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12 *Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-*
13 *A8*

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 **U.S. BANK, NATIONAL ASSOCIATION AS**
12 **TRUSTEE FOR MERRILL LYNCH**
13 **MORTGAGE INVESTORS TRUST,**
14 **MORTGAGE LOAN ASSET-BACKED**
15 **CERTIFICATES, SERIES 2005-A8,**

16 **Plaintiff,**

17 **vs.**

18 **SFR INVESTMENTS POOL 1, LLC, a Nevada**
19 **limited liability company,**

20 **Defendant.**

21 **SFR INVESTMENTS POOL 1, LLC, a**
22 **Nevada limited liability company,**

23 **Counter- Claimant,**

24 **vs.**

25 **U.S. BANK, NATIONAL ASSOCIATION AS**
26 **TRUSTEE FOR MERRILL LYNCH**
27 **MORTGAGE INVESTORS TRUST,**
28 **MORTGAGE LOAN ASSET-BACKED**
CERTIFICATES, SERIES 2005-A8,

Counter- Defendant.

Case No.: A-16-739867-C
Dept. No.: XXXI

NOTICE OF APPEAL

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NOTICE OF APPEAL

Notice is hereby given than Plaintiff/Counter/Cross-Defendant, U.S. Bank, National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8 (“U.S. Bank”), by and through its attorneys of record, Matthew S. Carter, Esq. and Natalie C. Lehman, Esq., of the law firm of Wright, Finlay & Zak, LLP, hereby appeals to the Supreme Court of Nevada from the Findings of Fact and Conclusions of Law and Judgment entered on June 19, 2019, attached hereto as **Exhibit 1**, and all other orders made final thereby.

DATED this 18th day of July, 2019.

WRIGHT FINLAY & ZAK LLP

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U.S. Bank, National Association as Trustee for
Merrill Lynch Mortgage Investors Trust, Mortgage
Loan Asset-Backed Certificates, Series 2005-A8*

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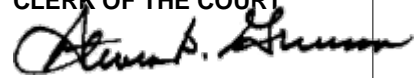
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Exhibit 1

Exhibit 1

Exhibit 1



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DISTRICT COURT

CLARK COUNTY, NEVADA

U.S. BANK, NATIONAL ASSOCIATION AS
TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

Plaintiff,

vs.

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

Defendants.

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

Counter/Cross Claimant,

vs.

U.S. BANK, NATIONAL ASSOCIATION AS
TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

Counter/Cross Defendants.

Case No. A-16-739867-C

Dept. No. XXXI

**NOTICE OF ENTRY OF FINDINGS OF
FACT AND CONCLUSIONS OF LAW
AND JUDGMENT**

KIM GILBERT EBRON
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1 PLEASE TAKE NOTICE that on June 18, 2019 the **FINDINGS OF FACT AND**
2 **CONCLUSIONS OF LAW AND JUDGMENT** was entered. A copy of said Order is attached
3 hereto.

4 DATED this 19th day of June, 2019.

5 **KIM GILBERT EBRON**

6 /s/ Diana S. Ebron

7 DIANA S. EBRON, ESQ.

8 Nevada Bar No. 10580

9 7625 Dean Martin Drive, Suite 110

10 Las Vegas, Nevada 89139

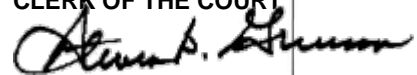
11 *Attorney for SFR Investments Pool 1, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of June, 2019, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT** to the following parties:

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/s/ Diane L. DeWalt
An Employee of KIM GILBERT EBRON



1 FFCL

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA
5

6 U.S. BANK, NATIONAL ASSOCIATION AS
7 TRUSTEE FOR MERRILL LYNCH
8 MORTGAGE INVESTORS TRUST,
9 MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

10 Plaintiff,

11 vs.

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

13 Defendants.

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

16 Counter/Cross Claimant,

17 vs.

18 U.S. BANK, NATIONAL ASSOCIATION AS
19 TRUSTEE FOR MERRILL LYNCH
20 MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

21 Counter/Cross Defendants.

Case No. A-16-739867-C

Dept. No. XXXI

**FINDINGS OF FACT AND CONCLUSIONS
OF LAW AND JUDGMENT**

22 This matter came before the Court for trial on April 16, 17, 18, 23, 24,
23 2019, and May 20, 2019. Karen L. Hanks, Esq. and Jason G. Martinez, Esq.
24 appeared on behalf of SFR Investments Pool 1, LLC ("SFR"). Natalie Lehman,
25 Esq. and Dana Nitz, Esq. appeared on behalf of U.S. Bank National Association
26 as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-
27 Backed Certificates, Series 2005-A8 ("U.S. Bank"). Having reviewed and

1 considered the facts, testimony of witnesses and arguments of counsel, for the
2 reasons stated on the record, and good cause appearing, the Court makes the
3 following Findings of Fact and Conclusions of Law:¹

4 **I. FINDINGS OF FACT**

5 Some of the following facts were stipulated to by the parties by way of
6 their Amended Joint Pre-Trial Memorandum. Where such facts were stipulated,
7 the Court takes such facts and unrefuted and undisputed:

8 1. In 1991, Nevada adopted the Uniform Common Interest Ownership
9 Act as NRS 116, including NRS 116.3116(2).

10 2. On June 23, 2004, the Antelope Homeowners Association
11 ("Association") perfected and gave notice of its lien by recording its Declaration of
12 Covenants, Conditions, and Restrictions ("CC&Rs") in the Official Records of the
13 Clark County Recorder as Instrument No. 200406230002013. (Ex. 1).²
14 Thereafter the Association recorded a Second Amendment to CC&Rs as
15 Instrument No. 200609140003739. (Ex. 2.)

16 3. On May 23, 2005, a Grant, Bargain Sale Deed transferring the real
17 property commonly known as 7868 Marbledoe Street, Las Vegas, Nevada
18 89149; Parcel No. 125-18-112-069 ("Property") Henry and Freddie Ivy ("Ivies")
19 was recorded in the Official Records of the Clark County Recorder as Instrument
20 No. 200610030004304. (Ex. 3.)

21 4. On May 23, 2005, a Deed of Trust identifying Mortgage Electronic
22 Registrations Systems, Inc. ("MERS") as nominee beneficiary for the originating
23

24
25 ¹ Pursuant to the agreement of the parties, the proposed Findings were filed and submitted by
26 June 4, 2019. Any Findings of Fact that are more appropriately Conclusions of Law shall be so
27 deemed. Any Conclusions of Law that are more appropriately Findings of Fact shall be so
28 deemed.

² The Parties stipulated to this fact.

1 lender, Universal American Mortgage Company, LLC ("Universal"), as Instrument
2 No. 200505230004228 ("Deed of Trust"). (Ex. 5.)³

3 5. On November 12, 2009, the Association, through its agent, Alessi &
4 Koenig, LLC ("Alessi"), recorded a Notice of Delinquent Assessment Lien
5 ("NODAL") in the Official Records of the Clark County Recorder as Instrument
6 No. 200911120004474. (Ex. 9.)⁴

7 6. On February 17, 2011, Alessi recorded a Notice of Default and
8 Election to Sell Under Homeowners Association Lien ("NOD") in the Official
9 Records of the Clark County Recorder as Instrument No. 201102170001289.
10 (Ex. 11.)⁵

11 7. On April 11, 2011, Alessi recorded a Notice of Sale ("NOS #1") in
12 the Official Records of the Clark County Recorder as Instrument No.
13 201108110003087. (Ex. 12.)⁶

14 8. On April 16, 2012, Alessi recorded a Notice of Sale ("NOS #2") in
15 the Official Records of the Clark County Recorder as Instrument No.
16 201204160000922. (Ex. 13.)⁷

17 9. On July 2, 2012, Alessi recorded a Notice of Sale ("NOS #3") in the
18 Official Records of the Clark County Recorder as Instrument No.
19 201207020001432. (Ex. 14.)⁸

20
21
22 ³ The parties stipulated to this fact.

23 ⁴ The parties stipulated to this fact.

24 ⁵ The parties stipulated to this fact.

25 ⁶ The parties stipulated to this fact.

26 ⁷ The parties stipulated to this fact.

27 ⁸ The parties stipulated to this fact.

1 10. Alessi, on behalf of the Association, mailed the NOD, NOS #1,
2 NOS#2 and NOS#3 to U.S. Bank's predecessor in interest, Universal and/or its
3 agent(s).⁹

4 11. Universal, the then recorded beneficiary of the Deed of Trust,
5 and/or its agent(s), received the NOD, NOS #1, NOS#2 and NOS#3.¹⁰

6 12. The Association foreclosure sale occurred on July 25, 2012
7 ("Sale").¹¹

8 13. On August 3, 2012, a Trustee's Deed Upon Sale ("Trustee's Deed")
9 was recorded in the Official Records of the Clark County Recorder, conveying
10 the Property to SFR Investments Pool 1, LLC ("SFR"). (Ex. 15.)¹²

11 14. SFR paid Alessi \$5,950.00 in exchange for the Trustee's Deed.

12 15. At the time of the Association Sale, Universal was the owner of the
13 Ivy Note and beneficiary of record of the Deed of Trust.¹³

14 16. On June 1, 2018, a Corporate Assignment of Deed of Trust was
15 recorded in which all beneficial interest in the Deed of Trust was purportedly
16 assigned to GreenPoint Mortgage Funding, Inc. (Ex. 34.)¹⁴

17 17. On July 2, 2018, a Corporate Assignment of Deed of Trust was
18 recorded in which all beneficial interest in the Deed of Trust was purportedly
19 assigned to U.S. Bank National Association, as trustee, successor in interest to
20 Wachovia Bank, National Association, as trustee for Merrill Lynch Mortgage
21

22 ⁹ The parties stipulated to this fact.

23 ¹⁰ The parties stipulated to this fact.

24 ¹¹ The parties stipulated to this fact.

25 ¹² The parties stipulated to this fact.

26 ¹³ The parties stipulated to this fact.

27 ¹⁴ The parties stipulated to this fact.

1 Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8 ("U.S.
2 Bank"). (Ex. 42.)¹⁵

3 18. On July 12, 2016, U.S. Bank filed a complaint against SFR.
4 Nowhere in the complaint does U.S. Bank plead tender or any facts related to
5 tender.

6 19. On May 8, 2018, U.S. Bank filed an amended complaint. This is the
7 first pleading where U.S. Bank pleads tender.
8

9 **II. CONCLUSIONS OF LAW**

10 **A. Evidentiary Rulings Re Witnesses Made During Trial**

11 1. U.S. Bank attempted to call a witness from Universal American
12 Mortgage Company, LLC. The Court granted SFR's objection to the same for
13 the following reasons: U.S. Bank never identified a witness by name for Universal
14 in violation of NRCP 16.1. There was no good cause presented for the failure to
15 name the witness. SFR raised timely objection(s). SFR also established that it
16 would be prejudiced if the Court allowed the unnamed witness to testify as they
17 had no opportunity to depose or have knowledge of what the witness would
18 state. After a full opportunity for oral argument by the parties the Court found the
19 Bank's conduct to be a per se violation of the Rule and under Rule 16.1(e)(3)
20 combined with the prejudice meant that the witness was precluded from
21 testifying at trial.

22 2. U.S. Bank attempted to call a witness from the Nevada Real Estate
23 Division ("NRED") by the name of Teralyn Thompson. The Court granted SFR's
24 objection to the same after a full hearing on the merits. The Court's reasoning
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27 ¹⁵ The parties stipulated to this fact.
28

1 included *inter alia*: Neither NRED, nor Ms. Thompson were disclosed under
2 NRCP 16.1 as required. There was no good cause cited for the failure to name
3 her. Likewise, the documents for which the witness was expected to testify were
4 never disclosed as required by Rule 16.1. The first time these documents were
5 asserted to have been mentioned was the day before trial, via email to counsel
6 for SFR. The Court finds this to be a per se violation. Both the witness and the
7 documents were readily available during the discovery period, and the Bank was
8 aware of NRED's involvement by virtue of the NRED mediation; notice of
9 completion of which was filed on January 9, 2018. The Court further found that
10 the Bank had not shown good cause why the Bank failed to disclose the witness
11 and documents or sought relief from the Court to extend discovery. SFR raised
12 timely objection(s). The Court further found that SFR was prejudiced by the
13 failure to disclose as it could not depose the witness; did not prepare to have the
14 documents taken into account in the case; and thus, it would not be proper to
15 allow the witness to testify or have the documents introduced for the first time at
16 trial.

17 3. U.S. Bank attempted to call Harrison Whitaker, an employee of
18 Ocwen Financial Corporation, as both a witness on behalf of U.S. Bank and as
19 custodian of records. After a full hearing on the merits, the Court granted SFR's
20 objection to the same for the following reasons: Neither Mr. Whittaker nor
21 Ocwen were disclosed as a witness in this case as required by NRCP 16.1 and
22 the Court finds this is a per se violation. SFR raised timely objection(s). The
23 Bank knew at the time it was hired by Ocwen, that Ocwen was acting as the loan
24 servicer; and, therefore, if they intended to call Ocwen as a witness at trial, the
25 Bank could have disclosed an Ocwen witness. The Court acknowledges the
26 Bank produced Katherine Ortwerth as its 30(b)(6) witness during discovery and
27 took the fact that she left Ocwen into account. Given she left Ocwen's employ in
28

1 or around February 2019, and the trial was several months later, the Court found
2 that the Bank never named another witness for Ocwen or disclosed Ocwen
3 overall as a potential witness despite having time to do so. The Bank also chose
4 not to file a pre-trial motion to handle this issue despite knowing that SFR had
5 timely objected. The Court also found that SFR established it would be
6 prejudiced and thus in light of the totality of the circumstances, the Court found it
7 proper to sustain SFR's objection.

8 **B. Rule 52(c) Motions**

9 4. At the close of U.S. Bank's case in chief, SFR brought several Rule
10 52(c) motions based on the issues of law identified by U.S. Bank in the joint pre-
11 trial memorandum.

12 5. As to the Motion Re: Issue #5, whether the HOA's foreclosure sale
13 was wrongful and/or complied with the provisions of NRS Chapter 116, to the
14 extent tender is alleged, the Court denied the Motion without prejudice.

15 6. As to the Motion re: Issue #6, whether the HOA's foreclosure sale
16 should be set aside, and within that inquiry: (a) whether the price paid at the
17 foreclosure sale was inadequate; and (b) whether there were elements of fraud,
18 unfairness, and/or oppression in the HOA foreclosure process and resulting sale,
19 the Court granted this Motion. The only evidence U.S. Bank proffered for value
20 was the Assessor's taxable value for 2008 and 2010. There being no value from
21 2012 for the Court to compare to the price paid by SFR at the 2012 sale, the
22 Court cannot determine whether the price paid was grossly inadequate. But
23 even if the Court could compare the price paid to the proffered values, price
24 alone is not enough. There must be additional evidence of fraud, unfairness, and
25 oppression that accounted for or brought about the price paid, and the Court
26 finds no such evidence. See *Nationstar Mortgage, LLC v. Saticoy Bay, LLC*
27 *Series 2227 Shadow Canyon*, 405 P.3d 641, 647 citing *Golden v. Tomiyasu*, 79

1 Nev. 503, 514, 387 P.2d 989, 995 (1963) (internal citations omitted) (emphasis
2 added).

3 7. As to the Motion Re: Issue #7, whether the mortgage protection
4 clause(s) in the CC&Rs was applicable to subordinate the HOA assessment lien
5 to the Deed of Trust or preclude extinguishment of the Deed of Trust by a
6 foreclosure sale under NRS 116.31162 through NRS 116.31168, the Court
7 granted this Motion. No CC&Rs were admitted into evidence, so the Court
8 cannot determine whether a mortgage protection clause even existed in the
9 Association's CC&Rs.

10 8. As to the Motion Re: Issue #8, whether the recitals in the
11 Foreclosure Deed are conclusive proof of any matter contained therein, the Court
12 granted this Motion in part. The Motion is granted with respect to those recitals
13 contained in the Foreclosure Deed. As to the equity portion, the Motion is denied
14 without prejudice.

15 9. As to the Motion Re: Issue #9, whether the HOA lien and Notices
16 of Default and Sale included items and amounts not permitted by the CC&Rs and
17 NRS Chapter 116, the Court grants the Motion in part. It is granted as to the
18 CC&Rs as these were never admitted, so there is no proof the notices included
19 amounts not permitted by the CC&Rs. The Motion is also granted as to NRS
20 116. There is no evidence the Notices included amounts not permitted by NRS
21 116. The Court denies, without prejudice, as to the superpriority amount.

22 10. As to the Motion Re: Issue #10, whether SFR was a bona fide
23 purchaser of the Property as a matter of Nevada law, the Court denied this
24 Motion without prejudice.

1 **C. Subject Matter Jurisdiction**

2 11. At the time U.S. Bank filed its Complaint (July 12, 2016), U.S. Bank
3 was not the real party in interest and lacked standing; and therefore, under
4 NRCP 12(h)(3), dismissal of U.S. Bank's action is mandated.

5 12. Under NRCP 17(a), "[a]n action must be prosecuted in the name of
6 the real party in interest."

7 13. "A real party in interest is one who possesses the right to enforce
8 the claim and has a significant interest in the litigation." *Arguello v. Sunset*
9 *Station, Inc.*, 127 Nev. 365, 368, 252 P.3d 206, 208 (2011) (internal quotations
10 omitted).

11 14. In short, the determination is whether the plaintiff is the correct
12 party to bring the suit. See *Elley v. Stephens*, 104 Nev. 413, 416-17, 760 P.2d
13 768, 771 (1988) ("appellants are asserting someone else's potential legal
14 problem; they are not the proper party to assert [this claim]"); see also *Hammes*
15 *v. Brumley*, 659 N.E.2d 1021, 1030 (Ind. 1995) (citing *Bowen v. Metro Bd. Of*
16 *Zoning Appeals*, 317 N.E.2d 193 (Ind. App. 1974)) (a real party in interest is the
17 person who is the true owner of the right sought to be enforced).

18 15. Here, the parties stipulated that at the time of the Association sale,
19 Universal was owner of the Ivy Note and beneficiary of record of the Deed of
20 Trust.

21 16. Also, at the time U.S. Bank filed its Complaint (July 12, 2016),
22 Universal was still the recorded beneficiary of the Deed of Trust. (Ex. 5.) This is
23 another stipulated fact by the parties.

24 17. As such, Universal was the real party in interest on July 12, 2016,
25 not U.S. Bank.

26 18. "The inquiry into whether a party is a real party in interest overlaps
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1 with the question of standing.” *Arguello*, 252 P.3d at 208. The question of
2 standing “focuses on the party seeking adjudication rather than on the issues
3 sought to be adjudicated.” *Szilagyi v. Testa*, 99 Nev. 834, 838, 673 P.2d 495, 498
4 (1983). In order to have standing, the party must also have suffered a legally
5 redressable harm and the suit must be “ripe” and not “moot” (at least as to the
6 particular plaintiff) at the time of the lawsuit. See *Schwartz v. Lopez*, 382 P.3d
7 886, 894 (Nev. 2016) (to establish standing, a party must show the occurrence of
8 an injury that is personal to him and not merely a generalized grievance.)
9 (emphasis added.)

10 19. Whether a party has standing is a question that goes to the court's
11 jurisdiction. *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 964-65, 194
12 P.3d 96, 105 (2008); *Vaile v. Eighth Jud. Dist. Ct.*, 118 Nev. 262, 276, 44 P.3d
13 506, 515–16 (2002).

14 20. A court lacks the power to grant relief when (1) an indispensable
15 party is absent; or (2) the dispute is moot or not yet ripe, or a party does not have
16 the legal right to seek or receive the requested relief. See *State Indus. Ins. Sys.*
17 *v. Sleeper*, 100 Nev. 267, 269, 679 P.2d 1273, 1274 (1984) (“There can be no
18 dispute that lack of subject matter jurisdiction renders a judgment void”). See
19 generally John G. Roberts, Jr., *Article III Limits on Statutory Standing*, 42 Duke
20 L.J. 1219, 1230 (1993); Antonin Scalia, *The Doctrine of Standing as an Essential*
21 *Element of the Separation of Powers*, 17 Suffolk U.L.Rev. 881, 881 (1983).

22 21. “Nevada has a long history of requiring an actual justiciable
23 controversy as a predicate to judicial relief” i.e. standing. *In re Amerco Derivative*
24 *Litig.*, 127 Nev. 196, 213, 252 P.3d 681, 694 (2011) (internal quotations omitted)
25 (citing *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986)).

26 22. Further, “a justiciable controversy [is] a preliminary hurdle to an
27 award of declaratory relief.” *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444
28

1 citing *Southern Pacific Co. v. Dickerson*, 80 Nev. 572, 576, 397 P.3d 187, 190
2 (1964)). What constitutes a justiciable controversy is defined in *Kress v. Corey*,
3 65 Nev. 1, 189 P.2d 352 (1948) as:

4
5 (1) there must exist a justiciable controversy; that is to say, a
6 controversy in which a claim of right is asserted against one
7 who has an interest in contesting it; (2) the controversy must be
8 between persons whose interests are adverse; (3) the party
9 seeking declaratory relief must have a legal interest in the
10 controversy, that is to say, a legally protectable interest; and (4)
11 the issue involved in the controversy must be ripe for judicial
12 determination.

13
14 23. Here, U.S. Bank falls short of these requirements. First, U.S. Bank
15 had no claim of right at the time of filing the Complaint because it did not become
16 the recorded beneficiary until July 2, 2018, nearly two years after the filing of the
17 Complaint. Thus, U.S. Bank had no interest in the Deed of Trust at the time the
18 Complaint filed. Second, in order for U.S. Bank's interest to be adverse to
19 SFR's, U.S. Bank would actually have to have an interest in the first place. But
20 at the time of filing the Complaint, U.S. Bank had no interest in the Deed of Trust.
21 Third, because U.S. Bank had no interest at the time it sued SFR, it follows that
22 U.S. Bank did not have a legally protectable interest at the time of filing. Finally,
23 because U.S. Bank had no interest at the time it sued SFR, all claims U.S. Bank
24 asserted against SFR were not ripe for judicial determination.

25
26 24. Based on the above, U.S. Bank has failed to show a justiciable
27 controversy and failed to show any injury. As such, U.S. Bank lacked standing at
28 the time the claims were filed against SFR.

29
30 25. Nor can the later assignment to U.S Bank in July 2018, while this
31 case was pending, cure the lack of subject matter jurisdiction at the outset. This

1 is so because subject matter jurisdiction “cannot be conferred by the parties.”
2 *Swan v. Swan*, 106 Nev. 464, 469, 796 P.2d 221, 224 (1990).

3 26. Under NRCP 12(h)(3), “[i]f the court determines at any time that it
4 lacks subject-matter jurisdiction, the court must dismiss the action.”

5 27. Because the Court finds that U.S. Bank was neither the real party in
6 interest, nor did it have standing at the time it filed its Complaint, the Court finds it
7 lacked subject matter jurisdiction from the outset. As such, under NRCP
8 12(h)(3), this Court dismisses U.S. Bank’s action.

9 **D. Statute of Limitations**

10 28. U.S. Bank alleges “quiet title” against SFR. In Nevada, “quiet title”
11 is just a slang term to identify any action where one party claims an interest in
12 real property adverse to another. Thus, the title of U.S. Bank’s claim does
13 nothing to assist the Court in determining which statute of limitations applies. In
14 order to determine this, the Court must look at the nature of the grievance to
15 determine the character of the action, rather than the labels in the pleadings.
16 *Torrealba v. Kesmetis*, 124 Nev. 95, 178 P.3d 716, 723 (2008).

17 29. Here, when the nature of U.S. Bank’s grievance is analyzed,
18 tender, i.e. the Association lacked authority to foreclose because the default of
19 the superpriority portion was cured, it becomes readily apparent that a three-year
20 statute of limitations applies under NRS 11.190(3)(a).

21 30. As the Nevada Supreme Court noted in *Torrealba*, “[t]he phrase
22 ‘liability created by statute’ means a liability which would not exist but for the
23 statute.” *Torreabla*, 178 P.3d at 722. The Court further noted, “[w]here a duty
24 exists only by virtue of a statute ... the obligation is one created by statute.”” *Id.*
25 quoting *Gonzalez v. Pacific Fruit Express Co.*, 99 F.Supp. 1012, 1015
26 (D.Nev.1951) (quoting *Abram v. San Joaquin Cotton Oil Co.*, 46 F.Supp. 969,
27 976 (D.Cal.1942)) (internal citations and quotations omitted).

