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Attorneys for SFR Investments Pool 1, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

ALESSI & KOENIG, LLC, a Nevada limited liability company,

Plaintiff,

vs.

STACY MOORE, an individual; MAGNOLIA GOTERA, an individual; KRISTIN JORDAL, AS TRUSTEE FOR THE JBWNO REVOCABLE LIVING TRUST, a trust; U.S. BANK, N.A., a national banking association; NATIONSTAR MORTGAGE, LLC, a foreign limited liability company; REPUBLIC SILVER STATE DISPOSAL, INC., DBA REPUBLIC SERVICES, a domestic governmental entity; DOE INDIVIDUALS I through X, inclusive; and ROE CORPORATIONS XI through XX inclusive,

Defendants.

U.S. BANK, N.A.,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited liability company,

Counter-Defendant.

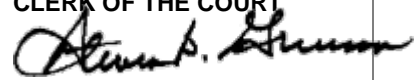
U.S. BANK, N.A.,

Third-Party Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a Nevada

Electronically Filed
6/3/2020 10:38 AM
Steven D. Grierson
CLERK OF THE COURT



Electronically Filed
Jun 09 2020 01:44 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. A-14-705563-C

Dept. No. 26

NOTICE OF APPEAL

limited liability company; INDIVIDUAL DOES
I through X, inclusive; and ROE
CORPORATIONS I through X, inclusive,
Third-Party Defendant(s).

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

Third-Party Counterclaimant/Cross-Claimant,
vs.

U.S. BANK, N.A.; NATIONSTAR
MORTGAGE, LLC, foreign limited liability
company; KRISTEN JORDAL, as Trustee for
the JBWNO REVOCABLE LIVING TRUST, a
Trust; STACY MOORE, an individual; and
MAGNOLIA GOTERA, an individual,
Counter-Defendants/Cross-Defendants.

PLEASE TAKE NOTICE that third-party defendant / third-party counterclaimant / third-party cross-claimant SFR Investments Pool 1, LLC ("SFR") appeals from the following orders and judgments:

1. Finding of Fact and Conclusions of Law filed November 29, 2018, notice of entry of which was filed December 26, 2018;
2. Order Granting Nationstar Mortgage, LLC's Motion for Reconsideration and to Alter/Amend Judgment filed June 28, 2019, notice of entry of which was filed the same day;
3. Findings of Fact, Conclusions of Law and Judgment filed April 30, 2020, notice of entry of which was filed on May 4, 2020; and
4. Any and all orders made appealable thereby.

DATED: June 3, 2020.

KIM GILBERT EBRON

/s/ Jacqueline A. Gilbert

JACQUELINE A. GILBERT, ESQ.

Nevada Bar No. 10593

DIANA S. EBRON, ESQ.

Nevada Bar No. 10580

KAREN L. HANKS, ESQ.

Nevada Bar No. 9578

7625 Dean Martin Dr., Ste. 110

Las Vegas, NV 89139

Attorneys for SFR Investments Pool 1, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of June, 2020, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system the foregoing **NOTICE OF APPEAL** to the following parties:

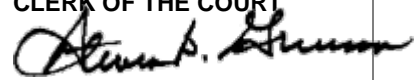
Akerman LLP	AkermanLAS@akerman.com
Melanie Morgan, Esq.	melanie.morgan@akerman.com
Donna Wittig, Esq.	donna.wittig@akerman.com
Douglas D. Gerrard, Esq.	dgerrard@gerrard-cox.com
Fredrick J. Biedermann, Esq.	fbiedermann@gerrard-cox.com
A&K eserve	eserve@alessikoenig.com
Kaytlyn Johnson .	kjohnson@gerrard-cox.com
Sarah Greenberg Davis	sgreenberg@wrightlegal.net

I HEREBY FURTHER CERTIFY that on this 3rd day of June, 2020, pursuant to NRCP 5(b), I caused the foregoing **NOTICE OF APPEAL** to be mailed via USPS, postage prepaid, to the following parties:

Stacy Moore
1275 Via Paraiso
Salinas, CA 93901

Magnolia Gotera
1275 Via Paraiso
Salinas, CA 93901

/s/ Alexander Loglia
An employee of KIM GILBERT EBRON



ASTA

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Attorneys for SFR Investments Pool 1, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

ALESSI & KOENIG, LLC, a Nevada limited liability company,

Plaintiff,

vs.

STACY MOORE, an individual; MAGNOLIA GOTERA, an individual; KRISTIN JORDAL, AS TRUSTEE FOR THE JBWNO REVOCABLE LIVING TRUST, a trust; U.S. BANK, N.A., a national banking association; NATIONSTAR MORTGAGE, LLC, a foreign limited liability company; REPUBLIC SILVER STATE DISPOSAL, INC., DBA REPUBLIC SERVICES, a domestic governmental entity; DOE INDIVIDUALS I through X, inclusive; and ROE CORPORATIONS XI through XX inclusive,

Defendants.

U.S. BANK, N.A.,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited liability company,

Counter-Defendant.

U.S. BANK, N.A.,

Third-Party Plaintiff,

vs.

Case No. A-14-705563-C

Dept. No. 26

CASE APPEAL STATEMENT

SFR INVESTMENTS POOL 1, LLC, a Nevada
limited liability company; INDIVIDUAL DOES
I through X, inclusive; and ROE
CORPORATIONS I through X, inclusive,
Third-Party Defendant(s).

SFR INVESTMENTS POOL 1, LLC, a Nevada
limited liability company,
Third-Party Counterclaimant/Cross-Claimant,
vs.
U.S. BANK, N.A.; NATIONSTAR
MORTGAGE, LLC, foreign limited liability
company; KRISTEN JORDAL, as Trustee for
the JBWNO REVOCABLE LIVING TRUST, a
Trust; STACY MOORE, an individual; and
MAGNOLIA GOTERA, an individual,
Counter-Defendants/Cross-Defendants.

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

SFR Investments Pool 1, LLC

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

The Honorable Gloria J. Sturman

3. Identify each appellant and the name and address of counsel for each appellant:

SFR Investments Pool 1, LLC (“SFR”)

KIM GILBERT EBRON
Jacqueline A. Gilbert, Esq. (NBN 10592)
Diana S. Ebron, Esq. (NBN 10580)
Karen L. Hanks, Esq. (NBN 9578)
Jason G. Martinez (NBN 13375)
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent’s appellate counsel is unknown, indicate as much and provide the name and address of that respondent’s trial counsel):

Third-Party Cross-Defendant Nationstar Mortgage LLC (“Nationstar”):

GERRARD COX LARSEN
Douglas D. Gerrard, Esq.
Fredrick J. Biedermann, Esq.
2450 Saint Rose Parkway, Suite 200
Henderson, Nevada 89074

AKERMAN LLP
Melanie D. Morgan, Esq.
Donna M. Wittig, Esq.
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134

Defendant / Counterclaimant / Third-Party Plaintiff / Third-Party Counter-Defendant
U.S. Bank, National Association, as Trustee for the Certificateholders of the LXS 2006-
4N Trust Fund, erroneously pled as U.S. Bank, N.A. (“**U.S. Bank**”) (collectively with
Nationstar, the “**Bank**”):

AKERMAN LLP
Melanie D. Morgan, Esq.
Donna M. Wittig, Esq.
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134

5. **Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):**

N/A

6. **Indicate whether appellant was represented by appointed or retained counsel in the district court:**

Retained

7. **Indicate whether appellant is represented by appointed or retained counsel on appeal:**

Retained

8. **Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:**

N/A

9. **Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed):**

August 14, 2014

10. **Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:**

The action began as complaint in interpleader as to excess funds following an NRS 116 foreclosure sale at which SFR obtained title to the property known as 5327 Marsh Butte Street, Las Vegas, Nevada 89148 (the "Property") as the highest bidder at the public auction.

U.S. Bank brought in SFR as a third-party defendant to assert claims for quiet title, injunctive relief, and unjust enrichment. SFR brought third-party cross/counterclaims for quiet title/declaratory relief, and injunctive relief against U.S. Bank, Nationstar, Kristen Jordal, as Trustee for the JBWNO Revocable Living Trust, a Trust, Stacy Moore, and Magnolia Gotera. SFR also brought a slander of title claim against Nationstar.

On June 20, 2016, SFR voluntarily dismissed Kristen Jordal, as Trustee for the JBWNO Revocable Living Trust, a Trust. On June 27, 2018, Clerk's defaults were entered against Magnolia Gotera and Stacy Moore.

On November 29, 2018, the District Court initially granted summary judgment in favor of SFR and denied Nationstar's motion for summary judgment and U.S. Bank's joinder thereto, finding that, *inter alia*: (1) the Bank tendered \$207.00, which was the amount of the Bank's superpriority lien; (2) the Bank's tender was rejected by Alessi & Koenig, LLC ("Alessi"), agent for Shadow Mountain Ranch Community Association (the "Association"); (3) the Bank failed to prove delivery of the purported tender or rejection of same, because the Bank merely provided a copy of the purported check and a screenshot, neither of which was admissible, and the Bank's predecessor's witness, Doug Miles, was not disclosed, and there were defects in his affidavit; (4) if in fact a tender of the superpriority amount was made before the sale and rejected by Alessi, the rejection was in good faith, and SFR had no notice of the payment; (5) SFR was a bona fide purchaser, and Nationstar failed to protect its interest in the Property; (6) the Bank failed to set forth material issues of fact establishing fraud, unfairness, or oppression; (7) U.S. Bank's unjust enrichment claim failed as a matter of law. The District Court found the Association's non-judicial foreclosure sale extinguished the deed of trust, that Nationstar and U.S. Bank had no interest in the Property, and title was quieted in favor of SFR.

On January 14, 2019, Nationstar filed a motion for reconsideration and/or to alter/amend judgment ("Motion for Reconsideration"), asserting that the District Court had made errors in its findings of facts and evidentiary rulings, and that the Nevada Supreme Court's recent ruling in *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 134 Nev.604, 427P.3d 113 (2018) ("*Diamond Spur*") required a different result. SFR opposed the motion. The case was reassigned twice in February 2019 while the Motion for Reconsideration was pending.

On June 28, 2019, the District Court granted Nationstar's Motion for Reconsideration, basing its decision on errors in the prior evidentiary rulings, the existence of a genuine issue of material fact as to whether payment of the superpriority portion of the Association's lien was sent to or received by Alessi, and setting the matter for trial.

At trial, SFR asserted its affirmative defense that the statute of repose found under NRS 106.240 terminated the deed of trust because the Bank accelerated the loan no later than January 22, 2008 and never timely decelerated, resulting in the deed of trust being terminated as of January 22, 2018.

After a bench trial, the District Court issued findings of facts and conclusions of law on April 30, 2020. The District Court rejected SFR's argument concerning NRS 106.240, and found that U.S. Bank's predecessor tendered and satisfied the superpriority portion of the Association's lien prior to the sale, that the Association foreclosed only on the subpriority portion of its lien, and that therefore SFR took the Property subject to the deed of trust.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

N/A

12. Indicate whether this appeal involves child custody or visitation:

N/A

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

SFR is always willing to discuss settlement. SFR believes it is a case that should go into the settlement program to explore settlement options prior to briefing.

DATED: June 3, 2020.

KIM GILBERT EBRON

/s/ Jacqueline A. Gilbert

JACQUELINE A. GILBERT, ESQ.

Nevada Bar No. 10593

DIANA S. EBRON, ESQ.

Nevada Bar No. 10580

KAREN L. HANKS, ESQ.

Nevada Bar No. 9578

7625 Dean Martin Dr., Ste. 110

Las Vegas, NV 89139

Attorneys for SFR Investments Pool 1, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of June, 2020, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system the foregoing **CASE APPEAL STATEMENT** to the following parties:

Akerman LLP	AkermanLAS@akerman.com
Melanie Morgan, Esq.	melanie.morgan@akerman.com
Donna Wittig, Esq.	donna.wittig@akerman.com
Douglas D. Gerrard, Esq.	dgerrard@gerrard-cox.com
Fredrick J. Biedermann, Esq.	fbiedermann@gerrard-cox.com
A&K eserve	eserve@alessikoenig.com
Kaytlyn Johnson .	kjohnson@gerrard-cox.com
Sarah Greenberg Davis	sgreenberg@wrightlegal.net

I HEREBY FURTHER CERTIFY that on this 3rd day of June, 2020, pursuant to NRCP 5(b), I caused the foregoing **CASE APPEAL STATEMENT** to be mailed via USPS, postage prepaid, to the following parties:

Stacy Moore
1275 Via Paraiso
Salinas, CA 93901

Magnolia Gotera
1275 Via Paraiso
Salinas, CA 93901

/s/ Alexander Loglia
An employee of KIM GILBERT EBRON

CASE SUMMARY**CASE NO. A-14-705563-C**

Alessi and Koenig LLC, Plaintiff(s)
vs.
Stacy Moore, Defendant(s)

§
§
§
§
§

Location: **Department 26**
 Judicial Officer: **Sturman, Gloria**
 Filed on: **08/14/2014**
 Case Number History:
 Cross-Reference Case Number: **A705563**

CASE INFORMATION**Statistical Closures**

05/01/2020 Summary Judgment
 11/29/2018 Summary Judgment
 07/12/2017 Other Manner of Disposition

Case Type: **Other Civil Matters**

Case Status: **05/01/2020 Closed**

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

Case Number A-14-705563-C
 Court Department 26
 Date Assigned 02/05/2019
 Judicial Officer Sturman, Gloria

PARTY INFORMATION*Lead Attorneys***Plaintiff Alessi and Koenig LLC****Defendant Gotera, Magnolia****JBWNO RevocableLiving Trust****Moore, Stacy****Nationstar Mortgage LLC**

Morgan, Melanie D.
Retained
 702-634-5000(W)

Republic Silver State Disposal Inc**US Bank NA**

Morgan, Melanie D.
Retained
 702-634-5000(W)

Counter Claimant SFR Investments Pool 1 LLC

Ebron, Diana S.
Retained
 702-485-3300(W)

US Bank NA

Morgan, Melanie D.
Retained
 702-634-5000(W)

Counter Defendant Alessi and Koenig LLC

US Bank NA

Morgan, Melanie D.
Retained
 702-634-5000(W)

Cross Claimant SFR Investments Pool 1 LLC

Ebron, Diana S.
Retained
 702-485-3300(W)

Cross Defendant Gotera, Magnolia

CASE SUMMARY**CASE NO. A-14-705563-C****Jordal, Kristin****Moore, Stacy****Nationstar Mortgage LLC****Morgan, Melanie D.***Retained*










702-634-5000(W)

**Third Party
Defendant****SFR Investments Pool 1 LLC****Ebron, Diana S.***Retained*

702-485-3300(W)













**Third Party
Plaintiff****US Bank NA****Morgan, Melanie D.***Retained*

702-634-5000(W)

DATE	EVENTS & ORDERS OF THE COURT	INDEX
	<u>EVENTS</u>	
08/14/2014	 Complaint Filed By: Counter Defendant Alessi and Koenig LLC <i>Complaint in Interpleader</i>	
08/14/2014	Case Opened	
10/16/2014	 Affidavit of Service Filed By: Counter Defendant Alessi and Koenig LLC <i>Affidavit of Service (as to Magnolia Gotera)</i>	
10/21/2014	 Affidavit of Service Filed By: Counter Defendant Alessi and Koenig LLC <i>Affidavit of Service -Us Bank</i>	
10/21/2014	 Declaration Filed By: Counter Defendant Alessi and Koenig LLC <i>Declaration of Service-Republic Silver State Disposal</i>	
10/31/2014	 Notice Filed By: Cross Defendant Nationstar Mortgage LLC <i>Defendant Nationstar Mortgage, LLC's Notice of Appearance</i>	
10/31/2014	 Initial Appearance Fee Disclosure Filed By: Cross Defendant Nationstar Mortgage LLC <i>Initial Appearance Fee Disclosure</i>	
11/17/2014	 Answer Filed By: Cross Defendant Nationstar Mortgage LLC <i>Nationstar Mortgage, LLC's Answer</i>	
11/21/2014	 Declaration Filed By: Counter Defendant Alessi and Koenig LLC <i>Declaration of Service-Kristin Jordal</i>	
12/02/2014	 Notice of Early Case Conference Filed By: Counter Defendant Alessi and Koenig LLC <i>Notice of Early Case Conference</i>	

CASE SUMMARY













CASE NO. A-14-705563-C

12/10/2014	 Default Filed By: Counter Defendant Alessi and Koenig LLC <i>Default (as to Magnolia Gotera)</i>
12/10/2014	 Declaration Filed By: Counter Defendant Alessi and Koenig LLC <i>Declaration of Service-Kristin Jordal as Trustee for the JBWNO Revocable Living Trust</i>
12/10/2014	 Declaration Filed By: Counter Defendant Alessi and Koenig LLC <i>Declaration of Service-Stacy Moore</i>
12/11/2014	 Default Filed By: Counter Defendant Alessi and Koenig LLC Default Prty: Counter Defendant US Bank NA <i>(Set Aside 6/12/15) Default (as to U.S. Bank, N.A.)</i>
03/31/2015	 Affidavit of Service Filed By: Cross Defendant Nationstar Mortgage LLC <i>Affidavit of Service -Shadow Mountain Ranch Community Association</i>
05/04/2015	Case Reassigned to Department 20 <i>Case reassigned from Judge Jerome Tao Dept 20</i>
05/27/2015	 Initial Appearance Fee Disclosure Filed By: Counter Defendant US Bank NA <i>Initial Appearance Fee Disclosure</i>
05/27/2015	 Notice of Appearance Party: Cross Defendant Nationstar Mortgage LLC <i>Notice of Appearance</i>
06/12/2015	 Stipulation and Order Filed by: Cross Defendant Nationstar Mortgage LLC <i>Stipulation and Order to Set Aside Default of U.S. Bank, N.A.</i>
06/17/2015	 Notice of Entry of Stipulation and Order Filed By: Cross Defendant Nationstar Mortgage LLC <i>Notice of Entry of Stipulation and Order to Set Aside Default of U.S. Bank, N.A.</i>
08/17/2015	 Default Filed By: Counter Defendant Alessi and Koenig LLC <i>Default (as to Stacy Moore)</i>
08/18/2015	 Answer and Counterclaim Filed By: Counter Defendant US Bank NA <i>U.S Bank, N.A.'s Answer, Counterclaim, and Third-Party Complaint</i>
08/27/2015	 Notice of Lis Pendens Filed by: Cross Defendant Nationstar Mortgage LLC <i>Notice of Lis Pendens</i>
10/05/2015	 Answer to Counterclaim Filed By: Counter Defendant Alessi and Koenig LLC

CASE SUMMARY

CASE NO. A-14-705563-C

Alessi & Koenig, LLC's Answer to U.S. Bank, N.A.'s Counterclaim

10/29/2015	 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>
12/08/2015	 Notice of Posting Bond Filed By: Cross Defendant Nationstar Mortgage LLC <i>Notice of Posting Bond</i>
12/17/2015	 Notice of Change of Address Filed By: Cross Claimant SFR Investments Pool 1 LLC <i>Notice of Change of Address and Notice of Change of Firm Name</i>
12/23/2015	 Motion to Dismiss Filed By: Cross Claimant SFR Investments Pool 1 LLC <i>SFR Investments Pool 1, LLC'S Motion to Dismiss Plaintiff's Third-Party Complaint Pursuant to NRCP 12(b)(6)</i>
12/24/2015	 Opposition to Motion to Dismiss Filed By: Cross Defendant Nationstar Mortgage LLC <i>U.S. Bank, National Association as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund, Erroneously Pled as U.S. Bank, N.A.'s Opposition to SFR Investment Pool 1, LLC's Motion to Dismiss Pursuant to 12 (B)(6)</i>
01/11/2016	 Certificate Filed By: Cross Defendant Nationstar Mortgage LLC <i>Certificate of Delivery</i>
01/27/2016	 Reply Filed by: Cross Claimant SFR Investments Pool 1 LLC <i>SFR Investments Pool 1, LLC'S Reply in Support of Motion to Dismiss for Failure to Join Indispensable Parties</i>
02/25/2016	 Order Denying Motion Filed By: Cross Defendant Nationstar Mortgage LLC <i>Order Denying SFR's Motion to Dismiss Plaintiff's Third-Party Complaint Pursuant to NRCP 12(B)(6)</i>
02/29/2016	 Notice of Entry Filed By: Counter Defendant Alessi and Koenig LLC <i>Notice of Entry of Order</i>
03/14/2016	 Answer and Counterclaim Filed By: Cross Claimant SFR Investments Pool 1 LLC <i>SFR Investments Pool 1, LLC's Answer to Third-Party Complaint, Counterclaim and Cross-Claim</i>
03/16/2016	 Notice of Lis Pendens Filed by: Cross Claimant SFR Investments Pool 1 LLC <i>Notice of Lis Pendens</i>
03/21/2016	 Answer to Third Party Complaint Filed By: Cross Defendant Nationstar Mortgage LLC

CASE SUMMARY

CASE NO. A-14-705563-C










Nationstar Mortgage, LLC and U.S. Bank, N.A. as Trustee for The Certificateholders of the LXS 2006-4N Trust Fund's Answer to SFR Investments Pool 1, LLC's Third Party Counterclaims

04/21/2016	 Notice of Association of Counsel Filed By: Cross Defendant Nationstar Mortgage LLC <i>Notice of Association of Counsel</i>
05/17/2016	 Affidavit of Service Filed By: Cross Claimant SFR Investments Pool 1 LLC <i>Affidavit of Service</i>
05/31/2016	 Notice of Early Case Conference Filed By: Counter Defendant Alessi and Koenig LLC <i>Notice of Early Case Conference</i>
06/14/2016	 Affidavit of Due Diligence Filed By: Counter Defendant Alessi and Koenig LLC <i>Affidavit of Due Diligence</i>
06/17/2016	 Ex Parte Motion Filed By: Cross Claimant SFR Investments Pool 1 LLC <i>Ex Parte Motion to Serve Stacey Moore by Publication and Motion to Enlarge Time to Serve Summons and Cross-Claim</i>
06/17/2016	 Ex Parte Motion Filed By: Cross Claimant SFR Investments Pool 1 LLC <i>Ex Parte Motion to Serve Magnolia Gotera by Publication and Motion to Enlarge Time Serve Summons and Cross-Claim</i>
06/20/2016	 Notice of Voluntary Dismissal Without Prejudice Filed by: Cross Claimant SFR Investments Pool 1 LLC <i>Notice of Voluntary Dismissal of Kristin Jordal, as Trustee for the JBWNO Revocable Living Trust</i>
06/30/2016	 Order Filed By: Cross Claimant SFR Investments Pool 1 LLC <i>Order Granting Ex Parte Motion to Serve Stacy Moore by Publication and Order Granting Motion to Enlarge Time to Serve Summons and Cross-Claim</i>
07/11/2016	 Order for Service by Publication Filed By: Cross Claimant SFR Investments Pool 1 LLC <i>Order Granting Ex Parte Motion to Serve Magnolia Gotera by Publication - and - Order Granting Motion to Enlarge Time to Serve Summons and Cross-Claim</i>
07/12/2016	 Notice of Entry of Order Filed By: Cross Claimant SFR Investments Pool 1 LLC <i>Notice of Entry of Order Granting Ex Parte Motion to Serve Magnolia Gotera by Publication and Order Granting Motion to Enlarge Time to Serve Summons and Cross-Claim</i>
07/21/2016	 Declaration Filed By: Counter Defendant Alessi and Koenig LLC <i>Declaration of Non-Monetary Status Pursuant to NRS 107/SB 239</i>
07/21/2016	 Memorandum

CASE SUMMARY

CASE NO. A-14-705563-C

Filed By: Counter Defendant Alessi and Koenig LLC
Memorandum of Points and Authorities in Support of Declaration of Non-Monetary Status (NRS 107/SB 239)

08/02/2016	 Objection Filed By: Cross Defendant Nationstar Mortgage LLC <i>Nationstar Mortgage, LLC and U.S. Bank, National Association's Objection to Alessi & Koenig, LLC's Declaration of Non-Monetary Status</i>
08/03/2016	 Affidavit of Publication of Summons Filed By: Counter Defendant Alessi and Koenig LLC <i>Affidavit of Publication</i>
08/17/2016	 Affidavit of Publication of Summons Filed By: Counter Defendant Alessi and Koenig LLC <i>Affidavit of Publication</i>
08/22/2016	 Motion Filed By: Cross Defendant Nationstar Mortgage LLC <i>Nationstar Mortgage, LLC and U.S. Bank, National Association's Motion to Account for and Interplead Funds</i>
08/24/2016	 Joint Case Conference Report Filed By: Cross Claimant SFR Investments Pool 1 LLC <i>Joint Case Conference Report</i>
09/08/2016	 Response Filed by: Cross Claimant SFR Investments Pool 1 LLC <i>SFR Investments Pool 1, LLC's Response to Nationstar Mortgage, LLC and U.S. Bank, National Association as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund, Erroneously Pled as U.S. Bank, N.A.'s Motion to Account for and Interplead Funds</i>
09/12/2016	 Proof of Service Filed by: Cross Claimant SFR Investments Pool 1 LLC <i>Proof of Service by Publication as to Stacy Moore</i>
09/12/2016	 Proof of Service Filed by: Cross Claimant SFR Investments Pool 1 LLC <i>Proof of Service by Publication as to Magnolia Gotera</i>
09/12/2016	 Certificate of Mailing Filed By: Cross Claimant SFR Investments Pool 1 LLC <i>Certificate of Mailing</i>
09/12/2016	 Certificate of Mailing Filed By: Cross Claimant SFR Investments Pool 1 LLC <i>Certificate of Mailing</i>
10/20/2016	 Scheduling Order <i>Scheduling Order</i>
11/28/2016	 Order Setting Civil Non-Jury Trial <i>Order Setting Civil Non-Jury Trial</i>
02/09/2017	

