

1                                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2       THE BANK OF NEW YORK MELLON,  
3       FKA THE BANK OF NEW YORK, AS  
4       TRUSTEE, FOR THE  
5       CERTIFICATEHOLDERS OF CWABS, INC.  
6       ASSET-BACKED CERTIFICATES, SERIES  
7       2006-25,

8                                   Appellant,  
9                                   vs.

10       SFR INVESTMENTS POOL 1, LLC,

11                                   Respondent.

**CASE NO.:** 81604

                                  Electronically Filed  
                                  Sep 03 2020 02:02 p.m.  
12       **DOCKETING STATEMENT**  
13       **CIVIL APPEALS**  
                                  Elizabeth A. Brown  
                                  Clerk of Supreme Court

14       1. **Judicial District:**     Eighth                                   **Department:** 29  
15                                   **County:**                     Clark                               **Judge:**             Hon. David Jones  
16                                   **District Ct. Case Nos.**       A-19-790150-C

17       2. **Attorney filing this Docketing Statement:**

18           Attorney:     J. Stephen Dolembro, Esq. and Shadd A. Wade, Esq.

19           Telephone:   (702) 948-8565

20           Firm Address: ZBS Law, LLP

21                           9435 West Russell Road, Suite 120

22                           Las Vegas, Nevada 89148

23           Client:       THE BANK OF NEW YORK MELLON, FKA THE BANK OF NEW  
24                           YORK, AS TRUSTEE, FOR THE CERTIFICATEHOLDERS OF  
25                           CWABS, INC. ASSET-BACKED CERTIFICATES, SERIES 2006-25

26       3. **Attorneys Representing Respondents:**

27           Attorney:     Diana S. Ebron, Esq., Jacqueline A. Gilbert, Esq., and Karen L. Hanks,  
28                           Esq.

          Telephone:   (702) 485-3300

          Firm Address: KIM GILBERT EBRON

                          7625 Dean Martin Drive, Suite 110

                          Las Vegas, NV 89139

          Client:       SFR INVESTMENTS POOL 1, LLC

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4. **Nature of Disposition Below:**
- Summary Judgment in favor of Plaintiff, SFR Investments Pool 1, LLC
5. **Does this Appeal Raise Issues Concerning Any of the Following?**
- Child Custody - NO
- Venue - NO
- Termination of Parental Rights – NO
6. **Pending and Prior Proceedings in this Court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:
- N/A
7. **Pending and Prior Proceedings in Other Courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g. bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:
- The Bank of New York Mellon, f/k/a The Bank of New York, as Trustee, for the Certificateholders of CWABS, Inc. Asset-Backed Certificates, Series 2006-25 v. SFR Investments Pool. 1, LLC, *et al*, 2:18-cv-00599-APG-CWH; United States District Court, District of Nevada. Judgment entered and action dismissed as time barred on October 1, 2018.
8. **Nature of the Action.**
- On February 27, 2019, Respondent, SFR Investments Pool 1, LLC initiated a district court action seeking to extinguish BNYM’s deed of trust under NRS 106.240.
9. **Issues on Appeal.**
- Whether the District Court erred when it ruled that the debt underlying BNYM’s deed of trust was presumed to be satisfied pursuant to NRS 106.240.
  - Whether the District Court erred when it found that BNYM and/or its predecessor made the loan “wholly due” under NRS 106.240 by virtue of a Notice of Default recorded on April 29, 2008.
10. **Pending Proceedings in this Court Raising the Same or Similar Issues.**
- Counsel is unaware of pending cases raising the same issue.
11. **Constitutional Issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance

1 with NRAP 44 and NRS 30.130.

2 Not Applicable.

3 **12. Other Issues.** Does this appeal involve any of the following issues:

4 ☐ Reversal of well-settled Nevada precedent

5 ☐ An issue arising under the U.S. and/or Nevada Constitutions

6 ☐ A substantial issue of first impression

7 ☐ An issue of public policy

8 ☐ An issue where en banc consideration is necessary to maintain uniformity  
9 of this court's decisions.

10 ☐ A ballot question

11 **If so, explain:**

12 Not Applicable.

13 **13. Assignment to the Court of Appeals or retention in the Supreme Court.**

14 The matter is presumptively retained by the Supreme Court pursuant to NRAP  
15 17(a)(13).

16 **14. Trial.**

17 N/A.

18 **15. Judicial Disqualification.** Do you intend to disqualify or have a justice recuse  
19 him/herself from participation in this appeal? If so, which Justice?

