

Electronically Filed  
Sep 11 2020 10:01 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**ANOA**  
DIANA S. EBRON, ESQ.  
Nevada Bar No. 10580  
E-mail: diana@kgelegal.com  
JACQUELINE A. GILBERT, ESQ.  
Nevada Bar No. 10593  
E-mail: jackie@kgelegal.com  
KAREN L. HANKS, ESQ.  
Nevada Bar No. 9578  
E-mail: karen@kgelegal.com  
**KIM GILBERT EBRON**  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
Telephone: (702) 485-3300  
Facsimile: (702) 485-3301  
*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,

Case No. A-14-705563-C

Dept. No. 26

**AMDNEDED NOTICE OF APPEAL**

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,

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 ("Nationstar") 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 ("April 30, 2020 FFCOL"), notice of entry of which was filed on May 4, 2020;
4. Stipulation and Order to Certify [as Final] the Findings of Fact, Conclusions of Law, and Judgment, entered April 30, 2020 as to SFR, Nationstar, and U.S. Bank, filed July 17, 2020,

notice of entry of which was filed on August 11, 2020.<sup>1</sup>

5. Any and all orders made appealable thereby.

DATED: September 8, 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*

<sup>1</sup> The Stipulation and Order amended the April 30, 2020 FFCOL to dismiss U.S. Bank's claims for unjust enrichment against SFR as moot, and certified it as final to SFR, Nationstar, and U.S. Bank.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 8<sup>th</sup> day of September, 2020, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system the foregoing **AMENDED NOTICE OF APPEAL** to the following parties:

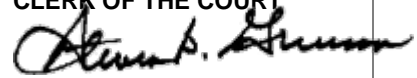
Akerman LLP	AkermanLAS@akerman.com
Melanie Morgan, Esq.	melanie.morgan@akerman.com
Donna Wittig, Esq.	donna.wittig@akerman.com
Douglas D. Gerrard, Esq.	dgerrard@gerrard-cox.com
Fredrick J. Biedermann, Esq.	fbiedermann@gerrard-cox.com
A&K eserve	eserve@alessikoenig.com
Kaytlyn Johnson .	kjohnson@gerrard-cox.com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

I HEREBY FURTHER CERTIFY that on this 8<sup>th</sup> day of September, 2020, pursuant to NRCP 5(b), I caused the foregoing **AMENDED 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



**ACAS**  
DIANA S. EBRON, ESQ.  
Nevada Bar No. 10580  
E-mail: diana@kgelegal.com  
JACQUELINE A. GILBERT, ESQ.  
Nevada Bar No. 10593  
E-mail: jackie@kgelegal.com  
KAREN L. HANKS, ESQ.  
Nevada Bar No. 9578  
E-mail: karen@kgelegal.com  
**KIM GILBERT EBRON**  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
Telephone: (702) 485-3300  
Facsimile: (702) 485-3301  
*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

**AMENDED 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.

### AMENDED 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 (WITHDREW AS TRIAL COUNSEL)  
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.

On June 3, 2020, SFR filed its notice of appeal and case appeal statement, which turned out to be premature based on issues that remained unresolved by the district court's April 30, 2020 findings of fact and conclusions of law. On July 17, 2020, the district court entered a stipulation and order which amended the April 30, 2020 findings of fact and conclusions of law to dismiss U.S. Bank's claims for unjust enrichment against SFR as moot, and certified it as final to SFR, Nationstar, and U.S. Bank. Notice of entry of the July 17, 2020 stipulation and order was filed on August 11, 2020.

**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: September 8, 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 8<sup>th</sup> day of September, 2020, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system the foregoing **AMENDED 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 8<sup>th</sup> day of September, 2020, pursuant to NRCP 5(b), I caused the foregoing **AMENDED 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

## EIGHTH JUDICIAL DISTRICT COURT

**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 **A705563**  
 Number:  
 Supreme Court No.: **81293**

**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)

**CASE SUMMARY****CASE NO. A-14-705563-C****Cross Defendant**      **Gotera, Magnolia****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
	<b><u>EVENTS</u></b>	
08/14/2014	 <b>Complaint</b> Filed By: Counter Defendant Alessi and Koenig LLC <i>Complaint in Interpleader</i>	
08/14/2014	Case Opened	
10/16/2014	 <b>Affidavit of Service</b> Filed By: Counter Defendant Alessi and Koenig LLC <i>Affidavit of Service (as to Magnolia Gotera)</i>	
10/21/2014	 <b>Affidavit of Service</b> Filed By: Counter Defendant Alessi and Koenig LLC <i>Affidavit of Service -Us Bank</i>	
10/21/2014	 <b>Declaration</b> Filed By: Counter Defendant Alessi and Koenig LLC <i>Declaration of Service-Republic Silver State Disposal</i>	
10/31/2014	 <b>Notice</b> Filed By: Cross Defendant Nationstar Mortgage LLC <i>Defendant Nationstar Mortgage, LLC's Notice of Appearance</i>	
10/31/2014	 <b>Initial Appearance Fee Disclosure</b> Filed By: Cross Defendant Nationstar Mortgage LLC <i>Initial Appearance Fee Disclosure</i>	
11/17/2014	 <b>Answer</b> Filed By: Cross Defendant Nationstar Mortgage LLC <i>Nationstar Mortgage, LLC's Answer</i>	
11/21/2014	 <b>Declaration</b> Filed By: Counter Defendant Alessi and Koenig LLC <i>Declaration of Service-Kristin Jordal</i>	
12/02/2014	 <b>Notice of Early Case Conference</b> 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

# CASE SUMMARY

CASE NO. A-14-705563-C

Filed By: Counter Defendant Alessi and Koenig LLC  
*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  
*SFR INVESTMENTS POOL 1, LLC'S DEMAND FOR SECURITY OF COSTS PURSUANT TO NRS 18.130(1)*

12/08/2015



Notice of Posting Bond

Filed By: Cross Defendant Nationstar Mortgage LLC  
*Notice of Posting Bond*

12/17/2015



Notice of Change of Address

Filed By: Cross Claimant SFR Investments Pool 1 LLC  
*Notice of Change of Address and Notice of Change of Firm Name*

12/23/2015



Motion to Dismiss

Filed By: Cross Claimant SFR Investments Pool 1 LLC  
*SFR Investments Pool 1, LLC'S Motion to Dismiss Plaintiff's Third-Party Complaint Pursuant to NRCP 12(b)(6)*

12/24/2015



Opposition to Motion to Dismiss

Filed By: Cross Defendant Nationstar Mortgage LLC  
*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)*

01/11/2016



Certificate

Filed By: Cross Defendant Nationstar Mortgage LLC  
*Certificate of Delivery*

01/27/2016



Reply

Filed by: Cross Claimant SFR Investments Pool 1 LLC  
*SFR Investments Pool 1, LLC'S Reply in Support of Motion to Dismiss for Failure to Join Indispensable Parties*

02/25/2016



Order Denying Motion

Filed By: Cross Defendant Nationstar Mortgage LLC  
*Order Denying SFR's Motion to Dismiss Plaintiff's Third-Party Complaint Pursuant to NRCP 12(B)(6)*

02/29/2016



Notice of Entry

Filed By: Counter Defendant Alessi and Koenig LLC  
*Notice of Entry of Order*

03/14/2016



Answer and Counterclaim

Filed By: Cross Claimant SFR Investments Pool 1 LLC  
*SFR Investments Pool 1, LLC's Answer to Third-Party Complaint, Counterclaim and Cross-Claim*

03/16/2016



Notice of Lis Pendens

Filed by: Cross Claimant SFR Investments Pool 1 LLC  
*Notice of Lis Pendens*

03/21/2016



Answer to Third Party Complaint

# CASE SUMMARY

CASE NO. A-14-705563-C

Filed By: Cross Defendant Nationstar Mortgage LLC  
*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  
*Notice of Association of Counsel*

05/17/2016



Affidavit of Service

Filed By: Cross Claimant SFR Investments Pool 1 LLC  
*Affidavit of Service*

05/31/2016



Notice of Early Case Conference

Filed By: Counter Defendant Alessi and Koenig LLC  
*Notice of Early Case Conference*

06/14/2016



Affidavit of Due Diligence

Filed By: Counter Defendant Alessi and Koenig LLC  
*Affidavit of Due Diligence*

06/17/2016



Ex Parte Motion

Filed By: Cross Claimant SFR Investments Pool 1 LLC  
*Ex Parte Motion to Serve Stacey Moore by Publication and Motion to Enlarge Time to Serve Summons and Cross-Claim*

06/17/2016



Ex Parte Motion

Filed By: Cross Claimant SFR Investments Pool 1 LLC  
*Ex Parte Motion to Serve Magnolia Gotera by Publication and Motion to Enlarge Time Serve Summons and Cross-Claim*

06/20/2016



Notice of Voluntary Dismissal Without Prejudice

Filed by: Cross Claimant SFR Investments Pool 1 LLC  
*Notice of Voluntary Dismissal of Kristin Jordal, as Trustee for the JBWNO Revocable Living Trust*

06/30/2016



Order

Filed By: Cross Claimant SFR Investments Pool 1 LLC  
*Order Granting Ex Parte Motion to Serve Stacy Moore by Publication and Order Granting Motion to Enlarge Time to Serve Summons and Cross-Claim*

07/11/2016



Order for Service by Publication

Filed By: Cross Claimant SFR Investments Pool 1 LLC  
*Order Granting Ex Parte Motion to Serve Magnolia Gotera by Publication - and - Order Granting Motion to Enlarge Time to Serve Summons and Cross-Claim*

07/12/2016



Notice of Entry of Order

Filed By: Cross Claimant SFR Investments Pool 1 LLC  
*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*

07/21/2016










Declaration

Filed By: Counter Defendant Alessi and Koenig LLC  
*Declaration of Non-Monetary Status Pursuant to NRS 107/SB 239*

07/21/2016

## CASE SUMMARY

CASE NO. A-14-705563-C

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



# CASE SUMMARY

CASE NO. A-14-705563-C

02/09/2017	 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</i>

# CASE SUMMARY













CASE NO. A-14-705563-C

*and to Continue Trial and U.S. Bank s Joinder Thereto*

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 &amp; 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 &amp; 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 &amp; 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 &amp; 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	













# CASE SUMMARY

CASE NO. A-14-705563-C

	 Appendix 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>
06/29/2018	 Motion for Summary Judgment Filed By: Cross Defendant Nationstar Mortgage LLC <i>Cross-Defendant Nationstar Mortgage, LLC's Motion for Summary Judgment</i>
07/02/2018	 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>
07/19/2018	 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>
07/19/2018	 Opposition Filed By: Cross Defendant Nationstar Mortgage LLC <i>Opposition To SFR Investments Pool 1, LLC's Motion For Summary Judgment</i>
07/20/2018	 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>
07/20/2018	 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>
07/24/2018	 Reply in Support Filed By: Cross Claimant SFR Investments Pool 1 LLC <i>SFR Investments Pool 1, LLC's Reply in Support of its Motion for Summary Judgment</i>
08/02/2018	 Pre-Trial Disclosure <i>SFR Investments Pool 1, LLC's Pre-Trial Disclosures</i>
08/07/2018	 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>
08/08/2018	 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>
08/23/2018	 Objection <i>Objections to Pre-Trial Disclosures</i>

