsupported allegations, particularly where it passed up its chance to develop the record on this issue.[3]

Furthermore, SFR is barred from asserting an objection that the HOA (or its agent, the HOA Trustee) failed to make when it rejected the tender. "A person to whom a tender is made must, at the time, specify the objections to it, or they are waived." *First Sec. Bank of Utah, N.A. v. Maxwell*, 659 P.2d 1078, 1081 (Utah 1983); *accord Lee v. Peters*, 250 S.W.3d 783, 787 (Mo. Ct. App. 2008) ("An objection to a tender, to be available to a creditor, must be timely made, and the grounds of the objection specified, otherwise it is waived."); *Blackford v. Judith Basin Cty.*, 98 P.2d 872, 876 (Mont. 1940) ("objections to a tender are waived unless specified at the time"); *see also Sellwood v. Equitable Life Ins. Co. of Iowa*, 42 N.W.2d 346, 353 (Minn. 1950) ("[T]he grounds of objection to a tender must be specified by the creditor"); *Lichty v. Whitney*, 182 P.2d 582, 585 (Cal. App. 1947) ("As defendants here made no objection to the form of the tender, any objection to it on that ground was waived.").

Because the HOA Trustee did not reject BANA's tender on any of the grounds argued by SFR, these objections were waived. SFR cannot argue that BANA's

[3] Ironically, SFR's petition criticizes the Court of Appeals for "hindsight bias," when **SFR** invents defenses for the HOA's rejection that the HOA never articulated.

tender was properly rejected because of objections that the HOA never actually made.

B. BANA was entitled to include the language in the letter.

1. The Court of Appeals correctly ruled that the tender was not impermissibly conditional.

The crux of the Court of Appeals' ruling was its rejection of the district court's holding that BANA's tender failed because it was "conditional." The Court of Appeals wrote,

> to the extent it was conditional, Bank of America had a right to insist on the given condition. Bank of America's tender indicated that it represented nine months' worth of HOA assessments and that the HOA's acceptance of the tender would act as a complete resolution of the HOA's superpriority lien. And the supreme court has confirmed that the pre-2015 version of NRS 116.3116 limited the HOA's superpriority lien amount to the amount which Bank of America offered: "an amount equal to the common expense assessments due during the nine months before foreclosure." Thus, Bank of America had a right to insist that acceptance of the nine months' worth of HOA assessments would result in the satisfaction of the HOA's superpriority lien as that condition comported with the law.

2017 WL 2445278 at *2 (internal citations omitted).[4]

[4] To the extent that SFR believes that the party paying off a statutorily fixed lien cannot require the recipient to acknowledge the lien's satisfaction, that position is a nonstarter. Tender does not become ineffective merely because it requires a release from further liability on the recipient's claim. *See Fresk v. Kraemer,* 99 P.3d 282, 287 (Or. 2004) (under a statute precluding an attorney's fee award to a party to whom full damages were tendered prior to litigation, tender was not invalidated by conditioning payment upon a release of liability).

SFR's petition suggests this Court should adopt the district court's holding that BANA's payment was conditional because it "requir[ed] the Association to waive its rights as to a currently undecided matter—namely, what amounts are included in a super-priority lien pursuant to NRS 116." *See* Petition at 13. However, *Ikon Holdings* confirmed that the superpriority composition was "equal to the common expense assessments due during the nine months before foreclosure." 373 P.3d at 66. SFR is wrong to call reliance on *Ikon Holdings* "hindsight bias," because, as the Court of Appeals noted, *Ikon Holdings* interpreted a preexisting statute. *See* 2017 WL 2445278 at *2 n.4.