CASE SUMMARY

CASE NO. A-14-705563-C

	 Notice of Bankruptcy Filed By: Cross Defendant Nationstar Mortgage LLC <i>Notice of Bankruptcy Filing</i>
03/17/2017	 Notice Filed By: Cross Defendant Nationstar Mortgage LLC <i>Notice of Removal</i>
07/01/2017	Case Reassigned to Department 17 <i>Civil Case Reassignment to Judge Michael Villani</i>
07/12/2017	 Order to Statistically Close Case <i>Civil Order to Statistically Close Case</i>
09/06/2017	 Notice Filed By: Cross Claimant SFR Investments Pool 1 LLC <i>Notice to Adverse Parties and to the Eighth Judicial District Court of Remand of Previously-Removed Case to this Court</i>
09/14/2017	 Order of Remand from Federal Court <i>Order Remanding Cases to State Court for Lack of Jurisdiction, and Alternatively, on Equitable Grounds</i>
11/02/2017	 Amended Order Setting Civil Non-Jury Trial <i>Amended Order Setting Civil Non-Jury Trial</i>
01/24/2018	 Substitution of Attorney Filed by: Cross Defendant Nationstar Mortgage LLC <i>Substitution Of Counsel For Defendant Nationstar Mortgage LLC And Defendant COUNTERCLAIM Third Party Defendant US Bank National Association</i>
02/28/2018	 Motion Filed By: Cross Defendant Nationstar Mortgage LLC <i>Nationstar Mortgage, LLC's Motion To Reopen Discovery And Continue Trial Date</i>
03/06/2018	 Joinder To Motion Filed By: Counter Defendant US Bank NA <i>U.S. Bank, N.A. as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund's Joinder to Nationstar Mortgage LLC's Motion to Reopen Discovery and Continue Trial Date (First Request)</i>
03/08/2018	 Application Filed By: Cross Defendant Nationstar Mortgage LLC <i>Application for Order Shortening Time Re Nationstar Mortgage, LLC S Motion to Reopen Discovery and Continue Trial Date</i>
03/08/2018	 Notice of Entry Filed By: Cross Defendant Nationstar Mortgage LLC <i>Notice of Entry of OST re Nationstar Mortgage, LLC's Motion to Reopen Discovery and Continue Trial Date</i>
03/13/2018	 Notice of Intent Filed By: Cross Claimant SFR Investments Pool 1 LLC <i>Notice of Intent to Orally Oppose Nationstar Mortgage LLC s Motion to Reopen Discovery and to Continue Trial and U.S. Bank s Joinder Thereto</i>












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03/14/2018	 Motion to Withdraw As Counsel Filed By: Counter Defendant Alessi and Koenig LLC <i>MOTION TO WITHDRAW AS COUNSEL OF RECORD FOR ALESSI & KOENIG, LLC</i>
03/22/2018	 Amended Order Setting Civil Non-Jury Trial <i>Amended Order Setting Civil Non-Jury Trial and Calendar Call</i>
03/22/2018	 Order Filed By: Cross Defendant Nationstar Mortgage LLC <i>Order Granting Nationstar Mortgage, LLC's Motion to Reopen Discovery and Continue Trial Date</i>
03/26/2018	 Notice of Entry of Order Filed By: Cross Defendant Nationstar Mortgage LLC <i>Notice of Entry of Order Granting Nationstar Mortgage, LLC's Motion to Reopen Discovery and Continue Trial Date</i>
04/30/2018	 Deposition Subpoena Filed By: Cross Defendant Nationstar Mortgage LLC <i>Notice of Subpoena For deposition of the NRCP 30(B)(6) Witness for Alessi & Koenig, LLC</i>
05/10/2018	 Notice of Deposition Filed By: Counter Defendant US Bank NA; Cross Defendant Nationstar Mortgage LLC <i>Notice of Subpoena for Deposition of the NRCP 30(b)(6) Witness for Shadow Mountain Ranch Community Association</i>
05/15/2018	 Order Filed By: Counter Defendant Alessi and Koenig LLC <i>Order Granting Steven Loizzi, Jr., Esq.'s Motion to Withdraw as Counsel of Record for Alessi & Koenig, LLC</i>
05/18/2018	 Notice of Entry Filed By: Counter Defendant Alessi and Koenig LLC <i>Notice of Entry of Order Granting Steven Loizzi, Esq.'s Motion to Withdraw as Counsel of Record for Alessi & Koenig, LLC</i>
05/22/2018	 Amended Notice Filed By: Cross Defendant Nationstar Mortgage LLC <i>First Amended Notice of Subpoena For Deposition of The NRCP 30(B)(6) Witness For Shadow Ranch Community Association</i>
06/27/2018	 Default Filed By: Cross Claimant SFR Investments Pool 1 LLC <i>Default Against Stacy Moore</i>
06/27/2018	 Default Filed By: Cross Claimant SFR Investments Pool 1 LLC <i>Default Against Magnolia Gotera</i>
06/29/2018	 Motion for Summary Judgment <i>Motion for Summary Judgment</i>
06/29/2018	 Appendix














CASE SUMMARY

CASE NO. A-14-705563-C

	<p>Filed By: Cross Defendant Nationstar Mortgage LLC <i>Appendix of Exhibit For Nationstar Mortgage, LLC's Motion for Summary Judgment Pursuant to EDCR 2.27</i></p>
06/29/2018	<p> Motion for Summary Judgment Filed By: Cross Defendant Nationstar Mortgage LLC <i>Cross-Defendant Nationstar Mortgage, LLC's Motion for Summary Judgment</i></p>
07/02/2018	<p> Joinder to Motion For Summary Judgment Filed By: Counter Defendant US Bank NA <i>U.S Bank, N.A., as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund's Joinder to Nationstar Mortgage LLC's Motion for Summary Judgment</i></p>
07/19/2018	<p> Opposition to Motion For Summary Judgment Filed By: Cross Claimant SFR Investments Pool 1 LLC <i>SFR Investments Pool 1, LLC's Opposition to Cross-Defendant Nationstar Mortgage, LLC's Motion for Summary Judgment and US Bank, NA as Trustee for the Certificate Holders of the LXS 2006-4n Trust Fund's Joinder to Nationstar Mortgage, LLC's Joinder</i></p>
07/19/2018	<p> Opposition Filed By: Cross Defendant Nationstar Mortgage LLC <i>Opposition To SFR Investments Pool 1, LLC's Motion For Summary Judgment</i></p>
07/20/2018	<p> Errata Filed By: Cross Claimant SFR Investments Pool 1 LLC <i>Errata to: SFR Investments Pool 1, LLC's Opposition to Cross-Defendant Nationstar Mortgage, LLC's Motion for Summary Judgment and U.S. Bank, N.A. as Trustee for the Certificate Holders of the LXS 2006-4N Trust Fund's Joinder to Nationstar Mortgage, LLC's Motion</i></p>
07/20/2018	<p> Joinder to Opposition to Motion Filed by: Counter Defendant US Bank NA <i>U.S. Bank, N.A., as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund's Joinder to Nationstar Mortgage LLC's Opposition to SFR Investments Pool 1, LLC's Motion for Summary Judgment</i></p>
07/24/2018	<p> 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 for Summary Judgment</i></p>
08/02/2018	<p> Pre-Trial Disclosure <i>SFR Investments Pool 1, LLC's Pre-Trial Disclosures</i></p>
08/07/2018	<p> Reply in Support Filed By: Cross Defendant Nationstar Mortgage LLC <i>Reply In Support Of Cross-Defendant Nationstar Mortgage, LLC's Motion for Summary Judgment</i></p>
08/08/2018	<p> Joinder Filed By: Counter Defendant US Bank NA <i>U.S. Bank, N.A., as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund's Joinder to Nationstar Mortgage LLC's Reply in Support of Motion for Summary Judgment</i></p>
08/23/2018	<p> Objection <i>Objections to Pre-Trial Disclosures</i></p>

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08/23/2018	 Objection <i>Objections to Pre-Trial Disclosures</i>
09/14/2018	 Recorders Transcript of Hearing <i>Recorder's Transcript of Hearing: Cross-Defendant Nationstar Mortgage, LLC's Motion for Summary Judgment/Counter Claimant SFR Investment Pool 1, LLC's Motion for Summary Judgment Heard on August 15, 2018</i>
11/29/2018	 Findings of Fact, Conclusions of Law and Judgment Filed by: Cross Claimant SFR Investments Pool 1 LLC <i>Findings of Fact and Conclusions of Law</i>
12/06/2018	 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>
12/26/2018	 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</i>
01/07/2019	Case Reassigned to Department 18 <i>Judicial Reassignment - From Judge Villani to Judge Holthus</i>
01/14/2019	 Appendix Filed By: Cross Defendant Nationstar Mortgage LLC <i>Appendix of Exhibits For Nationstar Mortgage, LLC's Motion For Reconsideration and/or To Alter/Amend Judgment Pursuant To E.D.C.R. 2.27</i>
01/14/2019	 Motion to Reconsider Filed By: Cross Defendant Nationstar Mortgage LLC <i>Defendant Nationstar Mortgage, LLC's Motion for Reconsideration and/or To Alter/Amend Judgment</i>
01/24/2019	 Errata Filed By: Cross Defendant Nationstar Mortgage LLC <i>Errata To Defendant Nationstar Mortgage, LLC's Motion For Reconsideration and/or To Alter/Amend Judgment</i>
01/31/2019	 Peremptory Challenge Filed by: Cross Claimant SFR Investments Pool 1 LLC <i>SFR Investments Pool 1, LLC's Peremptory Challenge of Judge</i>
02/01/2019	 Opposition to Motion Filed By: Cross Claimant SFR Investments Pool 1 LLC <i>SFR Investments Pool 1, LLC's Opposition to Defendant Nationstar Mortgage, LLC's Motion for Reconsideration And/Or to Alter/Amend Judgment</i>
02/01/2019	 Notice of Department Reassignment <i>Notice of Department Reassignment</i>
02/05/2019	 Notice of Department Reassignment <i>Notice of Department Reassignment</i>
03/19/2019	 Reply in Support

CASE SUMMARY

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Filed By: Cross Defendant Nationstar Mortgage LLC
Reply In Support Of Defendant Nationstar Mortgage, LLC's Motion For Reconsideration and/or To Alter / Amend Judgment

06/28/2019



Order

Filed By: Cross Defendant Nationstar Mortgage LLC
Order Granting Nationstar Mortgage, LLC's Motion for Reconsideration and to Alter/Amend Judgment

06/28/2019



Notice of Entry of Order

Filed By: Cross Defendant Nationstar Mortgage LLC
Notice of Entry of Order Granting Nationstar Mortgage, LLC's Motion for Reconsideration and to Alter/Amend Judgment

10/22/2019



Scheduling and Trial Order

Amended Non-Civil Trial Order

10/23/2019



Stipulation

Filed by: Counter Defendant US Bank NA; Cross Defendant Nationstar Mortgage LLC
Stipulation to Reopen Closed Case and Reset Trial Dates

10/24/2019



Notice of Entry

Notice of Entry of Stipulation and Order to Reopen Closed Case and Rest Trial Dates

12/11/2019



Notice of Withdrawal of Attorney

Filed by: Cross Defendant Nationstar Mortgage LLC
Notice of Withdrawal of Counsel for Defendant /Counterclaimant / Third-Party Defendant Nationstar Mortgage, LLC

12/31/2019



Stipulation and Order

Filed by: Counter Defendant US Bank NA; Cross Defendant Nationstar Mortgage LLC
Stipulation and Order Continuing Trial Date

12/31/2019



Notice of Entry of Stipulation and Order

Notice of Entry of Stipulation and Order Continuing Trial Date

01/13/2020



Objection

Filed By: Cross Claimant SFR Investments Pool 1 LLC
Objections to Amended Pre-trial Disclosures

02/04/2020



Trial Brief

Filed By: Cross Defendant Nationstar Mortgage LLC
Defendant's Trial Brief

02/05/2020



Trial Brief

Filed By: Cross Claimant SFR Investments Pool 1 LLC
SFR Investments Pool 1, LLC's Trial Brief

02/05/2020



Joint Pre-Trial Memorandum

Filed By: Counter Defendant US Bank NA; Cross Defendant Nationstar Mortgage LLC
Joint Pretrial Memorandum

02/06/2020




Findings of Fact, Conclusions of Law and Judgment


Filed by: Counter Defendant US Bank NA; Cross Defendant Nationstar Mortgage LLC


CASE SUMMARY


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Proposed Findings of Fact, Conclusions of Law and Judgment


02/24/2020  Clerk's Notice of Nonconforming Document
Clerk's Notice of Nonconforming Document


02/28/2020  Recorders Transcript of Hearing
Party: Cross Defendant Moore, Stacy
Recorder's Transcript of Bench Trial, Monday, February 10, 2020

04/30/2020  Findings of Fact, Conclusions of Law and Judgment
Filed by: Cross Defendant Nationstar Mortgage LLC
Findings of Fact, Conclusions of Law and Judgment

05/04/2020  Notice of Entry of Findings of Fact, Conclusions of Law
Filed By: Counter Defendant US Bank NA; Cross Defendant Nationstar Mortgage LLC
Notice of Entry of Findings of Fact, Conclusions of Law and Judgment

05/05/2020  Memorandum of Costs and Disbursements
Filed By: Counter Defendant US Bank NA; Cross Defendant Nationstar Mortgage LLC
Nationstar Mortgage LLC and U.S. Bank National Association, as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund's Memorandum of Costs

06/03/2020  Notice of Appeal
Filed By: Cross Claimant SFR Investments Pool 1 LLC
Notice of Appeal

06/03/2020  Case Appeal Statement
Filed By: Cross Claimant SFR Investments Pool 1 LLC
Case Appeal Statement


DISPOSITIONS

06/20/2016 **Dismissal Pursuant to NRCP 41** (Judicial Officer: Johnson, Eric)
Debtors: Kristin Jordal (Trustee)
Creditors: SFR Investments Pool 1 LLC (Cross Claimant)
Judgment: 06/20/2016, Docketed: 06/27/2016

11/29/2018 **Summary Judgment** (Judicial Officer: Villani, Michael)
Debtors: Nationstar Mortgage LLC (Cross Defendant)
Creditors: SFR Investments Pool 1 LLC (Cross Claimant)
Judgment: 11/29/2018, Docketed: 11/29/2018

04/30/2020 **Judgment** (Judicial Officer: Sturman, Gloria)
Debtors: SFR Investments Pool 1 LLC (Third Party Defendant)
Creditors: US Bank NA (Third Party Plaintiff)
Judgment: 04/30/2020, Docketed: 05/07/2020

HEARINGS

02/03/2016  **Motion to Dismiss** (8:30 AM) (Judicial Officer: Johnson, Eric)
SFR Investments Pool 1, LLC'S Motion to Dismiss Plaintiff's Third-Party Complaint Pursuant to NRCP 12(b)(6)
Denied;
Journal Entry Details:
Arguments by Mr. Heidari and Mr. Connell in support of their respective positions. Following, COURT ORDERED, Motion to Dismiss is DENIED. Mr. Connell to prepare the Order.;

10/05/2016

CASE SUMMARY

CASE NO. A-14-705563-C



Motion to Interplead (8:30 AM) (Judicial Officer: Johnson, Eric)

Nationstar Mortgage, LLC and U.S. Bank, National Association's Motion to Account for and Interplead Funds

Granted;

Journal Entry Details:

Upon Court's inquiry as to a response, Mr. Loizzi advised they have not filed one as they need a ruling on the Declaration for Non-Monetary Status first to know whether or not they need to respond to this Motion. Statements by Mr. Connell in support of this Motion. Mr. Loizzi advised this Motion can not be ruled on until there is a decision on the Declaration for Non-Monetary Status. Mr. Connell argued that Alessi and Koenig have funds that they don't know where they come from. Following colloquy, COURT ORDERED, Mr. Loizzi to provide an accounting and hold funds in the account until further Order from this Court. Further, deadline for accounting is October 19, 2016. Statements by Mr. Loizzi as to the Declaration. Following colloquy, COURT ORDERED, matter SET for hearing as to the Declaration. 10/26/16 10:30 AM HEARING: DECLARATION OF NON-MONETARY STATUS;

11/08/2016



Minute Order (3:00 PM) (Judicial Officer: Johnson, Eric)

Minute Order - No Hearing Held;

Journal Entry Details:

Defendants Objection to Alessi & Koenig s Declaration of Non-Monetary Status has been granted by Judge Johnson. This Court finds Alessi & Koenig not a trustee under a deed of trust in this case, and thus shall remain an active participant in the litigation. Nationstar s Motion to Account for and Interplead Funds has also been granted by Judge Johnson. Alessi & Koenig to provide a full accounting of the funds.;

11/09/2016

CANCELED Hearing (8:30 AM) (Judicial Officer: Hardcastle, Kathy)

Vacated - per Law Clerk

Hearing: Declaration of Non-Monetary Status

08/16/2017

CANCELED Calendar Call (10:45 AM) (Judicial Officer: Johnson, Eric)

Vacated - per Judge

09/05/2017

CANCELED Bench Trial (1:00 PM) (Judicial Officer: Johnson, Eric)

Vacated - per Judge

03/14/2018

Motion for Discovery (8:30 AM) (Judicial Officer: Villani, Michael)

Defendant Nationstar Mortgage LLC's Motion to Reopen Discovery and Continue Trial Date

03/14/2018

Joinder (8:30 AM) (Judicial Officer: Villani, Michael)

U.S. Bank, N.A. as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund's Joinder to Nationstar Mortgage LLC's Motion to Reopen Discovery and Continue Trial Date (First Request)

03/14/2018



All Pending Motions (8:30 AM) (Judicial Officer: Villani, Michael)

Matter Heard;

Journal Entry Details:

Jamie Combs, Esq. appearing on behalf of Defendant US Bank, Jason Martinez, Esq. appearing on behalf of Counter Claimant SFR Investments Pool 1 LLC Court noted this was Defendant Nationstar Motion to Reopen Discovery and Continue Trial and stated the procedural history of the case. Mr. Gerrard advised two months into discovery Counter Defendant Alessi file bankruptcy which put a Stay on discovery. Mr. Gerrard further advised he hadn't been able to complete discovery because of the automatic Stay and requested a short continuance. Upon Court's inquiry, Mr. Gerrard advised he hadn't taken the deposition of the purchaser and didn't have an opportunity to disclose an expert. Ms. Combs was in agreement with Mr. Gerrard representations. In opposition, Mr. Martinez argued the Stay only applied to Defendant Alessi and SFR continued with discovery and completed it; however, Mr. Martinez agreed to opening discovery for the limited purpose for dispositive motions. Further argument by Mr. Gerrard. COURT ORDERED, Motion GRANTED with the modification of dates as follows: Discovery cut-off date, June 2, 2018; Initial Expert Disclosures Deadline, April 20, 2018; Rebuttal Expert Disclosures deadline, May 1, 2018 and Dispositive Motion deadline, July 1, 2018. COURT FURTHER ORDERED, Trial dates VACATED and RESET; U.S. Bank, N.A. as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund's Joinder to

CASE SUMMARY

CASE NO. A-14-705563-C

	<i>Nationstar Mortgage LLC's Motion to Reopen Discovery and Continue Trial Date (First Request) ADVANCED. Mr. Gerrard to prepare the Order and submit to opposing counsel to sign off as to form and content. 08/29/18 9:00 AM CALENDAR CALL 09/04/18 9:00 AM BENCH TRIAL;</i>
04/11/2018	CANCELED Calendar Call (9:00 AM) (Judicial Officer: Villani, Michael) <i>Vacated - per Judge</i>
04/16/2018	CANCELED Bench Trial (9:00 AM) (Judicial Officer: Villani, Michael) <i>Vacated - per Judge</i>
04/18/2018	 Motion to Withdraw as Counsel (3:00 AM) (Judicial Officer: Villani, Michael) <i>Steven Loizzi Esq.'s Motion to Withdraw as Counsel of Record for Alessi & Koenig LLC</i> Granted; Journal Entry Details: <i>HOA Lawyer's Group, LLC s Motion to Withdraw as Counsel of Record for Alessi & Koenig, LLC came before this Court on the April 18, 2018 Chamber Calendar. This Court, having reviewed the pleadings and papers on file herein, there being no opposition filed with this Court and pursuant to EDCR 2.20, 2.23, and for good cause appearing, COURT ORDERED HOA Lawyer s Group, LLC's Motion to Withdraw as Counsel of Record for Alessi & Koenig, LLC Motion to Withdraw as Counsel of Record GRANTED. HOA Lawyer's Group, LLC is further directed to submit a proposed order consistent with the foregoing within ten (10) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. HOA Lawyer's Group, LLC is further directed to inform its client of all deadlines (including the calendar call set for August 29, 2018 and the bench trial set for September 4, 2018) and turn over any documents, papers, or files as necessary. CLERK S NOTE: A copy of the foregoing minute order has been electronically distributed to all registered parties./ob/04/18/18. ;</i>
08/15/2018	Motion for Summary Judgment (8:30 AM) (Judicial Officer: Villani, Michael) <i>Counter Claimant SFR Investments Pool 1 LLC's Motion for Summary Judgment</i> Per email from Law Clerk Motion Granted;
08/15/2018	Motion for Summary Judgment (8:30 AM) (Judicial Officer: Villani, Michael) <i>Cross-Defendant Nationstar Mortgage, LLC's Motion for Summary Judgment</i> Per email from Law Clerk Motion Denied;
08/15/2018	 All Pending Motions (8:30 AM) (Judicial Officer: Villani, Michael) Matter Heard; Journal Entry Details: <i>COUNTER CLAIMANT SFR INVESTMENTS POOL 1 LLC'S MOTION FOR SUMMARY JUDGMENT ... CROSS-DEFENDANT NATIONSTAR MORTGAGE, LLC'S MOTION FOR SUMMARY JUDGMENT Donna Wittig, Esq., present on behalf of US Bank and Nationstar. Jason Martinez, Esq., present on behalf of SFR Investments. Following arguments by counsel, COURT ORDERED, matters TAKEN UNDER ADVISEMENT; written decision will issue.;</i>
08/29/2018	 Calendar Call (9:00 AM) (Judicial Officer: Villani, Michael) Matter Heard; Journal Entry Details: <i>Dawna Wittig, Esq., present on behalf of US Bank NA and Nationstar. Karen Hanks, Esq., present on behalf of SFR Investments Pool 1 LLC. Upon Court's inquiry, Mr. Gerrard stated they are ready for trial; however, Motions for Summary Judgment were argued last week and they are awaiting a decision. Court noted a decision will be made by this Friday.;</i>
09/04/2018	 Minute Order (8:00 AM) (Judicial Officer: Villani, Michael) Minute Order - No Hearing Held; Journal Entry Details: <i>Counter-Defendant SFR Investments Pool 1, LLC s (SFR) Motion for Summary Judgment and Cross-Defendant Nationstar Mortgage, LLC s (Nationstar) Motion for Summary Judgment</i>

CASE SUMMARY

CASE NO. A-14-705563-C

came before this Court on the August 15, 2018 oral calendar. The Court having further reviewed the pleadings, files, and argument finds as follows: Summary judgment is appropriate when the pleadings and other evidence on file demonstrate no genuine issue as to any material fact [remains] and the moving party is entitled to judgment as a matter of law. See NRCP 56 (c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). In ruling upon a motion for summary judgment, the Court must view all evidence and inferences in the light most favorable to the non-moving party. See *Torrealba v. Kesmetis*, 124 Nev. 95, 178 P.3d 716 (2008). To rebut a motion for summary judgment, the nonmoving party must present some specific facts to demonstrate that a genuine issue of material fact exists. *Forouzan, Inc. v. Bank of George*, 128 Nev. 896, 381 P.3d 612 (2012). SFR seeks summary judgment based on the following: (1) Quiet Title and Permanent Injunction against U.S. Bank, (2) Unjust Enrichment against U.S. Bank, (3) Slander of Title against Nationstar, and (4) pursuant to NRS 116.31166 (2) against Moore and Gotera. Nationstar seeks summary judgment based on the following: (1) Nationstar's predecessor in interest redeemed the first DOT's priority by tendering the full amount of the HOA's super-priority lien, (2) the foreclosure sale was invalid, and (3) SFR is not a bona fide purchaser. Quiet Title & Declaratory Relief U.S. Bank (a) Title was vested in SFR without equity or right of redemption. NRS 116.31166(3) provides, [t]he sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the unit's owner without equity or right of redemption. According to the NSC, these sales vest the purchaser with absolute title. *In re Grant*, 303 B.R. 205, 209 (Bankr. D. Nev. 2003). A sale under a Chapter 107 non-judicial foreclosure sale vests in the purchaser the title of the grantor and any successors in interest without equity or right of redemption. If the sale is properly, lawfully and fairly carried out, [the Bank] cannot unilaterally create a right of redemption in [itself]. *Golden v. Tomiyasu*, 79 Nev. 503, 518 (1963). Here, the sale was a non-judicial foreclosure sale conducted pursuant to NRS 116.31166(2). The COURT FINDS the sale vested in SFR title without equity or right of redemption and title must be quieted in favor of SFR. (b) The deed recitals are conclusive. *Shadow Wood* holds that the deed recitals are conclusive, unless a party like Nationstar can establish that it is entitled to equitable relief from a defective sale. *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5, 1105 (2016). Here, Nationstar has not established that this was a defective sale. As the purchaser at the Association foreclosure sale, SFR need only show the Trustee's Deed Upon Sale to be entitled to quiet title free and clear of the deed of trust since there was no defective sale. The COURT FINDS the deed recitals are conclusive. (c) U.S. Bank is not Entitled to Equitable Relief. The Nevada Supreme Court stated that when a BFP has no notice of a pre-sale dispute, such as an attempted tender, equity cannot be granted to the tendering party, who could defeat any BFP status by giving notice of an attempt to pay. Equitable relief cannot be granted to a party who ignored earlier remedies and allowed a BFP to purchase the property, when the relief would be to the detriment to the BFP. Here, the Bank failed to adequately protect its interest. It failed to try for earlier remedies and allowed a BFP to purchase the property. The COURT FINDS equitable relief is no longer available to the Bank. (d) The Foreclosure Deed and Sale are Presumed Valid. SFR contends that U.S. Bank cannot overcome the presumptions that (1) the Association and its agent obeyed the law, (2) the property was conveyed to SFR, (3) the Association foreclosure sale was fair and regular, and conducted in the ordinary course of business. The COURT FINDS the DOT was extinguished by the Association foreclosure sale and since the property was conveyed to SFR, SFR is entitled to summary judgment on its claim for quiet title and permanent injunction. Nationstar has not overcome the conclusive presumption that the foreclosure sale and resulting deed are valid, and SFR can rely on the conclusive recitals in the foreclosure deed. Unjust Enrichment U.S. Bank To prevail on a claim for unjust enrichment, U.S. Bank must show that it conferred a benefit on SFR, that SFR appreciated such benefit, and there was acceptance and retention by [SFR] of such benefit under circumstances such that it would be inequitable for [SFR] to retain the benefit without payment of the value thereof. *Unionamerica Mtg. v. McDonald*, 97 Nev. 210 212 (1981). Under NRCP 16.1(a)(1)(C), a party is required to produce, without awaiting a discovery request . . . [a] computation of any category of damages claimed. U.S. Bank contends that SFR has benefited from U.S. Bank's payment of taxes, insurance, and homeowner's association assessments since the time of the HOA sale. However, U.S. Bank has not proven this to be true nor produced evidence that any such payments were made. Further, U.S. Bank has never disclosed any special damages under NRCP 16.1 on this issue. There being no evidence that U.S. Bank paid any monies toward the property or that SFR benefited from these payments. Therefore, the COURT FINDS U.S. Bank's claim for unjust enrichment fails as a matter of law. Tender and Bona Fide Purchaser Nationstar contends a proper tender was made on 9/2/10 for the amount of \$207.00 which represented the statutory super-priority amount of the HOA's lien at \$23.00 per month for months, thereby discharging the super priority lien in dispute. The Nevada Supreme Court held in *Horizons at Seven Hills v. Ikon Holdings*, 132 Nev. Adv. Op 35, 373 P.3d 66 (2016) that the superpriority lien granted by NRS 116.3116(2) does not include an amount for collection fees and foreclosure costs incurred; rather it is limited to an amount equal to the common expense assessments due during the nine months before foreclosure.