1 31. Here, the “character” of U.S. Bank’s tender claim is simple: the
2 Association had a duty to accept BANA’s tender, and it unjustifiably refused it.
3 U.S. Bank even pled as much: “[t]he HOA trustee refused to accept [BANA’s]
4 tender.” By virtue of this “rejection” U.S. Bank claims the “liability” is a void sale
5 resulting in SFR taking subject to the deed of trust. This duty to accept tender
6 arises implicitly from NRS 116 because as the Nevada Supreme Court noted, it
7 is the statute, i.e. NRS 116.3116 that governs liens against units for HOA
8 assessments and details the portion of the lien that has superpriority status.”
9 *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 427 P.3d 113, 116 (Nev.
10 2018) (“*SFR III*”).

11 32. In other words, but for the statute, there would be no superpriority
12 portion and, in turn, no duty on the part of the Association to accept payment of
13 this portion from a bank, like BANA. Moreover, but for the Association’s
14 rejection, there would be no liability on the part of SFR by way of taking, subject
15 to the Deed of Trust. All told, the Association’s lien is created by statute; the
16 superpriority mechanism of that lien is created by statute; the superpriority
17 portion is fixed by statute; and the Association’s implicit duty to accept payment
18 of the superpriority portion is created by statute. See *Torrealba*, 178 P.3d at 723.

19 33. Based on this, U.S. Bank’s tender claim is subject to the three-year
20 statute of limitations prescribed by NRS 11.190(3)(a). Here, the sale occurred on
21 July 25, 2012. Thus, the date by which U.S. Bank had to file its tender claim was
22 July 25, 2015. Having not alleged its tender claim until May 5, 2018, U.S. Bank’s
23 tender claim is time-barred.

24 34. The Court rejects U.S. Bank’s argument that a five-year statute of
25 limitations under NRS 11.070 and NRS 11.080 applies. Neither of these statutes
26 are time-bar statutes; they are standing statutes. Regardless, neither statute
27 could ever apply to U.S. Bank as it never possessed the subject property, which
28

1 both statutes require. But even if a five-year statute of limitations did apply, U.S.
2 Bank would still be time-barred as it did not plead tender until nearly six years
3 after the sale.

4 35. The Court rejects U.S. Bank's argument that its Amended
5 Complaint (filed May 5, 2018) relates-back to its original Complaint (filed July 12,
6 2016). For one, because a three-year statute of limitations applies, relation-back
7 does not save the bank as the original Complaint is time-barred. But even if the
8 Court applied a longer statute of limitations, relation-back would not apply.

9 36. NRCP 15(c) states "[w]henver the claim or defense asserted in the
10 amended pleading arose out of the conduct, transaction, or occurrence set forth
11 or attempted to be set forth in the original pleading, the amendment relates back
12 to the date of the original pleading." However, "where the original pleading does
13 not give a defendant 'fair notice of what the plaintiff's [amended] claim is and the
14 grounds upon which it rests,' the purpose of the statute of limitations has not
15 been satisfied and it is 'not an original pleading that [can] be rehabilitated by
16 invoking Rule 15(c).'" *Baldwin County Welcome Center v. Brown*, 466 U.S. 147,
17 149 n. 3, 104 S.Ct. 1723 (internal marks and citation omitted). *See also, Glover*
18 *v. F.D.I.C.*, 698 F.3d 139, 146 (3d Cir. 2012).

19 37. In other words, the analysis under NRCP 15(c) is "whether the
20 original complaint adequately notified the defendants of the basis for liability the
21 plaintiffs would later advance in the amended complaint." *Meijer, Inc. v. Biovail*
22 *Corp.*, 533 F.3d 857, 866 (D.C. Cir. 2008) (emphasis added). Similarly, Nevada
23 law will not allow a new claim based upon a new theory of liability asserted in an
24 amended pleading to relate-back under NRCP 15(c) after the statute of
25 limitations has run. *Nelson v. City of Las Vegas*, 99 Nev. 548, 556–57, 665 P.2d
26 1141, 1146 (1983).

1 38. Here, U.S. Bank's original complaint, filed on July 12, 2016, never
2 pled tender or any allegations related to tender. It made no allegations
3 whatsoever that the super-priority portion was cured. Simply put, anyone reading
4 the original Complaint would have no idea U.S. Bank would later claim it
5 tendered the superpriority portion of the lien. Compare this to U.S. Bank's
6 Amended Complaint, U.S. Bank completely changed the basis for which it was
7 challenging the sale i.e. tender. Because of this there is no relation-back. See
8 *Nutton v. Sunset Station, Inc.*, 357 P.3d 966 (Nev. 2015). This provides an
9 independent basis for U. S. Bank's claims to fail.

10 **E. U.S. Bank Failed to Prove a Deliver of a Valid Tender**

11 39. In Nevada, "[v]alid tender requires payment in full." *SFR III*, 427
12 P.3d 113 at 117.

13 40. Under NRS 116.31162(b), the superpriority portion of the
14 Association's lien is comprised of (1) nine-months of common assessments; and
15 (2) charges incurred for nuisance-abatement and maintenance under NRS
16 116.310312.

17 41. In Nevada, "[t]he burden of demonstrating that the delinquency was
18 cured presale, rendering the sale void, [is] on the party challenging the
19 foreclosure..." *Resources Group, LLC v. Nevada Association Services, Inc.*, 437
20 P.3d 154, 156 (Nev. 2019).

21 42. Thus, under Nevada law U.S. Bank bears the burden of proving
22 what the superpriority amount was at the time of the sale, and that it delivered a
23 full payment of this amount prior to the sale.

24 43. At trial, U.S. Bank offered a letter with a check written from Miles
25 Bauer's Trust Account in the amount of \$405.00, dated December 16, 2011, (Ex.
26 24), but there was no evidence the check was in fact delivered to Alessi. Mr.
27 Jung only testified about general practices of the firm in terms of delivering
28

1 similar checks like the one at Ex. 24, but had no personal knowledge about Ex.
2 24; and therefore, offered no specific testimony about Ex. 24. (Testimony of R.
3 Jung, Day 1, at 6:5-15; 25:16-20; 25:24-25-26:1-4.)

4 45. Mr. Jung was asked if he recalled sending a tender check in this
5 case, and his answer was, "[i]ndependently, I don't." (*Id.* at 26:17-19.)

6 44. U.S. Bank offered no run slip or testimony from any runner that Ex.
7 24 was in fact delivered to Alessi prior to the sale. This is compelling to the Court
8 in light of Mr. Jung's testimony that the practice of Miles Bauer was to deliver
9 said letters via runner. (*Id.* at 26:6-8.) This also comports with Mr. Alessi's
10 testimony. (Testimony of D. Alessi, Day 3, at 86:16-23.)

11 55. U.S. Bank offered no receipt of copy to show delivery. This is
12 compelling to the Court in light of Mr. Alessi's testimony that delivery of said
13 letters were accompanied by an ROC that Alessi signed when it accepted the
14 letter. (*Id.* at 86:1-18.)

15 56. Further, Mr. Alessi testified that it was the practice of Alessi to
16 maintain a copy of letters like Ex. 24 in the file and/or notate its status report of
17 receipt of such letter. (*Id.* at 85:7-10; 14-19; 87:2-7.) The letter was absent from
18 Alessi's file and the status report does not notate receipt of Ex. 24. (*Id.* at 84:16-
19 19; *see also*, Ex. 30.)

20 57. NRS 51.145 provides that "[e]vidence that a matter is not included
21 in the records in any form, of a regularly conducted activity, can be used to prove
22 the nonoccurrence or nonexistence of the matter, if the matter was of a kind of
23 which was regularly made and preserved."

24 58. What is included in the status report, in addition to what is not, also
25 convinces the Court that Ex. 24 was not delivered. Specifically, on June 8, 2012,
26 and July 3, 2012, nearly a year after Ex. 24 was dated, Alessi received two
27 payoff requests from Miles Bauer. Had Miles Bauer delivered Ex. 24, these
28

1 payoff requests make little sense. (Ex. 30 at 616-617.) Additionally, Ocwen, the
2 servicer of the loan, inquired of Alessi about excess proceeds on September 24,
3 2014. (*Id.*) Had the Bank believed it tendered the superpriority amount, its
4 servicer would not have sought out excess proceeds as these monies are only
5 available to junior, extinguished lienholders. See NRS 116.31164.

6 59. All told, U.S. Bank failed to prove by a preponderance of the
7 evidence that Ex. 24 was delivered. But even more damaging to U.S. Bank's
8 claim is it never proved the superpriority amount. At trial, no ledgers were
9 admitted into evidence that could prove this amount. Likewise, the Court strikes
10 Mr. Alessi's testimony about the amount of the monthly assessments in 2009 as
11 this testimony constituted inadmissible hearsay to which SFR timely objected.

12 60. Having failed to prove the superpriority amount, even if this Court
13 could find Ex. 24 was delivered prior to the sale (which it cannot), the amount is
14 meaningless as the Court cannot determine from the evidence whether it was a
15 payment in full.

16 61. Having failed to prove its tender claim, the Court concludes the sale
17 extinguished the Deed of Trust.

18 ORDER

19
20 1. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED U.S.
21 Bank's action against SFR is DISMISSED on the basis the Court lacked subject
22 matter jurisdiction at the time U.S. Bank filed its action.

23 2. IT IS HEREBY ORDERED, ADJUDGED AND DECREED U.S.
24 Bank's claim against SFR, which is grounded in tender, is time-barred.

25 3. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED the
26 Deed of Trust recorded against real property located at 7868 Marbledoe Street,
27 Las Vegas, Nevada 89149; Parcel No. 125-18-112-069, recorded in the Official
28

1 Records of the Clark County Recorder as Instrument No. 200505230004228,
2 was extinguished by the July 25, 2012 Association sale.

3 2. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED U.S.
4 Bank its predecessors in interest and successors and assigns, principals, or
5 anyone else claiming an interest in the Deed of Trust, have no further right, title
6 or interest in real property located at 7868 Marbledoe Street, Las Vegas, Nevada
7 89149; Parcel No. 125-18-112-069 and are hereby permanently enjoined from
8 taking any further action to enforce the now extinguished Deed of Trust, including
9 but not limited to, clouding title, initiating or continuing to initiate foreclosure
10 proceedings, or taking any other actions to sell or transfer the Property.

11 3. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED title to
12 real property located at 7868 Marbledoe Street, Las Vegas, Nevada 89149;
13 Parcel No. 125-18-112-069 is hereby quieted in favor of SFR.

14 4. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED the lis
15 pendens recorded in the Official Records of the Clark County Recorder as
16 Instrument No. 20160713-0002695 is expunged.

17 **IT IS SO ORDERED.**

18 DATED this 14th day of June, 2019.

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21 
22 **HON. JOANNA S. KISHNER**
23 **DISTRICT COURT JUDGE**
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CERTIFICATE OF SERVICE

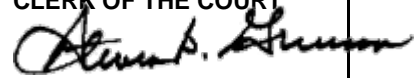
I hereby certify that on or about the date filed, a copy of this Order was served via Electronic Service to all counsel/registered parties, pursuant to the Nevada Electronic Filing Rules, and/or served via in one or more of the following manners: fax, U.S. mail, or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

DANA J. NITZ, ESQ.
NATALIE C. LEHMAN, ESQ.
WRIGHT, FINLAY & ZAK, LLP.

KAREN HANKS, ESQ.
JASON G. MARTINEZ, ESQ.
KIM GILBERT EBRON



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*Attorneys for Plaintiff/Counter/Cross-Defendant, U.S. Bank, National Association as Trustee for
Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-
A8*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

U.S. BANK, NATIONAL ASSOCIATION AS
TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

Plaintiff,

vs.

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

Defendant.

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

Counter-Claimant,

vs.

U.S. BANK, NATIONAL ASSOCIATION AS
TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

Counter-Defendant.

Case No.: A-16-739867-C
Dept. No.: XXXI

CASE APPEAL STATEMENT

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement.

Plaintiff/Counter/Cross-Defendant, U.S. Bank, National Association as Trustee for
Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates,
Series 2005-A8

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

The Honorable Judge Joanna S. Kishner, Eighth Judicial District Court, Dept. XXXI.

3. Identify all parties to the proceedings in the district court.

Plaintiff: U.S. Bank, National Association as Trustee for Merrill Lynch Mortgage
Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8

Defendant: SFR Investments Pool 1, LLC

Defendant: Antelope Homeowners Association (Dismissed)

Counter/Cross Claimant: SFR Investments Pool 1, LLC

Counter/Cross Defendant: U.S. Bank, National Association as Trustee for Merrill Lynch
Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8

Counter/Cross Defendant: Mortgage Electronic Registration Systems, Inc. (Dismissed)

Counter/Cross Defendant: Universal American Mortgage Company, LLC (Dismissed)

Counter/Cross Defendant: Hendry E. Ivy (Dismissed)

Counter/Cross Defendant: Freddy S. Ivy (Dismissed)

4. Identify all parties involved in this appeal.

Appellant/Plaintiff/Counter/Cross-Defendant, U.S. Bank, National Association as Trustee
for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates,
Series 2005-A8

Respondent/Defendant/Counter/Cross-Claimant: SFR Investments Pool 1, LLC

1 **5. Set forth the name, law firm, address, and telephone number of all counsel on the**
2 **appeal and identify the party or parties whom they represent.**

3 WRIGHT, FINLAY & ZAK, LLP
4 Dana Jonathon Nitz, Esq.
5 Matthew S. Carter, Esq.
6 Natalie C. Lehman, Esq.
7 7785 W. Sahara Ave., Suite 200
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10 *Attorneys for Appellant/Plaintiff/Counter/Cross-Defendant, U.S. Bank, National*
11 *Association as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan*
12 *Asset-Backed Certificates, Series 2005-A8*

13 KIM GILBERT EBRON
14 Diana S. Ebron, Esq.
15 Jacqueline A. Gilbert, Esq.
16 Karen L. Hanks, Esq.
17 Jason G. Martinez, Esq.
18 7625 Dean Martin Dr., Ste. 110
19 Las Vegas, NV 89139
20 Ph: (702) 485-3300
21 *Attorneys for Respondent/Defendant/Counter/Cross-Claimant, SFR Investments Pool 1,*
22 *LLC*

23 **6. Indicate whether any attorney identified above in response to question 5 is not**
24 **licensed to practice law in Nevada.**

25 All counsel listed above are licensed to practice in Nevada.

26 **7. Indicate whether appellant was represented by appointed or retained counsel in the**
27 **district court.**

28 The appellant was represented by retained counsel listed above in the district court.

29 **8. Indicate whether appellant is represented by appointed or retained counsel on**
30 **appeal.**

31 The appellant is represented by retained counsel listed above on this appeal.

32 **9. Indicate whether appellant was granted leave to proceed in forma pauperis and the**
33 **date of entry of the district court order granting such leave.**

34 No such leave was either requested or granted.

1 **10. Indicate the date the proceedings commenced in the district court (e.g., date of**
2 **complaint, indictment, information, or petition was filed.**

3 The Complaint for quiet title was filed on July 12, 2016.

4 **11. A brief description of the action and the order being appealed from.**

5 This appeal arises out of a quiet title and declaratory relief action related to a
6 homeowners association's non-judicial foreclosure sale ("HOA Sale") concerning real
7 property located in Clark County, Nevada. The Complaint was filed by Plaintiff/Counter
8 -Defendant, U.S. Bank, National Association as Trustee for Merrill Lynch Mortgage
9 Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8 ("U.S.
10 Bank") against Defendant/Counter/Cross-Claimant, SFR Investments Pool 1, LLC
11 ("SFR"), Antelope Homeowners Association ("Antelope"). SFR was the third party
12 purchaser at the HOA Sale held on behalf of Antelope. SFR filed a Counterclaim naming
13 as Counter-defendants U.S. Bank, Universal American Mortgage Company, LLC
14 ("Universal"), Mortgage Electronic Registration Systems, Inc. ("MERS"), Henry E. Ivy
15 and Freddie S. Ivy. Universal was the original lender and MERS was the initial
16 beneficiary under the first deed of trust recorded against the property. The Ivys were the
17 homeowners and borrowers under that deed of trust. Antelope, Universal, MERS and the
18 Ivys were all dismissed prior to trial and the caption of the case was updated by
19 stipulation to reflect the same.

20 The parties completed discovery and filed cross- motions for summary judgment.
21 U.S. Bank argued that it was entitled to judgment in its favor based upon a pre-sale tender
22 of the super priority portion of Antelope's lien by its predecessor in interest which
23 preserved the first deed of trust. SFR argued that it was entitled to judgment and quiet
24 title in its favor based upon the recitals in the foreclosure deed. After a hearing, the
25 District Court found that there were material facts in dispute regarding U.S. Bank's
26 tender defense and the case proceeded to a non-jury trial.

27 The District Court presided over the trial which occurred on April 16, 17, 18, 23,
28 24 and May 20. During the course of the trial, U.S. Bank presented testimony from three

1 witnesses and attempted to present testimony from three additional witnesses, which the
2 latter three witnesses were struck by the Court. One of the witnesses struck was U.S.
3 Bank's corporate designee/custodian of records. SFR did not present any witnesses and
4 rested on the evidence admitted in U.S. Bank's case in chief. After closing arguments, the
5 District Court took the matter under submission and judgment was thereafter entered in
6 favor SFR and against U.S. Bank. U.S. Bank appeals the Findings of Fact and
7 Conclusions of Law and Judgment, entered on June 19, 2019, and all other orders made
8 final thereby.

9 **11. Indicate whether the case involves the possibility of settlement.**

10 This case may have a reasonable possibility of settlement.

11 **12. Indicate whether the case has previously been the subject of an appeal to or original**
12 **writ proceeding in the Supreme Court.**

13 This case was not previously the subject of an appeal in the Supreme Court.

14 **13. Indicate whether the case involves child custody or visitation.**

15 This case does not involve child custody or visitation.

16 DATED this 19th day of July, 2019.

17 WRIGHT FINLAY & ZAK LLP

18 /s/ Natalie C. Lehman, Esq.

19 Natalie C. Lehman, Esq.

20 Nevada Bar No. 12995

21 7785 W. Sahara Ave., Suite 200

22 Las Vegas, Nevada 89117

23 *Attorneys for Plaintiff/Counter/Cross-Defendant,*

24 *U.S. Bank, National Association as Trustee for*

25 *Merrill Lynch Mortgage Investors Trust, Mortgage*

26 *Loan Asset-Backed Certificates, Series 2005-A8*

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CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 19th day of July, 2019, I did cause a true copy of the forgoing **CASE APPEAL STATEMENT** to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFCR 9.

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/s/ Lisa Cox

An Employee of WRIGHT, FINLAY & ZAK, LLP

CASE SUMMARY**CASE NO. A-16-739867-C**

U.S. Bank, National Association, Plaintiff(s)
vs.
SFR Investments Pool 1, LLC, Defendant(s)

§
§
§
§
§

Location: **Department 31**
 Judicial Officer: **Kishner, Joanna S.**
 Filed on: **07/12/2016**
 Cross-Reference Case Number: **A739867**

CASE INFORMATION**Statistical Closures**

06/24/2019 Judgment Reached (bench trial)
 04/11/2017 Transferred (before trial)

Case Type: **Other Real Property**

Case Status: **06/24/2019 Closed**

DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number A-16-739867-C
 Court Department 31
 Date Assigned 07/12/2016
 Judicial Officer Kishner, Joanna S.

PARTY INFORMATION

		<i>Lead Attorneys</i>
Plaintiff	U.S. Bank, National Association	Nitz, Dana J. <i>Retained</i> 702-475-7964(W)
Defendant	Antelope Homeowners Association Removed: 04/23/2019 Dismissed	Ebert, John William <i>Retained</i> 702-382-1500(W)
	Antelope Homeowners' Association Removed: 04/23/2019 Dismissed	Ebert, John William <i>Retained</i> 702-382-1500(W)
	SFR Investments Pool 1, LLC	Cline, Diana S. <i>Retained</i> 702-485-3300(W)
Counter Claimant	SFR Investments Pool 1, LLC	Cline, Diana S. <i>Retained</i> 702-485-3300(W)
Counter Defendant	U.S. Bank, National Association	Nitz, Dana J. <i>Retained</i> 702-475-7964(W)
Cross Claimant	SFR Investments Pool 1, LLC	Cline, Diana S. <i>Retained</i> 702-485-3300(W)
Cross Defendant	Ivy, Freddie S Removed: 07/17/2018 Dismissed	
	Ivy, Henry E Removed: 07/17/2018 Dismissed	
	Mortgage Electronic Registration Inc. Mortgage Electronic Registration Systems Inc as Beneficiary for Universal	

CASE SUMMARY**CASE NO. A-16-739867-C**

American Mortgage Co LLC





Removed: 09/26/2017

Dismissed

DATE	EVENTS & ORDERS OF THE COURT	INDEX
	<u>EVENTS</u>	
07/12/2016	 Lis Pendens Filed By: Counter Defendant U.S. Bank, National Association <i>Lis Pendens</i>	
07/12/2016	 Complaint Filed By: Counter Defendant U.S. Bank, National Association <i>Complaint Exempt from Arbitration: Action for Quiet Title and Declaratory Relief</i>	
07/12/2016	 Initial Appearance Fee Disclosure Filed By: Counter Defendant U.S. Bank, National Association <i>Initial Appearance Fee Disclosure</i>	
07/13/2016	 Receipt of Copy Filed by: Counter Defendant U.S. Bank, National Association <i>Receipt of Copy</i>	
07/29/2016	 Affidavit of Service Filed By: Counter Defendant U.S. Bank, National Association <i>Affidavit of Service</i>	
08/10/2016	 Demand for Security of Costs Filed By: Cross Claimant SFR Investments Pool 1, LLC <i>SFR Investments Pool 1, LLC's Demand for Security of Costs Pursuant to NRS 18.130(1)</i>	
08/16/2016	 Notice of Posting Bond Filed By: Counter Defendant U.S. Bank, National Association <i>Notice of Posting Bond</i>	
09/02/2016	 Motion to Dismiss Filed By: Cross Claimant SFR Investments Pool 1, LLC <i>SFR Investments Pool 1, LLC's Motion to Dismiss Plaintiff's Complaint Pursuant to NRCP 12(b)(6)</i>	
09/22/2016	 Opposition to Motion to Dismiss Filed By: Counter Defendant U.S. Bank, National Association <i>U.S. Bank, National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8's Opposition to SFR Investments Pool 1, LLC's Motion to Dismiss Plaintiff's Complaint Pursuant to N.R.C.P. 12(b)(6)</i>	
09/26/2016	 Reply in Support Filed By: Cross Claimant SFR Investments Pool 1, LLC <i>SFR Investments Pool 1, LLC's Reply in Support of Motion to Dismiss Plaintiff's Complaint Pursuant to NRCP 12(b)(6)</i>	
09/29/2016	 Receipt of Copy Filed by: Counter Defendant U.S. Bank, National Association <i>Receipt of Copy</i>	

CASE SUMMARY

CASE NO. A-16-739867-C

10/14/2016	 Transcript of Proceedings <i>Transcript of Proceedings Re: Defendant's Motion to Dismiss Plaintiff's Complaint Pursuant to NRCP 12(b)(6) -- 10-4-16</i>
10/19/2016	 Answer and Counterclaim Filed By: Cross Claimant SFR Investments Pool 1, LLC <i>SFR Investments pool 1, LLC's Answer to Complaint, Counterclaim and Cross-Claim</i>
10/19/2016	 Notice of Lis Pendens Filed by: Cross Claimant SFR Investments Pool 1, LLC <i>Notice of Lis Pendens</i>
11/08/2016	 Answer to Counterclaim Filed By: Counter Defendant U.S. Bank, National Association <i>U.S. Bank's Reply to SFR Investments Pool 1, LLC's Counterclaim</i>
11/08/2016	 Early Case Conference Filed By: Counter Defendant U.S. Bank, National Association <i>Notice of Early Case Conference</i>
11/15/2016	 Joint Case Conference Report Filed By: Counter Defendant U.S. Bank, National Association <i>Joint Case Conference Report</i>
11/22/2016	 Order Denying Motion Filed By: Counter Defendant U.S. Bank, National Association <i>Order Denying Defendant's Motion to Dismiss Plaintiff's Complaint Pursuant to NRCP 12(b)(6)</i>
12/01/2016	 Notice of Entry Filed By: Counter Defendant U.S. Bank, National Association <i>Notice of Entry of Order</i>
12/13/2016	 Affidavit of Service Filed By: Counter Defendant U.S. Bank, National Association <i>Affidavit of Service</i>
12/13/2016	 Affidavit of Service Filed By: Cross Claimant SFR Investments Pool 1, LLC <i>Affidavit of Service</i>
12/13/2016	 Affidavit of Service Filed By: Cross Claimant SFR Investments Pool 1, LLC <i>Affidavit of Service</i>
02/06/2017	 Scheduling Order <i>Scheduling Order</i>
03/24/2017	 Notice Filed By: Counter Defendant U.S. Bank, National Association <i>Notice of Removal</i>
04/11/2017	 Order to Statistically Close Case Filed By: Counter Defendant U.S. Bank, National Association