20 No.

21 **TIMELINESS OF NOTICE OF APPEAL**

22 **16. Date of Entry of Written Judgment or Order Appealed from:**

23 Findings of Fact, Conclusions of Law and Judgment entered on July 22, 2020.

24 **17. Date Written Notice of Entry of Judgment or Order was Served:**

25 Notice of Entry of Order was served on August 5, 2020.

26 **Was service by:**

27 ☐ Delivery

28 ☒ Mail/electronic/fax

1 **18. Was the Time for Filing the Notice of Appeal Tolled by Post-Judgment Motion?**

2 No.

3 **19. Date Notice of Appeal Filed:**

4 August 6, 2020. No other party has appealed from the judgment or order.

5 **20. Specify Statute or Rule Governing Time Limit for Filing Notice of Appeal:**

6 NRAP 4(a) & NRAP 26(a).

7 **SUBSTANTIVE APPEALABILITY**

8 **21. Specify the Statute or other Authority Granting Jurisdiction to Review Judgment**  
9 **or Order Appealed from:**

10 (a) NRAP 3A(b)(1).

11 (b) Explain how each authority provides a basis for appeal from the judgment or  
12 order:

13 On August 5, 2020, the district court entered an Order Denying BNYM's Motion for  
14 Summary Judgment and Granting SFR's Motion for Summary Judgment. Defendant Sables,  
15 LLC filed a Declaration of Non-Monetary Status pursuant to NRS 107.029 that SFR did not  
16 object to. This resolved all issues in the case between Appellant and Respondent, constituting  
17 final judgment. NRAP 3A(b)(1) specifically allows for an appeal after final judgment has been  
18 entered.

19 **22. List All Parties Involved in the Action or Consolidated Actions in the District**  
20 **Court:**

21 **(a) Parties:**

22 **Plaintiff:** SFR Investments Pool 1, LLC

23 **Defendants:** The Bank of New York Mellon, f/k/a The Bank of New York, as Trustee,  
24 for the Certificateholders of CWABS, Inc. Asset-Backed Certificates, Series 2006-25  
25 and Sables, LLC

26 **(b) If all parties in the district court are not parties to this appeal, explain in**  
27 **detail why those parties are not involved in this appeal:**

28 Defendant Sables, LLC filed a Declaration of Non-Monetary Status pursuant to  
NRS 107.029 that SFR did not object to. Under NRS 107.029(5), "if no objection is

1 raised...the trustee is not required to participate any further in the action..." NRS 107.029(5).  
2 SFR does not dispute that it did not object to Sables, LLC's Declaration of Non-Monetary  
3 Status.

4 **23. Give a Brief Description (3 to 5 words) of Each Party's Separate Claims,**  
5 **Counterclaims, Cross-Claims, or Third-Party Claims and the date of formal**  
6 **disposition of each Claim.**

7 Plaintiff – Cancellation of Written Instrument - disposed of July 22, 2020.

8 Defendants – None.

9 **24. Did the Judgment or Order Appealed from Adjudicate ALL the Claims Alleged**  
10 **Below and the Rights and Liabilities of ALL the Parties to the Action or**  
11 **Consolidated Actions Below?**

12 Yes.

13 **25. If You Answered "No" to Question 24, Complete the Following:**

14 a) Specify the claims remaining pending below: N/A.

15 b) Specify the parties remaining below: N/A.

16 c) Did the district court certify the judgment or order appealed from as a final  
17 judgment pursuant to NRCP 54(b)? N/A.

18 d) Did the district court make an express determination, pursuant to NRCP  
19 54(b), that there is no just reason for delay and an express direction for the  
20 entry of judgment? N/A.

21 **26. If You Answered "No to Any Part of Question 25, Explain the Basis for Seeking**  
22 **Appellate Review:**

23 N/A.

24 **27. Attach File-Stamped Copies of the Following Documents:**

- 25 • The latest filed complaint, counterclaims, cross-claims, and third-party claims  
26 • Any tolling motion(s) and order(s) resolving tolling motion(s)  
27 • Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims,  
28 cross-claims and/or third-party claims asserted in the action or consolidated

1                   action below, even if not at issue on appeal

- 2                   • Any other order challenged on appeal
- 3                   • Notices of entry for each attached order.
- 4

5                   **VERIFICATION**

6                   I declare under penalty of perjury that I have read this docketing statement, that the

7 information provided in this docketing statement is true and complete to the best of my

8 knowledge, information and belief, and that I have attached all required documents to this

9 docketing statement.