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While this Court acknowledges that in *Horizons at Seven Hills v. Ikon*, the association in question did not foreclose, the Nevada Supreme Court's in depth review of legislative history and statutory interpretation indicates the superpriority portion in question does not include fees and costs. *Id.* at 70. Therefore, the COURT FINDS said tender of \$207.00 was the proper amount of the superpriority lien, as it months of assessments under NRS 116.3116(2). The question then hinges on whether this tender precludes SFR from taking said property free and clear of Nationstar's interest, or whether SFR takes said property subject to Nationstar's interest. The Court looks to whether refusal of the tender was grounded on an honest belief that the tender was insufficient. See, 59 C.J.S. *Mortgages* 582 (2016); *Bank of Am., N.A. v. Rugged Oaks Investments, LLC*, 68504, 2016 WL 5219841, at *1 (Nev. Sept. 16, 2016) (It has been held... that a good and sufficient tender on the day when payment is due will relieve the property from the lien of the mortgage, except where the refusal [of payment] was... grounded on an honest belief that the tender was insufficient.). Nationstar's tender of the past due assessments in the amount of \$207.00 occurred on 9/2/10, which was rejected by the HOA Trustee. However, SFR did not have knowledge of this tender, either by inquiry notice or constructive notice. Nationstar has failed to set forth sufficient information that proper notice of the tender was provided, such that individuals or entities would be put on notice of the same. The Association rejected the payment in good faith. Nationstar failed to record its performance so as to protect itself from third-party purchasers as required by NV law. David Alessi testified that Alessi & Koenig did not receive the letter with the check. If Alessi & Koenig never received the purported tender there was nothing to reject. All Nationstar has is a copy of the purported check and a screenshot, neither of which are properly admissible. Further, Doug Miles was not disclosed and has defects of his affidavit. Nationstar is lacking admissible evidence to establish the delivery of the check, or admissible evidence that the check was rejected without explanation. Thus, SFR was a bona fide purchaser (BFP). A subsequent purchaser is bona fide under common-law principles if it takes the property for a valuable consideration and without notice of the prior equity, and without notice of facts which upon diligent inquiry would be indicated and from which notice would be imputed to him, if he failed to make such inquiry. *Bailey v. Butner*, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947) (emphasis omitted); see also *Moore v. De Bernardi*, 47 Nev. 33, 54, 220 P. 544, 547 (1923) (The decisions are uniform that the bona fide purchaser of a legal title is not affected by any latent equity founded either on a trust, [e]ncumbrance, or otherwise, of which he has no notice, actual or constructive.). The Nevada Supreme Court has further held, that [w]here the complaining party has access to all the facts surrounding the questioned transaction and merely makes a mistake as to the legal consequences of his act, equity should normally not interfere, especially where the rights of third parties might be prejudiced thereby. *Shadow Wood* 366 P.3d at 1116 (quoting *Nussbaumer v. Sup. Ct. in & for Yuma Cty.*, 107 Ariz. 504, 489 P.2d 843, 846 (1971)). In *Shadow Wood*, the Nevada Supreme Court held that [c]onsideration of harm to potentially innocent third parties is especially pertinent where [the lender] did not use the legal remedies available to it to prevent the property from being sold to a third party, such as by seeking a temporary restraining order and preliminary injunction and filing a *lis pendens* on the property. . *Shadow Wood*, 366 P.3d at 1114 fn. 7. Here, Nationstar was in the position to take any number of simple steps to avoid a BFP issue and simply failed to take such action. Nationstar has failed to offer any evidence to refute that SFR had no knowledge of a prior equity and paid valuable consideration. Nationstar has failed to offer evidence to refute that SFR had no knowledge of a prior equity and paid valuable consideration. Lastly, in the Hardin declaration, SFR provided evidence of being a BFP. The COURT FINDS Nationstar failed to protect its interest in said property, and SFR is a BFP. Grossly inadequate sales price and commercial unreasonableness Nationstar contends the sales price at the HOA foreclosure sale was grossly inadequate and was commercially unreasonable. To set aside an association foreclosure sale on a theory of commercial unreasonableness there must be a showing of grossly inadequate price, plus, fraud, unfairness, or oppression. *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1112 (2016) (citing *Long v. Towne*, 98 Nev. 11, 13, 639, P.2d 528, 530 (1982)) See also *Centeno v. JP Morgan Chase Bank, N.A.*, 67365, 2016 WL 1122449, at *1 (Nev. Mar. 18, 2016)(unpublished Order Vacating and Remanding)(Holding a low sales price is not a basis for voiding a foreclosure sale absent fraud, unfairness, oppression...) See also *Golden v. Tomiyasu*, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963) (stating that, while a power-of-sale foreclosure may not be set aside for mere inadequacy of price, it may be if the price is grossly inadequate and there is in addition proof of some element of fraud, unfairness, or oppression (internal quotation omitted))). The Supreme Court of Nevada recently clarified that in Nevada, courts retain the power to grant equitable relief from a defective [association] foreclosure sale when appropriate *Shadow Wood Homeowners Ass'n, Inc. v. New York Cmty. Bancorp, Inc.*, 366 P.3d 1105, 1110 (Nev.2016) (en banc). [D]emonstrating that an association sold a property at its foreclosure sale for an inadequate price is not enough to set aside a foreclosure sale; there must also be a showing of fraud, unfairness, or oppression. *Id.* (citing *Long*, 98 Nev. 11, 639 P.2d 530). In considering whether equity supports setting aside the sale in question, the


CASE SUMMARY


CASE NO. A-14-705563-C

Court is to consider any other factor bearing on the equities, including actions or inactions of both parties seeking to set aside the sale and the impact on a bona fide purchaser for value. *Id.* at 1114 (finding courts must consider the entirety of the circumstances that bear upon the equities). Here, Nationstar contends that the sale should be set aside under equitable principles because the sale of the Property for less than 20% of its fair market value is grossly inadequate. The Court, however, does not find this argument to be persuasive. The analysis for finding fraud, unfairness, or oppression applies to the seller (HOA) and purchaser (RJRN), not whatever mistake may have occurred by the HOA in rejecting tender or accepting payments from the Borrower. See *Golden v. Tomiyasu*, 79 Nev. 503, 513, 387 P.2d 989, 994 (reviewing fraud and collusion between the foreclosing trustee and bidders, not fraud, unfairness, or oppression in the underlying trustee's substantive actions). See also *Centeno v. JP Morgan Chase Bank, N.A.*, 67365, 2016 WL 1122449, at *1 (Nev. Mar. 18, 2016)(unpublished Order Vacating and Remanding)(Holding a low sales price is not a basis for voiding a foreclosure sale absent fraud, unfairness, oppression...). Because Nationstar failed to set forth material issues of fact demonstrating some fraud, unfairness, or oppression with the actual sale to demonstrate commercial unreasonableness, the COURT FINDS the sale in question was commercially reasonable. Slander of Title - Nationstar On 8/31/15 Nationstar recorded a lis pendens against the property. NRS 14.015 sets forth the requirements for maintaining a lis pendens on a property. Here, when Nationstar recorded the lis pendens, it did not have a pending action that was for (1) foreclosure or (2) that affected title or possession of the property and still has no pending claims against SFR today. The NRCP30(b)(6) deposition of U.S. Bank and Nationstar, concedes that Nationstar only services the loan and that it does not have an interest in the promissory note or deed of trust. Because Nationstar lacked any basis to record the lis pendens against the property in the first place and still lacks basis to maintain it, SFR is entitled to a judgment from this Court that the lis pendens be expunged. SFR's claims against Moore and Gotera pursuant to NRS 116.31166(2) Pursuant to NRS 116.31166(2), when SFR made the highest bid and purchased the property at the Association sale, it obtained the title of the unit's owner without equity or right of redemption. Thus, any interest Moore and/or Gotera could claim in the property was extinguished. On 6/27/18 default was entered against Moore and Gotera for failing to answer SFR's complaint. Therefore, COURT ORDERED Counter-Defendant SFR's Motion for Summary Judgment GRANTED and Cross-Defendant Nationstar's Motion for Summary Judgment DENIED. Counsel for Counter-Defendant SFR is directed to submit a proposed order consistent with the foregoing within ten (10) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing and be approved as to form and content by Cross-Defendant Nationstar's counsel. CLERK'S NOTE: A copy of this minute order was distributed to the following via email: Melanie Morgan, Esq. (melanie.morgan@akerman.com) Diana Cline, Esq. (victoria@hkimlaw.com) .9/4/18 lk;

09/04/2018 CANCELED Bench Trial (10:00 AM) (Judicial Officer: Villani, Michael)
Vacated - per Judge

 Minute Order (8:24 AM) (Judicial Officer: Cory, Kenneth)
Minute Order - No Hearing Held;
Journal Entry Details:
The Court has disqualified itself from any cases for which Douglas Gerrard is counsel, due to the fact the Court attends church with Mr. Gerrard and has a personal friendship with him. To avoid the appearance of impropriety and implied bias, this Court hereby disqualifies itself and ORDERS, this case be REASSIGNED at random.;




 Motion For Reconsideration (9:00 AM) (Judicial Officer: Sturman, Gloria)
Defendant Nationstar Mortgage, LLC's Motion for Reconsideration and/or To Alter/Amend Judgment
Minute Order Dated 02-05-19
Granted;
Journal Entry Details:
Following extensive arguments by counsel, COURT FINDS there were questions fact if tender was received and if the affidavit of counsel was sufficient to overcome testimony of the custodian of records; this Court can reconsider the issues since the case was reassigned; COURT THEREFORE ORDERED, Motion GRANTED.;

12/12/2019  Calendar Call (9:00 AM) (Judicial Officer: Sturman, Gloria)

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-14-705563-C

	<p><i>Calendar Call</i> Trial Date Set; Journal Entry Details: - CALENDAR CALL ALSO PRESENT was Donna Wittig on behalf of US Bank NA Counsels anticipated two days required for the bench trial completion. Following discussion, COURT ORDERED the 1/6/20 Bench Trial VACATED and DATES SET as follows: Pretrial Conference - 1/22/20 10:00 AM - Counsel are to bring in exhibits at this time Bench Trial - 1/29/20 and 1/30/20 @ 1:30 PM Bench Trial - 1/31/20 @ 9:30 AM ;</p>
01/16/2020	<p> Calendar Call (9:00 AM) (Judicial Officer: Sturman, Gloria) Trial Date Set; Journal Entry Details: Following colloquy regarding the five-year rule, COURT ORDERED Trial Dates SET; Pre Trial Conference SET. 02/05/20 10:30 AM PRE TRIAL CONFERENCE 02/10/20 9:00 AM BENCH TRIAL 02/11/20 1:30 PM BENCH TRIAL;</p>
01/22/2020	<p>CANCELED Pre Trial Conference (10:00 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated - per Stipulation and Order</i></p>
01/29/2020	<p>CANCELED Bench Trial (1:30 PM) (Judicial Officer: Sturman, Gloria) <i>Vacated - per Stipulation and Order</i></p>
01/30/2020	<p>CANCELED Bench Trial (1:30 PM) (Judicial Officer: Sturman, Gloria) <i>Vacated - per Stipulation and Order</i></p>
02/05/2020	<p> Pre Trial Conference (10:30 AM) (Judicial Officer: Sturman, Gloria) Matter Heard; Journal Entry Details: Counsel agreed to move the trial start time to 10:00 AM. Ms. Morgan stated the scope was narrow and the only issue of fact being delivery of the Miles Bauer letter and the impact of NRS 106.240. COURT FINDS Alessi and Koenig was out of the case with their bankruptcy filing and there were no interplead funds by them. Further, the only parties left were from counterclaims and/or third parties. ;</p>
02/10/2020	<p> Bench Trial (10:00 AM) (Judicial Officer: Sturman, Gloria) Judgment for the Plaintiff; Journal Entry Details: Also present, Edward Hine, Representative of US Bank NA. Court advised US Bank and SFR are the only parties in the case; all the other remaining parties are out of the case. Ms. Morgan moved to admit Exhibit 26, Bate Nos. 0036-42, Alessi and Koenig's collection file, the custodian of records affidavit of David Alessi. Ms. Hanks objected as to authenticity. Court advised it was not clear if there was an error in reproducing the document or if the error came from Alessi's office, noting the documents in the middle of the affidavit had nothing to do with the affidavit. Ms. Morgan stated she spoke with Mr. Alessi and he indicated he would be present at 1:15 p.m. Counsel stipulated to Exhibits 3 and 19; Exhibit 33 admitted over objection and 34 admitted without objection. (See worksheets). Colloquy regarding case law. COURT RECESSED until 1:15 p.m. Following recess, testimony and exhibits presented. (See worksheets) Ms. Morgan RESTED. At the conclusion of Plaintiff's case, Ms. Hanks made an oral 52(c) motion. Following arguments by counsel, which the Court considered, COURT ORDERED, Motion DENIED. Arguments by counsel regarding their respective relief. COURT FINDS that proper tender was made and finds in favor of the Bank. Mr. Stern to prepare Order. At the request of counsel, all unused exhibits were destroyed. ;</p>
05/07/2020	<p> Status Check (1:00 AM) (Judicial Officer: Sturman, Gloria) Status of Dueling Orders Advance Decision Vacate; Journal Entry Details: COURT ORDERED, Hearing VACATED as the order was received and signed on May 4, 2020.;</p>

DATE

FINANCIAL INFORMATION

CASE SUMMARY

CASE NO. A-14-705563-C

Counter Defendant Alessi and Koenig LLC

Total Charges	273.00
Total Payments and Credits	273.00
Balance Due as of 6/4/2020	0.00

Cross Defendant Moore, Stacy

Total Charges	5.50
Total Payments and Credits	5.50
Balance Due as of 6/4/2020	0.00

Cross Defendant Nationstar Mortgage LLC

Total Charges	423.00
Total Payments and Credits	423.00
Balance Due as of 6/4/2020	0.00

Counter Defendant US Bank NA

Total Charges	423.00
Total Payments and Credits	423.00
Balance Due as of 6/4/2020	0.00

Cross Claimant SFR Investments Pool 1 LLC

Total Charges	897.00
Total Payments and Credits	897.00
Balance Due as of 6/4/2020	0.00

Counter Defendant US Bank NA

Security Cost Bond Balance as of 6/4/2020	500.00
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CIVIL COVER SHEET

A- 14- 705563- C

CLARK County, Nevada

XX

Case No. _____

(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone): Alessi & Koenig, LLC

Attorney (name/address/phone): Huong Lam, Esq. / 9500 W.
Flamingo Road, Suite 205; Las Vegas, Nevada 89147 / (702) 222-4033Defendant(s) (name/address/phone): Stacy Moore; Magnolia Gotera;
JWBNO Revocable Living Trust; U.S. Bank, N.A.; Nationstar
Mortgage, LLC; Republic Silver State Disposal, Inc., dba
Republic Services

Attorney (Name/Address/Phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> Negligence <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence – Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
<input type="checkbox"/> Probate Estimated Estate Value: _____ <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	
	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input checked="" type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input checked="" type="checkbox"/> Other Civil Matters	

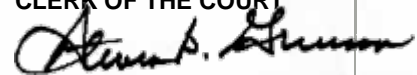
III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

- | | | |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104 Art. 8) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Trademarks (NRS 600A) | |

Date

Signature of initiating party or representative

Nevada Bar No. 10916



FFCL

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Attorneys for SFR Investments Pool 1, LLC

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

ALESSI & KOENIG, LLC, a Nevada limited
liability company,

Plaintiff,

vs.

Case No. A-14-705563-C

Dept. No. 17

STACY MOORE, an individual; MAGNOLIA
GOTERA, an individual; KRISTIN JORDAL,
AS TRUSTEE FOR THE JBWNO
REVOCABLE LIVING TRUST, a trust; U.S.
BANK, N.A., a national banking association;
NATIONSTAR MORTGAGE, LLC, a foreign
limited liability company; REPUBLIC SILVER
STATE DISPOSAL, INC., DBA REPUBLIC
SERVICES, a domestic governmental entity;
DOE INDIVIDUALS I through X, inclusive;
and ROE CORPORATIONS XI through XX
inclusive,

Defendants.

U.S. BANK, N.A.,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited
liability company,

Counter-Defendant.

U.S. BANK, N.A.,

Third-Party Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a Nevada
limited liability company; INDIVIDUAL DOES
I through X, inclusive; and ROE
CORPORATIONS I through X, inclusive,

**FINDINGS OF FACT AND CONCLUSIONS
OF LAW**

KIM GILBERT EBRON
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LAS VEGAS, NEVADA 89139
(702) 485-3300 FAX (702) 485-3301

**RECEIVED BY
DEPT 17 ON
OCT 01 2018**

Third-Party Defendant(s).
SFR INVESTMENTS POOL 1, LLC, a Nevada
limited liability company,
Third-Party Counterclaimant/Cross-Claimant,
vs.
U.S. BANK, N.A.; NATIONSTAR
MORTGAGE, LLC, foreign limited liability
company; KRISTEN JORDAL, as Trustee for
the JBWNO REVOCABLE LIVING TRUST, a
Trust; STACY MOORE, an individual; and
MAGNOLIA GOTERA, an individual,
Counter-Defendants/Cross-Defendants.

This matter came before the Court on August 15, 2018 on SFR Investments Pool 1, LLC's ("SFR") Motion for Summary Judgment, Nationstar Mortgage, LLC's ("Nationstar") Motion for Summary Judgment and U.S. Bank, N.A.'s ("U.S. Bank") (collectively referred to as "Bank") Joinder to Nationstar's Motion for Summary Judgment. Jason G. Martinez, Esq. appeared on behalf of SFR. Douglas D. Gerrard, Esq. appeared on behalf of Nationstar. Donna Wittig, Esq. appeared on behalf of Nationstar and U.S. Bank.

Having reviewed and considered the full briefing and arguments of counsel, for the reasons stated on the record and in the pleadings, and good cause appearing, this Court makes the following findings of fact and conclusions of law.¹

FINDINGS OF UNDISPUTED FACT

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

2. On June 21, 2000, Shadow Mountain Ranch Community Association (the "Association") perfected and gave notice of its lien by recording its Declaration of Covenants, Conditions, and Restrictions ("CC&Rs") in the Official Records of the Clark County Recorder in Book No. 20000621 as Instrument No. 01735.

3. On November 21, 2005, a Grant, Bargain, Sale Deed was recorded in the Official

¹ Any findings of fact that are more appropriately conclusions of law shall be so deemed. Any conclusions of law that are more appropriately findings of fact shall be so deemed.

1 Records of the Clark County Recorder as Instrument No. 20051121-0005566, transferring real
2 property located at 5327 Marsh Butte Street, Las Vegas, Nevada 89148; Parcel No. 163-30-312-
3 007 (the "Property") to Magnolia Gotera ("Gotera").

4 4. On November 21, 2005, a Deed of Trust listing Countrywide Home Loans, Inc.
5 ("Countrywide" or "Lender") as lender, with Mortgage Electronic Registration Systems, Inc.
6 ("MERS") as beneficiary, was recorded in the Official Records of the Clark County Recorder as
7 Instrument No. 20051121-0005567 ("DOT").

8 5. The DOT contained a Planned Unit Development Rider that allowed the Lender to
9 pay the Gotera association assessments and add that amount to the Gotera debt to Lender.

10 6. The DOT also included language that allowed the lender to "do and pay for
11 whatever is reasonable or appropriate to protect [its] interest in the Property ... [including]
12 but...not limited to: (a) paying any sums secured by a lien which has priority over [the DOT]; (b)
13 appearing in court; and (c) paying reasonable attorney's fees to protect its interest."

14 7. On May 27, 2011, a Grant Deed transferring the Property to JBWNO Revocable
15 Living Trust was recorded in the Official Records of the Clark County Recorder as Instrument
16 No. 201105270004010.

17 8. On May 27, 2011, a Grant Deed transferring the Property to Stacy Moore
18 ("Moore") was recorded in the Official Records of the Clark County Recorder as Instrument No.
19 201105270004011.

20 9. On November 2, 2011, an Assignment of Deed of Trust purportedly transferring
21 the DOT from MERS to U.S. Bank was recorded in the Official Records of the Clark County
22 Recorder as Instrument No. 201111020000754.

23 10. On September 11, 2012, the Association, through its agent, Alessi & Koenig, LLC
24 ("Alessi"), recorded a Notice of Delinquent Assessment Lien ("NODA") against the Property in
25 the Official Records of the Clark County Recorder as Instrument No. 201209110002023.

26 11. Pursuant to NRS 116.31162(1)(a), the NODA states the cumulative amount of
27 assessments and other sums due, describes the unit which the lien is imposed, and names the
28 record owner of the unit.

12. Pursuant to NRS 116.31162(1)(a), the NODA was mailed to Moore.

13. Pursuant to NRS 116.31162(b), after more than 30 days elapsed from the date of mailing the NODA, on July 5, 2013, the Association recorded its Notice of Default in the Official Records of the Clark County Recorder as Instrument No. 201307050000950 ("NOD"). The NOD contains the same information as the NODA, and describes the deficiency, states the name and address of the person authorized to enforce the lien, and contains in 14-point bold type: WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!

14. U.S. Bank admits it received the NOD.

15. The Bank proffered a letter dated September 2, 2010, executed by Rock K. Jung, Esq. of the law firm of Miles, Bauer, Bergstrom & Winters ("Miles Bauer") and addressed to the Association and Alessi and the Bank proffered a letter dated September 28, 2010, enclosing a check for \$207.00, also addressed to the Association and Alessi. The Bank sought to authenticate these records through the affidavit of Doug Miles. However, the Court finds that because Doug Miles was never disclosed and his affidavit contains defects as alleged by SFR, these records are inadmissible. Therefore, Nationstar/U.S. Bank failed to provide admissible evidence to establish delivery of the check, or admissible evidence that the check was rejected without explanation.

16. On October 1, 2013, an Assignment of Deed of Trust purportedly transferring the DOT from Bank of America, N.A. to Nationstar was recorded in the Official Records of the Clark County Recorder as Instrument No. 201310010002401.

17. Pursuant to NRS 116.311635, after expiration of 90 days, on December 10, 2013, the Association recorded a Notice of Trustee's Sale in the Official Records of the Clark County Recorder as Instrument No. 201307150002689 ("Notice of Sale"). Pursuant to NRS 116.311635(3), the Notice of Sale contains the amount necessary to satisfy the lien and contains 14-bold type: WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL ALESSI &

1 KOENIG AT 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE
2 FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE
3 DIVISION, AT 1-877-829-9907 IMMEDIATELY.

4 18. Pursuant to NRS 116.311635, the Notice of Sale was posted on the Property in a
5 conspicuous place. The Notice of Sale was posted at three public places within Clark County for
6 20 consecutive days. The Notice of Sale was published in the Nevada Legal News for three
7 consecutive weeks.

8 19. The Notice of Sale was mailed to all requisite parties, and others, including, but
9 not limited to, U.S. Bank, Bank of America, Nationstar, MERS, Moore and the Ombudsman.

10 20. On January 8, 2014, Alessi held a public non-judicial foreclosure auction for the
11 Property and SFR placed the highest cash bid of \$59,000.00. As the Notice of Sale references the
12 NODA, the Association's lien included assessments pursuant to NRS 116.3116. and, therefore,
13 included amounts that constituted the super-priority portion of the lien.

14 21. The Association sale met all the requirements of NRS 116.31164.

15 22. There were multiple bidders in attendance at the sale.

16 23. Pursuant to NRS 116.31164(3)(a), after SFR paid the money to Alessi, Alessi
17 made, executed, and delivered a deed to SFR, which vested title in SFR.

18 24. The Trustee's Deed Upon Sale was recorded in the Official Records of the Clark
19 County Recorder as Instrument No. 201401130001460 ("Foreclosure Deed").

20 25. As recited in the Foreclosure Deed, "[a]ll requirements of law regarding the
21 mailing of copies of notices and the posting and publication of the copies of the Notice of Sale
22 have been complied with."

23 26. Prior to the Association sale, no release of the super-priority portion of the lien
24 was recorded against the Property.

25 27. Prior to the Association sale, no lis pendens was recorded against the Property.

26 28. SFR's agent, Christopher Hardin, stated in his declaration that SFR had no reason
27 to doubt the recitals in the Foreclosure Deed that all noticing requirements were satisfied in
28 compliance with NRS 116 *et seq.* The recitals regarding default and noticing have been supported

1 by evidence of mailings and remain undisputed.

2 29. Mr. Hardin declared that neither he nor SFR had any relationship with the
3 Association besides owning property within the community. There was no evidence presented to
4 the draw this assertion into question.

5 30. Mr. Hardin declared that neither he nor SFR had any relationship with A&K, the
6 Association's agent, beyond attending auctions, bidding, and occasionally purchasing properties
7 at publicly-held auctions. There was no evidence presented to draw this assertion into question.

8 31. Default against Stacy Moore was entered on June 27, 2018.

9 32. Default against Magnolia Gotera was entered June 27, 2018.

