

IN THE SUPREME COURT OF NEVADA

Case No. 81293

**SFR INVESTMENTS POOL 1, LLC,
A NEVADA LIMITED LIABILITY COMPANY,**

Appellant/Cross-Respondent,

Electronically Filed
Jun 22 2021 06:10 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

vs.

**U.S. BANK N.A., A NATIONAL BANKING ASSOCIATION, AS TRUSTEE
FOR THE CERTIFICATEHOLDERS OF THE LXS 2006-4N TRUST FUND,
ERRONEOUSLY PLED AS U.S. BANK, N.A., AND NATIONSTAR
MORTGAGE, LLC, A FOREIGN LIMITED LIABILITY COMPANY,**

Respondents/Cross-Appellants.

Appeal from the Eighth Judicial District Court, Department IV
District Court Case No. A-14-705563-C

**MOTION OF AMICUS CURIAE FEDERAL HOUSING FINANCE
AGENCY TO APPEAR AS AMICUS AND FILE BRIEF IN SUPPORT OF
RESPONDENTS/CROSS-APPELLANTS AND
AFFIRMANCE OF THE DISTRICT COURT'S JUDGMENT**

Leslie Bryan Hart, Esq. (SBN 4932)
John D. Tennert III, Esq. (SBN 11728)
FENNEMORE CRAIG, P.C.
7800 Rancharra Parkway
Reno, NV 89511
Tel: (775) 788-2228
Fax: (775) 788-2229
lhart@fclaw.com
jtennert@fclaw.com

*Attorneys for Amicus Curiae
FEDERAL HOUSING FINANCE AGENCY*

The Federal Housing Finance Agency (“FHFA”) respectfully requests leave under Nevada Rule of Appellate Procedure 29(f) to appear as amicus curiae in support of Respondents/Cross-Appellants U.S. Bank N.A. and Nationstar Mortgage, LLC (“Servicers”) and file an amicus curiae brief in support of their position. Rule 29(a) recognizes that agencies of the United States, like FHFA, may file an amicus brief without the consent of the parties or leave of this Court. Out of an abundance of caution, FHFA seeks leave of the Court to file an amicus brief in this appeal to the extent that its brief would be considered a “later filing.”

NRAP 29(f). A copy of the proposed brief has been filed concurrently with this motion; should the Court accept it for filing, neither Servicers nor FHFA would object to an order granting Appellant/Cross-Respondent SFR Investments Pool 1, LLC (“SFR”) the opportunity to submit a response of no more than 7000 words. When contacted by FHFA’s counsel, Servicers’ counsel indicated that they consented to the filing of FHFA’s brief while SFR’s counsel did not give their consent.

FHFA has a special interest in this case and other cases like it involving NRS 106.240, as its outcome will likely affect the property interests of the government-sponsored enterprises it oversees in conservatorship, the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac”) (together, the “Enterprises”), which own

hundreds of thousands of mortgage loans in Nevada. FHFA's history of participation in similar cases before this Court and many others confirms that its involvement may assist the Court in understanding the widespread implications of the Court's eventual ruling in this appeal.¹

FHFA has previously appeared as amicus curiae in cases before the U.S. Court of Appeals for the Ninth Circuit involving the application of NRS 106.240. Recently, counsel for FHFA participated in oral argument in *Bank of America, N.A. v. SFR Investments Pool 1, LLC (Bumbasi)*, No. 19-17445 (9th Cir. 2021), arguing that the district court there erred in applying NRS 106.240 to terminate a deed of trust that was the subject of an active litigation. On June 1, 2021, following this Court's decision in *Glass v. Select Portfolio Servicing, Inc.*, No. 78325, 2020 WL 3604042, at *1 (Nev. 2020) (unpublished), the Ninth Circuit reversed the district court after concluding that a rescission notice decelerated the prior demand for full payment of the loan, making NRS 106.240 inapplicable. *Bumbasi*, --- F. App'x ---, 2021 WL 2206540 (9th Cir. June 1, 2021). SFR, which was the appellee in *Bumbasi*, has sought panel and en banc rehearing of that appeal. SFR argues that the Ninth Circuit should have waited for a decision in *this*

¹ See, e.g., *Nationstar Mortg. LLC v. SFR Invs. Pool 1*, No. 69400 (Nev.) (appearing as amicus curiae and participating in oral argument); *Saticoy Bay LLC Series 9641 Christine View v. Fannie Mae*, No. 69419 (Nev.) (same); *SFR Invs. Pool 1 v. Bank of America, N.A.*, No. 70060 (Nev.) (appeared as amicus curiae).

matter before issuing its ruling. *See* Pet. for Rehearing or Rehearing En Banc, *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, No. 19-17445 (9th Cir. 2021) (ECF No. 65-1) at 14-17. Because SFR has directly linked the outcome in *Bumbasi* to the Court’s decision in this case, FHFA seeks to ensure that its arguments regarding NRS 106.240’s application are also properly presented to this Court.

