

In the Supreme Court of Nevada

WYETH RANCH
COMMUNITY
ASSOCIATION,
Appellant,

vs.

MARCHAI B.T, A NEVADA
BUSINESS TRUST,
Respondent.

Supreme Court Case No. 83069

District Court Case No. A68946-1
Electronically Filed
Nov 15 2021 12:59 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANT'S APPENDIX OF DOCUMENTS

VOLUME I OF III

LIPSON NEILSON P.C.
KALEB D. ANDERSON, ESQ.
Nevada Bar No. 7582
DAVID T. OCHOA, ESQ.
Nevada Bar No. 10414
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 - Telephone
(702) 382-1512 - Facsimile
kanderson@lipsonneilson.com
dochoa@lipsonneilson.com

Attorneys for Appellant, Wyeth Ranch Community Association

Volume	Document	Bates No.
I	Case Appeal Statement (SFR Investments Pool 1, LLC)	AA 113-117
III	Case Appeal Statement (Wyeth Ranch Community Association)	AA 495-499
I	Decision and Order	AA 078-092
II	Findings of Fact and Conclusions of Law	AA 293-315
I	Judgment	AA 118-121
I	Marchai's Answer to Counterclaims	AA 022-028
I	Marchai's Complaint	AA 001-007
I	Marchai's Consolidated Complaint	AA 029-042
I	Marchai's Motion to Reopen Discovery	AA 137-147
I	Marchai's Motion to Retax and Settle Costs	AA 435-441
II	Marchai's Opposition to Motion for Fees and Costs	AA 445-455
II	Marchai's Opposition to Motion for Reconsideration	AA 261-273
I	Marchai's Opposition to Motion for Summary Judgment	AA 179-197
II	Marchai's Reply in Support of Motion to Retax	AA 461-465
I	Marchai's Statement of Facts	AA 198-213
I	Notice of Appeal (SFR Investments Pool 1, LLC)	AA 110-112
III	Notice of Appeal (Wyeth Ranch Community Association)	AA 492-494
I	Notice of Entry of Decision and Order	AA 093-109
II	Notice of Entry of Findings of Fact, Conclusions of Law	AA 323-347
I	Notice of Entry of Judgment	AA 122-127
I	Notice of Entry of Order Consolidating Cases	AA 047-050
II	Notice of Entry of Order Denying Defendant Wyeth Ranch Community Association's Motion for Reconsideration or Clarification Under NRCP 60, Alternatively Motion in Limine	AA 316-322
I	Notice of Entry of Order Denying Defendant Wyeth Ranch Community Association's Motion for Summary Judgment	AA 235-240
I	Notice of Entry of Order Denying, in Part, and Granting in Part, Defendant Wyeth Ranch Community Association's Motion to Dismiss	AA 054-058
I	Notice of Entry of Order Granting Marchai's Motion to Reopen Discovery on an Order Shortening Time and Denying the Alternative Countermotion for a Briefing Schedule	AA 155-163
I	Order Denying Amended Complaint	AA 043-044

III	Order Denying Defendant Wyeth Ranch Community Association's Motion for Attorney's Fees and Costs	AA 486-491
II	Order Denying Defendant Wyeth Ranch Community Association's Motion for Reconsideration or Clarification Under NRCP 60, Alternatively Motion in Limine	AA 288-292
I	Order Denying Defendant Wyeth Ranch Community Association's Motion for Summary Judgment	AA 231-234
I	Order Denying, in Part, and Granting in Part, Defendant Wyeth Ranch Community Association's Motion to Dismiss	AA 051-053
II	Order Denying Marchai's Motion to Retax and Settle the Costs	AA 478-485
I	Order Granting Marchai's Motion to Reopen Discovery	AA 148-154
I	Order Lifting Stay and Consolidating Cases	AA 045-046
I	Order Vacating Judgment and Remanding	AA 131-136
I	SFR Investments Pool 1, LLC's Amended Notice of Appeal	AA 128-130
I	SFR Investments Pool 1, LLC's Answer to Complaint	AA 069-077
I	SFR Investments Pool 1, LLC's Answer, Counterclaim, and Cross-Claim	AA 008-021
II	SFR Investments Pool 1, LLC's Opposition to Plaintiff's Motion to Retax and Settle Memorandum of Costs and Disbursements	AA 442-444
I	Wyeth Ranch Community Association's Answer and Affirmative Defenses	AA 059-068
II	Wyeth Ranch Community Association's Motion for Attorney's Fees and Costs	AA 353-434
II	Wyeth Ranch Community Association's Motion for Reconsideration or Clarification Under NRCP 60, Alternatively Motion in Limine	AA 241-260
I	Wyeth Ranch Community Association's Motion for Summary Judgment	AA 164-178
II	Wyeth Ranch Community Association's Opposition to the Motion to Retax and Settle Costs	AA 456-460
II	Wyeth Ranch Community Association's Reply in Support of its Motion for Attorney's Fees and Costs	AA 466-477
II	Wyeth Ranch Community Association's Reply in Support of its Motion for Reconsideration or	AA 274-287

	Clarification Under NRCP 60, Alternatively Motion in Limine	
I	Wyeth Ranch Community Association's Reply in Support of its Motion for Summary Judgment	AA 214-230
II	Wyeth Ranch Community Association's Verified Memorandum of Fees and Costs	AA 348-352
III	Trial Transcript	AA 500-711

COMP

LAW OFFICES OF LES ZIEVE
Benjamin D. Petiprin, Esq. (NV Bar 11681)
3753 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169
Tel: (702) 948-8565
Fax: (702) 446-9898


CLERK OF THE COURT

Attorneys for plaintiff Marchai B.T.

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

MARCHAI B.T., a Bank Trust,

Plaintiff,

vs.

CRISTELA PEREZ, an individual; SFR
INVESTMENTS POOL 1, LLC, a limited
liability company; U.S. BANK NATIONAL
ASSOCIATION, N.D., a national association;
DOES 1 through 10, inclusive, and ROES 1
through 10, inclusive.

Defendants.

A- 13- 689461- C
CASE NO.:

DEPT. NO.: **XXVI**

**COMPLAINT FOR JUDICIAL
FORECLOSURE OF DEED OF TRUST**

*Exempt from Arbitration
Action Involves Real Property*

COMES NOW Plaintiff, Marchai B.T., a Bank Trust ("Plaintiff"), and alleges as follows:

1. Plaintiff is, and at all times herein mentioned, a Bank Trust duly authorized to transact business in the State of Nevada.

2. This action concerns real property located in the City of Las Vegas, County of Clark, State of Nevada, and is legally described as set forth in **Exhibit "1"** attached hereto, and incorporated herein by this reference. The property is commonly known as: 7119 Wolf Rivers Avenue, Las Vegas, NV 89131 (the "Subject Property"), Clark County Assessor's Parcel Number 125-15-811-013.

1 3. Plaintiff is informed and believes that Cristela Perez ("Borrower") is an
2 individual, residing in the City of Las Vegas, County of Clark, State of Nevada and has an
3 ownership interest in or to the Subject Property by reason of a deed of trust.

4 4. Plaintiff is informed and believes that SFR Investments Pool 1, LLC ("SFR
5 Investments") is a limited liability company, and has an interest in the Subject Property or some
6 part of it by reason of a trustee's deed upon sale and is the record owner of the Subject Property.

7 5. Plaintiff is informed and believes that U.S. Bank National Association, N.D. ("US
8 Bank") is a national association, and has an interest in the Subject Property or some part of it by
9 reason of a junior lien, which interest is subsequent to that of Plaintiff.

10 6. Plaintiff is ignorant of the true names and capacities of individual defendants sued
11 herein as DOES 1 through 10, inclusive, and corporations, partnerships or other business entities
12 sued herein as ROES 1 through 10, inclusive, and therefore sues these defendants by such
13 fictitious names. Plaintiff is informed and believes that defendants named herein as DOES 1
14 through 10 and ROES 1 through 10 have, or may claim to have, some right, title or interest in
15 and to the Subject Property, the exact nature of which is unknown to Plaintiff and Plaintiff will
16 seek leave to amend this complaint ("Complaint") to allege their true names and capacities when
17 and as ascertained, and will further ask leave to join said defendants in these proceedings.

18 7. On or about October 19, 2005, for valuable consideration, the Borrower made,
19 executed and delivered to CMG Mortgage, Inc. ("CMG Mortgage") that certain InterestFirst
20 Adjustable Rate Note dated October 19, 2005 (the "Note") evidencing a loan to the Borrower in
21 the original principal amount of \$442,000.00 ("Loan"). A copy of the Note is attached hereto as
22 **Exhibit "2"** and incorporated herein by this reference.

23 8. To secure payment of the principal sum and interest provided in the Note, as part
24 of the same transaction, Borrower executed and delivered to CMG Mortgage, as beneficiary, a
25 Deed of Trust (hereinafter the "Deed of Trust") dated October 19, 2005. A true and correct copy
26 of the Deed of Trust is attached hereto as **Exhibit "3"** and incorporated herein by this reference.
27 The Deed of Trust was recorded in book number 20051109 as instrument number 0001385 in the
28

1 Official Records of the Clark County Recorder's Office ("Official Records") on November 9,
2 2005.

3 9. The Deed of Trust was then assigned to CitiMortgage, Inc. by that certain
4 Corporate Assignment of Deed of Trust ("Assignment") recorded in book number 20120605 and
5 instrument number 0003133 in the Official Records on June 5, 2012. The Deed of Trust was
6 subsequently assigned to U.S. Bank National Association, as Trustee for Stanwich Mortgage
7 Loan Trust, Series 2012-6 by that certain Assignment of Mortgage (Assignment 2") recorded in
8 book number 20120726 as instrument number 0002017 in the Official Records on July 26, 2012.
9 The Deed of Trust was then assigned to Plaintiff by that certain Assignment of Deed of Trust
10 ("Assignment 3") recorded in book number 20130812 as instrument number 0002562 in the
11 Official Records on August 12, 2013. True and correct copies of the Assignment, Assignment 2
12 and Assignment 3 are attached hereto as **Exhibit "4"** and incorporated herein by this reference.

13 10. On or about January 30, 2006, defendant US Bank funded a loan to Borrower in
14 the original principal sum of \$100,000.00. The loan was, and is evidenced by a Deed of Trust
15 ("Junior Deed of Trust") recorded in book number 20060406 as instrument number 0004914 of
16 the Official Records. A true and correct copy of the Junior Deed of Trust is attached hereto as
17 **Exhibit "5"** and incorporated herein by this reference.

18 11. Wyeth Ranch Homeowners Association ("HOA") recorded multiple Notice of
19 Delinquent Assessment Liens, Notice of Defaults, and Notice of Trustees Sales between
20 November 5, 2007 and October 31, 2012. Most recently, HOA recorded that certain Notice of
21 Trustee's Sale in book number 20130731 as instrument number 0001002 of the Official Records
22 on July 31, 2013. The trustee's sale was held on August 28, 2013 at 2:00 P.M.

23 12. Defendant SFR Investments purchased the Subject Property at the trustee's sale
24 for the amount of \$21,000.00, as referenced in that certain Trustee's Deed Upon Sale ("TDUS")
25 recorded in book number 20130909 as instrument number 0001816 of the Official Records. A
26 true and correct copy of the TDUS is attached hereto as **Exhibit "6"** and incorporated herein by
27 this reference.
28

1 13. Plaintiff is informed and believes that on October 1, 2011 a default occurred
2 under the terms of the Note, in that the Borrower failed to make the regular monthly installment
3 payment due on that date and all subsequent payments in the approximate amount of \$2,657.39.

4 14. That certain Notice of Intent to Foreclose ("Notice of Intent") dated October 3,
5 2012 was subsequently mailed to the Borrower. A true and correct copy of the Notice of Intent
6 is attached hereto as **Exhibit "7"** and incorporated herein by this reference. The Notice of Intent
7 provided notice to the Borrower of her default under the terms of the Note and Deed of Trust of
8 monthly payments obligations in the amount of \$36,281.60. The Notice of Intent indicated that
9 acceleration and foreclosure and public sale of the Subject Property would occur if the amount in
10 default was not cured within 30 days. The Notice of Intent further provided that the Borrower
11 has the right to reinstate the Loan following acceleration pursuant to the terms under the Note
12 and Deed of Trust, and that Borrower has a right to assert in any foreclosure action the non-
13 existence of a default and any other defenses to acceleration and foreclosure.

14 15. The subject Note provides that, if the payors default in payment of any installment
15 when due, or in the performance of any agreement in the subject Deed of Trust securing payment
16 of the subject Note, the entire principal and interest will become immediately due and payable at
17 the option of the noteholder. The subject Deed of Trust provides that, if the trustors default in
18 paying any indebtedness secured by the subject Deed of Trust, or in the performance of any
19 agreement in the subject Note or Deed of Trust, the entire principal and interest secured by the
20 subject Deed of Trust will, at the option of the beneficiary, become immediately due and
21 payable.

22 16. The Deed of Trust further provides that in the event of a default, the lender may
23 invoke the power of sale and after the required notices and time frames, sell the Subject Property
24 at a public auction.

25 17. By the terms of the subject Note, the Borrower promised and agreed to pay to
26 Plaintiff monthly installments of \$2,657.39, principal and interest, beginning December 1, 2005.
27 The Borrower has wholly failed, neglected and refused to pay the installment that was due on
28 October 1, 2011 and the subsequent months, up to and including the date of this Complaint. The

1 total of the monthly payments in default including accrued fees and interest is approximately
2 \$74,440.01. For such failure and default under the subject Note and Deed of Trust, Plaintiff has
3 elected to declare the entire remaining sum of principal and interest immediately due and
4 payable. Additional interest will accrue at the rate of \$38.30 per day for each additional day
5 from October 1, 2011 to the date of entry of judgment in this action.

6 18. Plaintiff may hereafter be required to expend additional sums to protect its
7 security in the Subject Property. In the subject Deed of Trust, the Borrower agreed to pay any
8 sums expended by Plaintiff. Plaintiff will amend this Complaint to allege the nature and
9 amounts of such sums if Plaintiff is required to make the additional expenditures.

10 19. Under the subject Note and Deed of Trust, the Borrower, agreed that, if any action
11 were instituted on the Note or Deed of Trust, she, as defendant, would pay the sum fixed by the
12 Court as Plaintiff's attorneys' fees and that these charges would also become a lien against the
13 Subject Property. Because of the above-described defaults, it has become necessary for Plaintiff
14 to employ an attorney to commence and prosecute this foreclosure action. The reasonable value
15 of services of counsel in this action shall be proved at or after trial in this action.

16 **FIRST CAUSE OF ACTION**

17 **(For Judicial Foreclosure of Deed of Trust, Against all Defendants)**

18 20. Plaintiff realleges and incorporates herein by reference each and every allegation
19 set forth in Paragraphs 1 through 19 of the Complaint as though set forth in full.

20 21. Despite Plaintiff's demands for payment under the Note and Deed of Trust,
21 Borrower has failed and refused to pay Plaintiff its indebtedness due, and Borrower is now in
22 default under the Note and Deed of Trust.

23 22. As a result of the default under the Note as secured by the Deed of Trust, Plaintiff
24 seeks to exercise its right under the Deed of Trust to foreclose on the Subject Property. And
25 Plaintiff seeks a Judgment of this Court foreclosing said Deed of Trust with the Court to award
26 Judgment for any deficiency which may remain after applying all proceeds of the sale of the
27 Subject Property applicable to the Judgment procured hereunder. The filing of this action does
28

1 not constitute a waiver of Plaintiff's right to proceed with a non-judicial foreclosure if it so
2 elects.

3 23. The Note and Deed of Trust provide that in the event of default thereunder by the
4 Borrowers, Plaintiff is entitled to recover its costs, including reasonable attorneys' fees, incurred
5 in enforcement thereof. Plaintiff has employed Benjamin D. Petiprin of the Law Offices of Les
6 Zieve, licensed and practicing attorney in the State of Nevada, for the purpose of instituting and
7 prosecuting the within action. Attorneys' fees have been, and continue to be incurred in an
8 amount to be proven at trial.

9 24. As a result of Borrower's default and breach, Plaintiff has been damaged in the
10 amount of the principal balance of the loan, accrued interest, late charges, advances, expenses
11 and attorneys' fees and costs which remain due under the Note and Deed of Trust.

12 WHEREFORE, Plaintiff prays for relief as follows:

13 **As to the First Cause of Action**

14 1. That the Court enter a money judgment against Borrower defendant only:

15 a. The sum of \$430,113.48 principal, together with interest as allowed at the
16 Note rate currently at 3% from October 1, 2011, to the date of judgment, according to proof;

17 b. Costs of this action and reasonable attorneys' fees;

18 c. Additional sums, if any, that Plaintiff hereafter expends to protect its
19 interest in the Subject Property, together with interest, according to proof.

20 2. That the Court adjudge the rights, claims, ownership, liens, titles and demands of
21 defendants are subject, subordinate and subsequent to Plaintiff's Deed of Trust;

22 3. That the Court order, adjudge, and decree that the Subject Deed of Trust be
23 foreclosed and that the usual Judgment be made for the sale of the Subject Property, according to
24 law, by the Sheriff of the County of Clark, or by a levying officer to be appointed by the Court;
25 that the proceeds of the sale be applied in payment of the amounts due to Plaintiff; that
26 defendants and all persons claiming under them subsequent to the execution of said Deed of
27 Trust, either as lien claimants, judgment creditors, claimants under a junior trust deed,
28 purchasers, encumbrances and otherwise, be barred and foreclosed from all rights, claims,

1 interest or equity of redemption of the Subject Property and every part of the Subject Property
2 when the time for redemption has lapsed;

3 4. That the Court award Plaintiff judgment and execution against Borrower
4 defendant only for any deficiency that may remain after applying all proceeds of the sale of the
5 Subject Property duly applicable to satisfy the amounts by the Court under paragraph 1 of this
6 demand for judgment;

7 5. That the Court permit Plaintiff or any other party to this suit, to become
8 purchasers at the foreclosure sale; that when the time for redemption has lapsed, the levying
9 officer or Sheriff, as the case may be, shall execute a deed to the purchaser of the Subject
10 Property at the sale; and that the purchaser be given possession of the Subject Property upon
11 production of the levying officer's or Sheriff's Deed;

12 6. For attorneys' fees according to proof in an amount the Court deems reasonable;

13 7. That the Court award all other appropriate and just relief.

14 8. For costs of suit incurred herein; and

15 9. For such other and further relief as the Court may deem just and proper.

16
17
18 DATED: September 30, 2013

LAW OFFICES OF LES ZIEVE

19
20 By: /s/ Benjamin D. Petiprin
21 Benjamin D. Petiprin, Esq.
22 Attorney for Plaintiff
23 Marchai B.T.
24
25
26
27
28


CLERK OF THE COURT

AACC
HOWARD C. KIM, ESQ.
Nevada Bar No. 10386
E-mail: howard@hkimlaw.com
DIANA S. CLINE, ESQ.
Nevada Bar No. 10580
E-mail: diana@hkimlaw.com
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
E-mail: jackie@hkimlaw.com
HOWARD KIM & ASSOCIATES
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for SFR Investments Pool 1, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

MARCHAI B.T., a Bank Trust,

Plaintiff,

vs.

Case No. A-13-689461-C

Dept. No. XXVI

CRISTELA PEREZ, an individual; SFR
INVESTMENTS POOL 1, LLC, a limited
liability company; U.S. BANK NATIONAL
ASSOCIATION, N.D., a national association;
DOES I through X; and ROE
CORPORATIONS I through 10, inclusive,

Defendants.

**ANSWER, COUNTERCLAIM, AND
CROSS CLAIM**

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

Counterclaimant/Cross-Claimant,

vs.

MARCHAI B.T., a Bank Trust; U.S. BANK
NATIONAL ASSOCIATION, N.D., a
national association; CRISTELA PEREZ, an
individual; and DOES I through X; and ROE
CORPORATIONS I through 10, inclusive,

Counter-Defendant/Cross-Defendants.

HOWARD KIM & ASSOCIATES
1055 WHITNEY RANCH DRIVE, SUITE 110
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

1 SFR INVESTMENTS POOL 1, LLC ("SFR") hereby answers the Plaintiff MARCHAI
2 B.T.'s complaint as follows:

3 **INTRODUCTION**

4 1. SFR is without sufficient knowledge or information to form a belief as to the truth of the
5 factual allegations contained in paragraph 1 of the complaint, and therefore denies said
6 allegations.

7 2. The document referenced in paragraph 2 of the complaint speaks for itself and SFR
8 denies any allegations inconsistent with the document.

9 3. SFR is without sufficient knowledge or information to form a belief as to the truth of the
10 factual allegations contained in paragraph 3 of the complaint, and therefore denies said
11 allegations, except that, upon information and belief, Cristela Perez is an individual, residing in
12 Nevada.

13 4. SFR admits that it claims an ownership interest in the subject property pursuant to a
14 recorded foreclosure deed recorded in the Official Records of the Clark County Recorder as
15 Instrument No. 201309090001816.

16 5. SFR is without sufficient knowledge or information to form a belief as to the truth of the
17 factual allegations contained in paragraph 5 of the complaint, and therefore denies said
18 allegations.

19 6. The allegations contained in paragraph 6 of the complaint call for a legal conclusion,
20 therefore, no answer is required. To the extent an answer is required, SFR denies the factual
21 allegations contained in paragraph 6 of the complaint.

22 7. The document referenced in paragraph 7 of the complaint speaks for itself, and SFR
23 denies any allegations inconsistent with the document.

24 8. The document referenced in paragraph 8 of the complaint speaks for itself, and SFR
25 denies any allegations inconsistent with the document.

26 9. The documents referenced in paragraph 9 of the complaint speak for themselves, and
27 SFR denies any allegations inconsistent with the documents.

28 10. The document referenced in paragraph 10 of the complaint speaks for itself, and SFR

denies any allegations inconsistent with the document.

11. The documents referenced in paragraph 11 of the complaint speak for themselves. SFR admits the allegations contained in paragraph 11 of the complaint.

12. The document referenced in paragraph 12 of the complaint (Trustee's Deed Upon Sale) is not attached to the complaint as Exhibit 6 as stated in paragraph 12. That notwithstanding, the document attached as Exhibit 6 speaks for itself, and SFR denies any allegations inconsistent with the document. SFR admits that it purchased the subject property for \$21,000.00 at a public foreclosure auction.

13. SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in paragraph 13 of the complaint, and therefore denies said allegations.

14. The document referenced in paragraph 14 of the complaint (Notice of Intent to Foreclose) is not attached to the complaint as Exhibit 7. That notwithstanding the document attached as Exhibit 7 speaks for itself, and SFR denies any allegations inconsistent with the document.

15. The documents referenced in paragraphs 15, 16, 17, 18 and 19 of the complaint speak for themselves, and SFR denies any allegations inconsistent with the documents. Further, the allegations in paragraphs 15, 16, and 17 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR is without sufficient knowledge or information to form a belief as the truth of the factual allegations contained in paragraphs 15, 16, 17, 18 and 19 of the complaint and therefore denies the same.

FIRST CAUSE OF ACTION
(Judicial Foreclosure of Deed of Trust)

16. SFR repeats and realleges its answers to paragraphs 1 through 19 of the complaint as though fully set forth herein.

17. The allegations contained in paragraph 21 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required; SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in

1 paragraph 21 of the complaint, and therefore denies said allegations.

2 18. The allegations contained in paragraph 22 of the complaint call for a legal conclusion,
3 therefore, no answer is required. To the extent an answer is required, SFR denies that Plaintiff
4 has a right under the Deed of Trust to foreclose on the subject property either judicially or non-
5 judicially.

6 19. The documents referenced in paragraph 23 of the complaint speak for themselves, and
7 SFR denies any allegations inconsistent with the documents. Further, the allegations contained
8 in paragraph 23 of the complaint call for a legal conclusion, therefore, no answer is required.
9 To the extent an answer is required, SFR denies the factual allegations contained therein.

10 20. The allegations contained in paragraph 24 of the complaint call for a legal conclusion,
11 therefore, no answer is required. To the extent an answer is required, SFR denies that amounts
12 remain due under the Deed of Trust and is without sufficient knowledge or information to form
13 a belief as the truth of the remaining factual allegations contained in paragraph 24 of the
14 complaint and therefore denies the same.

15
16 **AFFIRMATIVE DEFENSES**

17 1. Plaintiff fails to state a claim upon which relief may be granted.

18 2. Plaintiff is not entitled to relief from or against SFR, as Plaintiff has not sustained any
19 loss, injury, or damage that resulted from any act, omission, or breach by SFR.

20 3. The occurrence referred to in the Complaint, and all injuries and damages, if any,
21 resulting therefrom, were caused by the acts or omissions of Plaintiff.

22 4. The occurrence referred to in the Complaint, and all injuries and damages, if any,
23 resulting therefrom, were caused by the acts or omissions of a third party or parties over whom
24 SFR had no control.

25 5. SFR did not breach any statutory or common law duties allegedly owed to Plaintiff.

26 6. Plaintiff's claims are barred because SFR complied with applicable statutes and with the
27 requirements and regulations of the State of Nevada.

28 7. Plaintiff's causes of action are barred in whole or in part by the applicable statutes of

limitations or repose, or by the equitable doctrines of laches, waiver, estoppel, and ratification.

8. Plaintiff is not entitled to equitable relief because it has an adequate remedy at law.

9. Plaintiff has no standing to enforce the first deed of trust and the underlying promissory note.

10. The first deed of trust and other subordinate interests in the Property were extinguished by the Association foreclosure sale held in accordance with NRS Chapter 116.

11. Pursuant to Nevada Rule of Civil Procedure 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry at the time of filing this Answer. Therefore, SFR reserves the right to amend this Answer to assert any affirmative defenses if subsequent investigation warrants.

COUNTERCLAIM AND CROSSCLAIM

FOR QUIET TITLE AND INJUNCTIVE RELIEF

SFR INVESTMENTS POOL 1, LLC ("SFR"), hereby demands quiet title and requests injunctive relief against Counter-Defendant MARCHAI B.T., a Bank Trust ("Marchai"); and Cross-Defendants CRISTELA PEREZ ("Perez") and U.S. BANK NATIONAL ASSOCIATION, N.D ("U.S. Bank") as follows:

I. PARTIES

1. SFR is a Nevada limited liability company with its principal place of business in Clark County, Nevada and the current title owner of the property commonly known as **7119 Wolf Rivers Avenue, Las Vegas, NV 89131; Parcel No. 125-15-811-013** (the "Property").

2. Upon information and belief, Counter-Defendant, Marchai is a bank trust that may claim an interest in the Property via a 2005 deed of trust securing a loan originated by CMG Mortgage, Inc.

3. Upon information and belief, Cross-Defendant, Perez is a Nevada resident and former title owner to the Property.

1 4. Upon information and belief, Cross-Defendant, U.S. Bank is a national association that
2 may claim an interest in the Property via a 2006 deed of trust securing a home equity line of
3 credit.

4 5. Upon information and belief, each of the Cross-Defendants sued herein as DOES I
5 through X, inclusive claim an interest in the Property or are responsible in some manner for the
6 events and action that SFR seeks to enjoin; that when the true names capacities of such
7 defendants become known, SFR will ask leave of this Court to amend this counterclaim and
8 cross-claim to insert the true names, identities and capacities together with proper charges and
9 allegations.

10 6. Upon information and belief, each of the Cross-Defendants sued herein as ROES
11 CORPORATIONS I through X, inclusive claim an interest in the Property or are responsible in
12 some manner for the events an happenings herein that SFR seeks to enjoin; that when the true
13 names capacities of such defendants become known, SFR will ask leave of this Court to amend
14 this counterclaim and cross-claim to insert the true names, identities and capacities together with
15 proper charges and allegations.

16 **II. GENERAL ALLEGATIONS**

17 **SFR Acquired Title to the Property through Foreclosure of an Association Lien with Super Priority Amounts**

18 7. SFR acquired the Property at a publicly-held foreclosure auction on August 28, 2013 in
19 accordance with NRS 116.3116, et. seq. ("Association foreclosure sale").

20 8. The resulting foreclosure deed to SFR was recorded in the Official Records of the Clark
21 County Recorder as Instrument No. 201309090001816.

22 9. Wyeth Ranch Community Association (the "Association") had a lien pursuant to NRS
23 116.3116(1) ("Association Lien") that was perfected at the time the Association recorded its
24 declaration of CC&Rs.

25 10. The Association foreclosure sale was conducted by Alessi & Koenig, LLC, agent for the
26 Association, pursuant to the powers conferred by the Nevada Revised Statutes 116.3116,
27 116.31162-116.31168, the Association's governing documents (CC&R's) and a Notice of
28 Delinquent Assessment Lien which was recorded on December 20, 2011 in the Official Records

of the Clark County Recorder as Instrument No. 201112200001246.

11. As recited in the foreclosure deed, the Association foreclosure sale complied with all requirements of law, including but not limited to, recording and mailing of copies of Notice of Delinquent Assessment Lien, Notice of Default and Election to Sell Under Homeowners Association Lien, and the recording, posting and publication of the Notice of Sale.

12. Pursuant to NRS 116.3116(2), the entire Association Lien is prior to all other liens and encumbrances of unit except:

(a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;

(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and

(c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

13. NRS 116.3116(2) further provides that a portion of the Association Lien has priority over even a first security interest in the Property:

[the Association Lien] is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien[.]

15. Pursuant to NRS 116.1104, the provisions of NRS 116.3116(2) granting priority cannot be waived by agreement or contract, including any subordination clause in the CC&Rs.

16. According to NRS 116.1108, real property law principles supplement the provisions of NRS 116.

17. Upon information and belief, the Association took the necessary action to trigger the super-priority portion of the Association Lien.

18. Upon information and belief, no party still claiming an interest in the Property recorded a lien or encumbrance prior to the declaration creating the Association.

19. Upon information and belief, SFR's bid on the Property was in excess of the amount necessary to satisfy the costs of sale and the super-priority portion of the Association Lien.

20. Upon information and belief, the Association or its agent Alessi distributed or should have distributed the excess funds to lien holders in order of priority pursuant to NRS 116.3114(c).

21. Upon information and belief, Counter-Defendant and Cross-Defendants had actual or constructive notice of the requirement to pay assessments to the Association and of the Association Lien.

22. Upon information and belief, Counter-Defendant and Cross-Defendants had actual or constructive notice of the Association's foreclosure proceedings.

23. Upon information and belief, prior to the Association foreclosure sale, no individual or entity paid the full amount of delinquent assessments described in the Notice of Default.

24. Upon information and belief, Counter-Defendant Marchai had actual or constructive notice of the super-priority portion of the Association Lien.

25. Upon information and belief, at all relevant times, Counter-Defendant Marchai had internal policies and procedures relating to super-priority liens.

26. Upon information and belief, Counter-Defendant Marchai knew or should have known that its interest in the Property could be extinguished through foreclosure if it failed to cure the super-priority portion of the Association Lien representing 9 months of assessments for common expenses based on the periodic budget adopted by the association which would have become due in the absence of acceleration for the relevant time period.

27. Upon information and belief, prior to the Association foreclosure sale, no individual or entity paid the super-priority portion of the Association Lien representing 9 months of assessments for common expenses based on the periodic budget adopted by the association which would have become due in the absence of acceleration for the relevant time period.

28. Pursuant to NRS 116.31166, the foreclosure sale vested title in SFR "without equity or right of redemption," and the foreclosure deed is conclusive against the Property's "former owner, his or her heirs and assigns, and all other persons."

Interests, Liens and Encumbrances Extinguished by the Super-Priority Association Lien

29. Upon information and belief, Cross-Defendant Perez obtained title to the Property in July

1 of 2004 through a Grant Bargain Sale Deed from Robert D. Rose, Jr.

2 30. On November 9, 2005, CMG Mortgage, Inc. ("CMG") recorded a deed of trust against
3 the Property in the Official Records of the Clark County Recorder as Instrument Nos.
4 200511090001385 ("First Deed of Trust").

5 31. The First Deed of Trust includes a legal description referencing the Association's
6 declaration of CC&Rs.

7 32. Upon information and belief, the Association was formed and its declaration of CC&Rs
8 was recorded in the Official Records of the Clark County Recorder prior to the time that the First
9 Deed of Trust and Second Deed of Trust were recorded.

10 33. Upon information and belief, CMG had actual or constructive notice of the Association
11 Lien and NRS 116.3116 before it funded the loan secured by the First Deed of Trust.

12 34. On or about June 05, 2012 CitiMortgage Inc. recorded a Corporate Assignment of Deed
13 Trust wherein CMG assigned all of its rights under the First Deed of Trust to CitiMortgage, Inc.
14 in the Official Records of the Clark County Recorder as Instrument No. 201206050003133.

15 35. On or about July 26, 2012, US Bank National Association as trustee for Stanwhich
16 Mortgage Loan Trust ("Stanwhich") recorded an Assignment of Mortgage wherein
17 CitiMortgage, Inc. assigned all of its rights under the October 19, 2005 mortgage to US Bank
18 National Association as trustee for Stanwhich Mortgage in the Official Records of the Clark
19 County Reporter as Instrument 201207260002017.

20 36. On or about August 12, 2013, Plaintiff Marchai caused an Assignment of Deed Trust
21 wherein US Bank National Association as trustee for Stanwhich assigned all of its rights under
22 the October 19, 2005 mortgage to Plaintiff Marchai. The original date of the assignment was
23 March 12, 2013.

24 37. On or about September 30, 2013, Marchai filed a Complaint for Judicial Foreclosure on
25 Deed of Trust despite the fact that their security interest in the Property was extinguished by the
26 foreclosure of the Association Lien.

27 38. Cross-Defendant Perez's ownership interest in the Property was extinguished by the
28 foreclosure of the Association Lien.

39. Cross-Defendant U.S. Bank's security interest in the Property was extinguished by the foreclosure of the super priority portion of the Association Lien.

III. FIRST CLAIM FOR RELIEF
(Declaratory Relief/Quiet Title Pursuant to NRS 30.010, et. seq., NRS 40.10 & NRS 116.3116)

40. SFR repeats and realleges the allegations of paragraphs 1 - 39 as though fully set forth herein and incorporates the same by reference.

41. Pursuant to NRS 30.010, et. seq. and NRS 40.10, this Court has the power and authority to declare the SFR's rights and interests in the Property and to resolve the Counter-Defendant and Cross-Defendants' adverse claims in the Property.

42. Pursuant to NRS 116.31166, the Association foreclosure sale vested title in the Association "without equity or right of redemption," and the Foreclosure Deed is conclusive against the Property's "former owner, his or her heirs and assigns, and all other persons."

43. SFR obtained title to the Property pursuant to a foreclosure deed, which was recorded in the Official Records of the Clark County Recorder as Instrument No. 201309090001816.

44. Upon information and belief, Cross-Defendant Perez, may claim an ownership interest in the Property.

45. Upon information and belief, Cross-Defendant US Bank, may claim an ownership interest in the Property.

46. Upon information and belief, Counter-Defendant Marchai claims an interest in the Property through the Deed of Trust even after the Association foreclosure sale.

47. A foreclosure sale conducted pursuant to NRS 116.31162 - 116.31168, like all foreclosure sales, extinguishes the title owner's interest in the Property and all junior liens and encumbrances, including deeds of trust.

48. Pursuant to NRS 116.3116(2), the super-priority portion of the Association Lien has priority over the First Deed of Trust.

49. Counter-Defendant and Cross-Defendants were duly notified of the Association foreclosure sale and failed to act to protect their interests in the Property, if any legitimately existed.

50. SFR is entitled to a declaratory judgment from this Court finding that: (1) SFR is the title owner of the Property pursuant to the quitclaim deed obtained from the Association; (2) the Association foreclosure deed was valid and enforceable; (3) the Association foreclosure sale extinguished Counter-Defendant and Cross-Defendants' ownership and security interests in the Property; and (4) SFR's rights and interest in the Property are superior to any adverse interest claimed by Counter-Defendant and Cross-Defendants.

51. SFR seeks an order from the Court quieting title to the Property in favor of SFR.

IV. SECOND CLAIM FOR RELIEF (Preliminary and Permanent Injunction)

52. SFR repeats and realleges the allegations of paragraphs 1- 53 as though fully set forth herein and incorporate the same by reference.

53. Pursuant to NRS 116.31166, the Association foreclosure sale vested title in the Association "without equity or right of redemption," and the Foreclosure deed is conclusive against the Property's "former owner, his or her heirs and assigns, and all other persons."

54. On or about August 28, 2013, SFR obtained title to the Property pursuant to a Foreclosure deed from the Association.

55. Counter-Defendant Marchai may claim that it maintained an interest in the Property through the First Deed of Trust which was extinguished by the Association foreclosure sale.

56. Cross-Defendants, Perez and US Bank may claim an ownership interest in the Property.

57. A foreclosure sale based on the Deed of Trust is invalid as Counter-Defendant and Cross-Defendants lost their interest in the Property, if any, at the Association foreclosure sale in 2013.

58. Any sale or transfer of title to the Property by Counter-Defendant and Cross-Defendants would be invalid because their interest in the Property, if any, was extinguished by the Association foreclosure sale.

59. Any attempt to take or maintain possession of the Property by Counter-Defendant and Cross-Defendants would be invalid because their interest in the Property, if any, was extinguished by the Association foreclosure sale.

60. Any attempt to sell, transfer, encumber or otherwise convey the Property by the Counter-Defendant and Cross-Defendants would be invalid because their interest in the Property, if any, was extinguished by the Association foreclosure sale.

61. On the basis of the facts described herein, SFR has a reasonable probability of success on the merits of its claims and has no other adequate remedies at law.

62. SFR is entitled to a preliminary injunction and permanent injunction prohibiting Counter-Defendant and Cross-Defendants from beginning or continuing any eviction proceedings that would affect SFR's possession of the Property.

63. SFR is entitled to a preliminary injunction and permanent injunction prohibiting Counter-Defendant and Cross-Defendants from any sale or transfer that would affect the title to the Property.

VI. PRAYER FOR RELIEF

SFR requests judgment against Counter-Defendant and Cross-Defendants as follows:

1. For a declaration and determination that SFR Investments Pool 1, LLC is the rightful owner of title to the Property, and that Counter-Defendant and Cross-Defendants be declared to have no right, title or interest in the Property.

2. For a preliminary and permanent injunction that Counter-Defendant and Cross-Defendants are prohibited from initiating or continuing foreclosure proceedings, and from selling or transferring the Property;

3. For general and special damages in excess of \$10,000.00

4. For an award of attorney's fees and costs of suit; and

///

///

///

///

///

///

1 5. For any further relief that the Court may deem just and proper.

2 Dated this 13th day of November, 2013.

HOWARD KIM & ASSOCIATES

/s/Diana S. Cline

HOWARD C. KIM, ESQ.

Nevada Bar No. 10386

DIANA S. CLINE, ESQ.

Nevada Bar No. 10580

JACQUELINE A. GILBERT, ESQ.

Nevada Bar No. 10593

1055 Whitney Ranch Drive, Suite 110

Henderson, Nevada 89014

Phone: (702) 485-3300

Fax: (702) 485-3301

Attorneys for SFR Investments Pool 1, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of November, 2013, pursuant to NRCP 5(b), I served via first class U.S. Mail, postage prepaid, the foregoing Answer, Counterclaim and Cross-Claim for Quiet Title and Injunctive Relief to the following parties:

Benjamin D. Petiprin, Esq.
LAW OFFICES OF LES ZIEVE
3753 Howard Hughes Parkway, Suite 200
Las Vegas, NV 89169
Attorney for Marchai B.T.

/s/ Andrew M. David
An Employee of Howard Kim & Associates

CCAN

LAW OFFICES OF LES ZIEVE

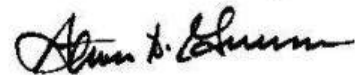
Benjamin D. Petiprin, Esq. (NV Bar 11681)

3753 Howard Hughes Parkway, Suite 200

Las Vegas, Nevada 89169

Tel: (702) 948-8565

Fax: (702) 446-9898



CLERK OF THE COURT

Attorneys for plaintiff Marchai B.T.

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI B.T., a Bank Trust,

Plaintiff,

vs.

CRISTELA PEREZ, an individual; SFR
INVESTMENTS POOL 1, LLC, a limited
liability company; U.S. BANK NATIONAL
ASSOCIATION, N.D., a national association;
DOES 1 through 10, inclusive, and ROES 1
through 10, inclusive.

Defendants.

CASE NO.: A-13-689461-C

DEPT. NO.: XXVI

ANSWER TO COUNTERCLAIM

Plaintiff and counterdefendant Marchai B.T. ("Marchai"), by and through its attorneys, the LAW OFFICES OF LES ZIEVE, answers the counterclaim of defendant SFR Investments Pool 1, LLC ("Defendant") as follows:

1. Marchai admits the allegations in paragraphs 1-4, 30, 34-36, 38, and 46.
2. Marchai denies the allegations in paragraphs 18, 24, 26, 49-50, and 57-63.
3. Marchai is without sufficient information and belief to admit or deny the allegations in paragraphs 5-6, 19, 21-23, 25, 27, 29, 31-33, 39, 43-45, and 54, and on that basis denies them.