10 CONCLUSIONS OF LAW

11 A. Summary judgment is appropriate "when the pleadings and other evidence on file
12 demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is
13 entitled to a judgment as a matter of law.'" *Wood v. Safeway*, 121 Nev. 724, 729, 121 P.3d 1026,
14 1029 (2005). Additionally, "[t]he purpose of summary judgment 'is to avoid a needless trial when
15 an appropriate showing is made in advance that there is no genuine issue of fact to be tried, and
16 the movant is entitled to judgment as a matter of law.'" *McDonald v. D.P. Alexander & Las Vegas*
17 *Boulevard, LLC*, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005) quoting *Coray v. Hom*, 80 Nev.
18 39, 40-41, 389 P.2d 76, 77 (1964). Moreover, the non-moving party "must, by affidavit or
19 otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have
20 summary judgment entered against [it]." *Wood*, 121 Nev. at 732, 121 P.3d at 1031. The non-
21 moving party "is not entitled to build a case on the gossamer threads of whimsy, speculation, and
22 conjecture." *Id.* Rather, the non-moving party must demonstrate specific facts as opposed to
23 general allegations and conclusions. *LaMantia v. Redis*, 118 Nev. 27, 29, 38 P.3d 877, 879
24 (2002); *Wayment v. Holmes*, 112 Nev. 232, 237, 912 P.2d 816, 819 (1996). Though inferences
25 are to be drawn in favor of the non-moving party, an opponent to summary judgment, must show
26 that it can produce evidence at trial to support its claim or defense. *Van Cleave v. Kietz-Mill Minit*
27 *Mart*, 97 Nev. 414, 417, 633 P.2d 1220, 1222 (1981).

28 B. While the moving party generally bears the burden of proving there is no genuine

1 issue of material fact, in this case, there are a number of presumptions that this Court must
2 consider in deciding the issues, including:

3 1. Recorded title is presumed valid. *See Breliant v. Preferred Equities Corp.*,
4 112 Nev. 663, 670, 918 P.2d 314, 319 (1996)("[T]here is a presumption in favor of the
5 record titleholder.")

6 2. Foreclosure sales and the resulting deeds are presumed valid. NRS
7 47.250(16)-(18) (stating that there are disputable presumptions "[t]hat the law has been
8 obeyed[,] "[t]hat a trustee or other person, whose duty it was to convey real property to
9 a particular person, has actually conveyed to that person, when such presumption is
10 necessary to perfect the title of such person or a successor in interest[,] "[t]hat private
11 transactions have been fair and regular[,] and "[t]hat the ordinary course of business has
12 been followed.").

13 3. A foreclosure deed issued pursuant to NRS 116.31164 that "recit[es]
14 compliance with notice provisions of NRS 116.31162 through NRS 116.31168 "is
15 conclusive" as to the recitals "against the unit's former owner, his or her heirs and assigns
16 and all other persons" unless a party like Nationstar can establish that it is entitled to
17 equitable relief from a defective sale. *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132
18 Nev. Adv. Op. 5, 1105 (2016); *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 130 Nev.
19 Adv. Op. 75, 334 P.3d 408, 411-412 (2014) (citing NRS 116.31166(2)).

20 4. That "[i]f the trustee's deed recites that all statutory notice requirements
21 and procedures required by law for the conduct of the foreclosure have been satisfied, a
22 rebuttable presumption arises that the sale has been conducted regularly and properly; this
23 presumption is conclusive as to a bona fide purchaser." *Moeller v. Lien*, 30 Cal. App. 4th
24 822, 831-32, 30 Cal. Rptr. 777, 783 (1994)(emphasis added); *see also* 4 Miller & Starr,
25 Cal. Real Estate (3d ed. 2000) Deeds of Trust and Mortgages § 10:211, pp. 647-652; 2
26 Bernhardt, Cal. Mortgage and Deed of Trust Practice (Cont.Ed.Bar 2d ed. 1990) § 7:59,
27 pp. 476-477).

28 C. These presumptions "not only fix[] the burden of going forward with evidence, but

1 it also shifts the burden of proof.” *Yeager v. Harrah's Club, Inc.*, 111 Nev. 830, 835, 897 P.2d
2 1093, 1095 (1995)(citing *Vancheri v. GNLV Corp.*, 105 Nev. 417, 421, 777 P.2d 366, 368 (1989)).
3 “These presumptions impose on the party against whom it is directed the burden of proving that
4 the nonexistence of the presumed fact is more probable than its existence.” *Id.* at 842 (citing NRS
5 47.180).

6 D. Thus, Bank bore the burden of proving it was more probable than not that the
7 Association sale and the resulting Foreclosure Deed were invalid. This burden has been confirmed
8 in the recent case of *Nationstar Mortgage, LLC v. Saticoy Bay Series 2227 Shadow Canyon*, 133
9 Nev. ___, ___, 405 P.3d 641, 646 (2017) (“...Nationstar has the burden to show that that the sale
10 should be set aside in light of Saticoy Bay’s status as the record title holder[.]” (citing *Brelant*,
11 112 Nev. at 669, 918 P.2d at 318; NRS 47.250(16); NRS 116.31166(10-(2); and *Shadow Wood*
12 *Homeowners Ass’n, Inc. v. New York Community Bankcorp, Inc.*, 132 Nev. ___, ___, 366 P.3d
13 1105, 1111 (noting that NRS 107.030(8) provided the language in NRS 116.31166)).

14 E. Bank failed to meet its burden of proving it was more probable than not that the
15 Association sale and the resulting Foreclosure Deed were invalid.

16 F. Pursuant to *SFR*, NRS 116.3116(2) gives associations a true super-priority lien,
17 the non-judicial foreclosure of which extinguishes a first deed of trust. *SFR*, 334 P.3d at 419.

18 G. A properly conducted foreclosure sale conducted pursuant to NRS 116.31162-
19 NRS 116.31168, like all foreclosure sales, extinguishes the title owner’s interest in real property
20 and all junior liens and encumbrances, including deeds of trust.

21 H. The Association foreclosure sale vested title in SFR “without equity or right of
22 redemption.” *SFR*, 334 P.3d at 412 (citing NRS 116.31166(3)).

23 I. These sales vest the purchaser with absolute title. *In re Grant*, 303 B.R. 205, 209
24 (Bankr. D. Nev. 2003).

25 J. If the sale is properly, lawfully and fairly carried out, ^{the Bank} ~~the Bank~~ cannot unilaterally
26 create a right of redemption in [itself]. *Golden v. Tomiyasu*, 79 Nev. 503, 518 (1963).

27 K. Here, the sale was a non-judicial foreclosure sale conducted pursuant to NRS
28 116.31166(2). The COURT FINDS the sale vested in SFR title without equity or right of

1 redemption and title must be quieted in favor of SFR.

2 L. *Shadow Wood* holds that the deed recitals are conclusive, unless a party like the
3 Bank can establish that it is entitled to equitable relief from a defective sale. *Shadow Wood HOA*
4 *v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5, 1105 (2016). Here, ~~the Bank~~ ^{Nationstar} has not established
5 that this was a defective sale. As the purchaser at the Association foreclosure sale, SFR need only
6 show the Trustee's Deed Upon Sale to be entitled to quiet title free and clear of the deed of trust
7 since there was no defective sale. The COURT FINDS the deed recitals are conclusive.

8 M. The Bank is not entitled to equitable relief. The Nevada Supreme Court stated that
9 when a BFP has no notice of a pre-sale dispute, such as an attempted tender, equity cannot be
10 granted to the tendering party, who could defeat any BFP status by giving notice of an attempt to
11 pay. Equitable relief cannot be granted to a party who ignored earlier remedies and allowed a BFP
12 to purchase the property, when the relief would be to the detriment to the BFP. Here, the Bank
13 failed to adequately protect its interest. It failed to try for earlier remedies and allowed a BFP to
14 purchase the property. The COURT FINDS equitable relief is no longer available to the Bank.

15 N. The Foreclosure Deed and Sale are Presumed Valid. SFR contends that the Bank
16 cannot overcome the presumptions that (1) the Association and its agent obeyed the law, (2) the
17 property was conveyed to SFR, (3) the Association foreclosure sale was fair and regular, and
18 conducted in the ordinary course of business. The COURT FINDS the DOT was extinguished by
19 the Association foreclosure sale and since the property was conveyed to SFR, SFR is entitled to
20 summary judgment on its claim for quiet title and permanent injunction. The Bank has not
21 overcome the conclusive presumption that the foreclosure sale and resulting deed are valid, and
22 SFR can rely on the conclusive recitals in the foreclosure deed.

23 O. To prevail on a claim for unjust enrichment, U.S. Bank must show that it conferred
24 a benefit on SFR, that SFR appreciated such benefit, and there was acceptance and retention by
25 [SFR] of such benefit under circumstances such that it would be inequitable for [SFR] to retain
26 the benefit without payment of the value thereof. *Unionamerica Mtg. v. McDonald*, 97 Nev. 210
27 212 (1981). Under NRCP 16.1(a)(1)(C), a party is required to produce, without awaiting a
28 discovery request . . . [a] computation of any category of damages claimed. U.S. Bank contends

1 that SFR has benefited from U.S. Bank's payment of taxes, insurance, and homeowner s
2 association assessments since the time of the HOA sale. However, U.S. Bank has not proven this
3 to be true nor produced evidence that any such payments were made. Further, U.S. Bank has never
4 disclosed any special damages under NRCP 16.1 on this issue. There being no evidence that U.S.
5 Bank paid any monies toward the property or that SFR benefited from these payments, therefore,
6 the COURT FINDS U.S. Bank's claim for unjust enrichment fails as a matter of law.

7 P. ~~The Bank~~ ^{Nationstar} contends a proper tender was made on 9/2/10 for the amount of \$207.00
8 which represented the statutory super-priority amount of the HOA s lien at \$23.00 per month for
9 months, thereby discharging the super priority lien in dispute. The Nevada Supreme Court held
10 in *Horizons at Seven Hills v. Ikon Holdings*, 132 Nev. Adv. Op 35, 373 P.3d 66 (2016) that the
11 superpriority lien granted by NRS 116.3116(2) does not include an amount for collection fees and
12 foreclosure costs incurred; rather it is limited to an amount equal to the common expense
13 assessments due during the nine months before foreclosure. While this Court acknowledges that
14 in *Horizons at Seven Hills v. Ikon*, the association in question did not foreclose, the Nevada
15 Supreme Court's in depth review of legislative history and statutory interpretation indicates the
16 superpriority portion in question does not include fees and costs. *Id.* at 70. Therefore, the COURT
17 FINDS said tender of \$207.00 was the proper amount of the superpriority lien, as it was nine
18 months of assessments under NRS 116.3116(2).

19 Q. The question then hinges on whether this tender precludes SFR from taking said
20 property free and clear of the DOT, or whether SFR takes said property subject to the DOT. The
21 Court looks to whether refusal of the tender was grounded on an honest belief that the tender was
22 insufficient. See, 59 C.J.S. Mortgages 582 (2016); *Bank of Am., N.A. v. Rugged Oaks Investments,*
23 *LLC*, 68504, 2016 WL 5219841, at *1 (Nev. Sept. 16, 2016)(It has been held... that a good and
24 sufficient tender on the day when payment is due will relieve the property from the lien of the
25 mortgage, except where the refusal [of payment] was... grounded on an honest belief that the
26 tender was insufficient.). ~~The Bank's~~ ^{Nationstar's} tender of the past due assessments in the amount of \$207.00
27 occurred on 9/2/10, which was rejected by the HOA Trustee. However, SFR did not have
28 knowledge of this tender, either by inquiry notice or constructive notice. ~~The Bank~~ ^{Nationstar} has failed to

1 set forth sufficient information that proper notice of the tender was provided, such that individuals
2 or entities would be put on notice of the same. The Association rejected the payment in good faith.
3 ~~The Bank~~ ^{Nationstar} failed to record its performance so as to protect itself from third-party purchasers as
4 required by NV law. David Alessi testified that Alessi & Koenig did not receive the letter with
5 the check. If Alessi & Koenig never received the purported tender there was nothing to reject. All
6 the Bank has is a copy of the purported check and a screenshot, neither of which are properly
7 admissible. Further, Doug Miles was not disclosed and has defects in his affidavit. The Bank is
8 lacking admissible evidence to establish the delivery of the check, or admissible evidence that the
9 check was rejected without explanation. Thus, SFR was a bona fide purchaser ("BFP"). A
10 subsequent purchaser is bona fide purchaser under common-law principles if it takes the property
11 for a valuable consideration and without notice of the prior equity, and without notice of facts
12 which upon diligent inquiry would be indicated and from which notice would be imputed to him,
13 if he failed to make such inquiry. *Bailey v. Butner*, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947)
14 (emphasis omitted); see also *Moore v. De Bernardi*, 47 Nev. 33, 54, 220 P. 544, 547 (1923) (The
15 decisions are uniform that the bona fide purchaser of a legal title is not affected by any latent
16 equity founded either on a trust, [e]ncumbrance, or otherwise, of which he has no notice, actual
17 or constructive.). The Nevada Supreme Court has further held, that [w]here the complaining party
18 has access to all the facts surrounding the questioned transaction and merely makes a mistake as
19 to the legal consequences of his act, equity should normally not interfere, especially where the
20 rights of third parties might be prejudiced thereby. *Shadow Wood*, 366 P.3d at 1116 (quoting
21 *Nussbaumer v. Sup. Ct. in & for Yuma Cty.*, 107 Ariz. 504, 489 P.2d 843, 846 (1971)). In *Shadow*
22 *Wood*, the Nevada Supreme Court held that [c]onsideration of harm to potentially innocent third
23 parties is especially pertinent where [the lender] did not use the legal remedies available to it to
24 prevent the property from being sold to a third party, such as by seeking a temporary restraining
25 order and preliminary injunction and filing a lis pendens on the property. *Shadow Wood*, 366 P.3d
26 at 1114 fn. 7. Here, ~~the Bank~~ ^{Nationstar} was in the position to take any number of simple steps to avoid a
27 BFP issue and simply failed to take such action. The Bank has failed to offer any evidence to
28 refute that SFR had no knowledge of a prior equity and paid valuable consideration. Lastly, in the

1 Hardin declaration, SFR provided evidence of being a BFP The COURT FINDS Nationstar failed
2 to protect its interest in said property, and SFR is a BFP.

3 R. ~~The Bank~~ ^{Nationstar} contends the sales price at the HOA foreclosure sale was grossly
4 inadequate and was commercially unreasonable. To set aside an association foreclosure sale on a
5 theory of commercial unreasonableness there must be a showing of grossly inadequate price, plus,
6 fraud, unfairness, or oppression. *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op.
7 5, 366 P.3d 1105, 1112 (2016) (citing *Long v. Towne*, 98 Nev. 11, 13, 639, P.2d 528, 530 (1982));
8 *See also Centeno v. JP Morgan Chase Bank, N.A.*, 67365, 2016 WL 1122449, at *1 (Nev. Mar.
9 18, 2016)(unpublished Order Vacating and Remanding)(Holding a low sales price is not a basis
10 for voiding a foreclosure sale absent fraud, unfairness, oppression...); *See also Golden v.*
11 *Tomiyasu*, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963) (stating that, while a power-of-sale
12 foreclosure may not be set aside for mere inadequacy of price, it may be if the price is grossly
13 inadequate and there is in addition proof of some element of fraud, unfairness, or oppression
14 (internal quotation omitted))). The Supreme Court of Nevada recently clarified that in Nevada,
15 courts retain the power to grant equitable relief from a defective [association] foreclosure sale
16 when appropriate *Shadow Wood Homeowners Ass'n, Inc. v. New York Cmty. Bancorp, Inc.*,
17 366 P.3d 1105, 1110 (Nev.2016) (en banc). [D]emonstrating that an association sold a property
18 at its foreclosure sale for an inadequate price is not enough to set aside a foreclosure sale; there
19 must also be a showing of fraud, unfairness, or oppression. *Id.* (citing *Long*, 98 Nev. 11, 639 P.2d
20 530). In considering whether equity supports setting aside the sale in question, the Court is to
21 consider any other factor bearing on the equities, including actions or inactions of both parties
22 seeking to set aside the sale and the impact on a bona fide purchaser for value. *Id.* at 1114 (finding
23 courts must consider the entirety of the circumstances that bear upon the equities). Here, ~~the Bank~~ ^{Nationstar}
24 contends that the sale should be set aside under equitable principles because the sale of the
25 Property for less than 20% of its fair market value is grossly inadequate. The Court, however,
26 does not find this argument to be persuasive. The analysis for finding fraud, unfairness, or
27 oppression applies to the seller (HOA) and purchaser, not whatever mistake may have occurred
28 by the HOA in rejecting tender or accepting payments from the Borrower. *See Golden v.*

1 *Tomiyasu*, 79 Nev. 503, 513, 387 P.2d 989, 994 (reviewing fraud and collusion between the
2 foreclosing trustee and bidders, not fraud, unfairness, or oppression in the underlying trustee s
3 substantive actions). *See also Centeno v. JP Morgan Chase Bank, N.A.*, 67365, 2016 WL
4 1122449, at *1 (Nev. Mar. 18, 2016)(unpublished Order Vacating and Remanding)(Holding a
5 low sales price is not a basis for voiding a foreclosure sale absent fraud, unfairness, oppression...).

6 Because the Bank failed to set forth material issues of fact demonstrating some fraud, unfairness,
7 or oppression with the actual sale to demonstrate commercial unreasonableness, the COURT
8 FINDS the sale in question was commercially reasonable.

9 S. On 8/31/15, Nationstar recorded a lis pendens against the property. NRS 14.015
10 sets forth the requirements for maintaining a lis pendens on a property. Here, when Nationstar
11 recorded the lis pendens, it did not have a pending action that was for (1) foreclosure or (2) that
12 affected title or possession of the property and still has no pending claims against SFR today. The
13 NRCP30(b)(6) deposition of U.S. Bank and Nationstar, concedes that Nationstar only services
14 the loan and that it does not have an interest in the promissory note or deed of trust. Because
15 Nationstar lacked any basis to record the lis pendens against the property in the first place and
16 still lacks basis to maintain it, SFR is entitled to a judgment from this Court on its slander of title
17 claim against Nationstar and that the lis pendens be expunged.

18 T. Pursuant to NRS 116.31166(2), when SFR made the highest bid and purchased the
19 property at the Association sale, it obtained the title of the unit's owner without equity or right of
20 redemption. Thus, any interest Moore and/or Gotera could claim in the property was extinguished.
21 On 6/27/18 default was entered against Moore and Gotera for failing to answer SFR s complaint.

22 U. As a result of the Association's non-judicial foreclosure sale, the DOT was
23 extinguished. As such, SFR is entitled to summary judgment on its claim for quiet title and a
24 permanent injunction.

25 V. Any attempt to foreclose on the DOT by the Bank would be invalid as the DOT
26 was extinguished by the Association sale.

27 W. Any assignment, sale, or transfer of the DOT by the Bank has no legal effect
28 because the DOT was extinguished by the Association sale.

1 X. Any attempt to take or maintain possession of the Property by the Bank would be
2 invalid because its interest in the Property, if any, was extinguished by the Association sale.

3 **ORDER**

4 **IT IS ORDERED, ADJUDGED, AND DECREED** that SFR's Motion for Summary
5 Judgment is **GRANTED**.

6 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Nationstar's
7 Motion for Summary Judgment is **DENIED**.

8 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that U.S. Bank's Joinder
9 to Nationstar's Motion for Summary Judgment is **DENIED**.

10 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Association's
11 non-judicial foreclosure sale relating to real property located at 5327 Marsh Butte Street, Las
12 Vegas, Nevada 89148; Parcel No. 163-30-312-007 extinguished the DOT recorded against the
13 Property in the Official Records of the Clark County Recorder as Instrument No. 20051121-
14 0005567.

15 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Nationstar has no
16 further right, title, or interest in real property located at 5327 Marsh Butte Street, Las Vegas,
17 Nevada 89148; Parcel No. 163-30-312-007, and is hereby permanently enjoined from taking any
18 further action to cloud SFR's title to the Property or enforce the now extinguished DOT, including
19 but not limited to initiating, or continuing to initiate, foreclosure proceedings and from selling or
20 transferring the Property.

21 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that U.S. Bank has no
22 further right, title, or interest in real property located at 5327 Marsh Butte Street, Las Vegas,
23 Nevada 89148; Parcel No. 163-30-312-007, and is hereby permanently enjoined from taking any
24 further action to cloud SFR's title to the Property or enforce the now extinguished DOT, including
25 but not limited to initiating, or continuing to initiate, foreclosure proceedings and from selling or
26 transferring the Property.

27 ...

28 ...

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LAS VEGAS, NEVADA 89139
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1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that title to real property
2 located at 5327 Marsh Butte Street, Las Vegas, Nevada 89148; Parcel No. 163-30-312-007 is
3 hereby quieted in favor of SFR.

4 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that JUDGMENT be
5 entered in favor of SFR pursuant to this ORDER.

6 **IT IS SO ORDERED.**

7 DATED this 26 day of Nov, 2018.

8 
9 DISTRICT COURT JUDGE


10 Jm

11 Respectfully Submitted By:

Approved as to Form and Content By:

12 **KIM GILBERT EBRON**

AKERMAN LLP

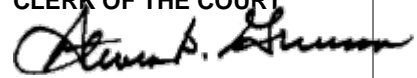
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**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC, a Nevada
limited liability company,

Plaintiff,

vs.

STACY MOORE, an individual;
MAGNOLIA GOTERA, an individual;
KRISTIN JORDAL, AS TRUSTEE FOR
THE JBWNO REVOCABLE LIVING
TRUST, a trust; U.S. BANK, N.A., a
national banking association;
NATIONSTAR MORTGAGE, LLC, a
foreign limited liability company;
REPUBLIC SILVER STATE DISPOSAL,
INC., DBA REPUBLIC SERVICES, a
domestic governmental entity; DOE
INDIVIDUALS I through X, inclusive; and
ROE CORPORATIONS XI through XX
inclusive,

Defendants.

U.S. BANK, N.A.,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada
limited liability company,

Counter-Defendant.

U.S. BANK., N.A.

Third-Party Plaintiff,

Case No.: A-14-705563-C

Dept. No.: XVII

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

vs.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company;
INDIVIDUAL DOES I through X,
inclusive; and ROE CORPORATIONS I
through X, inclusive,

Third-Party Defendant(s)

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

Third-Party Counterclaimant/Cross-
Claimant,

vs.

U.S. BANK, N.A.; NATIONSTAR
MORTGAGE, LLC, foreign limited liability
company; KRISTEN JORDAL, as trustee
for the JBWNO REVOCABLE LIVING
TRUST, a trust; STACY MOORE, an
individual; and MAGNOLIA GOTERA, an
individual,

Counter-Defendants/Cross-Defendants.

PLEASE TAKE NOTICE that on November 29th, 2018 **Findings of Fact and
Conclusions of Law** were entered. A copy of said Findings of Fact and Conclusions of Law are
attached hereto.

DATED this 26th day of December, 2018.

KIM GILBERT EBRON

/s/Diana S. Ebron

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of December, 2018, 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** to the following parties:

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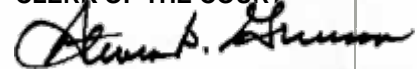
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IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

ALESSI & KOENIG, LLC, a Nevada limited
liability company,

Plaintiff,

vs.

Case No. A-14-705563-C

Dept. No. 17

STACY MOORE, an individual; MAGNOLIA
GOTERA, an individual; KRISTIN JORDAL,
AS TRUSTEE FOR THE JBWNO
REVOCABLE LIVING TRUST, a trust; U.S.
BANK, N.A., a national banking association;
NATIONSTAR MORTGAGE, LLC, a foreign
limited liability company; REPUBLIC SILVER
STATE DISPOSAL, INC., DBA REPUBLIC
SERVICES, a domestic governmental entity;
DOE INDIVIDUALS I through X, inclusive;
and ROE CORPORATIONS XI through XX
inclusive,

Defendants.

U.S. BANK, N.A.,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited
liability company,

Counter-Defendant.

U.S. BANK, N.A.,

Third-Party Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a Nevada
limited liability company; INDIVIDUAL DOES
I through X, inclusive; and ROE
CORPORATIONS I through X, inclusive,

**FINDINGS OF FACT AND CONCLUSIONS
OF LAW**

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**RECEIVED BY
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Third-Party Defendant(s).
SFR INVESTMENTS POOL 1, LLC, a Nevada
limited liability company,
Third-Party Counterclaimant/Cross-Claimant,
vs.
U.S. BANK, N.A.; NATIONSTAR
MORTGAGE, LLC, foreign limited liability
company; KRISTEN JORDAL, as Trustee for
the JBWNO REVOCABLE LIVING TRUST, a
Trust; STACY MOORE, an individual; and
MAGNOLIA GOTERA, an individual,
Counter-Defendants/Cross-Defendants.

This matter came before the Court on August 15, 2018 on SFR Investments Pool 1, LLC's ("SFR") Motion for Summary Judgment, Nationstar Mortgage, LLC's ("Nationstar") Motion for Summary Judgment and U.S. Bank, N.A.'s ("U.S. Bank") (collectively referred to as "Bank") Joinder to Nationstar's Motion for Summary Judgment. Jason G. Martinez, Esq. appeared on behalf of SFR. Douglas D. Gerrard, Esq. appeared on behalf of Nationstar. Donna Wittig, Esq. appeared on behalf of Nationstar and U.S. Bank.

Having reviewed and considered the full briefing and arguments of counsel, for the reasons stated on the record and in the pleadings, and good cause appearing, this Court makes the following findings of fact and conclusions of law.¹

FINDINGS OF UNDISPUTED FACT

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

2. On June 21, 2000, Shadow Mountain Ranch Community Association (the "Association") perfected and gave notice of its lien by recording its Declaration of Covenants, Conditions, and Restrictions ("CC&Rs") in the Official Records of the Clark County Recorder in Book No. 20000621 as Instrument No. 01735.

3. On November 21, 2005, a Grant, Bargain, Sale Deed was recorded in the Official

¹ Any findings of fact that are more appropriately conclusions of law shall be so deemed. Any conclusions of law that are more appropriately findings of fact shall be so deemed.

1 Records of the Clark County Recorder as Instrument No. 20051121-0005566, transferring real
2 property located at 5327 Marsh Butte Street, Las Vegas, Nevada 89148; Parcel No. 163-30-312-
3 007 (the "Property") to Magnolia Gotera ("Gotera").