10 Dated and executed this 3rd day of September, 2020 in Clark County, Nevada.

11                   ZBS LAW, LLP

12                   

13                   /s/ J. Stephen Dolemba

14                   J. Stephen Dolemba, Esq.

15                   Nevada Bar No. 9795

16                   9435 West Russell Road, Suite 120

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19                   *Attorneys for Appellant, The Bank of New York*

20                   *Mellon, f/k/a The Bank of New York, as Trustee,*

21                   *for the Certificateholders of CWABS, Inc. Asset-*

22                   *Backed Certificates, Series 2006-25*

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1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of ZBS LAW, LLP, and that on this 3rd day of  
3 September, 2020, I served a copy of this completed **DOCKETING STATEMENT CIVIL**  
4 **APPEALS** to be e-filed and e-served through the Supreme Court of the State of Nevada EFP  
5 system pursuant to NEFR 9 and/or by depositing a true copy of same in the United States Mail,  
6 at Las Vegas, Nevada, addressed as follows:

7 **Master Service List**

8  
9 **Docket Number and Case Title:** 81604 - THE BANK OF NEW YORK MELLON VS. SFR  
INVS. POOL 1, LLC

10 **Case Category** Civil Appeal

11 **Information current as of:** Sep 03 2020 01:54 p.m.

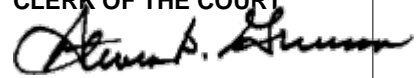
12 **Electronic notification will be sent to the following:**

13 John Dolembro  
14 Jacqueline Gilbert  
15 Karen Hanks  
16 Shadd Wade  
M. Segel

17 **Notification by traditional means must be sent to the following:**

18 Diana Ebron  
19  
20  
21

22 /s/Sara Hunsaker  
23 **An employee of ZBS LAW, LLP**  
24  
25  
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*Attorneys for SFR Investments Pool 1, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiff,

vs.

THE BANK OF NEW YORK MELLON, FKA  
THE BANK OF NEW YORK, AS TRUSTEE,  
FOR THE CERTIFICATEHOLDERS OF  
CWABS, INC., ASSET-BACKED  
CERTIFICATES, SERIES 2006-25; SABLES,  
LLC,

Defendants.

Case No. A-19-790150-C

Dept. No. Department 29

**COMPLAINT**

**Arbitration Exemption:**

1. Action Concerning Real Property

SFR Investments Pool 1, LLC hereby files its complaint against Defendants as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff, SFR Investments Pool 1, LLC ("SFR"), at all relevant times stated herein, is and was a Nevada limited liability company with its principal place of business in Clark County, Nevada.

2. Upon information and belief, Defendant, Bank of New York Mellon f/k/a The Bank of New York ("BNY Mellon"), as Trustee for the Certificateholders of CWABS, Inc. Asset-Backed Certificates, Series 2006-25, ("Trust"), at all relevant times stated herein, is and was a Delaware corporation with its headquarters in New York.



3. Upon information and belief, Defendant, Sables, LLC, at all relevant times stated herein is and was a Nevada limited liability company.

**GENERAL ALLEGATIONS**

4. On or about September 25, 2002, Susan Pritz and Nelson Pritz ("Pritz") purchased real property located at 4946 Droubay Drive, Las Vegas, Nevada 89122, Parcel No. 161-26-111-133 (the "Property").

5. On November 22, 2006, a deed of trust that was purportedly executed by Pritz, and which identified Countrywide Home Loans, Inc. ("Countrywide") as the Lender, and Mortgage Electronic Registrations Systems, Inc. ("MERS") as beneficiary, was recorded against the Property as Instrument No. 20061122-0003799 ("Deed of Trust").

6. Upon information and belief, the loan underlying the Deed of Trust was a cash-out refinance.

7. Paragraph 22 of the Deed of Trust states that "Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument...The notice shall specify...that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property."

8. On April 24, 2008, Recontrust Company as Trustee for MERS recorded a Notice of Default/Election to Sell Under Deed of Trust ("NOD") against the Property as Instrument No. 20080429-0004556 ("NOD #1). The NOD #1 indicates that Pritz became delinquent on or about January 1, 2008. The NOD #1 further states that the beneficiary "has declared and does hereby declare all sums secured thereby immediately due and payable..."