- 1 4. There are no allegations to admit or deny in paragraphs 40 and 51-52 and therefore
2 Marchai does not admit or deny anything in those paragraphs.
- 3 5. The allegations in paragraphs 7, 9-17 (paragraph 14 is omitted in the counterclaim),
4 20, 28, 41-42, 47-48, and 53 call for a legal conclusion and no response is necessary.
5 To the extent a response is required: Marchai is without sufficient information and
6 belief to admit or deny those allegations and on that basis denies them.
- 7 6. Marchai admits the allegation that a foreclosure deed recorded as instrument no.
8 201309090001816 in the Official Records of the Clark County Recorder's Office and
9 denies all other allegations in paragraph 8.
- 10 7. Marchai admits it filed a complaint for judicial foreclosure on September 30, 2013,
11 and denies all other allegations in paragraph 37.
- 12 8. Marchai admits the allegation that it maintains an interest in the Property through the
13 First Deed of Trust but denies all other allegations in paragraph 55.
- 14 9. Marchai admits the allegation that it claims an ownership interest in the Property but
15 denies all other allegations in paragraph 56.

16 **AFFIRMATIVE DEFENSES**

17 **FIRST AFFIRMATIVE DEFENSE**

18 **(Failure to State a Claim)**

19 Defendant fails to state a claim on which relief can be granted.

20 **SECOND AFFIRMATIVE DEFENSE**

21 **(Statute of Limitations)**

22 All causes of action alleged by Defendant are barred by the applicable statute of
23 limitations.

24 **THIRD AFFIRMATIVE DEFENSE**

25 **(Waiver)**

26 All causes of action alleged by Defendant are barred by the doctrine of waiver, laches,
27 and estoppel.

28 ///

1 **FOURTH AFFIRMATIVE DEFENSE**

2 **(Unclean Hands)**

3 All causes of action alleged by Defendant are barred by the doctrine of unclean hands.

4 **FIFTH AFFIRMATIVE DEFENSE**

5 **(Statute of Frauds)**

6 All causes of action alleged by Defendant are barred by the applicable statute of frauds.

7 **SIXTH AFFIRMATIVE DEFENSE**

8 **(Equitable Estoppel)**

9 The conduct of Defendant bars any relief under the principles of equitable estoppel.

10 **SEVENTH AFFIRMATIVE DEFENSE**

11 **(NRCP 8)**

12 Marchai incorporates by references all affirmative defenses enumerated in Rule 8 of the
13 Nevada Rules of Civil Procedure as though fully set forth herein.

14 **EIGHTH AFFIRMATIVE DEFENSE**

15 **(Intervening or Supervening Acts)**

16 All injuries or damages alleged by Defendant, if any, are a direct and proximate cause of
17 intervening or supervening acts of a person or persons other than Plaintiff and over which
18 Plaintiff did not nor reasonably could have exercised control.

19 **NINTH AFFIRMATIVE DEFENSE**

20 **(Conditions Precedent)**

21 Defendants failed to satisfy conditions precedent to bring an action against Plaintiff.

22 **TENTH AFFIRMATIVE DEFENSE**

23 **(Attorney's Fees and Costs)**

24 There is no basis for recovery of attorney's fees or costs from Marchai.

25 **ELEVENTH AFFIRMATIVE DEFENSE**

26 **(Lien Priority – NRS 116.3116)**

27 Any lien interest purportedly held by Defendant in the property that is the subject of this
28 litigation is inferior to Marchai's first deed of trust interest in the property.

1 **TWEFLTH AFFIRMATIVE DEFENSE**

2 **(Reservation of Rights)**

3 All affirmative defenses may not be listed here because facts may exist unknown to
4 Marchai at this time. Marchai reserves its right to amend its answer to add such affirmative
5 defenses in the event further information or investigation warrants it.

6 Marchai PRAYS FOR JUDGMENT AS FOLLOWS:

- 7 1. Defendant takes nothing by way of their counterclaim;
8 2. The counterclaim is dismissed as against Marchai with prejudice;
9 3. For reasonable attorney's fees and costs;
10 4. For any other relief this Court deems proper.

11
12 DATED: December 3, 2013

LAW OFFICES OF LES ZIEVE

13
14 By: /s/ Benjamin D. Petiprin
15 Benjamin D. Petiprin, Esq.
16 Attorney for Plaintiff and Counterdefendant
17 Marchai B.T.
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am an employee of the Law Offices of Les Zieve, and not a party to nor interested in the within matter; that on the 3rd day of December 2013, service of the **ANSWER TO COUNTERCLAIM** was made:

() by serving the following parties electronically through CM/ECF as set forth below;

(X) by depositing a copy in the United States Mail postage prepaid to the parties listed below:

Cristela Perez
7119 Wolf Rivers Ave.
Las Vegas, NV 89131-013
Defendant

Diana S. Cline, Esq.
Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, NV 89014
Attorney for Defendant SFR Investment Pool 1, LLC

US Bank National Association, ND
4325 17th Avenue S.W.
Fargo, ND 58103
Defendant

Robert D. Rose Jr.
7119 Wolf Rivers Ave
Las Vegas, NV 89131
Courtesy Copy

Robert D. Rose Jr.
17450 Burbank Blvd. #104
Encino, CA 91316
Courtesy Copy

CMG Mortgage, Inc.
3160 Crow Canyon Road, Suite 240
San Ramon, California 94583
Courtesy Copy

Mortgage Electronic Registration Systems, Inc.
P.O. Box 2026
Flint, MI 48501-2026
Courtesy Copy

1 CitiMortgage, Inc
2 1000 Technology Drive
3 O'Fallon, MO 63368-2240
4 ***Courtesy Copy***

5 CitiMortgage, Inc
6 C/O NTC 2100 Alt. 19 North
7 Palm Harbor, FL 34683
8 ***Courtesy Copy***

9 Attn: Kelly Mitchell
10 Wyeth Ranch HOA
11 PO Box 12117
12 Las Vegas, NV 89112
13 ***Courtesy Copy***

14 Wyeth Ranch HOA
15 C/O Complete Association Management Company (CAMCO)
16 PO Box 12117
17 Las Vegas, NV 89112
18 ***Courtesy Copy***

19 Wyeth Ranch HOA
20 C/O Alessi & Koenig, LLC
21 9500 W. Flamingo Rd., Suite 100
22 Las Vegas, Nevada 89147
23 ***Courtesy Copy***

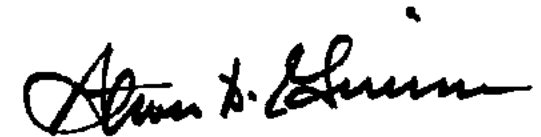
24 Attn: Kelly Mitchell
25 Wyeth Ranch Homeowners Assoc.
26 PO Box 12117
27 Las Vegas, NV 89112
28 ***Courtesy Copy***

Wyeth Ranch Community Association
C/O Alessi & Koenig, LLC
9500 W. Flamingo Rd., Suite 205
Las Vegas, Nevada 89147
Courtesy Copy

Toscana-Wyeth Ranch Landscape Maintenance Association
C/O Ken Williams
1820 E. Sahara STE 101
Las Vegas, NV 89104
Courtesy Copy

1 Toscana-Wyeth Ranch Landscape Maintenance Association
2 C/O Ken Williams
3 P.O. Box 12117
4 Las Vegas, NV 89112
5 *Courtesy Copy*

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
/s/ Michele Dapello
Michele Dapello, an employee of
Law Offices of Les Zieve



CLERK OF THE COURT

COMP
DAVID J. MERRILL
Nevada Bar No. 6060
DAVID J. MERRILL, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 566-1935
Facsimile: (702) 993-8841
E-mail: david@djmerrillpc.com
Attorney for MARCHAI, B.T.

DISTRICT COURT
CLARK COUNTY, NEVADA

MARCHAI, B.T., a Nevada business trust,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company;
WYETH RANCH COMMUNITY ASSOCIATION, a Nevada non-profit corporation; ALESSI & KOENIG, LLC, a Nevada limited liability company;
DOES 1 through 10, inclusive, and
ROES 1 through 10, inclusive.

Defendants.

Case No.: A- 16 - 742327 - C
Dept. No. XXXI

**EXEMPT FROM
ARBITRATION: ACTION
CONCERNING TITLE TO
REAL ESTATE**

COMPLAINT

Marchai, B.T., a Nevada business trust, alleges as follows:

1. Marchai is a Nevada business trust authorized to transact business in the State of Nevada.

2. This action concerns real property located in the City of Las Vegas, County of Clark, State of Nevada. The property is commonly known as 7119 Wolf

1 Rivers Avenue, Las Vegas, Nevada 89131, Clark County Assessor's Parcel Number
2 125-15-811-013.

3 3. Marchai is informed and believes that SFR Investments Pool 1, LLC is
4 a Nevada limited liability company, which has an interest in the property by reason
5 of the recording of a trustee's deed upon sale and is the record owner of the
6 property.

7 4. Marchai is informed and believes that Wyeth Ranch Community
8 Association is a Nevada non-profit corporation doing business in Clark County,
9 Nevada.

10 5. Marchai is informed and believes that Alessi & Koenig, LLC is a
11 Nevada limited liability company doing business in Clark County, Nevada.

12 6. Marchai is unaware of the true names and capacities of individual
13 defendants sued herein as DOES 1 through 10, inclusive, and corporations,
14 partnerships, or other business entities sued herein as ROES 1 through 10,
15 inclusive, and therefore sues these defendants by such fictitious names. Marchai is
16 informed and believes that defendants named herein as DOES 1 through 10 and
17 ROES 1 through 10 have, or may claim to have, some right, title, or interest in and
18 to the property, the exact nature of which is unknown to Marchai and Marchai will
19 seek leave to amend this complaint to allege their true names and capacities when
20 and as ascertained, and will further ask leave to join said defendants in these
21 proceedings.

22 7. On or about October 19, 2005, for valuable consideration, Cristela
23 Perez made, executed, and delivered to CMG Mortgage, Inc. that certain
24 InterestFirst Adjustable Rate Note dated October 19, 2005 evidencing a loan to
25 Perez in the original principal amount of \$442,000.00.

26 8. To secure payment of the principal sum and interest provided in the
27 note, as part of the same transaction, Perez executed and delivered to CMG
28 Mortgage, as beneficiary, a Deed of Trust dated October 19, 2005. The Deed of Trust

1 was recorded in book number 20051109 as instrument number 0001385 in the
2 Official Records of the Clark County Recorder's Office on November 9, 2005.

3 9. On November 5, 2007, Complete Association Management Company
4 recorded on behalf of Wyeth Ranch a Notice of Delinquent Violation Lien as
5 Document No. 20071105-0000341 in which Wyeth Ranch claimed a lien for unpaid
6 violations in the amount of \$1,400.00.

7 10. Marchai is informed and believes that Perez failed to timely pay Wyeth
8 Ranch association dues on January 1, April 1, or July 1, 2008.

9 11. On October 8, 2008, the Clark County Recorder recorded a Notice of
10 Delinquent Assessment (Lien) as Document No. 200810080003311, which Alessi &
11 Koenig executed as agent for Wyeth Ranch. According to the notice, as of September
12 30, 2008, Perez owed Wyeth Ranch \$1,425.17.

13 12. On January 5, 2009, Alessi & Koenig, on behalf of Wyeth Ranch,
14 recorded with the Clark County Recorder as Document No. 20090105-0002988 a
15 Notice of Default and Election to Sell Under Homeowners Association Lien.
16 According to the notice of default, as of December 17, 2008, Perez owed Wyeth
17 Ranch \$3,096.46.

18 13. On January 14, 2010, Alessi & Koenig, on behalf of Wyeth Ranch,
19 recorded with the Clark County Recorder as Document No. 201001140002589 a
20 Notice of Trustee's Sale. According to the notice of sale, Perez owed Wyeth Ranch
21 \$6,964.25 in unpaid assessments. The notice set a sale for February 17, 2010.

22 14. Marchai is informed and believes that between February 2010 and
23 March 2011, Perez paid Wyeth Ranch \$2,005.00 in association dues.

24 15. On March 9, 2011, Alessi & Koenig, on behalf of Wyeth Ranch,
25 recorded with the Clark County Recorder as Document No. 201103090001741 a
26 Rescission of Notice Trustee's Sale, in which Wyeth Ranch rescinded the January
27 14, 2010, notice of sale.

1 16. On March 29, 2011, Alessi & Koenig, on behalf of Wyeth Ranch,
2 recorded with the Clark County Recorder as Document No. 201103290002937 a
3 Notice of Trustee's Sale. According to the notice of sale, Perez owed Wyeth Ranch
4 \$7,306.62 in unpaid assessments. The notice set a sale for May 8, 2011.

5 17. Marchai is informed and believes that on August 4, 2011, Perez paid
6 Wyeth Ranch another \$165.00.

7 18. Marchai is informed and believes that on October 1, 2011, Perez
8 defaulted under the terms of her loan from CMG Mortgage in that Perez failed to
9 make the regular monthly installment payment on that date in the approximate
10 amount of \$2,657.39, and all subsequent payments.

11 19. On December 20, 2011, Alessi & Koenig, on behalf of Wyeth Ranch,
12 recorded with the Clark County Recorder as Document No. 201112200001246 a
13 Notice of Delinquent Assessment (Lien). According to the notice, Perez owed Wyeth
14 Ranch \$9,296.56.

15 20. On February 28, 2012, Alessi & Koenig, on behalf of Wyeth Ranch,
16 recorded with the Clark County Recorder as Document No. 201202280000836 a
17 Notice of Default and Election to Sell Under Homeowners Association Lien.
18 According to the notice of default, Perez owed Wyeth Ranch \$10,625.06 in unpaid
19 assessments.

20 21. Marchai is informed and believes that between March and May 2012,
21 Perez paid Wyeth Ranch another \$595.00.

22 22. On June 5, 2012, a Corporate Assignment of Deed of Trust was
23 recorded with the Clark County Recorder as Document 201206050003133 that
24 evidences an assignment of the deed of trust from CMG Mortgage, Inc. to
25 CitiMortgage, Inc.

26 23. Marchai is informed and believes that on July 26, 2012, Perez made a
27 \$165.00 payment to Wyeth Ranch.
28

1 24. On July 26, 2012, an Assignment of Mortgage was recorded with the
2 Clark County Recorder as Document 201207260002017 that evidences an
3 assignment of the deed of trust from CitiMortgage to U.S. Bank, N.A. as Trustee for
4 the Stanwich Mortgage Loan Trust, Series 2012-6.

5 25. On October 31, 2012, Alessi & Koenig, on behalf of Wyeth Ranch,
6 recorded with the Clark County Recorder as Document No. 201210310000686 a
7 Notice of Trustee's Sale. According to the notice of sale, Perez owed Wyeth Ranch
8 \$11,656.07. The notice set a sale for November 28, 2012.

9 26. Marchai is informed and believes that on November 13, 2012, Perez
10 made a \$300.00 payment to Wyeth Ranch.

11 27. On March 12, 2013, U.S. Bank, as trustee of the Stanwich Trust,
12 assigned the deed of trust to Marchai.

13 28. On July 31, 2013, Alessi & Koenig, on behalf of Wyeth Ranch, recorded
14 with the Clark County Recorder as Document 201307310001002 another Notice of
15 Trustee's Sale. According to the notice of sale, Perez owed Wyeth Ranch \$14,090.80.
16 The notice set a sale for August 28, 2013.

17 29. On August 12, 2013, an Assignment of Deed of Trust was recorded
18 with the Clark County Recorder as Document No. 201308120002562 that evidences
19 the assignment of the deed of trust from U.S. Bank, as trustee of the Stanwich
20 Trust, to Marchai.

21 30. On September 9, 2013, the Clark County Recorder recorded a Trustee's
22 Deed Upon Sale as Document No. 201309090001816 that Alessi & Koenig executed.
23 According to the trustee's deed, SFR acquired Alessi & Koenig's "right, title, and
24 interest" in the property for \$21,000.00 at a sale conducted on August 28, 2013.

25 31. Alessi & Koenig and Wyeth Ranch wrongfully foreclosed against the
26 property in reliance upon NRS §§ 116.3116 *et seq.* (the "Statute").
27
28

1 32. The purported foreclosure sale under the Statute did not extinguish
2 Marchai's deed of trust, which continues to constitute a valid encumbrance against
3 the property.

4 33. Alessi & Koenig and Wyeth Ranch failed to give constitutionally
5 adequate notice to Marchai of Wyeth Ranch's lien as required by the Supreme Court
6 in *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983), given that the Statute
7 on its face violated Marchai's rights to due process secured by the United States and
8 Nevada Constitutions.

9 34. Alessi & Koenig and Wyeth Ranch failed to give constitutionally
10 adequate notice to Marchai of Wyeth Ranch's notice of default.

11 35. Alessi & Koenig and Wyeth Ranch failed to give constitutionally
12 adequate notice to Marchai of the notice of sale.

13 36. Alessi & Koenig and Wyeth Ranch failed to identify any superpriority
14 amount claimed by Wyeth Ranch and failed to describe the "deficiency in payment"
15 required by NRS § 116.31162(1)(b)(1) in the notice of default.

16 37. Alessi & Koenig and Wyeth Ranch failed to provide notice of any
17 purported superpriority lien amount or the consequences for the failure to pay any
18 purported superpriority lien amount.

19 38. Alessi & Koenig and Wyeth Ranch failed to identify the amount of the
20 alleged lien that was for late fees, interest, fines/violations, or collection fees/costs.

21 39. Alessi & Koenig and Wyeth Ranch failed to identify if Wyeth Ranch
22 intended to foreclose upon the superpriority portion of its lien, if any, or on the sub-
23 priority portion of its lien.

24 40. Alessi & Koenig and Wyeth Ranch failed to specify in any of the
25 recorded documents that Wyeth Ranch's foreclosure would extinguish Marchai's
26 interest in the property.

27 41. Alessi & Koenig and Wyeth Ranch failed to market, sell, or auction the
28 property for in a commercially reasonable manner.

1 42. SFR purports to have purchased the property at the August 28, 2013,
2 foreclosure sale for \$21,000.00.

3 43. The property has an approximate fair market value well in excess of
4 the \$21,000.00 purchase price.

5 44. The sale and purchase of the property was unconscionable and
6 commercially unreasonable.

7 45. Neither Alessi & Koenig, nor Wyeth Ranch, nor the Statute gave fair
8 notice to Marchai that the nonjudicial foreclosure of Wyeth Ranch's lien could
9 extinguish Marchai's interest in the property as required by the Due Process
10 clauses of both the United States Constitution and the Constitution of the State of
11 Nevada.

12 46. To date, the note remains unpaid, and no document has been recorded
13 on the property expressly releasing Marchai's deed of trust.

14 47. SFR had actual or record notice of Marchai's interest in the property.

15 48. At the time of Wyeth Ranch's foreclosure, Perez had paid more than
16 nine months of association dues following Wyeth Ranch's "institution of an action to
17 enforce the lien," which satisfied any superpriority portion of Wyeth Ranch's lien.
18 Thus, to the extent SFR acquired any interest in the property, it did so subject to
19 Marchai's deed of trust.

20 49. At the time of Wyeth Ranch's foreclosure, Wyeth Ranch's lien, or a
21 portion thereof, including the superpriority portion, had expired. Thus, to the extent
22 SFR acquired anything it acquired the property subject to Marchai's deed of trust.

23 **First Claim for Relief**
24 **(Declaratory Relief Under Amendment V to the United States**
25 **Constitution—Takings Clause—Against SFR, Wyeth Ranch, and Alessi &**
26 **Koenig)**

26 50. Marchai repeats and realleges each of the paragraphs set forth above.

27 51. The purported foreclosure pursuant to the Statute effected a
28 regulatory taking of Marchai's secured interest in the property without just

1 compensation, in violation of the Fifth Amendment to the United States
2 Constitution.

3 52. An actual and justiciable controversy exists between Marchai and SFR,
4 Wyeth Ranch, and Alessi & Koenig regarding the purported foreclosure sale and the
5 rights associated with the foreclosure sale.

6 53. Without declaratory relief, an interpretation of the Statute and an
7 interpretation of the constitutional validity of the Statute, Marchai's rights and
8 secured interest in the property will be adversely affected.

9 54. Based upon the foregoing, Marchai requests an order declaring that
10 the purported foreclosure sale under the Statute did not extinguish Marchai's deed
11 of trust, which continues to be a valid encumbrance against the property.

12 55. Based upon the foregoing, Marchai requests an order declaring that
13 the purported foreclosure sale be voided and set aside because the foreclosure
14 pursuant to the Statute effected a regulatory taking of Marchai's secured interest in
15 the Property without just compensation, in violation of the Fifth Amendment to the
16 United States Constitution.

17 56. Marchai has been damaged by SFR, Wyeth Ranch, and Alessi &
18 Koenig's conduct as specified herein in an amount to be proven at trial.

19 57. Marchai has been required to engage the services of an attorney to
20 protect its interests in the property and is entitled to recover its reasonable
21 attorney's fees and costs incurred in connection with this action.

22 **Second Claim for Relief**
23 **(Declaratory Relief under the Due Process Clauses of the**
24 **United States and Nevada Constitutions—Against SFR, Wyeth**
Ranch, and Alessi & Koenig)

25 58. Marchai repeats and realleges each of the paragraphs set forth above.

26 59. The Statute on its face violates Marchai's constitutional rights, in
27 particular those rights to due process secured by both the United States and
28 Nevada Constitutions and is thus void and unenforceable.

1 60. Any purported notice provided was inadequate, insufficient, and in
2 violation of Marchai's rights to due process as it failed to provide fair notice as
3 required by the due process clauses of both the United States and Nevada
4 Constitutions.

5 61. An actual and justiciable controversy exists between Marchai and SFR,
6 Alessi & Koenig, and Wyeth Ranch regarding the purported foreclosure sale and the
7 rights associated with the foreclosure sale.

8 62. Without declaratory relief, an interpretation of the Statute, and an
9 interpretation of the constitutional validity of the Statute, Marchai's rights and
10 secured interest in the property will be adversely affected.

11 63. Based upon the foregoing, Marchai requests an order declaring that
12 the purported foreclosure sale under the Statute did not extinguish Marchai's deed
13 of trust, which continues to be a valid encumbrance against the Property.

14 64. Based upon the foregoing, Marchai requests an order declaring that
15 the purported foreclosure sale be voided and set aside because the Statute on its
16 face violates Marchai's due process under both the United States and Nevada
17 Constitutions.

18 65. Marchai has been damaged by SFR, Wyeth Ranch, and Alessi &
19 Koenig's conduct as specified herein in an amount to be proven at trial.

20 66. Marchai has been required to engage the services of an attorney to
21 protect its interests in the property and is entitled to recover its reasonable
22 attorney's fees and costs incurred in connection with this action.

23 **Third Claim for Relief**
24 **(Wrongful Foreclosure—Against SFR, Wyeth Ranch, and Alessi & Koenig)**

25 67. Marchai repeats and realleges each of the paragraphs set forth above.

26 68. SFR wrongfully purported to purchase Marchai's property in violation
27 of the Statute and common law.
28

1 69. The foreclosure sale was wrongful because the foreclosure itself was
2 contrary to law, in that:

3 (a) The Statute on its face violates Marchai's constitutional rights,
4 in particular Marchai's rights to due process under both the Nevada and United
5 States Constitutions.

6 (b) The purported foreclosure pursuant to the Statute effected a
7 regulatory taking of Marchai's secured interest in the property without just
8 compensation in violation of the Fifth Amendment to the United States
9 Constitution.

10 (c) Any purported notice provided was also inadequate, insufficient,
11 and in violation of Marchai's rights to due process under both the United States and
12 Nevada Constitutions.

13 (d) The lien, or a portion thereof, had expired by the time of the
14 foreclosure.

15 (e) Perez paid more than nine months of association dues following
16 Wyeth Ranch's institution of an action to enforce its lien.

17 70. SFR is not a bona fide purchaser of the Property.

18 71. SFR's \$21,000.00 purchase price for the property was unconscionable.

19 72. The sale and purchase of the property was not commercially
20 reasonable.

21 73. Based upon the foregoing, Marchai requests an order declaring that
22 the purported foreclosure sale did not extinguish Marchai's deed of trust, which
23 continues as a valid encumbrance against the property.

24 74. Based upon the foregoing, Marchai requests an order declaring that
25 the purported foreclosure sale be voided and set aside because SFR is not a bona
26 fide purchaser of the property.

75. Based upon the foregoing, Marchai requests an order setting aside the purported foreclosure sale as void because SFR's \$21,000.00 purchase price for the property was not commercially reasonable.

76. Based upon the foregoing, Marchai requests an order declaring that the purported foreclosure sale be voided and set aside because SFR's \$21,000.00 purchase price for the property was unconscionable.

77. Marchai has been damaged by SFR, Wyeth Ranch, and Alessi & Koenig's conduct as specified herein in an amount to be proven at trial.

78. Marchai has been required to engage the services of an attorney to protect its interests in the property and is entitled to recover its reasonable attorney's fees and costs incurred in connection with this action.

Fourth Claim for Relief
(Violation of NRS § 116.1113 *et seq.*—Against Wyeth Ranch and Alessi & Koenig)

79. Marchai repeats and realleges each of the paragraphs set forth above.

80. Wyeth Ranch and Alessi & Koenig wrongfully foreclosed upon the property in violation of the Statute.

81. Given the above-enumerated violations of the Statute, Marchai asserts that Wyeth Ranch's purported sale of the property be voided and set aside and requests any and all damages flowing from these violations.

Fifth Claim for Relief
(Intentional Interference with Contractual Relations against SFR, Wyeth Ranch, and Alessi & Koenig)

82. Marchai repeats and realleges each of the paragraphs set forth above.

83. Marchai had a valid contract with Perez as evidenced by the note and deed of trust, which included as part of the benefit of the bargain a first priority secured interest in the property.

84. SFR, Wyeth Ranch, and Alessi & Koenig knew or should have known of the contract between Marchai and Perez.

1 85. SFR, Wyeth Ranch, and Alessi & Koenig knowingly interfered with the
2 contract between Marchai and Perez by failing to market, sell, or auction the
3 property for a commercially reasonable or fair market value, thus evidencing intent
4 to harm Marchai.

5 86. SFR knowingly interfered with the contract between Marchai and
6 Perez by wrongfully obtaining possession of the property for an unconscionable and
7 commercially unreasonable amount, thus evidencing intent to harm Marchai.

8 87. SFR knowingly interfered with the contract between Marchai and
9 Perez by wrongfully obtaining possession of the property and attempting to
10 extinguish Marchai's security interest in the Property.

11 88. SFR, Wyeth Ranch, and Alessi & Koenig all lacked justification for
12 these interferences, because of the many infirmities described within this amended
13 complaint, including:

14 (a) The Statute on its face violates Marchai's constitutional rights,
15 in particular Marchai's rights to due process under both the Nevada and United
16 States Constitutions.

17 (b) The purported foreclosure pursuant to the Statute effected a
18 regulatory taking of Marchai's secured interest in the Property without just
19 compensation in violation of the Fifth Amendment to the United States
20 Constitution.

21 (c) Any purported notice provided was also inadequate, insufficient,
22 and in violation of Marchai's rights to due process under both the United States and
23 Nevada Constitutions.

24 (d) The lien, or a portion thereof, had expired by the time of the
25 foreclosure.

26 (e) Perez paid more than nine months of association dues following
27 Wyeth Ranch's institution of an action to enforce its lien.
28

1 89. Marchai has been damaged by SFR, Wyeth Ranch, and Alessi &
2 Koenig's conduct as specified herein in an amount to be proven at trial.

3 90. Marchai has been required to engage the services of an attorney to
4 protect its interests in the property and is entitled to recover its reasonable
5 attorney's fees and costs incurred in connection with this action.

6 **Sixth Claim for Relief**
7 **(Quiet Title—Against SFR, Wyeth Ranch, and Alessi & Koenig)**

8 91. Marchai repeats and realleges each of the paragraphs set forth above.

9 92. For all of the independent reasons cited above in Claims 2 through 6,
10 Wyeth Ranch's sale did not extinguish Marchai's senior deed of trust.

11 93. For all of the independent reasons cited above in Claims 2 through 6,
12 Marchai requests an order declaring that the purported foreclosure sale did not
13 extinguish Marchai's deed of trust, which continues as a valid encumbrance against
14 the Property.

15 94. For all of the independent reasons cited above in Claims 2 through 6,
16 Marchai requests an order declaring that the purported foreclosure sale be voided
17 and set aside because SFR is not a bona fide purchaser of the Property.

18 95. For all of the independent reasons cited above in Claims 2 through 6,
19 Marchai requests an order setting aside Wyeth Ranch's sale as void because SFR's
20 payment of \$21,000.00 as a purchase price for the property was not commercially
21 reasonable and the sale was not conducted in a commercially reasonable manner.

22 96. For all of the independent reasons cited above in Claims 2 through 6,
23 Marchai requests an order declaring that the purported foreclosure sale be voided
24 and set aside because SFR's \$21,000.00 purchase price for the property was
25 unconscionable.

26 97. Marchai has been damaged by SFR, Wyeth Ranch, and Alessi &
27 Koenig's conduct as specified herein in an amount to be proven at trial.
28

1 98. Marchai has been required to engage the services of an attorney to
2 protect its interests in the property and is entitled to recover its reasonable
3 attorney's fees and costs incurred in connection with this action.

4 99. Accordingly, Marchai requests that title be quieted in its name and its
5 deed of trust continue as a valid encumbrance against the Property.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Marchai prays for relief as follows:

8 A. For a declaration by the Court that Marchai holds a valid interest in
9 the property under the note and deed of trust, and that SFR acquired the property
10 subject to Marchai's interest;

11 B. That title in the Property be quieted in Marchai;

12 C. That Wyeth Ranch's purported foreclosure sale be declared void and
13 set aside;


14 D. For judgment in an amount proven at trial in excess of \$10,000.00;

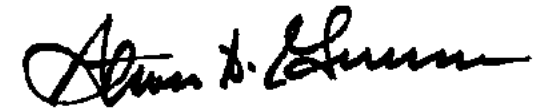
15 E. For an award of interest, costs, and attorneys' fees; and

16 F. For any further relief the Court deems just and proper.

17 DATED this 25th day of August 2016.

18 DAVID J. MERRILL, P.C.

19
20 By: 
21 DAVID J. MERRILL
22 Nevada Bar No. 6060
23 10161 Park Run Drive, Suite 150
24 Las Vegas, Nevada 89145
25 (702) 566-1935
26 Attorneys for MARCHAI, B.T.
27
28



CLERK OF THE COURT

1 ODM
2 DAVID J. MERRILL
3 Nevada Bar No. 6060
4 DAVID J. MERRILL, P.C.
5 10161 Park Run Drive, Suite 150
6 Las Vegas, Nevada 89145
7 Telephone: (702) 566-1935
8 Facsimile: (702) 993-8841
9 E-mail: david@djmerrillpc.com
10 Attorney for MARCHAI, B.T.

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 MARCHAI, B.T., a Nevada business
14 trust,

15 Plaintiff,

16 vs.

17 CRISTELA PEREZ, an individual; *et al.*

18 Defendants.

19 AND ALL RELATED CLAIMS

Case No.: A-13-689461-C
Dept. No. VII

20 ORDER DENYING MOTION

21 Marchai, B.T.'s Motion, on Shortened Time, for Leave to File an Amended
22 Complaint came before the Court on the 25th day of August 2016 at 9:00 a.m. The
23 Court, having considered the motion, the argument of counsel at the hearing, and
24 good cause appearing therefor:

1 IT IS HEREBY ORDERED that the Motion, on Shortened Time, for Leave to
2 File an Amended Complaint shall be and hereby is DENIED;

3 IT IS FURTHER ORDERED that this action shall be and hereby is STAYED
4 until the United States Court of Appeals for the Ninth Circuit issues its mandate in
5 *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*, Case No. 15-15233, or until
6 the Nevada Supreme Court issues an opinion concerning the constitutionality of
7 NRS 116 that concurs with or disagrees with the Ninth Circuit's decision in *Bourne*
8 *Valley*, whichever occurs first;

9 IT IS FURTHER ORDERED that a status check on the status of the stay is
10 scheduled for December 1, 2016 at 9:00 a.m.

11 DATED this 27th day of September 2016.

12 
13
14 HONORABLE KATHY HARDCASTLE
15 SENIOR DISTRICT COURT JUDGE


16 Submitted by:

17 DAVID J. MERRILL, P.C.


Approved as to form:

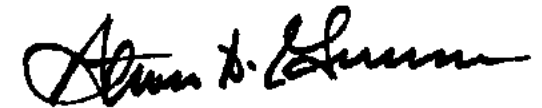
KIM GILBERT EBRON

19 By:

20 
21 DAVID J. MERRILL
22 Nevada Bar No. 6060
23 10161 Park Run Drive, Suite 150
24 Las Vegas, Nevada 89145
25 (702) 566-1935
26 Attorney for MARCHAI, B.T.

By:

20 
21 KAREN L. HANKS
22 Nevada Bar No. 9578
23 7625 Dean Martin Dr., Suite 110
24 Las Vegas, Nevada 89139
25 (702) 485-3300
26 Attorneys for SFR INVESTMENTS
27 POOL 1, LLC
28



CLERK OF THE COURT

1 **ORDR**
2 **DAVID J. MERRILL**
3 Nevada Bar No. 6060
4 **DAVID J. MERRILL, P.C.**
5 10161 Park Run Drive, Suite 150
6 Las Vegas, Nevada 89145
7 Telephone: (702) 566-1935
8 Facsimile: (702) 993-8841
9 E-mail: david@djmerrillpc.com
10 Attorney for MARCHAI, B.T.

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 MARCHAI, B.T., a Nevada business
14 trust,

15 Plaintiff,

16 vs.

17 CRISTELA PEREZ, an individual; *et al.*

18 Defendants.

19 **AND ALL RELATED CLAIMS AND
20 ACTIONS**

Case No.: A-13-689461-C

Dept. No. VII

Consolidated with: A-16-742327-C

21 **ORDER LIFTING STAY AND CONSOLIDATING CASES**

22 In accordance with the Court's September 30, 2016, Order Denying Motion,
23 on December 1, 2016, the Court conducted a status check concerning the stay issued
24 by the Court on September 30, 2016. David J. Merrill of David J. Merrill, P.C.
25 appeared on behalf of Marchai, B.T. Jacqueline A. Gilbert of Kim Gilbert Ebron
26 appeared on behalf of SFR Investments Pool 1, LLC. The Court having discussed
27 the status of the case with counsel, as well as Marchai's filing of a separate case
28 entitled *Marchai, B.T. v. SFR Investments Pool 1, LLC* (Case No. A-16-742327-C),
being fully advised in the premises, and good causes appearing therefor:

1 IT IS HEREBY ORDERED that the stay issued in this action on September
2 30, 2016 shall be and hereby is lifted;

3 IT IS FURTHER ORDERED that Case No. A-16-742327-C, entitled *Marchai,*
4 *B.T. v. SFR Investments Pool 1, LLC*, which is currently pending before
5 Department XXXI, shall be and hereby is consolidated with this action; and

6 IT IS FURTHER ORDERED that the parties shall appear for a status check
7 on January 3, 2017 at 9:00 a.m. to discuss further proceedings in the case.

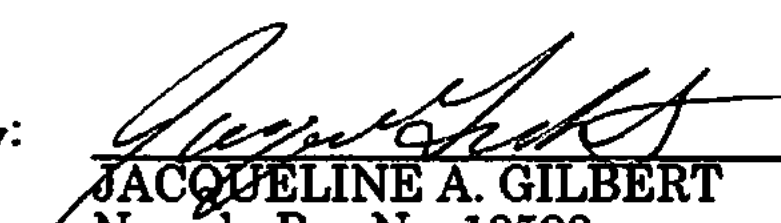
8 DATED this 9th day of December 2016.

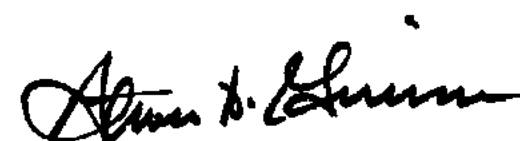
9
10 
11 HONORABLE LINDA MARIE BELL
12 

13 Submitted by:
14 DAVID J. MERRILL, P.C.

Approved as to form and content by:
KIM GILBERT EBRON

15
16 By: 
17 DAVID J. MERRILL
18 Nevada Bar No. 6060
19 10161 Park Run Drive, Suite 150
20 Las Vegas, Nevada 89145
21 (702) 566-1935
22 Attorneys for MARCHAI, B.T.

By: 
JACQUELINE A. GILBERT
Nevada Bar No. 10593
7625 Dean Martin Drive, # 110
Las Vegas, Nevada 89139
(702) 485-3300
Attorneys for SFR INVESTMENTS
POOL 1, LLC



CLERK OF THE COURT

1 **NEOJ**
2 **DAVID J. MERRILL**
3 Nevada Bar No. 6060
4 **DAVID J. MERRILL, P.C.**
5 10161 Park Run Drive, Suite 150
6 Las Vegas, Nevada 89145
7 Telephone: (702) 566-1935
8 Facsimile: (702) 993-8841
9 E-mail: david@djmerrillpc.com
10 Attorney for WELLS FARGO BANK, N.A.

7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 **MARCHAI, B.T., a Nevada business**
11 **trust,**

12 **Plaintiff,**

13 **vs.**

14 **CRISTELA PEREZ, an individual; et al.**

15 **Defendants.**

16 **AND ALL RELATED CLAIMS**

Case No.: A-13-689461-C

Dept. No. VII

Consolidated with: A-16-742327-C


17 **NOTICE OF ENTRY OF ORDER**

18 **TAKE NOTICE** that on the 13th day of December 2016, the Court entered an
19 **Order Lifting Stay and Consolidating Cases**, a copy of which is attached hereto.

20 **DATED** this 13th day of December 2016.

21 **DAVID J. MERRILL, P.C.**

22
23 **By:**


24 **DAVID J. MERRILL**
25 Nevada Bar No. 6060
26 10161 Park Run Drive, Suite 150
27 Las Vegas, Nevada 89145
28 (702) 566-1935
Attorneys for MARCHAI, B.T.

DAVID J. MERRILL, P.C.
10161 PARK RUN DRIVE, SUITE 150
LAS VEGAS, NEVADA 89145
(702) 566-1935

DAVID J. MERRILL, P.C.
10161 PARK RUN DRIVE, SUITE 150
LAS VEGAS, NEVADA 89145
(702) 566-1935

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of December 2016, a copy of the foregoing Notice of Entry of Order was served electronically to the following through the Court's electronic service system:

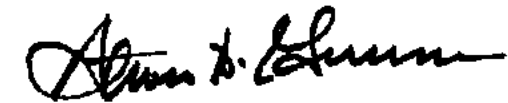
Kim Gilbert Ebron

Diana Cline Ebron	diana@kgelegal.com
E-Service for Kim Gilbert Ebron	eservice@hkimlaw.com
Michael L. Sturm	mike@kgelegal.com
Tomas Valerio	staff@kgelegal.com

Lipson, Neilson, Cole, Seltzer & Garin, P.C.

Brenda Correa	bcorrea@lipsonneilson.com
Kaleb Anderson	kanderson@lipsonneilson.com
Megan Hummel	mhummel@lipsonneilson.com


An employee of David J. Merrill, P.C.



CLERK OF THE COURT

1 **ORDER**
2 **DAVID J. MERRILL**
3 Nevada Bar No. 6060
4 **DAVID J. MERRILL, P.C.**
5 10161 Park Run Drive, Suite 150
6 Las Vegas, Nevada 89145
7 Telephone: (702) 566-1935
8 Facsimile: (702) 993-8841
9 E-mail: david@djmerrillpc.com
10 Attorney for MARCHAI, B.T.

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 **MARCHAI, B.T., a Nevada business**
14 **trust,**

15 **Plaintiff,**

16 **vs.**

17 **CRISTELA PEREZ, an individual; et al.**

18 **Defendants.**

19 **AND ALL RELATED CLAIMS AND**
20 **ACTIONS**

Case No.: A-13-689461-C

Dept. No. VII

Consolidated with: A-16-742327-C

21 **ORDER LIFTING STAY AND CONSOLIDATING CASES**

22 In accordance with the Court's September 30, 2016, Order Denying Motion,
23 on December 1, 2016, the Court conducted a status check concerning the stay issued
24 by the Court on September 30, 2016. David J. Merrill of David J. Merrill, P.C.
25 appeared on behalf of Marchai, B.T. Jacqueline A. Gilbert of Kim Gilbert Ebron
26 appeared on behalf of SFR Investments Pool 1, LLC. The Court having discussed
27 the status of the case with counsel, as well as Marchai's filing of a separate case
28 entitled *Marchai, B.T. v. SFR Investments Pool 1, LLC* (Case No. A-16-742327-C),
being fully advised in the premises, and good causes appearing therefor:

1 IT IS HEREBY ORDERED that the stay issued in this action on September
2 30, 2016 shall be and hereby is lifted;

3 IT IS FURTHER ORDERED that Case No. A-16-742327-C, entitled *Marchai,*
4 *B.T. v. SFR Investments Pool 1, LLC*, which is currently pending before
5 Department XXXI, shall be and hereby is consolidated with this action; and

6 IT IS FURTHER ORDERED that the parties shall appear for a status check
7 on January 3, 2017 at 9:00 a.m. to discuss further proceedings in the case.

8 DATED this 9th day of December 2016.

9

10

11

12

13

Submitted by:

14

DAVID J. MERRILL, P.C.

15

16

By: 
DAVID J. MERRILL
Nevada Bar No. 6060
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
(702) 566-1935
Attorneys for MARCHAI, B.T.