FHFA is charged with regulating and overseeing the Enterprises’ participation in the secondary mortgage market, giving it a unique perspective and interest in ensuring that the Enterprises’ assets are protected to the full extent of federal and state law so that the Enterprises can fulfill their statutory mission of stabilizing and enhancing the secondary mortgage market. And the Court’s resolution of this and other cases with similar facts will substantially affect FHFA’s interest as Conservator. In enacting the Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654 (codified as 12 U.S.C. § 4511 *et seq.*) (“HERA”), Congress empowered FHFA to “preserve and conserve” the Enterprises’ assets in conservatorship, 12 U.S.C. § 4617(b)(2)(D). Hundreds of cases involving the Enterprises’ property interests are either pending or have been resolved in federal and state courts throughout Nevada.

FHFA supports Servicers’ position. As explained in greater detail in its proposed *amicus* brief, Servicers’ position aligns with HERA’s policy goals of

protecting the conservatorships, maximizing the Enterprises' ability to realize value from their assets, and facilitating their statutory missions. FHFA often participates as an amicus curiae in cases implicating Enterprise loans and interests. Indeed, FHFA has presented its views in many amicus briefs in this Court, the Ninth Circuit, and the District of Nevada. FHFA has, as amicus, also participated in four oral arguments before this Court.

If history is any guide, FHFA's perspective will assist the Court. This Court and the Ninth Circuit have adopted positions set forth in FHFA's amicus briefs and appear to have found FHFA's perspective to be helpful. *See, e.g. Nationstar Mortg. LLC v. SFR Investments Pool 1*, 396 P.3d 754 (Nev. 2017); *Saticoy Bay, LLC, Series 2714 Snapdragon v. Flagstar Bank, FSB*, 699 F. App'x 658 (9th Cir. 2017). Similarly, during an oral argument in an appeal involving an evidentiary question similar to those that arise in Nevada HOA-sale cases, a First Circuit panel approvingly discussed the amicus brief FHFA submitted. *See Oral Argument, U.S. Bank Trust, N.A. v. Jones*, No. 18-1719 (1st Cir. argued Feb. 6, 2019), at 19:21-20:15, *available at* <http://media.ca1.uscourts.gov/files/audio/18-1719.mp3>.

For all these reasons, FHFA respectfully requests leave to participate as an

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amicus and file a brief in support of Servicers and affirmance of the district court's judgment.

FENNEMORE CRAIG, P.C.

By: /s/ Leslie Bryan Hart
Leslie Bryan Hart, Esq. (SBN 4932)
John D. Tennert, Esq. (SBN 11728)
7800 Rancharrah Parkway
Reno, Nevada 89511
Tel: (775) 788-2228
Fax: (775) 788-2229
lhart@fclaw.com; jtennert@fclaw.com

*Attorneys for Amicus Curiae
Federal Housing Finance Agency*

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9(b)(d)(e), I certify that on June 22, 2021, a true and correct copy of the **MOTION OF AMICUS CURIAE FEDERAL HOUSING FINANCE AGENCY TO APPEAR AS AMICUS AND FILE BRIEF IN SUPPORT OF RESPONDENTS / CROSS-APPELLANTS AND AFFIRMANCE OF THE DISTRICT COURT’S JUDGMENT**, was transmitted electronically through the Court’s e-filing system to the attorney(s) associated with this case.

Role	Party Name	Represented By
Appellant/ Cross-Respondent	SFR Investments Pool 1, LLC	Diana S. Ebron (Kim Gilbert Ebron) Jacqueline A. Gilbert (Kim Gilbert Ebron) Karen L. Hanks (Kim Gilbert Ebron) Jason G. Martinez (Kim Gilbert Ebron)
Respondent/ Cross-Appellant	Nationstar Mortgage, LLC	Fredrick J. Biedermann (Gerrard Cox Larsen) Douglas D. Gerrard (Gerrard Cox Larsen) Melanie D. Morgan (Akerman LLP/Las Vegas) Ariel E. Stern (Akerman LLP/Las Vegas) Donna M. Wittig (Akerman LLP/Las Vegas)
Respondent/ Cross-Appellant	U.S. Bank N.A.	Melanie D. Morgan (Akerman LLP/Las Vegas) Ariel E. Stern (Akerman LLP/Las Vegas) Donna M. Wittig (Akerman LLP/Las Veg

/s/ Shawna Braselton
An Employee of Fennemore Craig, P.C.