A court's interpretation of a statute "is explaining its understanding of what the statute has meant continuously **since the date when it became law**." *Rivers v. Roadway Express, Inc.*, 411 U.S. 298, 313 n.12 (1994) (emphasis added). Therefore, it is not true that the superpriority lien composition was undecided before *Ikon Holdings*; its composition was decided once NRS 116 became law.[5]

Finally, SFR's complaints about "hindsight bias" smack of irony. As this Court is well aware, in *SFR Investments*, 334 P.3d 408, SFR prevailed on its argument that it held an interest in property free and clear of a deed of trust as a

[5] Furthermore, the Nevada Real Estate Division of the Department of Business and Industry (NRED), the agency charged with administering NRS 116, released its opinion confirming the correct superpriority composition in December 2012. *See* 13–01 Op. Dep't of Bus. & Indus., Real Estate Div. 18 (2012). This was two months before the HOA sold its interest in the Property to SFR. *See* (1JA_216).

result of an HOA's nonjudicial foreclosure by a 4-3 margin. As a result, lenders have had to face the consequences of any pre-September 2014 decisions made based on the incorrect interpretation of the statute. But now SFR asks this Court to refrain from applying *Ikon Holdings* because of the HOA Trustee's erroneous understanding of the superpriority composition, an understanding that this Court **unanimously** rejected in *Ikon Holdings*. SFR cannot have it both ways.

2. SFR's interpretations of the letter accompanying the tender are patently unreasonable.

Perhaps because there is no plausible objection to BANA's actual letter, SFR mischaracterizes the letter to gin up reasons why the HOA Trustee would have been justified in rejecting payment. For instance, SFR claims that BANA's payment "could be construed to mean it was meant to pay the entirety of the Association's lien" and suggests BANA was "insist[ing] that the Association accept a partial payment as payment in full." Petition at 12. Leaving aside that (1) SFR failed to identify any evidence that the HOA actually had such concerns, and (2) any objections to the tender on those grounds have been waived, SFR's argument fails on the text of the letter.

SFR points to the letter's statement that "BANA's financial obligations towards the HOA in regard to the [Property] have now been 'paid in full.'" (2JA_412). However, SFR conveniently ignores the two immediately preceding sentences, which stated,

> Our client has authorized us to make payment to you in the amount of $720.00 to satisfy its obligations to the HOA **as a holder of the first deed of trust** against the property. Thus, enclosed you will find a cashier's check made out to Alessi & Koenig in the amount of $720.00, **which represents the maximum nine months worth of assessments recoverable by an HOA**.

(1JA_207) (emphasis added). The letter refers three times to "nine months of assessments," states that BANA is paying obligations "as a holder of the first deed of trust," and distinguishes between the superpriority and "junior" (*i.e.* subpriority) portions of the lien. (1JA_206-207). No reasonable reading could conclude that BANA was claiming to pay more than nine months of assessments.

SFR advances another outlandish interpretation of the letter as requiring the HOA to agree that "the Bank would never again have to pay the Association" even if "there were delinquencies in the future or even if the Bank were to purchase the property at its own sale." Petition at 12. This interpretation is also untenable in light of the letter's statements that the tender satisfied "[BANA's] obligations to the HOA as a holder of the first deed of trust" and "represents the maximum nine months worth of assessments recoverable by an HOA." (1JA_206-207). The claim that the letter required the HOA to disclaim future, hypothetical assessments is baseless.

It bears repeating that the HOA Trustee did not reject BANA's payment on the basis of any of SFR's proffered arguments: it rejected the tender because it demanded a payoff of the full lien, not just the superpriority portion. However, even

if the HOA Trustee **had** made such an objection, such an objection would have no plausible basis in the actual language of the letter.

C. BANA was not required to "keep the tender good" after the HOA Trustee rejected it.

SFR also claims BANA's tender was insufficient because BANA did not "keep the tender good." Resp's Br. at 12-13. SFR's only citation is to a comment in the Restatement (Third) of Property: Mortgages concerning the redemption of interests subordinate to **mortgages**. *Id*. However, the Restatement is not the basis of Nevada's HOA lien laws. NRS 116 is based on the Uniform Common Interest Ownership Act (**UCIOA**), which does not suggest that there is any need to "keep good" a tender that was rejected by the HOA. This is consistent with general principles on liens payoffs:

> As a general rule, where a tender is relied on merely defensively, it is not necessary that it must be kept good or that the money be paid into court. Ordinarily, therefore, **where the tender is relied on as having extinguished or discharged a lien, it is not essential to keep it good**.

74 Am. Jur. 2d Tender § 27 (emphasis added).

SFR provides no citation for the theory that a deed of trust holder must do more after an HOA rejects its lien payoff other than the aforementioned inapposite reference to mortgages. This fails to show that BANA's tender was insufficient.