20

21

22

23

24

25

26

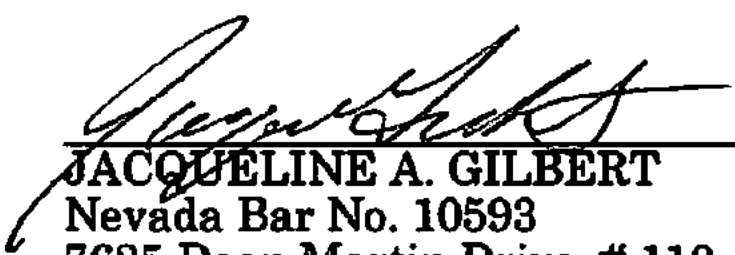
27

28


HONORABLE LINDA MARIE BELL
78

Approved as to form and content by:

KIM GILBERT EBRON

By: 
JACQUELINE A. GILBERT
Nevada Bar No. 10593
7625 Dean Martin Drive, # 110
Las Vegas, Nevada 89139
(702) 485-3300
Attorneys for SFR INVESTMENTS
POOL 1, LLC



CLERK OF THE COURT

1 ODM
2 DAVID J. MERRILL
3 Nevada Bar No. 6060
4 DAVID J. MERRILL, P.C.
5 10161 Park Run Drive, Suite 150
6 Las Vegas, Nevada 89145
7 Telephone: (702) 566-1935
8 Facsimile: (702) 993-8841
9 E-mail: david@djmerrillpc.com
10 Attorney for MARCHAI, B.T.

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 MARCHAI, B.T., a Nevada business
14 trust,

15 Plaintiff,

16 vs.

17 CRISTELA PEREZ, an individual; *et al.*

18 Defendants.

19 AND ALL RELATED CLAIMS AND
20 ACTIONS

Case No.: A-13-689461-C

Dept. No. VII

Consolidated with: A-16-742327-C

21 **ORDER DENYING, IN PART, AND GRANTING, IN PART,**
22 **DEFENDANT WYETH RANCH COMMUNITY ASSOCIATION'S**
23 **MOTION TO DISMISS**

24 On January 3, 2017, Defendant Wyeth Ranch Community Association's
25 Motion to Dismiss came before the Court. David J. Merrill of David J. Merrill, P.C.
26 appeared on behalf of Marchai, B.T. Jacqueline A. Gilbert of Kim Gilbert Ebron
27 appeared on behalf of SFR Investments Pool 1, LLC. Julie A. Funai of Lipson,
28 Neilson, Cole, Seltzer & Garin, P.C. appeared on behalf of Wyeth Ranch Community
Association. The Court having considered the motion, Wells Fargo's opposition,
Wyeth Ranch's reply, the arguments of counsel, and good cause appearing therefor:

1 IT IS HEREBY ORDERED that Defendant Wyeth Ranch Community
2 Association's Motion to Dismiss shall be and hereby is DENIED, in part, and
3 GRANTED, in part;

4 IT IS FURTHER ORDERED that Wyeth Ranch's motion to dismiss Marchai's
5 Third, Fourth, and Fifth Claims for Relief shall be and hereby is DENIED; and

6 IT IS FURTHER ORDERED that Wyeth Ranch's motion to dismiss Marchai's
7 Sixth Claim for Relief for quiet title shall be and hereby is GRANTED.

8 DATED this 21 day of January 2017.

9
10 
11 HONORABLE LINDA MARIE BELL *LB*

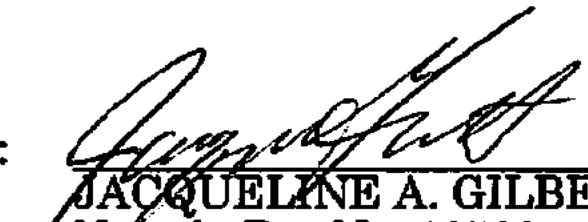
12
13 Submitted by:

14 DAVID J. MERRILL, P.C.


Approved as to form and content by:

KIM GILBERT EBRON

15
16 By: 
17 DAVID J. MERRILL
18 Nevada Bar No. 6060
19 10161 Park Run Drive, Suite 150
20 Las Vegas, Nevada 89145
21 (702) 566-1935
22 Attorneys for MARCHAI, B.T.

By: 
JACQUELINE A. GILBERT
Nevada Bar No. 10593
7625 Dean Martin Drive, # 110
Las Vegas, Nevada 89139
(702) 485-3300
Attorneys for SFR INVESTMENTS
POOL 1, LLC

23 LIPSON, NEILSON, COLE, SELTZER
24 & GARIN, P.C.

25 By: 
26 JULIE A. FUNAI
27 Nevada Bar No. 8725
28 9900 Covington Cross Drive, Suite
120
Las Vegas, Nevada 89144
(702) 382-1500
Attorneys for WYETH RANCH
COMMUNITY ASSOCIATION

1 IT IS HEREBY ORDERED that Defendant Wyeth Ranch Community
2 Association's Motion to Dismiss shall be and hereby is DENIED, in part, and
3 GRANTED, in part;

4 IT IS FURTHER ORDERED that Wyeth Ranch's motion to dismiss Marchai's
5 Third, Fourth, and Fifth Claims for Relief shall be and hereby is DENIED; and

6 IT IS FURTHER ORDERED that Wyeth Ranch's motion to dismiss Marchai's
7 Sixth Claim for Relief for quiet title shall be and hereby is GRANTED.

8 DATED this ____ day of January 2017.

9
10
11 HONORABLE LINDA MARIE BELL

12
13 Submitted by:

14 DAVID J. MERRILL, P.C.

Approved as to form and content by:

KIM GILBERT EBRON

15
16 By:

DAVID J. MERRILL
Nevada Bar No. 6060
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
(702) 566-1935

Attorneys for MARCHAI, B.T.


By:

JACQUELINE A. GILBERT
Nevada Bar No. 10593
7625 Dean Martin Drive, # 110
Las Vegas, Nevada 89139
(702) 485-3300

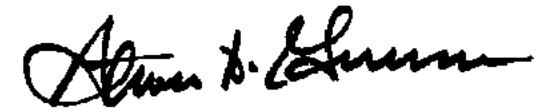
Attorneys for SFR INVESTMENTS
POOL 1, LLC

20 LIPSON, NEILSON, COLE, SELTZER
21 & GARIN, P.C.

22
23 By:


JULIE A. FUNAI
Nevada Bar No. 8725
9900 Covington Cross Drive, Suite
120
Las Vegas, Nevada 89144
(702) 382-1500

Attorneys for WYETH RANCH
COMMUNITY ASSOCIATION



CLERK OF THE COURT

1 **NEOJ**
2 **DAVID J. MERRILL**
3 Nevada Bar No. 6060
4 **DAVID J. MERRILL, P.C.**
5 10161 Park Run Drive, Suite 150
6 Las Vegas, Nevada 89145
7 Telephone: (702) 566-1935
8 Facsimile: (702) 993-8841
9 E-mail: david@djmerrillpc.com
10 Attorney for Marchai, B.T.

7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 **MARCHAI, B.T., a Nevada business**
11 **trust,**

12 **Plaintiff,**

13 **vs.**

14 **CRISTELA PEREZ, an individual; et al.**

15 **Defendants.**

16 **AND ALL RELATED CLAIMS**

Case No.: A-13-689461-C

Dept. No. VII


Consolidated with: A-16-742327-C

17 **NOTICE OF ENTRY OF ORDER**

18 **TAKE NOTICE** that on the 24th day of January 2017, the Court entered an
19 Order Denying, in Part, and Granting, in Part, Defendant Wyeth Ranch
20 Community Association's Motion to Dismiss, a copy of which is attached hereto.

21 **DATED** this 25th day of January 2017.

22 **DAVID J. MERRILL, P.C.**

23
24 By: 
25 **DAVID J. MERRILL**
26 Nevada Bar No. 6060
27 10161 Park Run Drive, Suite 150
28 Las Vegas, Nevada 89145
(702) 566-1935
Attorneys for MARCHAI, B.T.

DAVID J. MERRILL, P.C.
10161 PARK RUN DRIVE, SUITE 150
LAS VEGAS, NEVADA 89145
(702) 566-1935

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of January 2017, a copy of the foregoing Notice of Entry of Order was served electronically to the following through the Court's electronic service system:


Kim Gilbert Ebron

Diana Cline Ebron	diana@kgelegal.com
E-Service for Kim Gilbert Ebron	eservice@hkimlaw.com
Michael L. Sturm	mike@kgelegal.com
Tomas Valerio	staff@kgelegal.com

Lipson, Neilson, Cole, Seltzer & Garin, P.C.

Brenda Correa	bcorrea@lipsonneilson.com
Kaleb Anderson	kanderson@lipsonneilson.com
Megan Hummel	mhummel@lipsonneilson.com
Renee Rittenhouse	rrittenhouse@lipsonneilson.com
Susana Nutt	snutt@lipsonneilson.com


An employee of David J. Merrill, P.C.



CLERK OF THE COURT

1 ODM
2 DAVID J. MERRILL
3 Nevada Bar No. 6060
4 DAVID J. MERRILL, P.C.
5 10161 Park Run Drive, Suite 150
6 Las Vegas, Nevada 89145
7 Telephone: (702) 566-1935
8 Facsimile: (702) 993-8841
9 E-mail: david@djmerrillpc.com
10 Attorney for MARCHAI, B.T.

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 MARCHAI, B.T., a Nevada business
14 trust,

15 Plaintiff,

16 vs.

17 CRISTELA PEREZ, an individual; *et al.*

18 Defendants.

19 AND ALL RELATED CLAIMS AND
20 ACTIONS

Case No.: A-13-689461-C

Dept. No. VII

Consolidated with: A-16-742327-C

21 **ORDER DENYING, IN PART, AND GRANTING, IN PART,**
22 **DEFENDANT WYETH RANCH COMMUNITY ASSOCIATION'S**
23 **MOTION TO DISMISS**

24 On January 3, 2017, Defendant Wyeth Ranch Community Association's
25 Motion to Dismiss came before the Court. David J. Merrill of David J. Merrill, P.C.
26 appeared on behalf of Marchai, B.T. Jacqueline A. Gilbert of Kim Gilbert Ebron
27 appeared on behalf of SFR Investments Pool 1, LLC. Julie A. Funai of Lipson,
28 Neilson, Cole, Seltzer & Garin, P.C. appeared on behalf of Wyeth Ranch Community
Association. The Court having considered the motion, Wells Fargo's opposition,
Wyeth Ranch's reply, the arguments of counsel, and good cause appearing therefor:

1 IT IS HEREBY ORDERED that Defendant Wyeth Ranch Community
2 Association's Motion to Dismiss shall be and hereby is DENIED, in part, and
3 GRANTED, in part;

4 IT IS FURTHER ORDERED that Wyeth Ranch's motion to dismiss Marchai's
5 Third, Fourth, and Fifth Claims for Relief shall be and hereby is DENIED; and

6 IT IS FURTHER ORDERED that Wyeth Ranch's motion to dismiss Marchai's
7 Sixth Claim for Relief for quiet title shall be and hereby is GRANTED.

8 DATED this 21 day of January 2017.

9
10 
11 HONORABLE LINDA MARIE BELL *LB*

12
13 Submitted by:

14 DAVID J. MERRILL, P.C.

Approved as to form and content by:

KIM GILBERT EBRON

15
16 By: 

17 DAVID J. MERRILL
18 Nevada Bar No. 6060
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
(702) 566-1935

19 Attorneys for MARCHAI, B.T.

By: 

JACQUELINE A. GILBERT
Nevada Bar No. 10593
7625 Dean Martin Drive, # 110
Las Vegas, Nevada 89139
(702) 485-3300

Attorneys for SFR INVESTMENTS
POOL 1, LLC

20 LIPSON, NEILSON, COLE, SELTZER
21 & GARIN, P.C.

22
23 By: 

24 JULIE A. FUNAI
25 Nevada Bar No. 8725
9900 Covington Cross Drive, Suite
120
Las Vegas, Nevada 89144
(702) 382-1500

26 Attorneys for WYETH RANCH
27 COMMUNITY ASSOCIATION
28

1 IT IS HEREBY ORDERED that Defendant Wyeth Ranch Community
2 Association's Motion to Dismiss shall be and hereby is DENIED, in part, and
3 GRANTED, in part;

4 IT IS FURTHER ORDERED that Wyeth Ranch's motion to dismiss Marchai's
5 Third, Fourth, and Fifth Claims for Relief shall be and hereby is DENIED; and

6 IT IS FURTHER ORDERED that Wyeth Ranch's motion to dismiss Marchai's
7 Sixth Claim for Relief for quiet title shall be and hereby is GRANTED.

8 DATED this ____ day of January 2017.

9
10
11 HONORABLE LINDA MARIE BELL

12
13 Submitted by:

14 DAVID J. MERRILL, P.C.

Approved as to form and content by:

KIM GILBERT EBRON

15
16 By:

DAVID J. MERRILL
Nevada Bar No. 6060
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
(702) 566-1935

Attorneys for MARCHAI, B.T.


By:

JACQUELINE A. GILBERT
Nevada Bar No. 10593
7625 Dean Martin Drive, # 110
Las Vegas, Nevada 89139
(702) 485-3300

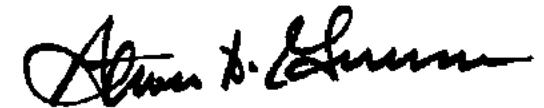
Attorneys for SFR INVESTMENTS
POOL 1, LLC

20 LIPSON, NEILSON, COLE, SELTZER
21 & GARIN, P.C.

22
23 By:


JULIE A. FUNAI
Nevada Bar No. 8725
9900 Covington Cross Drive, Suite
120
Las Vegas, Nevada 89144
(702) 382-1500

Attorneys for WYETH RANCH
COMMUNITY ASSOCIATION



CLERK OF THE COURT

LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.
KALEB D. ANDERSON, ESQ.
Nevada Bar No. 7582
MEGAN H. HUMMEL, ESQ.
Nevada Bar No. 12404
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500
(702) 382-1512 - fax
kanderson@lipsonneilson.com
mhummel@lipsonneilson.com

Attorneys for Defendant Wyeth Ranch Community Association

**DISTRICT COURT
CLARK COUNTY, NEVADA**

MARCHAI, B.T., a Nevada business trust,
Plaintiff,

v.

CRISTELA PEREZ, an individual; *et al.*
Defendants.

Case No.: A-13-689461-C
Dept. No.: VII

Consolidated with: A-16-742327-C

**DEFENDANT WYETH RANCH
COMMUNITY ASSOCIATION'S
ANSWER AND AFFIRMATIVE
DEFENSES**

AND ALL RELATED CLAIMS

**DEFENDANT WYETH RANCH COMMUNITY ASSOCIATION'S ANSWER AND
AFFIRMATIVE DEFENSES**

COMES NOW, WYETH RANCH COMMUNITY ASSOCIATION ("Defendant"), by
and through its counsel of record at the law firm of LIPSON, NEILSON, COLE,
SELTZER & GARIN P.C., and hereby answers Plaintiff MARCHAI, B.T.'s ("Plaintiff")
Complaint as follows:

///

///

///

///

COMPLAINT

1. Defendant, answering Paragraphs 1, is presently without sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

2. Defendant, answering paragraph 2, admits.

3. Defendant. Answering Paragraph 3, is presently without sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

4. Defendant, answering Paragraph 4, admits.

5. Defendant, answering Paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30 is presently without sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

6. The allegations in Paragraphs 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45 state and characterize legal conclusions to which no response is required. To the extent a response is required, Defendant denies each and every allegation set forth therein.

7. Defendant, answering Paragraphs 46, 47, 48, and 49, is presently without sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

FIRST CLAIM FOR RELIEF

(Declaratory Relief Under Amendment V to the United States Constitution – Takings Clause – Against SFR, Wyeth Ranch, and Alessi & Koenig)

8. Defendant, answering Paragraph 50, repeats and incorporates by reference its responses to the preceding Paragraphs as though fully set forth herein.

9. The allegations in Paragraphs 51, 52, 53, 54, and 55 state and characterize legal conclusions to which no response is required. To the extent a response is required, Defendant denies each and every allegation set forth therein.

///

10. Defendant, answering Paragraphs 56 and 57 is presently without sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

SECOND CLAIM FOR RELIEF
(Declaratory Relief under the Due Process Clauses of the United States and Nevada Constitutions – Against SFR, Wyeth Ranch, and Alessi & Koenig)

11. Defendant, answering Paragraph 58, repeats and incorporates by reference its responses to the preceding Paragraphs as though fully set forth herein.

12. The allegations in Paragraph 59, 60, 61, 62, 63, 64 state and characterize legal conclusions to which no response is required. To the extent a response is required, Defendant denies each and every allegation set forth therein.

13. Defendant, answering Paragraphs 65 and 66, is presently without sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

THIRD CLAIM FOR RELIEF
(Wrongful Foreclosure – Against, SFR, Wyeth Ranch, and Alessi & Koenig)

14. Defendant, answering Paragraph 67, repeats and incorporates by reference its responses to the preceding Paragraphs as though fully set forth herein.

15. The allegations in Paragraphs 68, 69, 70, 71, 72, 73, 74, 75, and 76, state and characterize legal conclusions to which no response is required. To the extent a response is required, Defendant denies each and every allegation set forth therein.

16. Defendant, answering Paragraphs 77 and 78, is presently without sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

FOURTH CLAIM FOR RELIEF
(Violation of NRS 116.1113, et. seq. – Against Wyeth Ranch and Alessi & Koenig)

17. Defendant, answering Paragraph 79, repeats and incorporates by reference its responses to the preceding Paragraphs as though fully set forth therein.

18. Defendant, answering Paragraphs 80 and 81, denies each and every allegation contained therein.

FIFTH CLAIM FOR RELIEF
**(Intentional Interference with Contractual Relations against SFR, Wyeth Ranch,
and Alessi & Koenig)**

19. Defendant, answering Paragraph 82, repeats and incorporates by reference its responses to the preceding Paragraphs as though fully set forth therein.

20. Defendant, answering Paragraphs 83, 84, 85, 86, 87, and 88, denies each and every allegation contained therein.

21. Defendant, answering Paragraphs 89 and 90, is presently without sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

SIXTH CLAIM FOR RELIEF
(Quiet Title – Against SFR, Wyeth Ranch, and Alessi & Koenig)

22. Defendant, answering Paragraph 82, repeats and incorporates by reference its responses to the preceding Paragraphs as though fully set forth therein.

23. Defendant, answering Paragraphs 92, 93, 94, 95, 96, 97, 98, and 99, states as follows: this cause of action was dismissed by the court on January 24, 2017.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Defendant denies that by reason of act, omission, fault, conduct or liability on Defendant's part, whether negligent, careless, unlawful or whether as alleged or otherwise, Plaintiff was injured or damaged in any of the amounts alleged, or in any other manner whatsoever.

SECOND AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that the complaint, and each and every cause of action therein, fails to state facts sufficient to constitute a cause of action against Defendant.

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIRD AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that the Complaint is barred by issue preclusion and/or claim preclusion (i.e. the Doctrine of Res Judicata).

FOURTH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that if Plaintiff suffered or sustained any loss, damage, or detriment, the same is directly and proximately caused and contributed to, in whole or in part, breach of warranty, breach of contract, or the acts, omissions, activities, recklessness, negligence, and/or intentional misconduct of Plaintiff, thereby completely or partially barring his recovery herein.

FIFTH AFFIRMATIVE ACTION

Defendant is informed and believes, and thereon alleges, that it is not legally responsible in any fashion with respect to the damages and injuries claimed by Plaintiff; however, if Defendant is subjected to any liability to Plaintiff, it will be due, in whole or in part, to the breach of warranty, breach of contract, omissions, activities, carelessness, recklessness, or negligence of others; wherefore any recovery obtained by Plaintiff against Defendant should be reduced in proportion to the respective negligence, fault, and legal responsibility of all other parties, persons, or entities who contributed to or caused any such injury or damage, in accordance with the laws of comparative negligence.

SIXTH AFFIRMATIVE DEFENSE

Defendant is informed and believed, and thereon alleges, that at the time of the incident alleged in Plaintiff's claims, Plaintiff knew of and fully understood the danger and risk incident to its undertaking, but despite such knowledge, freely and voluntarily assumed and exposed itself to all risk of harm and the consequent injuries or damages, if any, resulting therefrom.

///
///
///

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff is informed and believes, and thereon alleges, that the cross-claims, and each and every cause of action in the cross-claims, is barred by the applicable Statutes of Repose.

EIGHTH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that as to each alleged cause of action, Plaintiff has failed, refused, and neglected to take reasonable steps to mitigate his own alleged damages, if any, thus barring or diminishing Plaintiff's recovery.

NINTH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that the crossclaims, and each and every cause of action contained therein, is barred by the applicable Statutes of Limitation.

TENTH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that Plaintiff unreasonably delayed both the filing of the crossclaims, and notification of the alleged causes of action, and the basis for the causes of action alleged against Defendant, all of which has unduly and severely prejudiced Defendant in its defense of this action, thereby barring or diminishing Plaintiff's recovery under the Doctrine of Estoppel.

ELEVENTH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that Plaintiff unreasonably delayed both the filing of the crossclaims and notification of the alleged cause of action, and the basis for the causes of action alleged against this answering Defendant, all of which has unduly and severely prejudiced Defendant, thereby barring or diminishing Plaintiff's under the Doctrine of Laches.

TWELFTH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that Plaintiff failed to join all necessary and indispensable parties to this lawsuit.

///

THIRTEENTH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that the injuries and damages of which Plaintiff complaints were proximately caused by, or contributed to by, the acts of other Defendants, Cross-Defendants, Third-Party defendants, persons and/or other entities, and that said acts were an intervening and superseding cause of the injuries and damages, if any, of which the crossclaims complains, thus barring Plaintiff from recovering against Defendant.

FOURTEENTH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that the crossclaims are barred by the Statute of Frauds.

FIFTEENTH AFFIRMATIVE DEFENSE

It has been necessary for this Defendant to retain the services of an attorney to defend this action, and this Defendant is entitled to a reasonable sum for attorney's fees and costs.

SIXTEENTH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that the claims of Plaintiff are reduced, modified, or barred by the Doctrine of Unclean Hands.

SEVENTEENTH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that Plaintiff's claims are reduced, modified, and/or barred because Counterclaimant received payment.

EIGHTEENTH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that Plaintiff's claims are reduced, modified, and/or barred because of changed circumstances.

NINETEENTH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that Plaintiff's claims are reduced, modified, and/or barred because Plaintiff released its claims.

///

///

Defendant is informed and believes, and thereon alleges, that Plaintiff's claims are reduced, modified, and/or barred because of the Parol Evidence Rule.

Defendant is informed and believes and thereon alleges that Plaintiff's performance was excused because of cardinal change.

Defendant is informed and believes that Plaintiff's first and second causes of action are barred by the Nevada Supreme Court's decision in Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage, Case No. 68630.

Defendant is informed and believes and thereon alleges that Plaintiff failed to comply with the mediation requirements set forth in NRS Chapter 38.

Pursuant to the Nevada Rules of Civil Procedure, all affirmative defenses may not have been alleged herein insofar as sufficient facts were not available to this Defendant after reasonable inquiry, and therefore, Defendant reserves the right to amend this Answer to allege additional affirmative defenses, if subsequent investigation so warrants.

///
///
///
///
///
///
///
///

PRAYER

WHEREFORE, Defendant prays for judgment against Plaintiff as follows:

1. That Plaintiff takes nothing by way of this action;
2. For the costs of suit incurred herein;
3. For attorney's fees and costs; and
4. For such other relief as the Court deems just and proper.

DATED this 31st day of January, 2017.

LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

By: /s/ Megan H. Hummel

KALEB D. ANDERSON, ESQ.
Nevada Bar No. 7582
MEGAN H. HUMMEL ESQ.
Nevada Bar No. 12404
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144

*Attorneys for Defendant
Wyeth Ranch Community Association*

CERTIFICATE OF SERVICE

I certify that on the 31st day of January, 2017, I electronically transmitted the foregoing **DEFENDANT WYETH RANCH COMMUNITY ASSOCIATION'S ANSWER AND AFFIRMATIVE DEFENSES** to the Clerk's Office using the Odyssey E-File & Serve system for filing and transmittal to the following Odyssey E-File & Serve registrants addressed to:

David J. Merrill, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
david@djmerrillpc.com

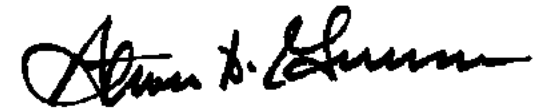
Attorney for Plaintiff Marchai, B.T.

Diana Cline Ebron, Esq.
Jacqueline A. Gilbert, Esq.
Karen L. Hanks, Esq.
KIM GILBERT EBRON
7625 Dean Martin Drive, Suite 110
Las Vegas, NV 89139
diana@kgelegal.com
jackie@kgelegal.com
karen@kgelegal.com

Attorneys for SFR Investments Pool 1, LLC

/s/ Brenda Correa

An employee of
LIPSON, NEILSON, COLE, SELZTER & GARIN, P.C.



CLERK OF THE COURT

ANSC
DIANA CLINE 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
fka Howard Kim & Associates
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

DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI B.T., a Bank Trust,

Plaintiff,

vs.

CRISTELA PEREZ, an individual; SFR
INVESTMENTS POOL 1, LLC, a limited
liability company; U.S. BANK NATIONAL
ASSOCIATION, N.D., a national
association; DOES I through X; and ROE
CORPORATIONS I through 10, inclusive,

Defendants.

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

Counterclaimant/Cross-Claimant,

vs.

MARCHAI B.T., a Bank Trust; U.S. BANK
NATIONAL ASSOCIATION, N.D., a
national association; CRISTELA PEREZ, an
individual; and DOES I through X; and ROE
CORPORATIONS I through 10, inclusive,

Counter-Defendant/Cross-Defendants.

Case No. A-13-689461-C

Dept. No. VII

Consolidated with: A-16-742327-C

**SFR INVESTMENTS POOL 1, LLC'S
ANSWER TO COMPLAINT**

SFR INVESTMENTS POOL 1, LLC ("SFR") hereby answers MARCHAI B.T.'s

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

1 (“Marchai” or “Bank”) Complaint (Case No. A-16-742327-C)¹ as follows:

2 1. The allegations in paragraph 1 of the Complaint calls for a legal conclusion to which no
3 response is required.

4 2. In answering paragraph 3 of the Complaint, SFR admits it is a Nevada limited liability
5 company and is the title holder of the Property. The Trustee’s Deed Upon Sale referenced in
6 paragraph 3 of the Complaint speaks for itself and SFR denies any allegations inconsistent with
7 said document.

8 3. Answering paragraph 4 of the Complaint, SFR admits upon information and belief that,
9 Wyeth Ranch Community Association (“Association” or “HOA”), is a Nevada non-profit
10 corporation doing business in Clark County, Nevada.

11 4. Answering paragraph 5 of the Complaint, SFR admits upon information and belief that,
12 Alessi & Koenig, LLC (“Alessi” or “HOA”), is a Nevada limited liability company doing business
13 in Clark County, Nevada.

14 5. SFR is without knowledge or information sufficient to form a belief about the allegations
15 in paragraph 6 in the Complaint and therefore denies said allegations.

16 6. The Note referenced in paragraph 7 of the Complaint speaks for itself, and SFR denies
17 any allegations inconsistent with said document. To the extent paragraph 7 alleges that Cristela
18 Perez (“Perez”) was the title owner of record of the Property at times prior to the Association
19 foreclosure sale, SFR, upon information and belief, admits the allegations in paragraph 7.

20 7. The recorded Deed of Trust referenced in paragraph 8 of the Complaint speaks for itself,
21 and SFR denies any allegations inconsistent with said document. SFR further admits upon
22 information and belief, that a non-judicial publicly-held Association foreclosure auction sale
23 occurred on August 28, 2013, at which time SFR was the highest bidder, purchasing the property
24 for \$21,000.00. SFR further admits it now owns the property free and clear of the Bank’s purported
25 deed of trust which was extinguished as a matter of law on August 28, 2013 as a result of the
26 Association foreclosure sale.

27
28 ¹ SFR maintains its counterclaim and cross-claims in Case No. A-13-689461-C.

1 8. The recorded Notice of Delinquent Assessments Lien referenced in paragraph 9 of the
2 Complaint speaks for itself, and SFR denies any allegations inconsistent with said document.

3 9. Upon information and belief, SFR admits the allegations in paragraph 10 of the Complaint.

4 10. The recorded Notice of Delinquent Assessments Lien referenced in paragraph 11 of the
5 Complaint speaks for itself, and SFR denies any allegations inconsistent with said document.

6 11. The recorded Notice of Default referenced in paragraph 12 of the Complaint speaks for
7 itself, and SFR denies any allegations inconsistent with said document.

8 12. The recorded Notice of Trustee's Sale referenced in paragraph 13 of the Complaint speaks
9 for itself, and SFR denies any allegations inconsistent with said document.

10 13. SFR is without knowledge or information sufficient to form a belief about the allegations
11 in paragraph 14 in the Complaint and therefore denies said allegations.

12 14. The recorded Notice of Trustee's Sale referenced in paragraph 15 of the Complaint speaks
13 for itself, and SFR denies any allegations inconsistent with said document.

14 15. The recorded Notice of Trustee's Sale referenced in paragraph 16 of the Complaint speaks
15 for itself, and SFR denies any allegations inconsistent with said document.

16 16. SFR is without knowledge or information sufficient to form a belief about the allegations
17 in paragraph 17 in the Complaint and therefore denies said allegations.

18 17. SFR is without knowledge or information sufficient to form a belief about the allegations
19 in paragraph 18 in the Complaint and therefore denies said allegations.

20 18. The recorded Notice of Delinquent Assessments Lien referenced in paragraph 19 of the
21 Complaint speaks for itself, and SFR denies any allegations inconsistent with said document.

22 19. The recorded Notice of Default referenced in paragraph 20 of the Complaint speaks for
23 itself, and SFR denies any allegations inconsistent with said document.

24 20. SFR is without knowledge or information sufficient to form a belief about the allegations
25 in paragraph 21 in the Complaint and therefore denies said allegations.

26 21. The recorded Assignment referenced in paragraph 22 of the Complaint speaks for itself,
27 and SFR denies any allegations inconsistent with said document. SFR further admits upon
28 information and belief, that a non-judicial publicly-held Association foreclosure auction sale

1 occurred on August 28, 2013, at which time SFR was the highest bidder, purchasing the property
2 for \$21,000.00. SFR further admits it now owns the property free and clear of the Bank's purported
3 deed of trust which was extinguished as a matter of law on August 28, 2013 as a result of the
4 Association foreclosure sale.

5 22. SFR is without knowledge or information sufficient to form a belief about the allegations
6 in paragraph 23 in the Complaint and therefore denies said allegations.

7 23. The recorded Assignment referenced in paragraph 24 of the Complaint speaks for itself,
8 and SFR denies any allegations inconsistent with said document. SFR further admits upon
9 information and belief, that a non-judicial publicly-held Association foreclosure auction sale
10 occurred on August 28, 2013, at which time SFR was the highest bidder, purchasing the property
11 for \$21,000.00. SFR further admits it now owns the property free and clear of the Bank's purported
12 deed of trust which was extinguished as a matter of law on August 28, 2013 as a result of the
13 Association foreclosure sale.

14 24. The recorded Notice of Trustee's Sale referenced in paragraph 25 of the Complaint speaks
15 for itself, and SFR denies any allegations inconsistent with said document.

16 25. SFR is without knowledge or information sufficient to form a belief about the allegations
17 in paragraph 26 in the Complaint and therefore denies said allegations.

18 26. The recorded Assignment referenced in paragraph 27 of the Complaint speaks for itself,
19 and SFR denies any allegations inconsistent with said document. SFR further admits upon
20 information and belief, that a non-judicial publicly-held Association foreclosure auction sale
21 occurred on August 28, 2013, at which time SFR was the highest bidder, purchasing the property
22 for \$21,000.00. SFR further admits it now owns the property free and clear of the Bank's purported
23 deed of trust which was extinguished as a matter of law on August 28, 2013 as a result of the
24 Association foreclosure sale.

25 27. The recorded Notice of Trustee's Sale referenced in paragraph 28 of the Complaint speaks
26 for itself, and SFR denies any allegations inconsistent with said document.

27 28. The recorded Assignment referenced in paragraph 29 of the Complaint speaks for itself,
28 and SFR denies any allegations inconsistent with said document. SFR further admits upon

1 information and belief, that a non-judicial publicly-held Association foreclosure auction sale
2 occurred on August 28, 2013, at which time SFR was the highest bidder, purchasing the property
3 for \$21,000.00. SFR further admits it now owns the property free and clear of the Bank's purported
4 deed of trust which was extinguished as a matter of law on August 28, 2013 as a result of the
5 Association foreclosure sale.

6 29. The recorded Notice of Trustee's Sale referenced in paragraph 30 of the Complaint speaks
7 for itself, and SFR denies any allegations inconsistent with said document.

8 30. The allegations in paragraphs 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44 of
9 the Complaint call for a legal conclusion to which no response is required. To the extent a
10 response is required, SFR denies the allegations of paragraphs 31, 32, 33, 34, 35, 36, 37, 38, 39,
11 40, 41, 42, 43 and 44. SFR specifically denies "the sale and purchase of the property was
12 unconscionable and commercially unreasonable." Further, SFR specifically denies "the property
13 has an approximate fair market value well in excess of the \$21,000.00 purchase price." The
14 statutes referenced in paragraphs 31, 32, 33 and 36 speak for themselves and SFR denies any
15 allegations inconsistent with said statutes.

16 31. The allegations in paragraphs 45, 46, 47, 48 and 49 of the Complaint call for a legal
17 conclusion to which no response is required. To the extent a response is required, SFR denies the
18 allegations of paragraphs 45, 46, 47, 48 and 49. SFR further admits upon information and belief,
19 that a non-judicial publicly-held Association foreclosure auction sale occurred on August 28, 2013,
20 at which time SFR was the highest bidder, purchasing the property for \$21,000.00. SFR further
21 admits it now owns the property free and clear of the Bank's purported deed of trust which was
22 extinguished as a matter of law on August 28, 2013 as a result of the Association foreclosure sale.

23 **FIRST CLAIM FOR RELIEF**

24 **(Declaratory Relief Under Amendment V to the United States Constitution—Takings
25 Clause—Against SFR, Wyeth Ranch, and Alessi & Koenig)**

26 32. SFR repeats and realleges its answers to paragraphs 1 through 49 of the Complaint as
27 though fully set forth herein.

28 33. The allegations in paragraphs 51, 52, 53, 54, 55 and 56 of the Complaint call for a legal
conclusion to which no response is required. To the extent an answer is required, SFR denies the

allegations in paragraphs 51, 52, 53, 54, 55 and 56.

34. SFR denies the allegations contained in paragraph 57 of the Complaint.

SECOND CLAIM FOR RELIEF

(Declaratory Relief Under the Due Process Clauses of the United States and Nevada Constitutions—Takings Clause—Against SFR, Wyeth Ranch, and Alessi & Koenig)

35. SFR repeats and realleges its answers to paragraphs 1 through 57 of the Complaint as though fully set forth herein.

36. The allegations in paragraphs 59, 60, 61, 62, 63, 64 and 65 of the Complaint call for a legal conclusion to which no response is required. To the extent an answer is required, SFR denies the allegations in paragraphs 59, 60, 61, 62, 63, 64 and 65. The statutes referenced in paragraph 59, 60, 62, 63 and 64 of the Complaint speak for themselves and SFR denies any allegations inconsistent with said statutes.

37. SFR denies the allegations contained in paragraph 66 of the Complaint.

THIRD CLAIM FOR RELIEF

(Wrongful Foreclosure—Against SFR, Wyeth Ranch, and Alessi & Koenig)

38. SFR repeats and realleges its answers to paragraphs 1 through 66 of the Complaint as though fully set forth herein.

39. The allegations in paragraphs 69, 70, 71, 72, 73, 74, 75, 76 and 77 of the Complaint call for a legal conclusion to which no response is required. To the extent an answer is required, SFR denies the allegations in paragraphs 69, 70, 71, 72, 73, 74, 75, 76 and 77. SFR specifically denies “the purchase price was not commercially reasonable.” Further, SFR specifically denies that the “purchase price for the property was unconscionable.”

40. SFR denies the allegations contained in paragraph 78 of the Complaint.

FOURTH CLAIM FOR RELIEF

(Violation of NRS§116.1113 *et seq.*--against SFR, Wyeth Ranch, and Alessi & Koenig)

41. SFR repeats and realleges its answers to paragraphs 1 through 78 of the Complaint as though fully set forth herein.

42. The allegations in paragraphs 80 and 81 of the Complaint call for a legal conclusion to which no response is required. To the extent an answer is required, SFR denies the allegations in

1 paragraphs 80 and 81. The statutes referenced in paragraphs 80 and 81 speak for themselves and
2 SFR denies any allegations inconsistent with said statutes.

3 **FIFTH CLAIM FOR RELIEF**
4 **(Intentional Interference with Contractual Relations against SFR, Wyeth Ranch, and**
5 **Alessi & Koenig)**

6 43. SFR repeats and realleges its answers to paragraphs 1 through 81 of the Complaint as
7 though fully set forth herein.

8 44. The allegations in paragraphs 83, 84, 85, 86, 87, 88 and 89 of the Complaint call for a
9 legal conclusion to which no response is required. To the extent an answer is required, SFR denies
10 the allegations in paragraphs 83, 84, 85, 86, 87, 88 and 89.

11 45. SFR denies the allegations contained in paragraph 90 of the Complaint.

12 **SIXTH CLAIM FOR RELIEF**
13 **(Quiet Title--against SFR, Wyeth Ranch, and Alessi & Koenig)**

14 46. SFR repeats and realleges its answers to paragraphs 1 through 90 of the Complaint as
15 though fully set forth herein.

16 47. The allegations in paragraphs 92, 93, 94, 95, 96, 97, 98 and 99 of the Complaint call for
17 a legal conclusion to which no response is required. To the extent an answer is required, SFR
18 denies the allegations in paragraphs 92, 93, 94, 95, 96, 97, 98 and 99. SFR specifically denies
19 "the purchase price was not commercially reasonable." Further, SFR specifically denies that the
20 "purchase price for the property was unconscionable."

21 **AFFIRMATIVE DEFENSES**

22 1. The Bank fails to state a claim upon which relief may be granted.

23 2. The Bank is not entitled to relief from or against SFR, as the Bank has not sustained any
24 loss, injury, or damage that resulted from any act, omission, or breach by SFR.

25 3. The occurrence referred to in the Counterclaim, and all injuries and damages, if any,
26 resulting therefrom, were caused by the acts or omissions of the Bank.

27 4. The occurrence referred to in the Counterclaim, and all injuries and damages, if any,
28 resulting therefrom, were caused by the acts or omissions of a third party or parties over whom
SFR had no control.

1 5. SFR did not breach any statutory or common law duties allegedly owed to the Bank.

2 6. The Bank failed to mitigate its damages, if any.

3 7. The Bank's claims are barred because SFR complied with applicable statutes and with the
4 requirements and regulations of the State of Nevada.

5 8. The Bank's claims are barred because the Association and its agents complied with
6 applicable statutes and regulations.

7 9. The Bank's causes of action are barred in whole or in part by the applicable statutes of
8 limitations or repose, or by the equitable doctrines of laches, waiver, estoppel, ratification and
9 unclean hands.

10 10. The Bank is not entitled to equitable relief because it has an adequate remedy at law.

11 11. The Bank has no standing to enforce the first deed of trust and/or the underlying
12 promissory note.

13 12. The Bank has no standing to enforce the statutes and regulations identified in the
14 Counterclaim.

15 13. The first deed of trust and other subordinate interests in the Property were extinguished
16 by the Association foreclosure sale held in accordance with NRS Chapter 116.

17 14. The Bank has no standing to challenge the constitutionality of NRS 116.

18 15. The Bank's claims are barred because the Association and its agents complied with the
19 foreclosure noticing requirements outlined in the CC&Rs.

20 16. The Bank has no remedy against SFR because, pursuant to NRS 116.31166, SFR is
21 entitled to rely on the recitals contained in the Association foreclosure deed that the sale was
22 properly noticed and conducted.

23 17. The Bank has no remedy against SFR because SFR is a bona fide purchaser for value.

24 18. The Bank has no remedy against SFR because the amounts owed under the first deed of
25 trust have been satisfied.

26 19. Pursuant to Nevada Rules of Civil Procedure 11, as amended, all possible affirmative
27 defenses may not have been alleged herein insofar as sufficient facts were not available after
28 reasonable inquiry at the time of filing this Answer. Therefore, SFR reserves the right to amend

this Answer to assert any affirmative defenses if subsequent investigation warrants.

DATED February 6th, 2017.

KIM GILBERT EBRON

/s/ Diana Cline Ebron
DIANA CLINE EBRON, ESQ.
Nevada Bar No. 10580
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
KAREN L. HANKS, ESQ.
Nevada Bar No. 9578
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
Attorneys for SFR Investments Pool 1, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of February 2017, pursuant to NRCP 5, I served via the Wiznet electronic filing system the foregoing **SFR INVESTMENTS POOL 1, LLC'S ANSWER TO COMPLAINT**, to the following parties:

Lipson, Neilson, Cole, Seltzer & Garin, P.C.