4 4. On November 21, 2005, a Deed of Trust listing Countrywide Home Loans, Inc.
5 ("Countrywide" or "Lender") as lender, with Mortgage Electronic Registration Systems, Inc.
6 ("MERS") as beneficiary, was recorded in the Official Records of the Clark County Recorder as
7 Instrument No. 20051121-0005567 ("DOT").

8 5. The DOT contained a Planned Unit Development Rider that allowed the Lender to
9 pay the Gotera association assessments and add that amount to the Gotera debt to Lender.

10 6. The DOT also included language that allowed the lender to "do and pay for
11 whatever is reasonable or appropriate to protect [its] interest in the Property ... [including]
12 but...not limited to: (a) paying any sums secured by a lien which has priority over [the DOT]; (b)
13 appearing in court; and (c) paying reasonable attorney's fees to protect its interest."

14 7. On May 27, 2011, a Grant Deed transferring the Property to JBWNO Revocable
15 Living Trust was recorded in the Official Records of the Clark County Recorder as Instrument
16 No. 201105270004010.

17 8. On May 27, 2011, a Grant Deed transferring the Property to Stacy Moore
18 ("Moore") was recorded in the Official Records of the Clark County Recorder as Instrument No.
19 201105270004011.

20 9. On November 2, 2011, an Assignment of Deed of Trust purportedly transferring
21 the DOT from MERS to U.S. Bank was recorded in the Official Records of the Clark County
22 Recorder as Instrument No. 201111020000754.

23 10. On September 11, 2012, the Association, through its agent, Alessi & Koenig, LLC
24 ("Alessi"), recorded a Notice of Delinquent Assessment Lien ("NODA") against the Property in
25 the Official Records of the Clark County Recorder as Instrument No. 201209110002023.

26 11. Pursuant to NRS 116.31162(1)(a), the NODA states the cumulative amount of
27 assessments and other sums due, describes the unit which the lien is imposed, and names the
28 record owner of the unit.

12. Pursuant to NRS 116.31162(1)(a), the NODA was mailed to Moore.

13. Pursuant to NRS 116.31162(b), after more than 30 days elapsed from the date of mailing the NODA, on July 5, 2013, the Association recorded its Notice of Default in the Official Records of the Clark County Recorder as Instrument No. 201307050000950 ("NOD"). The NOD contains the same information as the NODA, and describes the deficiency, states the name and address of the person authorized to enforce the lien, and contains in 14-point bold type: WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!

14. U.S. Bank admits it received the NOD.

15. The Bank proffered a letter dated September 2, 2010, executed by Rock K. Jung, Esq. of the law firm of Miles, Bauer, Bergstrom & Winters ("Miles Bauer") and addressed to the Association and Alessi and the Bank proffered a letter dated September 28, 2010, enclosing a check for \$207.00, also addressed to the Association and Alessi. The Bank sought to authenticate these records through the affidavit of Doug Miles. However, the Court finds that because Doug Miles was never disclosed and his affidavit contains defects as alleged by SFR, these records are inadmissible. Therefore, Nationstar/U.S. Bank failed to provide admissible evidence to establish delivery of the check, or admissible evidence that the check was rejected without explanation.

16. On October 1, 2013, an Assignment of Deed of Trust purportedly transferring the DOT from Bank of America, N.A. to Nationstar was recorded in the Official Records of the Clark County Recorder as Instrument No. 201310010002401.

17. Pursuant to NRS 116.311635, after expiration of 90 days, on December 10, 2013, the Association recorded a Notice of Trustee's Sale in the Official Records of the Clark County Recorder as Instrument No. 201307150002689 ("Notice of Sale"). Pursuant to NRS 116.311635(3), the Notice of Sale contains the amount necessary to satisfy the lien and contains 14-bold type: WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL ALESSI &

1 KOENIG AT 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE
2 FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE
3 DIVISION, AT 1-877-829-9907 IMMEDIATELY.

4 18. Pursuant to NRS 116.311635, the Notice of Sale was posted on the Property in a
5 conspicuous place. The Notice of Sale was posted at three public places within Clark County for
6 20 consecutive days. The Notice of Sale was published in the Nevada Legal News for three
7 consecutive weeks.

8 19. The Notice of Sale was mailed to all requisite parties, and others, including, but
9 not limited to, U.S. Bank, Bank of America, Nationstar, MERS, Moore and the Ombudsman.

10 20. On January 8, 2014, Alessi held a public non-judicial foreclosure auction for the
11 Property and SFR placed the highest cash bid of \$59,000.00. As the Notice of Sale references the
12 NODA, the Association's lien included assessments pursuant to NRS 116.3116. and, therefore,
13 included amounts that constituted the super-priority portion of the lien.

14 21. The Association sale met all the requirements of NRS 116.31164.

15 22. There were multiple bidders in attendance at the sale.

16 23. Pursuant to NRS 116.31164(3)(a), after SFR paid the money to Alessi, Alessi
17 made, executed, and delivered a deed to SFR, which vested title in SFR.

18 24. The Trustee's Deed Upon Sale was recorded in the Official Records of the Clark
19 County Recorder as Instrument No. 201401130001460 ("Foreclosure Deed").

20 25. As recited in the Foreclosure Deed, "[a]ll requirements of law regarding the
21 mailing of copies of notices and the posting and publication of the copies of the Notice of Sale
22 have been complied with."

23 26. Prior to the Association sale, no release of the super-priority portion of the lien
24 was recorded against the Property.

25 27. Prior to the Association sale, no lis pendens was recorded against the Property.

26 28. SFR's agent, Christopher Hardin, stated in his declaration that SFR had no reason
27 to doubt the recitals in the Foreclosure Deed that all noticing requirements were satisfied in
28 compliance with NRS 116 *et seq.* The recitals regarding default and noticing have been supported

1 by evidence of mailings and remain undisputed.

2 29. Mr. Hardin declared that neither he nor SFR had any relationship with the
3 Association besides owning property within the community. There was no evidence presented to
4 the draw this assertion into question.

5 30. Mr. Hardin declared that neither he nor SFR had any relationship with A&K, the
6 Association's agent, beyond attending auctions, bidding, and occasionally purchasing properties
7 at publicly-held auctions. There was no evidence presented to draw this assertion into question.

8 31. Default against Stacy Moore was entered on June 27, 2018.

9 32. Default against Magnolia Gotera was entered June 27, 2018.

10 CONCLUSIONS OF LAW

11 A. Summary judgment is appropriate "when the pleadings and other evidence on file
12 demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is
13 entitled to a judgment as a matter of law.'" *Wood v. Safeway*, 121 Nev. 724, 729, 121 P.3d 1026,
14 1029 (2005). Additionally, "[t]he purpose of summary judgment 'is to avoid a needless trial when
15 an appropriate showing is made in advance that there is no genuine issue of fact to be tried, and
16 the movant is entitled to judgment as a matter of law.'" *McDonald v. D.P. Alexander & Las Vegas*
17 *Boulevard, LLC*, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005) quoting *Coray v. Hom*, 80 Nev.
18 39, 40-41, 389 P.2d 76, 77 (1964). Moreover, the non-moving party "must, by affidavit or
19 otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have
20 summary judgment entered against [it]." *Wood*, 121 Nev. at 732, 121 P.3d at 1031. The non-
21 moving party "is not entitled to build a case on the gossamer threads of whimsy, speculation, and
22 conjecture." *Id.* Rather, the non-moving party must demonstrate specific facts as opposed to
23 general allegations and conclusions. *LaMantia v. Redis*, 118 Nev. 27, 29, 38 P.3d 877, 879
24 (2002); *Wayment v. Holmes*, 112 Nev. 232, 237, 912 P.2d 816, 819 (1996). Though inferences
25 are to be drawn in favor of the non-moving party, an opponent to summary judgment, must show
26 that it can produce evidence at trial to support its claim or defense. *Van Cleave v. Kietz-Mill Minit*
27 *Mart*, 97 Nev. 414, 417, 633 P.2d 1220, 1222 (1981).

28 B. While the moving party generally bears the burden of proving there is no genuine

1 issue of material fact, in this case, there are a number of presumptions that this Court must
2 consider in deciding the issues, including:

3 1. Recorded title is presumed valid. *See Breliant v. Preferred Equities Corp.*,
4 112 Nev. 663, 670, 918 P.2d 314, 319 (1996)("[T]here is a presumption in favor of the
5 record titleholder.")

6 2. Foreclosure sales and the resulting deeds are presumed valid. NRS
7 47.250(16)-(18) (stating that there are disputable presumptions "[t]hat the law has been
8 obeyed[,] "[t]hat a trustee or other person, whose duty it was to convey real property to
9 a particular person, has actually conveyed to that person, when such presumption is
10 necessary to perfect the title of such person or a successor in interest[,] "[t]hat private
11 transactions have been fair and regular[,] and "[t]hat the ordinary course of business has
12 been followed.").

13 3. A foreclosure deed issued pursuant to NRS 116.31164 that "recit[es]
14 compliance with notice provisions of NRS 116.31162 through NRS 116.31168 "is
15 conclusive" as to the recitals "against the unit's former owner, his or her heirs and assigns
16 and all other persons" unless a party like Nationstar can establish that it is entitled to
17 equitable relief from a defective sale. *Shadow Wood HOA v. N.Y. Cmty. Bancorp*, 132
18 Nev. Adv. Op. 5, 1105 (2016); *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 130 Nev.
19 Adv. Op. 75, 334 P.3d 408, 411-412 (2014) (citing NRS 116.31166(2)).

20 4. That "[i]f the trustee's deed recites that all statutory notice requirements
21 and procedures required by law for the conduct of the foreclosure have been satisfied, a
22 rebuttable presumption arises that the sale has been conducted regularly and properly; this
23 presumption is conclusive as to a bona fide purchaser." *Moeller v. Lien*, 30 Cal. App. 4th
24 822, 831-32, 30 Cal. Rptr. 777, 783 (1994)(emphasis added); *see also* 4 Miller & Starr,
25 Cal. Real Estate (3d ed. 2000) Deeds of Trust and Mortgages § 10:211, pp. 647-652; 2
26 Bernhardt, Cal. Mortgage and Deed of Trust Practice (Cont.Ed.Bar 2d ed. 1990) § 7:59,
27 pp. 476-477).

28 C. These presumptions "not only fix[] the burden of going forward with evidence, but

1 it also shifts the burden of proof.” *Yeager v. Harrah's Club, Inc.*, 111 Nev. 830, 835, 897 P.2d
2 1093, 1095 (1995)(citing *Vancheri v. GNLV Corp.*, 105 Nev. 417, 421, 777 P.2d 366, 368 (1989)).
3 “These presumptions impose on the party against whom it is directed the burden of proving that
4 the nonexistence of the presumed fact is more probable than its existence.” *Id.* at 842 (citing NRS
5 47.180).

6 D. Thus, Bank bore the burden of proving it was more probable than not that the
7 Association sale and the resulting Foreclosure Deed were invalid. This burden has been confirmed
8 in the recent case of *Nationstar Mortgage, LLC v. Saticoy Bay Series 2227 Shadow Canyon*, 133
9 Nev. ___, ___, 405 P.3d 641, 646 (2017) (“...Nationstar has the burden to show that that the sale
10 should be set aside in light of Saticoy Bay’s status as the record title holder[.]” (citing *Breliant*,
11 112 Nev. at 669, 918 P.2d at 318; NRS 47.250(16); NRS 116.31166(10-(2); and *Shadow Wood*
12 *Homeowners Ass’n, Inc. v. New York Community Bankcorp, Inc.*, 132 Nev. ___, ___, 366 P.3d
13 1105, 1111 (noting that NRS 107.030(8) provided the language in NRS 116.31166)).

14 E. Bank failed to meet its burden of proving it was more probable than not that the
15 Association sale and the resulting Foreclosure Deed were invalid.

16 F. Pursuant to *SFR*, NRS 116.3116(2) gives associations a true super-priority lien,
17 the non-judicial foreclosure of which extinguishes a first deed of trust. *SFR*, 334 P.3d at 419.

18 G. A properly conducted foreclosure sale conducted pursuant to NRS 116.31162-
19 NRS 116.31168, like all foreclosure sales, extinguishes the title owner’s interest in real property
20 and all junior liens and encumbrances, including deeds of trust.

21 H. The Association foreclosure sale vested title in SFR “without equity or right of
22 redemption.” *SFR*, 334 P.3d at 412 (citing NRS 116.31166(3)).

23 I. These sales vest the purchaser with absolute title. *In re Grant*, 303 B.R. 205, 209
24 (Bankr. D. Nev. 2003).

25 J. If the sale is properly, lawfully and fairly carried out, ^{the Bank} ~~the Bank~~ cannot unilaterally
26 create a right of redemption in [itself]. *Golden v. Tomiyasu*, 79 Nev. 503, 518 (1963).

27 K. Here, the sale was a non-judicial foreclosure sale conducted pursuant to NRS
28 116.31166(2). The COURT FINDS the sale vested in SFR title without equity or right of

1 redemption and title must be quieted in favor of SFR.

2 L. *Shadow Wood* holds that the deed recitals are conclusive, unless a party like the
3 Bank can establish that it is entitled to equitable relief from a defective sale. *Shadow Wood HOA*
4 *v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5, 1105 (2016). Here, ~~the Bank~~ ^{Nationstar} has not established
5 that this was a defective sale. As the purchaser at the Association foreclosure sale, SFR need only
6 show the Trustee's Deed Upon Sale to be entitled to quiet title free and clear of the deed of trust
7 since there was no defective sale. The COURT FINDS the deed recitals are conclusive.

8 M. The Bank is not entitled to equitable relief. The Nevada Supreme Court stated that
9 when a BFP has no notice of a pre-sale dispute, such as an attempted tender, equity cannot be
10 granted to the tendering party, who could defeat any BFP status by giving notice of an attempt to
11 pay. Equitable relief cannot be granted to a party who ignored earlier remedies and allowed a BFP
12 to purchase the property, when the relief would be to the detriment to the BFP. Here, the Bank
13 failed to adequately protect its interest. It failed to try for earlier remedies and allowed a BFP to
14 purchase the property. The COURT FINDS equitable relief is no longer available to the Bank.

15 N. The Foreclosure Deed and Sale are Presumed Valid. SFR contends that the Bank
16 cannot overcome the presumptions that (1) the Association and its agent obeyed the law, (2) the
17 property was conveyed to SFR, (3) the Association foreclosure sale was fair and regular, and
18 conducted in the ordinary course of business. The COURT FINDS the DOT was extinguished by
19 the Association foreclosure sale and since the property was conveyed to SFR, SFR is entitled to
20 summary judgment on its claim for quiet title and permanent injunction. The Bank has not
21 overcome the conclusive presumption that the foreclosure sale and resulting deed are valid, and
22 SFR can rely on the conclusive recitals in the foreclosure deed.

23 O. To prevail on a claim for unjust enrichment, U.S. Bank must show that it conferred
24 a benefit on SFR, that SFR appreciated such benefit, and there was acceptance and retention by
25 [SFR] of such benefit under circumstances such that it would be inequitable for [SFR] to retain
26 the benefit without payment of the value thereof. *Unionamerica Mtg. v. McDonald*, 97 Nev. 210
27 212 (1981). Under NRCP 16.1(a)(1)(C), a party is required to produce, without awaiting a
28 discovery request . . . [a] computation of any category of damages claimed. U.S. Bank contends

1 that SFR has benefited from U.S. Bank's payment of taxes, insurance, and homeowner s
2 association assessments since the time of the HOA sale. However, U.S. Bank has not proven this
3 to be true nor produced evidence that any such payments were made. Further, U.S. Bank has never
4 disclosed any special damages under NRCP 16.1 on this issue. There being no evidence that U.S.
5 Bank paid any monies toward the property or that SFR benefited from these payments, therefore,
6 the COURT FINDS U.S. Bank's claim for unjust enrichment fails as a matter of law.

7 P. ~~The Bank~~ ^{Nationstar} contends a proper tender was made on 9/2/10 for the amount of \$207.00
8 which represented the statutory super-priority amount of the HOA s lien at \$23.00 per month for
9 months, thereby discharging the super priority lien in dispute. The Nevada Supreme Court held
10 in *Horizons at Seven Hills v. Ikon Holdings*, 132 Nev. Adv. Op 35, 373 P.3d 66 (2016) that the
11 superpriority lien granted by NRS 116.3116(2) does not include an amount for collection fees and
12 foreclosure costs incurred; rather it is limited to an amount equal to the common expense
13 assessments due during the nine months before foreclosure. While this Court acknowledges that
14 in *Horizons at Seven Hills v. Ikon*, the association in question did not foreclose, the Nevada
15 Supreme Court's in depth review of legislative history and statutory interpretation indicates the
16 superpriority portion in question does not include fees and costs. *Id.* at 70. Therefore, the COURT
17 FINDS said tender of \$207.00 was the proper amount of the superpriority lien, as it was nine
18 months of assessments under NRS 116.3116(2).

19 Q. The question then hinges on whether this tender precludes SFR from taking said
20 property free and clear of the DOT, or whether SFR takes said property subject to the DOT. The
21 Court looks to whether refusal of the tender was grounded on an honest belief that the tender was
22 insufficient. See, 59 C.J.S. Mortgages 582 (2016); *Bank of Am., N.A. v. Rugged Oaks Investments,*
23 *LLC*, 68504, 2016 WL 5219841, at *1 (Nev. Sept. 16, 2016)(It has been held... that a good and
24 sufficient tender on the day when payment is due will relieve the property from the lien of the
25 mortgage, except where the refusal [of payment] was... grounded on an honest belief that the
26 tender was insufficient.). ~~The Bank's~~ ^{Nationstar's} tender of the past due assessments in the amount of \$207.00
27 occurred on 9/2/10, which was rejected by the HOA Trustee. However, SFR did not have
28 knowledge of this tender, either by inquiry notice or constructive notice. ~~The Bank~~ ^{Nationstar} has failed to

1 set forth sufficient information that proper notice of the tender was provided, such that individuals
2 or entities would be put on notice of the same. The Association rejected the payment in good faith.
3 ~~The Bank~~ ^{Nationstar} failed to record its performance so as to protect itself from third-party purchasers as
4 required by NV law. David Alessi testified that Alessi & Koenig did not receive the letter with
5 the check. If Alessi & Koenig never received the purported tender there was nothing to reject. All
6 the Bank has is a copy of the purported check and a screenshot, neither of which are properly
7 admissible. Further, Doug Miles was not disclosed and has defects in his affidavit. The Bank is
8 lacking admissible evidence to establish the delivery of the check, or admissible evidence that the
9 check was rejected without explanation. Thus, SFR was a bona fide purchaser ("BFP"). A
10 subsequent purchaser is bona fide purchaser under common-law principles if it takes the property
11 for a valuable consideration and without notice of the prior equity, and without notice of facts
12 which upon diligent inquiry would be indicated and from which notice would be imputed to him,
13 if he failed to make such inquiry. *Bailey v. Butner*, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947)
14 (emphasis omitted); see also *Moore v. De Bernardi*, 47 Nev. 33, 54, 220 P. 544, 547 (1923) (The
15 decisions are uniform that the bona fide purchaser of a legal title is not affected by any latent
16 equity founded either on a trust, [e]ncumbrance, or otherwise, of which he has no notice, actual
17 or constructive.). The Nevada Supreme Court has further held, that [w]here the complaining party
18 has access to all the facts surrounding the questioned transaction and merely makes a mistake as
19 to the legal consequences of his act, equity should normally not interfere, especially where the
20 rights of third parties might be prejudiced thereby. *Shadow Wood*, 366 P.3d at 1116 (quoting
21 *Nussbaumer v. Sup. Ct. in & for Yuma Cty.*, 107 Ariz. 504, 489 P.2d 843, 846 (1971)). In *Shadow*
22 *Wood*, the Nevada Supreme Court held that [c]onsideration of harm to potentially innocent third
23 parties is especially pertinent where [the lender] did not use the legal remedies available to it to
24 prevent the property from being sold to a third party, such as by seeking a temporary restraining
25 order and preliminary injunction and filing a lis pendens on the property. *Shadow Wood*, 366 P.3d
26 at 1114 fn. 7. Here, ~~the Bank~~ ^{Nationstar} was in the position to take any number of simple steps to avoid a
27 BFP issue and simply failed to take such action. The Bank has failed to offer any evidence to
28 refute that SFR had no knowledge of a prior equity and paid valuable consideration. Lastly, in the

1 Hardin declaration, SFR provided evidence of being a BFP The COURT FINDS Nationstar failed
2 to protect its interest in said property, and SFR is a BFP.

3 R. ~~The Bank~~ ^{Nationstar} contends the sales price at the HOA foreclosure sale was grossly
4 inadequate and was commercially unreasonable. To set aside an association foreclosure sale on a
5 theory of commercial unreasonableness there must be a showing of grossly inadequate price, plus,
6 fraud, unfairness, or oppression. *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op.
7 5, 366 P.3d 1105, 1112 (2016) (citing *Long v. Towne*, 98 Nev. 11, 13, 639, P.2d 528, 530 (1982));
8 *See also Centeno v. JP Morgan Chase Bank, N.A.*, 67365, 2016 WL 1122449, at *1 (Nev. Mar.
9 18, 2016)(unpublished Order Vacating and Remanding)(Holding a low sales price is not a basis
10 for voiding a foreclosure sale absent fraud, unfairness, oppression...); *See also Golden v.*
11 *Tomiyasu*, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963) (stating that, while a power-of-sale
12 foreclosure may not be set aside for mere inadequacy of price, it may be if the price is grossly
13 inadequate and there is in addition proof of some element of fraud, unfairness, or oppression
14 (internal quotation omitted))). The Supreme Court of Nevada recently clarified that in Nevada,
15 courts retain the power to grant equitable relief from a defective [association] foreclosure sale
16 when appropriate *Shadow Wood Homeowners Ass'n, Inc. v. New York Cmty. Bancorp, Inc.*,
17 366 P.3d 1105, 1110 (Nev.2016) (en banc). [D]emonstrating that an association sold a property
18 at its foreclosure sale for an inadequate price is not enough to set aside a foreclosure sale; there
19 must also be a showing of fraud, unfairness, or oppression. *Id.* (citing *Long*, 98 Nev. 11, 639 P.2d
20 530). In considering whether equity supports setting aside the sale in question, the Court is to
21 consider any other factor bearing on the equities, including actions or inactions of both parties
22 seeking to set aside the sale and the impact on a bona fide purchaser for value. *Id.* at 1114 (finding
23 courts must consider the entirety of the circumstances that bear upon the equities). Here, ~~the Bank~~ ^{Nationstar}
24 contends that the sale should be set aside under equitable principles because the sale of the
25 Property for less than 20% of its fair market value is grossly inadequate. The Court, however,
26 does not find this argument to be persuasive. The analysis for finding fraud, unfairness, or
27 oppression applies to the seller (HOA) and purchaser, not whatever mistake may have occurred
28 by the HOA in rejecting tender or accepting payments from the Borrower. *See Golden v.*

1 *Tomiyasu*, 79 Nev. 503, 513, 387 P.2d 989, 994 (reviewing fraud and collusion between the
2 foreclosing trustee and bidders, not fraud, unfairness, or oppression in the underlying trustee s
3 substantive actions). *See also Centeno v. JP Morgan Chase Bank, N.A.*, 67365, 2016 WL
4 1122449, at *1 (Nev. Mar. 18, 2016)(unpublished Order Vacating and Remanding)(Holding a
5 low sales price is not a basis for voiding a foreclosure sale absent fraud, unfairness, oppression...
6 Because the Bank failed to set forth material issues of fact demonstrating some fraud, unfairness,
7 or oppression with the actual sale to demonstrate commercial unreasonableness, the COURT
8 FINDS the sale in question was commercially reasonable.

9 S. On 8/31/15, Nationstar recorded a lis pendens against the property. NRS 14.015
10 sets forth the requirements for maintaining a lis pendens on a property. Here, when Nationstar
11 recorded the lis pendens, it did not have a pending action that was for (1) foreclosure or (2) that
12 affected title or possession of the property and still has no pending claims against SFR today. The
13 NRCP30(b)(6) deposition of U.S. Bank and Nationstar, concedes that Nationstar only services
14 the loan and that it does not have an interest in the promissory note or deed of trust. Because
15 Nationstar lacked any basis to record the lis pendens against the property in the first place and
16 still lacks basis to maintain it, SFR is entitled to a judgment from this Court on its slander of title
17 claim against Nationstar and that the lis pendens be expunged.

18 T. Pursuant to NRS 116.31166(2), when SFR made the highest bid and purchased the
19 property at the Association sale, it obtained the title of the unit's owner without equity or right of
20 redemption. Thus, any interest Moore and/or Gotera could claim in the property was extinguished.
21 On 6/27/18 default was entered against Moore and Gotera for failing to answer SFR s complaint.

22 U. As a result of the Association's non-judicial foreclosure sale, the DOT was
23 extinguished. As such, SFR is entitled to summary judgment on its claim for quiet title and a
24 permanent injunction.

25 V. Any attempt to foreclose on the DOT by the Bank would be invalid as the DOT
26 was extinguished by the Association sale.

27 W. Any assignment, sale, or transfer of the DOT by the Bank has no legal effect
28 because the DOT was extinguished by the Association sale.

1 X. Any attempt to take or maintain possession of the Property by the Bank would be
2 invalid because its interest in the Property, if any, was extinguished by the Association sale.

3 **ORDER**

4 **IT IS ORDERED, ADJUDGED, AND DECREED** that SFR's Motion for Summary
5 Judgment is **GRANTED**.

6 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Nationstar's
7 Motion for Summary Judgment is **DENIED**.

8 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that U.S. Bank's Joinder
9 to Nationstar's Motion for Summary Judgment is **DENIED**.

10 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Association's
11 non-judicial foreclosure sale relating to real property located at 5327 Marsh Butte Street, Las
12 Vegas, Nevada 89148; Parcel No. 163-30-312-007 extinguished the DOT recorded against the
13 Property in the Official Records of the Clark County Recorder as Instrument No. 20051121-
14 0005567.

15 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Nationstar has no
16 further right, title, or interest in real property located at 5327 Marsh Butte Street, Las Vegas,
17 Nevada 89148; Parcel No. 163-30-312-007, and is hereby permanently enjoined from taking any
18 further action to cloud SFR's title to the Property or enforce the now extinguished DOT, including
19 but not limited to initiating, or continuing to initiate, foreclosure proceedings and from selling or
20 transferring the Property.