D. Nevada's recording statutes do not apply to any aspect of BANA's superpriority payoff.

SFR's final argument against BANA's tender is that it had to be recorded. Petition at 14-15. This argument fails at the outset because Nevada's recording statutes only protect a bona fide purchaser, which SFR is not, as discussed below in Sec. IV. Equally important, SFR's argument also fails because BANA's payment does not fall within this state's recording statutes.

SFR's argument depends on a fundamental misunderstanding of how Nevada's recording statutes operate. SFR claims that the tender was ineffective because BANA "failed to record any document indicating its attempted payment." Petition at 15. However, the recording statutes cover only "instruments." All of the subsections cited by SFR reveal this: each concerns "instruments" either on its face (NRS 106.220, 111.315) or by reference (NRS 111.315 and 111.325 cover "conveyances," which NRS 111.010 defines as "every instrument in writing . . .").

The hole in SFR's reasoning is that no document involved in BANA's tender was an "instrument." *See* INSTRUMENT, Black's Law Dictionary (10th ed. 2014) (defining instrument as "A written legal document that defines rights, duties, entitlements, or liabilities, such as a statute, contract, will, promissory note, or share certificate."). Nor was the accompanying letter an "instrument." Therefore, the recording statutes did not apply to any aspect of BANA's tender.

Nor was BANA's tender of payment an "interest in property," as SFR also asserts. Petition at 15. BANA had only one interest in the Property: the Deed of Trust, which was recorded well before the foreclosure process began. The payment preserved the priority of BANA's interest; it did not constitute a new interest.

To the extent that SFR argues that BANA should have drafted and recorded a document purporting to release or waive the HOA's lien, that is a non-starter. Throughout Nevada statutory lien law, the lien claimant is responsible for recording a lien release, not the party who paid off the lien. This is reflected in the record—the HOA Trustee, in its letter demanding a check for the full amount of the lien from BANA, wrote, "Upon receipt of payment a release of lien will be drafted and recorded." (1JA_201).

Although NRS 116 does not have a provision dictating who must record a release of a lien after payment, NRS 117, which governs condominiums (another form of common-interest communities), provides that the **condominium association** must record a satisfaction of lien once a lien for delinquent assessments is satisfied. NRS 117.070(1) ("Upon payment . . . the management body shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof."). The same is true for other statutory liens in Nevada. *See, e.g.*, NRS 108.668 (requiring hospital lien claimant to release lien upon payment or face

statutory penalties); NRS 108.2437 (upon payment of a mechanic's lien, "the lien claimant shall cause to be recorded a discharge or release of the notice of lien[.]").

The 2015 amendments to NRS 116 lay out a similar framework. NRS 116.31164(2) requires an **HOA** to record satisfactions of the superpriority portion of the lien before conducting a sale:

> If the holder of the security interest described in paragraph (b) of subsection 2 of NRS 116.3116 satisfies the amount of the association's lien that is prior to its security interest not later than 5 days before the date of sale, the sale may not occur unless a record of such satisfaction is recorded in the office of the county recorder of the county in which the unit is located not later than 2 days before the date of sale.

This states that after a lender has tendered the superpriority portion, the HOA is barred from conducting a foreclosure sale unless a record of the satisfaction is recorded. If the "record of [the superpriority portion's] satisfaction" is not recorded, the tender is still effective; the detriment falls upon the HOA, which cannot conduct a foreclosure sale.

Although this subsection does not state explicitly which party must record the satisfaction, the context makes it clear that it could not be anyone besides the HOA or its agent. The introduction to NRS 116.31164 states, "The sale must be conducted in accordance with the provisions of this section," making it clear that this section governs **the party conducting the sale**. NRS 116.31164(1). This explains why NRS 116.31164(2) restricts the **HOA** from conducting the sale unless the satisfaction has been recorded. Had the Legislature intended for lenders to record satisfactions, it

would have stated that the deed of trust is extinguished unless the lender recorded a notice of satisfaction before the sale.