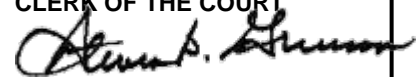
Name	Email	Select
Brenda Correa	bcorrea@lipsonneilson.com	<input checked="" type="checkbox"/>
Kaleb Anderson	kanderson@lipsonneilson.com	<input checked="" type="checkbox"/>
Megan Hummel	mhummel@lipsonneilson.com	<input checked="" type="checkbox"/>
Susana Nutt	snutt@lipsonneilson.com	<input checked="" type="checkbox"/>

Select All Select None

David J. Merrill, P.C.

Name	Email	Select
David J. Merrill	david@dimerrillpc.com	<input checked="" type="checkbox"/>

/s/ Andrew M. David
An employee of KIM GILBERT EBRON



1
2 DAO

3 EIGHTH JUDICIAL DISTRICT COURT
4 CLARK COUNTY, NEVADA
5

6 MARCHAI B.T.,

7 Plaintiff,

8 vs.

9 CRISTELA PEREZ; SFR INVESTMENTS POOL 1, LLC;
10 U.S. BANK NATIONAL ASSOCIATION, N.D.; DOES I
through X; and ROE CORPORATIONS 1 through 10,
inclusive,

11 Defendants.

Case No. A-13-689461-C

Dep't No. VII

12 And all related actions.
13

14 **DECISION AND ORDER**

15 This case arises from a homeowners' association's non-judicial foreclosure sale of
16 residential real property located at 7119 Wolf Rivers Avenue in Las Vegas, Nevada. The
17 HOA sold the Wolf Rivers property to satisfy the two recorded Notices of Defaults which
18 included a superpriority lien over the holder of the deed of trust. The HOA sold the Wolf
19 Rivers property to SFR. Upon the homeowners' association's foreclosure sale of the
20 property, Marchai B.T., the holder of the deed of trust and promissory note, filed suit
21 alleging that the sale did not extinguish their deed of trust pursuant to NRS Chapter 116.
22 SFR and the homeowners' association counter that Marchai's lien is extinguished. Now
23 before the Court are Defendant SFR Investments Pool 1's and Defendant Wyeth Ranch
24 Community Association's ("the HOA") Motions for Summary Judgment and Plaintiff
25 Marchai's opposition. These matters came before the Court on August 22, 2017. The Court
26 denies SFR and the HOA's Motions for Summary Judgment and after resolution of the legal
27 matters presented, finds in favor of Plaintiff Marchai.
28

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

<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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. Factual Background

In 2004, Cristela Perez entered into two loan agreements with Countrywide Home Loans in order to purchase the property. The loans were secured by two deeds of trust on the Wolf Rivers property at 2119 Wolf Rivers Avenue. The property was subject to the terms of the Wyeth Ranch Community Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs). After the initial purchase, Perez refinanced the two Countrywide loans through an agreement with CMG Mortgage. CMG Mortgage recorded a deed of trust against the property on November 9, 2005. Ultimately, there were three active Notices of Default. The October 8, 2008 notice was rescinded, leaving the unrescinded notices at issue in this matter.

A. First Notice of Delinquent Assessment Lien

The HOA recorded its first Notice of Delinquent Assessment Lien on October 8, 2008. At that time, the HOA charged \$140.00 per month in association dues, collected quarterly. At the beginning of 2009, the HOA increased its monthly dues to \$152.50. The HOA recorded a Notice of Default and Election to Sell on January 7, 2009. The HOA recorded a Notice of Trustee's Sale on January 14, 2010. In 2010, the HOA increased its monthly dues to \$159.50.

On February 3, 2010, the HOA sent a demand letter to Perez. On February 12, 2010, Perez paid the HOA \$900.00, which more than covered all outstanding HOA dues, but did not cover remaining fees and costs. On April 13, 2010, the HOA proposed a payment plan to Perez. On May 11, 2010, Perez paid the HOA \$300.00. Perez failed, however to comply with the payment plan. The Trustee on behalf of the HOA applied payments as partial payments on the account for the duration of the resident transaction detail. See Exhibit 2-H of Appendix of Exhibits to Marchai, B.T.'s Motion for Summary Judgment.

On July 13, 2010, the HOA mailed a Pre-Notice of Trustee Sale and Notice of Default and Election to Sell to Perez. Perez paid the HOA \$645.00 between August 2 and November 30, 2010. The HOA recorded a Rescission of Notice of Sale on March 9, 2011. Perez paid the HOA \$160.00 on March 10, 2011.

1 On March 29, 2011, the HOA recorded a second Notice of Sale. On July 27, 2011, the
2 HOA sent Perez a letter stating Perez was in breach of the payment plan. On August 4,
3 2011, Perez paid the HOA \$165.00.

4 **B. Second Notice of Delinquent Assessment Lien**

5 On December 20, 2011, the HOA recorded a second Notice of Delinquent
6 Assessment lien. The original Notice was not rescinded. The HOA recorded a Notice of
7 Default and Election to Sell on February 28, 2012. Perez paid the HOA \$760.00 between
8 March 19 and July 26, 2012. CMG Mortgage assigned its deed of trust to CitiMortgage in
9 May of 2012. CitiMortgage assigned the deed to U.S. Bank in July of 2012. The HOA
10 recorded a Notice of Trustee's Sale on October 31, 2012. Perez paid the HOA \$300.00 on
11 November 13, 2012.

12 In March of 2013, U.S. Bank assigned its deed of trust to Marchai. Neither U.S.
13 Bank nor Marchai recorded the transfer of interest for approximately five months. During
14 this gap, U.S. Bank did not inform Marchai of the HOA's foreclosure proceedings. The
15 HOA mailed a Notice of Trustee's sale to CMG Mortgage, CitiMortgage, and U.S. Bank on
16 July 29, 2013. Marchai finally recorded its interest in the Wolf Rivers property on August
17 12, 2013. Marchai's loan servicer received notice of the trustee's sale on August 27, 2013,
18 the day before the sale was scheduled to take place. The servicer contacted the HOA's
19 trustee conducting the sale, Alessi & Koenig, to ask that the sale be postponed. The HOA
20 declined.

21 Alessi & Koenig conducted a foreclosure sale of the Wolf Rivers property on August
22 28, 2013. SFR purchased the property for \$21,000.00. SFR recorded a trustee's deed upon
23 sale on September 9, 2013 identifying SFR as the grantee and the HOA as the foreclosing
24 beneficiary. The trustee's deed states:

25 Alessi & Koenig, LLC (herein called Trustee), as the duly appointed
26 Trustee under that certain Notice of Delinquent Assessment Lien...
27 does hereby grant, without warranty expressed or implied to: SFR... all
28 its right, title and interest in the property...

1 This conveyance is made pursuant to the powers conferred upon the
2 Trustee by NRS 116 et seq... All requirements of law regarding the
3 mailing of copies of notices and the posting and publication of the
4 copies of the Notice of Sale have been complied with.

5 At the time of sale, Perez owed the HOA \$14,677.80. As of January 14, 2016, Perez owed
6 Marchai \$489,372.77 based the agreement secured by the deed of trust.

7 **II. Procedural History**

8 On September 30, 2013, Marchai filed a complaint against Perez, SFR, and U.S.
9 Bank. Marchai sought to judicially foreclose on the Wolf Rivers property based on Perez's
10 breach of the agreement secured by the deed of trust. The Court entered defaults against
11 Perez and U.S. Bank in this case. On November 13, 2013, SFR filed an answer,
12 counterclaim, and crossclaim. SFR brought counterclaims and crossclaims for declaratory
13 relief/quiet title and injunctive relief. Specifically, SFR alleged Marchai's interest in the
14 Wolf Rivers property was extinguished by the non-judicial foreclosure of the HOA's super-
15 priority lien established pursuant to NRS Chapter 116.

16 On July 9, 2014, the Court ordered that the case be stayed pending a ruling from the
17 Nevada Supreme Court on an HOA foreclosure's effect on a first deed of trust. The Nevada
18 Supreme Court issued its ruling in SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408
19 (Nev. 2014) on September 18, 2014. The Nevada Supreme Court denied a rehearing on
20 October 16, 2014. The Court lifted the stay in the instant case on January 28, 2015.

21 Both Marchai and SFR filed motions for summary judgment on January 14, 2016.
22 The parties dispute whether NRS Chapter 116 is constitutional and whether the HOA
23 foreclosure procedure in the instant case complied with NRS Chapter 116. The parties filed
24 oppositions to each other's motions on February 3 and 4, 2016. The parties filed replies on
25 February 8 and 9, 2016. SFR's reply contained a countermotion to strike portions of
26 Marchai's motion for summary judgment and opposition. SFR asserts Marchai's motion
27 exceeded the appropriate page limit. SFR also argues Marchai's opposition contains
28 evidence not properly disclosed in the discovery process.

On March 22, 2016, this Court issued its Decision and Order denying both SFR and

1 Marchai their respective Motions for Summary Judgment as well as denying SFR's Motion
2 to Strike. This Court found that the technical failings of Marchai's compliance with EDCR
3 2.20(a) did not rise to the level of sanctions and thus denied SFR's Motion to Strike. As
4 discovery was ongoing, this Court also found in its March 22, 2016 Decision and Order that
5 there remained genuine issues of fact for both Motions for Summary Judgment to be
6 denied. The Court resolved constitutionality issues of NRS chapter 116 raised in Marchai's
7 Motion for Summary Judgment involving due process. These sub issues include notice
8 provisions, whether there is state action involved, violations of the Taking Clause, and
9 vagueness.

10 Discovery concluded on August 15, 2017. Upon completion of discovery, the HOA
11 and SFR renewed their Motions for Summary Judgment. The resolution of the issues in the
12 summary judgment motion necessarily results in a decision in favor of Marchai.

13 III. Discussion

14 A. Motions for Summary Judgment

15 Summary judgment is appropriate "when the pleadings and other evidence on file
16 demonstrate that no genuine issue as to any material fact remains and that the moving
17 party is entitled to a judgment as a matter of law." Wood v. Safeway, Inc., 121 P.3d 1026,
18 1029 (Nev. 2005) (internal quotation marks and alterations omitted). "If the party moving
19 for summary judgment will bear the burden of persuasion at trial, that party 'must present
20 evidence that would entitle it to a judgment as a matter of law in the absence of contrary
21 evidence.'" Francis v. Wynn Las Vegas, LLC, 262 P.3d 705, 714 (Nev. 2011) (citing Cuzze v.
22 Univ. & Cmty. Coll. Sys. of Nev., 172 P.3d 131, 134 (Nev. 2007)). "When requesting
23 summary judgment, the moving party bears the initial burden of production to
24 demonstrate the absence of a genuine issue of material fact. If the moving party meets its
25 burden, then the nonmoving party bears the burden of production to demonstrate that
26 there is a genuine issue of material fact. Las Vegas Metro. Police Dep't v. Coregis Ins. Co.,
27 256 P.3d 958, 961 (Nev. 2011) (internal citations omitted).
28

1 The HOA and SFR seek summary judgment on each of their claims against Marchai.
2 As previously argued, SFR holds the HOA foreclosure sale extinguished Marchai's interest
3 in the Wolf Rivers property. Marchai argues its interest survived the foreclosure sale and is
4 superior to SFR's interest. In the current motions for summary judgment, parties
5 reintroduce the same issues after the close of discovery along with a few new arguments.
6 Upon the close of discovery, the Court finds no further evidence presented that lends itself
7 to a genuine dispute over material facts. The only issues to be decided are legal issues.

8 These issues include whether the nonjudicial foreclosure sale constituted unfairness
9 when Marchai requested the HOA to halt the sale the night before the sale and whether
10 buyers are required to pay US currency the day of the sale. In addition, whether there is
11 Perez's payments to the HOA satisfy the procedural tender requirements of NRS Chapter
12 116. To determine the answers to these questions, the Court must evaluate NRS Chapter
13 116 and the foreclosure process in this particular case.

14 **1. Previously Addressed Issues**

15 Issues including commercial reasonableness, SFR as a bona fide purchaser,
16 constitutionality of Chapter 116, and whether the Trustee was the grantor in the HOA
17 foreclosure sale were resolved this Court's Decision of Order of March 22, 2016. The Court
18 found that Marchai failed to establish that the HOA sale was commercially unreasonable as
19 a matter of law because absent fraud, unfairness, or oppression, an inadequate price is not
20 dispositive of unreasonableness. Further, the Court found that SFR was not able to
21 establish as a matter of law that it was a bona fide purchaser and that the HOA's years of
22 foreclosure notice proceedings including delinquency notices, defaults, and sale documents
23 would be a matter for a fact finder. Marchai raised constitutionality revolving around NRS
24 Chapter 116 involving due process, takings, and void for vagueness. The Court found that
25 Marchai could not show that requirements under Chapter 116 did not meet the notice
26 requirements that would set off due process issues or the legislative enactment of Chapter
27 116 was a governmental taking or a meant to serve a public purpose. Nor could Marchai
28 show that Chapter 116 meets the high standard for unconstitutionally vagueness. Lastly,

1 the Court found that an inartfully drafted foreclosure deed could not be resolved in favor of
2 Marchai. This Court finds that there is no new law to decide in favor of granting summary
3 judgment on these same arguments and the Court will not reconsider these issues already
4 resolved.

5 **2. A Nonjudicial Foreclosure Sale is Not Unfair if the HOA Proceeds**
6 **with the Sale After the Lender Requests a Halt to the Sale.**

7 Here, the HOA foreclosed upon the Wolf Rivers property, which they ultimately sold
8 at a foreclosure sale after failure of the homeowner to pay dues. Marchai alleges that there
9 are no material disputed issues of fact regarding the foreclosure as the parties agree to the
10 circumstances. Parties agree that notice of the sale was given to U.S. Bank as the recorded
11 holder of the deed of trust and that Marchai did not record their interest until after that
12 notice of sale had been sent out to interested parties. Further, parties agree that there was
13 no firm offer from Marchai to pay the superpriority amount of the loan prior to the sale
14 when they made the request to halt the sale. Marchai now moves the Court to find that the
15 HOA did not comply with NRS Chapter 116.

16 **a. Procedural Requirements of NRS Chapter 116**

17 Nevada Revised Statute Chapter 116 provides the procedural requirements for
18 homeowners' associations seeking to secure a lien for unpaid assessments and fees. "NRS
19 116.3116(2)... splits an HOA lien into two pieces, a superpriority piece and a subpriority
20 piece. The superpriority piece, consisting of the last nine months of unpaid HOA dues and
21 maintenance and nuisance-abatement charges, is 'prior to' a first deed of trust." SFR
22 Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 411 (Nev. 2014), reh'g denied (Oct. 16,
23 2014). That super-priority portion of the lien was held by the Nevada Supreme Court to be
24 a true super-priority lien, which will extinguish a first deed of trust if foreclosed upon
25 pursuant to Chapter 116's requirements. Id. at 419. Specifically, "[t]he sale of a unit
26 pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the
27 unit's owner without equity or right of redemption." NRS 116.31166(3); see also SFR v. U.S.
28 Bank, 334 P.3d at 412.

1 To initiate foreclosure under Chapter 116, a Nevada homeowner association must
2 first notify the owner of the delinquent assessments. See NRS 116.31162(1)(a). If the owner
3 does not pay within thirty days, the homeowner association must then provide the owner a
4 notice of default and election to sell. See NRS 116.31162(1)(b). Then, if the lien has not
5 been paid off within 90 days, the homeowner association may continue with the foreclosure
6 process. See NRS 116.31162(1)(c). The homeowner association must next mail a notice of
7 sale to all those who were entitled to receive the prior notice of default and election to sell,
8 as well as the holder of a recorded security interest if the security interest holder “has
9 notified the association, before the mailing of the notice of sale of the existence of the
10 security interest.” See NRS 116.311635(1)(a)(1), (b)(2). As this Court interprets the
11 “notified-the-association” provision, this additional notice requirement simply means the
12 homeowner association must mail the notice of sale to any holder of a security interest who
13 has recorded its interest prior to the mailing of the notice of sale.

14 Marchai asserts they became aware of the sale late but had made overtures to paying
15 the superpriority lien. Marchai further asserts that after requesting that the HOA halt the
16 sale, the HOA and the Trustee’s refusal to halt the sale constituted unfairness to Marchai.
17 The HOA and SFR argues Marchai had constructive notice through the notice served to US
18 Bank and as a result is precluded from asking to halt the sale the night before for lack of
19 notice.

20 Generally, absent a showing of fraud, unfairness, or oppression, a foreclosure sale
21 will stand. The Nevada Supreme Court states, “demonstrating that an association sold a
22 property at its foreclosure sale for an inadequate price is not enough to set aside that sale;
23 there must also be a showing of fraud, unfairness, or oppression. Shadow Wood HOA v.
24 N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5 at *6 (2016). In the next sentence, the Nevada
25 Supreme Court appears to distinguish a merely inadequate price from a price that is
26 “grossly inadequate as a matter of law” and indicates that gross inadequacy may be
27 sufficient grounds to set aside a sale. Id. The Court finds that some other evidence of
28 fraud, unfairness or oppression is still required to set aside an HOA foreclosure sale,

1 regardless of the price. Shadow Wood cites Golden v. Tomiyasu, 387 P.2d 989, 995 (Nev.
2 1963) which required some showing of fraud "in addition to gross inadequacy of price" for a
3 court to set aside a transaction.

4 Marchai alleges that it did not have notice of the sale. Neither side disputes that
5 Marchai was not served with a notice of the foreclosure sale, but rather its predecessor, U.S.
6 Bank. It is also undisputed that after the transfer from US Bank to Marchai, both U.S. Bank
7 and Marchai waited months before recording their interest. Marchai recorded its interest
8 after the HOA's statutory requirement of thirty days for notice to interested parties under
9 NRS 16.31164. The HOA properly noticed U.S. Bank, the recorded holder of the deed of
10 trust at the time of the notice. Upon learning of the sale, Marchai contacted Alessi to halt
11 the sale. SFR and the HOA argue that there is no ongoing affirmative duty by the movant of
12 a sale to check for new interest parties once the statutory deadline has passed, but Marchai
13 argues that there was a continuing duty.

14 The HOA had no continuing legal duty to notify Marchai under the statute. Nor is
15 there any obligation of the HOA to halt a properly noticed sale when Marchai notified them
16 that they were the current holder in interest. It was Marchai's responsibility to record its
17 interest to protect itself. Failing to record rests solely on Marchai and the repercussions
18 cannot be held against the foreclosing party. Further, there was no firm offer to pay off the
19 superpriority lien.

20 Therefore, this Court finds that although Marchai was not directly notified, its
21 predecessor, U.S. Bank, had actual notice of both existing Notices of Default. The HOA
22 properly noticed the entity on record as the holder of the first deed of trust. Had Marchai
23 promptly recorded its interest in the property, the notice would have been sent to Marchai.
24 This leaves the issues of whether a purchaser at a foreclosure sale was required to present
25 cash at a nonjudicial foreclosure sale, whether Perez's payments intended to and satisfied
26 the HOA's superpriority lien and whether having more than one Notice of Default was
27 consequential.
28

3. A Purchaser is Not Required to Present Cash at a Nonjudicial Foreclosure Sale.

Marchai presents that NRS 116.31164 requires that “on the day of the sale. . . the person conducting the sale may sell the unit at public auction to the highest cash bidder.” It is undisputed that SFR provided proof of funds on the day of the sale, then tendered a cashier’s check to Alessi on August 29, 2013, one day after the sale. Marchai argues that this procedurally does not comply with the statute, interpreting the statute to require a payment in U.S. currency at the time of the sale. The Court is not swayed by this argument. The statute specifically requires a cash purchase rather than a credit purchase, but the statute is silent as to timing of payment. A cashier’s check in this context constitutes a cash payment. It is simply infeasible in practice to expect bidders to carry large amounts of U.S. currency, often in the many tens of thousands of dollars to an auction. SFR submitted proof of funds to Alessi at the time of the sale and then tendered a cashier’s check to Alessi for the full price of purchase of the property. Consequently, the sale complied with NRS 116.31164. Notwithstanding procedural issues raised under NRS 116.31164, the Court finds that a first notice of default is the operative notice when multiple notices are filed and prior notices are unwithdrawn.

4. A Second Notice of Default Results in a Supplement of the First Notice of Default when a First Notice of Default has not been Rescinded.

A superpriority lien consists of the nine months of unpaid homeowner assessments prior to a notice of default. Without satisfaction or withdrawal of the first notice of default a second notice of default serves only as a supplement to the first notice. A homeowner’s association is entitled to one superpriority lien on a single property without the rescission of the prior notice of default. Pursuant to the Nevada Supreme Court’s holding in Property Plus Investments, LLC v. Mortgage Electronic Registration Systems, Inc., et. al., 133 Nev. Adv. Opinion 62 (Sept. 14, 2017), this Court adopts the Nevada federal court’s holding in JPMorgan Chase Bank, N.A. v. SFR Investments Pool 1, LLC. JPMorgan held that a second noticed super priority lien must have separate set of unpaid months of homeowner

1 association assessments to be considered a separate superpriority lien. PropertyPlus, citing
2 JPMorgan, also holds that “when a HOA rescinds a superpriority lien on a property, the
3 HOA may subsequently assert a separate superpriority lien on the same property . . .
4 accruing after the rescission of the previous superpriority lien.” Without the satisfaction or
5 withdrawal of the first superpriority lien, the second notice of superpriority lien then acts as
6 a supplement or update of the first notice.

7 Here, there are two unrescinded Notices of Default filed against Perez, one on March
8 29, 2011 and one on February 28, 2012. The 2011 Notice of Default was never withdrawn.
9 Based on the holding in PropertyPlus, the operative notice of default is the 2011 Notice.
10 Therefore, the Court finds that the HOA’s would only be entitled to one superpriority
11 amount on both Notices of Defaults. This leaves only the question as to Perez’s intent as to
12 the application of payments to the HOA.

13 **5. Perez’s Intent Regarding Application of Payments to the HOA**

14 Perez maintained sporadic payments over the period starting from the first Notice of
15 Default to the foreclosure totaling \$2,390.24 Perez would receive a notice of a deficiency
16 and make a payment toward her obligations to the HOA. Despite these payments, she was
17 thousands of dollars behind in her HOA obligations.

18 The super-priority lien brands certain homeowner association liens as “prior to all
19 other liens and encumbrances,” excluding those recorded before the applicable CC&Rs. See
20 NRS 116.3116(2)(a)-(b). Nevada Revised Statutes 116.3116 is silent on who must satisfy the
21 lien and if they must make their intent regarding those payments known before an HOA’s
22 superpriority lien is extinguished. The public policy principle behind NRS Chapter 116 is to
23 ensure that homeowner association dues are paid first.

24 Here, the HOA had two recorded and unrescinded Notices of Default on the Wolf
25 Rivers property and ultimately sold the property at a foreclosure sale. Perez made post
26 Notice of Default payments prior to the sale totaling \$2,390.24. There are no material
27 disputed issues of fact: the parties agree regarding the timing and amounts of payments by
28 the homeowner and to the circumstances surrounding the Notices of Default. The question

1 remaining is the effect of the homeowner paying towards the lien as opposed to the holder
2 of the deed of trust. The HOA and SFR argue that these payments by Perez had no
3 intention of satisfying the superpriority lien, thus the first deed of trust was extinguished
4 upon the foreclosure sale. Marchai asserts the homeowner's payments were intended to
5 satisfy the HOA lien's superpriority amount prior to the HOA foreclosure sale. Marchai
6 argues this tender causes Marchai's deed of trust to survive the HOA foreclosure sale.

7 **a. Tender**

8 The foreclosure process, from the first unrescinded notice of delinquent
9 assessment in 2009 to the actual foreclosure sale spanned a few years. During this period,
10 Perez, paid the HOA \$2,390.24. This is more than the value of nine months of assessment
11 fees. For the nine months preceding the operative 2009 Notice of Default, Perez's
12 assessments totaled \$1,280.00. This would have satisfied the superpriority and left a
13 balance of \$1,110.24. Perez still owed the HOA \$14,677.80 and nothing precluded the HOA
14 from seeking the full amount from the borrower. The question is whether the HOA
15 superpriority lien was satisfied. If satisfied, it allows Marchai's lien to survive the
16 nonjudicial foreclosure sale to SFR. If not, then Marchai's first deed is extinguished by the
17 sale to SFR.

18 As suggested by SFR, the beneficiary of a deed of trust need only "determin[e] the
19 precise superpriority amount in advance of the sale," and then "pay the [nine] months'
20 assessments demanded by the association." SFR, 334 P.3d at 413, 418. Satisfying the
21 superpriority amount of the lien, not the amounts incurred by any particular months,
22 preserves the deed of trust. See Stone Hollow Ave. Trust v. Bank of America, N.A., 382
23 P.3d 911 (Nev. Aug. 11, 2016) (unpublished disposition) (finding tender of \$198 effective to
24 discharge the lien when "\$198 was adequate to pay off the superpriority portion of" the
25 HOA's lien.)

26 Different from SFR, here the Court must determine whether the homeowner's
27 payments to an HOA in this case constitutes tender of the superpriority amount or whether
28 the payments were meant to keep up with current assessment obligations. The Court finds

1 that absent contrary evidence, it is a distinction without a difference. The public policy and
2 stated legislative intent behind Chapter 116 is to ensure payment of homeowner liens, hence
3 the superpriority. Nevada Revised Statutes 116.3116(2) states the HOA lien is prior to first
4 deeds of trust, but does not limit who can satisfy the superpriority portion of the lien. Nor
5 does the statute or case law dictate that payments from a homeowner must first be applied
6 to obligations other than the superpriority.

7 Marchai alleges that it was Perez's intention to apply her payments to the HOA lien's
8 superpriority amounts that were recorded in its two Notices of Default. The HOA and SFR
9 allege that Perez's payments only represent her intention to keep up with her monthly dues
10 and not intended to satisfy the amounts noticed. This Court held in its March 22, 2016
11 Decision and Order that there were genuine issues of material fact regarding what Perez's
12 intention was in the application of her payments. Absent evidence showing that Perez only
13 meant to maintain her monthly assessments, she tendered payment in an amount that
14 would satisfy more than eighteen months' worth of payments.

15 Upon the close of discovery, SFR and the HOA have not presented any evidence that
16 shows Perez did not pay off the superpriority liens. Regardless of whether Perez meant to
17 pay off the superpriority lien or apply to the balance with the payment of oldest balances
18 first, the superpriority lien is satisfied. So whether she had the intention to pay off
19 obligations other than the superpriority first or whether the HOA applied them to
20 obligations other than the superpriority, the amount making up the superpriority was paid
21 off. Thus, regardless of which months a payor may request a payment be applied to, any
22 payment which is at least equal to the amount incurred in the nine months preceding the
23 notice of delinquent assessment lien is sufficient to satisfy the superpriority lien. As there
24 are no undisputed facts at the close of discovery as to the intention of payment or the effect
25 of multiple Notice of Defaults, this Court must deny the HOA and SFR's Motions for
26 Summary Judgment. As a result, this Court finds in favor of Marchai.

27 ///
28

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

5
6
7
8

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date of filing, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system or, if no e-mail was provided, by facsimile, U.S. Mail and/or placed in the Clerk's Office attorney folder(s) for:

Name	Party
David J. Merrill, Esq. David J. Merrill, P.C.	Counsel for Marchai, B.T.
Diana Cline Ebron, Esq. Jacqueline A. Gilbert, Esq. Karen L. Hanks, Esq. Kim Gilbert Ebron	Counsel for SFR Investments Pool 1, LLC
Kaleb D. Anderson, Esq. Megan Hummel, Esq.	Counsel for Wyeth Ranch Community Association


TINA HURD
JUDICIAL EXECUTIVE ASSISTANT, DEPARTMENT VII

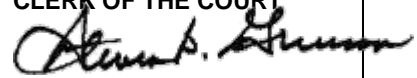
AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A689461 DOES NOT contain the social security number of any person.

/s/ Linda Marie Bell
District Court Judge

Date 10/2/2017
9/8/2017



NOED
David J. Merrill
Nevada Bar No. 6060
David J. Merrill, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 566-1935
Facsimile: (702) 993-8841
E-mail: david@djmerrillpc.com
Attorney for Marchai, B.T.

DISTRICT COURT
CLARK COUNTY, NEVADA

MARCHAI, B.T., a Nevada business
trust,

Plaintiff,

v.

CRISTELA PEREZ, an individual; *et al.*

Defendants.

Case No.: A-13-689461-C
Dept. No. VII

Consolidated with: A-16-742327-C


AND ALL RELATED CLAIMS AND
ACTIONS

Notice of Entry of Decision and Order

Take Notice that on the 3rd day of October 2017, the Court entered a
Decision and Order, a true and correct copy of which is attached.

Dated this 4th day of October 2017.

David J. Merrill, P.C.

By: 
David J. Merrill
Nevada Bar No. 6060
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
(702) 566-1935
Attorney for Marchai, B.T.

DAVID J. MERRILL, P.C.
10161 PARK RUN DRIVE, SUITE 150
LAS VEGAS, NEVADA 89145
(702) 566-1935

DAVID J. MERRILL, P.C.
10161 PARK RUN DRIVE, SUITE 150
LAS VEGAS, NEVADA 89145
(702) 566-1935

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of October 2017, a copy of the foregoing Notice of Entry of Decision and Order was served electronically to the following through the Court's electronic service system:

Kim Gilbert Ebron

Diana Cline Ebron
E-Service for Kim Gilbert Ebron
Michael L. Sturm
Tomas Valerio

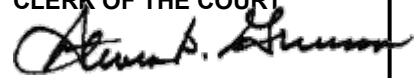
diana@kgelegal.com
eservice@hkimlaw.com
mike@kgelegal.com
staff@kgelegal.com

Lipson, Neilson, Cole, Seltzer & Garin, P.C.

Brenda Correa
Kaleb Anderson
Megan Hummel
Renee Rittenhouse
Susana Nutt

bcorrea@lipsonneilson.com
kanderson@lipsonneilson.com
mhummel@lipsonneilson.com
rrittenhouse@lipsonneilson.com
snutt@lipsonneilson.com


An employee of David J. Merrill, P.C.



1
2 DAO

3 EIGHTH JUDICIAL DISTRICT COURT
4 CLARK COUNTY, NEVADA
5

6 MARCHAI B.T.,

7 Plaintiff,

8 vs.

9 CRISTELA PEREZ; SFR INVESTMENTS POOL 1, LLC;
10 U.S. BANK NATIONAL ASSOCIATION, N.D.; DOES I
through X; and ROE CORPORATIONS 1 through 10,
inclusive,

11 Defendants.

Case No. A-13-689461-C

Dep't No. VII

12 And all related actions.
13

14 **DECISION AND ORDER**

15 This case arises from a homeowners' association's non-judicial foreclosure sale of
16 residential real property located at 7119 Wolf Rivers Avenue in Las Vegas, Nevada. The
17 HOA sold the Wolf Rivers property to satisfy the two recorded Notices of Defaults which
18 included a superpriority lien over the holder of the deed of trust. The HOA sold the Wolf
19 Rivers property to SFR. Upon the homeowners' association's foreclosure sale of the
20 property, Marchai B.T., the holder of the deed of trust and promissory note, filed suit
21 alleging that the sale did not extinguish their deed of trust pursuant to NRS Chapter 116.
22 SFR and the homeowners' association counter that Marchai's lien is extinguished. Now
23 before the Court are Defendant SFR Investments Pool 1's and Defendant Wyeth Ranch
24 Community Association's ("the HOA") Motions for Summary Judgment and Plaintiff
25 Marchai's opposition. These matters came before the Court on August 22, 2017. The Court
26 denies SFR and the HOA's Motions for Summary Judgment and after resolution of the legal
27 matters presented, finds in favor of Plaintiff Marchai.
28

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

<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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. Factual Background

In 2004, Cristela Perez entered into two loan agreements with Countrywide Home Loans in order to purchase the property. The loans were secured by two deeds of trust on the Wolf Rivers property at 2119 Wolf Rivers Avenue. The property was subject to the terms of the Wyeth Ranch Community Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs). After the initial purchase, Perez refinanced the two Countrywide loans through an agreement with CMG Mortgage. CMG Mortgage recorded a deed of trust against the property on November 9, 2005. Ultimately, there were three active Notices of Default. The October 8, 2008 notice was rescinded, leaving the unrescinded notices at issue in this matter.

A. First Notice of Delinquent Assessment Lien

The HOA recorded its first Notice of Delinquent Assessment Lien on October 8, 2008. At that time, the HOA charged \$140.00 per month in association dues, collected quarterly. At the beginning of 2009, the HOA increased its monthly dues to \$152.50. The HOA recorded a Notice of Default and Election to Sell on January 7, 2009. The HOA recorded a Notice of Trustee's Sale on January 14, 2010. In 2010, the HOA increased its monthly dues to \$159.50.

On February 3, 2010, the HOA sent a demand letter to Perez. On February 12, 2010, Perez paid the HOA \$900.00, which more than covered all outstanding HOA dues, but did not cover remaining fees and costs. On April 13, 2010, the HOA proposed a payment plan to Perez. On May 11, 2010, Perez paid the HOA \$300.00. Perez failed, however to comply with the payment plan. The Trustee on behalf of the HOA applied payments as partial payments on the account for the duration of the resident transaction detail. See Exhibit 2-H of Appendix of Exhibits to Marchai, B.T.'s Motion for Summary Judgment.

On July 13, 2010, the HOA mailed a Pre-Notice of Trustee Sale and Notice of Default and Election to Sell to Perez. Perez paid the HOA \$645.00 between August 2 and November 30, 2010. The HOA recorded a Rescission of Notice of Sale on March 9, 2011. Perez paid the HOA \$160.00 on March 10, 2011.

1 On March 29, 2011, the HOA recorded a second Notice of Sale. On July 27, 2011, the
2 HOA sent Perez a letter stating Perez was in breach of the payment plan. On August 4,
3 2011, Perez paid the HOA \$165.00.

4 **B. Second Notice of Delinquent Assessment Lien**

5 On December 20, 2011, the HOA recorded a second Notice of Delinquent
6 Assessment lien. The original Notice was not rescinded. The HOA recorded a Notice of
7 Default and Election to Sell on February 28, 2012. Perez paid the HOA \$760.00 between
8 March 19 and July 26, 2012. CMG Mortgage assigned its deed of trust to CitiMortgage in
9 May of 2012. CitiMortgage assigned the deed to U.S. Bank in July of 2012. The HOA
10 recorded a Notice of Trustee's Sale on October 31, 2012. Perez paid the HOA \$300.00 on
11 November 13, 2012.

12 In March of 2013, U.S. Bank assigned its deed of trust to Marchai. Neither U.S.
13 Bank nor Marchai recorded the transfer of interest for approximately five months. During
14 this gap, U.S. Bank did not inform Marchai of the HOA's foreclosure proceedings. The
15 HOA mailed a Notice of Trustee's sale to CMG Mortgage, CitiMortgage, and U.S. Bank on
16 July 29, 2013. Marchai finally recorded its interest in the Wolf Rivers property on August
17 12, 2013. Marchai's loan servicer received notice of the trustee's sale on August 27, 2013,
18 the day before the sale was scheduled to take place. The servicer contacted the HOA's
19 trustee conducting the sale, Alessi & Koenig, to ask that the sale be postponed. The HOA
20 declined.

21 Alessi & Koenig conducted a foreclosure sale of the Wolf Rivers property on August
22 28, 2013. SFR purchased the property for \$21,000.00. SFR recorded a trustee's deed upon
23 sale on September 9, 2013 identifying SFR as the grantee and the HOA as the foreclosing
24 beneficiary. The trustee's deed states:

25 Alessi & Koenig, LLC (herein called Trustee), as the duly appointed
26 Trustee under that certain Notice of Delinquent Assessment Lien...
27 does hereby grant, without warranty expressed or implied to: SFR... all
28 its right, title and interest in the property...

1 This conveyance is made pursuant to the powers conferred upon the
2 Trustee by NRS 116 et seq... All requirements of law regarding the
3 mailing of copies of notices and the posting and publication of the
4 copies of the Notice of Sale have been complied with.

5 At the time of sale, Perez owed the HOA \$14,677.80. As of January 14, 2016, Perez owed
6 Marchai \$489,372.77 based the agreement secured by the deed of trust.

7 **II. Procedural History**

8 On September 30, 2013, Marchai filed a complaint against Perez, SFR, and U.S.
9 Bank. Marchai sought to judicially foreclose on the Wolf Rivers property based on Perez's
10 breach of the agreement secured by the deed of trust. The Court entered defaults against
11 Perez and U.S. Bank in this case. On November 13, 2013, SFR filed an answer,
12 counterclaim, and crossclaim. SFR brought counterclaims and crossclaims for declaratory
13 relief/quiet title and injunctive relief. Specifically, SFR alleged Marchai's interest in the
14 Wolf Rivers property was extinguished by the non-judicial foreclosure of the HOA's super-
15 priority lien established pursuant to NRS Chapter 116.

16 On July 9, 2014, the Court ordered that the case be stayed pending a ruling from the
17 Nevada Supreme Court on an HOA foreclosure's effect on a first deed of trust. The Nevada
18 Supreme Court issued its ruling in SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408
19 (Nev. 2014) on September 18, 2014. The Nevada Supreme Court denied a rehearing on
20 October 16, 2014. The Court lifted the stay in the instant case on January 28, 2015.

21 Both Marchai and SFR filed motions for summary judgment on January 14, 2016.
22 The parties dispute whether NRS Chapter 116 is constitutional and whether the HOA
23 foreclosure procedure in the instant case complied with NRS Chapter 116. The parties filed
24 oppositions to each other's motions on February 3 and 4, 2016. The parties filed replies on
25 February 8 and 9, 2016. SFR's reply contained a countermotion to strike portions of
26 Marchai's motion for summary judgment and opposition. SFR asserts Marchai's motion
27 exceeded the appropriate page limit. SFR also argues Marchai's opposition contains
28 evidence not properly disclosed in the discovery process.

On March 22, 2016, this Court issued its Decision and Order denying both SFR and

1 Marchai their respective Motions for Summary Judgment as well as denying SFR's Motion
2 to Strike. This Court found that the technical failings of Marchai's compliance with EDCR
3 2.20(a) did not rise to the level of sanctions and thus denied SFR's Motion to Strike. As
4 discovery was ongoing, this Court also found in its March 22, 2016 Decision and Order that
5 there remained genuine issues of fact for both Motions for Summary Judgment to be
6 denied. The Court resolved constitutionality issues of NRS chapter 116 raised in Marchai's
7 Motion for Summary Judgment involving due process. These sub issues include notice
8 provisions, whether there is state action involved, violations of the Taking Clause, and
9 vagueness.

10 Discovery concluded on August 15, 2017. Upon completion of discovery, the HOA
11 and SFR renewed their Motions for Summary Judgment. The resolution of the issues in the
12 summary judgment motion necessarily results in a decision in favor of Marchai.

13 III. Discussion

14 A. Motions for Summary Judgment

15 Summary judgment is appropriate "when the pleadings and other evidence on file
16 demonstrate that no genuine issue as to any material fact remains and that the moving
17 party is entitled to a judgment as a matter of law." Wood v. Safeway, Inc., 121 P.3d 1026,
18 1029 (Nev. 2005) (internal quotation marks and alterations omitted). "If the party moving
19 for summary judgment will bear the burden of persuasion at trial, that party 'must present
20 evidence that would entitle it to a judgment as a matter of law in the absence of contrary
21 evidence.'" Francis v. Wynn Las Vegas, LLC, 262 P.3d 705, 714 (Nev. 2011) (citing Cuzze v.
22 Univ. & Cmty. Coll. Sys. of Nev., 172 P.3d 131, 134 (Nev. 2007)). "When requesting
23 summary judgment, the moving party bears the initial burden of production to
24 demonstrate the absence of a genuine issue of material fact. If the moving party meets its
25 burden, then the nonmoving party bears the burden of production to demonstrate that
26 there is a genuine issue of material fact. Las Vegas Metro. Police Dep't v. Coregis Ins. Co.,
27 256 P.3d 958, 961 (Nev. 2011) (internal citations omitted).
28

1 The HOA and SFR seek summary judgment on each of their claims against Marchai.
2 As previously argued, SFR holds the HOA foreclosure sale extinguished Marchai's interest
3 in the Wolf Rivers property. Marchai argues its interest survived the foreclosure sale and is
4 superior to SFR's interest. In the current motions for summary judgment, parties
5 reintroduce the same issues after the close of discovery along with a few new arguments.
6 Upon the close of discovery, the Court finds no further evidence presented that lends itself
7 to a genuine dispute over material facts. The only issues to be decided are legal issues.

8 These issues include whether the nonjudicial foreclosure sale constituted unfairness
9 when Marchai requested the HOA to halt the sale the night before the sale and whether
10 buyers are required to pay US currency the day of the sale. In addition, whether there is
11 Perez's payments to the HOA satisfy the procedural tender requirements of NRS Chapter
12 116. To determine the answers to these questions, the Court must evaluate NRS Chapter
13 116 and the foreclosure process in this particular case.