# CASE SUMMARY

CASE NO. A-14-705563-C

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	

# CASE SUMMARY

CASE NO. A-14-705563-C

	 Reply in Support Filed By: Cross Defendant Nationstar Mortgage LLC <i>Reply In Support Of Defendant Nationstar Mortgage, LLC's Motion For Reconsideration and/or To Alter / Amend Judgment</i>
06/28/2019	 Order Filed By: Cross Defendant Nationstar Mortgage LLC <i>Order Granting Nationstar Mortgage, LLC's Motion for Reconsideration and to Alter/Amend Judgment</i>
06/28/2019	 Notice of Entry of Order Filed By: Cross Defendant Nationstar Mortgage LLC <i>Notice of Entry of Order Granting Nationstar Mortgage, LLC's Motion for Reconsideration and to Alter/Amend Judgment</i>
10/22/2019	 Scheduling and Trial Order <i>Amended Non-Civil Trial Order</i>
10/23/2019	 Stipulation Filed by: Counter Defendant US Bank NA; Cross Defendant Nationstar Mortgage LLC <i>Stipulation to Reopen Closed Case and Reset Trial Dates</i>
10/24/2019	 Notice of Entry <i>Notice of Entry of Stipulation and Order to Reopen Closed Case and Rest Trial Dates</i>
12/11/2019	 Notice of Withdrawal of Attorney Filed by: Cross Defendant Nationstar Mortgage LLC <i>Notice of Withdrawal of Counsel for Defendant /Counterclaimant / Third-Party Defendant Nationstar Mortgage, LLC</i>
12/31/2019	 Stipulation and Order Filed by: Counter Defendant US Bank NA; Cross Defendant Nationstar Mortgage LLC <i>Stipulation and Order Continuing Trial Date</i>
12/31/2019	 Notice of Entry of Stipulation and Order <i>Notice of Entry of Stipulation and Order Continuing Trial Date</i>
01/13/2020	 Objection Filed By: Cross Claimant SFR Investments Pool 1 LLC <i>Objections to Amended Pre-trial Disclosures</i>
02/04/2020	 Trial Brief Filed By: Cross Defendant Nationstar Mortgage LLC <i>Defendant's Trial Brief</i>
02/05/2020	 Trial Brief Filed By: Cross Claimant SFR Investments Pool 1 LLC <i>SFR Investments Pool 1, LLC's Trial Brief</i>
02/05/2020	 Joint Pre-Trial Memorandum Filed By: Counter Defendant US Bank NA; Cross Defendant Nationstar Mortgage LLC <i>Joint Pretrial Memorandum</i>
02/06/2020	 Findings of Fact, Conclusions of Law and Judgment

**CASE SUMMARY**

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

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

07/17/2020



Stipulation and Order  
Filed by: Cross Claimant SFR Investments Pool 1 LLC  
*Stipulation and Order to Certify the Findings of Fact, Conclusions of Law and Judgment, Entered April 30, 2020 as to Nationstar mortgage, LLC U.S. Bank N.A. and SFR Investments Pool 1 LLC*

08/11/2020



Notice of Entry of Stipulation and Order  
Filed By: Counter Defendant US Bank NA; Cross Defendant Nationstar Mortgage LLC  
*Notice of Entry of Stipulation and Order to Certify The Findings of Fact, Conclusions of Law, and Judgment, Entered April 30, 2020 as to Nationstar Mortgage LLC, U.S. Bank, N.A. and SFR Investments Pool 1, LLC*

08/12/2020



Notice of Appeal  
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 Notice of Cross-Appeal*

08/12/2020



Case Appeal Statement  
*Nationstar Mortgage LLC and U.S. Bank, National Association, as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund's Case Appeal Statement*

08/21/2020



Notice of Posting Bond  
Filed By: Counter Defendant US Bank NA; Cross Defendant Nationstar Mortgage LLC  
*Notice of Posting of Bond on Appeal*

# CASE SUMMARY

CASE NO. A-14-705563-C

08/25/2020



Request

Filed by: Cross Claimant SFR Investments Pool 1 LLC  
*REQUEST FOR TRANSCRIPT OF PROCEEDINGS*

09/08/2020



Amended Notice of Appeal

Party: Cross Claimant SFR Investments Pool 1 LLC  
*Amended Notice of Appeal*

09/08/2020



Amended Case Appeal Statement

Party: Cross Claimant SFR Investments Pool 1 LLC  
*Amended 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

07/17/2020

**Order of Dismissal** (Judicial Officer: Sturman, Gloria)

Debtors: US Bank NA (Counter Defendant), Nationstar Mortgage LLC (Cross Defendant)  
Creditors: SFR Investments Pool 1 LLC (Cross Claimant, Counter Claimant)  
Judgment: 07/17/2020, Docketed: 07/21/2020  
Comment: Certain Claim

## **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



**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.*



# CASE SUMMARY

CASE NO. A-14-705563-C

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 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;*

04/11/2018

**CANCELED Calendar Call** (9:00 AM) (Judicial Officer: Villani, Michael)

*Vacated - per Judge*

04/16/2018

**CANCELED Bench Trial** (9:00 AM) (Judicial Officer: Villani, Michael)

*Vacated - per Judge*

04/18/2018



**Motion to Withdraw as Counsel** (3:00 AM) (Judicial Officer: Villani, Michael)

*Steven Loizzi Esq.'s Motion to Withdraw as Counsel of Record for Alessi & Koenig LLC*



# CASE SUMMARY

CASE NO. A-14-705563-C

Granted;

Journal Entry Details:

*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. ;*

08/15/2018

**Motion for Summary Judgment (8:30 AM)** (Judicial Officer: Villani, Michael)

*Counter Claimant SFR Investments Pool 1 LLC's Motion for Summary Judgment*

Per email from Law Clerk

Motion Granted;

08/15/2018

**Motion for Summary Judgment (8:30 AM)** (Judicial Officer: Villani, Michael)

*Cross-Defendant Nationstar Mortgage, LLC's Motion for Summary Judgment*

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:

*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.;*

08/29/2018



**Calendar Call (9:00 AM)** (Judicial Officer: Villani, Michael)

Matter Heard;

Journal Entry Details:

*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.;*

09/04/2018



**Minute Order (8:00 AM)** (Judicial Officer: Villani, Michael)

Minute Order - No Hearing Held;

Journal Entry Details:

*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*

## CASE SUMMARY

CASE NO. A-14-705563-C

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 116.3166(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. 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

## CASE SUMMARY

CASE NO. A-14-705563-C


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


# CASE SUMMARY


CASE NO. A-14-705563-C


*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*

02/05/2019  **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.;*

03/26/2019  **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)  
*Calendar Call*  
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 ;*




01/16/2020  **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*

EIGHTH JUDICIAL DISTRICT COURT

**CASE SUMMARY**

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

*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;*

01/22/2020	<b>CANCELED Pre Trial Conference</b> (10:00 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated - per Stipulation and Order</i>
01/29/2020	<b>CANCELED Bench Trial</b> (1:30 PM) (Judicial Officer: Sturman, Gloria) <i>Vacated - per Stipulation and Order</i>
01/30/2020	<b>CANCELED Bench Trial</b> (1:30 PM) (Judicial Officer: Sturman, Gloria) <i>Vacated - per Stipulation and Order</i>
02/05/2020	 <b>Pre Trial Conference</b> (10:30 AM) (Judicial Officer: Sturman, Gloria) Matter Heard; Journal Entry Details: <i>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. ;</i>
02/10/2020	 <b>Bench Trial</b> (10:00 AM) (Judicial Officer: Sturman, Gloria) Judgment for the Plaintiff; Journal Entry Details: <i>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. ;</i>
05/07/2020	 <b>Status Check</b> (1:00 AM) (Judicial Officer: Sturman, Gloria) <i>Status of Dueling Orders</i> Advance Decision Vacate; Journal Entry Details: <i>COURT ORDERED, Hearing VACATED as the order was received and signed on May 4, 2020.;</i>

**DATE**

**FINANCIAL INFORMATION**

<b>Counter Defendant</b> Alessi and Koenig LLC	
Total Charges	273.00
Total Payments and Credits	273.00
<b>Balance Due as of 9/8/2020</b>	<b>0.00</b>
<b>Cross Defendant</b> Moore, Stacy	
Total Charges	5.50
Total Payments and Credits	5.50
<b>Balance Due as of 9/8/2020</b>	<b>0.00</b>
<b>Cross Defendant</b> Nationstar Mortgage LLC	
Total Charges	423.00

# CASE SUMMARY

CASE NO. A-14-705563-C

Total Payments and Credits	423.00
<b>Balance Due as of 9/8/2020</b>	<b>0.00</b>
<b>Counter Defendant</b> US Bank NA	
Total Charges	447.00
Total Payments and Credits	447.00
<b>Balance Due as of 9/8/2020</b>	<b>0.00</b>
<b>Cross Claimant</b> SFR Investments Pool 1 LLC	
Total Charges	897.00
Total Payments and Credits	897.00
<b>Balance Due as of 9/8/2020</b>	<b>0.00</b>
<b>Counter Defendant</b> US Bank NA	
Security Cost Bond Balance as of 9/8/2020	<b>500.00</b>
<b>Counter Defendant</b> US Bank NA	
Appeal Bond Balance as of 9/8/2020	<b>500.00</b>

## 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 &amp; 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"/> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> <b>Title to Property</b> <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> <b>Condemnation/Eminent Domain</b> <input type="checkbox"/> <b>Other Real Property</b> <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> <b>Negligence</b> <input type="checkbox"/> <b>Negligence – Auto</b> <input type="checkbox"/> <b>Negligence – Medical/Dental</b> <input type="checkbox"/> <b>Negligence – Premises Liability</b> (Slip/Fall) <input type="checkbox"/> <b>Negligence – Other</b>	<input type="checkbox"/> <b>Product Liability</b> <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> <b>Intentional Misconduct</b> <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> <b>Employment Torts</b> (Wrongful termination) <input type="checkbox"/> <b>Other Torts</b> <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"/> <b>Probate</b> <b>Estimated Estate Value:</b> _____ <input type="checkbox"/> <b>Summary Administration</b> <input type="checkbox"/> <b>General Administration</b> <input type="checkbox"/> <b>Special Administration</b> <input type="checkbox"/> <b>Set Aside Estates</b> <input type="checkbox"/> <b>Trust/Conservatorships</b> <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> <b>Other Probate</b>	<input type="checkbox"/> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> <b>Breach of Contract</b> <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"/> <b>Civil Petition for Judicial Review</b> <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"/> <b>Appeal from Lower Court</b> (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> <b>Civil Writ</b> <input type="checkbox"/> Other Special Proceeding <input checked="" type="checkbox"/> <b>Other Civil Filing</b> <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.)