21 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that U.S. Bank has no
22 further right, title, or interest in real property located at 5327 Marsh Butte Street, Las Vegas,
23 Nevada 89148; Parcel No. 163-30-312-007, and is hereby permanently enjoined from taking any
24 further action to cloud SFR's title to the Property or enforce the now extinguished DOT, including
25 but not limited to initiating, or continuing to initiate, foreclosure proceedings and from selling or
26 transferring the Property.

27 ...

28 ...

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

1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that title to real property
2 located at 5327 Marsh Butte Street, Las Vegas, Nevada 89148; Parcel No. 163-30-312-007 is
3 hereby quieted in favor of SFR.

4 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that JUDGMENT be
5 entered in favor of SFR pursuant to this ORDER.

6 **IT IS SO ORDERED.**

7 DATED this 26 day of Nov, 2018.

8
9 
DISTRICT COURT JUDGE


10 Jm

11 Respectfully Submitted By:

Approved as to Form and Content By:

12 **KIM GILBERT EBRON**

AKERMAN LLP

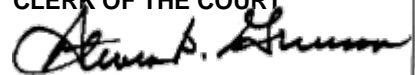
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15 JACQUELINE A. GILBERT, ESQ.
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16 KAREN L. HANKS, ESQ.
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Las Vegas, Nevada 89134
Attorneys for U.S. Bank, N.A. and Nationstar
Mortgage, LLC

21 Approved as to Form and Content By:

22 **GERRARD COX LARSEN**

23 Competing Order to be Submitted
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Attorneys for Defendant Nationstar Mortgage, LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC,

Plaintiff,

v.

STACY MOORE, an individual; MAGNOLIA
GOTERA, an individual; KRISTIN JORDAL,
AS TRUSTEE FOR THE JBWNO
REVOCABLE LIVING TRUST, a trust; U.S.
BANK, N.A., a national banking association;
NATIONSTAR MORTGAGE, LLC, a foreign
limited liability company; REPUBLIC SILVER
STATE DISPOSAL, INC., DBA REPUBLIC
SERVICES, a domestic government entity;
DOE INDIVIDUALS I through X, inclusive;
and ROE CORPORATIONS XI through XX
inclusive.

Defendants.

Case No.: A-14-705563-C

Dept.: XXVI

**ORDER GRANTING NATIONSTAR
MORTGAGE, LLC'S MOTION FOR
RECONSIDERATION AND TO
ALTER/AMEND JUDGMENT**

1 U.S. BANK, N.A.,
2 Counterclaimant,
3 vs.

4 ALESSI & KOENIG, LLC, a Nevada limited
5 liability company,
6 Counter-Defendant.

7 U.S. BANK, N.A.,
8 Third Party Plaintiff,
9 v.
10 SFR INVESTMENTS POOL 1, LLC, a Nevada
11 limited liability company; INDIVIDUAL DOES
12 I through X, inclusive; and ROE
13 CORPORATIONS I through X, inclusive.
14 Third Party Defendants.

15 SFR INVESTMENTS POOL 1, LLC, a
16 Nevada limited liability company,
17 Third Party Counterclaimant/Cross-claimant,
18 vs.
19 U.S. BANK, N.A.; NATIONSTAR
20 MORTGAGE, LLC, a foreign limited liability
21 company; KRISTIN JORDAL, AS TRUSTEE
22 FOR THE JBWNO REVOCABLE LIVING
23 TRUST, a trust; STACY MOORE, an
24 individual; and MAGNOLIA GOTERA, an
25 individual,
26 Counter-Defendant/Cross-Defendants.

27 **ORDER GRANTING NATIONSTAR MORTGAGE, LLC'S MOTION FOR**
28 **RECONSIDERATION AND TO ALTER/AMEND JUDGMENT**

Defendant NATIONSTAR MORTGAGE, LLC'S ("Nationstar") Motion For
Reconsideration and to Alter / Amend Judgment (the "Motion") was heard on March 26, 2018,
Douglas D. Gerrard, Esq. of the law firm GERRARD COX LARSEN appeared on behalf of
Defendant Nationstar, Jason Martinez, Esq. of the law firm KIM GILBERT EBRON appeared on
behalf of SFR Investments Pool 1, LLC ("SFR").

///

///

///

1 Having reviewed the Motion, Plaintiff SFR's Opposition to the Motion, and Nationstar's
2 Reply in Support thereof, and being fully informed, the Court finds as follows:

3 1. On January 14, 2019, Nationstar timely filed its Motion for Reconsideration and to
4 Alter/Amend Judgment ("Motion") related to the Findings of Fact and Conclusions of Law entered
5 on November 29, 2018 by Judge Villani ("FFCL"), notice of entry of which was completed on
6 December 26, 2018. On January 7, 2019, this case was randomly reassigned from Judge Villani to
7 Judge Mary Kay Holthus. On January 31, 2019, SFR filed a Peremptory Challenge of Judge Holthus
8 resulting in a February 1, 2019 Notice of Department Reassignment to Judge Kenneth Cory. Judge
9 Cory then recused himself resulting in a February 5, 2019 Notice of Department Reassignment to this
10 Court.

11 2. This Court now has jurisdiction over this case and has the authority and the right to
12 consider and decide the Motion, as the entire case has been reassigned to this Court.

13 3. This Court determines that the FFCL contained legal errors in that Douglas Miles was
14 properly disclosed as a witness in Nationstar's Second Supplemental Disclosure of Documents and
15 Witnesses which was electronically served on SFR's counsel on June 1, 2018 and that the Affidavit
16 of Douglas Miles met the criteria of NRS 52.260 as a custodial declaration to authenticate the business
17 records of the Miles Bauer Bergstrom & Winters law firm, which included the records and letters
18 related to the tender.

19 4. This Court determines that the FFCL contained a legal error as the documents related
20 to the tender were also properly authenticated through the Affidavit of Rock Jung, Esq., which
21 satisfies the requirements of NRS 52.025, as testimony of a person with personal knowledge.

22 5. The Court determines that reconsideration of the FFCL is appropriate because the
23 records of Miles Bauer Bergstrom & Winters create a genuine issue of material fact regarding whether
24 a full tender of the super-priority portion of the Association's lien was sent to and received by the
25 Association's agent, Alessi & Koenig, prior to the HOA completing its sale to SFR.

26 6. Reconsideration is also appropriate because the FFCL failed to apply recent Nevada
27 Supreme Court authority, including the *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 134
28 Nev. Adv. Op. 72 (Sept. 13, 2018) decision regarding tender, the defenses to a tender and the impact
of a tender on SFR's bona fide purchaser defense.

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7. The Court also determines the other legal and factual issues with the FFCL raised in the Motion warrant reconsideration and create genuine issues of material fact which must be decided in a trial.

THEREFORE, IT IS HEREBY ORDERED that Nationstar's Motion For Reconsideration and to Alter/Amend Judgment is hereby **GRANTED** and this matter will be set for a trial to determine the issues of material fact which preclude summary judgment.


IT IS SO ORDERED.

DATED this 26 day of June, 2019.


DISTRICT COURT JUDGE


Prepared and Submitted By:

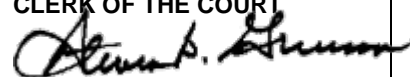
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Attorneys for Defendant Nationstar Mortgage, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

ALESSI & KOENIG, LLC,

Plaintiff,

v.

STACY MOORE, an individual; MAGNOLIA
GOTERA, an individual; KRISTIN JORDAL, AS
TRUSTEE FOR THE JBWNO REVOCABLE
LIVING TRUST, a trust; U.S. BANK, N.A., a
national banking association; NATIONSTAR
MORTGAGE, LLC, a foreign limited liability
company; REPUBLIC SILVER STATE
DISPOSAL, INC., DBA REPUBLIC SERVICES,
a domestic government entity; DOE
INDIVIDUALS I through X, inclusive; and ROE
CORPORATIONS XI through XX inclusive.

Defendants.

Case No.: A-14-705563-C

Dept.: XXVI

**NOTICE OF ENTRY OF ORDER
GRANTING NATIONSTAR MORTGAGE,
LLC'S MOTION FOR
RECONSIDERATION AND TO
ALTER/AMEND JUDGMENT**

1 U.S. BANK, N.A.,
2 Counterclaimant,
3 vs.

4 ALESSI & KOENIG, LLC, a Nevada limited
liability company,
5 Counter-Defendant.

6 U.S. BANK, N.A.,
7 Third Party Plaintiff,
8 v.
9 SFR INVESTMENTS POOL 1, LLC, a Nevada
limited liability company; INDIVIDUAL DOES I
through X, inclusive; and ROE CORPORATIONS
I through X, inclusive.
10 Third Party Defendants.

11 SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company,
12 Third Party Counterclaimant/Cross-claimant,
vs.

13 U.S. BANK, N.A.; NATIONSTAR
14 MORTGAGE, LLC, a foreign limited liability
company; KRISTIN JORDAL, AS TRUSTEE
15 FOR THE JBWNO REVOCABLE LIVING
TRUST, a trust; STACY MOORE, an
16 individual; and MAGNOLIA GOTERA, an
individual,

17 Counter-Defendant/Cross-Defendants.
18

**NOTICE OF ENTRY OF ORDER
GRANTING NATIONSTAR
MORTGAGE, LLC'S MOTION FOR
RECONSIDERATION AND TO
ALTER/AMEND JUDGMENT**

19 NOTICE IS HEREBY GIVEN that an **ORDER GRANTING NATIONSTAR MORTGAGE,**
20 **LLC'S MOTION FOR RECONSIDERATION AND TO ALTER/AMEND JUDGMENT**, was
21 entered herein on the 28th day of June, 2018. A copy of said Order is attached hereto.

22 DATED this 28th day of June, 2019.

GERRARD COX LARSEN

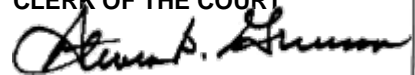
23 /s/ Douglas D. Gerrard, Esq.
24 Douglas D. Gerrard, Esq.
25 Fredrick J. Biedermann, Esq.
26 2450 St. Rose Parkway, Ste. #200
Henderson, NV 89074
27 *Attorneys for Defendant Nationstar
Mortgage, LLC*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of GERRARD COX LARSEN, and that on the 28th day of June, 2018, I served a copy of the **NOTICE OF ENTRY OF ORDER GRANTING NATIONSTAR MORTGAGE, LLC'S MOTION FOR RECONSIDERATION AND TO ALTER/AMEND JUDGMENT**, by e-serving a copy on all parties listed in the Master Service List pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer Togliatti, on May 9, 2014.

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/s/ Esther K. Medellin .
Esther K. Medellin, an employee of
GERRARD COX LARSEN



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Attorneys for Defendant Nationstar Mortgage, LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC,

Plaintiff,

v.

STACY MOORE, an individual; MAGNOLIA
GOTERA, an individual; KRISTIN JORDAL,
AS TRUSTEE FOR THE JBWNO
REVOCABLE LIVING TRUST, a trust; U.S.
BANK, N.A., a national banking association;
NATIONSTAR MORTGAGE, LLC, a foreign
limited liability company; REPUBLIC SILVER
STATE DISPOSAL, INC., DBA REPUBLIC
SERVICES, a domestic government entity;
DOE INDIVIDUALS I through X, inclusive;
and ROE CORPORATIONS XI through XX
inclusive.

Defendants.

Case No.: A-14-705563-C

Dept.: XXVI

**ORDER GRANTING NATIONSTAR
MORTGAGE, LLC'S MOTION FOR
RECONSIDERATION AND TO
ALTER/AMEND JUDGMENT**

1 U.S. BANK, N.A.,
2 Counterclaimant,
3 vs.

4 ALESSI & KOENIG, LLC, a Nevada limited
5 liability company,
6 Counter-Defendant.

7 U.S. BANK, N.A.,
8 Third Party Plaintiff,
9 v.
10 SFR INVESTMENTS POOL 1, LLC, a Nevada
11 limited liability company; INDIVIDUAL DOES
12 I through X, inclusive; and ROE
13 CORPORATIONS I through X, inclusive.
14 Third Party Defendants.

15 SFR INVESTMENTS POOL 1, LLC, a
16 Nevada limited liability company,
17 Third Party Counterclaimant/Cross-claimant,
18 vs.
19 U.S. BANK, N.A.; NATIONSTAR
20 MORTGAGE, LLC, a foreign limited liability
21 company; KRISTIN JORDAL, AS TRUSTEE
22 FOR THE JBWNO REVOCABLE LIVING
23 TRUST, a trust; STACY MOORE, an
24 individual; and MAGNOLIA GOTERA, an
25 individual,
26 Counter-Defendant/Cross-Defendants.

27 **ORDER GRANTING NATIONSTAR MORTGAGE, LLC'S MOTION FOR**
28 **RECONSIDERATION AND TO ALTER/AMEND JUDGMENT**

Defendant NATIONSTAR MORTGAGE, LLC'S ("Nationstar") Motion For
Reconsideration and to Alter / Amend Judgment (the "Motion") was heard on March 26, 2018,
Douglas D. Gerrard, Esq. of the law firm GERRARD COX LARSEN appeared on behalf of
Defendant Nationstar, Jason Martinez, Esq. of the law firm KIM GILBERT EBRON appeared on
behalf of SFR Investments Pool 1, LLC ("SFR").

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///

1 Having reviewed the Motion, Plaintiff SFR's Opposition to the Motion, and Nationstar's
2 Reply in Support thereof, and being fully informed, the Court finds as follows:

3 1. On January 14, 2019, Nationstar timely filed its Motion for Reconsideration and to
4 Alter/Amend Judgment ("Motion") related to the Findings of Fact and Conclusions of Law entered
5 on November 29, 2018 by Judge Villani ("FFCL"), notice of entry of which was completed on
6 December 26, 2018. On January 7, 2019, this case was randomly reassigned from Judge Villani to
7 Judge Mary Kay Holthus. On January 31, 2019, SFR filed a Peremptory Challenge of Judge Holthus
8 resulting in a February 1, 2019 Notice of Department Reassignment to Judge Kenneth Cory. Judge
9 Cory then recused himself resulting in a February 5, 2019 Notice of Department Reassignment to this
10 Court.

11 2. This Court now has jurisdiction over this case and has the authority and the right to
12 consider and decide the Motion, as the entire case has been reassigned to this Court.

13 3. This Court determines that the FFCL contained legal errors in that Douglas Miles was
14 properly disclosed as a witness in Nationstar's Second Supplemental Disclosure of Documents and
15 Witnesses which was electronically served on SFR's counsel on June 1, 2018 and that the Affidavit
16 of Douglas Miles met the criteria of NRS 52.260 as a custodial declaration to authenticate the business
17 records of the Miles Bauer Bergstrom & Winters law firm, which included the records and letters
18 related to the tender.

19 4. This Court determines that the FFCL contained a legal error as the documents related
20 to the tender were also properly authenticated through the Affidavit of Rock Jung, Esq., which
21 satisfies the requirements of NRS 52.025, as testimony of a person with personal knowledge.

22 5. The Court determines that reconsideration of the FFCL is appropriate because the
23 records of Miles Bauer Bergstrom & Winters create a genuine issue of material fact regarding whether
24 a full tender of the super-priority portion of the Association's lien was sent to and received by the
25 Association's agent, Alessi & Koenig, prior to the HOA completing its sale to SFR.

26 6. Reconsideration is also appropriate because the FFCL failed to apply recent Nevada
27 Supreme Court authority, including the *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 134
28 Nev. Adv. Op. 72 (Sept. 13, 2018) decision regarding tender, the defenses to a tender and the impact
of a tender on SFR's bona fide purchaser defense.

7. The Court also determines the other legal and factual issues with the FFCL raised in the Motion warrant reconsideration and create genuine issues of material fact which must be decided in a trial.

THEREFORE, IT IS HEREBY ORDERED that Nationstar's Motion For Reconsideration and to Alter/Amend Judgment is hereby **GRANTED** and this matter will be set for a trial to determine the issues of material fact which preclude summary judgment.

IT IS SO ORDERED.

DATED this 26 day of June, 2019.


DISTRICT COURT JUDGE

Prepared and Submitted By:

GERRARD COX LARSEN



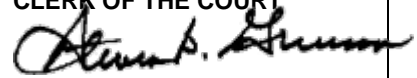
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Attorney for Defendant
Nationstar Mortgage, LLC

Approved as to Form and Content:

KIM GILBERT EBRON


~~REFUSED~~

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Attorneys for SFR Investments
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*Attorneys for Nationstar Mortgage LLC and U.S.
Bank, National Association, as Trustee for the
Certificateholders of the LXS 2006-4N Trust Fund,
erroneously pled as U.S. Bank, N.A.*

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC, a Nevada limited
liability company,

Plaintiff,

vs.

STACY MOORE, an individual; MAGNOLIA
GOTERA, an individual; KRISTEN JORDAL,
AS TRUSTEE FOR THE JBWNO
REVOCABLE LIVING TRUST; U.S. BANK,
N.A.; NATIONSTAR MORTGAGE, LLC;
REPUBLIC SILVER STATE DISPOSAL, INC.,
et al.;

Defendants.

U.S. BANK, N.A.,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited
liability company,

Counter-Defendant.

Case No.: A-14-705563-C

Dept.: XXVI

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

<input type="checkbox"/>	Voluntary Dismissal	<input checked="" type="checkbox"/>	Summary Judgment
<input type="checkbox"/>	Involuntary Dismissal	<input type="checkbox"/>	Stipulated Judgment
<input type="checkbox"/>	Stipulated Dismissal	<input type="checkbox"/>	Default Judgment
<input type="checkbox"/>	Motion to Dismiss by Deft(s)	<input type="checkbox"/>	Judgment of Arbitration

U.S. BANK, N.A.

Third-Party Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a Nevada
limited liability company, et al.

Third-Party Defendants.

This matter proceeded to a bench trial on February 10, 2020. Karen Hanks, Esq. and Jason Martinez, Esq. appeared on behalf of SFR. Melanie Morgan Esq. and Ariel Stern, Esq. appeared on behalf of U.S. Bank. Having reviewed and considered the evidence and arguments of counsel, for the reasons stated on the record and in the pleadings, and good cause appearing, this Court makes the following findings of fact and conclusions of law.¹

FINDINGS OF FACT

1. In 1991, Nevada adopted the Uniform Common Interest Ownership Act as NRS 116, including NRS 116.3116(2). (FOFCOL² at ¶1).

2. On June 21, 2000, Shadow Mountain Ranch Community Association (Association) perfected and gave notice of its lien by recording its Declaration of Covenants, Conditions, and Restrictions (CC&Rs) in the Official Records of the Clark County Recorder in Book No. 20000621 as Instrument No. 01735. (*Id.* at ¶2).

Property Transfers, The Deed of Trust, and Assignments

3. On November 21, 2005, a Grant, Bargain, Sale Deed was recorded in the Official Records of the Clark County Recorder as Instrument No. 20051121-0005566, transferring real property located at 5327 Marsh Butte Street, Las Vegas, Nevada 89148; Parcel No. 163-30-312-007 (the property) to Magnolia Gotera. (*Id.* at ¶3).

///

¹ Any findings of fact that are more appropriately conclusions of law shall be so deemed. Any conclusions of law that are more appropriately findings of fact shall be so deemed.

² References to "FOF&COL" pertain to the Findings of Fact and Conclusions of Law filed on November 29, 2018 following the hearing on SFR, U.S. Bank and Nationstar's competing motions for summary judgment.

1 4. On November 21, 2005, a Deed of Trust listing Countrywide Home Loans, Inc. as
2 lender, with Mortgage Electronic Registration Systems, Inc. (MERS) as beneficiary, was recorded in
3 the Official Records of the Clark County Recorder as Instrument No. 20051121-0005567 (deed of
4 trust). (*Id.* at ¶4).

5 5. A Notice of Default and Election to Sell under Deed of Trust was recorded in the
6 Official Records of the Clark County Recorder on January 22, 2008 as Instrument No. 20080122-
7 0002564. (Jt. Trial Ex. 33).

8 6. On March 20, 2008, a Rescission of Election to Declare Default was recorded in the
9 Official Records of the Clark County Recorder as Instrument No.20080320-0001352. (Jt. Trial Ex.
10 34).

11 7. On May 27, 2011, a Grant Deed transferring the Property to JBWNO Revocable Living
12 Trust was recorded in the Official Records of the Clark County Recorder as Instrument No.
13 201105270004010. (*Id.* at ¶7).

14 8. On May 27, 2011, a Grant Deed transferring the Property to Stacy Moore was recorded
15 in the Official Records of the Clark County Recorder as Instrument No. 201105270004011. (*Id.* at ¶8).

16 9. On November 2, 2011, an assignment of deed of trust purportedly transferring the deed
17 of trust from MERS to U.S. Bank was recorded in the Official Records of the Clark County Recorder
18 as Instrument. No. 201111070000754. (*Id.* at ¶9).

19 **Default and HOA Foreclosure Sale**

20 10. On September 2, 2010, MERS as nominee for BAC Home Loans Servicing, LP,
21 through its counsel, Rock Jung of Miles, Bauer, Bergstrom & Winters, LLP, sent a letter to the
22 Association and Alessi requesting a superpriority payoff of the Association's lien. In response, Alessi
23 provided a payoff with a total amount due of \$3,544. On September 28, 2010, Miles Bauer sent a
24 check for \$207.00 to Alessi, which represented nine months of common assessments at \$23.00 per
25 month. (*See* FOF&COL at 15 in conjunction with order granting Nationstar's motion for
26 reconsideration at ¶¶ 3 and 4).

27 11. Tender of \$207.00 was the proper amount of the superpriority lien, as it was nine
28 months of assessments under NRS 116.3116(2). (FOF&COL at ¶ P).

12. Alessi received the Miles Bauer check and September 28, 2010 letter, but rejected the payment. (Jt. Trial Ex. 26 at NATIONSTAR00174-176; trial testimony of David Alessi; FOF&COL at ¶ Q).

13. On December 10, 2013, the Association recorded a Notice of Trustee's Sale in the Official Records of the Clark County. Recorder as Instrument No. 201307150002689 (Notice of Sale). (*See id.* at ¶17).

14. On January 8, 2014, Alessi held a public non-judicial foreclosure auction for the property. (*See id.* at ¶20).

15. SFR placed the highest cash bid of \$59,000.00. (*See id.* at ¶20).

16. The Trustee's Deed Upon Sale was recorded in the Official Records of the Clark County Recorder as Instrument No. 201401130001460 (Foreclosure Deed). (*Id.* at ¶24).

CONCLUSIONS OF LAW

A. Douglas Miles was properly disclosed as a witness in Nationstar's Second Supplemental Disclosure of Documents and Witnesses which was electronically served on SFR's counsel on June 1, 2019 and that and the Affidavit of Douglas Miles met the criteria of NRS 52.260 as a custodial declaration to authenticate the business records of the Miles Bauer Bergstrom & Winters law firm, which included the records and letters related to the tender." (Order granting Nationstar's motion for reconsideration at ¶ 3).

B. The documents related to the tender were also properly authenticated through the Affidavit of Rock Jung, Esq., which satisfies the requirements of NRS 52.025, as testimony of a person with personal knowledge." (Order granting Nationstar's motion for reconsideration at ¶ 4).

C. The Nevada Supreme Court held in *Horizon at Seven Hills Homeowners Association v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35, at 13 (Nev. April 28, 2016), that the superpriority lien granted by NRS 116.3116(2) does not include an amount for collection fees and foreclosure costs incurred; rather it is limited to an amount equal to the common expense assessments due during the nine months before foreclosure. While this Court acknowledges that in *Horizon at Seven Hills v. Ikon*, the association in question did not foreclose, the Nevada Supreme Court's in depth review of legislative history and statutory interpretation indicates the superpriority portion in question does not include fees

1 and costs. *Id.* at 70. Therefore, the court finds Miles Bauer's tender of \$207.00 was the proper amount
2 of the superpriority lien, as it was nine months of assessments under NRS 116.3116(2). (FOF&COL
3 at ¶ P).

4 D. In *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (2014), the Nevada
5 Supreme Court clearly stated that a first deed of trust holder's pre-foreclosure tender prevents the first
6 deed of trust from being extinguished. 334 P.3d at 414 ("[A]s junior lienholder, [the holder of the first
7 deed of trust] could have paid off the [HOA] lien to avert loss of its security[.]").

8 E. Here, U.S. Bank's predecessor's attempt to pay the statutory superpriority portion of the
9 Association's lien, prior to the foreclosure sale, extinguished the superpriority portion of the
10 Association's lien pursuant to the tender doctrine.

11 F. The Nevada supreme court has held that a lender's tender of the superpriority portion
12 of the statutory HOA lien extinguishes the superpriority lien, even if the tender is rejected. *Bank of*
13 *America v. SFR Investments Pool 1, LLC*, 427 P.3d 113, 118-20 (Nev. 2018) (hereinafter ***Diamond***
14 ***Spur***).

15 G. *Diamond Spur* further confirmed that (1) the letters Miles Bauer routinely sent in
16 conjunction with its tender check contained only one condition, upon which the tendering party had
17 the right to insist, and therefore do not contain impermissible conditions; (2) an association or an
18 association trustee's rejection of the tender check on the basis that it did not satisfy the entire amount
19 of the lien—or anything more than nine months of assessments and any nuisance abatement charges—is
20 not a good faith rejection; (3) the tendering party was neither required to record its tender nor “keep it
21 good” by paying the amount into court in order to discharge the superpriority portion of the
22 association's lien; and (4) that bona fide purchaser status is irrelevant in superpriority tender cases.
23 *Id.* at 117-21.

24 H. The tender check at issue in this case constituted a valid tender sufficient to discharge
25 the superpriority portion of the statutory HOA lien.

26 I. U.S. Bank's predecessor's tender was sufficient to discharge the superpriority portion
27 of the statutory association lien.

28 ///

1 J. The tender letter Miles Bauer sent, and Alessi received, in conjunction with its
2 superpriority payment did not contain any conditions and, therefore, the tender was unconditional.
3 Even if the tender letter did contain conditions, they were conditions upon which U.S. Bank's
4 predecessor had the right to insist. *See Diamond Spur*, 427 P.3d at 118.

5 K. U.S. Bank's predecessor was also not required to record notice of its superpriority
6 tender pursuant to either NRS 111.315 or NRS 106.220. *Id.* at 119. NRS 111.315 does not apply to
7 the tender because an association's lien does not create, alienate, assign, or surrender an interest in
8 land. Instead, “it *preserves* a pre-existing interest, which does not require recording.” *Id.* (emphasis
9 in original). With respect to NRS 106.220, U.S. Bank's predecessor cured the statutory superpriority
10 portion of the Association's lien by operation of law, as opposed to by recording a written instrument,
11 and therefore NRS 106.220 is not applicable.

