

Case No. 80111

IN THE SUPREME COURT OF NEVADA

SATICOY BAY LLC, SERIES 34
INNISBROOK,

Appellant,

vs.

THORNBURG MORTGAGE
SECURITIES TRUST 2007-3; FRANK
TIMPA; MADELINE TIMPA; RED
ROCK FINANCIAL SERVICES, LLC;
SPANISH TRAIL MASTER
ASSOCIATION; REPUBLIC
SERVICES; AND LAS VEGAS
VALLEY WATER DISTRICT,

Respondents.

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

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NRAP 26.1 DISCLOSURE

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

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

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

DATED this 19th day of February, 2021.

KIM GILBERT EBRON

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

Pursuant to NRAP 29(c), SFR Investments Pool 1, LLC (“SFR”) respectfully requests leave to file an *amicus brief* in support of Saticoy Bay LLC Series 24 Innisbrook’s Opening Brief. SFR was able to obtain written consent from Saticoy Bay and respondents Thornburg Mortgage Securities and Red Rock Financial Services, LLC but was not able to obtain written consent from the remaining respondents and is therefore filing this motion.

I. SFR’S INTEREST¹

SFR buys properties at association non-judicial foreclosure sales. *See SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 744, 334 P.3d 408, 409-10 (2014) (“SFR”). Most of these properties are or have been the subject of lawsuits in Nevada’s state and federal courts.

Following the 2014 *SFR* decision, which held that a properly conducted foreclosure sale would extinguish a first deed of trust,² banks like Bank of America (“BANA”) changed their strategy from challenging the statute to challenging extinguishment outcome by asserting attempted tender, excuse of tender or futility of tender, based on secret facts and acts not available in the public records. Many, if

¹ NRAP 29(c)

² 130 Nev. 742, 758, 334 P.3d 408, 419 (2014).

not most, of SFRs remaining case involve the issue of tender and its result on the title obtained by the purchaser at the sale. Consequently, this Court should allow SFR to file an amicus brief.

II. THE REASONS WHY AN AMICUS BRIEF IS DESIRABLE

The District Court in this case correctly found that Saticoy Bay was a bona fide purchaser. [10JA_1724.] While all purchasers at any non-judicial foreclosure sale acknowledge the potential of challenges, that is not the same as having knowledge of or notice of specific facts that could change that presumptive extinguishment. But, the district court also concluded that Saticoy Bay's BFP status was irrelevant based on this Court's *Diamond Spur*³ decision. [*Id.*] That is because, even though the

In *Diamond Spur*, this Court stated that if a court determined a bank had made a proper tender, then the sale was void and BFP was irrelevant.⁴ This despite the fact that banks like BANA had to have their purported attempted payments be deemed to satisfy tender, and despite the banks electing to keep such actions secret and provide nothing in the public record to give notice of such actions to potential bidders at the nonjudicial public auctions. In other words, despite the Legislature's

³ *Bank of America, N.A. v SFR Investments Pool 1, LLC*, 134 Nev. 604, 427 P.3d 113 (2018) (“Diamond Spur”).

⁴ *Id.* at 612, 427 P.3d at 121.

choice to give homeowner associations the shorter, less expensive, nonjudicial foreclosure ability, all such sales were, in essence, turned into expensive litigation. And here, the facts show how inequitable that outcome is, where the successful bidder paid \$1.4 million dollars at auction, that took place after this Court's *SFR* decision confirming a proper sale would extinguish the deed of trust, but is left with that very deed of trust for over \$3 million attached to the property.

But, *Diamond Spur* did not take into account changes made by the Legislature in 2013, at the urging of title companies, which afford BFPs in real estate transactions protections so that there can be finality to such transactions, and specifically for foreclosures. As set forth fully in SFR's amicus brief, it was the ongoing onslaught of litigation where BFPs were not being afforded the protections the title companies thought existed under common law that brought about the amendments. Thus, without overturning or rejecting *Diamond Spur*, the effect of its holding rejecting the protections the statutes afford BFPS must be temporally limited, at least to those that took place prior to July 1, 2013, when the Legislature adopted NRS 111.180. SFR has fully set forth its arguments, reasoning and law in its amicus brief.

Therefore, SFR's proposed amicus brief is desirable because it addresses the statutes and Legislative history that were not addressed in *Diamond Spur* and shows

how NRS 111.180 provides for a different outcome for this case and similar cases arising post-adoption of NRS 111.180(1).

CONCLUSION

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

Respectfully submitted this 19th day of February, 2021.

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/s/ Jacqueline A. Gilbert _____

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 19th day of February, 2021. Electronic service of the foregoing **MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT’S OPENING BRIEF** was made pursuant to the Master Service List.

Dated this 19th day of February, 2021.

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