14 **1. Previously Addressed Issues**

15 Issues including commercial reasonableness, SFR as a bona fide purchaser,
16 constitutionality of Chapter 116, and whether the Trustee was the grantor in the HOA
17 foreclosure sale were resolved this Court's Decision of Order of March 22, 2016. The Court
18 found that Marchai failed to establish that the HOA sale was commercially unreasonable as
19 a matter of law because absent fraud, unfairness, or oppression, an inadequate price is not
20 dispositive of unreasonableness. Further, the Court found that SFR was not able to
21 establish as a matter of law that it was a bona fide purchaser and that the HOA's years of
22 foreclosure notice proceedings including delinquency notices, defaults, and sale documents
23 would be a matter for a fact finder. Marchai raised constitutionality revolving around NRS
24 Chapter 116 involving due process, takings, and void for vagueness. The Court found that
25 Marchai could not show that requirements under Chapter 116 did not meet the notice
26 requirements that would set off due process issues or the legislative enactment of Chapter
27 116 was a governmental taking or a meant to serve a public purpose. Nor could Marchai
28 show that Chapter 116 meets the high standard for unconstitutionally vagueness. Lastly,

1 the Court found that an inartfully drafted foreclosure deed could not be resolved in favor of
2 Marchai. This Court finds that there is no new law to decide in favor of granting summary
3 judgment on these same arguments and the Court will not reconsider these issues already
4 resolved.

5 **2. A Nonjudicial Foreclosure Sale is Not Unfair if the HOA Proceeds**
6 **with the Sale After the Lender Requests a Halt to the Sale.**

7 Here, the HOA foreclosed upon the Wolf Rivers property, which they ultimately sold
8 at a foreclosure sale after failure of the homeowner to pay dues. Marchai alleges that there
9 are no material disputed issues of fact regarding the foreclosure as the parties agree to the
10 circumstances. Parties agree that notice of the sale was given to U.S. Bank as the recorded
11 holder of the deed of trust and that Marchai did not record their interest until after that
12 notice of sale had been sent out to interested parties. Further, parties agree that there was
13 no firm offer from Marchai to pay the superpriority amount of the loan prior to the sale
14 when they made the request to halt the sale. Marchai now moves the Court to find that the
15 HOA did not comply with NRS Chapter 116.

16 **a. Procedural Requirements of NRS Chapter 116**

17 Nevada Revised Statute Chapter 116 provides the procedural requirements for
18 homeowners' associations seeking to secure a lien for unpaid assessments and fees. "NRS
19 116.3116(2)... splits an HOA lien into two pieces, a superpriority piece and a subpriority
20 piece. The superpriority piece, consisting of the last nine months of unpaid HOA dues and
21 maintenance and nuisance-abatement charges, is 'prior to' a first deed of trust." SFR
22 Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 411 (Nev. 2014), reh'g denied (Oct. 16,
23 2014). That super-priority portion of the lien was held by the Nevada Supreme Court to be
24 a true super-priority lien, which will extinguish a first deed of trust if foreclosed upon
25 pursuant to Chapter 116's requirements. Id. at 419. Specifically, "[t]he sale of a unit
26 pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the
27 unit's owner without equity or right of redemption." NRS 116.31166(3); see also SFR v. U.S.
28 Bank, 334 P.3d at 412.

1 To initiate foreclosure under Chapter 116, a Nevada homeowner association must
2 first notify the owner of the delinquent assessments. See NRS 116.31162(1)(a). If the owner
3 does not pay within thirty days, the homeowner association must then provide the owner a
4 notice of default and election to sell. See NRS 116.31162(1)(b). Then, if the lien has not
5 been paid off within 90 days, the homeowner association may continue with the foreclosure
6 process. See NRS 116.31162(1)(c). The homeowner association must next mail a notice of
7 sale to all those who were entitled to receive the prior notice of default and election to sell,
8 as well as the holder of a recorded security interest if the security interest holder “has
9 notified the association, before the mailing of the notice of sale of the existence of the
10 security interest.” See NRS 116.311635(1)(a)(1), (b)(2). As this Court interprets the
11 “notified-the-association” provision, this additional notice requirement simply means the
12 homeowner association must mail the notice of sale to any holder of a security interest who
13 has recorded its interest prior to the mailing of the notice of sale.

14 Marchai asserts they became aware of the sale late but had made overtures to paying
15 the superpriority lien. Marchai further asserts that after requesting that the HOA halt the
16 sale, the HOA and the Trustee’s refusal to halt the sale constituted unfairness to Marchai.
17 The HOA and SFR argues Marchai had constructive notice through the notice served to US
18 Bank and as a result is precluded from asking to halt the sale the night before for lack of
19 notice.

20 Generally, absent a showing of fraud, unfairness, or oppression, a foreclosure sale
21 will stand. The Nevada Supreme Court states, “demonstrating that an association sold a
22 property at its foreclosure sale for an inadequate price is not enough to set aside that sale;
23 there must also be a showing of fraud, unfairness, or oppression. Shadow Wood HOA v.
24 N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5 at *6 (2016). In the next sentence, the Nevada
25 Supreme Court appears to distinguish a merely inadequate price from a price that is
26 “grossly inadequate as a matter of law” and indicates that gross inadequacy may be
27 sufficient grounds to set aside a sale. Id. The Court finds that some other evidence of
28 fraud, unfairness or oppression is still required to set aside an HOA foreclosure sale,

1 regardless of the price. Shadow Wood cites Golden v. Tomiyasu, 387 P.2d 989, 995 (Nev.
2 1963) which required some showing of fraud "in addition to gross inadequacy of price" for a
3 court to set aside a transaction.

4 Marchai alleges that it did not have notice of the sale. Neither side disputes that
5 Marchai was not served with a notice of the foreclosure sale, but rather its predecessor, U.S.
6 Bank. It is also undisputed that after the transfer from US Bank to Marchai, both U.S. Bank
7 and Marchai waited months before recording their interest. Marchai recorded its interest
8 after the HOA's statutory requirement of thirty days for notice to interested parties under
9 NRS 16.31164. The HOA properly noticed U.S. Bank, the recorded holder of the deed of
10 trust at the time of the notice. Upon learning of the sale, Marchai contacted Alessi to halt
11 the sale. SFR and the HOA argue that there is no ongoing affirmative duty by the movant of
12 a sale to check for new interest parties once the statutory deadline has passed, but Marchai
13 argues that there was a continuing duty.

14 The HOA had no continuing legal duty to notify Marchai under the statute. Nor is
15 there any obligation of the HOA to halt a properly noticed sale when Marchai notified them
16 that they were the current holder in interest. It was Marchai's responsibility to record its
17 interest to protect itself. Failing to record rests solely on Marchai and the repercussions
18 cannot be held against the foreclosing party. Further, there was no firm offer to pay off the
19 superpriority lien.

20 Therefore, this Court finds that although Marchai was not directly notified, its
21 predecessor, U.S. Bank, had actual notice of both existing Notices of Default. The HOA
22 properly noticed the entity on record as the holder of the first deed of trust. Had Marchai
23 promptly recorded its interest in the property, the notice would have been sent to Marchai.
24 This leaves the issues of whether a purchaser at a foreclosure sale was required to present
25 cash at a nonjudicial foreclosure sale, whether Perez's payments intended to and satisfied
26 the HOA's superpriority lien and whether having more than one Notice of Default was
27 consequential.
28

3. A Purchaser is Not Required to Present Cash at a Nonjudicial Foreclosure Sale.

Marchai presents that NRS 116.31164 requires that “on the day of the sale. . . the person conducting the sale may sell the unit at public auction to the highest cash bidder.” It is undisputed that SFR provided proof of funds on the day of the sale, then tendered a cashier’s check to Alessi on August 29, 2013, one day after the sale. Marchai argues that this procedurally does not comply with the statute, interpreting the statute to require a payment in U.S. currency at the time of the sale. The Court is not swayed by this argument. The statute specifically requires a cash purchase rather than a credit purchase, but the statute is silent as to timing of payment. A cashier’s check in this context constitutes a cash payment. It is simply infeasible in practice to expect bidders to carry large amounts of U.S. currency, often in the many tens of thousands of dollars to an auction. SFR submitted proof of funds to Alessi at the time of the sale and then tendered a cashier’s check to Alessi for the full price of purchase of the property. Consequently, the sale complied with NRS 116.31164. Notwithstanding procedural issues raised under NRS 116.31164, the Court finds that a first notice of default is the operative notice when multiple notices are filed and prior notices are unwithdrawn.

4. A Second Notice of Default Results in a Supplement of the First Notice of Default when a First Notice of Default has not been Rescinded.

A superpriority lien consists of the nine months of unpaid homeowner assessments prior to a notice of default. Without satisfaction or withdrawal of the first notice of default a second notice of default serves only as a supplement to the first notice. A homeowner’s association is entitled to one superpriority lien on a single property without the rescission of the prior notice of default. Pursuant to the Nevada Supreme Court’s holding in Property Plus Investments, LLC v. Mortgage Electronic Registration Systems, Inc., et. al., 133 Nev. Adv. Opinion 62 (Sept. 14, 2017), this Court adopts the Nevada federal court’s holding in JPMorgan Chase Bank, N.A. v. SFR Investments Pool 1, LLC. JPMorgan held that a second noticed super priority lien must have separate set of unpaid months of homeowner

1 association assessments to be considered a separate superpriority lien. PropertyPlus, citing
2 JPMorgan, also holds that “when a HOA rescinds a superpriority lien on a property, the
3 HOA may subsequently assert a separate superpriority lien on the same property . . .
4 accruing after the rescission of the previous superpriority lien.” Without the satisfaction or
5 withdrawal of the first superpriority lien, the second notice of superpriority lien then acts as
6 a supplement or update of the first notice.

7 Here, there are two unrescinded Notices of Default filed against Perez, one on March
8 29, 2011 and one on February 28, 2012. The 2011 Notice of Default was never withdrawn.
9 Based on the holding in PropertyPlus, the operative notice of default is the 2011 Notice.
10 Therefore, the Court finds that the HOA’s would only be entitled to one superpriority
11 amount on both Notices of Defaults. This leaves only the question as to Perez’s intent as to
12 the application of payments to the HOA.

13 **5. Perez’s Intent Regarding Application of Payments to the HOA**

14 Perez maintained sporadic payments over the period starting from the first Notice of
15 Default to the foreclosure totaling \$2,390.24 Perez would receive a notice of a deficiency
16 and make a payment toward her obligations to the HOA. Despite these payments, she was
17 thousands of dollars behind in her HOA obligations.

18 The super-priority lien brands certain homeowner association liens as “prior to all
19 other liens and encumbrances,” excluding those recorded before the applicable CC&Rs. See
20 NRS 116.3116(2)(a)-(b). Nevada Revised Statutes 116.3116 is silent on who must satisfy the
21 lien and if they must make their intent regarding those payments known before an HOA’s
22 superpriority lien is extinguished. The public policy principle behind NRS Chapter 116 is to
23 ensure that homeowner association dues are paid first.

24 Here, the HOA had two recorded and unrescinded Notices of Default on the Wolf
25 Rivers property and ultimately sold the property at a foreclosure sale. Perez made post
26 Notice of Default payments prior to the sale totaling \$2,390.24. There are no material
27 disputed issues of fact: the parties agree regarding the timing and amounts of payments by
28 the homeowner and to the circumstances surrounding the Notices of Default. The question

1 remaining is the effect of the homeowner paying towards the lien as opposed to the holder
2 of the deed of trust. The HOA and SFR argue that these payments by Perez had no
3 intention of satisfying the superpriority lien, thus the first deed of trust was extinguished
4 upon the foreclosure sale. Marchai asserts the homeowner's payments were intended to
5 satisfy the HOA lien's superpriority amount prior to the HOA foreclosure sale. Marchai
6 argues this tender causes Marchai's deed of trust to survive the HOA foreclosure sale.

7 **a. Tender**

8 The foreclosure process, from the first unrescinded notice of delinquent
9 assessment in 2009 to the actual foreclosure sale spanned a few years. During this period,
10 Perez, paid the HOA \$2,390.24. This is more than the value of nine months of assessment
11 fees. For the nine months preceding the operative 2009 Notice of Default, Perez's
12 assessments totaled \$1,280.00. This would have satisfied the superpriority and left a
13 balance of \$1,110.24. Perez still owed the HOA \$14,677.80 and nothing precluded the HOA
14 from seeking the full amount from the borrower. The question is whether the HOA
15 superpriority lien was satisfied. If satisfied, it allows Marchai's lien to survive the
16 nonjudicial foreclosure sale to SFR. If not, then Marchai's first deed is extinguished by the
17 sale to SFR.

18 As suggested by SFR, the beneficiary of a deed of trust need only "determin[e] the
19 precise superpriority amount in advance of the sale," and then "pay the [nine] months'
20 assessments demanded by the association." SFR, 334 P.3d at 413, 418. Satisfying the
21 superpriority amount of the lien, not the amounts incurred by any particular months,
22 preserves the deed of trust. See Stone Hollow Ave. Trust v. Bank of America, N.A., 382
23 P.3d 911 (Nev. Aug. 11, 2016) (unpublished disposition) (finding tender of \$198 effective to
24 discharge the lien when "\$198 was adequate to pay off the superpriority portion of" the
25 HOA's lien.)

26 Different from SFR, here the Court must determine whether the homeowner's
27 payments to an HOA in this case constitutes tender of the superpriority amount or whether
28 the payments were meant to keep up with current assessment obligations. The Court finds

1 that absent contrary evidence, it is a distinction without a difference. The public policy and
2 stated legislative intent behind Chapter 116 is to ensure payment of homeowner liens, hence
3 the superpriority. Nevada Revised Statutes 116.3116(2) states the HOA lien is prior to first
4 deeds of trust, but does not limit who can satisfy the superpriority portion of the lien. Nor
5 does the statute or case law dictate that payments from a homeowner must first be applied
6 to obligations other than the superpriority.

7 Marchai alleges that it was Perez's intention to apply her payments to the HOA lien's
8 superpriority amounts that were recorded in its two Notices of Default. The HOA and SFR
9 allege that Perez's payments only represent her intention to keep up with her monthly dues
10 and not intended to satisfy the amounts noticed. This Court held in its March 22, 2016
11 Decision and Order that there were genuine issues of material fact regarding what Perez's
12 intention was in the application of her payments. Absent evidence showing that Perez only
13 meant to maintain her monthly assessments, she tendered payment in an amount that
14 would satisfy more than eighteen months' worth of payments.

15 Upon the close of discovery, SFR and the HOA have not presented any evidence that
16 shows Perez did not pay off the superpriority liens. Regardless of whether Perez meant to
17 pay off the superpriority lien or apply to the balance with the payment of oldest balances
18 first, the superpriority lien is satisfied. So whether she had the intention to pay off
19 obligations other than the superpriority first or whether the HOA applied them to
20 obligations other than the superpriority, the amount making up the superpriority was paid
21 off. Thus, regardless of which months a payor may request a payment be applied to, any
22 payment which is at least equal to the amount incurred in the nine months preceding the
23 notice of delinquent assessment lien is sufficient to satisfy the superpriority lien. As there
24 are no undisputed facts at the close of discovery as to the intention of payment or the effect
25 of multiple Notice of Defaults, this Court must deny the HOA and SFR's Motions for
26 Summary Judgment. As a result, this Court finds in favor of Marchai.

27 ///
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV. Conclusion

The Court finds that no genuine issues of material fact remain in this case. The Court denies SFR and the HOA's Motions for Summary Judgment. As the parties agree on all the material fact in this case, the resolution of the legal issues presented on the motions for summary judgment necessarily result in a finding in favor of Marchai.

DATED this 2nd October day of ~~September~~, 2017.


LINDA MARIE BELL
DISTRICT COURT JUDGE

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date of filing, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system or, if no e-mail was provided, by facsimile, U.S. Mail and/or placed in the Clerk's Office attorney folder(s) for:

Name	Party
David J. Merrill, Esq. David J. Merrill, P.C.	Counsel for Marchai, B.T.
Diana Cline Ebron, Esq. Jacqueline A. Gilbert, Esq. Karen L. Hanks, Esq. Kim Gilbert Ebron	Counsel for SFR Investments Pool 1, LLC
Kaleb D. Anderson, Esq. Megan Hummel, Esq.	Counsel for Wyeth Ranch Community Association


TINA HURD
JUDICIAL EXECUTIVE ASSISTANT, DEPARTMENT VII

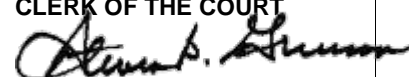
AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A689461 DOES NOT contain the social security number of any person.

/s/ Linda Marie Bell
District Court Judge

Date 10/2/2017
9/8/2017



NOAS
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

DISTRICT COURT
CLARK COUNTY, NEVADA

MARCHAI B.T., a Bank Trust,
Plaintiff,

vs.

Case No. A-13-689461-C
Consolidated with: A-16-742327-C

Dept. No. VII

CRISTELA PEREZ, an individual; SFR
INVESTMENTS POOL 1, LLC, a limited
liability company; U.S. BANK NATIONAL
ASSOCIATION, N.D., a national association;
DOES I through X; and ROE CORPORATIONS
I through 10, inclusive,

Defendants.

NOTICE OF APPEAL

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

Counterclaimant/Cross-Claimant,

vs.

MARCHAI B.T., a Bank Trust; U.S. BANK
NATIONAL ASSOCIATION, N.D., a national
association; CRISTELA PEREZ, an individual;
and DOES I through X; and ROE
CORPORATIONS I through 10, inclusive,

Counter-Defendant/Cross-Defendants.

PLEASE TAKE NOTICE that SFR Investments Pool 1, LLC, by and through its counsel
of record, hereby appeals from the following orders and judgments:

1. Decision and Order entered on October 3, 2017; and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. All other orders made appealable thereby.

DATED this 3rd day of November 2017.

KIM GILBERT EBRON

/s/ Jacqueline A. Gilbert, Esq.
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
Phone: (702) 485-3300
Fax: (702) 485-3301
Attorneys for SFR Investments Pool 1, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of November 2017, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the **SFR'S NOTICE OF APPEAL** to the following parties:

David Merrill - david@djmerrillpc.com

Kaleb Anderson - kanderson@lipsonneilson.com

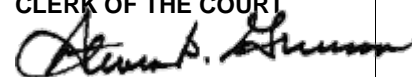
Brenda Correa - bcorrea@lipsonneilson.com

Megan Hummel - mhummel@lipsonneilson.com

Susana Nutt - snutt@lipsonneilson.com

Renee Rittenhouse - rrittenhouse@lipsonneilson.com

/s/ Jacqueline A. Gilbert, Esq.
an employee of Kim Gilbert Ebron



ASTA
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

DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI B.T., a Bank Trust,

Plaintiff,

vs.

Case No. A-13-689461-C
Consolidated with: A-16-742327-C

Dept. No. VII

CRISTELA PEREZ, an individual; SFR
INVESTMENTS POOL 1, LLC, a limited
liability company; U.S. BANK NATIONAL
ASSOCIATION, N.D., a national association;
DOES I through X; and ROE CORPORATIONS
I through 10, inclusive,

Defendants.

CASE APPEAL STATEMENT

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

Counterclaimant/Cross-Claimant,

vs.

MARCHAI B.T., a Bank Trust; U.S. BANK
NATIONAL ASSOCIATION, N.D., a national
association; CRISTELA PEREZ, an individual;
and DOES I through X; and ROE
CORPORATIONS I through 10, inclusive,

Counter-Defendant/Cross-Defendants.

...

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

SFR Investments Pool 1, LLC.

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

The Honorable Linda Marie Bell

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

Appellant: SFR Investments Pool 1, LLC (SFR)

Counsel: Jacqueline A. Gilbert, Esq.
Diana Cline Ebron, Esq.
Karen L. Hanks, Esq.
KIM GILBERT EBRON
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139

Possible Appellant: Wyeth Ranch Community Association

Trial Counsel: Kaleb D. Anderson, Esq.
Megan H. Hummel, Esq.
Lipson, Neilson, Cole, Seltzer & Garin, P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144

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):

Respondent: Marchai, B.T. (Marchai)

Trial Counsel: David J. Merrill, Esq.
DAVID J. MERRILL, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada, 89145

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

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

3 Retained

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

6 N/A

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

9 September 1, 2013

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

13 The case started as one for judicial foreclosure filed by Marchai on September 1, 2013 after
14 the Association's foreclosure sale on August 28, 2013 at which SFR was the highest bidder and
15 obtained title to the subject property. Three years later, Marchai filed a second suit related to the
16 same property against some of the same defendants, but adding additional defendants. These
17 actions were consolidated. SFR and the association answered and SFR cross-claimed for quiet
18 title. Following full briefing on motions for summary judgment, the district court found that post
19 notice partial payments by the homeowner in excess of the purported superpriority portion of the
20 association's lien satisfied that portion of the lien and preserved the first deed of trust. The district
21 court found that it was SFR's burden to prove otherwise as to the homeowner's intent as to the
22 payments. Thus, the Court found in favor of Marchai.

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

26 N/A.

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

28 N/A.

...

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

3 SFR is willing to address settlement but is unsure of Marchai's position.
4

5 **KIM GILBERT EBRON**

6
7 /s/ Jacqueline A. Gilbert, Esq.
8 JACQUELINE A. GILBERT, ESQ.
9 Nevada Bar No. 10593
10 7625 Dean Martin Drive, Suite 110
11 Las Vegas, Nevada 89139
12 Phone: (702) 485-3300
13 Fax: (702) 485-3301
14 Attorneys for SFR Investments Pool 1, LLC
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of November 2017, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the **SFR'S CASE APPEAL STATEMENT** to the following parties:

David Merrill - david@djmerrillpc.com

Kaleb Anderson - kanderson@lipsonneilson.com

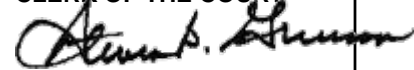
Brenda Correa - bcorrea@lipsonneilson.com

Megan Hummel - mhummel@lipsonneilson.com

Susana Nutt - snutt@lipsonneilson.com

Renee Rittenhouse - rrittenhouse@lipsonneilson.com

/s/ Jacqueline A. Gilbert, Esq.
an employee of Kim Gilbert Ebron



JUDG
David J. Merrill
Nevada Bar No. 6060
David J. Merrill, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 566-1935
Facsimile: (702) 993-8841
E-mail: david@djmerrillpc.com
Attorney for Marchai, B.T.

DISTRICT COURT
CLARK COUNTY, NEVADA

MARCHAI, B.T., a Nevada business
trust,

Plaintiff,

v.

CRISTELA PEREZ, an individual; *et al.*

Defendants.

Case No.: A-13-689461-C
Dept. No. VII

Consolidated with: A-16-742327-C

**AND ALL RELATED CLAIMS AND
ACTIONS**

JUDGMENT

On December 13, 2013, the Clerk of the Court entered a default against U.S. Bank, N.A. for its failure to file a response to the Complaint for Judicial Foreclosure of Deed of Trust. On April 22, 2014, the Clerk entered a default against Perez for her failure to serve a response to the complaint. On October 3, 2017, this Court entered a Decision and Order that entered summary judgment in favor of Marchai, B.T. and against SFR Investments Pool 1, LLC and Wyeth Ranch Community Association. Based upon the defaults, the Decision and Order, and good cause appearing therefor:

DAVID J. MERRILL, P.C.
10161 PARK RUN DRIVE, SUITE 150
LAS VEGAS, NEVADA 89145
(702) 566-1935

1 It is hereby ordered, adjudged, and decreed that Marchai shall take
2 judgment in its favor and against SFR, Perez, and U.S. Bank on its claim for judi-
3 cial foreclosure;

4 It is further ordered, adjudged, and decreed that SFR and U.S. Bank's
5 interests in the property located at 7119 Wolf Rivers Avenue, Las Vegas, Nevada
6 89131 (APN 125-15-811-013), shall be and hereby are subordinate, subsequent, and
7 subject to the Deed of Trust recorded on November 9, 2005 as Document No.
8 20051109-0001385, which is now owned by Marchai;

9 It is further ordered, adjudged, and decreed that Perez owes Marchai a
10 total of \$535,178.50, which includes \$480,113.48 in principal, \$96,566.45 in interest
11 through August 6, 2018, and \$8,498.57 in late charges;

12 It is further ordered, adjudged, and decreed that the Deed of Trust
13 shall be foreclosed to satisfy the amounts owed by Perez to Marchai;

14 It is further ordered, adjudged, and decreed that the Sheriff of Clark
15 County, or a levying officer appointed by the Court, shall have the authority to sell
16 the property and apply the proceeds of the sale due to Marchai;

17 It is further ordered, adjudged, and decreed that SFR, Wyeth Ranch,
18 U.S. Bank, Perez, and all persons claiming under them subsequent to the recording
19 of the Deed of Trust, either as lien claimants, judgment creditors, claimants under a
20 junior deed of trust, purchasers, encumbrances, and otherwise, be barred and fore-
21 closed from all rights, claims, interest or equity of redemption of the property and
22 every part of the property when the time for redemption has lapsed;

23 It is further ordered, adjudged, and decreed that Marchai, or any other
24 party to this action, may bid at the foreclosure sale;

25 It is further ordered, adjudged, and decreed that when the time for re-
26 demption has lapsed, the levying officer or Sheriff shall execute a deed to the pur-
27 chaser of the property at the sale and the purchaser at the sale shall be given pos-
28 session of the property upon production of the levying officer's or Sheriff's deed;

DAVID J. MERRILL, P.C.
10161 PARK RUN DRIVE, SUITE 150
LAS VEGAS, NEVADA 89146
(702) 566-1935

1 **It is further ordered, adjudged, and decreed that nothing in this Judg-**
2 **ment shall prevent Marchai from electing to exercise its non-judicial foreclosure**
3 **rights under the Deed of Trust;**

4 **It is further ordered, adjudged, and decreed that Marchai shall take**
5 **judgment in its favor and against SFR and Wyeth Ranch on a claim for declaratory**
6 **relief;**

7 **It is further ordered, adjudged, and decreed that Marchai holds a valid**
8 **interest in the property;**

9 **It is further ordered, adjudged, and decreed that Wyeth Ranch's lien on**
10 **the property was subject to Marchai's deed of trust;**

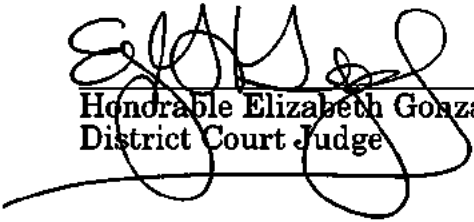
11 **It is further ordered, adjudged, and decreed that Wyeth Ranch's fore-**
12 **closure of its lien did not extinguish Marchai's deed of trust;**

13 **It is further ordered, adjudged, and decreed that SFR's counterclaims**
14 **and cross claims for quiet title/declaratory relief and preliminary and permanent**
15 **injunction shall be and hereby are dismissed with prejudice;**

16 **It is further ordered, adjudged, and decreed that Marchai shall take**
17 **judgment, jointly and severally, in its favor and against SFR and Wyeth Ranch for**
18 **its reasonable costs in the amount of \$2,752.85; and**
19
20
21
22
23
24
25
26
27
28

1 **It is further ordered, adjudged, and decreed that this Judgment is in-**
2 **tended as the final judgment by the Court and any remaining claims against any**
3 **remaining parties shall be and hereby are dismissed without prejudice.**

4 Dated this 6 day of August 2018.

5
6
7 
8 Honorable Elizabeth Gonzalez
9 District Court Judge

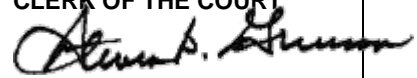
10 Submitted by:

11 David J. Merrill, P.C.

12 By: 
13 David J. Merrill
14 Nevada Bar No. 6060
15 10161 Park Run Drive, Suite 150
16 Las Vegas, Nevada 89145
17 (702) 566-1935

18 Attorney for Marchai, B.T.

19
20
21
22
23
24
25
26
27
28
DAVID J. MERRILL, P.C.
10161 PARK RUN DRIVE, SUITE 150
LAS VEGAS, NEVADA 89145
(702) 566-1935



NJUD

David J. Merrill
Nevada Bar No. 6060
David J. Merrill, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 566-1935
Facsimile: (702) 993-8841
E-mail: david@djmerrillpc.com
Attorney for Marchai, B.T.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

MARCHAI, B.T., a Nevada business
trust,

Plaintiff,

v.

CRISTELA PEREZ, an individual; *et al.*

Defendants.

Case No.: A-13-689461-C
Dept. No. XI

Consolidated with: A-16-742327-C


AND ALL RELATED CLAIMS AND
ACTIONS

Notice of Entry of Judgment

Take notice that on the 6th day of August 2018, the Court entered its Judgment, a copy of which is attached.

Dated this 7th day of August 2018.

David J. Merrill, P.C.

By: 
David J. Merrill
Nevada Bar No. 6060
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
(702) 566-1935
Attorney for Marchai, B.T.

DAVID J. MERRILL, P.C.
10161 PARK RUN DRIVE, SUITE 150
LAS VEGAS, NEVADA 89145
(702) 566-1935

Certificate of Service

I hereby certify that on the 7th day of August 2018, a copy of the Notice of Entry of Judgment was served electronically to the following through the Court's electronic service system:

Kim Gilbert Ebron

Diana Cline Ebron
KGE E-Service List
Michael L. Sturm
KGE Legal Staff

diana@kgelegal.com
eservice@kgelegal.com
mike@kgelegal.com
staff@kgelegal.com

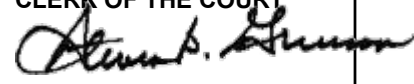
Lipson, Neilson, Cole, Seltzer & Garin, P.C.

Brenda Correa
Kaleb Anderson
Megan Hummel
Renee Rittenhouse
Susana Nutt

bcorrea@lipsonneilson.com
kanderson@lipsonneilson.com
mhummel@lipsonneilson.com
rrittenhouse@lipsonneilson.com
snutt@lipsonneilson.com



An employee of David J. Merrill, P.C.



JUDG
David J. Merrill
Nevada Bar No. 6060
David J. Merrill, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 566-1935
Facsimile: (702) 993-8841
E-mail: david@djmerrillpc.com
Attorney for Marchai, B.T.

DISTRICT COURT
CLARK COUNTY, NEVADA

MARCHAI, B.T., a Nevada business
trust,

Plaintiff,

v.

CRISTELA PEREZ, an individual; *et al.*

Defendants.

Case No.: A-13-689461-C
Dept. No. VII

Consolidated with: A-16-742327-C

**AND ALL RELATED CLAIMS AND
ACTIONS**

JUDGMENT

On December 13, 2013, the Clerk of the Court entered a default against U.S. Bank, N.A. for its failure to file a response to the Complaint for Judicial Foreclosure of Deed of Trust. On April 22, 2014, the Clerk entered a default against Perez for her failure to serve a response to the complaint. On October 3, 2017, this Court entered a Decision and Order that entered summary judgment in favor of Marchai, B.T. and against SFR Investments Pool 1, LLC and Wyeth Ranch Community Association. Based upon the defaults, the Decision and Order, and good cause appearing therefor:

DAVID J. MERRILL, P.C.
10161 PARK RUN DRIVE, SUITE 150
LAS VEGAS, NEVADA 89145
(702) 566-1935

1 It is hereby ordered, adjudged, and decreed that Marchai shall take
2 judgment in its favor and against SFR, Perez, and U.S. Bank on its claim for judi-
3 cial foreclosure;

4 It is further ordered, adjudged, and decreed that SFR and U.S. Bank's
5 interests in the property located at 7119 Wolf Rivers Avenue, Las Vegas, Nevada
6 89131 (APN 125-15-811-013), shall be and hereby are subordinate, subsequent, and
7 subject to the Deed of Trust recorded on November 9, 2005 as Document No.
8 20051109-0001385, which is now owned by Marchai;

9 It is further ordered, adjudged, and decreed that Perez owes Marchai a
10 total of \$535,178.50, which includes \$480,113.48 in principal, \$96,566.45 in interest
11 through August 6, 2018, and \$8,498.57 in late charges;

12 It is further ordered, adjudged, and decreed that the Deed of Trust
13 shall be foreclosed to satisfy the amounts owed by Perez to Marchai;

14 It is further ordered, adjudged, and decreed that the Sheriff of Clark
15 County, or a levying officer appointed by the Court, shall have the authority to sell
16 the property and apply the proceeds of the sale due to Marchai;

17 It is further ordered, adjudged, and decreed that SFR, Wyeth Ranch,
18 U.S. Bank, Perez, and all persons claiming under them subsequent to the recording
19 of the Deed of Trust, either as lien claimants, judgment creditors, claimants under a
20 junior deed of trust, purchasers, encumbrances, and otherwise, be barred and fore-
21 closed from all rights, claims, interest or equity of redemption of the property and
22 every part of the property when the time for redemption has lapsed;

23 It is further ordered, adjudged, and decreed that Marchai, or any other
24 party to this action, may bid at the foreclosure sale;

25 It is further ordered, adjudged, and decreed that when the time for re-
26 demption has lapsed, the levying officer or Sheriff shall execute a deed to the pur-
27 chaser of the property at the sale and the purchaser at the sale shall be given pos-
28 session of the property upon production of the levying officer's or Sheriff's deed;

1 **It is further ordered, adjudged, and decreed that nothing in this Judg-**
2 **ment shall prevent Marchai from electing to exercise its non-judicial foreclosure**
3 **rights under the Deed of Trust;**

4 **It is further ordered, adjudged, and decreed that Marchai shall take**
5 **judgment in its favor and against SFR and Wyeth Ranch on a claim for declaratory**
6 **relief;**

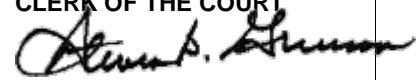
7 **It is further ordered, adjudged, and decreed that Marchai holds a valid**
8 **interest in the property;**

9 **It is further ordered, adjudged, and decreed that Wyeth Ranch's lien on**
10 **the property was subject to Marchai's deed of trust;**

11 **It is further ordered, adjudged, and decreed that Wyeth Ranch's fore-**
12 **closure of its lien did not extinguish Marchai's deed of trust;**

13 **It is further ordered, adjudged, and decreed that SFR's counterclaims**
14 **and cross claims for quiet title/declaratory relief and preliminary and permanent**
15 **injunction shall be and hereby are dismissed with prejudice;**

16 **It is further ordered, adjudged, and decreed that Marchai shall take**
17 **judgment, jointly and severally, in its favor and against SFR and Wyeth Ranch for**
18 **its reasonable costs in the amount of \$2,752.85; and**
19
20
21
22
23
24
25
26
27
28



NOAS
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

DISTRICT COURT
CLARK COUNTY, NEVADA

MARCHAI B.T., a Bank Trust,
Plaintiff,

vs.

CRISTELA PEREZ, an individual; SFR
INVESTMENTS POOL 1, LLC, a limited
liability company; U.S. BANK NATIONAL
ASSOCIATION, N.D., a national association;
DOES I through X; and ROE CORPORATIONS
I through 10, inclusive,

Defendants.

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

Counterclaimant/Cross-Claimant,
vs.

MARCHAI B.T., a Bank Trust; U.S. BANK
NATIONAL ASSOCIATION, N.D., a national
association; CRISTELA PEREZ, an individual;
and DOES I through X; and ROE
CORPORATIONS I through 10, inclusive,

Counter-Defendant/Cross-Defendants.

Case No. A-13-689461-C
Consolidated with: A-16-742327-C

Dept. No. XI

AMENDED NOTICE OF APPEAL

PLEASE TAKE NOTICE that SFR Investments Pool 1, LLC, by and through its counsel
of record, hereby files it AMENDED NOTICE OF APPEAL from the following orders and
judgments:

1. Decision and Order entered on October 3, 2017;
2. Judgment entered on August 6, 2018; and
3. All other orders made appealable thereby.

DATED this 7th day of August 2018.

KIM GILBERT EBRON

/s/ Jacqueline A. Gilbert, Esq.
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
Phone: (702) 485-3300
Fax: (702) 485-3301
Attorneys for SFR Investments Pool 1, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of August 2018, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the **SFR'S AMENDED NOTICE OF APPEAL** to the following parties:

David Merrill - david@djmerrillpc.com

Kaleb Anderson - kanderson@lipsonneilson.com

Brenda Correa - bcorrea@lipsonneilson.com

Megan Hummel - mhummel@lipsonneilson.com

Susana Nutt - snutt@lipsonneilson.com

Renee Rittenhouse - rrittenhouse@lipsonneilson.com

/s/ Jacqueline A. Gilbert, Esq.
an employee of Kim Gilbert Ebron

IN THE SUPREME COURT OF THE STATE OF NEVADA

SFR INVESTMENTS POOL 1, LLC, A
LIMITED LIABILITY COMPANY,
Appellant,
vs.
MARCHAI B.T., A BANK TRUST,
Respondent.

Supreme Court No. 74416
District Court Case No. A689461;A742327

FILED

APR 15 2020

Elizabeth A. Brown
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order."

Judgment, as quoted above, entered this 18th day of March, 2020.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
April 14, 2020.

Elizabeth A. Brown, Supreme Court Clerk

By: Monique Mercier
Administrative Assistant

A-13-689461-C
CCJR
NV Supreme Court Clerks Certificate/Judgm
4909197



IN THE SUPREME COURT OF THE STATE OF NEVADA

SFR INVESTMENTS POOL 1, LLC, A
LIMITED LIABILITY COMPANY,
Appellant,
vs.
MARCHAI B.T., A BANK TRUST,
Respondent.

No. 74416

FILED

MAR 18 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER VACATING JUDGMENT AND REMANDING

This is an appeal from a district court summary judgment in a judicial foreclosure action. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez; Linda Marie Bell, Judges. Reviewing the summary judgment de novo, *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005), we vacate and remand.¹

Appellant first argues that the district court erred in finding that the 2008 notice of delinquent assessment, rather than the 2011 notice of delinquent assessment, was the operative notice for calculating the amount of the NRS Chapter 116 superpriority default. Appellant does not claim that the HOA rescinded the first notice or that the lien was otherwise satisfied, but instead argues that the HOA was not required to record any rescission.² We conclude that the district court did not err in finding the

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

²We note that the district court did not state that the HOA was required to record a rescission of the first notice of delinquent assessment but, rather, stated that the HOA had not withdrawn/rescinded the notice or otherwise stated it was satisfied.

2008 notice to be the operative notice. We have previously held that the HOA must provide a notice of delinquent assessment before it can take any action to begin an NRS Chapter 116 foreclosure, and that the superpriority amount equals nine months of assessments incurred before the notice of delinquent assessment. See NRS 116.3116(2) (2009) (describing the superpriority component of an HOA's lien as "the assessments for common expenses . . . which would have become due . . . during the 9 months immediately preceding institution of an action to enforce the lien"); *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A.*, 133 Nev. 21, 25-26, 388 P.3d 226, 231 (2017) (recognizing that under the pre-2015 version of NRS 116.3116, serving a notice of delinquent assessments constitutes institution of an action to enforce the lien). We have also implicitly recognized that an HOA cannot enforce two superpriority liens on the same property at the same time. See *Prop. Plus Invs., LLC v. Mortg. Elec. Registration Sys., Inc.*, 133 Nev. 462, 466, 401 P.3d 728, 731 (2017) (holding that "NRS 116.3116 does not limit an HOA to one lien enforcement action or one superpriority lien per property forever" (emphasis added)); see also *JPMorgan Chase Bank, N.A. v. SFR Invs. Pool 1, LLC*, 200 F. Supp. 3d 1141, 1167-68 (D. Nev. 2016) (recognizing that an HOA can assert a second superpriority lien after a previous superpriority lien has been satisfied). Accordingly, the district court properly found that the superpriority portion of the HOA's lien in this case was comprised of the nine months of assessments incurred before the 2008 notice of delinquent assessment, as that is the notice that instituted the action to enforce the lien in this case.

Turning to the arguments regarding tender, in *9352 Cranesbill Trust v. Wells Fargo Bank, N.A.*, 136 Nev., Adv. Op. 8 (Mar. 5, 2020), this court held that payments made by a homeowner can cure the default on the

superpriority portion of an HOA lien such that the HOA's foreclosure sale would not extinguish the first deed of trust on the subject property. Whether a homeowner's payments actually cure a superpriority default, however, depends upon the actions and intent of the homeowner and the HOA and, if those cannot be determined, upon the district court's assessment of justice and equity. *See id.* slip op. at 7-9 (explaining that "[i]f neither the debtor nor the creditor makes a specific application of the payment, then it falls to the [district] court to determine how to apply the payment").

In this case, the district court correctly determined that the homeowner's payments could cure the default on the superpriority portion of the HOA's lien. However, the district court erred in concluding that the homeowner's payments cured the superpriority default without analyzing the intent of homeowner and HOA and, if appropriate, the equities as discussed in *9352 Cranesbill*. While we recognize that the district court did not have the benefit of the *9352 Cranesbill* opinion when entering its decision in this matter, we still must vacate the grant of summary judgment and remand this matter to the district court for further proceedings in line with that opinion.³

³Because appellant's purported status as a bona fide purchaser for value may be irrelevant on remand, we decline to address this issue further at this time. *See 9352 Cranesbill Tr.*, 136 Nev., slip op. at 10 (declining to address bona-fide-purchaser status when issues regarding tender remained); *Bank of Am., N.A. v. SFR Inv. Pool 1, LLC*, 134 Nev. 604, 612, 427 P.3d 113, 121 (2018) (providing that a party's status as a bona fide purchaser "is irrelevant when a defect in the foreclosure proceeding renders the sale void," such as a valid tender). And, because we have already concluded that the district court improperly granted summary judgment, we need not address appellant's argument that the district court erred in granting summary judgment sua sponte.

Based on the foregoing, we
ORDER the judgment of the district court REVERSED AND
REMAND this matter to the district court for proceedings consistent with
this order.