9. On November 29, 2011, a document titled "Assignment of Deed of Trust" was recorded against the Property as Instrument No. 201111290000514 ("Assignment"). The Assignment states that MERS grants, sells, assigns, transfers and conveys all beneficial interest in the Deed of Trust to BNY Mellon as Trustee for the Certificateholders of CWABS, Inc. Asset-Backed Certificates, Series 2006-25 (the "Trust").

10. Upon information and belief, Edward Gallegos, the individual who executed the Assignment was really an employee/agent of BNY Mellon rather than the originating lender.

11. According to the Pooling and Servicing Agreement ("PSA") the closing date of the Trust was December 29, 2006 and this is the date all loans must be transferred into the Trust.

12. On September 19, 2012, SFR acquired the Property by successfully bidding on the Property at a publicly-held foreclosure auction in accordance with NRS Chapter 116.

13. On October 9, 2012, the resulting Foreclosure Deed was recorded against the Property as Instrument No. 201210090001817.

14. BNY Mellon as trustee for the Trust failed to timely challenge the validity and effect of the Association foreclosure sale. As such, on October 1, 2018, District Court Judge Andrew Gordon dismissed BNY Mellon's complaint against SFR ruling that any claims challenging the Association sale were time-barred. *See* ECF No. 25, Case No. 2:18-cv-00599-APG-CWH. On January 23, 2019, the Order Granting Motion to Dismiss was recorded against the Property as Instrument No. 201901230000186.

15. On January 15, 2019, Sables, LLC, as trustee for BNY Mellon recorded a second Notice of Breach and Default and Election to Sell the Real Property Under Deed of Trust as Instrument No. 20190116-0000389 ("NOD #2").

16. On or about January 22, 2019, SFR received a copy of the NOD #2 from its tenant.

17. Upon information and belief, at no time within the ten years after acceleration, did BNY Mellon/the Trust or any other entity claiming an interest in the Deed of Trust, or their agents, take any clear and unequivocal affirmative act necessary to decelerate the loan.

**FIRST CAUSE OF ACTION**  
**(Cancellation of Written Instrument – NOD #1 and #2)**

18. SFR repeats and re-alleges the allegations of paragraphs 1-16 as though fully set forth herein and incorporates that same by reference.

19. At origination, the Note and Deed of Trust were split.

20. Upon information and belief, BNY Mellon/the Trust do not have possession of the original wet-ink promissory note.

1 21. BNY Mellon/the Trust are not entitled to enforce the Deed of Trust.

2 22. The Trust was never properly transferred the Note and/or Deed of Trust as the closing date  
3 of the Trust was December 29, 2006 and the Assignment was not executed and recorded until  
4 2011.

5 23. The Trust was never properly transferred the Note and/or Deed of Trust as Edward  
6 Gallegos, the individual who executed the Assignment was really an employee/agent of BNY  
7 Mellon rather than the originating lender.

8 24. Based on the foregoing, BNY Mellon/the Trust lack the authority to foreclose, and  
9 therefore the NOD # and #2 are invalid/void.

10 25. SFR is entitled to a cancellation of the of both the NOD #1 and NOD #2, and if left  
11 outstanding, SFR will suffer serious injury. BNY Mellon/the Trust is pursuing foreclosure, and if  
12 permitted to continue such foreclosure efforts, a sale can take place as early as May 15, 2019.  
13 Failure to cancel both the NOD #1 and #2 may result in damages, including, but not limited to,  
14 loss of the Property.

15  
16 **SECOND CAUSE OF ACTION**  
**(Cancellation of Written Instrument – Deed of Trust)**

17 26. SFR repeats and re-alleges the allegations of paragraphs 1-25 as though fully set forth  
18 herein and incorporates that same by reference.

19 27. Currently recorded against the Property is the Deed of Trust as Instrument No. 20061122-  
20 0003799.

21 28. BNY Mellon as trustee for the Trust, is the purported beneficiary of the Deed of Trust.

22 29. Between January 1, 2008, but no later than April 24, 2008, the loan was accelerated via  
23 the NOD #1 making all sums under the Note wholly due and immediately payable.

24 30. Upon information and belief, after default on January 1, 2008, Pritz made no further  
25 payments.

26 31. At no time within the ten years after acceleration did BNY Mellon/the Trust or any other  
27 entity claiming an interest in the Deed of Trust, or their agents, take any clear and unequivocal  
28 affirmative act necessary to decelerate the loan.