12 L. Nevada law did not require U.S. Bank's predecessor to take any further steps to solidify
13 the legal effect of its tender, such as paying the money into court. *Id.* at 120. Imposing such a
14 requirement would “negate[] the purpose behind the unconventional HOA split-lien scheme: prompt
15 and efficient payment of the HOA assessment fees on defaulted properties.” *Id.*

16 M. Because U.S. Bank's predecessor tendered and satisfied the superpriority portion of the
17 Association's lien prior to the Association's foreclosure, the Association could only foreclosure on the
18 sub-priority portion of its lien. Therefore, SFR purchased only the sub-priority portion of the
19 Association's lien and took the property subject to the Deed of Trust.

20 N. At the close of U.S. Bank's case in chief, SFR moved under NRCP 52(c), arguing the
21 Deed of Trust was extinguished through operation of NRS 106.240. U.S. Bank opposed on procedural
22 and substantive grounds. The court considers SFR's NRS 106.240 argument on its substantive
23 merits. In deciding SFR's motion, the court has reviewed and considered the following, among other
24 things: the parties' trial briefs and the cases cited therein, the arguments of counsel at trial, and the
25 text of NRS 106.240. On that basis, the court denies SFR's NRCP 52(c) motion.

26 O. U.S. Bank protected its Deed of Trust from NRS 106.240 by filing the subject quiet
27 title action on August 18, 2015, prior to ten years following the date upon which SFR claims the loan
28

1 obligation became "wholly due." U.S. Bank did not need to do anything else to avoid operation of
2 NRS 106.240.

3 P. In addition, NRS 106.240 does not apply because SFR is not a party to the note and is
4 not subject to any type of enforcement action concerning the underlying loan obligation. The court
5 has considered *Pro-Max Corp. v. Feenstra*, 117 Nev. 90, 16 P.3d 1074 (2001), and finds the case does
6 not help SFR. As a non-party to the note not subject to personal liability on the obligation, NRS
7 106.240 does not apply to SFR.

8 Q. If any of these conclusions of law are more properly considered findings of fact, they should
9 be so construed.

10 **JUDGMENT**

11 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that when Shadow Mountain
12 Ranch Homeowners Association foreclosed on its lien on January 8, 2014, it foreclosed only on the
13 sub-priority portion of its lien;

14 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** the deed of trust, recorded
15 November 21, 2005, with the Clark County, Nevada Recorder's Office as Instrument No. 20051121-
16 0005667 remains a valid, secured encumbrance against the property located at 5327 March Butte St.,
17 Las Vegas, Nevada 89148; APN 163-30-312-007;

18 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED**, all persons or entities
19 whom were granted title or an interest in the property through the Association's January 8, 2014
20 foreclosure sale took such title or interest subject to the deed of trust.

21 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Notice of Lis
22 Pendens recorded against the property on August 31, 2015 as Instrument No. 20150831-0001732 is
23 hereby expunged.

24 ///

25 ///

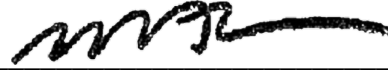
26 ///

27 ///

28 ///

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Notice of Lis Pendens recorded against the property on March 18, 2016 as Instrument No. 20160318-0000035 is hereby expunged

DATED April 30, 2020.



DISTRICT COURT JUDGE
Case Number: A-14-705563-C

Submitted by:

AKERMAN LLP

/s/ Melanie D. Morgan

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Nevada Bar No. 8215

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*Attorneys for Nationstar Mortgage LLC
and U.S. Bank, National Association, as
Trustee for the Certificateholders of the
LXS 2006-4N Trust Fund, erroneously
pled as U.S. Bank, N.A.*

Not approved as to content and
submitting competing order:

Kim Gilbert Ebron

/s/

Karen L. Hanks, Esq.

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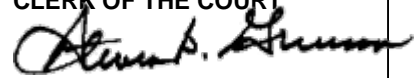
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*Attorneys for SFR Investments Pool 1,
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Attorneys for Defendant, Nationstar Mortgage, LLC and Defendant/Counterclaimant/Third-Party Defendant U.S. Bank, National Association, as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund, erroneously pled as U.S. Bank, N.A.

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

ALESSI & KOENIG, LLC, a Nevada limited liability company,

Plaintiff,

vs.

STACY MOORE, an individual; MAGNOLIA GOTERA, an individual; KRISTEN JORDAL, AS TRUSTEE FOR THE JBWNO REVOCABLE LIVING TRUST; U.S. BANK, N.A.; NATIONSTAR MORTGAGE, LLC; REPUBLIC SILVER STATE DISPOSAL, INC., et al.;

Defendants.

U.S. BANK., N.A.,,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited liability company,

Counter-Defendant.

Case No.: A-14-705563-C

Dept.: XXVI

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

1 U.S. BANK, N.A.

2 Third-Party Plaintiff,

3 vs.

4 SFR INVESTMENTS POOL 1, LLC, a Nevada
5 limited liability company, et al.

6 Third-Party Defendants.

7 **TO: ALL PARTIES OF RECORD AND THEIR COUNSEL:**

8 PLEASE TAKE NOTICE that the Findings of Fact, Conclusions of Law and Judgment has
9 been entered on April 30, 2020, a copy of which is attached hereto.

10 DATED May 4, 2020.

11 **AKERMAN LLP**

12 /s/ Melanie D. Morgan

13 MELANIE D. MORGAN, ESQ.

14 Nevada Bar No. 8215

15 DONNA M. WITTIG, ESQ.

16 Nevada Bar No. 11015

17 1635 Village Center Circle, Suite 200

18 Las Vegas, Nevada 89134

19 *Attorneys for Defendant, Nationstar Mortgage, LLC*
20 *and Defendant/Counterclaimant/Third-Party Defendant*
21 *U.S. Bank, National Association, as Trustee for the*
22 *Certificateholders of the LXS 2006-4N Trust Fund,*
23 *erroneously pled as U.S. Bank, N.A.*
24
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 4th day of May, 2020, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

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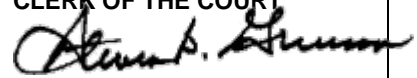
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/s/ Patricia Larsen

An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A



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*Attorneys for Nationstar Mortgage LLC and U.S.
Bank, National Association, as Trustee for the
Certificateholders of the LXS 2006-4N Trust Fund,
erroneously pled as U.S. Bank, N.A.*

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC, a Nevada limited
liability company,

Plaintiff,

vs.

STACY MOORE, an individual; MAGNOLIA
GOTERA, an individual; KRISTEN JORDAL,
AS TRUSTEE FOR THE JBWNO
REVOCABLE LIVING TRUST; U.S. BANK,
N.A.; NATIONSTAR MORTGAGE, LLC;
REPUBLIC SILVER STATE DISPOSAL, INC.,
et al.;

Defendants.

U.S. BANK, N.A.,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited
liability company,

Counter-Defendant.

Case No.: A-14-705563-C

Dept.: XXVI

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

<input type="checkbox"/>	Voluntary Dismissal	<input checked="" type="checkbox"/>	Summary Judgment
<input type="checkbox"/>	Involuntary Dismissal	<input type="checkbox"/>	Stipulated Judgment
<input type="checkbox"/>	Stipulated Dismissal	<input type="checkbox"/>	Default Judgment
<input type="checkbox"/>	Motion to Dismiss by Deft(s)	<input type="checkbox"/>	Judgment of Arbitration

U.S. BANK, N.A.

Third-Party Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a Nevada
limited liability company, et al.

Third-Party Defendants.

This matter proceeded to a bench trial on February 10, 2020. Karen Hanks, Esq. and Jason Martinez, Esq. appeared on behalf of SFR. Melanie Morgan Esq. and Ariel Stern, Esq. appeared on behalf of U.S. Bank. Having reviewed and considered the evidence and arguments of counsel, for the reasons stated on the record and in the pleadings, and good cause appearing, this Court makes the following findings of fact and conclusions of law.¹

FINDINGS OF FACT

1. In 1991, Nevada adopted the Uniform Common Interest Ownership Act as NRS 116, including NRS 116.3116(2). (FOFCOL² at ¶1).

2. On June 21, 2000, Shadow Mountain Ranch Community Association (Association) perfected and gave notice of its lien by recording its Declaration of Covenants, Conditions, and Restrictions (CC&Rs) in the Official Records of the Clark County Recorder in Book No. 20000621 as Instrument No. 01735. (*Id.* at ¶2).

Property Transfers, The Deed of Trust, and Assignments

3. On November 21, 2005, a Grant, Bargain, Sale Deed was recorded in the Official Records of the Clark County Recorder as Instrument No. 20051121-0005566, transferring real property located at 5327 Marsh Butte Street, Las Vegas, Nevada 89148; Parcel No. 163-30-312-007 (the property) to Magnolia Gotera. (*Id.* at ¶3).

///

¹ Any findings of fact that are more appropriately conclusions of law shall be so deemed. Any conclusions of law that are more appropriately findings of fact shall be so deemed.

² References to "FOF&COL" pertain to the Findings of Fact and Conclusions of Law filed on November 29, 2018 following the hearing on SFR, U.S. Bank and Nationstar's competing motions for summary judgment.

1 4. On November 21, 2005, a Deed of Trust listing Countrywide Home Loans, Inc. as
2 lender, with Mortgage Electronic Registration Systems, Inc. (MERS) as beneficiary, was recorded in
3 the Official Records of the Clark County Recorder as Instrument No. 20051121-0005567 (deed of
4 trust). (*Id.* at ¶4).

5 5. A Notice of Default and Election to Sell under Deed of Trust was recorded in the
6 Official Records of the Clark County Recorder on January 22, 2008 as Instrument No. 20080122-
7 0002564. (Jt. Trial Ex. 33).

8 6. On March 20, 2008, a Rescission of Election to Declare Default was recorded in the
9 Official Records of the Clark County Recorder as Instrument No.20080320-0001352. (Jt. Trial Ex.
10 34).

11 7. On May 27, 2011, a Grant Deed transferring the Property to JBWNO Revocable Living
12 Trust was recorded in the Official Records of the Clark County Recorder as Instrument No.
13 201105270004010. (*Id.* at ¶7).

14 8. On May 27, 2011, a Grant Deed transferring the Property to Stacy Moore was recorded
15 in the Official Records of the Clark County Recorder as Instrument No. 201105270004011. (*Id.* at ¶8).

16 9. On November 2, 2011, an assignment of deed of trust purportedly transferring the deed
17 of trust from MERS to U.S. Bank was recorded in the Official Records of the Clark County Recorder
18 as Instrument. No. 201111070000754. (*Id.* at ¶9).

19 **Default and HOA Foreclosure Sale**

20 10. On September 2, 2010, MERS as nominee for BAC Home Loans Servicing, LP,
21 through its counsel, Rock Jung of Miles, Bauer, Bergstrom & Winters, LLP, sent a letter to the
22 Association and Alessi requesting a superpriority payoff of the Association's lien. In response, Alessi
23 provided a payoff with a total amount due of \$3,544. On September 28, 2010, Miles Bauer sent a
24 check for \$207.00 to Alessi, which represented nine months of common assessments at \$23.00 per
25 month. (*See* FOF&COL at 15 in conjunction with order granting Nationstar's motion for
26 reconsideration at ¶¶ 3 and 4).

27 11. Tender of \$207.00 was the proper amount of the superpriority lien, as it was nine
28 months of assessments under NRS 116.3116(2). (FOF&COL at ¶ P).

12. Alessi received the Miles Bauer check and September 28, 2010 letter, but rejected the payment. (Jt. Trial Ex. 26 at NATIONSTAR00174-176; trial testimony of David Alessi; FOF&COL at ¶ Q).

13. On December 10, 2013, the Association recorded a Notice of Trustee's Sale in the Official Records of the Clark County. Recorder as Instrument No. 201307150002689 (Notice of Sale). (*See id.* at ¶17).

14. On January 8, 2014, Alessi held a public non-judicial foreclosure auction for the property. (*See id.* at ¶20).

15. SFR placed the highest cash bid of \$59,000.00. (*See id.* at ¶20).

16. The Trustee's Deed Upon Sale was recorded in the Official Records of the Clark County Recorder as Instrument No. 201401130001460 (Foreclosure Deed). (*Id.* at ¶24).

CONCLUSIONS OF LAW

A. Douglas Miles was properly disclosed as a witness in Nationstar's Second Supplemental Disclosure of Documents and Witnesses which was electronically served on SFR's counsel on June 1, 2019 and that and the Affidavit of Douglas Miles met the criteria of NRS 52.260 as a custodial declaration to authenticate the business records of the Miles Bauer Bergstrom & Winters law firm, which included the records and letters related to the tender." (Order granting Nationstar's motion for reconsideration at ¶ 3).

B. The documents related to the tender were also properly authenticated through the Affidavit of Rock Jung, Esq., which satisfies the requirements of NRS 52.025, as testimony of a person with personal knowledge." (Order granting Nationstar's motion for reconsideration at ¶ 4).

C. The Nevada Supreme Court held in *Horizon at Seven Hills Homeowners Association v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35, at 13 (Nev. April 28, 2016), that the superpriority lien granted by NRS 116.3116(2) does not include an amount for collection fees and foreclosure costs incurred; rather it is limited to an amount equal to the common expense assessments due during the nine months before foreclosure. While this Court acknowledges that in *Horizon at Seven Hills v. Ikon*, the association in question did not foreclose, the Nevada Supreme Court's in depth review of legislative history and statutory interpretation indicates the superpriority portion in question does not include fees

1 and costs. *Id.* at 70. Therefore, the court finds Miles Bauer's tender of \$207.00 was the proper amount
2 of the superpriority lien, as it was nine months of assessments under NRS 116.3116(2). (FOF&COL
3 at ¶ P).

4 D. In *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (2014), the Nevada
5 Supreme Court clearly stated that a first deed of trust holder's pre-foreclosure tender prevents the first
6 deed of trust from being extinguished. 334 P.3d at 414 ("[A]s junior lienholder, [the holder of the first
7 deed of trust] could have paid off the [HOA] lien to avert loss of its security[.]").

8 E. Here, U.S. Bank's predecessor's attempt to pay the statutory superpriority portion of the
9 Association's lien, prior to the foreclosure sale, extinguished the superpriority portion of the
10 Association's lien pursuant to the tender doctrine.

11 F. The Nevada supreme court has held that a lender's tender of the superpriority portion
12 of the statutory HOA lien extinguishes the superpriority lien, even if the tender is rejected. *Bank of*
13 *America v. SFR Investments Pool 1, LLC*, 427 P.3d 113, 118-20 (Nev. 2018) (hereinafter ***Diamond***
14 ***Spur***).

15 G. *Diamond Spur* further confirmed that (1) the letters Miles Bauer routinely sent in
16 conjunction with its tender check contained only one condition, upon which the tendering party had
17 the right to insist, and therefore do not contain impermissible conditions; (2) an association or an
18 association trustee's rejection of the tender check on the basis that it did not satisfy the entire amount
19 of the lien—or anything more than nine months of assessments and any nuisance abatement charges—is
20 not a good faith rejection; (3) the tendering party was neither required to record its tender nor “keep it
21 good” by paying the amount into court in order to discharge the superpriority portion of the
22 association's lien; and (4) that bona fide purchaser status is irrelevant in superpriority tender cases.
23 *Id.* at 117-21.

24 H. The tender check at issue in this case constituted a valid tender sufficient to discharge
25 the superpriority portion of the statutory HOA lien.

26 I. U.S. Bank's predecessor's tender was sufficient to discharge the superpriority portion
27 of the statutory association lien.

28 ///

1 J. The tender letter Miles Bauer sent, and Alessi received, in conjunction with its
2 superpriority payment did not contain any conditions and, therefore, the tender was unconditional.
3 Even if the tender letter did contain conditions, they were conditions upon which U.S. Bank's
4 predecessor had the right to insist. *See Diamond Spur*, 427 P.3d at 118.

5 K. U.S. Bank's predecessor was also not required to record notice of its superpriority
6 tender pursuant to either NRS 111.315 or NRS 106.220. *Id.* at 119. NRS 111.315 does not apply to
7 the tender because an association's lien does not create, alienate, assign, or surrender an interest in
8 land. Instead, “it *preserves* a pre-existing interest, which does not require recording.” *Id.* (emphasis
9 in original). With respect to NRS 106.220, U.S. Bank's predecessor cured the statutory superpriority
10 portion of the Association's lien by operation of law, as opposed to by recording a written instrument,
11 and therefore NRS 106.220 is not applicable.

12 L. Nevada law did not require U.S. Bank's predecessor to take any further steps to solidify
13 the legal effect of its tender, such as paying the money into court. *Id.* at 120. Imposing such a
14 requirement would “negate[] the purpose behind the unconventional HOA split-lien scheme: prompt
15 and efficient payment of the HOA assessment fees on defaulted properties.” *Id.*

16 M. Because U.S. Bank's predecessor tendered and satisfied the superpriority portion of the
17 Association's lien prior to the Association's foreclosure, the Association could only foreclosure on the
18 sub-priority portion of its lien. Therefore, SFR purchased only the sub-priority portion of the
19 Association's lien and took the property subject to the Deed of Trust.

20 N. At the close of U.S. Bank's case in chief, SFR moved under NRCP 52(c), arguing the
21 Deed of Trust was extinguished through operation of NRS 106.240. U.S. Bank opposed on procedural
22 and substantive grounds. The court considers SFR's NRS 106.240 argument on its substantive
23 merits. In deciding SFR's motion, the court has reviewed and considered the following, among other
24 things: the parties' trial briefs and the cases cited therein, the arguments of counsel at trial, and the
25 text of NRS 106.240. On that basis, the court denies SFR's NRCP 52(c) motion.

26 O. U.S. Bank protected its Deed of Trust from NRS 106.240 by filing the subject quiet
27 title action on August 18, 2015, prior to ten years following the date upon which SFR claims the loan
28

1 obligation became "wholly due." U.S. Bank did not need to do anything else to avoid operation of
2 NRS 106.240.

3 P. In addition, NRS 106.240 does not apply because SFR is not a party to the note and is
4 not subject to any type of enforcement action concerning the underlying loan obligation. The court
5 has considered *Pro-Max Corp. v. Feenstra*, 117 Nev. 90, 16 P.3d 1074 (2001), and finds the case does
6 not help SFR. As a non-party to the note not subject to personal liability on the obligation, NRS
7 106.240 does not apply to SFR.

8 Q. If any of these conclusions of law are more properly considered findings of fact, they should
9 be so construed.

10 **JUDGMENT**

11 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that when Shadow Mountain
12 Ranch Homeowners Association foreclosed on its lien on January 8, 2014, it foreclosed only on the
13 sub-priority portion of its lien;

14 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** the deed of trust, recorded
15 November 21, 2005, with the Clark County, Nevada Recorder's Office as Instrument No. 20051121-
16 0005667 remains a valid, secured encumbrance against the property located at 5327 March Butte St.,
17 Las Vegas, Nevada 89148; APN 163-30-312-007;

18 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED**, all persons or entities
19 whom were granted title or an interest in the property through the Association's January 8, 2014
20 foreclosure sale took such title or interest subject to the deed of trust.

21 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Notice of Lis
22 Pendens recorded against the property on August 31, 2015 as Instrument No. 20150831-0001732 is
23 hereby expunged.

24 ///

25 ///

26 ///

27 ///

28 ///

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Notice of Lis Pendens recorded against the property on March 18, 2016 as Instrument No. 20160318-0000035 is hereby expunged

DATED April 30, 2020.



DISTRICT COURT JUDGE
Case Number: A-14-705563-C

Submitted by:

AKERMAN LLP

/s/ Melanie D. Morgan

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*Attorneys for Nationstar Mortgage LLC
and U.S. Bank, National Association, as
Trustee for the Certificateholders of the
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Not approved as to content and
submitting competing order:

Kim Gilbert Ebron

/s/

Karen L. Hanks, Esq.

Nevada Bar No. 9578

Jason G. Martinez, Esq.

Nevada Bar No. 13375

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Las Vegas, NV 89139

*Attorneys for SFR Investments Pool 1,
LLC*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

February 03, 2016

A-14-705563-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Stacy Moore, Defendant(s)

February 03, 2016 8:30 AM Motion to Dismiss

HEARD BY: Johnson, Eric **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Linda Skinner

RECORDER:

REPORTER: Amber McClane

PARTIES

PRESENT: Connell, Christopher S. Attorney
 Heidari, Saman R. Attorney

JOURNAL ENTRIES

- Arguments by Mr. Heidari and Mr. Connell in support of their respective positions. Following, COURT ORDERED, Motion to Dismiss is DENIED. Mr. Connell to prepare the Order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

October 05, 2016

A-14-705563-C	Alessi and Koenig LLC, Plaintiff(s) vs. Stacy Moore, Defendant(s)
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October 05, 2016 8:30 AM Motion to Interplead

HEARD BY: Johnson, Eric **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Linda Skinner

RECORDER: Angie Calvillo

REPORTER:

PARTIES

PRESENT:	Connell, Christopher S.	Attorney
	Gilbert, Jacqueline	Attorney
	Loizzi, Steven T., Jr.	Attorney

JOURNAL ENTRIES

- Upon Court's inquiry as to a response, Mr. Loizzi advised they have not filed one as they need a ruling on the Declaration for Non-Monetary Status first to know whether or not they need to respond to this Motion. Statements by Mr. Connell in support of this Motion. Mr. Loizzi advised this Motion can not be ruled on until there is a decision on the Declaration for Non-Monetary Status. Mr. Connell argued that Alessi and Koenig have funds that they don't know where they come from. Following colloquy, COURT ORDERED, Mr. Loizzi to provide an accounting and hold funds in the account until further Order from this Court. Further, deadline for accounting is October 19, 2016.

Statements by Mr. Loizzi as to the Declaration. Following colloquy, COURT ORDERED, matter SET for hearing as to the Declaration.

10/26/16 10:30 AM HEARING: DECLARATION OF NON-MONETARY STATUS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

November 08, 2016

A-14-705563-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Stacy Moore, Defendant(s)

November 08, 2016 3:00 PM Minute Order

HEARD BY: Johnson, Eric

COURTROOM: RJC Courtroom 10D

COURT CLERK: Natalie Ortega

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Defendants Objection to Alessi & Koenig s Declaration of Non-Monetary Status has been granted by Judge Johnson. This Court finds Alessi & Koenig not a trustee under a deed of trust in this case, and thus shall remain an active participant in the litigation. Nationstar s Motion to Account for and Interplead Funds has also been granted by Judge Johnson. Alessi & Koenig to provide a full accounting of the funds.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters**COURT MINUTES****March 14, 2018**

A-14-705563-C Alessi and Koenig LLC, Plaintiff(s)
 vs.
 Stacy Moore, Defendant(s)

March 14, 2018 8:30 AM All Pending Motions

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Olivia Black

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT: Gerrard, Douglas D Attorney

JOURNAL ENTRIES

- Jamie Combs, Esq. appearing on behalf of Defendant US Bank, Jason Martinez, Esq. appearing on behalf of Counter Claimant SFR Investments Pool 1 LLC

Court noted this was Defendant Nationstar Motion to Reopen Discovery and Continue Trial and stated the procedural history of the case. Mr. Gerrard advised two months into discovery Counter Defendant Alessi file bankruptcy which put a Stay on discovery. Mr. Gerrard further advised he hadn't been able to complete discovery because of the automatic Stay and requested a short continuance. Upon Court's inquiry, Mr. Gerrard advised he hadn't taken the deposition of the purchaser and didn't have an opportunity to disclose an expert. Ms. Combs was in agreement with Mr. Gerrard representations. In opposition, Mr. Martinez argued the Stay only applied to Defendant Alessi and SFR continued with discovery and completed it; however, Mr. Martinez agreed to opening discovery for the limited purpose for dispositive motions. Further argument by Mr. Gerrard. COURT ORDERED, Motion GRANTED with the modification of dates as follows: Discovery cut-off date, June 2, 2018; Initial Expert Disclosures Deadline, April 20, 2018; Rebuttal Expert Disclosures deadline, May 1, 2018 and Dispositive Motion deadline, July 1, 2018. COURT FURTHER ORDERED, Trial dates VACATED and RESET; U.S. Bank, N.A. as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund's Joinder to Nationstar Mortgage LLC's Motion to Reopen Discovery and Continue Trial Date (First Request) ADVANCED. Mr. Gerrard to prepare the Order and submit to

opposing counsel to sign off as to form and content.

08/29/18 9:00 AM CALENDAR CALL

09/04/18 9:00 AM BENCH TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters**COURT MINUTES****April 18, 2018**

A-14-705563-C Alessi and Koenig LLC, Plaintiff(s)
 vs.
 Stacy Moore, Defendant(s)

**April 18, 2018 3:00 AM Motion to Withdraw as
 Counsel**

HEARD BY: Villani, Michael**COURTROOM:** RJC Courtroom 11A**COURT CLERK:** Olivia Black**RECORDER:****REPORTER:**

**PARTIES
 PRESENT:**

JOURNAL ENTRIES

- HOA Lawyer's Group, LLC s Motion to Withdraw as Counsel of Record for Alessi & Koenig, LLC came before this Court on the April 18, 2018 Chamber Calendar. This Court, having reviewed the pleadings and papers on file herein, there being no opposition filed with this Court and pursuant to EDCR 2.20, 2.23, and for good cause appearing, COURT ORDERED HOA Lawyer s Group, LLC's Motion to Withdraw as Counsel of Record for Alessi & Koenig, LLC Motion to Withdraw as Counsel of Record GRANTED. HOA Lawyer's Group, LLC is further directed to submit a proposed order consistent with the foregoing within ten (10) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. HOA Lawyer's Group, LLC is further directed to inform its client of all deadlines (including the calendar call set for August 29, 2018 and the bench trial set for September 4, 2018) and turn over any documents, papers, or files as necessary.

CLERK S NOTE: A copy of the foregoing minute order has been electronically distributed to all registered parties.//ob/04/18/18.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

August 15, 2018

A-14-705563-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Stacy Moore, Defendant(s)

August 15, 2018 8:30 AM All Pending Motions

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Haly Pannullo

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT: Gerrard, Douglas D Attorney

JOURNAL ENTRIES

- COUNTER CLAIMANT SFR INVESTMENTS POOL 1 LLC'S MOTION FOR SUMMARY JUDGMENT ... CROSS-DEFENDANT NATIONSTAR MORTGAGE, LLC'S MOTION FOR SUMMARY JUDGMENT

Donna Wittig, Esq., present on behalf of US Bank and Nationstar. Jason Martinez, Esq., present on behalf of SFR Investments.