Pickering, C.J.
Pickering

Gibbons J.
Gibbons

Silver J.
Silver

cc: Hon. Linda Marie Bell, Chief Judge
Hon. Elizabeth Goff Gonzalez, District Judge
Janet Trost, Settlement Judge
Kim Gilbert Ebron
David J. Merrill, P.C.
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

SFR INVESTMENTS POOL 1, LLC, A
LIMITED LIABILITY COMPANY,
Appellant,
vs.
MARCHEL B.T., A BANK TRUST,
Respondent.

Supreme Court No. 74416
District Court Case No. A689461;A742327

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: April 14, 2020

Elizabeth A. Brown, Clerk of Court

By: Monique Mercier
Administrative Assistant

cc (without enclosures):

Hon. Linda Marie Bell, Chief Judge
Hon. Elizabeth Goff Gonzalez, District Judge
Janet Trost, Settlement Judge
Kim Gilbert Ebron \ Jacqueline A. Gilbert
David J. Merrill, P.C. \ David J. Merrill

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on APR 15 2020.

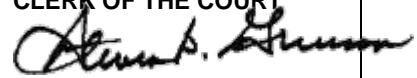
HEATHER UNGERMANN

Deputy District Court Clerk

RECEIVED
APPEALS

APR 15 2020

CLERK OF THE COURT



1 **MTED**

2 David J. Merrill
3 Nevada Bar No. 6060
4 David J. Merrill, P.C.
5 10161 Park Run Drive, Suite 150
6 Las Vegas, Nevada 89145
7 Telephone: (702) 566-1935
8 Facsimile: (702) 993-8841
9 Email: david@djmerrillpc.com
10 Attorney for Marchai, B.T.

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 MARCHAI, B.T., a Nevada business trust,

11 Plaintiff,

12 v.

13 CRISTELA PEREZ, an individual; *et al.*

14 Defendants.

Case No.: A-13-689461-C

Dept. No. XI

Consolidated with: A-16-742327-C

Date of Hearing: 08/20/2020

Time of Hearing: 9:00a.m.

15 AND ALL RELATED CLAIMS AND AC-
16 TIONS

17 **Marchai's Motion to Reopen Discovery on an Order Shortening Time**
18 **(Third Request)**

19 Under EDCR 2.35, Marchai, B.T. moves this Court, on shortened time, for an order reo-
20 pening discovery to allow Marchai to take the N.R.C.P. 30(b)(6) deposition of Wyeth Ranch
21 Community Association or its property manager. Marchai bases this motion on the following

DAVID J. MERRILL, P.C.
10161 PARK RUN DRIVE, SUITE 150
LAS VEGAS, NEVADA 89145
(702) 566-1935

memorandum of points and authorities, the pleadings and papers on file, and any argument heard by the Court.

Dated this 12th day of August 2020.

David J. Merrill, P.C.

By:



David J. Merrill
Nevada Bar No. 6060
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
(702) 566-1935

Attorney for Marchai, B.T.

Application for Order Shortening Time

Marchai applies to this Court under EDCR 2.35(a)(2) and 2.34(c) for an order shortening the time for the hearing on Marchai's Motion to Reopen Discovery on an Order Shortening Time. Marchai bases this application on the following Declaration of David J. Merrill.

Dated this 12th day of August 2020.

David J. Merrill, P.C.

By:



David J. Merrill
Nevada Bar No. 6060
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
(702) 566-1935

Attorney for Marchai, B.T.

Declaration of David J. Merrill

I, David J. Merrill, declare:

1. I am the sole shareholder of David J. Merrill, P.C., who is the counsel of record for Marchai, B.T. in *Marchai, B.T. v. Perez* (Case No. A-13-689461-C), which is pending in the Eighth Judicial District Court, Clark County, Nevada. I know of and am competent to testify to

1 the facts in this declaration. I have made this declaration supporting Marchai's Motion to Reopen
2 Discovery on an Order Shortening Time.

3 2. On March 28, 2020, the Nevada Supreme Court decided *SFR Investments Pool 1,*
4 *LLC v. Marchai, B.T.* (Case No. 74416), which reversed this Court's grant of summary judgment
5 for Marchai.

6 3. The Nevada Supreme Court based its decision on new law or clarification of exist-
7 ing law, as announced in *9352 Cranesbill Trust v. Wells Fargo Bank, N.A.*, 136 Nev. Adv. Op. 8
8 (Mar. 5, 2020).

9 4. The court filed the remittitur on April 14, 2020.

10 5. When the remittitur issued, thus granting jurisdiction back to the district court,
11 this Court had issued an administrative order precluding in-person depositions due to the
12 COVID-19 pandemic. *See* Administrative Order 20-09 at 4:9-17 (Mar. 20, 2020).

13 6. And just four days after the remittitur, this Court entered another administrative
14 order precluding in-person depositions. *See* Administrative Order 20-13 (Apr. 17, 2020).

15 7. I prefer taking depositions in person, particularly, as in this case, when it will in-
16 volve the detailed review of documents. But I am also at increased risk for severe illness due to
17 COVID-19.

18 8. In June, this Court entered an administrative order that allows parties to take in-
19 person depositions after July 1, "as long as social distancing protocols are observed." *See* Admin-
20 istrative Order 20-17 at 11:3-13 (June 1, 2020).

21 9. On August 6, I emailed SFR's and Wyeth Ranch's counsel, asking if they would
22 stipulate to reopen discovery to take an N.R.C.P. 30(b)(6) deposition of Wyeth Ranch given the
23 Nevada Supreme Court's opinion. I have attached a copy of my email to counsel as Exhibit 1.


24 10. The next day, Karen Hanks, SFR's counsel, responded that SFR would agree to
25 the deposition. I have attached a copy of Ms. Hanks's email as Exhibit 2.

26 11. But David Ochoa, Wyeth Ranch's counsel, responded that Wyeth Ranch would
27 not agree. I have attached a copy of Mr. Ochoa's email as Exhibit 3.
28

12. On August 10, I spoke to Mr. Ochoa about taking the deposition of Wyeth Ranch or its property manager's N.R.C.P. 30(b)(6) witness. Mr. Ochoa said that if Marchai filed a motion, Wyeth Ranch might not oppose it. Mr. Ochoa's concern was whether anyone at Wyeth Ranch or its property manager (who may have changed over the years) would know how it applied Cristela Perez's (the prior homeowner) payments. He said he would speak to his client and reply to me in about a week. But given the approaching November trial date, I told him I would file the motion. Of course, if Wyeth Ranch will stipulate to the deposition, then Marchai will take this motion off the calendar.

13. I declare under penalty of perjury that the preceding is true and correct.

Dated this 12th day of August 2020.

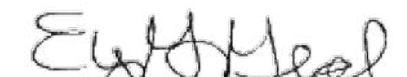

David J. Merrill

Order Shortening Time

Based upon the preceding Declaration of David J. Merrill, and good cause appearing therefor:

It is ordered that the Application for Order Shortening Time is **granted**;

It is further ordered this Court shall hear Marchai's Motion to Reopen Discovery on an Order Shortening Time on the 20th day of August 2010 at 9 :00 a.m.


Honorable Elizabeth Gonzalez
District Court Judge
Dated: August 13, 2020

Memorandum of Points and Authorities

Introduction

The Nevada Supreme Court issued its opinion in *9352 Cranesbill Trust v. Wells Fargo Bank, N.A.*, 136 Nev. Adv. Op. 8 (Mar. 5, 2020), which changed or clarified the law concerning applying payments, particularly as it applies to a homeowners' association lien. Given that ruling, Marchai wants to reopen discovery to take the N.R.C.P. 30(b)(6) deposition of the association or its property manager to discover how it applied the homeowner's payments. Marchai is not asking to reopen discovery for all purposes. Instead, Marchai seeks a limited reopening of discovery. And because the Nevada Supreme Court changed or clarified the law concerning applying payments by a homeowners' association, good cause exists for reopening discovery.

Statement Required by EDCR 2.35(b)

A. A statement specifying the discovery completed.

1. On January 9, 2014, Marchai served Plaintiff's Initial Disclosures of Witnesses and Documents Pursuant to NRCP 16.1.
2. On January 28, 2014, SFR Investments Pool 1, LLC served SFR Investments Pool 1, LLC's Initial Disclosure of Witnesses and Documents Pursuant to NRCP 16.1.
3. On October 9, 2015, Marchai issued a Subpoena Duces Tecum to Alessi & Koenig, LLC.
4. On October 9, 2015, Marchai issued a Subpoena Duces Tecum to Wyeth Ranch Community Association.
5. On October 19, 2015, Marchai served Plaintiff's Supplemental Disclosures.
6. On October 27, 2015, SFR served a First Amended Notice of 30(b)(6) Deposition of Marchai, B.T.
7. On October 27, 2015, SFR served Amended Interrogatories to Marchai, B.T.
8. On October 27, 2015, SFR served Amended Request for Admissions to Marchai, B.T.
9. On October 27, 2015, SFR served Amended Request for Production of Documents to Marchai, B.T.

10. On October 30, 2015, Marchai served interrogatories upon SFR.
11. On October 30, 2015, Marchai served requests for admission upon SFR.
12. On October 30, 2015, Marchai served requests for production of documents upon SFR.
13. On November 16, 2015, Alessi & Koenig served documents in response to the Subpoena Duces Tecum.
14. On November 18, 2015, SFR served a Second Amended Notice of 30(b)(6) Deposition of Marchai, B.T.
15. On November 24, 2015, Marchai served Plaintiff's Supplemental Disclosures of Witnesses and Documents Pursuant to NRCP 16.1.
16. On November 25, 2015, Marchai served Responses and Objections of Plaintiff Marchai, B.T., to Amended Interrogatories Propounded by Defendant SFR Investments Pool 1, LLC.
17. On November 25, 2015, Marchai served Responses and Objections of Plaintiff Marchai, B.T. to Amended Request for Admissions Propounded by Defendant SFR Investments Pool 1, LLC.
18. On November 25, 2015, Marchai served Responses and Objections of Plaintiff Marchai, B.T. to Request for Production of Documents Propounded by Defendant SFR Investments Pool 1, LLC.
19. On December 9, 2015, SFR served SFR Investments Pool 1, LLC's Objections and Responses to Marchai, B.T.'s First Set of Interrogatories.
20. On January 9, 2016, SFR served SFR Investments Pool 1, LLC's Pre-Trial Disclosures.
21. On April 25, 2017, Marchai served Marchai, B.T.'s Initial Expert Disclosure.
22. On May 22, 2017, Wyeth Ranch Community Association served Wyeth Ranch Community Association's First Set of Interrogatories to Marchai, B.T.
23. On May 22, 2017, Wyeth Ranch served Wyeth Ranch Community Association's First Set of Requests for Admissions to Marchai, B.T.

24. On May 22, 2017, Wyeth Ranch served Wyeth Ranch Community Association's First Set of Requests for Production of Documents to Marchai, B.T.

25. On May 26, 2017, SFR served SFR Investments Pool 1, LLC's Rebuttal Expert Disclosure.

26. On May 31, 2017, Wyeth Ranch served Wyeth Ranch Community Association's Joinder in SFR Investments Pool 1, LLC's Rebuttal Expert Disclosure.

27. On June 6, 2017, Wyeth Ranch served Wyeth Ranch Community Association's Initial Disclosure of Witnesses and Documents Pursuant to NRCP 16.1.

28. On June 21, 2017, Marchai served Marchai, B.T.'s Third Supplemental Disclosure of Witnesses and Documents.

29. On June 21, 2017, SFR served SFR Investments Pool 1, LLC's Second Supplemental Disclosure of Witnesses and Documents Pursuant to NRCP 16.1.

30. On June 28, 2017, Marchai served Answers to Wyeth Ranch Community Association's First Set of Interrogatories to Marchai, B.T.

31. On June 28, 2017, Marchai served Answers to Wyeth Ranch Community Association's First Set of Requests for Admissions to Marchai, B.T.

32. On June 28, 2017, Marchai served Responses to Wyeth Ranch Community Association's First Set of Requests for Production of Documents to Marchai, B.T.

33. On August 7, 2017, Wyeth Ranch served Defendant Wyeth Ranch Community Association's Pretrial Disclosures Pursuant to NRCP 16.1(a)(3).

34. On August 8, 2017, Marchai served Marchai, B.T.'s Pretrial Disclosure.

35. On August 21, 2017, Marchai served Marchai, B.T.'s Objections to Defendant Wyeth Ranch Community Association's Pretrial Disclosures Pursuant to NRCP 16.1(a)(3).

B. A specific description of the discovery that remains to be completed.

Marchai wants to take the N.R.C.P. 30(b)(6) deposition of Wyeth Ranch or its property manager limited to the issues raised by the Nevada Supreme Court in its order vacating this Court's judgment and remanding the case for further proceedings. *See SFR Invs. Pool 1, LLC v. Marchai, B.T.*, No. 74416, Order Vacating J. & Remanding (Mar. 18, 2020). Specifically, Marchai

1 wants testimony about: (1) any agreements between Wyeth Ranch and Cristela Perez, the prior
2 owner, concerning the application of payments to the association; (2) how Wyeth Ranch applied
3 Perez's payments after it instituted an action to enforce its lien; and (3) how Wyeth Ranch dis-
4 bursed payments following the foreclosure of its lien. A copy of the proposed notice of deposition
5 is attached as Exhibit 4.

6 **C. The reasons why the discovery remaining was not completed within the time limits set by the**
7 **discovery order.**

8 Marchai commenced this action by filing a complaint on September 30, 2013. (*See* Compl.
9 for Judicial Foreclosure of Deed of Trust.) About a year later, the parties stipulated to stay the
10 action pending a decision by the Nevada Supreme Court about the effect of the foreclosure of an
11 association's lien. (*See* Stip. and Order Staying Litig. (July 9, 2014).) In early 2015, the parties
12 lifted the stay. (*See* Order Lifting Stay (Jan. 28, 2015).) After lifting the stay, the parties stipulated
13 to a December 1, 2015 close of discovery. (*See* Stip. and Order to Extend Discovery Deadline
14 Dates (Feb. 12, 2015).)

15 On August 25, 2016, Marchai commenced a separate action in *Marchai, B.T. v. SFR Invs.*
16 *Pool 1, LLC* (Case No. A-16-742327-C), which added Wyeth Ranch as a defendant. (*See* Compl.
17 (Aug. 25, 2016).)

18 On September 30, 2016, this Court again stayed this action pending the Ninth Circuit's
19 issuance of its mandate in *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.* (Case No. 15-
20 15233) or until the Nevada Supreme Court issued an opinion that concurred with or disagreed
21 with the Ninth Circuit decision. (*See* Order Deny. Mot. (Sept. 30, 2016). A few months later, this
22 Court lifted the stay and consolidated this case with Case No. A-16-742327-C. (*See* Order Lifting
23 Stay and Consolidating Cases (Dec. 13, 2016).)

24 On May 16, 2017, the parties filed a Supplemental Joint Case Conference Report, which
25 set a June 21, 2017 close of discovery. (*See* Suppl. Joint Case Conference Report at 11:5 (May 16,
26 2017).) After discovery closed, SFR and Wyeth Ranch moved for summary judgment. (*See* SFR
27 Invs. Pool 1, LLC's Mot. for Summ. J. (July 21, 2017); Def. Wyeth Ranch Cmty. Ass'n's Mot.
28 for Summ. J. (July 21, 2017).) This Court not only denied their motions but instead granted

1 summary judgment for Marchai. (*See* Decision & Order (Oct. 3, 2017).) After this Court entered
2 a final judgment, SFR appealed the decision. (*See* Judgment (Aug. 6, 2018); Am. Notice of Ap-
3 peal (Aug. 8, 2018).)

4 On March 18, 2018, the Nevada Supreme Court reversed this Court’s order granting
5 summary judgment and remanded the case to the district court for further proceedings. *See SFR*
6 *Invs. Pool 1, LLC v. Marchai, B.T.*, Case No. 74416 (Mar. 18, 2020). The court agreed that Pe-
7 rez’s payments to Wyeth Ranch could have cured the superpriority portion of the lien. *Id.* at 2–3.
8 But, the court concluded, based upon its recent decision in *9352 Cranesbill Trust v. Wells Fargo*
9 *Bank, N.A.*, 136 Nev. Adv. Op. 8 (Mar. 5, 2020), that the district court needed to determine Pe-
10 rez’s and Wyeth Ranch’s actions and intent when making and accepting payments and, if that
11 cannot be determined, “the district court’s assessment of justice and equity.” *Id.* at 3.

12 When an appellate court issues new law (or clarification of existing law) and remands the
13 case for further proceedings, good cause exists for the trial court to reopen discovery. *See Darney*
14 *v. Dragon Prods. Co., LLC*, 266 F.R.D. 23, 26 (D. Me. 2010) (concluding that good cause existed
15 to reopen discovery given a change of existing law). And the Nevada Supreme Court has con-
16 cluded that district courts should exercise their discretion and “freely” reopen cases “[i]n order
17 that justice be done.” *See Ford v. Ford*, 105 Nev. 672, 676, 782 P.2d 1304, 1307 (1989) (citing *An-*
18 *dolino v. State*, 99 Nev. 346, 351, 662 P.2d 631, 634 (1983)).

19 Marchai wants to take Wyeth Ranch’s (or its property manager’s) deposition to inquire
20 into Wyeth Ranch’s actions and intent when accepting payments from Perez. Marchai is not ask-
21 ing for the wholesale reopening of discovery. Instead, it wants narrowly focused, limited discov-
22 ery—one deposition—focused on facts now relevant due to the Nevada Supreme Court’s pro-
23 nouncement of Nevada law in *9352 Cranesbill*.

24 **D. A proposed schedule for completing all remaining discovery.**

25 Marchai is ready, willing, and able to take the deposition of Wyeth Ranch or its property
26 manager’s N.R.C.P. 30(b)(6) witness when counsel and the witness are available. Marchai pro-
27 poses that the parties complete the deposition by September 30, 2020.
28

E. The current trial date.

The Court set trial for a five-week stack to begin on November 16, 2020. The proposed revision of the discovery schedule will not disrupt the trial date.

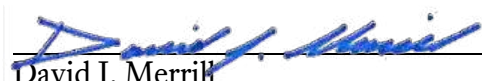
Conclusion

Good cause exists for this Court to exercise its discretion and reopen discovery to permit the parties to explore facts about how Wyeth Ranch applied Perez's payments. Hence, Marchai asks this Court to reopen discovery and allow it to serve the N.R.C.P. 30(b)(6) deposition notice upon either Wyeth Ranch or its property manager (whichever Wyeth Ranch's counsel concludes will have the requisite information to respond to the categories in the N.R.C.P. 30(b)(6) notice).

Dated this 12th day of August 2020.

David J. Merrill, P.C.

By:



David J. Merrill
Nevada Bar No. 6060
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
(702) 566-1935

Attorney for Marchai, B.T.

Certificate of Service

I certify that on the 12th day of August 2020, a copy of the Marchai's Motion to Reopen Discovery on an Order Shortening Time was served electronically to the following through the Court's electronic service system:

Kim Gilbert Ebron

Diana Cline Ebron
E-Service for Kim Gilbert Ebron
Michael L. Sturm
Tomas Valerio

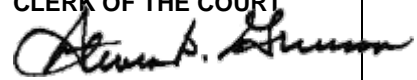
diana@kgelegal.com
eservice@kgelegal.com
mike@kgelegal.com
staff@kgelegal.com

Lipson, Neilson, Cole, Seltzer & Garin, P.C.

Brenda Correa
Kaleb Anderson
Megan Hummel
Renee Rittenhouse
Susana Nutt
Juan Cerezo
David Ochoa

bcorrea@lipsonneilson.com
kanderson@lipsonneilson.com
mhummel@lipsonneilson.com
rrittenhouse@lipsonneilson.com
snutt@lipsonneilson.com
jcerezo@lipsonneilson.com
dochoa@lipsonneilson.com


An employee of David J. Merrill, P.C.



1 **OGM**
2 David J. Merrill
3 Nevada Bar No. 6060
4 David J. Merrill, P.C.
5 10161 Park Run Drive, Suite 150
6 Las Vegas, Nevada 89145
7 Telephone: (702) 566-1935
8 Facsimile: (702) 993-8841
9 Email: david@djmerrillpc.com
10 Attorney for Marchai, B.T.

11
12
13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 MARCHAI, B.T., a Nevada business trust,
16
17 Plaintiff,
18
19 v.
20 CRISTELA PEREZ, an individual; *et al.*
21
22 Defendants.

Case No.: A-13-689461-C
Dept. No. XI
Consolidated with: A-16-742327-C

23
24
25 AND ALL RELATED CLAIMS AND AC-
26 TIONS

27 **Order Granting Marchai's Motion to Reopen Discovery on an Order Shortening Time**
28 **and Denying the Alternative Countermotion for a Briefing Schedule**

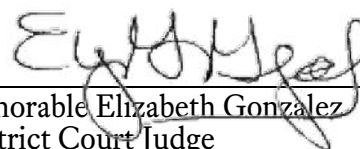
Marchai's Motion to Reopen Discovery on an Order Shortening Time and Wyeth Ranch Community Association's Alternative Countermotion for a Briefing Schedule came before the Court on the 20th day of August 2020 at 9:00 a.m. David J. Merrill of David J. Merrill, P.C. appeared for Marchai, B.T. David Ochoa of Lipson Neilson, P.C. appeared for Wyeth Ranch Community Association. Karen L. Hanks of Kim Gilbert Ebron appeared for SFR Investments Pool 1, LLC. The Court, having considered the motion, Wyeth Ranch's opposition and countermotion, Marchai's reply and opposition to the countermotion, the argument of counsel, and good cause appearing therefor:

It is ordered that Marchai's Motion to Reopen Discovery on an Order Shortening Time is **granted**;

DAVID J. MERRILL, P.C.
10161 PARK RUN DRIVE, SUITE 150
LAS VEGAS, NEVADA 89145
(702) 566-1935

1 **It is further ordered** that Wyeth Ranch's Alternative Countermotion for a Briefing
2 Schedule is **denied**.

3 Dated this 21st day of August 2020.

4
5
6 
Honorable Elizabeth Gonzalez
District Court Judge

7
8 Submitted by:

9 David J. Merrill, P.C.

10
11 By: /s/ David J. Merrill
12 David J. Merrill
13 Nevada Bar No. 6060
10161 Park Run Drive, Suite 150
14 Las Vegas, Nevada 89145
(702) 566-1935
Attorney for Marchai, B.T.

15
16 Approved as to form and content:

17 Kim Gilbert Ebron

Lipson Neilson, P.C.

18
19 By: /s/ Karen L. Hanks
20 Karen L. Hanks
Nevada Bar No. 9578
7625 Dean Martin Drive, Suite 110
21 Las Vegas, Nevada 89139
(702) 485-3300
22 Attorneys for SFR Investments Pool 1, LLC

By: /s/ David T. Ochoa
David T. Ochoa
Nevada Bar No. 10414
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500
Attorneys for Wyeth Ranch Community Association



David Merrill <david@djmerrillpc.com>

RE: Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order granting the motion to reopen discovery

1 message

Karen Hanks <karen@kgelegal.com>

Thu, Aug 20, 2020 at 9:35 AM

To: David Merrill <david@djmerrillpc.com>, "dochoa@lipsonneilson.com" <dochoa@lipsonneilson.com>, "Wolf Rivers (de715b910+matter1020495566@maildrop.clio.com)" <de715b910+matter1020495566@maildrop.clio.com>

You have my permission to insert my e-signature.

KAREN L. HANKS, ESQ.

KIM GILBERT EBRON

7625 Dean Martin Dr., Suite 110

Las Vegas, NV 89139

Phone: (702) 485-3300

Fax: (702) 485-3301

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 all 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 and jackie@kgelegal.com.

Sent from [Mail](#) for Windows 10

From: David Merrill**Sent:** Thursday, August 20, 2020 9:33 AM**To:** Karen Hanks; dochoa@lipsonneilson.com**Subject:** Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order granting the motion to reopen discovery

Karen and David,

I have attached a draft of the proposed Order Granting Marchai's Motion to Reopen Discovery on Order Shortening Time and Denying the Alternative Countermotion for a Briefing Schedule. Please review as soon as possible and advise if you have any changes or with approval to submit to the Court. Thank you.

AA 150

--

David J. Merrill

David J. Merrill, P.C.

10161 Park Run Drive, Suite 150

Las Vegas, Nevada 89145

Office: (702) 566-1935

Mobile: (702) 577-0268

Fax: (702) 993-8841



David Merrill <david@djmerillpc.com>

RE: Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order granting the motion to reopen discovery

1 message

David Ochoa <DOchoa@lipsonneilson.com>

Thu, Aug 20, 2020 at 9:36 AM

To: Karen Hanks <karen@kgelegal.com>, David Merrill <david@djmerillpc.com>, "Wolf Rivers (de715b910+matter1020495566@maildrop.clio.com)" <de715b910+matter1020495566@maildrop.clio.com>

David,

I approve you may e-sign for me.

David

**David Ochoa, Esq.****Lipson Neilson P.C.****9900 Covington Cross Drive, Suite 120****Las Vegas, Nevada 89144****702-382-1500****702-382-1512 (fax)****E-Mail: dochoa@lipsonneilson.com****Website: www.lipsonneilson.com****OFFICES IN NEVADA, MICHIGAN, ARIZONA & COLORADO *******

CONFIDENTIALITY NOTICE

This message is confidential, intended only for the named recipient(s) and may contain information that is privileged, attorney work product or exempt from disclosure under applicable law. If you are not the intended recipient(s), you are notified that any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on the contents of this information is prohibited and may be unlawful. If you receive this message in error, or are not the named recipient(s), please notify the sender, delete this e-mail from your computer, and destroy any copies in any form immediately. Receipt by anyone other than the named recipient(s) is not a waiver of any attorney-client, work product, or other applicable privilege.

From: Karen Hanks <karen@kgelegal.com>**Sent:** Thursday, August 20, 2020 9:35 AM**To:** David Merrill <david@djmerillpc.com>; David Ochoa <DOchoa@lipsonneilson.com>; Wolf Rivers

AA 152

(de715b910+matter1020495566@maildrop.clio.com) <de715b910+matter1020495566@maildrop.clio.com>

Subject: RE: Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order granting the motion to reopen discovery

You have my permission to insert my e-signature.

KAREN L. HANKS, ESQ.

KIM GILBERT EBRON

[7625 Dean Martin Dr., Suite 110](#)

[Las Vegas, NV 89139](#)

Phone: (702) 485-3300

Fax: (702) 485-3301

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 all 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 and jackie@kgelegal.com.

Sent from [Mail](#) for Windows 10

From: [David Merrill](#)

Sent: Thursday, August 20, 2020 9:33 AM

To: [Karen Hanks](#); dochoa@lipsonneilson.com

Subject: Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order granting the motion to reopen discovery

Karen and David,

I have attached a draft of the proposed Order Granting Marchai's Motion to Reopen Discovery on Order Shortening Time and Denying the Alternative Countermotion for a Briefing Schedule. Please review as soon as possible and advise if you have any changes or with approval to submit to the Court. Thank you.

--

David J. Merrill

David J. Merrill, P.C.

[10161 Park Run Drive, Suite 150](#)

AA 153

8/20/2020

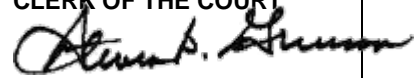
David J. Merrill, P.C. Mail - RE: Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order granting the motion to reopen discovery

Las Vegas, Nevada 89145

Office: (702) 566-1935

Mobile: (702) 577-0268

Fax: (702) 993-8841



1 **NEOJ**
David J. Merrill
2 Nevada Bar No. 6060
David J. Merrill, P.C.
3 10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
4 Telephone: (702) 566-1935
Facsimile: (702) 993-8841
5 E-mail: david@djmerrillpc.com
Attorney for Marchai, B.T.
6
7

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 MARCHAI, B.T., a Nevada business trust,
11 Plaintiff,

12 v.

13 CRISTELA PEREZ, an individual; *et al.*
14 Defendants.

Case No.: A-13-689461-C
Dept. No. XI

Consolidated with: A-16-742327-C

15
16 AND ALL RELATED CLAIMS AND AC-
TIONS
17

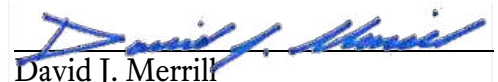
18 **Notice of Entry of Order**

19 **Take notice** that on the 21st day of August 2020, the Court entered an Order Granting
20 Marchai's Motion to Reopen Discovery on an Order Shortening Time and Denying the Alterna-
21 tive Countermotion for a Briefing Schedule, a copy of which is attached.

22 Dated this 21st day of August 2020.

23 David J. Merrill, P.C.

24
25 By:



David J. Merrill
Nevada Bar No. 6060
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
(702) 566-1935
Attorney for Marchai, B.T.

Certificate of Service

I hereby certify that on the 21st day of August 2020, a copy of the Notice of Entry of Order was served electronically to the following through the Court's electronic service system:

Kim Gilbert Ebron

Diana Cline Ebron
E-Service for Kim Gilbert Ebron
Michael L. Sturm
Tomas Valerio

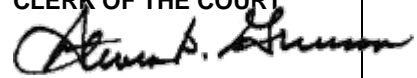
diana@kgelegal.com
eservice@kgelegal.com
mike@kgelegal.com
staff@kgelegal.com

Lipson, Neilson, Cole, Seltzer & Garin, P.C.

Brenda Correa
Kaleb Anderson
Megan Hummel
Renee Rittenhouse
Susana Nutt
Juan Cerezo
David Ochoa

bcorrea@lipsonneilson.com
kanderson@lipsonneilson.com
mhummel@lipsonneilson.com
rrittenhouse@lipsonneilson.com
snutt@lipsonneilson.com
jcerezo@lipsonneilson.com
dochoa@lipsonneilson.com


An employee of David J. Merrill, P.C.



1 **OGM**
2 David J. Merrill
3 Nevada Bar No. 6060
4 David J. Merrill, P.C.
5 10161 Park Run Drive, Suite 150
6 Las Vegas, Nevada 89145
7 Telephone: (702) 566-1935
8 Facsimile: (702) 993-8841
9 Email: david@djmerrillpc.com
10 Attorney for Marchai, B.T.

11
12
13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 MARCHAI, B.T., a Nevada business trust,
16
17 Plaintiff,

18 v.

19 CRISTELA PEREZ, an individual; *et al.*
20
21 Defendants.

Case No.: A-13-689461-C
Dept. No. XI

Consolidated with: A-16-742327-C

22
23
24
25
26
27
28
AND ALL RELATED CLAIMS AND AC-
TIONS

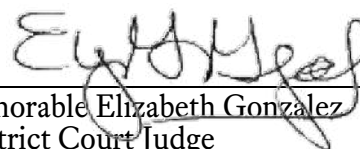
**Order Granting Marchai's Motion to Reopen Discovery on an Order Shortening Time
and Denying the Alternative Countermotion for a Briefing Schedule**

Marchai's Motion to Reopen Discovery on an Order Shortening Time and Wyeth Ranch
Community Association's Alternative Countermotion for a Briefing Schedule came before the
Court on the 20th day of August 2020 at 9:00 a.m. David J. Merrill of David J. Merrill, P.C. ap-
peared for Marchai, B.T. David Ochoa of Lipson Neilson, P.C. appeared for Wyeth Ranch Com-
munity Association. Karen L. Hanks of Kim Gilbert Ebron appeared for SFR Investments Pool 1,
LLC. The Court, having considered the motion, Wyeth Ranch's opposition and countermotion,
Marchai's reply and opposition to the countermotion, the argument of counsel, and good cause
appearing therefor:

It is ordered that Marchai's Motion to Reopen Discovery on an Order Shortening Time
is **granted**;

1 **It is further ordered** that Wyeth Ranch's Alternative Countermotion for a Briefing
2 Schedule is **denied**.

3 Dated this 21st day of August 2020.

4
5
6 
Honorable Elizabeth Gonzalez
District Court Judge

7
8 Submitted by:

9 David J. Merrill, P.C.

10
11 By: /s/ David J. Merrill
12 David J. Merrill
13 Nevada Bar No. 6060
10161 Park Run Drive, Suite 150
14 Las Vegas, Nevada 89145
(702) 566-1935
Attorney for Marchai, B.T.

15
16 Approved as to form and content:

17 Kim Gilbert Ebron

Lipson Neilson, P.C.

18
19 By: /s/ Karen L. Hanks
20 Karen L. Hanks
Nevada Bar No. 9578
7625 Dean Martin Drive, Suite 110
21 Las Vegas, Nevada 89139
(702) 485-3300
22 Attorneys for SFR Investments Pool 1, LLC

By: /s/ David T. Ochoa
David T. Ochoa
Nevada Bar No. 10414
9900 Covington Cross Drive, Suite 120
23 Las Vegas, Nevada 89144
(702) 382-1500
Attorneys for Wyeth Ranch Community Association



David Merrill <david@djmerrillpc.com>

RE: Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order granting the motion to reopen discovery

1 message

Karen Hanks <karen@kgelegal.com>

Thu, Aug 20, 2020 at 9:35 AM

To: David Merrill <david@djmerrillpc.com>, "dochoa@lipsonneilson.com" <dochoa@lipsonneilson.com>, "Wolf Rivers (de715b910+matter1020495566@maildrop.clio.com)" <de715b910+matter1020495566@maildrop.clio.com>

You have my permission to insert my e-signature.

KAREN L. HANKS, ESQ.

KIM GILBERT EBRON

7625 Dean Martin Dr., Suite 110

Las Vegas, NV 89139

Phone: (702) 485-3300

Fax: (702) 485-3301

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 all 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 and jackie@kgelegal.com.

Sent from [Mail](#) for Windows 10

From: David Merrill**Sent:** Thursday, August 20, 2020 9:33 AM**To:** Karen Hanks; dochoa@lipsonneilson.com**Subject:** Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order granting the motion to reopen discovery

Karen and David,

I have attached a draft of the proposed Order Granting Marchai's Motion to Reopen Discovery on Order Shortening Time and Denying the Alternative Countermotion for a Briefing Schedule. Please review as soon as possible and advise if you have any changes or with approval to submit to the Court. Thank you.

AA 159

--

David J. Merrill

David J. Merrill, P.C.

10161 Park Run Drive, Suite 150

Las Vegas, Nevada 89145

Office: (702) 566-1935

Mobile: (702) 577-0268

Fax: (702) 993-8841



David Merrill <david@djmerrillpc.com>

RE: Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order granting the motion to reopen discovery

1 message

David Ochoa <DOchoa@lipsonneilson.com>

Thu, Aug 20, 2020 at 9:36 AM

To: Karen Hanks <karen@kgelegal.com>, David Merrill <david@djmerrillpc.com>, "Wolf Rivers (de715b910+matter1020495566@maildrop.clio.com)" <de715b910+matter1020495566@maildrop.clio.com>

David,

I approve you may e-sign for me.

David

**David Ochoa, Esq.****Lipson Neilson P.C.****9900 Covington Cross Drive, Suite 120****Las Vegas, Nevada 89144****702-382-1500****702-382-1512 (fax)****E-Mail: dochoa@lipsonneilson.com****Website: www.lipsonneilson.com****OFFICES IN NEVADA, MICHIGAN, ARIZONA & COLORADO *******

CONFIDENTIALITY NOTICE

This message is confidential, intended only for the named recipient(s) and may contain information that is privileged, attorney work product or exempt from disclosure under applicable law. If you are not the intended recipient(s), you are notified that any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on the contents of this information is prohibited and may be unlawful. If you receive this message in error, or are not the named recipient(s), please notify the sender, delete this e-mail from your computer, and destroy any copies in any form immediately. Receipt by anyone other than the named recipient(s) is not a waiver of any attorney-client, work product, or other applicable privilege.

From: Karen Hanks <karen@kgelegal.com>**Sent:** Thursday, August 20, 2020 9:35 AM**To:** David Merrill <david@djmerrillpc.com>; David Ochoa <DOchoa@lipsonneilson.com>; Wolf Rivers

AA 161

(de715b910+matter1020495566@maildrop.clio.com) <de715b910+matter1020495566@maildrop.clio.com>

Subject: RE: Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order granting the motion to reopen discovery

You have my permission to insert my e-signature.

KAREN L. HANKS, ESQ.

KIM GILBERT EBRON

[7625 Dean Martin Dr., Suite 110](#)

[Las Vegas, NV 89139](#)

Phone: (702) 485-3300

Fax: (702) 485-3301

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 all 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 and jackie@kgelegal.com.

Sent from [Mail](#) for Windows 10

From: [David Merrill](#)

Sent: Thursday, August 20, 2020 9:33 AM

To: [Karen Hanks](#); dochoa@lipsonneilson.com

Subject: Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order granting the motion to reopen discovery

Karen and David,

I have attached a draft of the proposed Order Granting Marchai's Motion to Reopen Discovery on Order Shortening Time and Denying the Alternative Countermotion for a Briefing Schedule. Please review as soon as possible and advise if you have any changes or with approval to submit to the Court. Thank you.

--

David J. Merrill

David J. Merrill, P.C.

[10161 Park Run Drive, Suite 150](#)

AA 162

8/20/2020

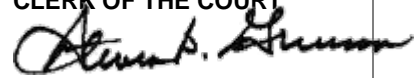
David J. Merrill, P.C. Mail - RE: Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order granting the motion to reopen discovery

Las Vegas, Nevada 89145

Office: (702) 566-1935

Mobile: (702) 577-0268

Fax: (702) 993-8841



LIPSON NEILSON P.C.
KALEB D. ANDERSON, ESQ.
Nevada Bar No. 7582
DAVID T. OCHOA, ESQ.
Nevada Bar No. 10414
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500
(702) 382-1512 - fax
kanderson@lipsonneilson.com
dochoa@lipsonneilson.com

Attorneys for Defendant Wyeth Ranch Community Association

DISTRICT COURT
CLARK COUNTY, NEVADA

MARCHAI, B.T., a Nevada business trust
Plaintiff,

v.

CRISTELA PEREZ, an individual, et al.
Defendants.

AND ALL RELATED CLAIMS AND ACTIONS.

Case No.: A-13-689461-C
Dept. No.: XII

Consolidated with: A-16-742327-C

**DEFENDANT WYETH RANCH
COMMUNITY ASSOCIATION'S
MOTION FOR SUMMARY
JUDGMENT**

(HEARING DATE REQUESTED)

Defendant, WYETH RANCH COMMUNITY ASSOCIATION ("HOA"), by and through its counsel of record at the law firm of LIPSON NEILSON P.C., respectfully submits the following Motion for Summary Judgment pursuant to Nevada Rule of Civil Procedure 56(b) ("Motion").

///

///

///

///

///

///

1 This Motion is made and based upon the Memorandum of Points and Authorities,
2 the exhibits attached hereto, the pleadings and papers on file herein, and any oral
3 argument that may be presented at any hearing on the Motion.

4 DATED this 25th day of September, 2020.

5 LIPSON NEILSON P.C.

6
7 */s/ David T. Ochoa*

8 By: _____

KALEB D. ANDERSON, ESQ.
Nevada Bar No. 7582
DAVID T. OCHOA, ESQ.
Nevada Bar No. 10414
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144

Attorneys for Defendant
Wyeth Ranch Community Association

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This action arises from a non-judicial foreclosure sale of real property located at 7119 Wolf Rivers Avenue, Las Vegas, Nevada 89131 (“Property”). The sale occurred on August 28, 2013. At that time, the senior deed of trust securing the Property was assigned to Marchai, B.T. (“Marchai”). Marchai acquired an interest in the Property six months before the sale, but waited until the morning of August 28, 2013 to request a postponement. Further, there is no admissible evidence proving that Marchai made any actual offer to pay any portion of the HOA’s lien. Further, at the time Marchai acquired an interest in the Property, foreclosure proceedings had been pending for several years. In fact, the first notice of default and election to sell was recorded in 2009 and several recorded notices were sent by certified mail to Marchai’s predecessors.

The District Court previously granted summary judgment in favor of Marchai finding it was the SFR’s burden to prove the prior owners intent in applying partial payments, and thus found the owners partial payments satisfied the superpriority portion of the lien, and protected Marchai’s deed of trust. SFR appealed this issue, and the Nevada Supreme Court reversed and remanded on this limited issue of how to apply the prior owners partial payments. However, the district court had also made a number of decisions that resolved Marchai’s claims against the HOA. Those decisions were not appealed by Marchai, and the limited remand by the Nevada Supreme Court does not leave anything open on Marchai claims against the HOA.

However, the *Cranesbill* analysis is limited to the specific issue of applying the partial payments and does not make the prior owner or the HOA a necessary party. Although this may resolve Marchai’s final claim of quiet title, the HOA was granted summary judgment on Marchai’s claim for Quiet Title earlier in this case and that decision was not appealed. Determination of this issue does not leave open claims against the HOA, as the application of the payments will either lead to a completed superpriority sale or a completed subpriority sale. Neither of which leads to a violation of NRS 116 by the

HOA. Marchai's quiet title claim contained various arguments including that the sale should be voided as commercially unreasonable, or the price was unconscionable. However, those specific issues were addressed by the district court previously and not appealed by Marchai. Thus what is left on the Quiet Title claim that remains against SFR only is the *Cranesbill* issue. The HOA does not have a title interest in the property, it has a lien interest, and in regards to the lien interest there is no avenue for damages against the HOA if the court finds that a non-parties partial payments did not save Marchai. The HOA can foreclose on either the superpriority or subpriority portion of its lien and it is not a wrongful foreclosure. Accordingly the HOA is entitled to summary judgment on all of Marchai's claims against it.