CASE SUMMARY

CASE NO. A-16-739867-C

Civil Order to Statistically Close Case

09/06/2017



Notice

Filed By: Cross Claimant SFR Investments Pool 1, LLC

Notice to Adverse Parties and to the Eighth Judicial District Court of Remand of Previously-Removed Case to this Court

09/14/2017

Order of Remand from Federal Court

Order Remanding Cases to State Court for Lack of Jurisdiction, and Alternatively, on Equitable Grounds

09/26/2017



Stipulation and Order for Dismissal Without Prejudice

Filed By: Cross Defendant Mortgage Electronic Registration Systems Inc as Beneficiary for Universal American Mortgage Co LLC

Stipulation and Order Dismissing Mortgage Electronic Registration Systems, Inc. Without Prejudice

09/27/2017



Notice of Entry of Stipulation & Order for Dismissal

Notice of Entry of Stipulation and Order

10/05/2017



Stipulation and Order

Filed by: Cross Claimant SFR Investments Pool 1, LLC

Stipulation and Order to Dismiss SFR Investments Pool 1, LLC's Slander of Title Claim Against U.S. Bank, National Association

10/09/2017



Notice of Entry of Stipulation and Order

Filed By: Cross Claimant SFR Investments Pool 1, LLC

Notice of Entry of Stipulation and Order to Dismiss SFR Investments Pool 1, LLC's Slander of Title Claim Against U.S. Bank, National Association

12/06/2017



Motion

Filed By: Counter Defendant U.S. Bank, National Association

Plaintiff/Counter-Defendant, U.S. Bank, N.A.'s Motion to Set Status Check Upon Remand

01/09/2018



Notice

Filed By: Counter Defendant U.S. Bank, National Association

Notice of Completion of Mediation Pursuant to Nrs 38.310

01/23/2018



Supplement to List of Witnesses & Documents

Party: Counter Defendant U.S. Bank, National Association

Plaintiff U.S. Bank National Association's First Supplemental Disclosure of Witnesses and Documents

03/13/2018



Motion to Amend

Filed By: Counter Defendant U.S. Bank, National Association

Plaintiff U.S. Bank, N.A.'s Motion for Leave to Amend its Complaint

03/15/2018



Stipulation and Order

Filed by: Counter Defendant U.S. Bank, National Association

Stipulated Discovery Plan Upon Remand From Bankruptcy Court

05/08/2018



Order Granting Motion

Filed By: Counter Defendant U.S. Bank, National Association

Order Granting Plaintiff U.S. Bank's Motion for Leave to Amend its Complaint

CASE SUMMARY

CASE NO. A-16-739867-C

05/08/2018	 Notice of Entry of Order Filed By: Counter Defendant U.S. Bank, National Association <i>Notice of Entry of Order Granting U.S. Bank's Motion for Leave to Amend it's Complaint</i>
05/08/2018	 Amended Complaint Filed By: Counter Defendant U.S. Bank, National Association <i>U.S. Bank's First Amended Complaint - Exempt from Arbitration: Action for Quiet Title and Declaratory Relief</i>
05/24/2018	 Summons Electronically Issued - Service Pending Party: Counter Defendant U.S. Bank, National Association <i>Summons</i>
05/29/2018	 Answer Filed By: Cross Claimant SFR Investments Pool 1, LLC <i>SFR Investment Pool 1, LLC's Answer to First Amended Complaint</i>
05/30/2018	 Summons Electronically Issued - Service Pending Party: Counter Defendant U.S. Bank, National Association <i>Summons to Antelope HOA</i>
06/15/2018	 Motion to Strike Filed By: Cross Claimant SFR Investments Pool 1, LLC <i>SFR Investments Pool 1, LLC's Motion to Strike Plaintiff's Initial Expert Disclosure</i>
06/18/2018	 Notice of Hearing Filed By: Cross Claimant SFR Investments Pool 1, LLC <i>Notice of Hearing (re: SFR Investments Pool 1, LLC's Motion to Strike Plaintiff's Initial Expert Disclosure)</i>
07/09/2018	 Opposition and Countermotion Filed By: Counter Defendant U.S. Bank, National Association <i>U.S. Bank's Opposition to SFR Investments Pool 1, LLC's Motion to Strike and Countermotion for Late Disclosure of Initial Expert Witness</i>
07/09/2018	 Motion to Dismiss Filed By: Defendant Antelope Homeowners' Association <i>Defendant Antelope Homeowners Association's Motion to Dismiss</i>
07/09/2018	 Initial Appearance Fee Disclosure Filed By: Defendant Antelope Homeowners' Association <i>Initial Appearance Fee Disclosure</i>
07/09/2018	 Motion for Summary Judgment Filed By: Cross Claimant SFR Investments Pool 1, LLC <i>SFR Investments Pool 1 LLC's Motion for Summary Judgment</i>
07/11/2018	 Reply in Support Filed By: Cross Claimant SFR Investments Pool 1, LLC <i>SFR Investments Pool 1, LLC's Reply in Support of Its Motion to Strike Plaintiff's Initial Expert Disclosure and Opposition to Bank's Countermotion for Late Disclosure</i>
07/12/2018	 Declaration Filed By: Counter Defendant U.S. Bank, National Association

CASE SUMMARY

CASE NO. A-16-739867-C

Declaration of Jamie S. Hendrickson, Esq. in Response to June 28, 2018, Order to Show Cause

07/16/2018	 Pre-Trial Disclosure <i>SFR Investments Pool 1, LLC's Pre-Trial Disclosures</i>
07/17/2018	 Stipulation and Order Filed by: Cross Claimant SFR Investments Pool 1, LLC <i>Stipulation and Order Dismissing Henry E. Ivy and Freddie S. Ivy Without Prejudice</i>
07/17/2018	 Order to Show Cause <i>Order to Show Cause</i>
07/18/2018	 Notice of Entry of Stipulation and Order Filed By: Cross Claimant SFR Investments Pool 1, LLC <i>Notice of Entry of Stipulation and Order Dismissing Henry E. Ivy and Freddie S. Ivy Without Prejudice</i>
07/19/2018	 Opposition to Motion to Dismiss Filed By: Counter Defendant U.S. Bank, National Association <i>U.S. Bank's Opposition to Antelope HOA's Motion to Dismiss</i>
07/20/2018	 Order Shortening Time Filed By: Defendant Antelope Homeowners' Association <i>Defendant Antelope Homeowners' Association Motion to Re-open Discovery, Extend Dispositive Motion Deadline and Continue Trial On Order Shortening Time</i>
07/23/2018	 Notice of Entry Filed By: Defendant Antelope Homeowners' Association <i>Notice of Entry of Order</i>
07/24/2018	 Notice Filed By: Counter Defendant U.S. Bank, National Association <i>U.S. Bank's Notice of Intent to Offer Custodian of Records Affidavit Pursuant to NRS 52.260 (4)(Alessi & Koenig, LLC)</i>
07/25/2018	 Opposition Filed By: Cross Claimant SFR Investments Pool 1, LLC <i>SFR Investments Pool 1, LLC's Limited Opposition to Motion to Re-Open Discovery and Continue Trial and Counter-Motion for Attorneys Fees Against Bank</i>
07/26/2018	 Recorders Transcript of Hearing <i>Transcript - All Pending Motions 7/19/18</i>
07/26/2018	 Opposition and Countermotion Filed By: Counter Defendant U.S. Bank, National Association <i>U.S. Bank's Opposition to SFR Investments Pool 1, LLC's Motion for Summary Judgment and Countermotion for Summary Judgment</i>
07/27/2018	 Order Shortening Time Filed By: Defendant Antelope Homeowners' Association <i>Stipulation and Order to Advance Hearing on Antelope Homeowners' Association's Motion to Dismiss</i>
07/27/2018	 Opposition

CASE SUMMARY

CASE NO. A-16-739867-C

Filed By: Counter Defendant U.S. Bank, National Association
U.S. Bank's Opposition to SFR Investments Pool 1, LLC's Countermotion for Attorneys Fees and Costs

07/30/2018



Objection

Objections to Pre-Trial Disclosures

07/30/2018



Initial Appearance Fee Disclosure

Filed By: Counter Defendant U.S. Bank, National Association
Initial Appearance Fee Disclosure

07/31/2018



Errata

Errata to Objections to Pre-Trial Disclosures

07/31/2018



Notice of Entry of Order

Filed By: Defendant Antelope Homeowners' Association
Notice of Entry of Order

07/31/2018



Joint Pre-Trial Memorandum

Joint Pre-Trial Memorandum

07/31/2018



Notice of Compliance

Party: Counter Defendant U.S. Bank, National Association
Notice of Compliance

08/06/2018



Reply in Support

Filed By: Cross Claimant SFR Investments Pool 1, LLC
SFR Investments Pool 1, LLC's Reply in Support of its Motion for Summary Judgment, Counter-Motion to Strike Plaintiff's Counter-Motion for Summary Judgment and Opposition to Plaintiff's Counter-Motion for Summary Judgment

08/08/2018



Notice

Filed By: Counter Defendant U.S. Bank, National Association
Notice of Availability to Inspect Collateral File

08/09/2018



Opposition

Filed By: Counter Defendant U.S. Bank, National Association
U.S. Bank's Opposition to SFR Investments Pool 1, LLC's Countermotion to Strike U.S. Bank's Countermotion for Summary Judgment

08/15/2018



Notice

Filed By: Counter Defendant U.S. Bank, National Association
Notice of Compliance

08/21/2018



Order Denying

Filed By: Cross Claimant SFR Investments Pool 1, LLC
Order Denying The Antelope Homeowners' Association's Motion to Dismiss

08/21/2018



Order Granting

Filed By: Cross Claimant SFR Investments Pool 1, LLC
Order Granting Motion to Strike Plaintiff's Initial Expert Disclosure

08/21/2018



Order Granting Motion

Filed By: Defendant Antelope Homeowners' Association

CASE SUMMARY






CASE NO. A-16-739867-C

Order Granting Antelope Homeowners' Association Motion to Re-Open Discovery and Continue Trial and Denying SFR's Motion for Attorney's Fees Against US Bank

08/22/2018	 Recorders Transcript of Hearing <i>Transcript - All Pending Motions 8/14/18</i>
08/23/2018	 Notice of Entry of Order Filed By: Defendant Antelope Homeowners' Association <i>Notice of entry of Order</i>
08/23/2018	 Notice of Entry of Order Filed By: Cross Claimant SFR Investments Pool 1, LLC <i>Notice of Entry of Order Granting Motion to Strike Plaintiff's Initial Expert Disclosure</i>
09/07/2018	 Answer Filed By: Defendant Antelope Homeowners' Association <i>Defendant Antelope Homeowners Association's Answer and Affirmative Defenses</i>
09/10/2018	 Amended Order Setting Civil Non-Jury Trial <i>Amended Order Setting Civil Non Jury Trial, Pre Trial Conference and Calendar Call</i>
09/21/2018	 Recorders Transcript of Hearing <i>Transcript - All Pending Motions 7/31/18</i>
10/10/2018	 Order Granting Filed By: Cross Claimant SFR Investments Pool 1, LLC <i>Order Granting SFR's Counter-Motion to Strike and Granting in Part and Denying in Part SFR's Motion for Summary Judgment</i>
10/11/2018	 Notice of Entry of Order Filed By: Cross Claimant SFR Investments Pool 1, LLC <i>Notice of Entry of Order Granting SFR's Counter-Motion to Strike and Granting in Part and Denying in Part SFR's Motion for Summary Judgment</i>
12/18/2018	 Supplement to List of Witnesses & Documents <i>Plaintiff U.S. Bank's National Association's Seventh Supplemental Disclosure of Witnesses and Documents</i>
02/01/2019	 Notice Filed By: Counter Defendant U.S. Bank, National Association <i>Notice of Intent to Offer Custodian of Records Affidavits Pursuant to NRS 52.260(4)</i>
03/29/2019	 Objection <i>Objections to U.S. Bank's Amended Pre-Trial Disclosures</i>
04/02/2019	 Joint Pre-Trial Memorandum <i>Amended Joint Pre-Trial Memorandum</i>
04/15/2019	 Finding of Fact and Conclusions of Law <i>Proposed Findings of Fact and Conclusions of Law</i>
04/15/2019	 Trial Brief <i>SFR Investments Pool 1, LLC's Trial Brief re Admissibility of Certain Proposed Exhibits</i>















CASE SUMMARY

CASE NO. A-16-739867-C

04/15/2019	 Trial Brief <i>SFR Investments Pool 1, LLC Trial Brief re Statute of Limitations</i>
04/16/2019	 Trial Subpoena Filed by: Counter Defendant U.S. Bank, National Association <i>Trial Subpoena to Teralyn Thompson</i>
04/16/2019	 Trial Subpoena Filed by: Counter Defendant U.S. Bank, National Association <i>Amended Trial Subpoena to Corporate Designee/Respresentative and Custodian of Records for the Clark County Assessor</i>
04/16/2019	 Trial Subpoena Filed by: Counter Defendant U.S. Bank, National Association <i>Amended Trial Subpoena to Corporate Designee for Antelope Homeowners' Association</i>
04/16/2019	 Trial Subpoena Filed by: Counter Defendant U.S. Bank, National Association <i>Amended Trial Subpoena to Corporate Designee for Alessi & Koenig, LLC</i>
04/16/2019	 Trial Subpoena Filed by: Counter Defendant U.S. Bank, National Association <i>Trial Subpoena to Corporate Designee for Complete Association Management Company (CAMCO)</i>
04/16/2019	 Trial Subpoena Filed by: Counter Defendant U.S. Bank, National Association <i>Amended Trial Subpoena to Chris Hardin</i>
04/16/2019	 Trial Subpoena Filed by: Counter Defendant U.S. Bank, National Association <i>Trial Subpoena to David Alessi</i>
04/16/2019	 Trial Subpoena Filed by: Counter Defendant U.S. Bank, National Association <i>Amended Trial Subpoena to Rock K. Jung, Esq.</i>
04/16/2019	 Trial Subpoena Filed by: Counter Defendant U.S. Bank, National Association <i>Amended Trial Subpoena to Corporate Designee for SFR Investments Pool 1, LLC</i>
04/17/2019	 Trial Brief Filed By: Counter Defendant U.S. Bank, National Association <i>U.S. Bank's Bench Memorandum Regarding Authentication and Admissibility of Proposed Exhibits 21, 22, 23, 24 and 31</i>
04/18/2019	 Trial Memorandum Filed by: Counter Defendant U.S. Bank, National Association <i>U.S. Bank's Bench Memorandum Regarding Statute of Limitations</i>
04/18/2019	 Trial Memorandum Filed by: Counter Defendant U.S. Bank, National Association <i>U.S. Bank's Bench Memorandum Regarding Standing to Maintain its Claims in this Action and Standing to Enforce the Deed of Trust and Note</i>

CASE SUMMARY

CASE NO. A-16-739867-C

04/18/2019	 Trial Memorandum Filed by: Counter Defendant U.S. Bank, National Association <i>U.S. Bank's Bench Memorandum Regarding Pre-Foreclosure Satisfaction of the Superpriority Portion of the HOA's Lien</i>
04/18/2019	 Trial Memorandum Filed by: Counter Defendant U.S. Bank, National Association <i>Bench Memorandum Regarding Whether Defendant is a Bona Fide Purchase is Irrelevant</i>
04/18/2019	 Trial Memorandum Filed by: Counter Defendant U.S. Bank, National Association <i>U.S. Bank's Bench Memorandum Regarding Business Record Exception</i>
04/18/2019	 Stipulation and Order Filed by: Counter Defendant U.S. Bank, National Association <i>Stipulation and Order to Amend Caption</i>
04/18/2019	 Notice of Entry of Stipulation and Order Filed By: Counter Defendant U.S. Bank, National Association <i>Notice of Entry of Stipulation and Order</i>
04/22/2019	 Recorders Transcript of Hearing <i>Partial Transcript: Bench Trial Day 1 - Testimony of Rock Jung 4/16/19</i>
04/22/2019	 Recorders Transcript of Hearing <i>Partial Transcript: Bench Trial Day 2 - Testimony of Rock Jung and David Alessi 4/17/19</i>
04/22/2019	 Recorders Transcript of Hearing <i>Partial Transcript: Bench Trial Day 3 - Continued Testimony of David Alessi 4/18/19</i>
04/23/2019	 Stipulation and Order for Dismissal Without Prejudice Filed By: Defendant Antelope Homeowners' Association <i>Stipulation and Order for Dismissal without Prejudice as the Claims between Antelope Homeowners Association and U.S. Bank National Association</i>
04/23/2019	 Trial Subpoena Filed by: Counter Defendant U.S. Bank, National Association <i>Amended Trial Subpoena to Antelope Homeowners' Association</i>
04/23/2019	 Notice of Entry of Order Filed By: Defendant Antelope Homeowners Association <i>Notice of Entry of Order</i>
05/01/2019	 Recorders Transcript of Hearing <i>Partial Transcript: Bench Trial Day 1 - 4/16/19</i>
05/01/2019	 Recorders Transcript of Hearing <i>Partial Transcript: Bench Trial Day 2 - 4/17/19</i>
05/01/2019	 Recorders Transcript of Hearing <i>Partial Transcript: Bench Trial Day 3 - 4/18/19</i>




CASE SUMMARY

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05/01/2019	 Recorders Transcript of Hearing <i>Transcript: Bench Trial Day 4 - 4/23/19</i>
05/01/2019	 Recorders Transcript of Hearing <i>Transcript: Bench Trial Day 5 - 4/24/19</i>
05/17/2019	 Findings of Fact, Conclusions of Law and Judgment <i>Amended Proposed Findings of Fact, Conclusions of Law and Judgment</i>
06/04/2019	 Findings of Fact, Conclusions of Law and Judgment <i>Second Amended Proposed Findings of Fact, Conclusions of Law and Judgment</i>
06/18/2019	 Findings of Fact, Conclusions of Law and Judgment <i>Findings of Fact, Conclusions of Law and Judgment</i>
06/19/2019	 Notice of Entry of Findings of Fact, Conclusions of Law Filed By: Cross Claimant SFR Investments Pool 1, LLC <i>Notice of Entry of Findings of Fact and Conclusions of Law and Judgment</i>
06/24/2019	 Order to Statistically Close Case <i>Civil Order to Statistically Close Case</i>
06/24/2019	 Memorandum of Costs and Disbursements Filed By: Cross Claimant SFR Investments Pool 1, LLC <i>SFR Investments Pool 1, LLC's Memorandum of Costs and Disbursements</i>
07/18/2019	 Notice of Appeal Filed By: Counter Defendant U.S. Bank, National Association <i>Notice of Appeal</i>
07/19/2019	 Recorders Transcript of Hearing <i>Transcript: Bench Trial Day 6 - 5/20/19</i>
07/19/2019	 Case Appeal Statement Filed By: Counter Defendant U.S. Bank, National Association <i>Case Appeal Statement</i>
<u>DISPOSITIONS</u>	
09/26/2017	Order of Dismissal Without Prejudice (Judicial Officer: Kishner, Joanna S.) Debtors: SFR Investments Pool 1, LLC (Cross Claimant) Creditors: Mortgage Electronic Registration Systems Inc as Beneficiary for Universal American Mortgage Co LLC (Cross Defendant) Judgment: 09/26/2017, Docketed: 09/27/2017
10/05/2017	Order of Dismissal Without Prejudice (Judicial Officer: Kishner, Joanna S.) Debtors: U.S. Bank, National Association (Counter Defendant) Creditors: SFR Investments Pool 1, LLC (Counter Claimant) Judgment: 10/05/2017, Docketed: 10/05/2017 Comment: Certain Claim
07/17/2018	Order of Dismissal Without Prejudice (Judicial Officer: Kishner, Joanna S.) Debtors: Henry E Ivy (Cross Defendant), Freddie S Ivy (Cross Defendant) Creditors: SFR Investments Pool 1, LLC (Cross Claimant) Judgment: 07/17/2018, Docketed: 07/17/2018

CASE SUMMARY



CASE NO. A-16-739867-C

10/10/2018	<p>Partial Summary Judgment (Judicial Officer: Kishner, Joanna S.) Debtors: U.S. Bank, National Association (Counter Defendant) Creditors: SFR Investments Pool 1, LLC (Counter Claimant) Judgment: 10/10/2018, Docketed: 10/10/2018</p>
04/23/2019	<p>Order of Dismissal Without Prejudice (Judicial Officer: Kishner, Joanna S.) Debtors: Antelope Homeowners' Association (Defendant) Creditors: U.S. Bank, National Association (Plaintiff) Judgment: 04/23/2019, Docketed: 04/23/2019</p>
06/18/2019	<p>Order of Dismissal (Judicial Officer: Kishner, Joanna S.) Debtors: SFR Investments Pool 1, LLC (Defendant) Creditors: U.S. Bank, National Association (Plaintiff) Judgment: 06/18/2019, Docketed: 06/18/2019</p>
06/18/2019	<p>Order (Judicial Officer: Kishner, Joanna S.) Debtors: U.S. Bank, National Association (Plaintiff) Creditors: SFR Investments Pool 1, LLC (Defendant) Judgment: 06/18/2019, Docketed: 06/18/2019 Comment: Quiet Title</p>
HEARINGS	
10/04/2016	<p> Motion to Dismiss (9:30 AM) (Judicial Officer: Kishner, Joanna S.) <i>SFR Investments Pool 1, LLC's Motion to Dismiss Plaintiff's Complaint Pursuant to NRCP 12 (b)(6)</i> Denied Without Prejudice; Journal Entry Details: <i>Arguments by counsel. Mr Nitz made an oral motion to strike paragraph 79 and prayer number 9 of his complaint. Objection by Ms. Goulet. Court stated its findings, and ORDERED, SFR Investments Pool 1, LLC's Motion to Dismiss Plaintiff's Complaint Pursuant to NRCP 12 (b)(6) is DENIED WITHOUT PREJUDICE. COURT FURTHER ORDERED, Plaintiff's Oral Motion to Strike Paragraph 79 and Prayer for Relief 9 from its Pleading is GRANTED. Counsel for Plaintiff to prepare the Order, circulating to Defense counsel for approval as to form and content. ;</i></p>
01/09/2018	<p> Motion (9:00 AM) (Judicial Officer: Kishner, Joanna S.) <i>Plaintiff/ Counter Defendant U.S. Bank N.A.'s Motion to Set Status Check Upon Remand Trial Date Set; Plaintiff/Counter Defendant U.S. Bank N.A.'s Motion to Set Status Check Upon Remand</i> Journal Entry Details: <i>Court noted Mr. Loizzi is not present on behalf of the HOA Trustee and inquired if Huong Lam, Esq., present in the Gallery, was covering the hearing. Ms. Lam indicated that Mr. Loizzi has asked her to cover a hearing in this Court on its 9:30 a.m. calendar on another matter. MATTER TRAILED for Ms. Lam to reach out to Alessi & Koenig to inquire if she is to cover this hearing as well. MATTER RECALLED and Ms. Lam indicated that David Alessi has authorized her to appear on behalf of the HOA Trustee for today's hearing. Court indicated the case needs to get moving forward it is a 2016 case and it does not appear that much, if anything, has been done. Mr. Hendrickson indicated in discussing with counsel, they were requesting to set discovery deadline out nine (9) months. Upon Court's inquiry as to why the parties would need nine months, Mr. Zachary indicated that no depositions had yet been taken. Following further colloquy, COURT ORDERED discovery to close in six (6) months and matter SET for Trial on the August 6, 2018 Stack. Court DIRECTED that the parties to submit a stipulation and order with the dates consistent with the new Trial Date. 6/28/18 10:15 AM PRE TRIAL CONFERENCE 7/31/18 9:00 AM CALENDAR CALL 8/6/18 9:00 AM BENCH TRIAL;</i></p>
04/17/2018	<p> Motion for Leave (9:00 AM) (Judicial Officer: Kishner, Joanna S.) <i>Plaintiff U.S. Bank, N.A.'s Motion for Leave to Amend its Complaint</i> Motion Granted; Plaintiff U.S. Bank, N.A.'s Motion for Leave to Amend its Complaint Journal Entry Details:</p>

CASE SUMMARY


CASE NO. A-16-739867-C

Ms. Hanks indicated that SFR had no objection, plaintiff are just joining the HOA. Upon the Court's inquiry whether the HOA had been put on notice of any claims against them and that the case is set for trial in August. Mr. Hendrickson stated that the HOA was a party to the NRED Mediation and should know this was coming. Following further colloquy regarding the history of the case regarding the Bankruptcy Stay and the remand back, COURT ORDERED, Plaintiff U.S. Bank, N.A.'s Motion for Leave to Amend its Complaint is GRANTED; Plaintiff has fifteen (15) days to file the Amended Complaint. Mr. Hendrickson to prepare the Order.;