1 32. By virtue of the acceleration, pursuant to NRS 106.240, the Deed of Trust was  
2 terminated/discharged as early as January 1, 2018, but no later than April 24, 2018.

3 33. SFR is entitled to a cancellation of the Deed of Trust, and if left outstanding, SFR will  
4 suffer serious injury. BNY Mellon/the Trust is pursuing foreclosure, and if permitted to continue  
5 such foreclosure efforts, a sale can take place as early as May 15, 2019. Failure to cancel the Deed  
6 of Trust may result in damages, including, but not limited to, loss of the Property.

7 **THIRD CAUSE OF ACTION**  
8 **(Violation of NRS 107.028)**

9 34. SFR repeats and re-alleges the allegations of paragraphs 1-33 as though fully set forth  
10 herein and incorporates that same by reference.

11 35. On January 22, 2019, SFR's counsel, Kim Gilbert Ebron, emailed Zieve, Brodnax &  
12 Steele, LLP, counsel of BNY Mellon asking if the recording of the NOD #2 was a mistake in light  
13 of the prior dismissal of BNY Mellon's complaint in federal court based on the statute of  
14 limitations.

15 36. On January 28, 2019, BNY Mellon's counsel, Shadd Wade, Esq. of Zieve, Brodnax &  
16 Steele, LLP responded and indicated the recording was intentional, and as a result refused to  
17 withdraw it.

18 37. According to the Nevada Secretary of State, Les Zieve of Zieve, Brodnax & Steele, LLP  
19 is a manager of Sables, LLC.

20 38. According to the Nevada Secretary of State, Shadd Wade is the registered agent of Sables,  
21 LLC.

22 **COUNT 1**

23 39. Pursuant to NRS 107.028, Sables, LLC shall act impartially with respect to the deed of  
24 trust.

25 40. The manager of Sables, LLC is also the named partner of the law firm that represents BNY  
26 Mellon, and as such, Sables, LLC is not acting impartially. Instead, Sables, LLC is only acting in  
27 the interest of BNY Mellon.  
28

COUNT 2

41. Pursuant NRS 107.028, Sables, LLC shall act in good faith. In light of the NOD #1 which provides the Note was accelerated at the latest on April 24, 2008, Sables, LLC knows or should know that the statute of repose has expired and the Deed of Trust was terminated/discharged. Pursuing foreclosure is in bad faith.

COUNT 3

42. In light of the prior dismissal of BNY Mellon's complaint in federal court based on the statute of limitations, Sables, LLC is acting in bad faith by failing to withdraw the NOD #2. Because BNY Mellon failed to timely challenge the conclusive recitals and failed to timely rebut the presumptive validity of the Association sale and SFR's deed, Sables, LLC knows or should know the Deed of Trust was extinguished as a result of the Association foreclosure sale.

COUNT 4

43. Pursuant NRS 107.028, Sables, LLC shall act in accordance with the law of this State. In light of the NOD #1 which provides the Note was accelerated at the latest on April 24, 2008, Sables, LLC knows or should know that the statute of repose has expired and the Deed of Trust was terminated/discharged. Pursuing foreclosure is not in accordance with the laws of this State.

44. As a direct and proximate cause of Sables, LLC's multiple violations of NRS 107.028, pursuant to NRS 107.028(7), SFR is entitled to mandatory damages as follows:

- (a) Damages of \$5,000 or treble the amount of actual damages, whichever is greater;
- (b) An injunction enjoining the exercise of the power of sale until the beneficiary, the successor in interest of the beneficiary or the trustee complies with the requirements of subsections 2, 3 and 4; and
- (c) Reasonable attorney's fees and costs.

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. That the Notice of Default recorded as Instrument No. 20080429-0004556 be declared void;

- 1        2. That the Notice of Default recorded as Instrument No. 20190116-0000389 be declared
- 2        void;
- 3        3. That the Deed of Trust recorded as Instrument No. 20061122-0003799 be declared
- 4        terminated/discharged;
- 5        4. That Defendant BNY Mellon record and deliver a reconveyance of the Deed of Trust to
- 6        the clerk of the court for cancellation;
- 7        5. For damages in excess of \$15,000 or treble the amount of actual damages;
- 8        6. For an injunction enjoining the exercise of the power of sale;
- 9        7. For reasonable attorneys' fees;
- 10       8. For costs; and
- 11       9. For such other and further relief the Court deems proper.