II. STATEMENT OF UNDISPUTED FACTS

On or around October 19, 2005, Cristela Perez ("Borrower") obtained a loan to purchase the Property. See Complaint in Case No. A-16-742327-C, attached hereto as **Exhibit 1** ¶ 7. The loan was secured by a deed of trust with CMG Mortgage named as beneficiary. *Id.* ¶ 8. The deed of trust was subsequently assigned to CitiMortgage, Inc. and Stanwich Mortgage Loan Trust, Series 2012-6. *Id.* ¶¶ 22, 24. In March 2013, the deed of trust was assigned to Plaintiff. *Id.* ¶ 27.

Sometime after purchasing the Property, Borrower defaulted on her quarterly homeowners' assessments. See generally *id.*; see also Resident Transaction Detail, attached hereto as **Exhibit 2**. Therefore, on November 5, 2007, the HOA, through Complete Association Management Company ("CAMCO"), recorded a notice of delinquent violation lien. Ex. 1 ¶ 9; see also Notice of Delinquent Violation Lien, attached hereto as **Exhibit 3**. On or around October 8, 2008, the HOA, through Alessi & Koenig LLC ("Alessi") recorded a notice of delinquent assessment lien. Ex. 1 ¶ 11; see also Notice of Delinquent Assessment Lien, attached hereto as **Exhibit 4**. On January 5, 2009, the HOA, through Alessi, recorded a notice of default and election to sell. Ex. 1 ¶ 12; see also Notice of Default and Election to Sell attached hereto as **Exhibit 5**. On January 14, 2010, the HOA, through Alessi, recorded a notice of trustee's sale. Ex. 1 ¶

1 13; see also Notice of Trustee's Sale, attached hereto as **Exhibit 6**. The sale was
2 scheduled for February 17, 2010. *Id.*

3 On or around February 5, 2010, Borrower and her husband entered into a 12-
4 month payment plan with the HOA and the pending foreclosure sale was postponed.
5 See Account 84081, attached hereto as **Exhibit 7**. Borrower made four payments to the
6 HOA between March 2010 and October 2010, none of which brought her account
7 current. See Ex 2 & 7. Thus, in November 2010, Alessi began preparation to re-notice
8 the sale. Ex. 7. Between November 2010 and March 2011, Borrower made two
9 additional partial payments on her account, but failed to bring her account current. Ex. 2
10 & 7. On March 9, 2011, the HOA, through Alessi, recorded a rescission of notice of the
11 February 2010 trustee's sale. Ex. 1 ¶ 15. On March 29, 2011, the HOA, through Alessi,
12 recorded a second notice of trustee's sale. *Id.* ¶ 16; see also Notice of Trustee's Sale
13 attached hereto as **Exhibit 8**. The second sale was scheduled for May 8, 2011. *Id.*
14 Copies of the notice were sent by certified mail to CMG Mortgage, Inc.. See Certified
15 Mailing Receipts, attached hereto as **Exhibit 9**.

16 On April 7, 2011, Alessi received a letter of hardship from Borrower and agreed,
17 once again, to postpone the sale. See Ex. 7. Borrower entered into a ten-month
18 payment plan to bring her assessments current. Ex. 2 & 7. By September 2011,
19 Borrower had once again breached her payment plan. *Id.* Therefore, on December 20,
20 2011, the HOA, through Alessi, recorded a second notice of delinquent assessment
21 lien. Ex. 1 ¶ 19, see also Notice of Delinquent Assessment (Lien), attached hereto as
22 **Exhibit 10**.

23 On February 28, 2012, the HOA, through Alessi, recorded a second notice of
24 default and election to sell. Ex. 1 ¶ 20, see also Notice of Default and Election to Sell,
25 attached hereto as **Exhibit 11**. Copies of the notice were sent by certified mail to CMG
26 Mortgage, Inc. See Certified Mailing Receipts, attached hereto as **Exhibit 12**. On March
27 8, 2012, Borrower's husband contacted Alessi and requested another payment plan.
28 See email correspondence, attached collectively hereto as **Exhibit 13**. Although

1 Borrower made two payments to Alessi between March 2012 and July 2012, she failed
2 to bring her account current. See Ex. 2 & 7. Therefore, on October 31, 2012, the HOA,
3 through Alessi, recorded a third notice of trustee's sale. Ex. 1 ¶ 25; see also Notice of
4 Trustee's Sale, attached hereto as **Exhibit 14**. The sale was scheduled for November
5 28, 2012. *Id.* Copies of the notice were sent certified mail to CMG Mortgage, Inc. and
6 CitiMortgage, Inc. See Mailing Receipts, attached hereto as **Exhibit 15**. In response to
7 the third notice of sale, Borrower sent correspondence to the HOA requesting another
8 payment plan. See correspondence attached hereto as **Exhibit 16**. The sale was
9 postponed accordingly. See Ex. 7.

10 On March 26, 2013, the HOA, through Alessi, received notification that Borrower
11 filed for Chapter 7 bankruptcy. Ex. 7. On July 31, 2013, the HOA, through Alessi,
12 recorded a fourth notice of trustee's sale. Ex. 1 ¶ 28; see also Notice of Trustee's Sale,
13 attached hereto as **Exhibit 17**. The sale was scheduled for August 28, 2013. *Id.* On
14 August 28, 2013, Alessi emailed the HOA's community management company, advising
15 that "the mortgage company is asking for an extension so they can get it paid off" and
16 requesting permission to postpone the sale. See email correspondence, attached
17 hereto as **Exhibit 18**.

18 The HOA declined to postpone the sale. *Id.* That same day, the HOA, through
19 Alessi, sold the Property to SFR Investment Pool 1 LLC ("SFR") for \$21,000. Ex. 1 ¶ 30.
20 A trustee's deed upon sale was recorded in SFR's favor in September 2013. See
21 Trustee's Deed Upon Sale, attached hereto as **Exhibit 19**.

22 **III. PROCEDURAL BACKGROUND**

23 In the District Court's Order entered March 22, 2016, the Court found that Marchai
24 failed to establish the sale was commercially unreasonable, violated the takings or due
25 process clauses, or that the statute was unconstitutional vague. **Exhibit 20**.

26 In the District Court's Order entered January 24, 2017, the Court dismissed
27 Marchai's Quiet Title Claim against the HOA. **Exhibit 21**.

28 ///

1 In the District Court's October 3, 2017 Order, the Court found that Notice was
2 proper, however, found for Marchai based on a determination that Borrower's partial
3 payments paid off the superpriority portion of the lien. **Exhibit 22.**

4 On November 6, 2017, SFR filed its Case Appeal Statement and Notice of Appeal,
5 appealing the determination on the application of Borrower's partial payments. **Exhibit**
6 **23.**

7 Marchai did not appeal the earlier orders or the determination on notice from the
8 October 3, 2017.

9 On March 18, 2020, the Nevada Supreme Court entered its Order Vacating
10 Judgment and Remanding. **Exhibit 24.** Within that Order the Nevada Supreme Court
11 found and affirmed that the 2008 Notice of Delinquent Assessment was the operative
12 notice to review superpriority and that a Borrower's payments could satisfy the
13 superpriority portion of an HOA lien. However, the Court remanded on finding that
14 under *9352 Cranesbill Trust v. Wells Fargo Bank, N.A.*, 136 Nev., Adv. Op. 8 (Mar. 5,
15 2020), the facts surrounding the payments needed to be analyzed to determine if the
16 payments actually satisfied the superpriority portion of the lien.

17 **IV. STANDARD OF REVIEW**

18
19 "The purpose of summary judgment is to pierce the pleading and to assess the
20 proof in order to see whether there is a genuine need for trial." *Matushita Elec. Indus.*
21 *Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Summary judgment is appropriate
22 when the pleadings, the discovery and disclosure materials on file, and any affidavits
23 "show [] that there are no genuine disputes as to any material fact and the movant is
24 entitled to judgment as a matter of law." Nev. R. Civ. P. 56(b); see also *Celotex v.*
25 *Catrett*, 477 U.S. 317, 330 (1986); *Boland v. Nevada Rock & Sand Co.*, 111 Nev. 608,
26 610, 894 P.2d 988 (1995).

27 To survive a motion for summary judgment, the nonmoving party "may not rest
28 upon the mere allegations or denials of [its] pleadings," *Anderson v. Liberty Lobby*,

1 Inc., 477 U.S. 242, 248 (1986), nor may it “simply show there is some metaphysical
2 doubt as to the material facts.” *Matsushita Elec. Indus. Co.*, 475 U.S. at 586. It is the
3 nonmoving party’s burden to “come forward with specific facts showing that there is a
4 **genuine** issue for trial.” *Id.* at 587 (emphasis added); see also *Wood v. Safeway, Inc.*,
5 121 Nev. 724 (2005), citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57
6 P.3d 82 (2002).

7 An issue is only genuine if there is a sufficient evidentiary basis for a reasonable
8 jury to return a verdict for the nonmoving party. *Anderson*, 477 U.S. at 248 (1986).
9 Further, a dispute will only preclude the entry of summary judgment if it could affect the
10 outcome of the suit under governing law. *Id.* “The amount of evidence necessary to
11 raise a genuine issue of material fact is enough to require a judge or jury to resolve the
12 parties’ differing versions of the truth at trial.” *Id.* at 249. In evaluating a summary
13 judgment, a court views all facts and draws all inferences in a light most favorable
14 to the nonmoving party. *Kaiser Cement Corp. v. Fischbach & Moore, Inc.*, 793 F.2d
15 100, 1103 (9th Cir. 1986).

16 **V. LEGAL ARGUMENT**

17 **A. The HOA is entitled to Summary Judgment on all of Marchai’s claims** 18 **against it.**

19 On October 3 2017, the Honorable Linda Marie Bell entered her summary
20 judgment order in this matter. Exhibit 22. Notice of Entry of Order was filed the next day.

21 *Id.* The 2017 Order states:

22 Issues including commercial reasonableness, SFR as a bona fide
23 purchaser, constitutionality of Chapter 116, and whether the Trustee was
24 the grantor in the HOA foreclosure sale were resolved this Court’s
25 Decision of Order of March 22, 2016. The Court found that Marchai failed
26 to establish that the HOA sale was commercially unreasonable as a
27 matter of law because absent fraud, unfairness, or oppression, an
28 inadequate price is not dispositive of unreasonableness. Further, the
Court found that SFR was not able to establish as a matter of law that it
was a bona fide purchaser and that the HOA’s years of foreclosure notice
proceedings including delinquency notices, defaults, and sale documents
would be a matter for a fact finder. Marchai raised constitutionality
revolving around NRS Chapter 116 involving due process, takings, and

1 void for vagueness. The Court found that Marchai could not show that
2 requirements under Chapter 116 did not meet the notice requirements that
3 would set off due process issues or the legislative enactment of Chapter
4 116 was a governmental taking or a meant to serve a public purpose. Nor
5 could Marchai show that Chapter 116 meets the high standard for
6 unconstitutionally vagueness. Lastly, the Court found that an inartfully
7 drafted foreclosure deed could not be resolved in favor of Marchai. This
8 Court finds that there is no new law to decide in favor of granting summary
9 judgment on these same arguments and the Court will not reconsider
10 these issues already resolved.

11 *Id.* Thus the District Court confirmed in its 2017 Order that it previously resolved
12 in its 2016 Order Marchai's first and second causes of actions related to taking
13 and due process. *Id.* Further, to the extent Marchai's third through sixth cause
14 of action related to taking, due process, or commercial reasonableness, those
15 portion of those causes of action were also resolved by the 2016 Order. *Id.* The
16 2016 Order was not appealed. See Exhibit 23, notice of appeal and case appeal
17 statement.

18 The 2017 Order that was appealed also found that notice was proper
19 stating: "The HOA properly notice U.S. Bank . . . The HOA had no continuing
20 legal duty to notify Marchai under the statute." Exhibit 22. The Nevada Supreme
21 Court did not remand the notice issue. Exhibit 24.

22 Further Quiet Title against the HOA only was dismissed in a separate
23 2017 Order that was not appealed. Exhibit 21.

24 The 2017 Order that was appealed does not address Marchai's fifth cause
25 of action of intentional interference of contract by name. However, the Order
26 recognizes:

27 SFR Investments Pool r v. U.S. Bank, 334 P.3d 408, 411 (Nev. 2014), reh'g
28 denied (Oct. 16, 2014). That super-priority portion of the lien was held by
the Nevada Supreme Court to be a true super-priority lien, which will
extinguish a first deed of trust if foreclosed upon pursuant to Chapter 116's
requirements. *Id.* at 419. Specifically, "[t]he sale of a unit pursuant to NRS
116.91162, 116.31163 and 116.31164 vests in the purchaser the title of

the unit's owner without equity or right of redemption." NRS 116.31166(3); see also *SFR v. U.S. Bank*, 334 P.3d at 412.

Thus NRS 116 allows for a superpriority lien, and any attempt by Marchai or its predecessors to contract around NRS 116 would be void as a matter of law pursuant to the statute. A breach by their borrower that could lead to an NRS 116 should have been contemplated. If Marchai believed that its predecessor contracted around an NRS 116 superiority lien, the statute itself prevented this not any action by the HOA to exercise its rights under the statute in foreclosing. There is simply no evidence to establish intentional interference with contract. There is no evidence that the HOA caused the borrower to stop paying assessments let alone had intent to interfere with a contract, when the contract should contemplate an NRS 116 HOA foreclosure because the contract cannot get around the statute.

To establish tortious or intentional interference with contract, a plaintiff must show: (1) a valid and existing contract; (2) the defendant's knowledge of the contract; (3) intentional acts intended or designed to disrupt the contractual relationship; (4) actual disruption of the contract; and (5) resulting damage. *Sutherland v. Gross*, 105 Nev. 192, 196, 772 P.2d 1287, 1290 (1989), citing *Ramona Manor Convalescent Hosp. v. Care Ent.*, 177 Cal. App.3d 1120, 225 Cal. Rptr. 120, 124 (1986).

The crux of a claim for intentional interference with contract is "whether Plaintiff has proved intentional acts *by Defendant* intended or designed to disrupt Plaintiff's contractual relations..." *J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 275, 71 P.3d 1264, 1268 (2003). Mere knowledge of a contract is insufficient to establish that a defendant intended to disrupt the relationship, particularly when "[defendant's] conduct is not criminal or fraudulent" and there are "[no] other aggravating circumstances." *Id.*, citing *Nat. Right to Life P.A. Com.*, 741 F. Supp. 807, 814 (D. Nev. 1990). A plaintiff must

1 prove that a defendant had a “specific motive or purpose to injure by his interference.”
2 *Id.*; see also *Ramona Manor Convalescent Hosp.*, 177 Cal. at 1130 (“The essential
3 thing is the purpose to cause the result. If the actor does not have this purpose, his
4 conduct does not subject him to liability under this rule ...”)

5 Here, the evidence indicates that HOA accepted borrowers payments throughout
6 the foreclosure process. See Exhibit 2 and 7. Additionally, a lender can step in any
7 time and protect itself from even complete non-payment of assessments by the
8 borrower by paying all or the superpriority portion themselves. This issue was address
9 in the prior summary judgment briefing, it was not appealed by Marchai, not remanded
10 for consideration by the Nevada Supreme Court and should be considered resolved.
11 Alternatively, if it remains as an issue, for the reasons stated above, the HOA is entitled
12 to summary judgment on this cause of action as well.

13 As to Marchai’s Wrongful Foreclosure and Violation of NRS 116.113 causes of
14 action, the *Cranesbill* issue was the limited issue remanded. The *Cranesbill* decision
15 reflects a break from the idea that the payments should just be applied by the Court in
16 hindsight to benefit the Lender. Instead the decision requires a review of the factual
17 reality of how the payments were being applied and the borrower’s understanding
18 regarding their payments. Generally, it is possible borrowers that made partial
19 payments after collections had begun could have been paying only toward the current
20 monthly assessments and not past assessments that make up the superpriority portion
21 of lien. The *Cranesbill* decision also directs a review of whether the borrower would
22 have been paying toward collection costs as separate account that reflected actual
23 expenses the HOA owed to a third party. Still, given the limited facual analysis
24 remaining on the application of the Borrower’s partial payments, the HOA is entitled to
25 summaray judgment on all of Marchai claims.
26
27
28

1 The remaining issue is application of payments. With constitutionality,
2 commercial reasonableness, notice, etc., resolved there was a valid sale here.
3 The HOA does not have a pending lien interest remaining in the subject property
4 following the foreclosure. See NRS 107.080(5) (2013) (providing that a sale pursuant to
5 the provisions of NRS Chapter 107 vests title in the purchaser); *see also SFR Invs. Pool*
6 *1 v. U.S. Bank*, 130 Nev. 742, 746, 334 P.3d 408, 411 (2014) (discussing
7 how HOA foreclosures follow NRS Chapter 107). Additionally, the sale of a unit
8 pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title
9 of the unit's owner without equity or right of redemption. See Nev. Rev. Stat. §
10 116.31166(2)-(3). There was a valid sale and SFR was the Purchaser. The application
11 of payments leaves open whether SFR took subject to the deed of trust, or whether the
12 deed of trust was extinguished by the foreclosure sale, but there is no basis to void the
13 sale, or reason to keep the HOA in the case to continue to trial for the purpose of
14 declaratory relief on whether SFR took title subject to the deed of trust or not.

15
16
17 Additionally, the determination on payments does not leave open a causal nexus
18 to damages against the HOA that conducted a valid but yet to be determined
19 superpriority or subpriority sale. *Cranesbill* directs that either payments went to pay of
20 the superiority portion of lien protecting Marchai's interest in the deed of trust, or some
21 other valid application of the payments directed them to other assessments or collection
22 costs. Marchai took an assignment of interest where its predecessor was aware for
23 years that the Borrower was in collections with HOA, and the predecessor did not pay to
24 protect that interest; and Marchai did not pay to protect the interest when taking the
25 assignment when it did. Marchai is praying that the Borrower that it failed to assist
26 saved them. However, if the Borrower did not, the HOA is not liable as it conducted a
27 valid foreclosure sale.
28

For various reasons an HOA foreclosure sale can be a superpriority or subpriority foreclosure sale. The reality is that the HOA (during this period): 1) was required to provide a non-warranty deed after the foreclosure (see NRS 116.31164(3)(a)); 2) had no obligation to disclose it was an HOA with a superpriority lien;¹ 3) had no obligation to disclose it was foreclosing on a superpriority lien if it has one;² 4) had no obligation to disclose the amount of the superpriority portion of the lien;³ 5) had no obligation to disclose a tender of the superpriority lien;⁴ 6) had no obligation to disclose whether the Federal Housing Finance Agency (FHFA) has an interest in the property.⁵ The court's reviewed good faith in making determinations on the above issues. Similarly, under *Cranesbill* the HOA had no obligation to specifically apply Borrower's partial payments to pay down the superpriority portion of the lien, not doing so was not a wrongful foreclosure or violation of good faith. Therefore, despite a pending determination on title between SFR and Marchai, the court can still find summary judgment in favor of the

¹ Some HOAs do not have a superpriority lien, see *Saticoy Bay LLC Series 4500 Pac. Sun v. Lakeview Loan Servicing, LLC*, 2019 Nev. Unpub. LEXIS 570, 441 P.3d 81, 2019 WL 2158334

² See *Pennymac Corp. v. Javalina Options Ltd.*, 2019 Nev. Unpub. LEXIS 1174, *6, 450 P.3d 915, 2019 WL 5491000, stating: "... nothing in the CC&Rs supports appellant's arguments that the HOA chose to conduct a subpriority-only sale, and... the HOA's failure to delineate the superpriority amount in the foreclosure notices is not evidence of such a choice. Citing: *SFR Inns. Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 757, 334 P.3d 408, 418 (2014) (observing that it was "appropriate" for the notices to state the total lien amount because they are sent to the homeowner and other junior lienholders).

³ *Id.*, and NRS 116 provides that the superpriority is up to nine months of assessments.

⁴ *A Oro, LLC v. Ditech Financial LLC*, 2019 WL 913129, 434 P.3d 929 (Nev. 2019) (unpublished) and *Noonan v. Bayview Loan Servicing, LLC*, 438 P.3d 335 (2019).

⁵ *Id.*, and see *Fannie Mae v. Saticoy Bay LLC Series 8324 Charleston & Fulton Park Unit Owners' Ass'n*, 2020 U.S. Dist. LEXIS 103267, *8, 2020 WL 3103896, stating: "[The HOA] had no duty to announce that it had not obtained Fannie Mae's consent for the sale to extinguish the deed of trust. At the time of this sale in January 2015, the HOA provided the purchaser "a deed without warranty." Nev. Rev. Stat. § 116.31164(3)."

HOA, which was not obligated to step in and protect Marchai in this way from NRS 116, after Marchai and its predecessor failed to protect themselves.

VI. CONCLUSION

Based on the foregoing arguments, the HOA respectfully requests that summary judgment be entered in its favor on all claims for relief set forth in Marchai's complaint.

DATED this 25th day of September, 2020.

LIPSON NEILSON P.C.

/s/ David Ochoa

By: _____

KALEB D. ANDERSON, ESQ.
Nevada Bar No. 7582
DAVID T. OCHOA, ESQ.
Nevada Bar No. 10414
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144

*Attorneys for Defendant
Wyeth Ranch Community Association*

CERTIFICATE OF SERVICE

I certify that on the 25th day of September, 2020, I electronically transmitted the foregoing **DEFENDANT WYETH RANCH COMMUNITY ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT** to the Clerk's Office using the Odyssey eFileNV & Serve system for filing and transmittal to the following Odyssey eFileNV & Serve registrants addressed to:

David J. Merrill, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
david@djmerillpc.com

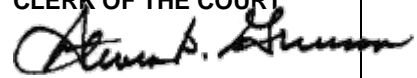
Attorney for Plaintiff Marchai, B.T.

Diana Cline Ebron, Esq.
Jacqueline A. Gilbert, Esq.
Karen L. Hanks, Esq.
KIM GILBERT EBRON
7625 Dean Martin Drive, Suite 110
Las Vegas, NV 89139
diana@kgelegal.com
jackie@kgelegal.com
karen@kgelegal.com

*Attorneys for SFR Investments Pool 1,
LLC*

/s/ Juan Cerezo

An employee of
LIPSON NEILSON P.C.



1 **OMSJ**
2 David J. Merrill
3 Nevada Bar No. 6060
4 David J. Merrill, P.C.
5 10161 Park Run Drive, Suite 150
6 Las Vegas, Nevada 89145
7 Telephone: (702) 566-1935
8 Facsimile: (702) 993-8841
9 Email: david@djmerrillpc.com
10 Attorney for Marchai, B.T.

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

DISTRICT COURT
CLARK COUNTY, NEVADA

MARCHAI, B.T., a Nevada business trust,

Plaintiff,

v.

CRISTELA PEREZ, an individual; *et al.*

Defendants.

Case No.: A-13-689461-C

Dept. No. XI

Consolidated with: A-16-742327-C

AND ALL RELATED CLAIMS AND AC-
TIONS

**Marchai, B.T.'s Opposition to Defendant Wyeth Ranch Community As-
sociation's Motion for Summary Judgment**

Date of Hearing: November 10, 2020

Time of Hearing: 9:00 a.m.

Introduction

In 2008, Wyeth Ranch Community Association instituted an action to enforce its lien. The superpriority portion of Wyeth Ranch's lien was \$752.40. But after Wyeth Ranch instituted an action to enforce its lien, Cristela Perez, the homeowner, paid Wyeth Ranch \$3,390.00, \$2,381.75 of which Wyeth Ranch applied to Perez's account. If Wyeth Ranch applied at least \$752.40 to the superpriority portion of Wyeth Ranch's lien, then Wyeth Ranch had no superpriority lien to foreclose. But how Wyeth Ranch applied Perez's partial payments is the precise

1 issue the Nevada Supreme Court remanded for this Court to decide. And that issue is a factual
2 issue, which this Court cannot decide on summary judgment if genuine issues of material fact ex-
3 ist. They do.

4 Wyeth Ranch's witness, Yvette Saucedo, testified that it first applied payments to the
5 current quarter's association dues and any excess to the oldest dues outstanding. But Saucedo's
6 testimony conflicts with the documentary evidence.

7 A report Wyeth Ranch ran in September 2008 showed that it first applied payments to
8 the oldest association dues. And, after the foreclosure, Wyeth Ranch applied an amount equal to
9 its entire assessment lien, which it could only do if Perez had satisfied the superpriority portion of
10 the lien. Also, Saucedo based her testimony on her mistaken belief that Perez made payments un-
11 der a payment plan. But, again, Wyeth Ranch's documents refute Saucedo's testimony.

12 The conflict between Saucedo's testimony and the documentary evidence creates genuine
13 issues of material fact, which this Court can only resolve at trial. Hence, Marchai asks this Court
14 to deny Wyeth Ranch's motion.

15 **Statement of Facts¹**

16 On July 21, 2004, Cristela Perez, a California resident, purchased the property at 7119
17 Wolf Rivers Avenue, Las Vegas, Nevada 89131 (the Property) for \$457,545.00. (SOF No. 1.) Pe-
18 rez, who purchased the Property as a second home, took title in the Property as a married woman
19 as her sole and separate property. (SOF Nos. 3-4.) To purchase the Property, Perez entered into
20 two loans with Countrywide Home Loans, Inc.—one for \$366,000.00 and a second for
21 \$68,631.00—both of which Countrywide secured by recording two deeds of trust. (SOF No. 5.)

22 The year after she purchased the Property, Perez refinanced her two loans with Country-
23 wide by entering into one InterestFirst Adjustable Rate Note (the Note) with CMG Mortgage,
24

25 ¹ In accordance with N.R.C.P. 56, Marchai contemporaneously filed with this opposition to the motion for
26 summary judgment Marchai, B.T.'s Statement of Undisputed and Disputed Facts in Support of its Opposition to
27 Wyeth Ranch Community Association's Motion for Summary Judgment, which Marchai incorporates by reference.
28 The statement provides a more complete discussion of the entire facts of the case. Marchai tried to limit the state-
ment of facts in the opposition to those most relevant to the arguments raised by the motion. The opposition's cita-
tion to "SOF" refers to the statement of facts and the citation to the "No." refers to the corresponding paragraph
number in the statement of facts.

1 Inc. for \$442,000.00. (SOF No. 6.) CMG Mortgage secured the Note by recording a deed of
2 trust against the Property (the Deed of Trust). (SOF No. 7.) And Countrywide reconveyed its
3 deeds of trust, leaving the Deed of Trust as the first deed of trust. (*See* SOF No. 8.)

4 The following year, Perez obtained a home equity line of credit from U.S. Bank, who se-
5 cured the credit line by recording a second deed of trust. (*See* SOF No. 9.)

6 The Property is in the Wyeth Ranch community, which collected association dues on
7 each quarter's first day. (SOF No. 2, 10.) Wyeth Ranch had no general agreements with home-
8 owners about applying payments or partial payments. (SOF No. 14.) Wyeth Ranch maintained
9 two accounts for the Property: an assessment account and a violation account. (SOF No. 15.) But
10 Wyeth Ranch did *not* maintain separate superpriority and subpriority accounts. (SOF No. 16.)

11 On January 1, 2008, Wyeth Ranch charged Perez a \$420 quarterly assessment. (SOF No.
12 17.) Because Perez failed to pay the assessment within 30 days, on January 30, 2008, Perez be-
13 came delinquent in the payment of her quarterly assessments. (SOF No. 18.) On the first day of
14 the next quarter, Wyeth Ranch charged Perez another \$420 quarterly assessment. (SOF No. 19.)
15 But, on April 16, 2008, Perez paid \$507.60. (SOF No. 20.) Yvette Saucedo, the accounting direc-
16 tor for Complete Association Management Company (CAMCO), Wyeth Ranch's community
17 manager, testified that Wyeth Ranch applied Perez's payment first to the current quarter's (April
18 2008) association dues, and the remainder to the oldest association dues (January 2008). (*See*
19 SOF Nos. 12, 122-26.) When asked how Saucedo knew that Wyeth Ranch applied the payment
20 in the manner she suggested, she testified, "I just know that." (*See* SOF No. 126.)

21 But a report Wyeth Ranch produced conflicts with Saucedo's testimony. (*See* SOF No.
22 127.) The report, which Wyeth Ranch prepared in September 2008, shows that Wyeth Ranch ap-
23 plied the payment first to January 2008's association dues (which the ledger does not show are
24 due) and the remainder to April 2008's association dues. (*See* SOF No. 127.) The following is a
25 clipped image of the report showing the amounts outstanding in September 2008:

WYETH RANCH CA
P. O. BOX 12117
LAS VEGAS, NV 89112

CRISTELA PEREZ
7119 WOLF RIVERS AVE
LAS VEGAS, NV 89131

Property Address: 7119 WOLF RIVERS AVE
Account #: 64081

11632

Code	Date	Amount	Applied	Remaining	Balance	Check#	Memo
LF	1/30/2008	8.30	0.00	8.30	8.30		Late Fee Processed
LF	1/30/2008	75.00	0.00	75.00	81.30		Late Fee Processed
LF	2/29/2008	8.30	0.00	8.30	87.80		Late Fee Processed
LF	3/30/2008	8.30	0.00	8.30	93.90		Late Fee Processed
MA	4/1/2008	420.00	87.60	332.40	428.30		MA
MA	7/1/2008	420.00	0.00	420.00	848.30		MA
LF	7/30/2008	11.29	0.00	11.29	857.59		Late Fee Processed
LF	7/30/2008	75.00	0.00	75.00	932.59		Late Fee Processed
Intent	8/13/2008	50.00	0.00	50.00	982.59		INTENT TO LIEN
LF	8/30/2008	11.29	0.00	11.29	993.88		Late Fee Processed
MA	10/1/2008	420.00	0.00	420.00	1,413.88		MA
Current	30 - 59 Days	60 - 89 Days	>90 Days	Balance:	1,413.88		
431.29	136.29	420.00	426.30				

In other words, Wyeth Ranch first applied the payment to the oldest outstanding association dues. (See SOF No. 128.)

Because Perez did not pay the remainder of April's or July's dues, on September 30, 2008, Alessi & Koenig, LLC, an agent hired by Wyeth Ranch to collect assessments, instituted an action to enforce Wyeth Ranch's lien by sending Perez a Notice of Delinquent Assessment Lien. (See SOF Nos. 21-22.) According to the notice, Perez owed Wyeth Ranch \$1,425.17, including collection costs, attorney's fees, late fees, service charges, and interest. (SOF No. 23.) Alessi recorded the notice. (SOF No. 24.)

While Alessi proceeded with the foreclosure process, Perez made payments towards her association dues. On February 12, 2010, Perez paid \$900.00. (SOF No. 35.) Alessi deducted \$309.60 in collection costs and disbursed the remainder (\$590.40) to Wyeth Ranch, who applied the payment to Perez's account. (SOF Nos. 36-37.) Saucedo again testified that Wyeth Ranch applied this payment first to the January 2010 dues and the remainder to January 2008. (SOF No.

138.) Saucedo testified this was Wyeth Ranch's *unwritten* policy. (SOF No. 138–39.) But the September 2008 report showed that Wyeth Ranch's *policy* was to apply payments to the *oldest* association dues first. (See SOF No. 127–28.) And Wyeth Ranch could *not* have applied Perez's payment to the January 2008 association dues because the September 2008 report shows that Perez already satisfied that payment. (See SOF No. 139.)

After Perez made the \$900 payment, she entered into a payment plan with Alessi that required her to make a \$669.87 payment each month beginning April 1, 2010. (SOF Nos. 134–35.) But Perez *never* made a \$669.87 payment. (SOF No. 137.) Instead, Perez made several, smaller partial payments.

For example, in May 2010, Perez paid \$300.00. (SOF No. 38.) Alessi deducted \$95.40 in collection costs from the payment and disbursed the remainder (\$204.60) to Wyeth Ranch, who applied it to Perez's account. (SOF Nos. 39–40.) Saucedo testified that when a homeowner was not on a payment plan, Wyeth Ranch applied payments to the account "generally." (SOF No. 124.) But when the homeowner was on a payment plan, Wyeth Ranch applied the payments under the plan. (SOF No. 124.) Although Perez and Wyeth Ranch entered into a payment plan, Perez's \$300 payment did not comply with the plan. (Compare SOF No. 38 with SOF Nos. 134–35.) Nevertheless, Saucedo testified that the plan required Wyeth Ranch to apply partial payments first to the current quarter's association dues. (SOF No. 129.) But the payment plan did not require Wyeth Ranch to first apply partial payments to the current quarter's association dues. (SOF No. 130.) Also, the payment plan breakdowns the association dues by *month*, not *quarter*. (SOF No. 130.) And Perez's partial payments were *not* first applied to the current quarter's association dues. (SOF No. 131.) Instead, Alessi first applied the payments to collection costs. (SOF No. 131.) Regardless, Alessi terminated the payment plan on July 2, 2010. (SOF No. 140.)

But Perez continued to make payments towards her assessments:

- In August 2010, Perez paid \$250.00. (SOF No. 43.) Alessi deducted \$77.24 in collection costs and disbursed the remainder (\$172.76) to Wyeth Ranch, who applied it to Perez's account. (SOF Nos. 44–45.)

- In September 2010, Perez made a \$220.00 payment. (SOF No. 46.) Alessi deducted \$67.98 in collection costs and disbursed the remainder (\$152.02) to Wyeth Ranch, who applied it to Perez's account. (SOF Nos. 47–48.)
- In November 2010, Perez paid \$175.00. (SOF No. 49.) Alessi deducted \$48.82 in collection costs and disbursed the remainder (\$126.18) to Wyeth Ranch, who applied it to Perez's account. (SOF Nos. 50–51.)
- In March 2011, Perez paid \$160.00. (SOF No. 52.) Alessi deducted \$40.48 in collection costs and disbursed the remainder (\$119.52) to Wyeth Ranch, who applied it to Perez's account. (SOF Nos. 53–54.)

Perez made none of these payments under a payment plan. (SOF Nos. 141–45.)

According to Wyeth Ranch's records, Alessi entered into a second payment plan with Perez on April 30, 2011. (SOF No. 146.) But Wyeth Ranch produced no documents describing the plan. (SOF No. 146.) Hence, the parties cannot determine whether Perez made any payments consistent with the plan's terms. (SOF No. 146.) Regardless, Alessi terminated the plan on September 30, 2011. (SOF No. 147.) During the possible pendency of the unknown plan, Perez made two payments:

- In May 2011, Perez paid \$160.00. (SOF No. 59.) Alessi deducted \$35.68 in collection costs and disbursed the remainder (\$124.32) to Wyeth Ranch, who applied it to Perez's account. (SOF Nos. 60–61.)
- In August 2011, Perez paid \$165.00. (SOF No. 62.) Alessi deducted \$37.29 in collection costs and disbursed the remainder (\$127.71) to Wyeth Ranch, who applied it to Perez's account. (SOF Nos. 63–64.)

Again, without the payment plan terms, which Wyeth Ranch has not produced, this Court cannot determine whether Perez made these payments consistent with the plan. (SOF No. 146.)

On October 1, 2011, Perez defaulted on her loan from CMG Mortgage. (SOF No. 65.)

But even after Perez defaulted on her loan with CMG Mortgage, she continued to make payments towards her assessments. For example:

- In March 2012, Perez paid \$300.00. (SOF No. 74.) Alessi deducted \$87.30 in collection costs and disbursed the remainder (\$212.70) to Wyeth Ranch, who applied it to Perez's account. (SOF No. 75–76.)
- In May 2012, Perez paid \$295.00. (SOF No. 77.) Alessi deducted \$85.84 in collection costs and disbursed the remainder (\$209.16) to Wyeth Ranch, who applied it to Perez's account. (SOF Nos. 78–79.)

Again, Perez made neither payment under a payment plan. (SOF No. 148.)

At the end of May 2012, Mortgage Electronic Registration Systems, Inc., as the nominee for CMG Mortgage, assigned the Deed of Trust to CitiMortgage, Inc. (SOF No. 80.) CMG Mortgage also endorsed the Note payable to the order of CitiMortgage. (SOF No. 81.) And CitiMortgage recorded the assignment. (SOF No. 82.)

In July 2012, CitiMortgage, assigned the Deed of Trust to U.S. Bank, N.A., as trustee for Stanwich Mortgage Loan Trust, Series 2012-6. (SOF No. 88.) CitiMortgage also signed an allonge that endorsed the Note payable to U.S. Bank. (SOF No. 89.) And U.S. Bank recorded the assignment. (SOF No. 90.)

In the summer and fall of 2012, Perez again made two payments towards her assessments:

- In July 2012, Perez paid \$165.00. (SOF No. 85.) Alessi deducted \$43.72 in collection costs and disbursed the remainder (\$121.28) to Wyeth Ranch, who applied it to Perez's account. (SOF Nos. 86–87.)
- In November 2012, Perez made a \$300.00 payment. (SOF No. 98.) Alessi deducted \$78.90 in collection costs and disbursed the remainder (\$221.10) to Wyeth Ranch, who applied it to Perez's account. (SOF Nos. 99–100.)

Again, Perez made neither payment under a payment plan. (SOF No. 148.)

In March 2013, U.S. Bank assigned its interest in the Deed of Trust to Marchai, B.T., a Nevada business trust, which it recorded with the Clark County Recorder on August 12, 2013.²

² Even though Marchai acquired its interest in the note and deed of trust in March 2013, the loan's prior servicer did not transfer the servicing information for the loan to Marchai's loan servicing company for nearly four months (until July 2013). (*See* SOF at 9, n.3.) During this time U.S. Bank did not inform Marchai of Wyeth Ranch's lien or its efforts to foreclose upon that lien. (*Id.*) Because of U.S. Bank's delay in sending the loan servicing file, the

(SOF No. 101.) Contemporaneously with the assignment, U.S. Bank executed an allonge endorsing the Note to Marchai. (SOF No. 102.)

In July 2013, Alessi recorded a Notice of Trustee's Sale. (SOF Nos. 103–06.) The notice claimed that Perez owed \$14,090.80 in unpaid assessments. (SOF No. 104.) According to the notice, Alessi intended to sell the Property at a foreclosure sale on August 28, 2013. (SOF No. 105.)

On August 27, 2013, less than 24 hours before the foreclosure sale, Peak Loan Servicing, Marchai's servicer, learned about the trustee's sale. (SOF No. 107.) Upon learning of the sale, Peak contacted Alessi and asked it to postpone the sale so it could pay the lien. (SOF No. 107.)

On the morning of the day of the sale (August 28, 2013), Naomi Eden at Alessi emailed Brittney O'Connor, CAMCO's accounting clerk, stating that "[t]he mortgage company is asking for an extension so they can get it paid off." (See SOF No. 108.) Eden asked O'Connor if Alessi could postpone the sale. (SOF No. 108.) O'Connor responded to the email asking Eden how many oral postponements Wyeth Ranch had remaining. (SOF No. 109.) Eden advised O'Connor that Wyeth Ranch still had three postponements left. (SOF No. 110.)

O'Connor then emailed Michele Weaver, a manager at CAMCO. (SOF No. 111.) O'Connor notified Weaver that Wyeth Ranch had a foreclosure sale set for that morning, that Wyeth Ranch could still postpone the sale three times, and that "[t]he mortgage company would like an extension so they can pay off the account." (SOF No. 111.) In her email to Weaver, O'Connor said she "will use all postponements then go to sale on the 3rd sale date set," "[u]nless otherwise directed by the board." (SOF No. 112.) Unless an association directed otherwise, postponing foreclosure sales until the third sale date was CAMCO's standard practice. (SOF No. 112.) According to the last email in the chain, Weaver "received confirmation" that Wyeth Ranch did "NOT want to postpone." (SOF No. 113.) Wyeth Ranch refused to postpone the sale so Marchai could pay off the account and proceeded with the foreclosure. (SOF No. 114.)

On August 28, 2013, Alessi conducted the sale. (SOF No. 115.) At the sale, SFR Investments Pool 1, LLC submitted the winning bid of \$21,000.00. (SOF No. 116.)

assignment of the deed of trust from U.S. Bank to Marchai did not get recorded until August 12, 2013, just two weeks before Wyeth Ranch's foreclosure. (*Id.*)

At the time of the foreclosure, the assessment ledger shows that Perez owed Wyeth Ranch \$10,679.12, which included assessments, late fees, and interest. (SOF No. 117.) Wyeth Ranch received payment in full (\$10,679.12) of all amounts owed on its assessment ledger. (SOF No. 118.)

Procedural History

In 2016, this Court entered a Decision and Order on competing motions for summary judgment filed by SFR and Marchai. (Decision & Order (Mar. 22, 2016).) This Court concluded that genuine issues of material fact precluded it from ruling that Perez satisfied the superpriority portion of Wyeth Ranch's lien through the \$3,390 in payments Perez made after Wyeth Ranch instituted an action to enforce the lien. (*See id.* at 21:6–19.) After this Court entered its decision, it consolidated this action with an action brought by Marchai that asserted claims against Wyeth Ranch. (*See* Order Lifting Stay & Consolidated Cases at 2:3–5 (Dec. 13, 2016).)

Despite previously deciding that genuine issues of material fact precluded summary judgment, in 2017, SFR again moved for summary judgment. (*See* SFR Invs. Pool 1, LLC's Mot. for Summ. J. (July 21, 2017).) And so did Wyeth Ranch. (*See* Def. Wyeth Ranch Cmty. Ass'n's Mot. for Summ. J. (July 21, 2017).) But this time, this Court not only denied SFR and Wyeth Ranch's motions for summary judgment, it entered summary judgment for Marchai. (*See* Decision & Order at 14:2–5 (Oct. 3, 2017).) This Court concluded that Perez's payments satisfied the superpriority portion of Wyeth Ranch's lien. (*Id.* at 13:15–26.) SFR (but not Wyeth Ranch) appealed this Court's decision. (*See* Notice of Appeal (Nov. 3, 2017).)