- 04/18/2018 **CANCELED Motion to Compel** (9:00 AM) (Judicial Officer: Bulla, Bonnie)
Vacated - Set in Error
Plaintiff's Motion to Compel Defendant's Deposition;(2) Deem Plaintiff's Requests for Admission as Admitted; and (3) Compel Defendant's Interrogatory Responses
- 06/28/2018  **Pre Trial Conference** (10:15 AM) (Judicial Officer: Kishner, Joanna S.)
Trial Date Set;
Journal Entry Details:
Jason Martinez, Esq., present on behalf of SFR Investments. Upon Court's inquiry, Mr. Martinez stated he is not sure where Plaintiff's counsel is. Court noted trial counsel needs to be present. MATTER TRAILED. MATTER RECALLED. All parties present as before. Mr. Martinez represented Jamie Hendrickson, Plaintiff's counsel, indicated there was a calendaring error. Mr. Martinez announced ready for trial. COURT FINDS Counsel was properly noticed and ORDERED, trial dates SET; Pre-Trial Memo due by 07/31/18 at 4:00 pm; Order to Show Cause WILL ISSUE for Plaintiff's counsel; Show Cause Hearing SET. Court noted Trial Order was dated January 2018 and was e-served upon all of the parties. Upon Court's inquiry, Mr. Martinez estimated trial will take two to three full days. Court stated trial is #3 on the stack. 07/19/18 9:00 AM SHOW CAUSE HEARING 08/07/18 9:00 AM CALENDAR CALL 08/15/18 thru 08/17/18 BENCH TRIAL CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Haly Pannullo, to all registered parties for Odyssey File & Serve. hyp/07/12/18 ;
- 07/19/2018 **Motion to Strike** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
Defendant SFR Investments Pool 1, LLC's Motion to Strike Plaintiff's Initial Expert Disclosure Motion Granted;
- 07/19/2018 **Show Cause Hearing** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
Show Cause Hearing RE: Plaintiff's Counsel
Matter Heard;
- 07/19/2018 **Opposition and Countermotion** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
Plaintiff U.S. Bank's Opposition to SFR Investments Pool I, LLC's Motion to Strike and Countermotion for Late Disclosure of Initial Expert Witness
Denied;
- 07/19/2018 **CANCELED Show Cause Hearing** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
Vacated - Duplicate Entry
- 07/19/2018 **All Pending Motions** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
Matter Heard;
- 07/19/2018  **All Pending Motions** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
Granted in Part; Plaintiff US Bank's Opposition to SFR Investments Pool I, LLC's Motion to Strike and Countermotion for Late Disclosure of Initial Expert Witness...Defendant SFR Investments Pool 1, LLC's Motion to Strike Plaintiff's Initial Expert Disclosure...Show Cause Hearing re: Plaintiff's Counsel
Journal Entry Details:
The Court noted that counsel for Plaintiff did not appear for the pre-trial conference even though they were in Court that day for two other matters. The Court waited for over two and one-half hours and there was no response from counsel's office. Additionally, it was very clear on the scheduling order that counsel MUST be present. Mr. Hendrickson apologized and explained what might have happened. Following further discussion regarding this matter and upon request by Mr. Hendrickson, COURT ORDERED, counsel is to make a \$250.00 voluntary donation to a legal charity of his choice and is to file a notice of compliance within thirty days. Ms. Hanks argued that their Motion to Strike should be granted as the expert

CASE SUMMARY

CASE NO. A-16-739867-C

	<i>disclosure was due on 3/16/18 and was not done until 5/15/18. Additionally, Defendant's motion doesn't meet the statutory requirements regarding citing case law. Mr. Hendrickson stated he directed his assistant to file the expert disclosure and was told that he did so. He advised there is no prejudice to the Plaintiff as this is the expert they normally call in cases like this. Following further arguments of counsel, COURT FINDS, the disclosure was two months late and nothing was filed to reopen Discovery. COURT ORDERED, Plaintiff's motion is DENIED and Defendant's motion is GRANTED.;</i>
07/31/2018	CANCELED Calendar Call (9:00 AM) (Judicial Officer: Kishner, Joanna S.) <i>Vacated - per Judge</i>
07/31/2018	Motion to Dismiss (10:00 AM) (Judicial Officer: Kishner, Joanna S.) <i>Defendant Antelope Homeowners Association's Motion to Dismiss - Set to be heard with the Motion on OST</i> Denied Without Prejudice;
07/31/2018	Motion (10:00 AM) (Judicial Officer: Kishner, Joanna S.) <i>Defendant Antelope Homeowners' Association Motion to Re-open Discovery, Extend Dispositive Motion Deadline and Continue Trial On Order Shortening Time</i> Motion Granted;
07/31/2018	Opposition and Countermotion (10:00 AM) (Judicial Officer: Kishner, Joanna S.) <i>Defendant SFR Investments Pool 1 LLC's Limited Opposition to Motion to Re-Open Discovery and Continue Trial and Counter Motion for Attorney's Fees Against US Bank</i> Denied;
07/31/2018	 All Pending Motions (10:00 AM) (Judicial Officer: Kishner, Joanna S.) Matter Heard; Journal Entry Details: <i>DEFENDANT ANTELOPE HOMEOWNERS ASSOCIATION'S MOTION TO DISMISS After the Court's consideration of the papers submitted by counsel in connection with this matter, and, having heard the oral arguments presented by both Ms. Kao and Mr. Hendrickson, the Court stated its FINDINGS and ORDERED, Motion to Dismiss DENIED WITHOUT PREJUDICE; Antelope's Answer due ten (10) days after Notice of Entry of Order. Mr. Hendrickson to prepare the Order, circulating to opposing counsel and provide it back to the Court in accordance with EDCR 7.21. DEFENDANT ANTELOPE HOMEOWNERS ASSOCIATION'S MOTION TO RE-OPEN DISCOVERY, EXTEND DISPOSITIVE MOTION DEADLINE AND CONTINUE TRIAL ON ORDER SHORTENING TIME...DEFENDANT SFR INVESTMENTS POOL1 LLC'S LIMITED OPPOSITION TO MOTION TO RE-OPEN DISCOVERY AND CONTINUE TRIAL AND COUNTER-MOTION FOR ATTORNEY'S FEES AGAINST US BANK After the Court's consideration of the papers submitted by counsel in connection with this matter, and, having heard the oral arguments presented by Ms. Kao and Mr. Hendrickson and Mr. Martinez objection to reopening anything as between SFR and U.S. Bank, the COURT FINDS good cause exists in light of Antelope Homeowners Association having newly appeared in the case and ORDERED Motion to Re-Open Discovery, Extend Dispositive Motion Deadline and Continue Trial GRANTED; Trial Dates VACATED and RESET; Antelope Homeowners Association will be allowed to conduct discovery; Amended Pleadings and Antelope Homeowners Association's Initial Expert Disclosures DUE 9/19/18; Rebuttal Expert Disclosure DUE 10/16/18; Discovery Closes 12/18/18; and Dispositive Motions DUE 1/12/19. COURT FURTHER ORDERED SFR's Counter-Motion for Attorney's Fees Against U.S. Bank DENIED. Ms. Kao to prepare the Order, circulating to opposing counsel and provide it back to the Court in accordance with EDCR 7.21. 2/14/19 10:15 AM PRE TRIAL CONFERENCE 3/12/19 9:00 AM CALENDAR CALL 3/18/19 9:00 AM BENCH TRIAL;</i>
08/06/2018	CANCELED Bench Trial (9:00 AM) (Judicial Officer: Kishner, Joanna S.) <i>Vacated - per Judge</i>
08/07/2018	CANCELED Calendar Call (9:00 AM) (Judicial Officer: Kishner, Joanna S.) <i>Vacated - per Judge</i>
08/14/2018	Motion for Summary Judgment (9:30 AM) (Judicial Officer: Kishner, Joanna S.) <i>Defendant/Counter Claimant/Cross Claimant SFR Investments Pool 1 LLC's Motion for</i>

CASE SUMMARY

CASE NO. A-16-739867-C

Summary Judgment

Granted in Part;

08/14/2018

Opposition and Countermotion (9:30 AM) (Judicial Officer: Kishner, Joanna S.)

Plaintiff/Counter Defendant U.S. Bank's Opposition to SFR Investments Pool I, LLC's Motion for Summary Judgment and Countermotion for Summary Judgment
Moot;

08/14/2018



All Pending Motions (9:30 AM) (Judicial Officer: Kishner, Joanna S.)

Matter Heard;

Journal Entry Details:

SFR INVESTMENT POOL I, LLC'S COUNTER-MOTION TO STRIKE PLTF'S COUNTER-MOTION FOR SUMMARY JUDGMENT...PLTF/COUNTER DEFT. U.S. BANK'S OPPOSITION TO SFR INVESTMENT POOL I, LLC'S MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR SUMMARY JUDGMENT: Mr. Martinez argued U.S. Bank's counter-motion is untimely. Further, dispositive motions deadline set as to SFR and the bank was July 9, 2018. The bank filed opposition and counter-motion three weeks later which fails to comply with the scheduling order. Mr. Hendrickson argued counter-motion was filed within the opposition deadline and if the Court is inclined to find it untimely and strike it, all arguments would still weigh towards the opposition of SFR's motion and will just file dispositive motions again since discovery has been re-opened. Court inquired if all parties view that since the HOA came into case, trial moved to March 2019 stack, dispositive motions were open up to all parties and all claims or just HOA related claims. Mr. Martinez stated the bank is not going to get a second bite at the apple as to the claims between SFR and U.S. Bank if they failed to file motion for summary judgment on time, did not do discovery that was necessary and argued that time as past. The only re-opening of discovery deadlines including the dispositive motions deadline was going to be as to the bank's claims against HOA or vice versa if the HOA filed counter-claims against bank. Ms. Kao stated she agrees with SFR's counsel's representations as to deadlines and claims. Mr. Hendrickson argued he does not remember any discussion at the hearing on the HOA's motion to continue trial, did discuss discovery would be limited to claims between the HOA and the bank. Further, there was no discussion about any limiting dispositive motions, only to claims between the HOA and the bank assuming that a new scheduling order would be issued moving dispositive motion deadline out to January 2019. There was no discussion that would only entail claims between the HOA and the bank. If that was the intention of SFR or the bank, Mr. Hendrickson argued that should of been on the record and should of been in the order granting the HOA's motion. Court FINDS at the time these were filed, new trial order has not yet issued, dates that were in effect for filing dispositive motions were the dates that were in effect at the time of dispositive motions, ORDERED, motion GRANTED; counter-motion STRICKEN under NRCP as it was untimely and will treat as an opposition. DEFT/COUNTER CLAIMANT/CROSS CLAIMANT SFR INVESTMENTS POOL I, LLC'S MOTION FOR SUMMARY JUDGMENT: Mr. Martinez argued there is an evidentiary issue with their inability to actually present evidence to put forward their tender defense. As to the affidavit of Rock Jung, specifically this is how the bank is attempting to authenticate what they call the tender documents and counsel will refer to them as the Miles Bauer documents. Mr. Jung states in his affidavit that he is an ex-employee of Miles Bauer, signatory on letter that contains the check, however, there is an authentication issue. The declaration on its face is insufficient to establish authenticity for the documents. The biggest issue is Mr. Jung has testified in trial that he himself does not have access to the Miles Bauer system. Trial testimony was on April 22, 2016, and as of that date, he was not working for Miles Bauer. Further, Mr. Martinez argued his testimony was as of that day, he no longer had access to the Miles Bauer system which means he actually cannot authenticate the records reportedly coming from the Miles Bauer System he himself did not pull them. He cannot go into the system to verify those are actually true and accurate copies of the documents that are in there. Additionally, his declaration is insufficient as it is testimonial where he declares the check was rejected by Alessi & Koenig and returned via runner without being cashed. However, there is no documentation to prove that, this is testimonial declaration so he cannot authenticate a record that does not exist and he does not have access to Miles Bauer system. To the extent that he is trying to authenticate Miles Bauer documents, he cannot authenticate Miles Bauer documents. He cannot compare copies of documents to the originals in the Miles Bauer system. Colloquy. Additional argument by Mr. Martinez. As to unjust enrichment, Mr. Martinez argued the bank has provided zero evidence, nothing attached to opposition, and they barely substantively addressed counsel's arguments on unjust enrichment just that they conferred a benefit and discussed something about payments to taxes prior to SFR's acquisition. Colloquy. Further argument by Mr. Martinez. Upon Court's inquiry, Mr. Hendrickson stated provide throughout the discovery process and did not highlight in motion.


CASE SUMMARY


CASE NO. A-16-739867-C


Further, payment history has been provided to indicate that and in client deposition testimony to indicate client has been paying taxes since the HOA sale. Colloquy. Mr. Hendrickson stated the unjust enrichment claims is a claim in the alternative. Mr. Hendrickson stated Rock Jung is not testifying as 30(b)(6) witness of Miles Bauer who has no knowledge of any of these matters except by review of the records. He drafted the letter, sent the letter and was handling counsel from start to finish and he can testify on his personal knowledge regardless of whether or not he has any knowledge how the Miles Bauer records were kept or that he even had access to the records because he drafted it. Mr. Jung's testimony is based on his personal knowledge. He can testify that he drafted the letter and sent to Alessi & Koenig. He can testify that the letter was rejected because he was handling counsel. He does have access to the records through Akerman who provides counsel with all of the Miles Bauer records. We also reviewed not just the Akerman records but the Miles Bauer billing records that Mr. Jung created contemporaneously with his work product. Mr. Martinez argued counsel just conceded Rock Jung does not have access to the Miles Bauer records. He cannot himself, pull the documents. The Akerman firm has purportedly pulled these documents from Miles Bauer system and argued they are not directly from Miles Bauer but indirectly through a different law firm which is not included in Mr. Jung's declaration. COURT ORDERED, motion for summary judgment as to unjust enrichment GRANTED pursuant EDCR 2.20 and on the merits as no evidence was presented to the Court. As to remaining motion for summary judgment, Court FINDS material issues of fact in dispute as to tender and ORDERED, DENIED WITHOUT PREJUDICE. SFR to prepare the order. Mr. Martinez advised he will be requesting the transcript and requested additional time to submit order. COURT ORDERED, counsel has 45 days from today which is September 25, 2018. If counsel needs more time, contact the Court in writing and notice all parties.;

08/14/2018 **Motion to Strike** (9:30 AM) (Judicial Officer: Kishner, Joanna S.)
SFR Investment Pool 1, LLC's Counter-Motion to Strike Pltf's Counter-Motion for Summary Judgment
Motion Granted;

08/15/2018 **CANCELED Bench Trial** (10:00 AM) (Judicial Officer: Kishner, Joanna S.)
Vacated - per Judge

02/12/2019  **Pre Trial Conference** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
Trial Date Set;
Journal Entry Details:
Mr. Ebert advised that the Bank and the HOA have settled. Counsel concur that on the Bank and SFR remain for purposes of a bench trial and they anticipate 3 days for trial. Colloquy regarding trial setting within the stack. COURT ORDERED, Trial Dates SET; Calendar Call RESET; Joint Pretrial Memorandum DUE April 2, 2019. The Court DIRECTED counsel to submit a stipulation to amend the case caption prior to trial. 4/9/19 9:00 AM CALENDAR CALL 4/16/19 11:00 AM BENCH TRIAL;

04/09/2019  **Calendar Call** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
Matter Heard;
Journal Entry Details:
Upon Court's inquiry, parties advised they anticipate three days for trial beginning on 4/16/2019. Further, parties anticipate brief openings with twenty minutes for each side. Colloquy regarding witness line up for trial and scheduling for trial. Court noted parties have provided exhibits, Pre Trial Memorandum. Mr. Martinez advised parties will submit Trial Briefs at the time of trial as well as proposed Findings of Fact and Conclusions of Law. Mr. Martinez submitted the deposition of Katherine Ortwerth. Ms. Lehman advised she is working on obtaining the certified copy of the deposition she intended to use. Court stated that information is due today and will not be utilized at trial. CLERK'S NOTE: The minutes for this hearing have been prepared by a review of the JAVS recording. tia everett 5/23/2019;

04/15/2019  **Telephonic Conference** (4:15 PM) (Judicial Officer: Kishner, Joanna S.)
Matter Heard;
Journal Entry Details:
Court informed counsel that she is still in her current trial with witnesses. Further, Court stated she will not be able to start trial in this case at 10:30 am; however, she can possible begin the trial at 2:00 pm in hopes that the current trial is in deliberations. Court inquired Ms. Hanks advised she would like the trial to stand and begin tomorrow at 2:00 pm. Mr. Nitz

CASE SUMMARY

CASE NO. A-16-739867-C

advised he will agree to begin tomorrow at 2:00 pm. Court advised she will inform parties tomorrow if the 2:00 pm will work or if trial will begin Wednesday. Parties so agreed.
CLERK'S NOTE: The minutes for this hearing have been prepared by a review of the JAVS recording via Everett;

04/16/2019



Bench Trial (2:00 PM) (Judicial Officer: Kishner, Joanna S.)

04/16/2019-04/18/2019, 04/23/2019-04/24/2019, 05/20/2019

MINUTES

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Matter Heard;

Matter Heard;

Journal Entry Details:

Discussions as to the caption outlined in the Findings of Fact, Conclusions of Law and Judgment filed May 17, 2019, and Exhibit No. 30. Closing arguments by counsel. COURT ORDERED, written decision to issue; matter SET for status check on the Court's Civil Chambers calendar, regarding the decision. Plaintiff's Amended Proposed Findings of Facts and Conclusions of Law due June 4, 2019. Ms. Hanks informed the Court she will be submitting another amended proposed findings of facts and conclusions of law, to reflect the correct caption. 6/07/19 STATUS CHECK: DECISION (CHAMBERS) CLERK'S NOTE: Joint Proposed Exhibit Binders were returned to counsel for Plaintiff, via runner service, on May 21, 2019 at around 3:00 p.m. (5/21/19 sb);

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Matter Heard;

Matter Heard;

Journal Entry Details:

Exhibits presented (see worksheet). Arguments regarding the admission of exhibits. Plaintiff resets. Defense counsel moved for a 52 (c) motion. Mr. Nitz argued the 52 (c) motion should be submitted in writing and responded to in writing. COURT ALLOWED counsel to argue the 52 (c) motion orally. Arguments by counsel. COURT stated FINDINGS and ORDERED exhibit NOT ADMITTED. RECESS. COURT RECONVENED. Further arguments regarding admission of exhibits. COURT stated FINDINGS, AFFIRMED objections and DENIED reconsideration of exhibit twenty-five. RECESS. COURT RECONVENED. Plaintiff rests. Arguments regarding 52 (c) motion. COURT ORDERED, ruling DEFERRED until the conclusion of the case. Defense rests. COURT ORDERED, 52 (c) DENIED WITHOUT PREJUDICE. Colloquy regarding scheduling a date for closing arguments.;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Matter Heard;

Matter Heard;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Matter Heard;

Matter Heard;

Journal Entry Details:

BENCH TRIAL - DAY 3 [Requested Designation of Record begins at 10:15 a.m.] Plaintiff's Witness, David Alessi, who was previously sworn continued with testimony under direct examination by Mr. Nitz. Three other Plaintiff's Witnesses were sworn and testified. Exhibits presented. (Please see Exhibit Lists) Last Witness of the day excused. COURT ORDERED, TRIAL CONTINUED TO: 4/23/19 1:00 P.M. CLERK'S NOTE: On 7/3/19 Court Clerk Sharon Chun generated this minute order based on Exhibit Lists and Transcript. ;

Trial Continues;

Trial Continues;

CASE SUMMARY**CASE NO. A-16-739867-C**

	<p>Trial Continues; Trial Continues; Matter Heard; Matter Heard; Journal Entry Details: <i>At the hour of 4:00 p.m. Courtroom Clerk, Madalyn Kearney, now present. Testimony and exhibits continue (see worksheets). CONTINUED TO: 4/18/19 10:00 AM;</i> Trial Continues; Trial Continues; Trial Continues; Trial Continues; Matter Heard; Matter Heard; Journal Entry Details: <i>Greg King, Esq. also present. Colloquy regarding updating the caption pursuant the stipulation, witness schedule, time allotted, and witness availability. Mr. Nitz moved to continue trial to permit the orderly presentation of witnesses. Opposition by Ms. Hanks. Opening statements by Mr. Nitz. Objection by Ms. Hanks regarding the universal witness. COURT ORDERED, motion to strike universal witness GRANTED. Mr. Mr. King excused. Counsel for SFR to prepare the order. Court signed stipulation IN OPEN COURT. Testimony and exhibits presented (see worksheets). Colloquy regarding witness scheduling. COURT ORDERED, trial CONTINUED. CONTINUED TO: 4/17/2019 9:30 AM;</i></p> <p>SCHEDULED HEARINGS</p> <p>CANCELED Status Check (06/21/2019 at 3:00 AM) (Judicial Officer: Kishner, Joanna S.) <i>Vacated</i> <i>Status Check: Decision</i></p>
05/20/2019	<p>CANCELED Bench Trial (10:00 AM) (Judicial Officer: Kishner, Joanna S.) <i>Vacated - Duplicate Entry</i> <i>Closing arguments</i></p>
06/21/2019	<p>CANCELED Status Check (3:00 AM) (Judicial Officer: Kishner, Joanna S.) <i>Vacated</i> <i>Status Check: Decision</i></p>

DATE**FINANCIAL INFORMATION**

Defendant Antelope Homeowners' Association	
Total Charges	223.00
Total Payments and Credits	223.00
Balance Due as of 7/22/2019	0.00
 Cross Claimant SFR Investments Pool 1, LLC	
Total Charges	423.00
Total Payments and Credits	423.00
Balance Due as of 7/22/2019	0.00
 Counter Defendant U.S. Bank, National Association	
Total Charges	497.00
Total Payments and Credits	497.00
Balance Due as of 7/22/2019	0.00
 Counter Defendant U.S. Bank, National Association	
Security Cost Bond Balance as of 7/22/2019	500.00

DISTRICT COURT CIVIL COVER SHEET

Clark County, Nevada
 Case No. _____
 (Assigned by Clerk's Office)

A- 16- 739867- C

XXXI

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): U.S. BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR MERRILL LYNCH MORTGAGE INVESTORS TRUST, MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES 2005-A8	Defendant(s) (name/address/phone): SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company; DOE INDIVIDUALS I through X, inclusive; and ROE CORPORATIONS I through X, inclusive
Attorney (name/address/phone): WRIGHT, FINLAY & ZAK, LLP Edgar C. Smith, Esq., Victoria L. Hightower, Esq. 7785 W. Sahara Avenue, Suite 200 Las Vegas, NV 89117 (702) 475-7964; Fax: (702) 946-1345	Attorney (name/address/phone):

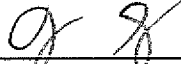
II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input checked="" type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

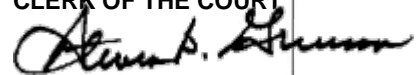
Business Court filings should be filed using the Business Court civil coversheet.

July 12, 2016

Date


 Signature of initiating party or representative

See other side for family-related case filings.



1 FFCL

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA
5

6 U.S. BANK, NATIONAL ASSOCIATION AS
7 TRUSTEE FOR MERRILL LYNCH
8 MORTGAGE INVESTORS TRUST,
9 MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

10 Plaintiff,

11 vs.

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

13 Defendants.

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

15 Counter/Cross Claimant,

16 vs.

17
18 U.S. BANK, NATIONAL ASSOCIATION AS
19 TRUSTEE FOR MERRILL LYNCH
20 MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

21 Counter/Cross Defendants.

Case No. A-16-739867-C

Dept. No. XXXI

**FINDINGS OF FACT AND CONCLUSIONS
OF LAW AND JUDGMENT**

22 This matter came before the Court for trial on April 16, 17, 18, 23, 24,
23 2019, and May 20, 2019. Karen L. Hanks, Esq. and Jason G. Martinez, Esq.
24 appeared on behalf of SFR Investments Pool 1, LLC ("SFR"). Natalie Lehman,
25 Esq. and Dana Nitz, Esq. appeared on behalf of U.S. Bank National Association
26 as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-
27 Backed Certificates, Series 2005-A8 ("U.S. Bank"). Having reviewed and

1 considered the facts, testimony of witnesses and arguments of counsel, for the
2 reasons stated on the record, and good cause appearing, the Court makes the
3 following Findings of Fact and Conclusions of Law:¹

4 **I. FINDINGS OF FACT**

5 Some of the following facts were stipulated to by the parties by way of
6 their Amended Joint Pre-Trial Memorandum. Where such facts were stipulated,
7 the Court takes such facts and unrefuted and undisputed:

8 1. In 1991, Nevada adopted the Uniform Common Interest Ownership
9 Act as NRS 116, including NRS 116.3116(2).