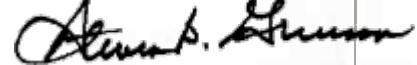
- |   |  |   |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88   | <input type="checkbox"/> Investments (NRS 104 Art. 8)        | <input type="checkbox"/> Enhanced Case Mgmt/Business  |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 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**

JACQUELINE A. GILBERT, ESQ.  
Nevada Bar No. 10593  
E-mail: jackie@kgelegal.com  
DIANA S. EBRON, ESQ.  
Nevada Bar No. 10580  
E-mail: diana@kgelegal.com  
KAREN L. HANKS, ESQ.  
Nevada Bar No. 9578  
E-mail: karen@kgelegal.com  
KIM GILBERT EBRON  
7625 Dean Martin Dr., Suite 110  
Las Vegas, Nevada 89139  
Telephone: (702) 485-3300  
Facsimile: (702) 485-3301  
*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**  
7625 DEAN MARTIN DRIVE, SUITE 110  
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.<sup>1</sup>

#### **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

<sup>1</sup> 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, <sup>the Bank</sup> ~~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~~ <sup>Nationstar</sup> 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~~ <sup>Nationstar</sup> 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~~ <sup>Nationstar's</sup> 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~~ <sup>Nationstar</sup> 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~~ <sup>Nationstar</sup> 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~~ <sup>Nationstar</sup> 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~~ <sup>Nationstar</sup> 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~~ <sup>Nationstar</sup>  
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**

13   
14 DIANA S. EBRON, ESQ.  
15 Nevada Bar No. 10580  
16 JACQUELINE A. GILBERT, ESQ.  
17 Nevada Bar No. 10593  
18 KAREN L. HANKS, ESQ.  
19 Nevada Bar No. 9578  
20 JASON G. MARTINEZ, ESQ.  
21 Nevada Bar No. 13375  
22 7625 Dean Martin Drive, Suite 110  
23 Las Vegas, Nevada 89139  
24 Attorneys for SFR Investments Pool I, LLC

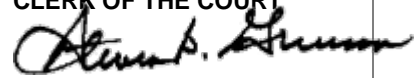
Competing Order to be Submitted  
DARREN T. BRENNER, ESQ.  
Nevada Bar No. 8386  
DONNA WITTIG, ESQ.  
Nevada Bar No. 11015  
1635 Village Center Circle, Suite 200  
Las Vegas, Nevada 89134  
Attorneys for U.S. Bank, N.A. and Nationstar  
Mortgage, LLC

21 Approved as to Form and Content By:

22 **GERRARD COX LARSEN**

23 Competing Order to be Submitted  
24 DOUGLAS D. GERRARD, ESQ.  
25 Nevada Bar No. 4613  
26 FREDERICK J. BIEDERMANN, ESQ.  
27 Nevada Bar No. 11918  
28 2450 Saint Rose Parkway, Suite 200  
Henderson, Nevada 89074  
Attorneys for Nationstar Mortgage, LLC





**NEFF**

DIANA S. EBRON, ESQ.  
Nevada Bar No. 10580  
E-mail: diana@kgelegal.com  
JACQUELINE A. GILBERT, ESQ.  
Nevada Bar No. 10593  
E-mail: jackie@kgelegal.com  
KAREN L. HANKS, ESQ.  
Nevada Bar No. 9578  
E-mail: karen@kgelegal.com  
KIM GILBERT EBRON  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
Telephone: (702) 485-3300  
Facsimile: (702) 485-3301  
*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,

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 29<sup>th</sup>, 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 26<sup>th</sup> day of December, 2018.

**KIM GILBERT EBRON**

/s/Diana S. Ebron

DIANA S. EBRON, ESQ.

Nevada Bar No. 10580

KAREN L. HANKS, ESQ.

Nevada Bar No. 9578

7625 Dean Martin Drive, Suite 110

Las Vegas, Nevada 89139

*Attorney for SFR Investments Pool 1, LLC*



**CERTIFICATE OF SERVICE**

I hereby certify that on this 26<sup>th</sup> 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:

Melanie Morgan (melanie.morgan@akerman.com)

Akerman LLP (AkermanLAS@akerman.com)

Donna Wittig (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)

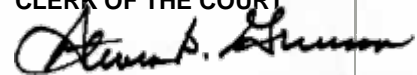
Kaytlyn Johnson . (kjohnson@gerrard-cox.com)

Sarah Greenberg Davis . (sgreenberg@wrightlegal.net)

Esther Medellin (emedellin@gerrard-cox.com)

/s/ Tomas Valerio

An Employee of KIM GILBERT EBRON



**FFCL**

JACQUELINE A. GILBERT, ESQ.  
Nevada Bar No. 10593  
E-mail: jackie@kgelegal.com  
DIANA S. EBRON, ESQ.  
Nevada Bar No. 10580  
E-mail: diana@kgelegal.com  
KAREN L. HANKS, ESQ.  
Nevada Bar No. 9578  
E-mail: karen@kgelegal.com  
KIM GILBERT EBRON  
7625 Dean Martin Dr., Suite 110  
Las Vegas, Nevada 89139  
Telephone: (702) 485-3300  
Facsimile: (702) 485-3301  
*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**

7625 DEAN MARTIN DRIVE, SUITE 110  
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.<sup>1</sup>

#### **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

<sup>1</sup> 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, <sup>the Bank</sup> ~~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~~ <sup>Nationstar</sup> 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~~ <sup>Nationstar</sup> 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~~ <sup>Nationstar's</sup> 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~~ <sup>Nationstar</sup> 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~~ <sup>Nationstar</sup> 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~~ <sup>Nationstar</sup> 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~~ <sup>Nationstar</sup> 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~~ <sup>Nationstar</sup>  
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**

13   
14 DIANA S. EBRON, ESQ.  
15 Nevada Bar No. 10580  
16 JACQUELINE A. GILBERT, ESQ.  
17 Nevada Bar No. 10593  
18 KAREN L. HANKS, ESQ.  
19 Nevada Bar No. 9578  
20 JASON G. MARTINEZ, ESQ.  
21 Nevada Bar No. 13375  
22 7625 Dean Martin Drive, Suite 110  
23 Las Vegas, Nevada 89139  
24 Attorneys for SFR Investments Pool I, LLC

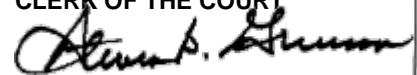
Competing Order to be Submitted  
DARREN T. BRENNER, ESQ.  
Nevada Bar No. 8386  
DONNA WITTIG, ESQ.  
Nevada Bar No. 11015  
1635 Village Center Circle, Suite 200  
Las Vegas, Nevada 89134  
Attorneys for U.S. Bank, N.A. and Nationstar  
Mortgage, LLC

21 Approved as to Form and Content By:

22 **GERRARD COX LARSEN**

23 Competing Order to be Submitted  
24 DOUGLAS D. GERRARD, ESQ.  
25 Nevada Bar No. 4613  
26 FREDERICK J. BIEDERMANN, ESQ.  
27 Nevada Bar No. 11918  
28 2450 Saint Rose Parkway, Suite 200  
Henderson, Nevada 89074  
Attorneys for Nationstar Mortgage, LLC





**ORDR**

Douglas D. Gerrard, Esq.  
Nevada Bar No. 4613  
[dgerrard@gerrard-cox.com](mailto:dgerrard@gerrard-cox.com)  
Fredrick J. Biedermann, Esq.  
Nevada Bar No. 11918  
[fbiedermann@gerrard-cox.com](mailto:fbiedermann@gerrard-cox.com)

**GERRARD COX LARSEN**

2450 Saint Rose Parkway, Suite 200  
Henderson, Nevada 89074  
(702) 796-4000

Darren T. Brenner, Esq.  
Nevada Bar No. 8386  
Donna Wittig, Esq.  
Nevada Bar No. 11015

**AKERMAN LLP**

1160 Town Center Drive, Suite 330  
Las Vegas, Nevada 89144  
Telephone: (702) 634-5000  
Facsimile: (702) 380-8572  
Email: [darren.brenner@akerman.com](mailto:darren.brenner@akerman.com)  
Email: [donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)

*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.

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



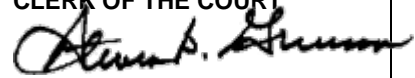
Douglas D. Gerrard, Esq.  
Nevada Bar No. 4613  
Fredrick J. Biedermann, Esq.  
Nevada Bar No. 11918  
2450 Saint Rose Pkwy., Ste 200  
Henderson, Nevada 89074  
*Attorney for Defendant  
Nationstar Mortgage, LLC*

Approved as to Form and Content:

KIM GILBERT EBRON

  
~~REFUSED~~

Diana Ebron, Esq.  
Nevada Bar No. 10580  
Jason G. Martinez, Esq.  
Nevada Bar No. 13375  
7625 Dean Martin Drive, Ste. 110  
Henderson, Nevada 89139  
*Attorneys for SFR Investments  
Pool 1, LLC*



**NEOJ**

Douglas D. Gerrard, Esq.

Nevada Bar No. 4613

[dgerrard@gerrard-cox.com](mailto:dgerrard@gerrard-cox.com)

Fredrick J. Biedermann, Esq.

Nevada Bar No. 11918

[fbiedermann@gerrard-cox.com](mailto:fbiedermann@gerrard-cox.com)

**GERRARD COX LARSEN**

2450 Saint Rose Parkway, Suite 200

Henderson, Nevada 89074

(702) 796-4000

Darren T. Brenner, Esq.

Nevada Bar No. 8386

Donna Wittig, Esq.

Nevada Bar No. 11015

**AKERMAN LLP**

1160 Town Center Drive, Suite 330

Las Vegas, Nevada 89144

Telephone: (702) 634-5000

Facsimile: (702) 380-8572

Email: [darren.brenner@akerman.com](mailto:darren.brenner@akerman.com)

Email: [donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)

*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 28<sup>th</sup> day of June, 2018. A copy of said Order is attached hereto.

22 DATED this 28<sup>th</sup> day of June, 2019.

**GERRARD COX LARSEN**

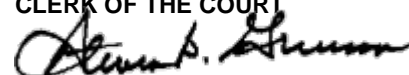
23 /s/ Douglas D. Gerrard, Esq.  
24 Douglas D. Gerrard, Esq.  
25 Fredrick J. Biedermann, Esq.  
26 2450 St. Rose Parkway, Ste. #200  
Henderson, NV 89074  
27 *Attorneys for Defendant Nationstar*  
*Mortgage, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of GERRARD COX LARSEN, and that on the 28<sup>th</sup> 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.