12       Dated this 27th day of February, 2019.

**KIM GILBERT EBRON**

/s/ Karen L. Hanks

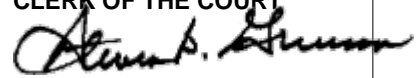
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*Attorneys for SFR Investments Pool 1, LLC*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiff,

vs.

THE BANK OF NEW YORK MELLON, FKA  
THE BANK OF NEW YORK, AS TRUSTEE,  
FOR THE CERTIFICATEHOLDERS OF  
CWABS, INC. ASSET-BACKED  
CERTIFICATES, SERIES 2006-25; SABLES,  
LLC,

Defendants.

Case No.: A-19-790150-C

Dept. No.: XXIX

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

PLEASE TAKE NOTICE that on July 22, 2020, the **Findings of Fact and Conclusions  
of Law and Judgment** was entered. A copy of said Order is attached hereto.

DATED this 5<sup>th</sup> day of August, 2020.

**KIM GILBERT EBRON**

/s/ Karen L. Hanks

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**

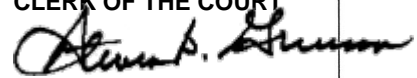
I hereby certify that on this 5<sup>th</sup> day of August, 2020, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT** to the following parties:

J. Stephen Dolembro	<a href="mailto:sdolembro@zbslaw.com">sdolembro@zbslaw.com</a>
Sara Hunsaker	<a href="mailto:shunsaker@zbslaw.com">shunsaker@zbslaw.com</a>
Shadd A. Wade	<a href="mailto:swade@zbslaw.com">swade@zbslaw.com</a>

/s/ Diane L. DeWalt

An Employee of KIM GILBERT EBRON





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8 *Attorneys for SFR Investments Pool 1, LLC*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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

12 Plaintiff,

13 vs.

14 THE BANK OF NEW YORK MELLON, FKA  
15 THE BANK OF NEW YORK, AS TRUSTEE,  
16 FOR THE CERTIFICATEHOLDERS OF  
17 CWABS, INC. ASSET-BACKED  
CERTIFICATES, SERIES 2006-25; SABLES,  
LLC,

18 Defendants.

Case No.: A-19-790150-C

Dept. No.: XXIX

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

19  
20 This matter came before the Court for a hearing on competing motions for summary  
21 judgment on April 29, 2020. Karen L. Hanks, Esq. appeared on behalf of SFR Investments Pool  
22 1, LLC's ("SFR"). J. Stephen Dolembro, Esq. appeared on behalf of The Bank of New York  
23 Mellon fka The Bank of New York as successor trustee for the Certificateholders of CWABS,  
24 Inc. Asset-Backed Certificates, Series 2006-25 and Sables, LLC ("BNY Mellon"). Having  
25 reviewed and considered the motions, oppositions, replies and sur-replies, and arguments of  
26 counsel, for the reasons stated on the record, and good cause appearing, the Court makes the  
27 following Findings of Fact and Conclusions of Law:<sup>1</sup>

28 <sup>1</sup> Any findings of fact that are more appropriately conclusions of law shall be so deemed. Any

**FINDINGS OF FACT**

1  
2 1. On September 19, 2012, Squire Village Homeowners Association non-judicially  
3 foreclosed on real property located at 4946 Droubay Drive, Las Vegas, Nevada 89122 APN 161-  
4 26-111-133 (the "Property") pursuant to NRS Chapter 116. At the sale, SFR placed the highest  
5 bid and a Foreclosure Deed transferring the Property to SFR recorded as Instrument No.  
6 20121009-0001817 on October 9, 2012.

7 2. Prior to the foreclosure, on November, 22, 2006, a Deed of Trust was recorded as  
8 Instrument No. 20061122-0003799 against the Property.

9 3. In January 2008, the borrowers, Nelson and Susan Pritz stopped making payments  
10 toward the Note which the Deed of Trust secured.

11 4. On April 29, 2008, a Notice of Default and Election to Sell Under Deed of Trust  
12 was recorded against the Property. The Notice of Default reads in pertinent part, "That by reason  
13 thereof, the present beneficiary under such deed of trust has executed and delivered to  
14 RECONTRUST COMPANY, N.A. a written Declaration of Default and Demand for sale, and  
15 has deposited with RECONTRUST COMPANY, N.A. such deed of trust and all documents  
16 evidencing obligations secured thereby, and has declared and does declare all sums secured  
17 thereby immediately due and payable and has elected and does hereby elect to cause the trust  
18 property to be sold to satisfy the obligations secured thereby."