10 2. On June 23, 2004, the Antelope Homeowners Association
11 ("Association") perfected and gave notice of its lien by recording its Declaration of
12 Covenants, Conditions, and Restrictions ("CC&Rs") in the Official Records of the
13 Clark County Recorder as Instrument No. 200406230002013. (Ex. 1).²
14 Thereafter the Association recorded a Second Amendment to CC&Rs as
15 Instrument No. 200609140003739. (Ex. 2.)

16 3. On May 23, 2005, a Grant, Bargain Sale Deed transferring the real
17 property commonly known as 7868 Marbledoe Street, Las Vegas, Nevada
18 89149; Parcel No. 125-18-112-069 ("Property") Henry and Freddie Ivy ("Ivies")
19 was recorded in the Official Records of the Clark County Recorder as Instrument
20 No. 200610030004304. (Ex. 3.)

21 4. On May 23, 2005, a Deed of Trust identifying Mortgage Electronic
22 Registrations Systems, Inc. ("MERS") as nominee beneficiary for the originating
23

24
25 ¹ Pursuant to the agreement of the parties, the proposed Findings were filed and submitted by
26 June 4, 2019. Any Findings of Fact that are more appropriately Conclusions of Law shall be so
27 deemed. Any Conclusions of Law that are more appropriately Findings of Fact shall be so
28 deemed.

² The Parties stipulated to this fact.

1 lender, Universal American Mortgage Company, LLC ("Universal"), as Instrument
2 No. 200505230004228 ("Deed of Trust"). (Ex. 5.)³

3 5. On November 12, 2009, the Association, through its agent, Alessi &
4 Koenig, LLC ("Alessi"), recorded a Notice of Delinquent Assessment Lien
5 ("NODAL") in the Official Records of the Clark County Recorder as Instrument
6 No. 200911120004474. (Ex. 9.)⁴

7 6. On February 17, 2011, Alessi recorded a Notice of Default and
8 Election to Sell Under Homeowners Association Lien ("NOD") in the Official
9 Records of the Clark County Recorder as Instrument No. 201102170001289.
10 (Ex. 11.)⁵

11 7. On April 11, 2011, Alessi recorded a Notice of Sale ("NOS #1") in
12 the Official Records of the Clark County Recorder as Instrument No.
13 201108110003087. (Ex. 12.)⁶

14 8. On April 16, 2012, Alessi recorded a Notice of Sale ("NOS #2") in
15 the Official Records of the Clark County Recorder as Instrument No.
16 201204160000922. (Ex. 13.)⁷

17 9. On July 2, 2012, Alessi recorded a Notice of Sale ("NOS #3") in the
18 Official Records of the Clark County Recorder as Instrument No.
19 201207020001432. (Ex. 14.)⁸

20
21
22 ³ The parties stipulated to this fact.

23 ⁴ The parties stipulated to this fact.

24 ⁵ The parties stipulated to this fact.

25 ⁶ The parties stipulated to this fact.

26 ⁷ The parties stipulated to this fact.

27 ⁸ The parties stipulated to this fact.

1 10. Alessi, on behalf of the Association, mailed the NOD, NOS #1,
2 NOS#2 and NOS#3 to U.S. Bank's predecessor in interest, Universal and/or its
3 agent(s).⁹

4 11. Universal, the then recorded beneficiary of the Deed of Trust,
5 and/or its agent(s), received the NOD, NOS #1, NOS#2 and NOS#3.¹⁰

6 12. The Association foreclosure sale occurred on July 25, 2012
7 ("Sale").¹¹

8 13. On August 3, 2012, a Trustee's Deed Upon Sale ("Trustee's Deed")
9 was recorded in the Official Records of the Clark County Recorder, conveying
10 the Property to SFR Investments Pool 1, LLC ("SFR"). (Ex. 15.)¹²

11 14. SFR paid Alessi \$5,950.00 in exchange for the Trustee's Deed.

12 15. At the time of the Association Sale, Universal was the owner of the
13 Ivy Note and beneficiary of record of the Deed of Trust.¹³

14 16. On June 1, 2018, a Corporate Assignment of Deed of Trust was
15 recorded in which all beneficial interest in the Deed of Trust was purportedly
16 assigned to GreenPoint Mortgage Funding, Inc. (Ex. 34.)¹⁴

17 17. On July 2, 2018, a Corporate Assignment of Deed of Trust was
18 recorded in which all beneficial interest in the Deed of Trust was purportedly
19 assigned to U.S. Bank National Association, as trustee, successor in interest to
20 Wachovia Bank, National Association, as trustee for Merrill Lynch Mortgage
21

22 ⁹ The parties stipulated to this fact.

23 ¹⁰ The parties stipulated to this fact.

24 ¹¹ The parties stipulated to this fact.

25 ¹² The parties stipulated to this fact.

26 ¹³ The parties stipulated to this fact.

27 ¹⁴ The parties stipulated to this fact.

1 Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8 ("U.S.
2 Bank"). (Ex. 42.)¹⁵

3 18. On July 12, 2016, U.S. Bank filed a complaint against SFR.
4 Nowhere in the complaint does U.S. Bank plead tender or any facts related to
5 tender.

6 19. On May 8, 2018, U.S. Bank filed an amended complaint. This is the
7 first pleading where U.S. Bank pleads tender.
8

9 **II. CONCLUSIONS OF LAW**

10 **A. Evidentiary Rulings Re Witnesses Made During Trial**

11 1. U.S. Bank attempted to call a witness from Universal American
12 Mortgage Company, LLC. The Court granted SFR's objection to the same for
13 the following reasons: U.S. Bank never identified a witness by name for Universal
14 in violation of NRCP 16.1. There was no good cause presented for the failure to
15 name the witness. SFR raised timely objection(s). SFR also established that it
16 would be prejudiced if the Court allowed the unnamed witness to testify as they
17 had no opportunity to depose or have knowledge of what the witness would
18 state. After a full opportunity for oral argument by the parties the Court found the
19 Bank's conduct to be a per se violation of the Rule and under Rule 16.1(e)(3)
20 combined with the prejudice meant that the witness was precluded from
21 testifying at trial.

22 2. U.S. Bank attempted to call a witness from the Nevada Real Estate
23 Division ("NRED") by the name of Teralyn Thompson. The Court granted SFR's
24 objection to the same after a full hearing on the merits. The Court's reasoning
25
26

27 ¹⁵ The parties stipulated to this fact.
28

1 included *inter alia*: Neither NRED, nor Ms. Thompson were disclosed under
2 NRCP 16.1 as required. There was no good cause cited for the failure to name
3 her. Likewise, the documents for which the witness was expected to testify were
4 never disclosed as required by Rule 16.1. The first time these documents were
5 asserted to have been mentioned was the day before trial, via email to counsel
6 for SFR. The Court finds this to be a per se violation. Both the witness and the
7 documents were readily available during the discovery period, and the Bank was
8 aware of NRED's involvement by virtue of the NRED mediation; notice of
9 completion of which was filed on January 9, 2018. The Court further found that
10 the Bank had not shown good cause why the Bank failed to disclose the witness
11 and documents or sought relief from the Court to extend discovery. SFR raised
12 timely objection(s). The Court further found that SFR was prejudiced by the
13 failure to disclose as it could not depose the witness; did not prepare to have the
14 documents taken into account in the case; and thus, it would not be proper to
15 allow the witness to testify or have the documents introduced for the first time at
16 trial.

17 3. U.S. Bank attempted to call Harrison Whitaker, an employee of
18 Ocwen Financial Corporation, as both a witness on behalf of U.S. Bank and as
19 custodian of records. After a full hearing on the merits, the Court granted SFR's
20 objection to the same for the following reasons: Neither Mr. Whittaker nor
21 Ocwen were disclosed as a witness in this case as required by NRCP 16.1 and
22 the Court finds this is a per se violation. SFR raised timely objection(s). The
23 Bank knew at the time it was hired by Ocwen, that Ocwen was acting as the loan
24 servicer; and, therefore, if they intended to call Ocwen as a witness at trial, the
25 Bank could have disclosed an Ocwen witness. The Court acknowledges the
26 Bank produced Katherine Ortwerth as its 30(b)(6) witness during discovery and
27 took the fact that she left Ocwen into account. Given she left Ocwen's employ in
28

1 or around February 2019, and the trial was several months later, the Court found
2 that the Bank never named another witness for Ocwen or disclosed Ocwen
3 overall as a potential witness despite having time to do so. The Bank also chose
4 not to file a pre-trial motion to handle this issue despite knowing that SFR had
5 timely objected. The Court also found that SFR established it would be
6 prejudiced and thus in light of the totality of the circumstances, the Court found it
7 proper to sustain SFR's objection.

8 **B. Rule 52(c) Motions**

9 4. At the close of U.S. Bank's case in chief, SFR brought several Rule
10 52(c) motions based on the issues of law identified by U.S. Bank in the joint pre-
11 trial memorandum.

12 5. As to the Motion Re: Issue #5, whether the HOA's foreclosure sale
13 was wrongful and/or complied with the provisions of NRS Chapter 116, to the
14 extent tender is alleged, the Court denied the Motion without prejudice.

15 6. As to the Motion re: Issue #6, whether the HOA's foreclosure sale
16 should be set aside, and within that inquiry: (a) whether the price paid at the
17 foreclosure sale was inadequate; and (b) whether there were elements of fraud,
18 unfairness, and/or oppression in the HOA foreclosure process and resulting sale,
19 the Court granted this Motion. The only evidence U.S. Bank proffered for value
20 was the Assessor's taxable value for 2008 and 2010. There being no value from
21 2012 for the Court to compare to the price paid by SFR at the 2012 sale, the
22 Court cannot determine whether the price paid was grossly inadequate. But
23 even if the Court could compare the price paid to the proffered values, price
24 alone is not enough. There must be additional evidence of fraud, unfairness, and
25 oppression that accounted for or brought about the price paid, and the Court
26 finds no such evidence. See *Nationstar Mortgage, LLC v. Saticoy Bay, LLC*
27 *Series 2227 Shadow Canyon*, 405 P.3d 641, 647 citing *Golden v. Tomiyasu*, 79

1 Nev. 503, 514, 387 P.2d 989, 995 (1963) (internal citations omitted) (emphasis
2 added).

3 7. As to the Motion Re: Issue #7, whether the mortgage protection
4 clause(s) in the CC&Rs was applicable to subordinate the HOA assessment lien
5 to the Deed of Trust or preclude extinguishment of the Deed of Trust by a
6 foreclosure sale under NRS 116.31162 through NRS 116.31168, the Court
7 granted this Motion. No CC&Rs were admitted into evidence, so the Court
8 cannot determine whether a mortgage protection clause even existed in the
9 Association's CC&Rs.

10 8. As to the Motion Re: Issue #8, whether the recitals in the
11 Foreclosure Deed are conclusive proof of any matter contained therein, the Court
12 granted this Motion in part. The Motion is granted with respect to those recitals
13 contained in the Foreclosure Deed. As to the equity portion, the Motion is denied
14 without prejudice.

15 9. As to the Motion Re: Issue #9, whether the HOA lien and Notices
16 of Default and Sale included items and amounts not permitted by the CC&Rs and
17 NRS Chapter 116, the Court grants the Motion in part. It is granted as to the
18 CC&Rs as these were never admitted, so there is no proof the notices included
19 amounts not permitted by the CC&Rs. The Motion is also granted as to NRS
20 116. There is no evidence the Notices included amounts not permitted by NRS
21 116. The Court denies, without prejudice, as to the superpriority amount.

22 10. As to the Motion Re: Issue #10, whether SFR was a bona fide
23 purchaser of the Property as a matter of Nevada law, the Court denied this
24 Motion without prejudice.

1 **C. Subject Matter Jurisdiction**

2 11. At the time U.S. Bank filed its Complaint (July 12, 2016), U.S. Bank
3 was not the real party in interest and lacked standing; and therefore, under
4 NRCP 12(h)(3), dismissal of U.S. Bank's action is mandated.

5 12. Under NRCP 17(a), "[a]n action must be prosecuted in the name of
6 the real party in interest."

7 13. "A real party in interest is one who possesses the right to enforce
8 the claim and has a significant interest in the litigation." *Arguello v. Sunset*
9 *Station, Inc.*, 127 Nev. 365, 368, 252 P.3d 206, 208 (2011) (internal quotations
10 omitted).

11 14. In short, the determination is whether the plaintiff is the correct
12 party to bring the suit. See *Elley v. Stephens*, 104 Nev. 413, 416-17, 760 P.2d
13 768, 771 (1988) ("appellants are asserting someone else's potential legal
14 problem; they are not the proper party to assert [this claim]"); see also *Hammes*
15 *v. Brumley*, 659 N.E.2d 1021, 1030 (Ind. 1995) (citing *Bowen v. Metro Bd. Of*
16 *Zoning Appeals*, 317 N.E.2d 193 (Ind. App. 1974)) (a real party in interest is the
17 person who is the true owner of the right sought to be enforced).

18 15. Here, the parties stipulated that at the time of the Association sale,
19 Universal was owner of the Ivy Note and beneficiary of record of the Deed of
20 Trust.

21 16. Also, at the time U.S. Bank filed its Complaint (July 12, 2016),
22 Universal was still the recorded beneficiary of the Deed of Trust. (Ex. 5.) This is
23 another stipulated fact by the parties.

24 17. As such, Universal was the real party in interest on July 12, 2016,
25 not U.S. Bank.

26 18. "The inquiry into whether a party is a real party in interest overlaps
27
28

1 with the question of standing.” *Arguello*, 252 P.3d at 208. The question of
2 standing “focuses on the party seeking adjudication rather than on the issues
3 sought to be adjudicated.” *Szilagyi v. Testa*, 99 Nev. 834, 838, 673 P.2d 495, 498
4 (1983). In order to have standing, the party must also have suffered a legally
5 redressable harm and the suit must be “ripe” and not “moot” (at least as to the
6 particular plaintiff) at the time of the lawsuit. See *Schwartz v. Lopez*, 382 P.3d
7 886, 894 (Nev. 2016) (to establish standing, a party must show the occurrence of
8 an injury that is personal to him and not merely a generalized grievance.)
9 (emphasis added.)

10 19. Whether a party has standing is a question that goes to the court's
11 jurisdiction. *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 964-65, 194
12 P.3d 96, 105 (2008); *Vaile v. Eighth Jud. Dist. Ct.*, 118 Nev. 262, 276, 44 P.3d
13 506, 515–16 (2002).

14 20. A court lacks the power to grant relief when (1) an indispensable
15 party is absent; or (2) the dispute is moot or not yet ripe, or a party does not have
16 the legal right to seek or receive the requested relief. See *State Indus. Ins. Sys.*
17 *v. Sleeper*, 100 Nev. 267, 269, 679 P.2d 1273, 1274 (1984) (“There can be no
18 dispute that lack of subject matter jurisdiction renders a judgment void”). See
19 generally John G. Roberts, Jr., *Article III Limits on Statutory Standing*, 42 Duke
20 L.J. 1219, 1230 (1993); Antonin Scalia, *The Doctrine of Standing as an Essential*
21 *Element of the Separation of Powers*, 17 Suffolk U.L.Rev. 881, 881 (1983).

22 21. “Nevada has a long history of requiring an actual justiciable
23 controversy as a predicate to judicial relief” i.e. standing. *In re Amerco Derivative*
24 *Litig.*, 127 Nev. 196, 213, 252 P.3d 681, 694 (2011) (internal quotations omitted)
25 (citing *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986)).

26 22. Further, “a justiciable controversy [is] a preliminary hurdle to an
27 award of declaratory relief.” *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444
28

1 citing *Southern Pacific Co. v. Dickerson*, 80 Nev. 572, 576, 397 P.3d 187, 190
2 (1964)). What constitutes a justiciable controversy is defined in *Kress v. Corey*,
3 65 Nev. 1, 189 P.2d 352 (1948) as:

4
5 (1) there must exist a justiciable controversy; that is to say, a
6 controversy in which a claim of right is asserted against one
7 who has an interest in contesting it; (2) the controversy must be
8 between persons whose interests are adverse; (3) the party
9 seeking declaratory relief must have a legal interest in the
10 controversy, that is to say, a legally protectable interest; and (4)
11 the issue involved in the controversy must be ripe for judicial
12 determination.

13
14 23. Here, U.S. Bank falls short of these requirements. First, U.S. Bank
15 had no claim of right at the time of filing the Complaint because it did not become
16 the recorded beneficiary until July 2, 2018, nearly two years after the filing of the
17 Complaint. Thus, U.S. Bank had no interest in the Deed of Trust at the time the
18 Complaint filed. Second, in order for U.S. Bank's interest to be adverse to
19 SFR's, U.S. Bank would actually have to have an interest in the first place. But
20 at the time of filing the Complaint, U.S. Bank had no interest in the Deed of Trust.
21 Third, because U.S. Bank had no interest at the time it sued SFR, it follows that
22 U.S. Bank did not have a legally protectable interest at the time of filing. Finally,
23 because U.S. Bank had no interest at the time it sued SFR, all claims U.S. Bank
24 asserted against SFR were not ripe for judicial determination.

25
26 24. Based on the above, U.S. Bank has failed to show a justiciable
27 controversy and failed to show any injury. As such, U.S. Bank lacked standing at
28 the time the claims were filed against SFR.

29
30 25. Nor can the later assignment to U.S Bank in July 2018, while this
31 case was pending, cure the lack of subject matter jurisdiction at the outset. This

1 is so because subject matter jurisdiction “cannot be conferred by the parties.”
2 *Swan v. Swan*, 106 Nev. 464, 469, 796 P.2d 221, 224 (1990).

3 26. Under NRCP 12(h)(3), “[i]f the court determines at any time that it
4 lacks subject-matter jurisdiction, the court must dismiss the action.”

5 27. Because the Court finds that U.S. Bank was neither the real party in
6 interest, nor did it have standing at the time it filed its Complaint, the Court finds it
7 lacked subject matter jurisdiction from the outset. As such, under NRCP
8 12(h)(3), this Court dismisses U.S. Bank’s action.

9 **D. Statute of Limitations**

10 28. U.S. Bank alleges “quiet title” against SFR. In Nevada, “quiet title”
11 is just a slang term to identify any action where one party claims an interest in
12 real property adverse to another. Thus, the title of U.S. Bank’s claim does
13 nothing to assist the Court in determining which statute of limitations applies. In
14 order to determine this, the Court must look at the nature of the grievance to
15 determine the character of the action, rather than the labels in the pleadings.
16 *Torrealba v. Kesmetis*, 124 Nev. 95, 178 P.3d 716, 723 (2008).

17 29. Here, when the nature of U.S. Bank’s grievance is analyzed,
18 tender, i.e. the Association lacked authority to foreclose because the default of
19 the superpriority portion was cured, it becomes readily apparent that a three-year
20 statute of limitations applies under NRS 11.190(3)(a).

21 30. As the Nevada Supreme Court noted in *Torrealba*, “[t]he phrase
22 ‘liability created by statute’ means a liability which would not exist but for the
23 statute.” *Torreabla*, 178 P.3d at 722. The Court further noted, “[w]here a duty
24 exists only by virtue of a statute ... the obligation is one created by statute.”” *Id.*
25 quoting *Gonzalez v. Pacific Fruit Express Co.*, 99 F.Supp. 1012, 1015
26 (D.Nev.1951) (quoting *Abram v. San Joaquin Cotton Oil Co.*, 46 F.Supp. 969,
27 976 (D.Cal.1942)) (internal citations and quotations omitted).

1 31. Here, the “character” of U.S. Bank’s tender claim is simple: the
2 Association had a duty to accept BANA’s tender, and it unjustifiably refused it.
3 U.S. Bank even pled as much: “[t]he HOA trustee refused to accept [BANA’s]
4 tender.” By virtue of this “rejection” U.S. Bank claims the “liability” is a void sale
5 resulting in SFR taking subject to the deed of trust. This duty to accept tender
6 arises implicitly from NRS 116 because as the Nevada Supreme Court noted, it
7 is the statute, i.e. NRS 116.3116 that governs liens against units for HOA
8 assessments and details the portion of the lien that has superpriority status.”
9 *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 427 P.3d 113, 116 (Nev.
10 2018) (“*SFR III*”).

11 32. In other words, but for the statute, there would be no superpriority
12 portion and, in turn, no duty on the part of the Association to accept payment of
13 this portion from a bank, like BANA. Moreover, but for the Association’s
14 rejection, there would be no liability on the part of SFR by way of taking, subject
15 to the Deed of Trust. All told, the Association’s lien is created by statute; the
16 superpriority mechanism of that lien is created by statute; the superpriority
17 portion is fixed by statute; and the Association’s implicit duty to accept payment
18 of the superpriority portion is created by statute. See *Torrealba*, 178 P.3d at 723.

19 33. Based on this, U.S. Bank’s tender claim is subject to the three-year
20 statute of limitations prescribed by NRS 11.190(3)(a). Here, the sale occurred on
21 July 25, 2012. Thus, the date by which U.S. Bank had to file its tender claim was
22 July 25, 2015. Having not alleged its tender claim until May 5, 2018, U.S. Bank’s
23 tender claim is time-barred.

24 34. The Court rejects U.S. Bank’s argument that a five-year statute of
25 limitations under NRS 11.070 and NRS 11.080 applies. Neither of these statutes
26 are time-bar statutes; they are standing statutes. Regardless, neither statute
27 could ever apply to U.S. Bank as it never possessed the subject property, which
28

1 both statutes require. But even if a five-year statute of limitations did apply, U.S.
2 Bank would still be time-barred as it did not plead tender until nearly six years
3 after the sale.

4 35. The Court rejects U.S. Bank's argument that its Amended
5 Complaint (filed May 5, 2018) relates-back to its original Complaint (filed July 12,
6 2016). For one, because a three-year statute of limitations applies, relation-back
7 does not save the bank as the original Complaint is time-barred. But even if the
8 Court applied a longer statute of limitations, relation-back would not apply.

9 36. NRCP 15(c) states "[w]henver the claim or defense asserted in the
10 amended pleading arose out of the conduct, transaction, or occurrence set forth
11 or attempted to be set forth in the original pleading, the amendment relates back
12 to the date of the original pleading." However, "where the original pleading does
13 not give a defendant 'fair notice of what the plaintiff's [amended] claim is and the
14 grounds upon which it rests,' the purpose of the statute of limitations has not
15 been satisfied and it is 'not an original pleading that [can] be rehabilitated by
16 invoking Rule 15(c).'" *Baldwin County Welcome Center v. Brown*, 466 U.S. 147,
17 149 n. 3, 104 S.Ct. 1723 (internal marks and citation omitted). *See also, Glover*
18 *v. F.D.I.C.*, 698 F.3d 139, 146 (3d Cir. 2012).

19 37. In other words, the analysis under NRCP 15(c) is "whether the
20 original complaint adequately notified the defendants of the basis for liability the
21 plaintiffs would later advance in the amended complaint." *Meijer, Inc. v. Biovail*
22 *Corp.*, 533 F.3d 857, 866 (D.C. Cir. 2008) (emphasis added). Similarly, Nevada
23 law will not allow a new claim based upon a new theory of liability asserted in an
24 amended pleading to relate-back under NRCP 15(c) after the statute of
25 limitations has run. *Nelson v. City of Las Vegas*, 99 Nev. 548, 556–57, 665 P.2d
26 1141, 1146 (1983).

1 38. Here, U.S. Bank's original complaint, filed on July 12, 2016, never
2 pled tender or any allegations related to tender. It made no allegations
3 whatsoever that the super-priority portion was cured. Simply put, anyone reading
4 the original Complaint would have no idea U.S. Bank would later claim it
5 tendered the superpriority portion of the lien. Compare this to U.S. Bank's
6 Amended Complaint, U.S. Bank completely changed the basis for which it was
7 challenging the sale i.e. tender. Because of this there is no relation-back. See
8 *Nutton v. Sunset Station, Inc.*, 357 P.3d 966 (Nev. 2015). This provides an
9 independent basis for U. S. Bank's claims to fail.

10 **E. U.S. Bank Failed to Prove a Deliver of a Valid Tender**

11 39. In Nevada, "[v]alid tender requires payment in full." *SFR III*, 427
12 P.3d 113 at 117.

13 40. Under NRS 116.31162(b), the superpriority portion of the
14 Association's lien is comprised of (1) nine-months of common assessments; and
15 (2) charges incurred for nuisance-abatement and maintenance under NRS
16 116.310312.