Douglas D. Gerrard, Esq.	dgerrard@gerrard-cox.com
Fredrick J. Biedermann, Esq.	fbiedermann@gerrard-cox.com
A&K eserve .	eserve@alessikoenig.com
Diana Cline Ebron .	diana@kgelegal.com
E-Service for Kim Gilbert Ebron .	eservice@kgelegal.com
Kaytlyn Johnson .	kjohnson@gerrard-cox.com
Michael L. Sturm .	mike@kgelegal.com
Sarah Greenberg Davis .	sgreenberg@wrightlegal.net
Tomas Valerio .	staff@kgelegal.com
Thera Cooper	thera.cooper@akerman.com
Akerman LLP	AkermanLAS@akerman.com
Esther Medellin	emedellin@gerrard-cox.com
Melanie Morgan	melanie.morgan@akerman.com
KGE E-Service List	eservice@kgelegal.com
KGE Legal Staff	staff@kgelegal.com

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



**ORDR**

Douglas D. Gerrard, Esq.  
Nevada Bar No. 4613  
[dgerrard@gerrard-cox.com](mailto:dgerrard@gerrard-cox.com)  
Fredrick J. Biedermann, Esq.  
Nevada Bar No. 11918  
[fbiedermann@gerrard-cox.com](mailto:fbiedermann@gerrard-cox.com)

**GERRARD COX LARSEN**  
2450 Saint Rose Parkway, Suite 200  
Henderson, Nevada 89074  
(702) 796-4000

Darren T. Brenner, Esq.  
Nevada Bar No. 8386  
Donna Wittig, Esq.  
Nevada Bar No. 11015  
**AKERMAN LLP**  
1160 Town Center Drive, Suite 330  
Las Vegas, Nevada 89144  
Telephone: (702) 634-5000  
Facsimile: (702) 380-8572  
Email: [darren.brenner@akerman.com](mailto:darren.brenner@akerman.com)  
Email: [donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)

*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.

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:

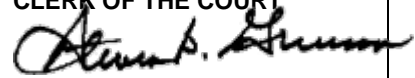
GERRARD COX LARSEN

  
Douglas D. Gerrard, Esq.  
Nevada Bar No. 4613  
Fredrick J. Biedermann, Esq.  
Nevada Bar No. 11918  
2450 Saint Rose Pkwy., Ste 200  
Henderson, Nevada 89074  
*Attorney for Defendant*  
*Nationstar Mortgage, LLC*

Approved as to Form and Content:

KIM GILBERT EBRON

  
Diana Ebron, Esq.  
Nevada Bar No. 10580  
Jason G. Martinez, Esq.  
Nevada Bar No. 13375  
7625 Dean Martin Drive, Ste. 110  
Henderson, Nevada 89139  
*Attorneys for SFR Investments*  
*Pool 1, LLC*



**FFCL**  
MELANIE D. MORGAN, ESQ.  
Nevada Bar No. 8215  
DONNA M. WITTIG, ESQ.  
Nevada Bar No. 11015  
**AKERMAN LLP**  
1635 Village Center Circle, Suite 200  
Las Vegas, Nevada 89134  
Telephone: (702) 634-5000  
Facsimile: (702) 380-8572  
Email: melanie.morgan@akerman.com  
Email: donna.wittig@akerman.com

*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.<sup>1</sup>

### **FINDINGS OF FACT**

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

///

<sup>1</sup> 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.

<sup>2</sup> 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 ///

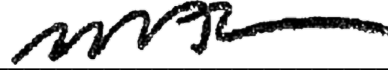
26 ///

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

MELANIE D. MORGAN, ESQ.

Nevada Bar No. 8215

DONNA M. WITTIG, ESQ.

Nevada Bar No. 11015

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

*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.

Nevada Bar No. 9578

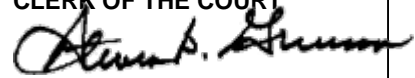
Jason G. Martinez, Esq.

Nevada Bar No. 13375

7625 Dean Martin Drive, Suite 110

Las Vegas, NV 89139

*Attorneys for SFR Investments Pool 1,  
LLC*



**NEFF**  
MELANIE D. MORGAN, ESQ.  
Nevada Bar No. 8215  
**DONNA M. WITTIG, ESQ.**  
Nevada Bar No. 11015  
**AKERMAN LLP**  
1635 Village Center Circle, Suite 200  
Las Vegas, Nevada 89134  
Telephone: (702) 634-5000  
Facsimile: (702) 380-8572  
Email: melanie.morgan@akerman.com  
Email: donna.wittig@akerman.com

*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  
limited liability company, et al.

5 Third-Party Defendants.  
6

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 4<sup>th</sup> 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:

**KIM GILBERT EBRON**

Diana S. Ebron

diana@kgelegal.com

KGE E-Service List

eservice@kgelegal.com

KGE Legal Staff

staff@kgelegal.com

Michael L. Sturm

mike@kgelegal.com

E-Service for Kim Gilbert Ebron

eservice@kgelegal.com

Tomas Valerio

staff@kgelegal.com

**GERRARD COX & LARSEN**

Douglas D. Gerrard, Esq.

dgerrard@gerrard-cox.com

Fredrick J. Biedermann, Esq.

fbiedermann@gerrard-cox.com

Kaytlyn Johnson

kjohnson@gerrard-cox.com

Esther Medellin

emedellin@gerrard-cox.com

**ALESSI & KOENIG**

A&amp;K eserve

eserve@alessikoenig.com

**WRIGHT FINLAY & ZAK, LLP**

Sarah Greenberg Davis

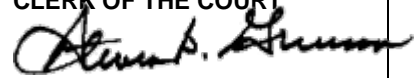
sgreenberg@wrightlegal.net

/s/ Patricia Larsen

An employee of AKERMAN LLP

**EXHIBIT A**

**EXHIBIT A**



**FFCL**  
MELANIE D. MORGAN, ESQ.  
Nevada Bar No. 8215  
DONNA M. WITTIG, ESQ.  
Nevada Bar No. 11015  
**AKERMAN LLP**  
1635 Village Center Circle, Suite 200  
Las Vegas, Nevada 89134  
Telephone: (702) 634-5000  
Facsimile: (702) 380-8572  
Email: melanie.morgan@akerman.com  
Email: donna.wittig@akerman.com

*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 JBNWO  
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.<sup>1</sup>

### **FINDINGS OF FACT**

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

///

<sup>1</sup> 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.

<sup>2</sup> 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 ///

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

4           DATED April 30, 2020.



5  
6           DISTRICT COURT JUDGE  
7           Case Number: A-14-705563-C  
8

9       Submitted by:

10      **AKERMAN LLP**

11      /s/ Melanie D. Morgan

12      MELANIE D. MORGAN, ESQ.

13      Nevada Bar No. 8215

14      DONNA M. WITTIG, ESQ.

15      Nevada Bar No. 11015

16      1635 Village Center Circle, Suite 200

17      Las Vegas, Nevada 89134

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

23      Not approved as to content and  
24      submitting competing order:

25      **Kim Gilbert Ebron**

26      /s/

27      Karen L. Hanks, Esq.

28      Nevada Bar No. 9578

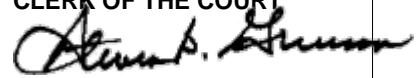
    Jason G. Martinez, Esq.

    Nevada Bar No. 13375

    7625 Dean Martin Drive, Suite 110

    Las Vegas, NV 89139

*Attorneys for SFR Investments Pool 1,*  
    *LLC*



**SAO**

JACQUELINE A. GILBERT, ESQ.

Nevada Bar No. 10593

E-mail: jackie@kgelegal.com

DIANA S. EBRON, ESQ.

Nevada Bar No. 10580

E-mail: diana@kgelegal.com

KAREN L. HANKS, ESQ.

Nevada Bar No. 9578

E-mail: karen@kgelegal.com

KIM GILBERT EBRON

7625 Dean Martin Dr., Suite 110

Las Vegas, Nevada 89139

Telephone: (702) 485-3300

Facsimile: (702) 485-3301

*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.

STACY MOORE, an individual; MAGNOLIA  
GOTERA, an individual; KRISTIN JORDAL,  
AS TRUSTEE FOR THE JBNWO  
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,

Case No. A-14-705563-C

Dept. No. XXVI

**STIPULATION AND ORDER TO  
CERTIFY THE FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
JUDGMENT, ENTERED APRIL 30, 2020  
AS TO NATIONSTAR MORTGAGE, LLC,  
U.S. BANK, N.A. AND SFR  
INVESTMENTS POOL 1, LLC**



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.

Nationstar Mortgage LLC (“Nationstar”), 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”), and SFR Investments Pool 1, LLC (“SFR”)<sup>1</sup> hereby stipulate and agree that the Findings of Fact, Conclusions of Law and Judgment<sup>2</sup> entered on April 30, 2020 (the “Order”) be amended to dismiss U.S. Bank’s claim for unjust enrichment against SFR be deemed moot, and then for this Court review the record on file and independently determine that, pursuant to NRCP 54(b), there is no just cause for delay in certifying as final as to the stipulating parties. A premature notice of appeal was filed for which appellant SFR anticipates receiving an Order to Show Cause and this request will ripen the appeal.

### **MEMORANDUM OF POINTS AND AUTHORITIES**

NRCP 54(b) authorizes a court to certify an order as final as to less than all parties if the order resolves all disputes as to those parties and the court finds there is no just reason for delay. Here, the Court’s Findings of Fact, Conclusions of Law and Judgment entered on April 30, 2020, resolved all but two of the claims as between Nationstar, U.S. Bank, and SFR. Those resolved were

<sup>1</sup> Plaintiff-in-Interpleader/counterdefendant Alessi & Koenig no longer have counsel in the case, as an order granting withdrawal of HOA lawyers was entered on May 15, 2018 and no attorney has made an appearance on behalf of Alessi & Koenig. Silver State Disposal has not made an appearance in the case, Kristen Jordal as Trustee for the JBWNO Revocable Living Trust was voluntarily dismissed by SFR by Notice entered on June 20, 2016.

<sup>2</sup> This Order was determined following the Court’s reconsideration of an Order entered on November 29, 2018 granting summary judgment in favor of SFR (the “Prior Order”).

1 opposing claims for quiet title/declaratory relief as to whether the deed of trust survived the NRS  
2 116 homeowners association non-judicial foreclosure. The Order granted judgment in favor of  
3 Nationstar and U.S. Bank and determined that SFR obtained title subject to the deed of trust. SFR's  
4 claim for slander of title remains, and the Parties stipulate that the claim shall be dismissed.  
5 Thus, only U.S. Bank's unjust enrichment claim against SFR remains unresolved as between the  
6 stipulating Parties. The Parties hereby stipulate and request this Court amend the April 30, 2020  
7 Order to include an Order dismissing that unjust enrichment claim as moot.