For all the reasons provided above (the recording statutes do not apply to a payment and BANA could not have recorded a document waiving or surrendering part of the HOA's lien) as well as the fact that SFR was not a bona fide purchaser (discussed in the subsequent section), SFR fails to show that BANA's tender failed on the basis of the recording statutes.

IV. SFR's Bona Fide Purchaser Defense Does Not Warrant Rehearing.

SFR's last supposed ground for review is the bona fide purchaser defense. Petition at 8-11. The Court of Appeals properly rejected SFR's claim to be protected by the bona fide purchaser defense. This Court has never endorsed the idea that a deed of trust holder that tendered the superpriority portion of an HOA lien could still have its interest extinguished by the HOA's foreclosure sale on account of the bona fide purchaser defense. To the contrary: Justice Pickering noted that the "prevailing view" is that "putative bona fide purchaser status is irrelevant" when there was an adequate tender. *Stone Hollow Ave. Tr. v. Bank of Am., Nat'l Ass'n*, 391 P.3d 760 (Table), 2016 WL 8613879 (Nev. Dec. 31, 2016) (Pickering, J., dissenting).

SFR's argument, then and now, is based principally on a misreading of *Shadow Wood Homeowners Ass'n, Inc. v. New York Community Bancorp, Inc.*, 366 P.3d 1105 (2016). In *Shadow Wood*, a quiet title action between a property owner

and a purchaser at an HOA foreclosure sale, this Court instructed the district court to consider the bona fide purchaser defense to determine the effect of the HOA's foresclosure on the bank's ownership interest.

SFR is hung up on the fact that the property owner in *Shadow Wood* was a bank, failing to recognize the relevant differences between an **owner** and a **deed of trust holder**. When the *Shadow Wood* HOA initiated foreclosure proceedings, the bank was the **owner** of the property, not, as in this case, the holder of a deed of trust. *See* 366 P.3d at 1107-08 (explaining that the bank had foreclosed on its deed of trust). As a result, there was no longer any recorded document[6] to provide notice to a purchaser of a competing interest that could survive the HOA's foreclosure; the only interest in the property was the owner's. *Shadow Wood*'s discussion applies only where a party could lack notice of a dispute between the HOA and the owner of the foreclosed property, not, as in this case, where a deed of trust holder has a competing recorded interest in the property.

As a factual matter, SFR has never carried its burden of proof on the bona fide purchaser defense. SFR, the party claiming this defense, has the burden of proof. *Berge v. Fredericks*, 591 P.2d 246, 247-48 (Nev. 1979). BANA's recorded deed of trust was a "prior right or title" in the property, *Berge*, 591 P.2d at 249, that

[6] The deed of trust had been foreclosed upon and was thus a legal nullity. *See Shadow Wood*, 366 P.3d at 1113.

inherently precluded bona fide purchaser status. *See Telegraph Rd. Trust v. Bank of America, N.A.*, No. 67787, 2016 WL 5400134 (Nev. Sep. 16, 2016) (unpublished) (notice of a deed of trust is sufficient to defeat bona fide purchaser status).

Furthermore, the deed of trust put SFR under a duty to make "adequate inquiry" into the status of BANA's interest in the Property. However, there is no evidence nor even allegations that SFR inquired into the status of the deed of trust. Therefore, even if the bona fide purchase defense could be relevant, SFR failed to carry its burden of proof.[7]

[7] SFR's argument that BANA is not entitled to quiet title because it could seek damages from the HOA fails because it depends on the premise that SFR was a bona fide purchaser. *See* Petition at 18-20.

CONCLUSION

For all of the above reasons, this Court should decline to review the decision of the Court of Appeals reversing the district court's summary judgment.

DATED this 12th day of October, 2017.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this answer to a petition for review has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman and 14 point font size.

I FURTHER CERTIFY that this answer to a petition for review complies with the page or type-volume limitations of NRAP 40(b)(3) because, excluding the parts of the answer exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points or more and contains 4,594 words.

FINALLY, I CERTIFY that I have read this **APPELLANT'S ANSWER TO RESPONDENT'S PETITION FOR REVIEW**, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that the accompanying answer is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 12th day of October, 2017.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of October, 2017, the foregoing **APPELLANT'S ANSWER TO RESPONDENT'S PETITION FOR REVIEW** was electronically filed:

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