17 41. In Nevada, "[t]he burden of demonstrating that the delinquency was
18 cured presale, rendering the sale void, [is] on the party challenging the
19 foreclosure..." *Resources Group, LLC v. Nevada Association Services, Inc.*, 437
20 P.3d 154, 156 (Nev. 2019).

21 42. Thus, under Nevada law U.S. Bank bears the burden of proving
22 what the superpriority amount was at the time of the sale, and that it delivered a
23 full payment of this amount prior to the sale.

24 43. At trial, U.S. Bank offered a letter with a check written from Miles
25 Bauer's Trust Account in the amount of \$405.00, dated December 16, 2011, (Ex.
26 24), but there was no evidence the check was in fact delivered to Alessi. Mr.
27 Jung only testified about general practices of the firm in terms of delivering
28

1 similar checks like the one at Ex. 24, but had no personal knowledge about Ex.
2 24; and therefore, offered no specific testimony about Ex. 24. (Testimony of R.
3 Jung, Day 1, at 6:5-15; 25:16-20; 25:24-25-26:1-4.)

4 45. Mr. Jung was asked if he recalled sending a tender check in this
5 case, and his answer was, "[i]ndependently, I don't." (*Id.* at 26:17-19.)

6 44. U.S. Bank offered no run slip or testimony from any runner that Ex.
7 24 was in fact delivered to Alessi prior to the sale. This is compelling to the Court
8 in light of Mr. Jung's testimony that the practice of Miles Bauer was to deliver
9 said letters via runner. (*Id.* at 26:6-8.) This also comports with Mr. Alessi's
10 testimony. (Testimony of D. Alessi, Day 3, at 86:16-23.)

11 55. U.S. Bank offered no receipt of copy to show delivery. This is
12 compelling to the Court in light of Mr. Alessi's testimony that delivery of said
13 letters were accompanied by an ROC that Alessi signed when it accepted the
14 letter. (*Id.* at 86:1-18.)

15 56. Further, Mr. Alessi testified that it was the practice of Alessi to
16 maintain a copy of letters like Ex. 24 in the file and/or notate its status report of
17 receipt of such letter. (*Id.* at 85:7-10; 14-19; 87:2-7.) The letter was absent from
18 Alessi's file and the status report does not notate receipt of Ex. 24. (*Id.* at 84:16-
19 19; *see also*, Ex. 30.)

20 57. NRS 51.145 provides that "[e]vidence that a matter is not included
21 in the records in any form, of a regularly conducted activity, can be used to prove
22 the nonoccurrence or nonexistence of the matter, if the matter was of a kind of
23 which was regularly made and preserved."

24 58. What is included in the status report, in addition to what is not, also
25 convinces the Court that Ex. 24 was not delivered. Specifically, on June 8, 2012,
26 and July 3, 2012, nearly a year after Ex. 24 was dated, Alessi received two
27 payoff requests from Miles Bauer. Had Miles Bauer delivered Ex. 24, these
28

1 payoff requests make little sense. (Ex. 30 at 616-617.) Additionally, Ocwen, the
2 servicer of the loan, inquired of Alessi about excess proceeds on September 24,
3 2014. (*Id.*) Had the Bank believed it tendered the superpriority amount, its
4 servicer would not have sought out excess proceeds as these monies are only
5 available to junior, extinguished lienholders. See NRS 116.31164.

6 59. All told, U.S. Bank failed to prove by a preponderance of the
7 evidence that Ex. 24 was delivered. But even more damaging to U.S. Bank's
8 claim is it never proved the superpriority amount. At trial, no ledgers were
9 admitted into evidence that could prove this amount. Likewise, the Court strikes
10 Mr. Alessi's testimony about the amount of the monthly assessments in 2009 as
11 this testimony constituted inadmissible hearsay to which SFR timely objected.

12 60. Having failed to prove the superpriority amount, even if this Court
13 could find Ex. 24 was delivered prior to the sale (which it cannot), the amount is
14 meaningless as the Court cannot determine from the evidence whether it was a
15 payment in full.

16 61. Having failed to prove its tender claim, the Court concludes the sale
17 extinguished the Deed of Trust.

18
19 **ORDER**

20 1. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED U.S.
21 Bank's action against SFR is DISMISSED on the basis the Court lacked subject
22 matter jurisdiction at the time U.S. Bank filed its action.

23 2. IT IS HEREBY ORDERED, ADJUDGED AND DECREED U.S.
24 Bank's claim against SFR, which is grounded in tender, is time-barred.

25 3. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED the
26 Deed of Trust recorded against real property located at 7868 Marbledoe Street,
27 Las Vegas, Nevada 89149; Parcel No. 125-18-112-069, recorded in the Official
28

1 Records of the Clark County Recorder as Instrument No. 200505230004228,
2 was extinguished by the July 25, 2012 Association sale.

3 2. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED U.S.
4 Bank its predecessors in interest and successors and assigns, principals, or
5 anyone else claiming an interest in the Deed of Trust, have no further right, title
6 or interest in real property located at 7868 Marbledoe Street, Las Vegas, Nevada
7 89149; Parcel No. 125-18-112-069 and are hereby permanently enjoined from
8 taking any further action to enforce the now extinguished Deed of Trust, including
9 but not limited to, clouding title, initiating or continuing to initiate foreclosure
10 proceedings, or taking any other actions to sell or transfer the Property.

11 3. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED title to
12 real property located at 7868 Marbledoe Street, Las Vegas, Nevada 89149;
13 Parcel No. 125-18-112-069 is hereby quieted in favor of SFR.

14 4. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED the lis
15 pendens recorded in the Official Records of the Clark County Recorder as
16 Instrument No. 20160713-0002695 is expunged.

17 **IT IS SO ORDERED.**

18 DATED this 14th day of June, 2019.

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21 
22 **HON. JOANNA S. KISHNER**
23 **DISTRICT COURT JUDGE**
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CERTIFICATE OF SERVICE

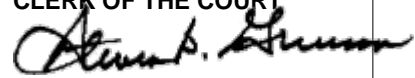
I hereby certify that on or about the date filed, a copy of this Order was served via Electronic Service to all counsel/registered parties, pursuant to the Nevada Electronic Filing Rules, and/or served via in one or more of the following manners: fax, U.S. mail, or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

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DISTRICT COURT

CLARK COUNTY, NEVADA

U.S. BANK, NATIONAL ASSOCIATION AS
TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

Plaintiff,

vs.

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

Defendants.

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

Counter/Cross Claimant,

vs.

U.S. BANK, NATIONAL ASSOCIATION AS
TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

Counter/Cross Defendants.

Case No. A-16-739867-C

Dept. No. XXXI

**NOTICE OF ENTRY OF FINDINGS OF
FACT AND CONCLUSIONS OF LAW
AND JUDGMENT**

KIM GILBERT EBRON
7625 DEAN MARTIN DRIVE, SUITE 110
LAS VEGAS, NEVADA 89139
(702) 485-3300 FAX (702) 485-3301

1 PLEASE TAKE NOTICE that on June 18, 2019 the **FINDINGS OF FACT AND**
2 **CONCLUSIONS OF LAW AND JUDGMENT** was entered. A copy of said Order is attached
3 hereto.

4 DATED this 19th day of June, 2019.

5 **KIM GILBERT EBRON**

6 /s/ Diana S. Ebron

7 DIANA S. EBRON, ESQ.

8 Nevada Bar No. 10580

9 7625 Dean Martin Drive, Suite 110

10 Las Vegas, Nevada 89139

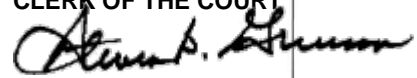
11 *Attorney for SFR Investments Pool 1, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of June, 2019, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT** to the following parties:

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/s/ Diane L. DeWalt
An Employee of KIM GILBERT EBRON



1 FFCL

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA
5

6 U.S. BANK, NATIONAL ASSOCIATION AS
7 TRUSTEE FOR MERRILL LYNCH
8 MORTGAGE INVESTORS TRUST,
9 MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

10 Plaintiff,

11 vs.

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

13 Defendants.

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

16 Counter/Cross Claimant,

17 vs.

18 U.S. BANK, NATIONAL ASSOCIATION AS
19 TRUSTEE FOR MERRILL LYNCH
20 MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8,

21 Counter/Cross Defendants.

Case No. A-16-739867-C

Dept. No. XXXI

**FINDINGS OF FACT AND CONCLUSIONS
OF LAW AND JUDGMENT**

22 This matter came before the Court for trial on April 16, 17, 18, 23, 24,
23 2019, and May 20, 2019. Karen L. Hanks, Esq. and Jason G. Martinez, Esq.
24 appeared on behalf of SFR Investments Pool 1, LLC ("SFR"). Natalie Lehman,
25 Esq. and Dana Nitz, Esq. appeared on behalf of U.S. Bank National Association
26 as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-
27 Backed Certificates, Series 2005-A8 ("U.S. Bank"). Having reviewed and

1 considered the facts, testimony of witnesses and arguments of counsel, for the
2 reasons stated on the record, and good cause appearing, the Court makes the
3 following Findings of Fact and Conclusions of Law:¹

4 **I. FINDINGS OF FACT**

5 Some of the following facts were stipulated to by the parties by way of
6 their Amended Joint Pre-Trial Memorandum. Where such facts were stipulated,
7 the Court takes such facts and unrefuted and undisputed:

8 1. In 1991, Nevada adopted the Uniform Common Interest Ownership
9 Act as NRS 116, including NRS 116.3116(2).

10 2. On June 23, 2004, the Antelope Homeowners Association
11 ("Association") perfected and gave notice of its lien by recording its Declaration of
12 Covenants, Conditions, and Restrictions ("CC&Rs") in the Official Records of the
13 Clark County Recorder as Instrument No. 200406230002013. (Ex. 1).²
14 Thereafter the Association recorded a Second Amendment to CC&Rs as
15 Instrument No. 200609140003739. (Ex. 2.)

16 3. On May 23, 2005, a Grant, Bargain Sale Deed transferring the real
17 property commonly known as 7868 Marbledoe Street, Las Vegas, Nevada
18 89149; Parcel No. 125-18-112-069 ("Property") Henry and Freddie Ivy ("Ivies")
19 was recorded in the Official Records of the Clark County Recorder as Instrument
20 No. 200610030004304. (Ex. 3.)

21 4. On May 23, 2005, a Deed of Trust identifying Mortgage Electronic
22 Registrations Systems, Inc. ("MERS") as nominee beneficiary for the originating
23

24
25 ¹ Pursuant to the agreement of the parties, the proposed Findings were filed and submitted by
26 June 4, 2019. Any Findings of Fact that are more appropriately Conclusions of Law shall be so
27 deemed. Any Conclusions of Law that are more appropriately Findings of Fact shall be so
28 deemed.

² The Parties stipulated to this fact.

1 lender, Universal American Mortgage Company, LLC ("Universal"), as Instrument
2 No. 200505230004228 ("Deed of Trust"). (Ex. 5.)³

3 5. On November 12, 2009, the Association, through its agent, Alessi &
4 Koenig, LLC ("Alessi"), recorded a Notice of Delinquent Assessment Lien
5 ("NODAL") in the Official Records of the Clark County Recorder as Instrument
6 No. 200911120004474. (Ex. 9.)⁴

7 6. On February 17, 2011, Alessi recorded a Notice of Default and
8 Election to Sell Under Homeowners Association Lien ("NOD") in the Official
9 Records of the Clark County Recorder as Instrument No. 201102170001289.
10 (Ex. 11.)⁵

11 7. On April 11, 2011, Alessi recorded a Notice of Sale ("NOS #1") in
12 the Official Records of the Clark County Recorder as Instrument No.
13 201108110003087. (Ex. 12.)⁶

14 8. On April 16, 2012, Alessi recorded a Notice of Sale ("NOS #2") in
15 the Official Records of the Clark County Recorder as Instrument No.
16 201204160000922. (Ex. 13.)⁷

17 9. On July 2, 2012, Alessi recorded a Notice of Sale ("NOS #3") in the
18 Official Records of the Clark County Recorder as Instrument No.
19 201207020001432. (Ex. 14.)⁸

20
21
22 ³ The parties stipulated to this fact.

23 ⁴ The parties stipulated to this fact.

24 ⁵ The parties stipulated to this fact.

25 ⁶ The parties stipulated to this fact.

26 ⁷ The parties stipulated to this fact.

27 ⁸ The parties stipulated to this fact.

1 10. Alessi, on behalf of the Association, mailed the NOD, NOS #1,
2 NOS#2 and NOS#3 to U.S. Bank's predecessor in interest, Universal and/or its
3 agent(s).⁹

4 11. Universal, the then recorded beneficiary of the Deed of Trust,
5 and/or its agent(s), received the NOD, NOS #1, NOS#2 and NOS#3.¹⁰

6 12. The Association foreclosure sale occurred on July 25, 2012
7 ("Sale").¹¹

8 13. On August 3, 2012, a Trustee's Deed Upon Sale ("Trustee's Deed")
9 was recorded in the Official Records of the Clark County Recorder, conveying
10 the Property to SFR Investments Pool 1, LLC ("SFR"). (Ex. 15.)¹²

11 14. SFR paid Alessi \$5,950.00 in exchange for the Trustee's Deed.

12 15. At the time of the Association Sale, Universal was the owner of the
13 Ivy Note and beneficiary of record of the Deed of Trust.¹³

14 16. On June 1, 2018, a Corporate Assignment of Deed of Trust was
15 recorded in which all beneficial interest in the Deed of Trust was purportedly
16 assigned to GreenPoint Mortgage Funding, Inc. (Ex. 34.)¹⁴

17 17. On July 2, 2018, a Corporate Assignment of Deed of Trust was
18 recorded in which all beneficial interest in the Deed of Trust was purportedly
19 assigned to U.S. Bank National Association, as trustee, successor in interest to
20 Wachovia Bank, National Association, as trustee for Merrill Lynch Mortgage
21

22 ⁹ The parties stipulated to this fact.

23 ¹⁰ The parties stipulated to this fact.

24 ¹¹ The parties stipulated to this fact.

25 ¹² The parties stipulated to this fact.

26 ¹³ The parties stipulated to this fact.

27 ¹⁴ The parties stipulated to this fact.

1 Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8 ("U.S.
2 Bank"). (Ex. 42.)¹⁵

3 18. On July 12, 2016, U.S. Bank filed a complaint against SFR.
4 Nowhere in the complaint does U.S. Bank plead tender or any facts related to
5 tender.

6 19. On May 8, 2018, U.S. Bank filed an amended complaint. This is the
7 first pleading where U.S. Bank pleads tender.
8

9 **II. CONCLUSIONS OF LAW**

10 **A. Evidentiary Rulings Re Witnesses Made During Trial**

11 1. U.S. Bank attempted to call a witness from Universal American
12 Mortgage Company, LLC. The Court granted SFR's objection to the same for
13 the following reasons: U.S. Bank never identified a witness by name for Universal
14 in violation of NRCP 16.1. There was no good cause presented for the failure to
15 name the witness. SFR raised timely objection(s). SFR also established that it
16 would be prejudiced if the Court allowed the unnamed witness to testify as they
17 had no opportunity to depose or have knowledge of what the witness would
18 state. After a full opportunity for oral argument by the parties the Court found the
19 Bank's conduct to be a per se violation of the Rule and under Rule 16.1(e)(3)
20 combined with the prejudice meant that the witness was precluded from
21 testifying at trial.

22 2. U.S. Bank attempted to call a witness from the Nevada Real Estate
23 Division ("NRED") by the name of Teralyn Thompson. The Court granted SFR's
24 objection to the same after a full hearing on the merits. The Court's reasoning
25
26

27 ¹⁵ The parties stipulated to this fact.
28

1 included *inter alia*: Neither NRED, nor Ms. Thompson were disclosed under
2 NRCP 16.1 as required. There was no good cause cited for the failure to name
3 her. Likewise, the documents for which the witness was expected to testify were
4 never disclosed as required by Rule 16.1. The first time these documents were
5 asserted to have been mentioned was the day before trial, via email to counsel
6 for SFR. The Court finds this to be a per se violation. Both the witness and the
7 documents were readily available during the discovery period, and the Bank was
8 aware of NRED's involvement by virtue of the NRED mediation; notice of
9 completion of which was filed on January 9, 2018. The Court further found that
10 the Bank had not shown good cause why the Bank failed to disclose the witness
11 and documents or sought relief from the Court to extend discovery. SFR raised
12 timely objection(s). The Court further found that SFR was prejudiced by the
13 failure to disclose as it could not depose the witness; did not prepare to have the
14 documents taken into account in the case; and thus, it would not be proper to
15 allow the witness to testify or have the documents introduced for the first time at
16 trial.

17 3. U.S. Bank attempted to call Harrison Whitaker, an employee of
18 Ocwen Financial Corporation, as both a witness on behalf of U.S. Bank and as
19 custodian of records. After a full hearing on the merits, the Court granted SFR's
20 objection to the same for the following reasons: Neither Mr. Whittaker nor
21 Ocwen were disclosed as a witness in this case as required by NRCP 16.1 and
22 the Court finds this is a per se violation. SFR raised timely objection(s). The
23 Bank knew at the time it was hired by Ocwen, that Ocwen was acting as the loan
24 servicer; and, therefore, if they intended to call Ocwen as a witness at trial, the
25 Bank could have disclosed an Ocwen witness. The Court acknowledges the
26 Bank produced Katherine Ortwerth as its 30(b)(6) witness during discovery and
27 took the fact that she left Ocwen into account. Given she left Ocwen's employ in
28

1 or around February 2019, and the trial was several months later, the Court found
2 that the Bank never named another witness for Ocwen or disclosed Ocwen
3 overall as a potential witness despite having time to do so. The Bank also chose
4 not to file a pre-trial motion to handle this issue despite knowing that SFR had
5 timely objected. The Court also found that SFR established it would be
6 prejudiced and thus in light of the totality of the circumstances, the Court found it
7 proper to sustain SFR's objection.

8 **B. Rule 52(c) Motions**

9 4. At the close of U.S. Bank's case in chief, SFR brought several Rule
10 52(c) motions based on the issues of law identified by U.S. Bank in the joint pre-
11 trial memorandum.

12 5. As to the Motion Re: Issue #5, whether the HOA's foreclosure sale
13 was wrongful and/or complied with the provisions of NRS Chapter 116, to the
14 extent tender is alleged, the Court denied the Motion without prejudice.

15 6. As to the Motion re: Issue #6, whether the HOA's foreclosure sale
16 should be set aside, and within that inquiry: (a) whether the price paid at the
17 foreclosure sale was inadequate; and (b) whether there were elements of fraud,
18 unfairness, and/or oppression in the HOA foreclosure process and resulting sale,
19 the Court granted this Motion. The only evidence U.S. Bank proffered for value
20 was the Assessor's taxable value for 2008 and 2010. There being no value from
21 2012 for the Court to compare to the price paid by SFR at the 2012 sale, the
22 Court cannot determine whether the price paid was grossly inadequate. But
23 even if the Court could compare the price paid to the proffered values, price
24 alone is not enough. There must be additional evidence of fraud, unfairness, and
25 oppression that accounted for or brought about the price paid, and the Court
26 finds no such evidence. See *Nationstar Mortgage, LLC v. Saticoy Bay, LLC*
27 *Series 2227 Shadow Canyon*, 405 P.3d 641, 647 citing *Golden v. Tomiyasu*, 79

1 Nev. 503, 514, 387 P.2d 989, 995 (1963) (internal citations omitted) (emphasis
2 added).

3 7. As to the Motion Re: Issue #7, whether the mortgage protection
4 clause(s) in the CC&Rs was applicable to subordinate the HOA assessment lien
5 to the Deed of Trust or preclude extinguishment of the Deed of Trust by a
6 foreclosure sale under NRS 116.31162 through NRS 116.31168, the Court
7 granted this Motion. No CC&Rs were admitted into evidence, so the Court
8 cannot determine whether a mortgage protection clause even existed in the
9 Association's CC&Rs.

10 8. As to the Motion Re: Issue #8, whether the recitals in the
11 Foreclosure Deed are conclusive proof of any matter contained therein, the Court
12 granted this Motion in part. The Motion is granted with respect to those recitals
13 contained in the Foreclosure Deed. As to the equity portion, the Motion is denied
14 without prejudice.

15 9. As to the Motion Re: Issue #9, whether the HOA lien and Notices
16 of Default and Sale included items and amounts not permitted by the CC&Rs and
17 NRS Chapter 116, the Court grants the Motion in part. It is granted as to the
18 CC&Rs as these were never admitted, so there is no proof the notices included
19 amounts not permitted by the CC&Rs. The Motion is also granted as to NRS
20 116. There is no evidence the Notices included amounts not permitted by NRS
21 116. The Court denies, without prejudice, as to the superpriority amount.

22 10. As to the Motion Re: Issue #10, whether SFR was a bona fide
23 purchaser of the Property as a matter of Nevada law, the Court denied this
24 Motion without prejudice.

1 **C. Subject Matter Jurisdiction**

2 11. At the time U.S. Bank filed its Complaint (July 12, 2016), U.S. Bank
3 was not the real party in interest and lacked standing; and therefore, under
4 NRCP 12(h)(3), dismissal of U.S. Bank's action is mandated.

5 12. Under NRCP 17(a), "[a]n action must be prosecuted in the name of
6 the real party in interest."

7 13. "A real party in interest is one who possesses the right to enforce
8 the claim and has a significant interest in the litigation." *Arguello v. Sunset*
9 *Station, Inc.*, 127 Nev. 365, 368, 252 P.3d 206, 208 (2011) (internal quotations
10 omitted).

11 14. In short, the determination is whether the plaintiff is the correct
12 party to bring the suit. See *Elley v. Stephens*, 104 Nev. 413, 416-17, 760 P.2d
13 768, 771 (1988) ("appellants are asserting someone else's potential legal
14 problem; they are not the proper party to assert [this claim]"); see also *Hammes*
15 *v. Brumley*, 659 N.E.2d 1021, 1030 (Ind. 1995) (citing *Bowen v. Metro Bd. Of*
16 *Zoning Appeals*, 317 N.E.2d 193 (Ind. App. 1974)) (a real party in interest is the
17 person who is the true owner of the right sought to be enforced).

18 15. Here, the parties stipulated that at the time of the Association sale,
19 Universal was owner of the Ivy Note and beneficiary of record of the Deed of
20 Trust.

21 16. Also, at the time U.S. Bank filed its Complaint (July 12, 2016),
22 Universal was still the recorded beneficiary of the Deed of Trust. (Ex. 5.) This is
23 another stipulated fact by the parties.

24 17. As such, Universal was the real party in interest on July 12, 2016,
25 not U.S. Bank.

26 18. "The inquiry into whether a party is a real party in interest overlaps
27
28

1 with the question of standing.” *Arguello*, 252 P.3d at 208. The question of
2 standing “focuses on the party seeking adjudication rather than on the issues
3 sought to be adjudicated.” *Szilagyi v. Testa*, 99 Nev. 834, 838, 673 P.2d 495, 498
4 (1983). In order to have standing, the party must also have suffered a legally
5 redressable harm and the suit must be “ripe” and not “moot” (at least as to the
6 particular plaintiff) at the time of the lawsuit. See *Schwartz v. Lopez*, 382 P.3d
7 886, 894 (Nev. 2016) (to establish standing, a party must show the occurrence of
8 an injury that is personal to him and not merely a generalized grievance.)
9 (emphasis added.)

10 19. Whether a party has standing is a question that goes to the court's
11 jurisdiction. *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 964-65, 194
12 P.3d 96, 105 (2008); *Vaile v. Eighth Jud. Dist. Ct.*, 118 Nev. 262, 276, 44 P.3d
13 506, 515–16 (2002).

14 20. A court lacks the power to grant relief when (1) an indispensable
15 party is absent; or (2) the dispute is moot or not yet ripe, or a party does not have
16 the legal right to seek or receive the requested relief. See *State Indus. Ins. Sys.*
17 *v. Sleeper*, 100 Nev. 267, 269, 679 P.2d 1273, 1274 (1984) (“There can be no
18 dispute that lack of subject matter jurisdiction renders a judgment void”). See
19 generally John G. Roberts, Jr., *Article III Limits on Statutory Standing*, 42 Duke
20 L.J. 1219, 1230 (1993); Antonin Scalia, *The Doctrine of Standing as an Essential*
21 *Element of the Separation of Powers*, 17 Suffolk U.L.Rev. 881, 881 (1983).

22 21. “Nevada has a long history of requiring an actual justiciable
23 controversy as a predicate to judicial relief” i.e. standing. *In re Amerco Derivative*
24 *Litig.*, 127 Nev. 196, 213, 252 P.3d 681, 694 (2011) (internal quotations omitted)
25 (citing *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986)).