8         There were a number of other claims against other parties, however, which were not  
9 directly addressed in the Order or in the Prior Order entered on November 29, 2018 which had  
10 granted summary judgment in favor of SFR. Therefore, the stipulating parties are asking for Rule  
11 54(b) certification out of an abundance of caution. It appears that as to the Complaint in  
12 Interpleader, the following parties remain: Alessi & Koenig, Republic Silver State Disposal Inc.,  
13 Stacy Moore, and Magnolia Gotera. U.S. Bank's claims against Alessi & Koenig appear  
14 unresolved, and SFR has filed for default judgments against Moore and Gotera.

15         As noted above, SFR filed a notice of appeal on June 3, 2020, which, based on the  
16 foregoing was premature. NRAP 4(a)(6). SFR anticipates receiving an Order to Show Cause why  
17 the Appeal should not be dismissed for lack of jurisdiction. Granting this request will resolve any  
18 jurisdictional issues, and will perfect the appeal as of the date of this court's order.

19  
20 ///

21  
22 ///

23  
24 ///

25  
26 ///

**CONCLUSION**

For the reasons stated above, Nationstar, U.S. Bank, and SFR respectfully request this Court dismiss SFR's slander of title claim, modify the April 30, 2020 Order to dismiss as moot U.S. Bank's unjust enrichment claim against SFR, and review the file and find no just cause for delay in certifying the Order as final pursuant to NRCP 54(b).

DATED June 30, 2020.

<b>KIM GILBERT EBRON</b>	<b>AKERMAN LLP</b>
<u>/s/ Jacqueline A. Gilbert</u> 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 Drive, Suite 110 Las Vegas, Nevada 89139 Telephone: 702-485-3300 Facsimile: 702-485-3301 Email: jackie@kgelegal.com Email: diana@kgelegal.com Email: karen@kgelegal.com  <i>Attorneys for SFR Investments Pool 1, LLC</i>	<u>/s/ Donna M. Wittig</u> Melanie D. Morgan, Esq. Nevada Bar No. 8215 Donna M. Wittig, Esq. Nevada Bar No. 11015 1635 Village Center Circle, Suite 200 Las Vegas, Nevada 89134 Telephone: 702-634-5000 Facsimile: 702-381-8572 Email: melanie.morgan@akerman.com Email: donna.wittig@akerman.com  <i>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.</i>

**ORDER**

The Court, having read the stipulation and having independently reviewed the papers on file in this case has determined that the Parties' stipulation to dismiss SFR's slander of title claim and request to modify the April 30, 2020 Findings of Fact, Conclusions of Law and Judgment, to include that the Court denies U.S. Bank's claim for unjust enrichment as moot should be granted. Further, the Court finds no just reason to delay certifying the April 30, 2020 as final as to the claims between the stipulating Parties. NRCP 54(b). Good cause appearing

IT IS HEREBY ORDERED that SFR's slander of title claim is dismissed.

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and

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

1 Judgment entered on April 30, 2020, shall be modified to DENY U.S. Bank's unjust  
2 enrichment claim as against SFR as moot.

3 IT IS FURTHER ORDERED that final judgment be entered as to Nationstar  
4 Mortgage, LLC, U.S. Bank, N.A., and SFR Investments Pool 1, LLC on their claims  
5 against each other.

6  
7 DATE: July 1, 2020

8  
9 

10 DISTRICT COURT JUDGE  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## Jackie Gilbert

---

**From:** donna.wittig@akerman.com  
**Sent:** Tuesday, June 30, 2020 4:28 PM  
**To:** Jackie Gilbert; melanie.morgan@akerman.com  
**Cc:** Michael L. Sturm; Alex Loglia; Diana Ebron; de715b910+matter1033047067@maildrop.clio.com  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Yes.

### Donna Wittig

Associate  
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134  
D: 702 634 5035  
[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)

---

**From:** Jackie Gilbert <jackie@kgelegal.com>  
**Sent:** Tuesday, June 30, 2020 4:16 PM  
**To:** Wittig, Donna (Assoc-Las) <donna.wittig@akerman.com>; Morgan, Melanie (Ptnr-Las) <melanie.morgan@akerman.com>  
**Cc:** Michael L. Sturm <Mike@kgelegal.com>; Alex Loglia <alex@kgelegal.com>; Diana Ebron <diana@kgelegal.com>; de715b910+matter1033047067@maildrop.clio.com  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Sorry, one last thing. I would like to include the following:

The Parties also stipulate that SFR shall dismiss its Slander of Title claim against Nationstar and U.S. Bank.

IT IS ALSO ORDERED that SFR's claim for Slander of Title against Nationstar and U.S. Bank is hereby dismiss. (this right before the 54(b) cert.

Will that work for you?

*Jackie*

---

**From:** [donna.wittig@akerman.com](mailto:donna.wittig@akerman.com) <[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)>  
**Sent:** Tuesday, June 30, 2020 3:07 PM  
**To:** Jackie Gilbert <[jackie@kgelegal.com](mailto:jackie@kgelegal.com)>; [melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)  
**Cc:** Michael L. Sturm <[Mike@kgelegal.com](mailto:Mike@kgelegal.com)>; Alex Loglia <[alex@kgelegal.com](mailto:alex@kgelegal.com)>; Diana Ebron <[diana@kgelegal.com](mailto:diana@kgelegal.com)>; [de715b910+matter1033047067@maildrop.clio.com](mailto:de715b910+matter1033047067@maildrop.clio.com)  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Yes, please use my e-signature. Thanks!

### Donna Wittig

Associate  
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134

D: 702 634 5035  
[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)

---

**From:** Jackie Gilbert <[jackie@kgelegal.com](mailto:jackie@kgelegal.com)>  
**Sent:** Tuesday, June 30, 2020 3:04 PM  
**To:** Wittig, Donna (Assoc-Las) <[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)>; Morgan, Melanie (Ptnr-Las) <[melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)>  
**Cc:** Michael L. Sturm <[Mike@kgelegal.com](mailto:Mike@kgelegal.com)>; Alex Loglia <[alex@kgelegal.com](mailto:alex@kgelegal.com)>; Diana Ebron <[diana@kgelegal.com](mailto:diana@kgelegal.com)>; [de715b910+matter1033047067@maildrop.clio.com](mailto:de715b910+matter1033047067@maildrop.clio.com)  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

I have no problem with those changes. They will change the formatting a bit, so the signature blocks are not split, but if you are okay with me making those changes, may I file with your e-signature.

*Jackie*

---

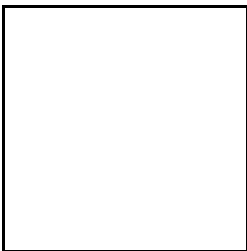
**From:** [donna.wittig@akerman.com](mailto:donna.wittig@akerman.com) <[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)>  
**Sent:** Tuesday, June 30, 2020 3:02 PM  
**To:** Jackie Gilbert <[jackie@kgelegal.com](mailto:jackie@kgelegal.com)>; [melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)  
**Cc:** Michael L. Sturm <[Mike@kgelegal.com](mailto:Mike@kgelegal.com)>; Alex Loglia <[alex@kgelegal.com](mailto:alex@kgelegal.com)>; Diana Ebron <[diana@kgelegal.com](mailto:diana@kgelegal.com)>; [de715b910+matter1033047067@maildrop.clio.com](mailto:de715b910+matter1033047067@maildrop.clio.com)  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Let us know if you are agreeable to these edits.

**Donna Wittig**

Associate  
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134  
D: 702 634 5035  
[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)

**vCard | Profile**



CONFIDENTIALITY NOTE: The information contained in this transmission may be privileged and confidential, and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, please immediately reply to the sender that you have received this communication in error and then delete it. Thank you.

---

**From:** Jackie Gilbert <[jackie@kgelegal.com](mailto:jackie@kgelegal.com)>  
**Sent:** Tuesday, June 30, 2020 2:37 PM  
**To:** Wittig, Donna (Assoc-Las) <[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)>; Morgan, Melanie (Ptnr-Las) <[melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)>  
**Cc:** Michael L. Sturm <[Mike@kgelegal.com](mailto:Mike@kgelegal.com)>; Alex Loglia <[alex@kgelegal.com](mailto:alex@kgelegal.com)>; Diana Ebron <[diana@kgelegal.com](mailto:diana@kgelegal.com)>;

Marsh Butte St. <[de715b910+matter1033047067@maildrop.clio.com](mailto:de715b910+matter1033047067@maildrop.clio.com)>

**Subject:** Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

**Importance:** High

Hello, Donna,

As we discussed in prior emails, I am attaching a draft Stipulation and Order to certify the FFCLJ entered on April 30, 2020 as final as to US Bank, Nationstar, and SFR.

Please let me know if you have any revisions. If not, please reply to this email that I have your authority to use your electronic signature.

Thank you for your prompt attention to this matter.

Jackie

*Jacqueline A. Gilbert, Esq.*

**KIM GILBERT EBRON**

*fka Howard Kim & Associates*

7625 Dean Martin Drive, Suite 110

Las Vegas, Nevada 89139

Phone: (702) 485-3300

Fax: (702) 485-3301

Cell: (702) 400-4130

Our office is currently closed to clients and visitors in order to comply with best practices for minimizing the spread of COVID-19. KGE is committed to serving our clients and will continue to operate during this period, but most of our attorneys and staff are working remotely and there may be a delay in responses. The best way to contact us is by e-mail. Please copy Diana and Jackie on emails at [Diana@kgelegal.com](mailto:Diana@kgelegal.com) and [jackie@kgelegal.com](mailto:jackie@kgelegal.com). If you need to reach me (Jackie) directly, please call my cell: 702-400-4130.

The information contained in this email is confidential and proprietary information intended for the use only of the intended addressee. If the reader of this email is not the intended addressee, you are notified that any dissemination, distribution, or copying of this message is prohibited. If you have received this message in error, please notify the sender immediately by telephone at (702) 485-3300 or by electronic mail ([jackie@KGElegal.com](mailto:jackie@KGElegal.com)) and then delete the message and all copies and backups. Thank you.

Unless expressly stated otherwise, any U.S. federal tax advice contained in this transmittal, is not intended or written to be used, and cannot be used, by any person for the purpose of (i) avoiding penalties under the U.S. Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this e-mail or attachment.

## Jackie Gilbert

---

**From:** donna.wittig@akerman.com  
**Sent:** Tuesday, June 30, 2020 4:28 PM  
**To:** Jackie Gilbert; melanie.morgan@akerman.com  
**Cc:** Michael L. Sturm; Alex Loglia; Diana Ebron; de715b910+matter1033047067@maildrop.clio.com  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Yes.