Following arguments by counsel, COURT ORDERED, matters TAKEN UNDER ADVISEMENT; written decision will issue.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

August 29, 2018

A-14-705563-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Stacy Moore, Defendant(s)

August 29, 2018 9:00 AM Calendar Call

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Haly Pannullo

RECORDER: Michelle Ramsey

REPORTER:

PARTIES

PRESENT: Gerrard, Douglas D Attorney

JOURNAL ENTRIES

- Dawna Wittig, Esq., present on behalf of US Bank NA and Nationstar. Karen Hanks, Esq., present on behalf of SFR Investments Pool 1 LLC.

Upon Court's inquiry, Mr. Gerrard stated they are ready for trial; however, Motions for Summary Judgment were argued last week and they are awaiting a decision. Court noted a decision will be made by this Friday.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

September 04, 2018

A-14-705563-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Stacy Moore, Defendant(s)

September 04, 2018 8:00 AM Minute Order

HEARD BY: Villani, Michael

COURTROOM: Chambers

COURT CLERK:

Lauren Kidd

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Counter-Defendant SFR Investments Pool 1, LLC s (SFR) Motion for Summary Judgment and Cross-Defendant Nationstar Mortgage, LLC s (Nationstar) Motion for Summary Judgment came before this Court on the August 15, 2018 oral calendar. The Court having further reviewed the pleadings, files, and argument finds as follows:

Summary judgment is appropriate when the pleadings and other evidence on file demonstrate no genuine issue as to any material fact [remains] and the moving party is entitled to judgment as a matter of law. See NRCP 56(c); Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). In ruling upon a motion for summary judgment, the Court must view all evidence and inferences in the light most favorable to the non-moving party. See Torrealba v. Kesmetis, 124 Nev. 95, 178 P.3d 716 (2008). To rebut a motion for summary judgment, the nonmoving party must present some specific facts to demonstrate that a genuine issue of material fact exists. Forouzan, Inc. v. Bank of George, 128 Nev. 896, 381 P.3d 612 (2012).

SFR seeks summary judgment based on the following: (1) Quiet Title and Permanent Injunction against U.S. Bank, (2) Unjust Enrichment against U.S. Bank, (3) Slander of Title against Nationstar, and (4) pursuant to NRS 116.31166(2) against Moore and Gotera.

Nationstar seeks summary judgment based on the following: (1) Nationstar's predecessor in interest redeemed the first DOT's priority by tendering the full amount of the HOA's super-priority lien, (2) the foreclosure sale was invalid, and (3) SFR is not a bona fide purchaser.

Quiet Title & Declaratory Relief U.S. Bank

(a) Title was vested in SFR without equity or right of redemption.

NRS 116.3116(3) provides, [t]he sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the unit's owner without equity or right of redemption. According to the NSC, these sales vest the purchaser with absolute title. In re Grant, 303 B.R. 205, 209 (Bankr. D. Nev. 2003). A sale under a Chapter 107 non-judicial foreclosure sale vests in the purchaser the title of the grantor and any successors in interest without equity or right of redemption. If the sale is properly, lawfully and fairly carried out, [the Bank] cannot unilaterally create a right of redemption in [itself]. Golden v. Tomiyasu, 79 Nev. 503, 518 (1963).

Here, the sale was a non-judicial foreclosure sale conducted pursuant to NRS 116.3116(2). The COURT FINDS the sale vested in SFR title without equity or right of redemption and title must be quieted in favor of SFR.

(b) The deed recitals are conclusive.

Shadow Wood holds that the deed recitals are conclusive, unless a party like Nationstar can establish that it is entitled to equitable relief from a defective sale. Shadow Wood HOA v. N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5, 1105 (2016).

Here, Nationstar has not established that this was a defective sale. As the purchaser at the Association foreclosure sale, SFR need only show the Trustee's Deed Upon Sale to be entitled to quiet title free and clear of the deed of trust since there was no defective sale. The COURT FINDS the deed recitals are conclusive.

(c) U.S. Bank is not Entitled to Equitable Relief.

The Nevada Supreme Court stated that when a BFP has no notice of a pre-sale dispute, such as an attempted tender, equity cannot be granted to the tendering party, who could defeat any BFP status by giving notice of an attempt to pay. Equitable relief cannot be granted to a party who ignored earlier remedies and allowed a BFP to purchase the property, when the relief would be to the detriment to the BFP.

Here, the Bank failed to adequately protect its interest. It failed to try for earlier remedies and allowed a BFP to purchase the property. The COURT FINDS equitable relief is no longer available to the Bank.

(d) The Foreclosure Deed and Sale are Presumed Valid.

SFR contends that U.S. Bank cannot overcome the presumptions that (1) the Association and its agent obeyed the law, (2) the property was conveyed to SFR, (3) the Association foreclosure sale was fair and regular, and conducted in the ordinary course of business.

The COURT FINDS the DOT was extinguished by the Association foreclosure sale and since the property was conveyed to SFR, SFR is entitled to summary judgment on its claim for quiet title and permanent injunction. Nationstar has not overcome the conclusive presumption that the foreclosure sale and resulting deed are valid, and SFR can rely on the conclusive recitals in the foreclosure deed.

Unjust Enrichment U.S. Bank

To prevail on a claim for unjust enrichment, U.S. Bank must show that it conferred a benefit on SFR, that SFR appreciated such benefit, and there was acceptance and retention by [SFR] of such benefit under circumstances such that it would be inequitable for [SFR] to retain the benefit without payment of the value thereof. *Unionamerica Mtg. v. McDonald*, 97 Nev. 210 212 (1981). Under NRCP 16.1(a)(1)(C), a party is required to produce, without awaiting a discovery request . . . [a] computation of any category of damages claimed.

U.S. Bank contends that SFR has benefited from U.S. Bank's payment of taxes, insurance, and homeowner's association assessments since the time of the HOA sale. However, U.S. Bank has not proven this to be true nor produced evidence that any such payments were made. Further, U.S. Bank has never disclosed any special damages under NRCP 16.1 on this issue. There being no evidence that U.S. Bank paid any monies toward the property or that SFR benefited from these payments. Therefore, the COURT FINDS U.S. Bank's claim for unjust enrichment fails as a matter of law.

Tender and Bona Fide Purchaser

Nationstar contends a proper tender was made on 9/2/10 for the amount of \$207.00 which represented the statutory super-priority amount of the HOA's lien at \$23.00 per month for months, thereby discharging the super priority lien in dispute. The Nevada Supreme Court held in *Horizons at Seven Hills v. Ikon Holdings*, 132 Nev. Adv. Op 35, 373 P.3d 66 (2016) that the superpriority lien granted by NRS 116.3116(2) does not include an amount for collection fees and foreclosure costs incurred; rather it is limited to an amount equal to the common expense assessments due during the nine months before foreclosure. While this Court acknowledges that in *Horizons at Seven Hills v. Ikon*, the association in question did not foreclose, the Nevada Supreme Court's in depth review of legislative history and statutory interpretation indicates the superpriority portion in question does not include fees and costs. *Id.* at 70.

Therefore, the COURT FINDS said tender of \$207.00 was the proper amount of the superpriority lien, as it months of assessments under NRS 116.3116(2). The question then hinges on whether this tender precludes SFR from taking said property free and clear of Nationstar's interest, or whether SFR takes

said property subject to Nationstar's interest. The Court looks to whether refusal of the tender was grounded on an honest belief that the tender was insufficient. See, 59 C.J.S. Mortgages 582 (2016); Bank of Am., N.A. v. Rugged Oaks Investments, LLC, 68504, 2016 WL 5219841, at *1 (Nev. Sept. 16, 2016)(It has been held... that a good and sufficient tender on the day when payment is due will relieve the property from the lien of the mortgage, except where the refusal [of payment] was... grounded on an honest belief that the tender was insufficient.).

Nationstar's tender of the past due assessments in the amount of \$207.00 occurred on 9/2/10, which was rejected by the HOA Trustee. However, SFR did not have knowledge of this tender, either by inquiry notice or constructive notice. Nationstar has failed to set forth sufficient information that proper notice of the tender was provided, such that individuals or entities would be put on notice of the same. The Association rejected the payment in good faith. Nationstar failed to record its performance so as to protect itself from third-party purchasers as required by NV law. David Alessi testified that Alessi & Koenig did not receive the letter with the check. If Alessi & Koenig never received the purported tender there was nothing to reject. All Nationstar has is a copy of the purported check and a screenshot, neither of which are properly admissible. Further, Doug Miles was not disclosed and has defects of his affidavit. Nationstar is lacking admissible evidence to establish the delivery of the check, or admissible evidence that the check was rejected without explanation. Thus, SFR was a bona fide purchaser (BFP).

A subsequent purchaser is bona fide under common-law principles if it takes the property for a valuable consideration and without notice of the prior equity, and without notice of facts which upon diligent inquiry would be indicated and from which notice would be imputed to him, if he failed to make such inquiry. Bailey v. Butner, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947) (emphasis omitted); see also Moore v. De Bernardi, 47 Nev. 33, 54, 220 P. 544, 547 (1923) (The decisions are uniform that the bona fide purchaser of a legal title is not affected by any latent equity founded either on a trust, [e]ncumbrance, or otherwise, of which he has no notice, actual or constructive.). The Nevada Supreme Court has further held, that [w]here the complaining party has access to all the facts surrounding the questioned transaction and merely makes a mistake as to the legal consequences of his act, equity should normally not interfere, especially where the rights of third parties might be prejudiced thereby. Shadow Wood 366 P.3d at 1116 (quoting Nussbaumer v. Sup. Ct. in & for Yuma Cty., 107 Ariz. 504, 489 P.2d 843, 846 (1971)). In Shadow Wood, the Nevada Supreme Court held that [c]onsideration of harm to potentially innocent third parties is especially pertinent where [the lender] did not use the legal remedies available to it to prevent the property from being sold to a third party, such as by seeking a temporary restraining order and preliminary injunction and filing a lis pendens on the property. . Shadow Wood, 366 P.3d at 1114 fn. 7.

Here, Nationstar was in the position to take any number of simple steps to avoid a BFP issue and simply failed to take such action. Nationstar has failed to offer any evidence to refute that SFR had no knowledge of a prior equity and paid valuable consideration. Nationstar has failed to offer evidence to refute that SFR had no knowledge of a prior equity and paid valuable consideration. Lastly, in the Hardin declaration, SFR provided evidence of being a BFP

The COURT FINDS Nationstar failed to protect its interest in said property, and SFR is a BFP.

Grossly inadequate sales price and commercial unreasonableness

Nationstar contends the sales price at the HOA foreclosure sale was grossly inadequate and was commercially unreasonable. To set aside an association foreclosure sale on a theory of commercial unreasonableness there must be a showing of grossly inadequate price, plus, fraud, unfairness, or oppression. *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1112 (2016) (citing *Long v. Towne*, 98 Nev. 11, 13, 639, P.2d 528, 530 (1982)) See also *Centeno v. JP Morgan Chase Bank, N.A.*, 67365, 2016 WL 1122449, at *1 (Nev. Mar. 18, 2016)(unpublished Order Vacating and Remanding)(Holding a low sales price is not a basis for voiding a foreclosure sale absent fraud, unfairness, oppression...) See also *Golden v. Tomiyasu*, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963) (stating that, while a power-of-sale foreclosure may not be set aside for mere inadequacy of price, it may be if the price is grossly inadequate and there is in addition proof of some element of fraud, unfairness, or oppression (internal quotation omitted))).

The Supreme Court of Nevada recently clarified that in Nevada, courts retain the power to grant equitable relief from a defective [association] foreclosure sale when appropriate *Shadow Wood Homeowners Ass'n, Inc. v. New York Cmty. Bancorp, Inc.*, 366 P.3d 1105, 1110 (Nev.2016) (en banc). [D]emonstrating that an association sold a property at its foreclosure sale for an inadequate price is not enough to set aside a foreclosure sale; there must also be a showing of fraud, unfairness, or oppression. *Id.* (citing *Long*, 98 Nev. 11, 639 P.2d 530). In considering whether equity supports setting aside the sale in question, the Court is to consider any other factor bearing on the equities, including actions or inactions of both parties seeking to set aside the sale and the impact on a bona fide purchaser for value. *Id.* at 1114 (finding courts must consider the entirety of the circumstances that bear upon the equities).

Here, Nationstar contends that the sale should be set aside under equitable principles because the sale of the Property for less than 20% of its fair market value is grossly inadequate. The Court, however, does not find this argument to be persuasive. The analysis for finding fraud, unfairness, or oppression applies to the seller (HOA) and purchaser (RJRN), not whatever mistake may have occurred by the HOA in rejecting tender or accepting payments from the Borrower. See *Golden v. Tomiyasu*, 79 Nev. 503, 513, 387 P.2d 989, 994 (reviewing fraud and collusion between the foreclosing trustee and bidders, not fraud, unfairness, or oppression in the underlying trustee's substantive actions). See also *Centeno v. JP Morgan Chase Bank, N.A.*, 67365, 2016 WL 1122449, at *1 (Nev. Mar. 18, 2016)(unpublished Order Vacating and Remanding)(Holding a low sales price is not a basis for voiding a foreclosure sale absent fraud, unfairness, oppression...).

Because Nationstar failed to set forth material issues of fact demonstrating some fraud, unfairness, or oppression with the actual sale to demonstrate commercial unreasonableness, the COURT FINDS the sale in question was commercially reasonable.

Slander of Title - Nationstar

On 8/31/15 Nationstar recorded a lis pendens against the property. NRS 14.015 sets forth the requirements for maintaining a lis pendens on a property. Here, when Nationstar recorded the lis pendens, it did not have a pending action that was for (1) foreclosure or (2) that affected title or possession of the property and still has no pending claims against SFR today.

The NRCP30(b)(6) deposition of U.S. Bank and Nationstar, concedes that Nationstar only services the loan and that it does not have an interest in the promissory note or deed of trust. Because Nationstar lacked any basis to record the lis pendens against the property in the first place and still lacks basis to maintain it, SFR is entitled to a judgment from this Court that the lis pendens be expunged. SFR's claims against Moore and Gotera pursuant to NRS 116.31166(2)

Pursuant to NRS 116.31166(2), when SFR made the highest bid and purchased the property at the Association sale, it obtained the title of the unit's owner without equity or right of redemption. Thus, any interest Moore and/or Gotera could claim in the property was extinguished. On 6/27/18 default was entered against Moore and Gotera for failing to answer SFR's complaint.

Therefore, COURT ORDERED Counter-Defendant SFR's Motion for Summary Judgment GRANTED and Cross-Defendant Nationstar's Motion for Summary Judgment DENIED.

Counsel for Counter-Defendant SFR is directed to submit a proposed order consistent with the foregoing within ten (10) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing and be approved as to form and content by Cross-Defendant Nationstar's counsel.

CLERK'S NOTE: A copy of this minute order was distributed to the following via email: Melanie Morgan, Esq. (melanie.morgan@akerman.com) Diana Cline, Esq. (victoria@hkimlaw.com) .9/4/18 lk

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

February 05, 2019

A-14-705563-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Stacy Moore, Defendant(s)

February 05, 2019 8:24 AM Minute Order

HEARD BY: Cory, Kenneth

COURTROOM: RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- The Court has disqualified it self from any cases for which Douglas Gerrard is counsel, due to the fact the Court attends church with Mr. Gerrard and has a personal friendship with him. To avoid the appearance of impropriety and implied bias, this Court hereby disqualifies itself and ORDERS, this case be REASSIGNED at random.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

March 26, 2019

A-14-705563-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Stacy Moore, Defendant(s)

**March 26, 2019 9:00 AM Motion For
Reconsideration**

HEARD BY: Sturman, Gloria **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Lorna Shell

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT: Gerrard, Douglas D Attorney
Martinez, Jason G. Attorney

JOURNAL ENTRIES

- Following extensive arguments by counsel, COURT FINDS there were questions fact if tender was received and if the affidavit of counsel was sufficient to overcome testimony of the custodian of records; this Court can reconsider the issues since the case was reassigned; COURT THEREFORE ORDERED, Motion GRANTED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

December 12, 2019

A-14-705563-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Stacy Moore, Defendant(s)

December 12, 2019 9:00 AM Calendar Call

HEARD BY: Sturman, Gloria

COURTROOM: RJC Courtroom 10D

COURT CLERK: Sharon Chun

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT: Martinez, Jason G. Attorney

JOURNAL ENTRIES

-- CALENDAR CALL

ALSO PRESENT was Donna Wittig on behalf of US Bank NA

Counsels anticipated two days required for the bench trial completion. Following discussion, COURT ORDERED the 1/6/20 Bench Trial VACATED and DATES SET as follows:

Pretrial Conference - 1/22/20 10:00 AM - Counsel are to bring in exhibits at this time
Bench Trial - 1/29/20 and 1/30/20 @ 1:30 PM
Bench Trial - 1/31/20 @ 9:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

January 16, 2020

A-14-705563-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Stacy Moore, Defendant(s)

January 16, 2020 9:00 AM Calendar Call

HEARD BY: Sturman, Gloria

COURTROOM: RJC Courtroom 10D

COURT CLERK: Lorna Shell

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT: Martinez, Jason G. Attorney
 Morgan, Melanie D. Attorney

JOURNAL ENTRIES

- Following colloquy regarding the five-year rule, COURT ORDERED Trial Dates SET; Pre Trial Conference SET.

02/05/20 10:30 AM PRE TRIAL CONFERENCE

02/10/20 9:00 AM BENCH TRIAL

02/11/20 1:30 PM BENCH TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

February 05, 2020

A-14-705563-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Stacy Moore, Defendant(s)

February 05, 2020 10:30 AM Pre Trial Conference

HEARD BY: Sturman, Gloria

COURTROOM: RJC Courtroom 10D

COURT CLERK: Lorna Shell

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT: Hanks, Karen Attorney
 Morgan, Melanie D. Attorney

JOURNAL ENTRIES

- Counsel agreed to move the trial start time to 10:00 AM.

Ms. Morgan stated the scope was narrow and the only issue of fact being delivery of the Miles Bauer letter and the impact of NRS 106.240.

COURT FINDS Alessi and Koenig was out of the case with their bankruptcy filing and there were no interplead funds by them. Further, the only parties left were from counterclaims and/or third parties.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

February 10, 2020

A-14-705563-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Stacy Moore, Defendant(s)

February 10, 2020 10:00 AM Bench Trial

HEARD BY: Sturman, Gloria

COURTROOM: RJC Courtroom 10D

COURT CLERK: Louisa Garcia

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT:	Hanks, Karen	Attorney
	Martinez, Jason G.	Attorney
	Morgan, Melanie D.	Attorney
	Stern, Ariel E.	Attorney

JOURNAL ENTRIES

- Also present, Edward Hine, Representative of US Bank NA.

Court advised US Bank and SFR are the only parties in the case; all the other remaining parties are out of the case. Ms. Morgan moved to admit Exhibit 26, Bate Nos. 0036-42, Alessi and Koenig's collection file, the custodian of records affidavit of David Alessi. Ms. Hanks objected as to authenticity. Court advised it was not clear if there was an error in reproducing the document or if the error came from Alessi's office, noting the documents in the middle of the affidavit had nothing to do with the affidavit. Ms. Morgan stated she spoke with Mr. Alessi and he indicated he would be present at 1:15 p.m. Counsel stipulated to Exhibits 3 and 19; Exhibit 33 admitted over objection and 34 admitted without objection. (See worksheets). Colloquy regarding case law. COURT RECESSED until 1:15 p.m.

Following recess, testimony and exhibits presented. (See worksheets) Ms. Morgan RESTED. At the conclusion of Plaintiff's case, Ms. Hanks made an oral 52(c) motion. Following arguments by counsel, which the Court considered, COURT ORDERED, Motion DENIED. Arguments by counsel regarding

their respective relief. COURT FINDS that proper tender was made and finds in favor of the Bank. Mr. Stern to prepare Order. At the request of counsel, all unused exhibits were destroyed.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

May 07, 2020

A-14-705563-C Alessi and Koenig LLC, Plaintiff(s)
vs.
Stacy Moore, Defendant(s)

May 07, 2020 1:00 AM Status Check

HEARD BY: Sturman, Gloria **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Lorna Shell

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT ORDERED, Hearing VACATED as the order was received and signed on May 4, 2020.

EXHIBIT(S) LIST

5563

XXVI

Trial Date:

21020

Judge:

Gloria Sturman

Court Clerk:

LORNA Shell &

Recorder:

Kenny ESPARZA

Counsel for Plaintiff:

Karen Hanks, Esq

vs.

Defendant: **NATIONSTAR MORTGAGE**

Counsel for Defendant:

Melanie Morgan, Esq

Bench TRIAL BEFORE THE COURT

JOINT EXHIBITS

[illegible]

List of Joint Trial Exhibits

<u>NO.</u>	<u>EXHIBIT</u>	<u>BATES NO.</u>	<u>OFFERED</u>	<u>OBJECTED</u>	<u>ADMITTED</u>
1.	Declaration of Covenants, Conditions and Restrictions for Shadow Mountain Ranch	WFZ00001 – WFZ00080			
2.	Grant, Bargain, Sale Deed	WFZ00094 – WFZ00095			
3.	Deed of Trust	WFZ00096 – WFZ00121	2/10/20	Stip	2/10/20
4.	Substitution of Trustee Nevada	WFZ00124			
5.	Notice of Delinquent Assessment (5/7/08)	WFZ00126			
6.	Notice of Default and Election to Sell Under Homeowners Association Lien (7/23/08)	WFZ00127			
7.	Notice of Default and Election to Sell Under Homeowners Association Lien (4/30/09)	WFZ00128			
8.	Notice of Default and Election to Sell Under Homeowners Association Lien (7/1/10)	WFZ00129			
9.	Notice of Trustee's Sale	WFZ00130			
10.	Grant Deed to JWBNO	WFZ00131 – WFZ00134			
11.	Grant Deed to Stacy Moore	WFZ00135 – WFZ00138			
12.	Assignment of Deed of Trust	WFZ00139 – WFZ00140			
13.	Notice of Delinquent Assessment (Lien) (9/11/12)	WFZ00141			
14.	Notice of Violation (Lien)	WFZ00142			
15.	Notice of Default and Election to Sell Under Homeowners Association Lien (6/13/13)	WFZ00143			
16.	Notice of Default and Election to Sell Under Homeowners Association Lien (7/5/13)	WFZ00144			
17.	Assignment of Deed of Trust	WFZ00145 – WFZ00146			
18.	Notice of Trustee's Sale	WFZ00147			
19.	Trustee's Deed Upon Sale	WFZ00148 – WFZ00149	2/10/20	Stip	2/10/20
20.	Substitution of Trustee	WFZ00150			
21.	Scott Dugan's expert report with attachments	WFZ00151 – WFZ00182			
22.	Miles Bauer Borrower Affidavit with Exhibits	WFZ00183 – WFZ00190			
23.	Miles Bauer Affidavit with Exhibits	WFZ00191 – WFZ00211			
24.	Foreclosure notices stamped received	WFZ00212 – WFZ00253			

** Exhibits not used, Destroyed.*

NO.	EXHIBIT	BATES NO.	OFFERED	OBJECTED	ADMITTED
25.	Loan Policy of Title Insurance	WFZ00254 – WFZ00276			
26.	Documents produced by Alessi	NATIONSTAR 00036 – NATIONSTAR 00333	2/10/20	y	2/10/20
27.	Documents produced by Shadow Mountain Community Association	SMRCA0001 – SMRCA0461			
28.	Note	NATIONSTAR 00001 – NATIONSTAR 00006			
29.	Written discovery responses by all parties.				
30.	Check and Receipt	SFR335 – SFR336			
31.	Notice of Lien recorded 1/12/10	SFR39			
32.	Release of Notice Delinquent Assessment Lien	SFR42			
33.	Notice of Default and Election to Sell under Deed of Trust	SFR29 – SFR30	2/10/20	y	2/10/20
34.	Rescission of Election to Declare Default	SFR32	2/10/20	no	2/10/20

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

DIANA S. EBRON, ESQ.
7625 DEAN MARTIN DR., SUITE 110
LAS VEGAS, NV 89139

DATE: June 4, 2020
CASE: A-14-705563-C

RE CASE: ALESSI & KOENIG, LLC vs. STACY MOORE; MAGNOLIA GOTERA; KRISTIN JORDAL, AS TRUSTEE FOR THE JBNWO REVOCABLE LIVING TRUST; U.S. BANK, N.A.; NATIONSTAR MORTGAGE, LLC; REPUBLIC SILVER STATE DISPOSAL, INC. dba REPUBLIC SERVICES

NOTICE OF APPEAL FILED: June 3, 2020

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 (g) 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; NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW; ORDER GRANTING NATIONSTAR MORTGAGE, LLC'S MOTION FOR RECONSIDERATION AND TO ALTER/AMEND JUDGMENT; NOTICE OF ENTRY OF ORDER GRANTING NATIONSTAR MORTGAGE, LLC'S MOTION FOR RECONSIDERATION AND TO ALTER/AMEND JUDGMENT; PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

ALESSI & KOENIG, LLC,

Plaintiff(s),

vs.

STACY MOORE; MAGNOLIA GOTERA;
KRISTIN JORDAL, AS TRUSTEE FOR THE
JBWNO REVOCABLE LIVING TRUST; U.S.
BANK, N.A.; NATIONSTAR MORTGAGE,
LLC; REPUBLIC SILVER STATE DISPOSAL,
INC. dba REPUBLIC SERVICES,

Defendant(s),

Case No: A-14-705563-C

Dept No: XXVI

U.S. BANK, N.A.,

Third-Party Plaintiff(s),

vs.

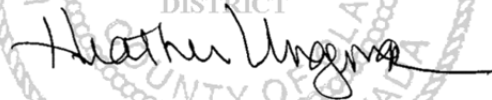
SFR INVESTMENTS POOL 1, LLC,

Third-Party Defendant(s),

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 4 day of June 2020.

Steven D. Grierson, Clerk of the Court

A handwritten signature in black ink, reading "Heather Ungermann", is written over a faint, circular court seal. The seal contains the text "UNITED STATES DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT COUNTY OF CLATSOP STATE OF OREGON".

Heather Ungermann, Deputy Clerk
A-14-705563-C