26 22. Further, “a justiciable controversy [is] a preliminary hurdle to an
27 award of declaratory relief.” *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444
28

1 citing *Southern Pacific Co. v. Dickerson*, 80 Nev. 572, 576, 397 P.3d 187, 190
2 (1964)). What constitutes a justiciable controversy is defined in *Kress v. Corey*,
3 65 Nev. 1, 189 P.2d 352 (1948) as:

4
5 (1) there must exist a justiciable controversy; that is to say, a
6 controversy in which a claim of right is asserted against one
7 who has an interest in contesting it; (2) the controversy must be
8 between persons whose interests are adverse; (3) the party
9 seeking declaratory relief must have a legal interest in the
10 controversy, that is to say, a legally protectable interest; and (4)
11 the issue involved in the controversy must be ripe for judicial
12 determination.

13
14 23. Here, U.S. Bank falls short of these requirements. First, U.S. Bank
15 had no claim of right at the time of filing the Complaint because it did not become
16 the recorded beneficiary until July 2, 2018, nearly two years after the filing of the
17 Complaint. Thus, U.S. Bank had no interest in the Deed of Trust at the time the
18 Complaint filed. Second, in order for U.S. Bank's interest to be adverse to
19 SFR's, U.S. Bank would actually have to have an interest in the first place. But
20 at the time of filing the Complaint, U.S. Bank had no interest in the Deed of Trust.
21 Third, because U.S. Bank had no interest at the time it sued SFR, it follows that
22 U.S. Bank did not have a legally protectable interest at the time of filing. Finally,
23 because U.S. Bank had no interest at the time it sued SFR, all claims U.S. Bank
24 asserted against SFR were not ripe for judicial determination.

25
26 24. Based on the above, U.S. Bank has failed to show a justiciable
27 controversy and failed to show any injury. As such, U.S. Bank lacked standing at
28 the time the claims were filed against SFR.

29
30 25. Nor can the later assignment to U.S Bank in July 2018, while this
31 case was pending, cure the lack of subject matter jurisdiction at the outset. This

1 is so because subject matter jurisdiction “cannot be conferred by the parties.”
2 *Swan v. Swan*, 106 Nev. 464, 469, 796 P.2d 221, 224 (1990).

3 26. Under NRCP 12(h)(3), “[i]f the court determines at any time that it
4 lacks subject-matter jurisdiction, the court must dismiss the action.”

5 27. Because the Court finds that U.S. Bank was neither the real party in
6 interest, nor did it have standing at the time it filed its Complaint, the Court finds it
7 lacked subject matter jurisdiction from the outset. As such, under NRCP
8 12(h)(3), this Court dismisses U.S. Bank’s action.

9 **D. Statute of Limitations**

10 28. U.S. Bank alleges “quiet title” against SFR. In Nevada, “quiet title”
11 is just a slang term to identify any action where one party claims an interest in
12 real property adverse to another. Thus, the title of U.S. Bank’s claim does
13 nothing to assist the Court in determining which statute of limitations applies. In
14 order to determine this, the Court must look at the nature of the grievance to
15 determine the character of the action, rather than the labels in the pleadings.
16 *Torrealba v. Kesmetis*, 124 Nev. 95, 178 P.3d 716, 723 (2008).

17 29. Here, when the nature of U.S. Bank’s grievance is analyzed,
18 tender, i.e. the Association lacked authority to foreclose because the default of
19 the superpriority portion was cured, it becomes readily apparent that a three-year
20 statute of limitations applies under NRS 11.190(3)(a).

21 30. As the Nevada Supreme Court noted in *Torrealba*, “[t]he phrase
22 ‘liability created by statute’ means a liability which would not exist but for the
23 statute.” *Torreabla*, 178 P.3d at 722. The Court further noted, “[w]here a duty
24 exists only by virtue of a statute ... the obligation is one created by statute.”” *Id.*
25 quoting *Gonzalez v. Pacific Fruit Express Co.*, 99 F.Supp. 1012, 1015
26 (D.Nev.1951) (quoting *Abram v. San Joaquin Cotton Oil Co.*, 46 F.Supp. 969,
27 976 (D.Cal.1942)) (internal citations and quotations omitted).

1 31. Here, the “character” of U.S. Bank’s tender claim is simple: the
2 Association had a duty to accept BANA’s tender, and it unjustifiably refused it.
3 U.S. Bank even pled as much: “[t]he HOA trustee refused to accept [BANA’s]
4 tender.” By virtue of this “rejection” U.S. Bank claims the “liability” is a void sale
5 resulting in SFR taking subject to the deed of trust. This duty to accept tender
6 arises implicitly from NRS 116 because as the Nevada Supreme Court noted, it
7 is the statute, i.e. NRS 116.3116 that governs liens against units for HOA
8 assessments and details the portion of the lien that has superpriority status.”
9 *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 427 P.3d 113, 116 (Nev.
10 2018) (“*SFR III*”).

11 32. In other words, but for the statute, there would be no superpriority
12 portion and, in turn, no duty on the part of the Association to accept payment of
13 this portion from a bank, like BANA. Moreover, but for the Association’s
14 rejection, there would be no liability on the part of SFR by way of taking, subject
15 to the Deed of Trust. All told, the Association’s lien is created by statute; the
16 superpriority mechanism of that lien is created by statute; the superpriority
17 portion is fixed by statute; and the Association’s implicit duty to accept payment
18 of the superpriority portion is created by statute. See *Torrealba*, 178 P.3d at 723.

19 33. Based on this, U.S. Bank’s tender claim is subject to the three-year
20 statute of limitations prescribed by NRS 11.190(3)(a). Here, the sale occurred on
21 July 25, 2012. Thus, the date by which U.S. Bank had to file its tender claim was
22 July 25, 2015. Having not alleged its tender claim until May 5, 2018, U.S. Bank’s
23 tender claim is time-barred.

24 34. The Court rejects U.S. Bank’s argument that a five-year statute of
25 limitations under NRS 11.070 and NRS 11.080 applies. Neither of these statutes
26 are time-bar statutes; they are standing statutes. Regardless, neither statute
27 could ever apply to U.S. Bank as it never possessed the subject property, which
28

1 both statutes require. But even if a five-year statute of limitations did apply, U.S.
2 Bank would still be time-barred as it did not plead tender until nearly six years
3 after the sale.

4 35. The Court rejects U.S. Bank's argument that its Amended
5 Complaint (filed May 5, 2018) relates-back to its original Complaint (filed July 12,
6 2016). For one, because a three-year statute of limitations applies, relation-back
7 does not save the bank as the original Complaint is time-barred. But even if the
8 Court applied a longer statute of limitations, relation-back would not apply.

9 36. NRCP 15(c) states "[w]henever the claim or defense asserted in the
10 amended pleading arose out of the conduct, transaction, or occurrence set forth
11 or attempted to be set forth in the original pleading, the amendment relates back
12 to the date of the original pleading." However, "where the original pleading does
13 not give a defendant 'fair notice of what the plaintiff's [amended] claim is and the
14 grounds upon which it rests,' the purpose of the statute of limitations has not
15 been satisfied and it is 'not an original pleading that [can] be rehabilitated by
16 invoking Rule 15(c).'" *Baldwin County Welcome Center v. Brown*, 466 U.S. 147,
17 149 n. 3, 104 S.Ct. 1723 (internal marks and citation omitted). *See also, Glover*
18 *v. F.D.I.C.*, 698 F.3d 139, 146 (3d Cir. 2012).

19 37. In other words, the analysis under NRCP 15(c) is "whether the
20 original complaint adequately notified the defendants of the basis for liability the
21 plaintiffs would later advance in the amended complaint." *Meijer, Inc. v. Biovail*
22 *Corp.*, 533 F.3d 857, 866 (D.C. Cir. 2008) (emphasis added). Similarly, Nevada
23 law will not allow a new claim based upon a new theory of liability asserted in an
24 amended pleading to relate-back under NRCP 15(c) after the statute of
25 limitations has run. *Nelson v. City of Las Vegas*, 99 Nev. 548, 556–57, 665 P.2d
26 1141, 1146 (1983).

1 38. Here, U.S. Bank's original complaint, filed on July 12, 2016, never
2 pled tender or any allegations related to tender. It made no allegations
3 whatsoever that the super-priority portion was cured. Simply put, anyone reading
4 the original Complaint would have no idea U.S. Bank would later claim it
5 tendered the superpriority portion of the lien. Compare this to U.S. Bank's
6 Amended Complaint, U.S. Bank completely changed the basis for which it was
7 challenging the sale i.e. tender. Because of this there is no relation-back. See
8 *Nutton v. Sunset Station, Inc.*, 357 P.3d 966 (Nev. 2015). This provides an
9 independent basis for U. S. Bank's claims to fail.

10 **E. U.S. Bank Failed to Prove a Deliver of a Valid Tender**

11 39. In Nevada, "[v]alid tender requires payment in full." *SFR III*, 427
12 P.3d 113 at 117.

13 40. Under NRS 116.31162(b), the superpriority portion of the
14 Association's lien is comprised of (1) nine-months of common assessments; and
15 (2) charges incurred for nuisance-abatement and maintenance under NRS
16 116.310312.

17 41. In Nevada, "[t]he burden of demonstrating that the delinquency was
18 cured presale, rendering the sale void, [is] on the party challenging the
19 foreclosure..." *Resources Group, LLC v. Nevada Association Services, Inc.*, 437
20 P.3d 154, 156 (Nev. 2019).

21 42. Thus, under Nevada law U.S. Bank bears the burden of proving
22 what the superpriority amount was at the time of the sale, and that it delivered a
23 full payment of this amount prior to the sale.

24 43. At trial, U.S. Bank offered a letter with a check written from Miles
25 Bauer's Trust Account in the amount of \$405.00, dated December 16, 2011, (Ex.
26 24), but there was no evidence the check was in fact delivered to Alessi. Mr.
27 Jung only testified about general practices of the firm in terms of delivering
28

1 similar checks like the one at Ex. 24, but had no personal knowledge about Ex.
2 24; and therefore, offered no specific testimony about Ex. 24. (Testimony of R.
3 Jung, Day 1, at 6:5-15; 25:16-20; 25:24-25-26:1-4.)

4 45. Mr. Jung was asked if he recalled sending a tender check in this
5 case, and his answer was, "[i]ndependently, I don't." (*Id.* at 26:17-19.)

6 44. U.S. Bank offered no run slip or testimony from any runner that Ex.
7 24 was in fact delivered to Alessi prior to the sale. This is compelling to the Court
8 in light of Mr. Jung's testimony that the practice of Miles Bauer was to deliver
9 said letters via runner. (*Id.* at 26:6-8.) This also comports with Mr. Alessi's
10 testimony. (Testimony of D. Alessi, Day 3, at 86:16-23.)

11 55. U.S. Bank offered no receipt of copy to show delivery. This is
12 compelling to the Court in light of Mr. Alessi's testimony that delivery of said
13 letters were accompanied by an ROC that Alessi signed when it accepted the
14 letter. (*Id.* at 86:1-18.)

15 56. Further, Mr. Alessi testified that it was the practice of Alessi to
16 maintain a copy of letters like Ex. 24 in the file and/or notate its status report of
17 receipt of such letter. (*Id.* at 85:7-10; 14-19; 87:2-7.) The letter was absent from
18 Alessi's file and the status report does not notate receipt of Ex. 24. (*Id.* at 84:16-
19 19; *see also*, Ex. 30.)

20 57. NRS 51.145 provides that "[e]vidence that a matter is not included
21 in the records in any form, of a regularly conducted activity, can be used to prove
22 the nonoccurrence or nonexistence of the matter, if the matter was of a kind of
23 which was regularly made and preserved."

24 58. What is included in the status report, in addition to what is not, also
25 convinces the Court that Ex. 24 was not delivered. Specifically, on June 8, 2012,
26 and July 3, 2012, nearly a year after Ex. 24 was dated, Alessi received two
27 payoff requests from Miles Bauer. Had Miles Bauer delivered Ex. 24, these
28

1 payoff requests make little sense. (Ex. 30 at 616-617.) Additionally, Ocwen, the
2 servicer of the loan, inquired of Alessi about excess proceeds on September 24,
3 2014. (*Id.*) Had the Bank believed it tendered the superpriority amount, its
4 servicer would not have sought out excess proceeds as these monies are only
5 available to junior, extinguished lienholders. See NRS 116.31164.

6 59. All told, U.S. Bank failed to prove by a preponderance of the
7 evidence that Ex. 24 was delivered. But even more damaging to U.S. Bank's
8 claim is it never proved the superpriority amount. At trial, no ledgers were
9 admitted into evidence that could prove this amount. Likewise, the Court strikes
10 Mr. Alessi's testimony about the amount of the monthly assessments in 2009 as
11 this testimony constituted inadmissible hearsay to which SFR timely objected.

12 60. Having failed to prove the superpriority amount, even if this Court
13 could find Ex. 24 was delivered prior to the sale (which it cannot), the amount is
14 meaningless as the Court cannot determine from the evidence whether it was a
15 payment in full.

16 61. Having failed to prove its tender claim, the Court concludes the sale
17 extinguished the Deed of Trust.

18 ORDER

19
20 1. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED U.S.
21 Bank's action against SFR is DISMISSED on the basis the Court lacked subject
22 matter jurisdiction at the time U.S. Bank filed its action.

23 2. IT IS HEREBY ORDERED, ADJUDGED AND DECREED U.S.
24 Bank's claim against SFR, which is grounded in tender, is time-barred.

25 3. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED the
26 Deed of Trust recorded against real property located at 7868 Marbledoe Street,
27 Las Vegas, Nevada 89149; Parcel No. 125-18-112-069, recorded in the Official
28

1 Records of the Clark County Recorder as Instrument No. 200505230004228,
2 was extinguished by the July 25, 2012 Association sale.

3 2. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED U.S.
4 Bank its predecessors in interest and successors and assigns, principals, or
5 anyone else claiming an interest in the Deed of Trust, have no further right, title
6 or interest in real property located at 7868 Marbledoe Street, Las Vegas, Nevada
7 89149; Parcel No. 125-18-112-069 and are hereby permanently enjoined from
8 taking any further action to enforce the now extinguished Deed of Trust, including
9 but not limited to, clouding title, initiating or continuing to initiate foreclosure
10 proceedings, or taking any other actions to sell or transfer the Property.

11 3. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED title to
12 real property located at 7868 Marbledoe Street, Las Vegas, Nevada 89149;
13 Parcel No. 125-18-112-069 is hereby quieted in favor of SFR.

14 4. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED the lis
15 pendens recorded in the Official Records of the Clark County Recorder as
16 Instrument No. 20160713-0002695 is expunged.

17 **IT IS SO ORDERED.**

18 DATED this 14th day of June, 2019.

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22 **HON. JOANNA S. KISHNER**
23 **DISTRICT COURT JUDGE**
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CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was served via Electronic Service to all counsel/registered parties, pursuant to the Nevada Electronic Filing Rules, and/or served via in one or more of the following manners: fax, U.S. mail, or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

DANA J. NITZ, ESQ.
NATALIE C. LEHMAN, ESQ.
WRIGHT, FINLAY & ZAK, LLP.

KAREN HANKS, ESQ.
JASON G. MARTINEZ, ESQ.
KIM GILBERT EBRON



TRACY L. CORDOBA-WHEELER
Judicial Executive Assistant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Real Property

COURT MINUTES

October 04, 2016

A-16-739867-C U.S. Bank, National Association, Plaintiff(s)
vs.
SFR Investments Pool 1, LLC, Defendant(s)

October 04, 2016 9:30 AM Motion to Dismiss

HEARD BY: Kishner, Joanna S.

COURTROOM: RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Debbie Winn

REPORTER:

PARTIES

PRESENT: Ebron, Diana Cline Attorney
 Goulet, Vanessa S. Attorney
 Nitz, Dana J. Attorney

JOURNAL ENTRIES

- Arguments by counsel. Mr Nitz made an oral motion to strike paragraph 79 and prayer number 9 of his complaint. Objection by Ms. Goulet. Court stated its findings, and ORDERED, SFR Investments Pool 1, LLC's Motion to Dismiss Plaintiff's Complaint Pursuant to NRCP 12(b)(6) is DENIED WITHOUT PREJUDICE. COURT FURTHER ORDERED, Plaintiff's Oral Motion to Strike Paragraph 79 and Prayer for Relief 9 from its Pleading is GRANTED. Counsel for Plaintiff to prepare the Order, circulating to Defense counsel for approval as to form and content.

January 09, 2018

Minutes Date: October 04, 2016

6/28/18 10:15 AM PRE TRIAL CONFERENCE

7/31/18 9:00 AM CALENDAR CALL

8/6/18 9:00 AM BENCH TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Real Property**COURT MINUTES****April 17, 2018**

A-16-739867-C U.S. Bank, National Association, Plaintiff(s)
 vs.
 SFR Investments Pool 1, LLC, Defendant(s)

April 17, 2018	9:00 AM	Motion for Leave	Plaintiff U.S. Bank, N.A.'s Motion for Leave to Amend its Complaint
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HEARD BY: Kishner, Joanna S.**COURTROOM:** RJC Courtroom 12B**COURT CLERK:** Tena Jolley**RECORDER:** Rubina Fedra**REPORTER:****PARTIES**

PRESENT:	Ebron, Diana S. Cline	Attorney
	Hanks, Karen	Attorney
	Hendrickson, Jamie S	Attorney

JOURNAL ENTRIES

- Ms. Hanks indicated that SFR had no objection, plaintiff are just joining the HOA. Upon the Court's inquiry whether the HOA had been put on notice of any claims against them and that the case is set for trial in August. Mr. Hendrickson stated that the HOA was a party to the NRED Mediation and should know this was coming. Following further colloquy regarding the history of the case regarding the Bankruptcy Stay and the remand back, COURT ORDERED, Plaintiff U.S. Bank, N.A.'s Motion for Leave to Amend its Complaint is GRANTED; Plaintiff has fifteen (15) days to file the Amended Complaint. Mr. Hendrickson to prepare the Order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Real Property

COURT MINUTES

June 28, 2018

A-16-739867-C U.S. Bank, National Association, Plaintiff(s)
vs.
SFR Investments Pool 1, LLC, Defendant(s)

June 28, 2018

10:15 AM

Pre Trial Conference

HEARD BY: Kishner, Joanna S.

COURTROOM: RJC Courtroom 12B

COURT CLERK: Haly Pannullo

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Jason Martinez, Esq., present on behalf of SFR Investments.

Upon Court's inquiry, Mr. Martinez stated he is not sure where Plaintiff's counsel is. Court noted trial counsel needs to be present. MATTER TRAILED.

MATTER RECALLED. All parties present as before. Mr. Martinez represented Jamie Hendrickson, Plaintiff's counsel, indicated there was a calendaring error. Mr. Martinez announced ready for trial. COURT FINDS Counsel was properly noticed and ORDERED, trial dates SET; Pre-Trial Memo due by 07/31/18 at 4:00 pm; Order to Show Cause WILL ISSUE for Plaintiff's counsel; Show Cause Hearing SET. Court noted Trial Order was dated January 2018 and was e-served upon all of the parties. Upon Court's inquiry, Mr. Martinez estimated trial will take two to three full days. Court stated trial is #3 on the stack.

07/19/18 9:00 AM SHOW CAUSE HEARING

08/07/18 9:00 AM CALENDAR CALL

08/15/18 thru 08/17/18 BENCH TRIAL

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Haly Pannullo, to all registered parties for Odyssey File & Serve. hvp/07/12/18

July 19, 2018

July 19, 2018	9:00 AM	All Pending Motions	Plaintiff US Bank's Opposition to SFR Investments Pool I, LLC's Motion to Strike and Countermotion for Late Disclosure of Initial Expert Witness...Defendant SFR Investments Pool 1, LLC's Motion to Strike Plaintiff's Initial Expert Disclosure...Show Cause Hearing re: Plaintiff's Counsel
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COURTROOM: RJC Courtroom 12B

REPORTER:

PRESENT: Hanks, Karen Attorney
Hendrickson, Jamie S Attorney
Kao, Karen Attorney
Nitz, Dana J. Attorney

JOURNAL ENTRIES

PRINT DATE: 07/22/2019 Page 7 of 21 Minutes Date: October 04, 2016

they were in Court that day for two other matters. The Court waited for over two and one-half hours and there was no response from counsel's office. Additionally, it was very clear on the scheduling order that counsel MUST be present. Mr. Hendrickson apologized and explained what might have happened. Following further discussion regarding this matter and upon request by Mr. Hendrickson, COURT ORDERED, counsel is to make a \$250.00 voluntary donation to a legal charity of his choice and is to file a notice of compliance within thirty days. Ms. Hanks argued that their Motion to Strike should be granted as the expert disclosure was due on 3/16/18 and was not done until 5/15/18. Additionally, Defendant's motion doesn't meet the statutory requirements regarding citing case law. Mr. Hendrickson stated he directed his assistant to file the expert disclosure and was told that he did so. He advised there is no prejudice to the Plaintiff as this is the expert they normally call in cases like this. Following further arguments of counsel, COURT FINDS, the disclosure was two months late and nothing was filed to reopen Discovery. COURT ORDERED, Plaintiff's motion is DENIED and Defendant's motion is GRANTED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Real Property

COURT MINUTES

July 31, 2018

A-16-739867-C U.S. Bank, National Association, Plaintiff(s)
vs.
SFR Investments Pool 1, LLC, Defendant(s)

July 31, 2018 10:00 AM All Pending Motions

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Tena Jolley

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT: Hendrickson, Jamie S Attorney
 Kao, Karen Attorney
 Martinez, Jason G. Attorney

JOURNAL ENTRIES

- DEFENDANT ANTELOPE HOMEOWNERS ASSOCIATION'S MOTION TO DISMISS

After the Court's consideration of the papers submitted by counsel in connection with this matter, and, having heard the oral arguments presented by both Ms. Kao and Mr. Hendrickson, the Court stated its FINDINGS and ORDERED, Motion to Dismiss DENIED WITHOUT PREJUDICE; Antelope's Answer due ten (10) days after Notice of Entry of Order. Mr. Hendrickson to prepare the Order, circulating to opposing counsel and provide it back to the Court in accordance with EDCR 7.21.

DEFENDANT ANTELOPE HOMEOWNERS ASSOCIATION'S MOTION TO RE-OPEN DISCOVERY, EXTEND DISPOSITIVE MOTION DEADLINE AND CONTINUE TRIAL ON ORDER SHORTENING TIME...DEFENDANT SFR INVESTMENTS POOL1 LLC'S LIMITED OPPOSITION TO MOTION TO RE-OPEN DISCOVERY AND CONTINUE TRIAL AND COUNTER-MOTION FOR ATTORNEY'S FEES AGAINST US BANK

After the Court's consideration of the papers submitted by counsel in connection with this matter,

and, having heard the oral arguments presented by Ms. Kao and Mr. Hendrickson and Mr. Martinez objection to reopening anything as between SFR and U.S. Bank, the COURT FINDS good cause exists in light of Antelope Homeowners Association having newly appeared in the case and ORDERED Motion to Re-Open Discovery, Extend Dispositive Motion Deadline and Continue Trial GRANTED; Trial Dates VACATED and RESET; Antelope Homeowners Association will be allowed to conduct discovery; Amended Pleadings and Antelope Homeowners Association's Initial Expert Disclosures DUE 9/19/18; Rebuttal Expert Disclosure DUE 10/16/18; Discovery Closes 12/18/18; and Dispositive Motions DUE 1/12/19. COURT FURTHER ORDERED SFR's Counter-Motion for Attorney's Fees Against U.S. Bank DENIED. Ms. Kao to prepare the Order, circulating to opposing counsel and provide it back to the Court in accordance with EDCR 7.21.

2/14/19 10:15 AM PRE TRIAL CONFERENCE

3/12/19 9:00 AM CALENDAR CALL

3/18/19 9:00 AM BENCH TRIAL

August 14, 2018

PRINT DATE: 07/22/2019 Page 11 of 21 Minutes Date: October 04, 2016

be as to the bank's claims against HOA or vice versa if the HOA filed counter-claims against bank. Ms. Kao stated she agrees with SFR's counsel's representations as to deadlines and claims. Mr. Hendrickson argued he does not remember any discussion at the hearing on the HOA's motion to continue trial, did discuss discovery would be limited to claims between the HOA and the bank. Further, there was no discussion about any limiting dispositive motions, only to claims between the HOA and the bank assuming that a new scheduling order would be issued moving dispositive motion deadline out to January 2019. There was no discussion that would only entail claims between the HOA and the bank. If that was the intention of SFR or the bank, Mr. Hendrickson argued that should of been on the record and should of been in the order granting the HOA's motion. Court FINDS at the time these were filed, new trial order has not yet issued, dates that were in effect for filing dispositive motions were the dates that were in effect at the time of dispositive motions, ORDERED, motion GRANTED; counter-motion STRICKEN under NRCP as it was untimely and will treat as an opposition.