### Donna Wittig

Associate  
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134  
D: 702 634 5035  
[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)

---

**From:** Jackie Gilbert <jackie@kgelegal.com>  
**Sent:** Tuesday, June 30, 2020 4:16 PM  
**To:** Wittig, Donna (Assoc-Las) <donna.wittig@akerman.com>; Morgan, Melanie (Ptnr-Las) <melanie.morgan@akerman.com>  
**Cc:** Michael L. Sturm <Mike@kgelegal.com>; Alex Loglia <alex@kgelegal.com>; Diana Ebron <diana@kgelegal.com>; de715b910+matter1033047067@maildrop.clio.com  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Sorry, one last thing. I would like to include the following:

The Parties also stipulate that SFR shall dismiss its Slander of Title claim against Nationstar and U.S. Bank.

IT IS ALSO ORDERED that SFR's claim for Slander of Title against Nationstar and U.S. Bank is hereby dismiss. (this right before the 54(b) cert.

Will that work for you?

*Jackie*

---

**From:** [donna.wittig@akerman.com](mailto:donna.wittig@akerman.com) <[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)>  
**Sent:** Tuesday, June 30, 2020 3:07 PM  
**To:** Jackie Gilbert <[jackie@kgelegal.com](mailto:jackie@kgelegal.com)>; [melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)  
**Cc:** Michael L. Sturm <[Mike@kgelegal.com](mailto:Mike@kgelegal.com)>; Alex Loglia <[alex@kgelegal.com](mailto:alex@kgelegal.com)>; Diana Ebron <[diana@kgelegal.com](mailto:diana@kgelegal.com)>; [de715b910+matter1033047067@maildrop.clio.com](mailto:de715b910+matter1033047067@maildrop.clio.com)  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Yes, please use my e-signature. Thanks!

### Donna Wittig

Associate  
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134



D: 702 634 5035  
[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)

---

**From:** Jackie Gilbert <[jackie@kgelegal.com](mailto:jackie@kgelegal.com)>  
**Sent:** Tuesday, June 30, 2020 3:04 PM  
**To:** Wittig, Donna (Assoc-Las) <[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)>; Morgan, Melanie (Ptnr-Las) <[melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)>  
**Cc:** Michael L. Sturm <[Mike@kgelegal.com](mailto:Mike@kgelegal.com)>; Alex Loglia <[alex@kgelegal.com](mailto:alex@kgelegal.com)>; Diana Ebron <[diana@kgelegal.com](mailto:diana@kgelegal.com)>; [de715b910+matter1033047067@maildrop.clio.com](mailto:de715b910+matter1033047067@maildrop.clio.com)  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

I have no problem with those changes. They will change the formatting a bit, so the signature blocks are not split, but if you are okay with me making those changes, may I file with your e-signature.

*Jackie*

---

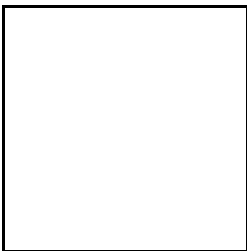
**From:** [donna.wittig@akerman.com](mailto:donna.wittig@akerman.com) <[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)>  
**Sent:** Tuesday, June 30, 2020 3:02 PM  
**To:** Jackie Gilbert <[jackie@kgelegal.com](mailto:jackie@kgelegal.com)>; [melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)  
**Cc:** Michael L. Sturm <[Mike@kgelegal.com](mailto:Mike@kgelegal.com)>; Alex Loglia <[alex@kgelegal.com](mailto:alex@kgelegal.com)>; Diana Ebron <[diana@kgelegal.com](mailto:diana@kgelegal.com)>; [de715b910+matter1033047067@maildrop.clio.com](mailto:de715b910+matter1033047067@maildrop.clio.com)  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Let us know if you are agreeable to these edits.

**Donna Wittig**

Associate  
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134  
D: 702 634 5035  
[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)

**vCard | Profile**



CONFIDENTIALITY NOTE: The information contained in this transmission may be privileged and confidential, and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, please immediately reply to the sender that you have received this communication in error and then delete it. Thank you.

---

**From:** Jackie Gilbert <[jackie@kgelegal.com](mailto:jackie@kgelegal.com)>  
**Sent:** Tuesday, June 30, 2020 2:37 PM  
**To:** Wittig, Donna (Assoc-Las) <[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)>; Morgan, Melanie (Ptnr-Las) <[melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)>  
**Cc:** Michael L. Sturm <[Mike@kgelegal.com](mailto:Mike@kgelegal.com)>; Alex Loglia <[alex@kgelegal.com](mailto:alex@kgelegal.com)>; Diana Ebron <[diana@kgelegal.com](mailto:diana@kgelegal.com)>;

Marsh Butte St. <[de715b910+matter1033047067@maildrop.clio.com](mailto:de715b910+matter1033047067@maildrop.clio.com)>

**Subject:** Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

**Importance:** High

Hello, Donna,

As we discussed in prior emails, I am attaching a draft Stipulation and Order to certify the FFCLJ entered on April 30, 2020 as final as to US Bank, Nationstar, and SFR.

Please let me know if you have any revisions. If not, please reply to this email that I have your authority to use your electronic signature.

Thank you for your prompt attention to this matter.

Jackie

*Jacqueline A. Gilbert, Esq.*

**KIM GILBERT EBRON**

*fka Howard Kim & Associates*

7625 Dean Martin Drive, Suite 110

Las Vegas, Nevada 89139

Phone: (702) 485-3300

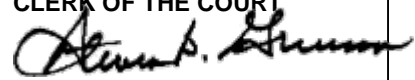
Fax: (702) 485-3301

Cell: (702) 400-4130

Our office is currently closed to clients and visitors in order to comply with best practices for minimizing the spread of COVID-19. KGE is committed to serving our clients and will continue to operate during this period, but most of our attorneys and staff are working remotely and there may be a delay in responses. The best way to contact us is by e-mail. Please copy Diana and Jackie on emails at [Diana@kgelegal.com](mailto:Diana@kgelegal.com) and [jackie@kgelegal.com](mailto:jackie@kgelegal.com). If you need to reach me (Jackie) directly, please call my cell: 702-400-4130.

The information contained in this email is confidential and proprietary information intended for the use only of the intended addressee. If the reader of this email is not the intended addressee, you are notified that any dissemination, distribution, or copying of this message is prohibited. If you have received this message in error, please notify the sender immediately by telephone at (702) 485-3300 or by electronic mail ([jackie@KGElegal.com](mailto:jackie@KGElegal.com)) and then delete the message and all copies and backups. Thank you.

Unless expressly stated otherwise, any U.S. federal tax advice contained in this transmittal, is not intended or written to be used, and cannot be used, by any person for the purpose of (i) avoiding penalties under the U.S. Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this e-mail or attachment.



**NTSO**  
MELANIE D. MORGAN, ESQ.  
Nevada Bar No. 8215  
DONNA M. WITTIG, ESQ.  
Nevada Bar No. 11015  
**AKERMAN LLP**  
1635 Village Center Circle, Suite 200  
Las Vegas, Nevada 89134  
Telephone: (702) 634-5000  
Facsimile: (702) 380-8572  
Email: melanie.morgan@akerman.com  
Email: donna.wittig@akerman.com

*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 STIPULATION  
AND ORDER TO CERTIFY THE  
FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND JUDGMENT, ENTERED  
APRIL 30, 2020 AS TO NATIONSTAR  
MORTGAGE LLC, U.S. BANK, N.A. AND  
SFR INVESTMENTS POOL 1, LLC**

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200  
LAS VEGAS, NEVADA 89134  
TEL.: (702) 634-5000 – FAX: (702) 380-8572

1 U.S. BANK, N.A.

2 Third-Party Plaintiff,

3 vs.

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

5 Third-Party Defendants.  
6

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

9 PLEASE TAKE NOTICE that the **STIPULATION AND ORDER TO CERTIFY THE**  
10 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT, ENTERED APRIL 30,**  
11 **2020 AS TO NATIONSTAR MORTGAGE LLC, U.S. BANK, N.A. AND SFR**  
12 **INVESTMENTS POOL 1, LLC** has been filed on July 17, 2020. A copy of which is attached  
13 hereto as Exhibit A.

14 DATED on August 11, 2020.

15 **AKERMAN LLP**

16 /s/ Donna M. Wittig

17 MELANIE D. MORGAN, ESQ.

Nevada Bar No. 8215

18 DONNA M. WITTIG, ESQ.

Nevada Bar No. 11015

19 1635 Village Center Circle, Suite 200

20 Las Vegas, Nevada 89134

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 11<sup>th</sup> day of August, 2020, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF STIPULATION AND ORDER TO CERTIFY THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT, ENTERED APRIL 30, 2020 AS TO NATIONSTAR MORTGAGE LLC, U.S. BANK, N.A. AND SFR INVESTMENTS POOL 1, LLC**, 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:

**KIM GILBERT EBRON**

Diana S. Ebron

KGE E-Service List

KGE Legal Staff

Michael L. Sturm

E-Service for Kim Gilbert Ebron

Tomas Valerio

diana@kgelegal.com

eservice@kgelegal.com

staff@kgelegal.com

mike@kgelegal.com

eservice@kgelegal.com

staff@kgelegal.com

**GERRARD COX & LARSEN**

Douglas D. Gerrard, Esq.

Fredrick J. Biedermann, Esq.

Kaytlyn Johnson

dgerrard@gerrard-cox.com

fbiedermann@gerrard-cox.com

kjohnson@gerrard-cox.com

**ALESSI & KOENIG**

A&amp;K eserve

eserve@alessikoenig.com

**WRIGHT FINLAY & ZAK, LLP**

Sarah Greenberg Davis

sgreenberg@wrightlegal.net

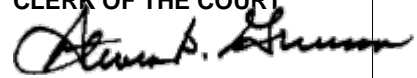
I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

/s/ Patricia Larsen

An employee of AKERMAN LLP

**EXHIBIT A**

**EXHIBIT A**



**SAO**

JACQUELINE A. GILBERT, ESQ.

Nevada Bar No. 10593

E-mail: jackie@kgelegal.com

DIANA S. EBRON, ESQ.

Nevada Bar No. 10580

E-mail: diana@kgelegal.com

KAREN L. HANKS, ESQ.

Nevada Bar No. 9578

E-mail: karen@kgelegal.com

KIM GILBERT EBRON

7625 Dean Martin Dr., Suite 110

Las Vegas, Nevada 89139

Telephone: (702) 485-3300

Facsimile: (702) 485-3301

*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.

STACY MOORE, an individual; MAGNOLIA  
GOTERA, an individual; KRISTIN JORDAL,  
AS TRUSTEE FOR THE JBNWO  
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,

Case No. A-14-705563-C

Dept. No. XXVI

**STIPULATION AND ORDER TO  
CERTIFY THE FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
JUDGMENT, ENTERED APRIL 30, 2020  
AS TO NATIONSTAR MORTGAGE, LLC,  
U.S. BANK, N.A. AND SFR  
INVESTMENTS POOL 1, LLC**

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.

