

IN THE SUPREME COURT OF NEVADA

Case No. 81293

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

Appellant/Cross-Respondent,

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

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

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In its Opposition to FHFA’s motion to appear as amicus curiae, SFR does not dispute that FHFA’s proposed amicus brief provides a useful perspective that will assist the Court in resolving this appeal. Instead, SFR seeks to keep FHFA’s submission from the Court because, supposedly, FHFA should have filed it sooner. That is wrong, and the Court should accept FHFA’s brief.

SFR’s Opposition is based on unwarranted assumptions and an unfounded reading of applicable law.¹ FHFA’s motion promptly followed SFR’s invocation of this appeal in its Petition for Rehearing in *Bank of America, N.A. v. SFR Investments Pool 1, LLC (Bumbasi)*, No. 19-17445 (9th Cir. 2021); SFR’s qualified and equivocal mention of this appeal during the *Bumbasi* oral argument did not require FHFA to make its motion sooner. This Court retains ample discretionary authority to grant FHFA’s motion, and FHFA respectfully requests that the Court do so.²

SFR’s contention that FHFA was required to file an amicus brief in this matter within seven days after the oral argument in *Bumbasi* is unfounded. During that argument, SFR made a qualified suggestion that, if the panel was persuaded that *Bumbasi* was distinguishable from *Glass v. Select Portfolio Servicing, Inc.*,

¹ Capitalized terms not defined herein shall have the same meaning as in FHFA’s Motion to Appear as Amicus and File Brief in Support of Respondents/Cross-Appellants and Affirmance of the District Court's Judgment.

² FHFA and Respondents/Cross-Appellants have no objection to SFR’s request for leave to file a response of up to 7,000 words.

No. 78325, 2020 WL 3604042 (Nev. July 1, 2020) (unpublished), it should hold the case pending the instant appeal.³ The panel instead sided with Appellants Fannie Mae and Bank of America, as well as amicus FHFA, held that *Bumbasi* was closely analogous to *Glass*, and followed this Court’s holding in concluding that NRS 106.240 was inapplicable. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 849 F. App’x 211 (9th Cir. 2021).

In any event, SFR’s impromptu mention of this appeal during that oral argument did not trigger any requirement for FHFA to act. SFR never referenced this appeal in its *Bumbasi* brief, although this appeal was docketed months before SFR filed it. Nor did SFR formally move to stay proceedings at or after the *Bumbasi* oral argument pending the outcome of this appeal. It was not until SFR suffered an adverse ruling in the Ninth Circuit and filed a Petition for Rehearing that it formally tied *Bumbasi* to the instant appeal. In that petition, SFR’s position shifted from contending *Glass* was distinguishable, *e.g.*, Appellee’s Answering Brief at 15-17, *Bank of Am. v. SFR Invs. Pool 1, LLC*, No. 19-17445 (Oct. 19, 2020) (ECF No. 33), to asserting that *Glass* rests on a “flawed” and “faulty

³ A recording of the oral argument in *Bumbasi* is available at https://youtu.be/iM_vyk2a8xw. Counsel for SFR mentioned the instant appeal at 16:37-17:03 and at 18:54-19:13. At 18:54, Counsel for SFR states, “so we would ask, *if you are at all wondering what the [Nevada] Supreme Court would do with [SFR’s] specific argument as it is framed in this case*, to stay it, and wait for the *SFR vs. U.S. Bank* case, because these implications that I am raising here today are raised in that brief.” (emphasis added).

conclusion,” effectively contending that in deciding this case the Court may abandon or limit *Glass*. See Pet’n for Rehearing or Rehearing En Banc at 11, 14-17, *Bank of Am. v. SFR Invs. Pool 1, LLC*, No. 19-17445 (June 15, 2021) (ECF No. 65-1). Thus, regardless of its passing mention of this appeal during the *Bumbasi* argument, SFR had not taken the position in a writing that this Court “wrongly concluded that the Rescission [in *Glass*] was meant to decelerate the loan” until it filed its rehearing petition. *Id.* at 10. Once SFR made clear that it would use this appeal as a vehicle to seek to undermine *Glass*’s core holding, FHFA moved to appear as an amicus here.

SFR cites no rule or other authority supporting its contention that FHFA must have sought leave to appear as an amicus here within a certain time period after SFR first mentioned this case in the *Bumbasi* argument. And Nevada’s Rules of Appellate Procedure do not dictate the outcome SFR seeks. The Rules do not prescribe the timing or factors to consider when granting leave to file an amicus brief docketed more than seven days after a party’s principal brief; Rule 29(f) merely states that “[t]he court may grant leave for later filing, specifying the time within which an opposing party may answer.” See also *supra* n.2. And even if any aspect of Rule 29 could be read to limit this Court’s discretion in granting FHFA’s motion, this Court retains ample discretionary authority to “liberally construe[]” or “suspend” any such requirement where doing so would facilitate the just and

efficient resolution of an appeal. *See* NRAP 1(c), 2.

Notably, SFR does not dispute that FHFA's participation would aid the Court. FHFA's frequent participation in Nevada cases implicating Enterprise loans and interests has afforded it extensive familiarity and a deep understanding of the policy and real-world implication of this Court's rulings on Nevada property law and, in turn, on Enterprise property interests. FHFA's proposed brief makes arguments developed in the course of litigating cases involving NRS 106.240 that are intended to support the Court's understanding of the issues presented and the potential effects of its decision.

CONCLUSION

For these reasons and the reasons stated in its motion, FHFA respectfully requests that the Court grant it leave to participate as an amicus and file a brief in support of Servicers and affirmance of the district court's judgment.

DATED: July 6, 2021.

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CERTIFICATE OF SERVICE

Pursuant to NEFCR 9(b)(d)(e), I certify that on July 6, 2021, a true and correct copy of the **AMICUS CURIAE FEDERAL HOUSING FINANCE AGENCY’S REPLY IN SUPPORT OF MOTION 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)
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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 Vegas)

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