DEFT/COUNTER CLAIMANT/CROSS CLAIMANT SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT:

Mr. Martinez argued there is an evidentiary issue with their inability to actually present evidence to put forward their tender defense. As to the affidavit of Rock Jung, specifically this is how the bank is attempting to authenticate what they call the tender documents and counsel will refer to them as the Miles Bauer documents. Mr. Jung states in his affidavit that he is an ex-employee of Miles Bauer, signatory on letter that contains the check, however, there is an authentication issue. The declaration on its face is insufficient to establish authenticity for the documents. The biggest issue is Mr. Jung has testified in trial that he himself does not have access to the Miles Bauer system. Trial testimony was on April 22, 2016, and as of that date, he was not working for Miles Bauer. Further, Mr. Martinez argued his testimony was as of that day, he no longer had access to the Miles Bauer system which means he actually cannot authenticate the records reportedly coming from the Miles Bauer System he himself did not pull them. He cannot go into the system to verify those are actually true and accurate copies of the documents that are in there. Additionally, his declaration is insufficient as it is testimonial where he declares the check was rejected by Alessi & Koenig and returned via runner without being cashed. However, there is no documentation to prove that, this is testimonial declaration so he cannot authenticate a record that does not exist and he does not have access to Miles Bauer system. To the extent that he is trying to authenticate Miles Bauer documents, he cannot authenticate Miles Bauer documents. He cannot compare copies of documents to the originals in the Miles Bauer system. Colloquy. Additional argument by Mr. Martinez.

As to unjust enrichment, Mr. Martinez argued the bank has provided zero evidence, nothing attached to opposition, and they barely substantively addressed counsel's arguments on unjust enrichment just that they conferred a benefit and discussed something about payments to taxes prior to SFR's acquisition. Colloquy. Further argument by Mr. Martinez. Upon Court's inquiry, Mr. Hendrickson stated provide throughout the discovery process and did not highlight in motion. Further, payment history has been provided to indicate that and in client deposition testimony to indicate client has been paying taxes since the HOA sale. Colloquy. Mr. Hendrickson stated the unjust enrichment

claims is a claim in the alternative. Mr. Hendrickson stated Rock Jung is not testifying as 30(b)(6) witness of Miles Bauer who has no knowledge of any of these matters except by review of the records. He drafted the letter, sent the letter and was handling counsel from start to finish and he can testify on his personal knowledge regardless of whether or not he has any knowledge how the Miles Bauer records were kept or that he even had access to the records because he drafted it. Mr. Jung's testimony is based on his personal knowledge. He can testify that he drafted the letter and sent to Alessi & Koenig. He can testify that the letter was rejected because he was handling counsel. He does have access to the records through Akerman who provides counsel with all of the Miles Bauer records. We also reviewed not just the Akerman records but the Miles Bauer billing records that Mr. Jung created contemporaneously with his work product. Mr. Martinez argued counsel just conceded Rock Jung does not have access to the Miles Bauer records. He cannot himself, pull the documents. The Akerman firm has purportedly pulled these documents from Miles Bauer system and argued they are not directly from Miles Bauer but indirectly through a different law firm which is not included in Mr. Jung's declaration.

COURT ORDERED, motion for summary judgment as to unjust enrichment GRANTED pursuant EDCR 2.20 and on the merits as no evidence was presented to the Court. As to remaining motion for summary judgment, Court FINDS material issues of fact in dispute as to tender and ORDERED, DENIED WITHOUT PREJUDICE.

SFR to prepare the order. Mr. Martinez advised he will be requesting the transcript and requested additional time to submit order. COURT ORDERED, counsel has 45 days from today which is September 25, 2018. If counsel needs more time, contact the Court in writing and notice all parties.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Real Property

COURT MINUTES

February 12, 2019

A-16-739867-C U.S. Bank, National Association, Plaintiff(s)
vs.
SFR Investments Pool 1, LLC, Defendant(s)

February 12, 2019 9:00 AM Pre Trial Conference

HEARD BY: Kishner, Joanna S.

COURTROOM: RJC Courtroom 12B

COURT CLERK: Tena Jolley

RECORDER: Sandra Pruchnic

REPORTER:

PARTIES

PRESENT: Ebert, John William Attorney
 Hanks, Karen Attorney
 Nitz, Dana J. Attorney

JOURNAL ENTRIES

- Mr. Ebert advised that the Bank and the HOA have settled. Counsel concur that on the Bank and SFR remain for purposes of a bench trial and they anticipate 3 days for trial. Colloquy regarding trial setting within the stack. COURT ORDERED, Trial Dates SET; Calendar Call RESET; Joint Pretrial Memorandum DUE April 2, 2019. The Court DIRECTED counsel to submit a stipulation to amend the case caption prior to trial.

4/9/19 9:00 AM CALENDAR CALL

4/16/19 11:00 AM BENCH TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Real Property

COURT MINUTES

April 09, 2019

A-16-739867-C U.S. Bank, National Association, Plaintiff(s)
vs.
SFR Investments Pool 1, LLC, Defendant(s)

April 09, 2019 9:00 AM Calendar Call

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Tena Jolley

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT: Lehman, Natalie C. Attorney
 Martinez, Jason G. Attorney

JOURNAL ENTRIES

- Upon Court's inquiry, parties advised they anticipate three days for trial beginning on 4/16/2019. Further, parties anticipate brief openings with twenty minutes for each side. Colloquy regarding witness line up for trial and scheduling for trial.

Court noted parties have provided exhibits, Pre Trial Memorandum. Mr. Martinez advised parties will submit Trial Briefs at the time of trial as well as proposed Findings of Fact and Conclusions of Law. Mr. Martinez submitted the deposition of Katherine Ortwerth. Ms. Lehman advised she is working on obtaining the certified copy of the deposition she intended to use. Court stated that information is due today and will not be utilized at trial.

CLERK'S NOTE: The minutes for this hearing have been prepared by a review of the JAVS recording.
tia everett 5/23/2019

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Real Property

COURT MINUTES

April 15, 2019

A-16-739867-C U.S. Bank, National Association, Plaintiff(s)
vs.
SFR Investments Pool 1, LLC, Defendant(s)

April 15, 2019 4:15 PM Telephonic Conference

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Tena Jolley

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT: Hanks, Karen Attorney
Lehman, Natalie C. Attorney
Nitz, Dana J. Attorney

JOURNAL ENTRIES

- Court informed counsel that she is still in her current trial with witnesses. Further, Court stated she will not be able to start trial in this case at 10:30 am; however, she can possibly begin the trial at 2:00 pm in hopes that the current trial is in deliberations. Court inquired

Ms. Hanks advised she would like the trial to stand and begin tomorrow at 2:00 pm. Mr. Nitz advised he will agree to begin tomorrow at 2:00 pm. Court advised she will inform parties tomorrow if the 2:00 pm will work or if trial will begin Wednesday. Parties so agreed.

CLERK'S NOTE: The minutes for this hearing have been prepared by a review of the JAVS recording
tia Everett

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Real Property

COURT MINUTES

April 16, 2019

A-16-739867-C U.S. Bank, National Association, Plaintiff(s)
vs.
SFR Investments Pool 1, LLC, Defendant(s)

April 16, 2019

2:00 PM

Bench Trial

HEARD BY: Kishner, Joanna S.

COURTROOM: RJC Courtroom 12B

COURT CLERK: Nicole McDevitt

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT: Hanks, Karen Attorney
Lehman, Natalie C. Attorney
Martinez, Jason G. Attorney
Nitz, Dana J. Attorney

JOURNAL ENTRIES

- Greg King, Esq. also present.

Colloquy regarding updating the caption pursuant the stipulation, witness schedule, time allotted, and witness availability. Mr. Nitz moved to continue trial to permit the orderly presentation of witnesses. Opposition by Ms. Hanks. Opening statements by Mr. Nitz. Objection by Ms. Hanks regarding the universal witness. COURT ORDERED, motion to strike universal witness GRANTED. Mr. Mr. King excused. Counsel for SFR to prepare the order. Court signed stipulation IN OPEN COURT. Testimony and exhibits presented (see worksheets). Colloquy regarding witness scheduling. COURT ORDERED, trial CONTINUED.

CONTINUED TO: 4/17/2019 9:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Real Property

COURT MINUTES

April 17, 2019

A-16-739867-C U.S. Bank, National Association, Plaintiff(s)
vs.
SFR Investments Pool 1, LLC, Defendant(s)

April 17, 2019 9:30 AM Bench Trial

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Tena Jolley
Madalyn Kearney

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT: Hanks, Karen Attorney
Lehman, Natalie C. Attorney
Nitz, Dana J. Attorney

JOURNAL ENTRIES

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At the hour of 4:00 p.m. Courtroom Clerk, Madalyn Kearney, now present. Testimony and exhibits continue (see worksheets).

CONTINUED TO: 4/18/19 10:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Real Property

COURT MINUTES

April 18, 2019

A-16-739867-C U.S. Bank, National Association, Plaintiff(s)
vs.
SFR Investments Pool 1, LLC, Defendant(s)

April 18, 2019 10:00 AM Bench Trial

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Tena Jolley

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT: Hanks, Karen Attorney
Lehman, Natalie C. Attorney
Martinez, Jason G. Attorney
Nitz, Dana J. Attorney

JOURNAL ENTRIES

- BENCH TRIAL - DAY 3

[Requested Designation of Record begins at 10:15 a.m.]

Plaintiff's Witness, David Alessi, who was previously sworn continued with testimony under direct examination by Mr. Nitz.

Three other Plaintiff's Witnesses were sworn and testified. Exhibits presented. (Please see Exhibit Lists)

Last Witness of the day excused.

COURT ORDERED, TRIAL CONTINUED TO: 4/23/19 1:00 P.M.

CLERK'S NOTE: On 7/3/19 Court Clerk Sharon Chun generated this minute order based on Exhibit Lists and Transcript.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Real Property

COURT MINUTES

April 24, 2019

A-16-739867-C U.S. Bank, National Association, Plaintiff(s)
vs.
SFR Investments Pool 1, LLC, Defendant(s)

April 24, 2019 10:45 AM Bench Trial

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Natalie Ortega

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT: Hanks, Karen Attorney
Lehman, Natalie C. Attorney
Martinez, Jason G. Attorney
Nitz, Dana J. Attorney

JOURNAL ENTRIES

- Exhibits presented (see worksheet). Arguments regarding the admission of exhibits. Plaintiff resets. Defense counsel moved for a 52 (c) motion. Mr. Nitz argued the 52 (c) motion should be submitted in writing and responded to in writing. COURT ALLOWED counsel to argue the 52 (c) motion orally. Arguments by counsel. COURT stated FINDINGS and ORDERED exhibit NOT ADMITTED. RECESS.

COURT RECONVENED. Further arguments regarding admission of exhibits. COURT stated FINDINGS, AFFIRMED objections and DENIED reconsideration of exhibit twenty-five. RECESS.

COURT RECONVENED. Plaintiff rests. Arguments regarding 52 (c) motion. COURT ORDERED, ruling DEFERRED until the conclusion of the case. Defense rests. COURT ORDERED, 52 (c) DENIED WITHOUT PREJUDICE. Colloquy regarding scheduling a date for closing arguments.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Real Property

COURT MINUTES

May 20, 2019

A-16-739867-C U.S. Bank, National Association, Plaintiff(s)
vs.
SFR Investments Pool 1, LLC, Defendant(s)

May 20, 2019 10:00 AM Bench Trial

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Susan Botzenhart

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT: Hanks, Karen Attorney
Martinez, Jason G. Attorney
Nitz, Dana J. Attorney

JOURNAL ENTRIES

- Discussions as to the caption outlined in the Findings of Fact, Conclusions of Law and Judgment filed May 17, 2019, and Exhibit No. 30.

Closing arguments by counsel.

COURT ORDERED, written decision to issue; matter SET for status check on the Court's Civil Chambers calendar, regarding the decision. Plaintiff's Amended Proposed Findings of Facts and Conclusions of Law due June 4, 2019. Ms. Hanks informed the Court she will be submitting another amended proposed findings of facts and conclusions of law, to reflect the correct caption.

6/07/19 STATUS CHECK: DECISION (CHAMBERS)

CLERK'S NOTE: Joint Proposed Exhibit Binders were returned to counsel for Plaintiff, via runner service, on May 21, 2019 at around 3:00 p.m. (5/21/19 sb)

EXHIBIT LIST

Case No.: **A739867**

Trial Date:

APRIL 16, 2019 - 5/20/19

Dept. No.: **XXXI**

Judge: **JOANNA S. KISHNER**

Court Clerk: **NICOLE McDEVITT; TENA M JOLLEY**
Susan Batzenhart

Recorder: **SANDRA HARRELL**

U.S. BANK, NATIONAL ASSOCIATION,

PLAINTIFF,

Counsel for Plaintiff: **NATALIE C. LEHMAN, ESQ.**

vs.

DANA J. NITZ, ESQ.

SFR INVESTMENTS POOL 1, LLC

DEFENDANT.

Counsel for Defendant: **KAREN HANKS, ESQ.**

JASON G. MARTINEZ, ESQ.

TRIAL BEFORE THE COURT

JOINT EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
1	Declaration of Covenants, Conditions and Restrictions for Antelope Homeowners' Association (USB00001-USB00063)			
2	Second Amendment to the Declaration of Covenants, Conditions, and Restrictions for Antelope Homeowners' Association (USB00064-USB00066)			
3	Grant, Bargain, Sale Deed (USB00067-USB00070)			
4	Notice of Default and Election to Sell Under Deed of Trust (USB00071-USB00072)			
5	Deed of Trust (USB00073-USB00094)	APR 18 2019	STIP	APR 18 2019
6	Deed of Trust (Second) (USB00095-USB00107)			
7	Deed of Trust re-recorded to add correct Adjustable Rate Rider (USB00108-USB00133)	APR 18 2019	STIP	APR 18 2019
8	Grant, Bargain, Sale Deed re-recorded to correct vesting to show Henry E. Ivy and Freddie S. Ivy, husband and wife as joint tenants with rights of survivorship (USB00134-USB00139)	4.24.19	NO	4.24.19
9	Notice of Delinquent Assessment (Lien) (USB00140)	4-17-19	NO	4-17-19
10	Notice of Delinquent Violation Lien (USB00141-USB00142)			
11	Notice of Default and Election to Sell Under Homeowners Association Lien (USB00143)	APR 18 2019	STIP	APR 18 2019
12	Notice of Trustee's Sale (USB00144)	APR 18 2019	STIP	APR 18 2019
13	Notice of Trustee's Sale (USB00145)	APR 18 2019	STIP	APR 18 2019
14	Notice of Trustee's Sale (USB00146)	APR 18 2019	STIP	APR 18 2019

EXHIBIT LIST

A739867

U.S. BANK, NATIONAL ASSOCIATION VS.

SFR INVESTMENTS POOL 1, LLC

JOINT EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
15	Trustee's Deed Upon Sale (USB00147-USB00148)			
16	Release of Notice of Delinquent Assessment Lien (USB00149)			
17	Rescission of Election to Declare Default (USB00150-USB00151)			
18	Notice of Delinquent Violation Lien (USB00152-USB00153)			
19	Request for Notice Pursuant to NRS 116.31168 (USB00154-USB00156)			
20	Notice of Lis Pendens (USB00157-USB00160)			
21	Letter from Miles, Bauer, Bergstrom & Winters, LLP to Henry Ivy (USB00161-USB00163)			
22	Letter from Miles, Bauer, Bergstrom & Winters, LLP to Antelope Homeowners Association (USB00164-USB00165)	4-17-19	yes	
23	Correspondence from Alessi & Koenig to Miles, Bauer, Bergstrom & Winters, LLP (USB00169-USB00175)	4-17-19	yes	4-17-19 USB00169-USB00175
24	Letter from Miles, Bauer, Bergstrom & Winters, LLP to Alessi & Koenig, LLC (USB00166-USB00168)	4-16-19 4-17-19	yes	4-17-19
25	Correspondence regarding corrected ARM Note (USB00286)			
26	Affidavit of Lost Note (USB00182-USB00191)			
27	Affidavit of Lost Note (USB00202-USB00209)			
28	Correspondence regarding Note (USB00216-USB00217)			
29	Deed of Trust, Note, and Lost Note Affidavit (USB00176-USB00441)			
30	Alessi & Koenig, LLC Collection File (USB00442-USB00617)	4-17-19	yes	4-24-19
31	Affidavit of Doug Miles and Backup (USB00618-USB00638)	4-17-19	yes	
31a	Excerpt of Affidavit of Doug Miles and Backup (USB00625-USB00626)	4-16-19	yes	
32	Title Insurance Documents – First American Title Insurance Company – NV08000274-11/IVY (USB00639-USB00649)			
33	Title Insurance Policy – North American Title Insurance Company (USB00650-USB00666)			
34	Corporate Assignment of Deed of Trust, recorded as Book and Instrument No. (USB00667-USB00668)	APR 18 2019	STIP	APR 18 2019
35	Trustee's Sale Guarantee (USB00669-USB00679)			

March 25, 2016

Printed April 17, 2019

Removed 472-476; 481-485; 487-498; 527-533; 553-560; 585-589 * 570-577 REMAINS for hearing purposes (non-hearsay purposes) (5-20-19) (SSB)

EXHIBIT LIST

A739867

U.S. BANK, NATIONAL ASSOCIATION VS.

SFR INVESTMENTS POOL 1, LLC

JOINT EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
36	Bank of America, N.A.'s Payment History (USB00680-USB00692)			
37	Greenpoint's Payment History (USB00693-USB00703)			
38	Bank of America, N.A.'s Servicing Notes (USB00732-USB01011)			
39	Copy of Promissory Note and Allonges (USB01012-USB01027)	APR 23 2019	obj.	
40	Pooling and Servicing Agreement (USB01028-USB01243)			
41	Mortgage Loan Schedule for PSA (USB01244-USB01262)			
42	Corporate Assignment of Deed of Trust (USB01263-USB01264)	APR 18 2019	STIP	APR 18 2019
43	Acknowledgement of Inspection of the Original Collateral File (USB01263-USB01370)	4.24.19	obj	
44	Antelope Homeowners Association's Initial Disclosures and all Supplements (ANT000001-ANT000117)	APR 23 2019	obj.	
45	Exhibit 1 to Deposition of David Alessi – Subpoena for Deposition of N.R.C.P. 30(b)(6) Witness for Alessi & Koenig, LLC			
46	Exhibit 2 to Deposition of David Alessi – Account Ledger			
47	Exhibit 3 to Deposition of David Alessi – Notice of Delinquent Assessment (Lien)			
48	Exhibit 4 to Deposition of David Alessi – Notice of Delinquent Violation Lien			
49	Exhibit 5 to Deposition of David Alessi – Notice of Default and Election to Sell Under Homeowners Association Lien			
50	Exhibit 6 to Deposition of David Alessi – Notice of Trustee's Sale			
51	Exhibit 7 to Deposition of David Alessi – Second Notice of Trustee's Sale			
52	Exhibit 8 to Deposition of David Alessi – Third Notice of Trustee's Sale			
53	Exhibit 9 to Deposition of David Alessi – Request for Payoff by Miles Bauer			
54	Exhibit 10 to Deposition of David Alessi – Response to Miles Bauer Payoff Request			
55	Exhibit 11 to Deposition of David Alessi – Letter by Miles Bauer			
56	Exhibit 12 to Deposition of David Alessi – Trustee's Deed Upon Sale			

EXHIBIT LIST

A739867

U.S. BANK, NATIONAL ASSOCIATION VS.

SFR INVESTMENTS POOL 1, LLC

JOINT EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
57	Exhibit 1 to Deposition of David Bembas – Notice of Taking Deposition of SFR Investments Pool 1, LLC			
58	Exhibit 2 to Deposition of David Bembas – Notice of Delinquent Assessment (Lien)			
59	Exhibit 3 to Deposition of David Bembas – Notice of Default and Election to Sell Under Homeowners Association Lien			
60	Exhibit 4 to Deposition of David Bembas – Notice of Trustee's Sale			
61	Exhibit 5 to Deposition of David Bembas – Notice of Trustee's Sale			
62	Exhibit 6 to Deposition of David Bembas – Notice of Trustee's Sale			
63	Exhibit 7 to Deposition of David Bembas – Letter Dated 10-11-11			
64	Exhibit 8 to Deposition of David Bembas – Letter Dated 12-16-11			
65	Exhibit 9 to Deposition of David Bembas – Trustee's Deed Upon Sale			
66	Antelope Homeowners Association's Answers to Plaintiff U.S. Bank's Interrogatories.			
67	Antelope Homeowners Association's Answers To Plaintiff U.S. Bank's Requests for Admission			
68	Antelope Homeowners Association's Answers To Plaintiff U.S. Bank's Request for Production of Documents			
69	SFR Investments Pool 1, LLC'S Objections And Answers To Plaintiff, U.S. Bank's Interrogatories			
70	SFR Investments Pool 1, LLC'S Objections And Answers To Plaintiff, U.S. Bank's Requests for Admissions.			
71	SFR Investments Pool 1, LLC'S Objections And Answers To Plaintiff, U.S. Bank's Request for Production of Documents			
72	Email Re: URGENT WIRE REQUEST: Status Update re: 10- H1715 (1st) De Vera Relevance, Hearsay, Authenticity, and Foundation (SFR417-SFR422)			
73	BANA's Written Policies and Procedures Re: Homeowners Association (HOA) Matters – Pre-Foreclosure Relevance, Hearsay, Authenticity, and Foundation (BANA000407-BANA000411)			
74	Alessi + Koenig Fax Dated 7-11-12 From Ryan Korbaw to A. Shame Re: 7848 Marble Doc Ct./HO #18842	APR 18 2019	STIP	APR 18 2019

March 25, 2016

Printed April 17, 2019

EXHIBIT LIST

Case No.: **A739867**

Trial Date: **APRIL 16, 2019** -5/20/19

Dept. No.: **XXXI**

Judge: **JOANNA S. KISHNER**

Court Clerk: NICOLE McDEVITT; TENA M JOLLEY;
MICHELE TUCKER / Susan Botzenhart

U.S. BANK, NATIONAL ASSOCIATION,

Recorder: **SANDRA HARRELL**

PLAINTIFF,

Counsel for Plaintiff: **NATALIE C. LEHMAN, ESQ.**

vs.

DANA J. NITZ, ESQ.

SFR INVESTMENTS POOL, 1, LLC

Counsel for Defendant: **KAREN HANKS, ESQ.**

DEFENDANT.

JASON G. MARTINEZ, ESQ.

TRIAL BEFORE THE COURT

COURT'S EXHIBITS

[illegible]



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

MATTHEW S. CARTER, ESQ.
7785 W. SAHARA AVE., STE 200
LAS VEGAS, NV 89117

DATE: July 22, 2019
CASE: A-16-739867-C

RE CASE: U.S. BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR MERRILL LYNCH MORTGAGE INVESTORS TRUST, MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES 2005-A8 vs. SFR INVESTMENTS POOL 1, LLC; ANTELOPE HOMEOWNERS ASSOCIATION

NOTICE OF APPEAL FILED: July 18, 2019

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; FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT; NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

U.S. BANK, NATIONAL ASSOCIATION AS
TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-A8 ,

Plaintiff(s),

vs.

SFR INVESTMENTS POOL 1, LLC;
ANTELOPE HOMEOWNERS ASSOCIATION,

Defendant(s),

Case No: A-16-739867-C

Dept No: XXXI

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 22 day of July 2019.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk



**EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd FL.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

July 22, 2019

Elizabeth A. Brown
Clerk of the Court
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702

RE: U.S. BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR MERRILL LYNCH MORTGAGE
INVESTORS TRUST, MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES 2005-A8 vs.
SFR INVESTMENTS POOL 1, LLC; ANTELOPE HOMEOWNERS ASSOCIATION
D.C. CASE: A-16-739867-C

Dear Ms. Brown:

Please find enclosed a Notice of Appeal packet, filed July 18, 2019. Due to extenuating circumstances minutes from the date(s) listed below have not been included:

July 19, 2018 April 23, 2019

We do not currently have a time frame for when these minutes will be available.

If you have any questions regarding this matter, please contact me at (702) 671-0512.

Sincerely,
STEVEN D. GRIERSON, CLERK OF THE COURT

A handwritten signature in black ink, appearing to read "Amanda Hampton".

Amanda Hampton, Deputy Clerk