Nationstar Mortgage LLC (“Nationstar”), 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”), and SFR Investments Pool 1, LLC (“SFR”)<sup>1</sup> hereby stipulate and agree that the Findings of Fact, Conclusions of Law and Judgment<sup>2</sup> entered on April 30, 2020 (the “Order”) be amended to dismiss U.S. Bank’s claim for unjust enrichment against SFR be deemed moot, and then for this Court review the record on file and independently determine that, pursuant to NRCP 54(b), there is no just cause for delay in certifying as final as to the stipulating parties. A premature notice of appeal was filed for which appellant SFR anticipates receiving an Order to Show Cause and this request will ripen the appeal.

### **MEMORANDUM OF POINTS AND AUTHORITIES**

NRCP 54(b) authorizes a court to certify an order as final as to less than all parties if the order resolves all disputes as to those parties and the court finds there is no just reason for delay. Here, the Court’s Findings of Fact, Conclusions of Law and Judgment entered on April 30, 2020, resolved all but two of the claims as between Nationstar, U.S. Bank, and SFR. Those resolved were

<sup>1</sup> Plaintiff-in-Interpleader/counterdefendant Alessi & Koenig no longer have counsel in the case, as an order granting withdrawal of HOA lawyers was entered on May 15, 2018 and no attorney has made an appearance on behalf of Alessi & Koenig. Silver State Disposal has not made an appearance in the case, Kristen Jordal as Trustee for the JBWNO Revocable Living Trust was voluntarily dismissed by SFR by Notice entered on June 20, 2016.

<sup>2</sup> This Order was determined following the Court’s reconsideration of an Order entered on November 29, 2018 granting summary judgment in favor of SFR (the “Prior Order”).



1 opposing claims for quiet title/declaratory relief as to whether the deed of trust survived the NRS  
2 116 homeowners association non-judicial foreclosure. The Order granted judgment in favor of  
3 Nationstar and U.S. Bank and determined that SFR obtained title subject to the deed of trust. SFR's  
4 claim for slander of title remains, and the Parties stipulate that the claim shall be dismissed.  
5 Thus, only U.S. Bank's unjust enrichment claim against SFR remains unresolved as between the  
6 stipulating Parties. The Parties hereby stipulate and request this Court amend the April 30, 2020  
7 Order to include an Order dismissing that unjust enrichment claim as moot.

8         There were a number of other claims against other parties, however, which were not  
9 directly addressed in the Order or in the Prior Order entered on November 29, 2018 which had  
10 granted summary judgment in favor of SFR. Therefore, the stipulating parties are asking for Rule  
11 54(b) certification out of an abundance of caution. It appears that as to the Complaint in  
12 Interpleader, the following parties remain: Alessi & Koenig, Republic Silver State Disposal Inc.,  
13 Stacy Moore, and Magnolia Gotera. U.S. Bank's claims against Alessi & Koenig appear  
14 unresolved, and SFR has filed for default judgments against Moore and Gotera.

15         As noted above, SFR filed a notice of appeal on June 3, 2020, which, based on the  
16 foregoing was premature. NRAP 4(a)(6). SFR anticipates receiving an Order to Show Cause why  
17 the Appeal should not be dismissed for lack of jurisdiction. Granting this request will resolve any  
18 jurisdictional issues, and will perfect the appeal as of the date of this court's order.

19  
20 ///

21  
22 ///

23  
24 ///

25  
26 ///

**CONCLUSION**

For the reasons stated above, Nationstar, U.S. Bank, and SFR respectfully request this Court dismiss SFR's slander of title claim, modify the April 30, 2020 Order to dismiss as moot U.S. Bank's unjust enrichment claim against SFR, and review the file and find no just cause for delay in certifying the Order as final pursuant to NRCP 54(b).

DATED June 30, 2020.

<b>KIM GILBERT EBRON</b>  <u>/s/ Jacqueline A. Gilbert</u> 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 Drive, Suite 110 Las Vegas, Nevada 89139 Telephone: 702-485-3300 Facsimile: 702-485-3301 Email: jackie@kgelegal.com Email: diana@kgelegal.com Email: karen@kgelegal.com  <i>Attorneys for</i> <i>SFR Investments Pool 1, LLC</i>	<b>AKERMAN LLP</b>  <u>/s/ Donna M. Wittig</u> Melanie D. Morgan, Esq. Nevada Bar No. 8215 Donna M. Wittig, Esq. Nevada Bar No. 11015 1635 Village Center Circle, Suite 200 Las Vegas, Nevada 89134 Telephone: 702-634-5000 Facsimile: 702-381-8572 Email: melanie.morgan@akerman.com Email: donna.wittig@akerman.com  <i>Attorneys for Nationstar Mortgage LLC</i> <i>and U.S. Bank National Association as</i> <i>Trustee for the Certificateholders of the</i> <i>LXS 2006-4N Trust Fund, erroneously pled</i> <i>as U.S. Bank, N.A.</i>
--	---

**ORDER**

The Court, having read the stipulation and having independently reviewed the papers on file in this case has determined that the Parties' stipulation to dismiss SFR's slander of title claim and request to modify the April 30, 2020 Findings of Fact, Conclusions of Law and Judgment, to include that the Court denies U.S. Bank's claim for unjust enrichment as moot should be granted. Further, the Court finds no just reason to delay certifying the April 30, 2020 as final as to the claims between the stipulating Parties. NRCP 54(b). Good cause appearing

IT IS HEREBY ORDERED that SFR's slander of title claim is dismissed.

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and

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

1 Judgment entered on April 30, 2020, shall be modified to DENY U.S. Bank's unjust  
2 enrichment claim as against SFR as moot.

3 IT IS FURTHER ORDERED that final judgment be entered as to Nationstar  
4 Mortgage, LLC, U.S. Bank, N.A., and SFR Investments Pool 1, LLC on their claims  
5 against each other.

6  
7 DATE: July 1, 2020

8  
9 

10 DISTRICT COURT JUDGE  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## Jackie Gilbert

---

**From:** donna.wittig@akerman.com  
**Sent:** Tuesday, June 30, 2020 4:28 PM  
**To:** Jackie Gilbert; melanie.morgan@akerman.com  
**Cc:** Michael L. Sturm; Alex Loglia; Diana Ebron; de715b910+matter1033047067@maildrop.clio.com  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Yes.

### Donna Wittig

Associate  
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134  
D: 702 634 5035  
[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)

---

**From:** Jackie Gilbert <jackie@kgelegal.com>  
**Sent:** Tuesday, June 30, 2020 4:16 PM  
**To:** Wittig, Donna (Assoc-Las) <donna.wittig@akerman.com>; Morgan, Melanie (Ptnr-Las) <melanie.morgan@akerman.com>  
**Cc:** Michael L. Sturm <Mike@kgelegal.com>; Alex Loglia <alex@kgelegal.com>; Diana Ebron <diana@kgelegal.com>; de715b910+matter1033047067@maildrop.clio.com  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Sorry, one last thing. I would like to include the following:

The Parties also stipulate that SFR shall dismiss its Slander of Title claim against Nationstar and U.S. Bank.

IT IS ALSO ORDERED that SFR's claim for Slander of Title against Nationstar and U.S. Bank is hereby dismiss. (this right before the 54(b) cert.

Will that work for you?

*Jackie*

---

**From:** [donna.wittig@akerman.com](mailto:donna.wittig@akerman.com) <[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)>  
**Sent:** Tuesday, June 30, 2020 3:07 PM  
**To:** Jackie Gilbert <[jackie@kgelegal.com](mailto:jackie@kgelegal.com)>; [melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)  
**Cc:** Michael L. Sturm <[Mike@kgelegal.com](mailto:Mike@kgelegal.com)>; Alex Loglia <[alex@kgelegal.com](mailto:alex@kgelegal.com)>; Diana Ebron <[diana@kgelegal.com](mailto:diana@kgelegal.com)>; [de715b910+matter1033047067@maildrop.clio.com](mailto:de715b910+matter1033047067@maildrop.clio.com)  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Yes, please use my e-signature. Thanks!

### Donna Wittig

Associate  
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134

D: 702 634 5035  
[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)

---

**From:** Jackie Gilbert <[jackie@kgelegal.com](mailto:jackie@kgelegal.com)>  
**Sent:** Tuesday, June 30, 2020 3:04 PM  
**To:** Wittig, Donna (Assoc-Las) <[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)>; Morgan, Melanie (Ptnr-Las) <[melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)>  
**Cc:** Michael L. Sturm <[Mike@kgelegal.com](mailto:Mike@kgelegal.com)>; Alex Loglia <[alex@kgelegal.com](mailto:alex@kgelegal.com)>; Diana Ebron <[diana@kgelegal.com](mailto:diana@kgelegal.com)>; [de715b910+matter1033047067@maildrop.clio.com](mailto:de715b910+matter1033047067@maildrop.clio.com)  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

I have no problem with those changes. They will change the formatting a bit, so the signature blocks are not split, but if you are okay with me making those changes, may I file with your e-signature.

*Jackie*

---

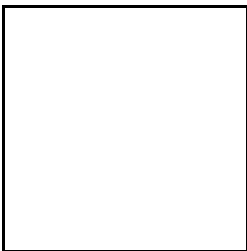
**From:** [donna.wittig@akerman.com](mailto:donna.wittig@akerman.com) <[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)>  
**Sent:** Tuesday, June 30, 2020 3:02 PM  
**To:** Jackie Gilbert <[jackie@kgelegal.com](mailto:jackie@kgelegal.com)>; [melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)  
**Cc:** Michael L. Sturm <[Mike@kgelegal.com](mailto:Mike@kgelegal.com)>; Alex Loglia <[alex@kgelegal.com](mailto:alex@kgelegal.com)>; Diana Ebron <[diana@kgelegal.com](mailto:diana@kgelegal.com)>; [de715b910+matter1033047067@maildrop.clio.com](mailto:de715b910+matter1033047067@maildrop.clio.com)  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Let us know if you are agreeable to these edits.

**Donna Wittig**

Associate  
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134  
D: 702 634 5035  
[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)

**vCard | Profile**



CONFIDENTIALITY NOTE: The information contained in this transmission may be privileged and confidential, and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, please immediately reply to the sender that you have received this communication in error and then delete it. Thank you.