19 5. The Court finds the language in the Notice of Default clearly and unequivocally  
20 made the loan wholly due as contemplated by NRS 106.240 at the latest on April 29, 2008.

21 6. On November 29, 2011, an Assignment of Deed of Trust was recorded against the  
22 Property as Instrument No. 201111129-0000514 wherein all beneficial interest under the Deed of  
23 Trust was purportedly transferred from MERS to BNY Mellon.

24 7. While BNY Mellon's file contains a modification agreement dated August 25,  
25 2008, the agreement is not signed by Countrywide.

26  
27  
28 \_\_\_\_\_ (continued)  
conclusions of law that are more appropriately findings of fact shall be so deemed.



1           17.     NRS 106.240 provides deeds of trust are conclusively presumed to have been  
2 satisfied and the notes discharged at the expiration of ten years after the debt secured by the deed  
3 of trust becomes wholly due, and the deed of trust is terminated and the lien discharged.

4           18.     Based on the language of NRS 106.240 and the Nevada Supreme Court's  
5 interpretation of that language namely "deed of trust according to the terms thereof or any  
6 recorded written extension thereof..." the Court finds BNY Mellon and/or its predecessor made  
7 the loan wholly due by virtue of the Notice of Default recorded on April 29, 2008.

8           19.     The Notice of Default clearly and unequivocally states in relevant part, "present  
9 beneficiary...has declared and does declare all sums secured thereby immediately due and  
10 payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the  
11 obligations secured thereby."

12           20.     The Court further concludes that at no time after April 29, 2008, did the  
13 borrowers cure the default nor did BNY Mellon reinstate the loan as an installment loan.

14           21.     Thus, under NRS 106.240 the ten years ran from April 29, 2008 to April 29,  
15 2018, and therefore, the deed of trust terminated/expired on April 29, 2018.

16           22.     Pursuant to NRS 107.029, the Court further grants summary judgment in favor of  
17 Sables only as to SFR's third cause of action against Sables.

18                                 **ORDER**

19           1.     IT IS HEREBY ORDERED, ADJUDGED, AND DECREED the Deed of Trust  
20 recorded against real property located at 4946 Droubay Drive, Las Vegas, Nevada 89122 APN  
21 161-26-111-133 (the "Property") recorded in the Official Records of the Clark County Recorder  
22 as Instrument No. 20121009-0001817, was terminated/extinguished on April 29, 2018 by  
23 operation of NRS 106.240.

24           2.     IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that The Bank of  
25 New York Mellon fka The Bank of New York as successor trustee for the Certificateholders of  
26 CWABS, Inc. Asset-Backed Certificates, Series 2006-25, its predecessors in interest and  
27 successors and assigns, have no further right, title or interest in the real property located at 4946  
28 Droubay Drive, Las Vegas, Nevada 89122 APN 161-26-111-133, and are hereby permanently

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1 enjoined from taking any further action to enforce the terminated/extinguished Deed of Trust,  
2 including but not limited to, clouding title, initiating or continuing to initiate foreclosure  
3 proceedings, or taking any other actions to sell or transfer the Property.

4 3. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the  
5 preliminary injunction bond in the amount of \$1,500.00 posted by SFR on or about September  
6 30, 2019 with the Clerk of Court shall be released to SFR.

7 **IT IS SO ORDERED.**

8 DATED this 22nd day of July, 2020.

9  
10   
**DISTRICT COURT JUDGE**

11 Respectfully Submitted by:

12 **KIM GILBERT EBRON**

13 /s/ Karen L. Hanks

14 KAREN L. HANKS, ESQ.  
15 Nevada Bar No. 9578  
16 7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
*Attorneys for SFR Investments Pool 1, LLC*

Approved as to Form and Content:

**ZBS LAW, LLP**

17 /s/ J. Stephen Dolembro

18 J. STEPHEN DOLEMBO, ESQ.  
19 Nevada Bar No. 9795  
20 9435 West Russell Road, Ste 120  
Las Vegas, Nevada 89148  
*Attorneys for The Bank of New York Mellon*

21 RE: Case No. A-19-790150-C/Droubay

22 Stephen Dolembro

23 10:48 AM

24 Thanks Karen,

25 You may e-sign for me.

26 Steve