---

**From:** Jackie Gilbert <[jackie@kgelegal.com](mailto:jackie@kgelegal.com)>  
**Sent:** Tuesday, June 30, 2020 2:37 PM  
**To:** Wittig, Donna (Assoc-Las) <[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)>; Morgan, Melanie (Ptnr-Las) <[melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)>  
**Cc:** Michael L. Sturm <[Mike@kgelegal.com](mailto:Mike@kgelegal.com)>; Alex Loglia <[alex@kgelegal.com](mailto:alex@kgelegal.com)>; Diana Ebron <[diana@kgelegal.com](mailto:diana@kgelegal.com)>;

Marsh Butte St. <[de715b910+matter1033047067@maildrop.clio.com](mailto:de715b910+matter1033047067@maildrop.clio.com)>

**Subject:** Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

**Importance:** High

Hello, Donna,

As we discussed in prior emails, I am attaching a draft Stipulation and Order to certify the FFCLJ entered on April 30, 2020 as final as to US Bank, Nationstar, and SFR.

Please let me know if you have any revisions. If not, please reply to this email that I have your authority to use your electronic signature.

Thank you for your prompt attention to this matter.

Jackie

*Jacqueline A. Gilbert, Esq.*

**KIM GILBERT EBRON**

*fka Howard Kim & Associates*

7625 Dean Martin Drive, Suite 110

Las Vegas, Nevada 89139

Phone: (702) 485-3300

Fax: (702) 485-3301

Cell: (702) 400-4130

Our office is currently closed to clients and visitors in order to comply with best practices for minimizing the spread of COVID-19. KGE is committed to serving our clients and will continue to operate during this period, but most of our attorneys and staff are working remotely and there may be a delay in responses. The best way to contact us is by e-mail. Please copy Diana and Jackie on emails at [Diana@kgelegal.com](mailto:Diana@kgelegal.com) and [jackie@kgelegal.com](mailto:jackie@kgelegal.com). If you need to reach me (Jackie) directly, please call my cell: 702-400-4130.

The information contained in this email is confidential and proprietary information intended for the use only of the intended addressee. If the reader of this email is not the intended addressee, you are notified that any dissemination, distribution, or copying of this message is prohibited. If you have received this message in error, please notify the sender immediately by telephone at (702) 485-3300 or by electronic mail ([jackie@KGElegal.com](mailto:jackie@KGElegal.com)) and then delete the message and all copies and backups. Thank you.

Unless expressly stated otherwise, any U.S. federal tax advice contained in this transmittal, is not intended or written to be used, and cannot be used, by any person for the purpose of (i) avoiding penalties under the U.S. Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this e-mail or attachment.

## Jackie Gilbert

---

**From:** donna.wittig@akerman.com  
**Sent:** Tuesday, June 30, 2020 4:28 PM  
**To:** Jackie Gilbert; melanie.morgan@akerman.com  
**Cc:** Michael L. Sturm; Alex Loglia; Diana Ebron; de715b910+matter1033047067@maildrop.clio.com  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Yes.

### Donna Wittig

Associate  
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134  
D: 702 634 5035  
[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)

---

**From:** Jackie Gilbert <jackie@kgelegal.com>  
**Sent:** Tuesday, June 30, 2020 4:16 PM  
**To:** Wittig, Donna (Assoc-Las) <donna.wittig@akerman.com>; Morgan, Melanie (Ptnr-Las) <melanie.morgan@akerman.com>  
**Cc:** Michael L. Sturm <Mike@kgelegal.com>; Alex Loglia <alex@kgelegal.com>; Diana Ebron <diana@kgelegal.com>; de715b910+matter1033047067@maildrop.clio.com  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Sorry, one last thing. I would like to include the following:

The Parties also stipulate that SFR shall dismiss its Slander of Title claim against Nationstar and U.S. Bank.

IT IS ALSO ORDERED that SFR's claim for Slander of Title against Nationstar and U.S. Bank is hereby dismiss. (this right before the 54(b) cert.

Will that work for you?

*Jackie*

---

**From:** [donna.wittig@akerman.com](mailto:donna.wittig@akerman.com) <[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)>  
**Sent:** Tuesday, June 30, 2020 3:07 PM  
**To:** Jackie Gilbert <[jackie@kgelegal.com](mailto:jackie@kgelegal.com)>; [melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)  
**Cc:** Michael L. Sturm <[Mike@kgelegal.com](mailto:Mike@kgelegal.com)>; Alex Loglia <[alex@kgelegal.com](mailto:alex@kgelegal.com)>; Diana Ebron <[diana@kgelegal.com](mailto:diana@kgelegal.com)>; [de715b910+matter1033047067@maildrop.clio.com](mailto:de715b910+matter1033047067@maildrop.clio.com)  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Yes, please use my e-signature. Thanks!

### Donna Wittig

Associate  
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134

D: 702 634 5035  
[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)

---

**From:** Jackie Gilbert <[jackie@kgelegal.com](mailto:jackie@kgelegal.com)>  
**Sent:** Tuesday, June 30, 2020 3:04 PM  
**To:** Wittig, Donna (Assoc-Las) <[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)>; Morgan, Melanie (Ptnr-Las) <[melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)>  
**Cc:** Michael L. Sturm <[Mike@kgelegal.com](mailto:Mike@kgelegal.com)>; Alex Loglia <[alex@kgelegal.com](mailto:alex@kgelegal.com)>; Diana Ebron <[diana@kgelegal.com](mailto:diana@kgelegal.com)>; [de715b910+matter1033047067@maildrop.clio.com](mailto:de715b910+matter1033047067@maildrop.clio.com)  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

I have no problem with those changes. They will change the formatting a bit, so the signature blocks are not split, but if you are okay with me making those changes, may I file with your e-signature.

*Jackie*

---

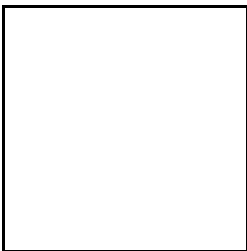
**From:** [donna.wittig@akerman.com](mailto:donna.wittig@akerman.com) <[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)>  
**Sent:** Tuesday, June 30, 2020 3:02 PM  
**To:** Jackie Gilbert <[jackie@kgelegal.com](mailto:jackie@kgelegal.com)>; [melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)  
**Cc:** Michael L. Sturm <[Mike@kgelegal.com](mailto:Mike@kgelegal.com)>; Alex Loglia <[alex@kgelegal.com](mailto:alex@kgelegal.com)>; Diana Ebron <[diana@kgelegal.com](mailto:diana@kgelegal.com)>; [de715b910+matter1033047067@maildrop.clio.com](mailto:de715b910+matter1033047067@maildrop.clio.com)  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Let us know if you are agreeable to these edits.

**Donna Wittig**

Associate  
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134  
D: 702 634 5035  
[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)

**vCard | Profile**



CONFIDENTIALITY NOTE: The information contained in this transmission may be privileged and confidential, and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, please immediately reply to the sender that you have received this communication in error and then delete it. Thank you.

---

**From:** Jackie Gilbert <[jackie@kgelegal.com](mailto:jackie@kgelegal.com)>  
**Sent:** Tuesday, June 30, 2020 2:37 PM  
**To:** Wittig, Donna (Assoc-Las) <[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)>; Morgan, Melanie (Ptnr-Las) <[melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)>  
**Cc:** Michael L. Sturm <[Mike@kgelegal.com](mailto:Mike@kgelegal.com)>; Alex Loglia <[alex@kgelegal.com](mailto:alex@kgelegal.com)>; Diana Ebron <[diana@kgelegal.com](mailto:diana@kgelegal.com)>;



Marsh Butte St. <[de715b910+matter1033047067@maildrop.clio.com](mailto:de715b910+matter1033047067@maildrop.clio.com)>

**Subject:** Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

**Importance:** High

Hello, Donna,

As we discussed in prior emails, I am attaching a draft Stipulation and Order to certify the FFCLJ entered on April 30, 2020 as final as to US Bank, Nationstar, and SFR.

Please let me know if you have any revisions. If not, please reply to this email that I have your authority to use your electronic signature.

Thank you for your prompt attention to this matter.

Jackie

*Jacqueline A. Gilbert, Esq.*

**KIM GILBERT EBRON**

*fka Howard Kim & Associates*

7625 Dean Martin Drive, Suite 110

Las Vegas, Nevada 89139

Phone: (702) 485-3300

Fax: (702) 485-3301

Cell: (702) 400-4130

Our office is currently closed to clients and visitors in order to comply with best practices for minimizing the spread of COVID-19. KGE is committed to serving our clients and will continue to operate during this period, but most of our attorneys and staff are working remotely and there may be a delay in responses. The best way to contact us is by e-mail. Please copy Diana and Jackie on emails at [Diana@kgelegal.com](mailto:Diana@kgelegal.com) and [jackie@kgelegal.com](mailto:jackie@kgelegal.com). If you need to reach me (Jackie) directly, please call my cell: 702-400-4130.

The information contained in this email is confidential and proprietary information intended for the use only of the intended addressee. If the reader of this email is not the intended addressee, you are notified that any dissemination, distribution, or copying of this message is prohibited. If you have received this message in error, please notify the sender immediately by telephone at (702) 485-3300 or by electronic mail ([jackie@KGElegal.com](mailto:jackie@KGElegal.com)) and then delete the message and all copies and backups. Thank you.

Unless expressly stated otherwise, any U.S. federal tax advice contained in this transmittal, is not intended or written to be used, and cannot be used, by any person for the purpose of (i) avoiding penalties under the U.S. Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this e-mail or attachment.

**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)

---

**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**

<b>PRESENT:</b>	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

NO.	EXHIBIT	BATES NO.	OFFERED	OBJECTED	ADMITTED
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.*

<u>NO.</u>	<u>EXHIBIT</u>	<u>BATES NO.</u>	<u>OFFERED</u>	<u>OBJECTED</u>	<u>ADMITTED</u>
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

AB

AB

AB

# 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):

AMDNEDED NOTICE OF APPEAL; AMENDED 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; STIPULATION AND ORDER TO CERTIFY THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT, ENTERED APRIL 30, 2020 AS TO NATIONSTAR MORTGAGE, LLC, U.S. BANK, N.A. AND SFR INVESTMENTS POOL 1, LLC; NOTICE OF ENTRY OF STIPULATION AND ORDER TO CERTIFY THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT, ENTERED APRIL 30, 2020 AS TO NATIONSTAR MORTGAGE LLC, U.S. BANK, N.A. AND SFR INVESTMENTS POOL 1, LLC; DISTRICT COURT MINUTES; EXHIBITS LIST

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),

U.S. BANK, N.A.,

Third-Party Plaintiff(s),

vs.

Case No: A-14-705563-C

Dept No: XXVI

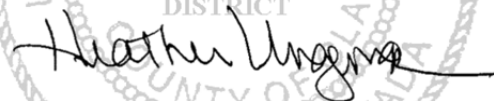
SFR INVESTMENTS POOL 1, LLC,

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 8 day of September 2020.

Steven D. Grierson, Clerk of the Court

A handwritten signature in black ink, appearing to read "Heather Ungermann", is written over a faint, circular court seal. The seal contains the text "CLERK OF THE COURT", "JUDICIAL DISTRICT", and "COUNTY OF CLARK, NEVADA".

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