The Nevada Supreme Court vacated the judgment and remanded. (*See* Order Vacating J. & Remanding.) The court affirmed the district court's conclusion that the 2008 notice of delinquent assessment was the operative notice for calculating the superpriority portion of the lien. (*Id.* at 1–2.) But the Court remanded based upon its decision in *9352 Cranesbill Trust v. Wells Fargo Bank, N.A.*, 136 Nev. 76, 459 P.3d 227 (2020), for a determination whether Perez's payments satisfied the lien's superpriority portion. (*Id.* at 2–3.)

The court in *Cranesbill* left the district courts to determine both legal and factual issues. The court concluded that the district court must first determine whether the association treated the superpriority and subpriority portions of the lien as separate accounts or one running account. *9352 Cranesbill Trust*, 136 Nev. at 81, 459 P.3d at 231–32. After making that determination, the district court must decide whether the parties had an agreement directing the application of payments, whether the debtor specifically directed the application of payments to certain obligations at the time of payment, how the creditor applied the payments, and potentially, the district court must weigh the equities concerning the application of payments. *Id.* at 80–81, 459 P.3d at 231. The Nevada Supreme Court concluded that these issues raised genuine issues of material fact for which summary judgment is not proper. *Id.* at 81, 459 P.3d at 282.

Nevertheless, Wyeth Ranch moved for summary judgment before this Court had an opportunity to consider the evidence and issue a ruling on the issues remanded. But because genuine issues of material fact preclude summary judgment, this Court should deny the motion. *See id.*

Argument

A. Unless Wyeth Ranch concedes that it foreclosed upon a subpriority lien, genuine issues of material fact about how Wyeth Ranch applied Perez’s partial payments preclude summary judgment on Marchai’s wrongful foreclosure claim.

Marchai’s third claim for relief contends that Wyeth Ranch wrongfully foreclosed upon the property as a superpriority foreclosure because Perez paid the lien’s superpriority part. (*See* Compl. at 9–10 (Aug. 25, 2016).) Despite evidence demonstrating that Wyeth Ranch foreclosed upon a subpriority lien, Wyeth Ranch has not conceded this. Instead, Wyeth Ranch’s witness testified that Perez’s payments did not satisfy the superpriority portion of the lien. But because her testimony directly conflicts with documentary evidence, genuine issues of material fact prevent this Court from granting summary judgment on Marchai’s wrongful foreclosure claim.

Under Nevada law, a wrongful foreclosure occurs when “no breach of condition or failure of performance existed . . . which would have authorized the foreclosure.” *Collins v. Union Fed. Sav. & Loan Ass’n*, 99 Nev. 284, 304, 662 P.2d 610, 623 (1983). Thus, “the material issue of fact

1 in a wrongful foreclosure claim is whether the trustor was in default when the power of sale was
2 exercised.” *Id.*

3 Here, it is indisputable that Perez defaulted on subpriority amounts of Wyeth Ranch’s
4 lien. Hence, if Wyeth Ranch foreclosed upon a subpriority lien, then Marchai has no claim for
5 wrongful foreclosure. But if Wyeth Ranch contends that it foreclosed upon a lien with both su-
6 perpriority and subpriority amounts, genuine issues of material fact preclude summary judgment
7 because the evidence supports a finding that Perez satisfied the lien’s superpriority portion.

8 In *SFR Investments Pool 1 v. U.S. Bank, N.A.*, the Nevada Supreme Court concluded that
9 the superpriority portion of an association’s lien consists “of the last nine months of unpaid
10 HOA dues.” 130 Nev. 742, 745, 334 P.3d 408, 411 (2014) (emphasis added). The court didn’t say
11 that the superpriority portion of the lien consisted of any nine months of HOA dues but specified
12 that it is the “last nine months.” *Id.* (emphasis added).

13 But the Court’s opinion left unresolved the question of the last nine months from when?
14 NRS 116 and *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JP Morgan Chase Bank, N.A.* an-
15 swered the question. NRS 116 limits the superpriority portion of an association’s lien to the “9
16 months immediately preceding institution of an action to enforce the lien.” NRS § 116.3116(2).
17 An association institutes an action to enforce the lien through the service of a notice of delinquent
18 assessment. *See Saticoy Bay LLC Series 2021 Gray Eagle Way v. JP Morgan Chase Bank, N.A.*, 133
19 Nev. 21, 26, 388 P.3d 226, 231 (2017). The superpriority portion of the lien does not include col-
20 lection fees, late fees, interest, or foreclosure costs. *Horizons at Seven Hills Homeowners Ass’n v.*
21 *Ikon Holdings, LLC*, 132 Nev. 362, 371, 373 P.3d 66, 70 (2016). Thus, the superpriority portion of
22 an association’s lien includes no more than the delinquent association dues for the nine months
23 before the association serves the notice of delinquent assessment. *See* NRS § 116.3116(2); *Saticoy*
24 *Bay LLC Series 2021 Gray Eagle Way*, 133 Nev. at 26, 388 P.3d at 231; *Horizons at Seven Hills*
25 *Homeowners Ass’n*, 132 Nev. at 371, 373 P.3d at 70.

26 Here, Wyeth Ranch served the notice of delinquent assessment on September 30, 2008.
27 Hence, any association dues that came due between December 30, 2007 and September 30,
28 2008—the nine months before Wyeth Ranch instituted an action to enforce its lien—had

superpriority status.³ See NRS § 116.3116(2); *Saticoy Bay LLC Series 2021 Gray Eagle Way*, 133 Nev. at 26, 388 P.3d at 231; *Horizons at Seven Hills Homeowners Ass’n*, 132 Nev. at 371, 373 P.3d at 70.

Wyeth Ranch assessed three quarterly charges of \$420.00 in dues during the nine months preceding its institution of an action to enforce its lien: January 1, April 1, and July 1, 2008. And Perez’s first delinquency concerned the association dues due on January 1, 2008.

But on April 16, 2008, Perez paid Wyeth Ranch \$507.60. Saucedo testified that Wyeth Ranch applied the first \$420 to the April 2008 association dues and the remaining \$87.60 to January 2008’s association dues. But a report Wyeth Ranch prepared in September 2008, shows that Wyeth Ranch applied the payment first to the oldest dues (January 2008) and the remainder to the next oldest dues (April 2008). Either way, Wyeth Ranch’s superpriority lien totaled \$752.40. See NRS § 116.3116(2); *Saticoy Bay LLC Series 2021 Gray Eagle Way*, 133 Nev. at 26, 388 P.3d at 231; *Horizons at Seven Hills Homeowners Ass’n*, 132 Nev. at 371, 373 P.3d at 70.

But after Wyeth Ranch instituted an action to enforce its lien, Perez made 12 payments, which totaled \$3,390.00. Alessi applied the first fruits of those payments, totaling \$1,008.25, to collection costs. Alessi then paid Wyeth Ranch the remainder, totaling \$2,381.75, which Wyeth Ranch applied to Perez’s account. The following chart reflects the date and amount of Perez’s payments to Alessi and the date and amount of the payments Wyeth Ranch applied to Perez’s account:

Date of Payment to Alessi	Amount of Payment to Alessi	Date Wyeth Ranch Applied Payment to Perez’s Account	Amount of Payment Wyeth Ranch Applied to Perez’s Account
02/12/2010	\$900.00	03/02/2010	\$590.40
05/11/2010	\$300.00	06/08/2010	\$204.60
08/02/2010	\$250.00	08/20/2010	\$172.76
09/29/2010	\$220.00	10/15/2010	\$152.02

³ In this Court and in the Nevada Supreme Court, SFR argued that the November 29, 2011 notice of delinquent assessment was the operative notice for the institution of an action to enforce the lien. But this Court previously rejected that argument and the Nevada Supreme Court affirmed that the September 2008 notice of delinquent assessment was the operative notice for the institution of an action to enforce the lien. (See Order Vacating J. & Remanding at 1–2.)

Date of Payment to Alessi	Amount of Payment to Alessi	Date Wyeth Ranch Applied Payment to Perez's Account	Amount of Payment Wyeth Ranch Applied to Perez's Account
11/30/2010	\$175.00	12/16/2010	\$126.18
03/10/2011	\$160.00	03/22/2011	\$119.52
05/23/2011	\$160.00	06/16/2011	\$124.32
08/04/2011	\$165.00	08/18/2011	\$127.71
03/19/2012	\$300.00	04/03/2012	\$212.70
05/07/2012	\$295.00	05/23/2012	\$209.16
07/26/2012	\$165.00	08/27/2012	\$121.28
11/13/2012	\$300.00	12/14/2012	\$221.10
Totals	\$3,390.00		\$2,381.75

If Wyeth Ranch applied at least \$752.40 of the \$2,381.75 to the lien's superpriority portion, then Perez satisfied the lien's superpriority part, Wyeth Ranch could not have foreclosed upon the lien's superpriority part, and any claim it did results in a wrongful foreclosure.

Sauceda testified that Wyeth Ranch applied each payment to the current quarter's dues and any remainder to the oldest outstanding dues. Hence, if this Court believes Saucedo's testimony, then Perez owed superpriority amounts when Wyeth Ranch foreclosed.⁴ But Saucedo's testimony is not credible.

Sauceda's testimony is belied by (1) the only document Wyeth Ranch produced that conclusively demonstrates how it applied payments; (2) Wyeth Ranch's application of payments after the foreclosure; and (3) Saucedo's mistaken belief that Perez had a payment plan when it made each payment.

1. The only document Wyeth Ranch produced that definitively demonstrates how it applied payments reveals that Wyeth Ranch applied payments to the oldest dues first, which directly contradicts Saucedo's testimony.

Although Wyeth Ranch produced multiple ledgers, those ledgers show charges and payments but do not reveal how Wyeth Ranch applied the payments. Saucedo testified that Wyeth Ranch applied payments first to the current quarter's dues and any remainder to older dues. But

⁴ The only payment that exceeded the amount of the current quarter's dues was the \$590.40 Wyeth Ranch applied to Perez's account on March 2, 2010. If Saucedo is believed, this payment retired the January 1, 2010 charge of \$478.50 and Wyeth Ranch applied the remainder to January 2008's dues. Hence, according to Saucedo, Wyeth Ranch had a \$640.50 superpriority lien at the time of its foreclosure.

her testimony is directly contradicted by the *one* document Wyeth Ranch produced, which definitively shows how it applied Perez's payments.

On April 16, 2008, Perez paid Wyeth Ranch \$507.60. Saucedo testified that Wyeth Ranch applied \$420 to April 2008's dues and the remaining \$87.60 to the outstanding January 2008 dues. But Wyeth Ranch's report shows differently. The report, which Wyeth Ranch ran less than two weeks before instituting an action to enforce its lien, reveals the amounts outstanding as of September 17, 2008. According to the report, Perez still owed the April 2008 payment but did not owe the January 2008 payment. In other words, contrary to Saucedo's testimony, Wyeth Ranch first applied Perez's \$507.60 payment to the *oldest dues outstanding*—January 2008. The report also demonstrates that Wyeth Ranch applied the remaining \$87.60 to the *next oldest dues*—April 2008. Wyeth Ranch cannot now change how it applied the payments. *See 9352 Cranesbill Trust*, 136 Nev. at 80, 459 P.3d at 231.

Saucedo's testimony conflicts with Wyeth Ranch's documents. Hence, genuine issues of material fact exist that prevent summary judgment.

2. Wyeth Ranch received and applied the entire remaining balance of its assessment lien following its foreclosure, which it could have done *only* if Perez already had satisfied the lien's superpriority portion.

At the time of Wyeth Ranch's foreclosure, Nevada law required the association to apply the proceeds of sale in the following order:

- (1) The reasonable expenses of sale;
- (2) The reasonable expenses of securing possession before sale, holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by the declaration, reasonable attorney's fees and other legal expenses incurred by the association;
- (3) Satisfaction of the association's lien;
- (4) Satisfaction in the order of priority of any subordinate claim of record; and
- (5) Remittance of any excess to the unit's owner.

NRS § 116.31164(3)(c) (2005). If a portion of Wyeth Ranch's lien had superpriority status when it foreclosed, Wyeth Ranch (after deducting the foreclosure costs and costs to secure possession) first had to satisfy the superpriority portion of the lien and then remit the excess to Marchai, the

subordinate lien holder. *See id.*; *see also Bank of Am., N.A. v. Las Vegas Rental & Repair, LLC Series 57*, 451 P.3d 547 (Nev. 2019) (Unpublished) (recognizing that associations must remit excess proceeds to the first deed of trust holder after satisfying the lien’s superpriority portion). But that is not what happened.

At the foreclosure, SFR submitted the winning bid of \$21,000. After Alessi satisfied the foreclosure costs, it remitted \$10,679.12 to Wyeth Ranch, which consisted of the entire remaining balance of Wyeth Ranch’s assessment lien. Wyeth Ranch applied that balance to Perez’s account. But if Saucedo’s testimony is accurate, Wyeth Ranch could only apply \$640.50 to its lien and should have remitted the remaining \$10,038.62 to Marchai. It didn’t. And Wyeth Ranch cannot now change how it applied the payments. *See 9352 Cranesbill Trust*, 136 Nev. at 80, 459 P.3d at 231

Further, this Court must presume that Wyeth Ranch followed the law when it applied the entire \$10,679.12 to Perez’s account. *See NRS § 47.250(16)* (creating a disputable presumption that “the law has been obeyed.”); *see also Nationstar Mortg., LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133 Nev. 740, 746, 405 P.3d 641, 646 (2017) (applying the presumption in NRS § 47.250(16) in an association foreclosure case). When Wyeth Ranch applied the entire \$10,679.12 to Perez’s account, it could only have done so consistently with the law if Perez’s prior payments had satisfied the lien’s superpriority portion. *See NRS § 116.31164(3)(c)*; *see also Las Vegas Rental & Repair, LLC Series 57*, 451 P.3d 547 (Nev. 2019). Hence, Wyeth Ranch’s application of payments following the foreclosure demonstrates that Perez had already satisfied the lien’s superpriority portion.⁵ If Wyeth Ranch contends otherwise, then its foreclosure was wrongful. But genuine issues of material fact preclude this Court from making this determination.

⁵ Presumably Wyeth Ranch will argue that it did not understand the law at the time of the foreclosure when it applied the full amount of the proceeds to Perez’s account. But, “Everyone is presumed to know the law and this presumption is not even rebuttable.” *See JPMorgan Chase Bank, N.A. v. SFR Invs. Pool 1, LLC*, 414 P.3d 812 (Nev. 2018) (Unpublished) (quoting *Smith v. State*, 38 Nev. 477, 481, 151 P. 512, 513 (1915)).

1 **3. Saucedo based her testimony that Wyeth Ranch applied Perez's partial payments to the cur-**
2 **rent quarter's association dues on an incorrect assumption that Perez made each payment un-**
3 **der a payment plan.**

4 During her deposition, Saucedo testified that when a homeowner was not on a payment
5 plan, Wyeth Ranch applied payments to the account generally. And we know from the report run
6 in September 2008 that when Wyeth Ranch applied payments to the account, it applied them to
7 the oldest outstanding association dues first. But Saucedo testified that when a homeowner is on
8 a payment plan, the association applied the payments to the current quarter's association dues as
9 specified in the payment plan. Again, Saucedo's testimony is not credible.

10 Contrary to Saucedo's testimony, the payment plan details Wyeth Ranch produced do
11 not require the application of payments first to the current quarter's association dues. Also,
12 Perez's payments were *not* first applied to the current quarter's association dues. Instead, they
13 first were applied to Alessi's collection costs. And Perez made *no payments* consistent with the
14 terms of any payment plans.

15 Further, Saucedo's testimony presumes that Perez made payments under a payment plan.
16 But Perez made most of her payments when she was not under the terms of any payment plan.
17 The payments shaded green in the chart above reflect Perez's payments made while she was not
18 under the terms of any payment plan. Those payments equal \$1,925.12, more than twice the
19 lien's superpriority portion. Hence, if Wyeth Ranch applied those payments to the account "gen-
20 erally," then Perez's payments satisfied the lien's superpriority part. If Wyeth Ranch claims oth-
21 erwise, then it conducted a wrongful foreclosure. But genuine issues of material fact preclude this
22 Court from determining this issue without first considering the evidence.

23 **B. The same genuine issues of material fact preclude this Court from granting summary judg-**
24 **ment on Marchai's claim under NRS § 116.1113.**

25 NRS § 116.1113 imposes an obligation of good faith in the performance or enforcement of
26 every contract or duty governed by NRS Chapter 116. NRS § 116.1113. Here, Marchai asserted a
27 claim against Wyeth Ranch for acting in bad faith when it foreclosed its lien. (*See* Compl. at 11.)
28 Genuine issues of material fact preclude this Court from entering summary judgment for Wyeth
Ranch on this claim.

As discussed above in the context of wrongful foreclosure, if this Court concludes (as it should) that Perez's payments satisfied the lien's superpriority portion, then a contention by Wyeth Ranch that it foreclosed upon a superpriority lien is bad faith. And if this Court decides that Perez did not satisfy the lien's superpriority portion, then Wyeth Ranch's receipt of excess funds above its superpriority lien is bad faith. *See Bank of Am., N.A. v. Thomas Jessup, LLC Series VII*, 462 P.3d 255 (Nev. 2020) (Unpublished) (reversing a judgment against the first deed of trust holder's claim under NRS § 116.1113 and concluding that if the association foreclosed on a superpriority lien, the first deed of trust holder is entitled to excess proceeds from the foreclosure). But this Court must first consider the evidence and resolve the conflict between Saucedo's testimony and Wyeth Ranch's documents before it can decide whether Wyeth Ranch acted in bad faith. Hence, this Court should deny Wyeth Ranch's motion.

C. Genuine issues of material fact preclude this Court from granting summary judgment on Marchai's claim for intentional inference with contractual relations.

To establish a claim for intentional interference with contract, Marchai must show a valid and existing contract, Wyeth Ranch's knowledge of the contract, intentional acts intended or designed to disrupt the contractual relationship, actual disruption of the contract, and resulting damage. *J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 274, 71 P.3d 1264, 1267 (2003). Wyeth Ranch cannot dispute that Marchai has a valid contract with Perez, it knew of the contract, Wyeth Ranch's foreclosure disrupted the contract, and that Marchai suffered damage. *See id.* Instead, Wyeth Ranch argues that Marchai has no evidence that Wyeth Ranch intended to interfere with this contract. However, at a minimum, Wyeth Ranch's arguments create a genuine issue of material fact.

Wyeth Ranch argues that Marchai has no evidence it intended to disrupt the contract between Marchai and Perez. (*See Mot.* at 10:22–11:13.) But Wyeth Ranch's intent is a factual issue. *See Bank of N.Y. v. Fremont Gen. Corp.*, 523 F.3d 902, 911 (9th Cir. 2008). Marchai has presented evidence that Perez satisfied the superpriority portion of the lien. Wyeth Ranch knew (or should have known) that Perez satisfied the superpriority portion of the lien. Yet Wyeth Ranch proceeded with the foreclosure (despite Marchai's reasonable request for a brief postponement). If

Wyeth Ranch claims it foreclosed upon the lien's superpriority portion despite knowing it was satisfied, this provides evidence of intent to interfere with Marchai's contract. Because this Court must view the evidence in a light most favorable to Marchai, this Court should deny Wyeth Ranch's motion for summary judgment. *See Anderson v. Mandalay Corp.*, 131 Nev. 825, 829, 358 P.3d 242, 245 (2015) (quoting *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005)).


Conclusion

The Nevada Supreme Court remanded this action to this Court for a determination of whether Perez satisfied the superpriority portion of Wyeth Ranch's lien. While Marchai firmly believes that the documentary evidence conclusively establishes that Wyeth Ranch applied Perez's payments to the oldest association dues and satisfied the lien's superpriority portion, Wyeth Ranch's witness testified contrary to what its documents describe. That creates a genuine issue of material fact, which this Court cannot resolve on summary judgment. Hence, Marchai asks this Court to deny the motion.

Dated this 19th day of October 2020.

David J. Merrill, P.C.

By:



David J. Merrill
Nevada Bar No. 6060
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
(702) 566-1935

Attorney for Marchai, B.T.

Certificate of Service

I certify that on the 19th day of October 2020, I served a copy of Marchai, B.T.'s Opposition to Defendant Wyeth Ranch Community Association's Motion for Summary Judgment electronically to the following through the Court's electronic service system:

Kim Gilbert Ebron

Diana Cline Ebron
E-Service for Kim Gilbert Ebron
Michael L. Sturm
Tomas Valerio

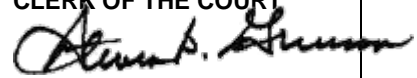
diana@kgelegal.com
eservice@kgelegal.com
mike@kgelegal.com
staff@kgelegal.com

Lipson, Neilson, Cole, Seltzer & Garin, P.C.

Brenda Correa
Kaleb Anderson
Megan Hummel
Renee Rittenhouse
Susana Nutt
Juan Cerezo
David Ochoa

bcorrea@lipsonneilson.com
kanderson@lipsonneilson.com
mhummel@lipsonneilson.com
rrittenhouse@lipsonneilson.com
snutt@lipsonneilson.com
jcerezo@lipsonneilson.com
dochoa@lipsonneilson.com


An employee of David J. Merrill, P.C.



STAT
David J. Merrill
Nevada Bar No. 6060
David J. Merrill, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 566-1935
Facsimile: (702) 993-8841
Email: david@djmerrillpc.com
Attorney for Marchai, B.T.

DISTRICT COURT
CLARK COUNTY, NEVADA

MARCHAI, B.T., a Nevada business trust,

Plaintiff,

v.

CRISTELA PEREZ, an individual; *et al.*

Defendants.

Case No.: A-13-689461-C

Dept. No. XI

Consolidated with: A-16-742327-C

AND ALL RELATED CLAIMS AND AC-
TIONS

**Marchai, B.T.'s Statement of Undisputed and Disputed Facts in Support of its Opposi-
tion to Wyeth Ranch Community Association's Motion for Summary Judgment**

Undisputed Facts

1. On July 21, 2004, Cristela Perez, a California resident, purchased from Pulte Homes the property at 7119 Wolf Rivers Avenue, Las Vegas, Nevada 89131 (the Property) for \$457,545.00. (App. of Exs. to Marchai, B.T.'s Mot. for Summ. J. (Jan. 14, 2016) ("App.") at 2-3; 22-25; 27-30.)

2. The Property is in the Wyeth Ranch community. (*See* Dep. of NRCP 30(b)(6) Witness Yvette Saucedo at 9:18-10:11, attached as Ex. A.)

3. Perez took title in the Property as a married woman as her sole and separate prop-
erty. (App. at 27.)

1 4. Perez purchased the Property as a second home. (App. at 53–54.)

2 5. To purchase the Property, Perez entered into two loans with Countrywide Home
3 Loans, Inc.—one for \$366,000.00 and a second for \$68,631.00—both of which Countrywide se-
4 cured by recording two deeds of trust. (App. at 32–58; 60–71.)

5 6. On October 19, 2005, Perez refinanced her two loans with Countrywide by enter-
6 ing into one InterestFirst Adjustable Rate Note (the Note) with CMG Mortgage, Inc. for
7 \$442,000.00. (App. at 201, 205–213.)

8 7. On November 9, 2005, CMG Mortgage secured the Note by recording a Deed of
9 Trust against the Property. (App. at 72–94.)

10 8. On November 21, 2005, Countrywide reconveyed its deeds of trust. (App. at 3, 5–
11 10.)

12 9. On April 6, 2006, U.S. Bank, N.A. recorded a deed of trust against the Property to
13 secure a home equity line of credit that U.S. Bank extended to Perez in January 2006. (App. at
14 249–57.)

15 10. The Wyeth Ranch Community Association collected association dues on the first
16 day of each quarter. (App. at 96.)

17 11. In 2008, Wyeth Ranch collected \$420.00 per quarter in dues. (App. at 96.)

18 12. Complete Association Management Company acted as the community manage-
19 ment company for Wyeth Ranch. (Sauceda Dep. at 8:16–9:3, 9:18–21.)

20 13. Wyeth Ranch retained Alessi & Koenig, LLC as its collection agent, who collected
21 delinquent assessments from Perez. (Sauceda Dep. at 9:22–10:11.)

22 14. Wyeth Ranch had no general agreements with the homeowners about applying
23 payments or partial payments. (Sauceda Dep. at 11:19–23.)

24 15. Wyeth Ranch maintained two accounts for the Property: an assessment account
25 and a violation account. (Sauceda Dep. at 15:4–7.)

26 16. Wyeth Ranch did not maintain separate superpriority and subpriority accounts for
27 the Property. (Sauceda Dep. at 15:11–20.)
28

1 17. On January 1, 2008, Wyeth Ranch charged Perez a \$420 quarterly assessment.
2 (App. at 98.)

3 18. On January 30, 2008, Perez became delinquent in the payment of her quarterly as-
4 sessments. (App. at 98.)

5 19. On April 1, 2008, Wyeth Ranch charged Perez a \$420 quarterly assessment. (App.
6 at 98.)

7 20. On April 16, 2008, Wyeth Ranch applied a \$507.60 payment to Perez's account.
8 (App. at 98.)

9 21. On July 1, 2008, Wyeth Ranch charged Perez a \$420 quarterly assessment. (App.
10 at 98.)

11 22. On September 30, 2008, Alessi instituted an action to enforce Wyeth Ranch's lien
12 by sending Perez a Notice of Delinquent Assessment Lien. (App. 102-03.)

13 23. According to the Notice of Delinquent Assessment Lien, Perez owed Wyeth
14 Ranch \$1,425.17, including collection costs, attorney's fees, late fees, service charges, and inter-
15 est.¹ (App. at 103.)

16 24. Alessi recorded the Notice of Delinquent Assessment Lien on October 8, 2008.
17 (App. at 3, 12.)

18 25. In 2009, Wyeth Ranch increased its assessments from \$420.00 per quarter to
19 \$457.50 per quarter. (App. at 98.)

20 26. On January 5, 2009, Alessi recorded a Notice of Default and Election to Sell Un-
21 der Homeowners Association Lien on behalf of Wyeth Ranch. (App. at 105.)

22 27. According to the notice of default, Perez owed Wyeth Ranch \$3,096.46 as of De-
23 cember 17, 2008. (App. at 105.)

24 28. On November 5, 2009, Wyeth Ranch executed an Authorization to Conclude
25 Non-Judicial Foreclosure and Conduct Trustee Sale. Wyeth Ranch authorized Alessi to proceed
26 with the non-judicial foreclosure of its assessment lien. (App. at 3, 259-60, 262.)

27 ¹ The Notice of Delinquent Assessment Lien incorrectly calculated the amount owed. As of September 30,
28 2008, Perez owed only \$1,005.17. (See App. at 98.)

29. According to Wyeth Ranch, Perez owed \$3,330.32 in assessments. (App. at 262.)
30. In 2010, Wyeth Ranch increased its assessments from \$457.50 to \$478.50 per quarter. (App. at 99.)
31. Under Wyeth Ranch's authorization, on January 14, 2010, Alessi recorded a Notice of Trustee's Sale, which set a foreclosure sale for February 17, 2010. (App. at 112.)
32. The Notice of Trustee's Sale stated Wyeth Ranch's intention to foreclose the lien recorded on October 8, 2008. (App. at 112.)
33. According to the notice, Perez owed Wyeth Ranch \$6,964.25 for unpaid assessments. (App. at 112.)
34. On February 3, 2010, Alessi sent a demand to Perez and her husband, Robert Rose, in which Alessi claimed that Perez owed Wyeth Ranch \$6,977.61. (App. at 118.)
35. On February 12, 2010, Perez paid Alessi \$900.00. (App. at 120.)
36. Alessi deducted \$309.60 in collection costs from the \$900 payment and disbursed the remainder (\$590.40) to Wyeth Ranch. (App. at 99, 120; Saucedo Dep. at 22:8-23:11.)
37. Wyeth Ranch applied the \$590.40 payment to Perez's account on March 2, 2010. (App. at 99.)
38. On May 11, 2010, Perez paid Alessi \$300.00. (App. at 125.)
39. Alessi deducted \$95.40 in collection costs from the \$300 payment and disbursed the remainder (\$204.60) to Wyeth Ranch. (App. at 99, 125; Saucedo Dep. at 30:19-32:1.)
40. On June 8, 2010, Wyeth Ranch applied the \$204.60 to Perez's account. (App. at 99.)
41. On July 13, 2010, Alessi sent Perez a Pre-Notice of Trustee Sale Notification based upon the Notice of Delinquent Assessment Lien recorded on October 8, 2008, and the Notice of Default and Election to Sell Recorded on January 5, 2009. (App. at 127.)
42. The Pre-Notice of Trustee's Sale demanded payment from Perez for \$19,071.21. (App. at 127.)
43. On August 2, 2010, Perez paid Alessi \$250.00. (App. at 129.)

44. Alessi deducted \$77.24 in collection costs from the \$250 payment and disbursed the remainder (\$172.76) to Wyeth Ranch. (App. at 99, 129; Saucedo Dep. at 33:7–34:3.)

45. On August 20, 2010, Wyeth Ranch applied the \$172.76 to Perez’s account. (App. at 99.)

46. On September 29, 2010, Perez paid Alessi \$220.00. (App. at 131.)

47. Alessi deducted \$67.98 in collection costs from the \$220 payment and disbursed the remainder (\$152.02) to Wyeth Ranch. (App. at 99, 131; Saucedo Dep. at 35:2–23.)

48. On October 15, 2010, Wyeth Ranch applied the \$152.02 to Perez’s account. (App. at 99.)

49. On November 30, 2010, Perez paid Alessi \$175.00. (App. at 133.)

50. Alessi deducted \$48.82 in collection costs from the \$175 payment and disbursed the remainder (\$126.18) to Wyeth Ranch. (App. at 99, 133; Saucedo Dep. at 37:23–39:6.)

51. On December 16, 2010, Wyeth Ranch applied the \$126.18 to Perez’s account. (App. at 99.)

52. On March 10, 2011, Perez paid Alessi \$160.00. (App. at 135.)

53. Alessi deducted \$40.48 in collection costs from the \$160 payment and disbursed the remainder (\$119.52) to Wyeth Ranch. (App. at 99, 135; Saucedo Dep. at 39:10–40:11.)

54. On March 22, 2011, Wyeth Ranch applied the \$119.52 to Perez’s account. (App. at 99.)

55. On March 9, 2011, Alessi recorded a Rescission of Notice of Trustee’s Sale, which rescinded the notice Alessi recorded on January 14, 2010.² (App. at 3, 14.)

56. On March 29, 2011, Alessi recorded another Notice of Trustee’s Sale based upon the January 5, 2009 Notice of Default and Election to Sell. (App. at 4, 16.)

57. On June 2, 2011, Wyeth Ranch executed another authorization to allow Alessi to complete the non-judicial foreclosure and conduct the trustee sale. (App. at 264.)

² Although the notice claims to rescind the Notice of Trustee’s Sale recorded on January 11, 2010, Alessi did not record a Notice of Trustee’s Sale on January 11, 2010. Marchai assumes that Alessi meant to state that it rescinded the notice recorded on January 14, 2010, as it does refer to instrument number 2589, which is the January 14, 2010 Notice of Trustee’s Sale.

1 58. The authorization claimed that Perez owed Wyeth Ranch \$4,730.03 in delinquent
2 assessments. (App. at 264.)

3 59. On May 23, 2011, Perez paid Alessi \$160.00. (*See* Saucedo Dep. at 42:11–24; *see*
4 *also* Receipt from Alessi for \$160.00, attached as Ex. A-1.)

5 60. Alessi deducted \$35.68 in collection costs from the \$160 payment and disbursed
6 the remainder (\$124.32) to Wyeth Ranch. (App. at 99; Ex. A-1; Saucedo Dep. at 40:15–41:8.)

7 61. On June 16, 2011, Wyeth Ranch applied \$124.32 to Perez’s account. (App. at 99.)

8 62. On August 4, 2011, Perez paid Alessi \$165.00. (App. at 145.)

9 63. Alessi deducted \$37.29 in collection costs from the \$165 payment and disbursed
10 the remainder (\$127.71) to Wyeth Ranch. (App. at 99, 145; Saucedo Dep. at 40:15–41:8.)

11 64. On August 18, 2011, Wyeth Ranch applied the \$127.71 to Perez’s account. (App.
12 at 99.)

13 65. On October 1, 2011, Perez defaulted under her loan from CMG Mortgage. (App.
14 at 202, 244.)

15 66. In 2011, Wyeth Ranch charged \$448.50 each quarter for assessments. (App. at
16 99.)

17 67. On November 29, 2011, Alessi sent Perez a lien letter to which Alessi attached a
18 Notice of Delinquent Assessment Lien. (App. at 147–48.)

19 68. According to the notice, Perez owed Wyeth Ranch \$9,296.56, yet it claims
20 \$9,559.06 was due for “Collection and/or Attorney Fees, assessments, interest, late fees, and
21 service charges,” and \$450.00 for collection costs. (App. at 147–48.)

22 69. On December 20, 2011, Alessi recorded the Notice of Delinquent Assessment
23 Lien but did not release or rescind the Notice of Delinquent Assessment Lien it recorded in 2008.
24 (App. at 4, 18–20, 150.)

25 70. On January 25, 2012, Alessi followed up with the Notice of Delinquent Assess-
26 ment Lien by mailing Perez a Pre-Notice of Default Letter demanding that Perez pay Wyeth
27 Ranch \$9,865.06 in past-due assessments. (App. at 152.)
28

1 71. On February 28, 2012, Alessi recorded a Notice of Default and Election to Sell
2 Under Homeowners Association Lien but did not release or rescind the Notice of Default and
3 Election to Sell it recorded on January 5, 2009. (App. at 154–56; *see also* App. at 18–20.)

4 72. According to the notice, as of February 14, 2012, Perez owed Wyeth Ranch
5 \$10,625.06 in unpaid assessments. (App. at 154.)

6 73. The notice states that Perez first defaulted on her obligations to Wyeth Ranch in
7 January 2008. Yet, it says that Alessi prepared the notice under the Notice of Delinquent Assess-
8 ment Lien recorded on December 20, 2011. (App. at 154.)

9 74. On March 19, 2012, Perez paid Alessi \$300.00. (App. at 160.)

10 75. Alessi deducted \$87.30 in collection costs from the \$300 payment and disbursed
11 the remainder (\$212.70) to Wyeth Ranch. (App. at 100, 160; Saucedo Dep. at 40:15–41:8.)

12 76. On April 3, 2012, Wyeth Ranch applied the \$212.70 to Perez’s account. (App. at
13 100.)

14 77. On May 7, 2012, Perez paid Alessi \$295.00. (App. at 162.)

15 78. Alessi deducted \$85.84 in collection costs from the \$295 payment and disbursed
16 the remainder (\$209.16) to Wyeth Ranch. (App. at 100, 162; Saucedo Dep. at 40:15–41:8.)

17 79. On May 23, 2012, Wyeth Ranch applied the \$209.16 to Perez’s account. (App. at
18 100.)

19 80. On May 25, 2012, Mortgage Electronic Registration Systems, Inc., as the nominee
20 for CMG Mortgage, assigned CMG Mortgage’s deed of trust to CitiMortgage, Inc. (App. at 201,
21 238–39.)

22 81. Likewise, CMG Mortgage endorsed the note payable to the order of CitiMort-
23 gage. (App. at 209.)

24 82. On June 5, 2012, CitiMortgage recorded a Corporate Assignment of Deed of
25 Trust. (App. at 238–39.)

26 83. On July 18, 2012, Alessi sent Perez a Pre-Notice of Trustee Sale Notification, in
27 which Alessi demanded that Perez pay Wyeth Ranch \$11,371.07. (App. at 164.)
28

84. Alessi claims that it sent the Pre-Notice of Trustee's Sale Notification according to the Notice of Delinquent Assessment Lien recorded on December 20, 2011, and the Notice of Default and Election to Sell recorded nearly three years earlier on January 5, 2009. (App. at 164.)

85. On July 26, 2012, Perez paid Alessi \$165.00. (App. at 166.)

86. Alessi deducted \$43.72 in collection costs from the \$165 payment and disbursed the remainder (\$121.28) to Wyeth Ranch. (App. at 100, 166; Saucedo Dep. at 40:15-41:8.)

87. On August 27, 2012, Wyeth Ranch applied the \$121.28 payment to Perez's account. (App. at 100.)

88. On July 26, 2012, CitiMortgage assigned the deed of trust to U.S. Bank, N.A., as trustee for Stanwich Mortgage Loan Trust, Series 2012-6. (App. at 168-69.)

89. CitiMortgage also signed an allonge, endorsing the note payable to U.S. Bank. (App. at 212.)

90. On July 26, 2012, U.S. Bank recorded the Assignment of Mortgage with the Clark County Recorder. (App. at 168-69.)

91. On October 3, 2012, Carrington Mortgage Services, LLC, the servicer for the loan assigned to U.S. Bank, sent Perez a Notice of Intent to Foreclose. (App. at 243-45.)

92. According to the notice, Perez defaulted on the loan on October 1, 2011, and owed U.S. Bank \$36,281.60. (App. at 244.)

93. On October 10, 2012, Alessi prepared another Notice of Trustee's Sale. (App. at 171.)

94. According to the notice, Alessi stated its intention to sell the Property at a foreclosure sale on November 28, 2012. (App. at 171.)

95. The notice claims that Alessi will conduct the sale according to the lien recorded on December 20, 2012. (App. at 171.)

96. According to the notice, Perez owed \$11,656.07. (App. at 171.)

97. On October 31, 2012, Alessi recorded the Notice of Trustee's Sale but did not rescind the Notice of Trustee's Sale it recorded on March 29, 2011. (App. at 181; *see also* App. at 18-20.)

1 98. On November 13, 2012, Perez made a \$300.00 payment to Alessi. (App. at 183.)

2 99. Alessi deducted \$78.90 in collection costs from the \$300 payment and disbursed
3 the remainder (\$221.10) to Wyeth Ranch. (App. at 100, 162; Saucedo Dep. at 40:15–41:8.)

4 100. On December 14, 2012, Wyeth Ranch applied the \$221.10 to Perez’s account.
5 (App. at 100.)

6 101. On March 12, 2013, U.S. Bank assigned its interest in the deed of trust to Mar-
7 chai, B.T., a Nevada business trust, which it recorded with the Clark County Recorder on August
8 12, 2013.³ (App. at 202, 247–48.)

9 102. Contemporaneously with the assignment, U.S. Bank executed an allonge endors-
10 ing the note to Marchai. (App. at 213.)

11 103. On July 11, 2013, Alessi executed another Notice of Trustee’s Sale. (App. at
12 266.)

13 104. The notice claimed that Perez owed \$14,090.80 in unpaid assessments. (App. at
14 266.)

15 105. According to the notice, Alessi intended to sell the Property at a foreclosure sale
16 on August 28, 2013. (App. at 266.)

17 106. On July 31, 2013, Alessi recorded the notice with the Clark County Recorder but
18 again failed to rescind the Notice of Trustee’s Sale recorded on October 31, 2012. (App. at 194.)

19 107. On August 27, 2013, less than 24 hours before the foreclosure sale, Peak Loan
20 Servicing, Marchai’s servicer, learned about the sale. (*See* Sawyer Decl. ¶ 4.) Peak immediately
21 contacted Alessi and asked it to postpone the sale so it could pay the lien. (*Id.* ¶ 5.)

22 108. On the morning of the day of the sale (August 28, 2013), Naomi Eden at Alessi
23 emailed Brittney O’Connor, the accounting clerk at CAMCO, in which she notes that “[t]he
24

25 ³ Even though Marchai acquired its interest in the note and deed of trust in March 2013, the loan’s prior ser-
26 vicer did not transfer the loan’s servicing information to Marchai’s loan servicing company for nearly four months
27 (until July 2013). (*See* Decl. of Scott Sawyer ¶ 2, attached as Ex. 1 to Marchai, B.T.’s Opp’n to SFR Invs. Pool 1,
28 LLC’s Mot. for Summ. J. (Feb. 3, 2016).) During this time U.S. Bank did not inform Marchai of Wyeth Ranch’s lien
or its efforts to foreclose upon that lien. (*Id.*) Because of U.S. Bank’s delay in sending the loan servicing file, the as-
signment of the deed of trust from U.S. Bank to Marchai did not get recorded until August 12, 2013, just two weeks
before Wyeth Ranch’s foreclosure. (*Id.* ¶ 3.)

1 mortgage company is asking for an extension so they can get it paid off.” (*See* Decl. of David J.
2 Merrill ¶¶ 4–5, attached as Ex. 3 to Marchai, B.T.’s Opp’n to SFR Invs. Pool 1, LLC’s Mot. for
3 Summ. J. (Feb. 3, 2016); *see also* email from Eden to O’Connor (Aug. 28, 2013), attached as Ex.
4 3-A to Marchai, B.T.’s Opp’n to SFR Invs. Pool 1, LLC’s Mot. for Summ. J. (Feb. 3, 2016).)
5 Eden asked O’Connor if Alessi could postpone the sale. (*See id.*)

6 109. O’Connor responded to the email asking Eden how many oral postponements
7 Wyeth Ranch had remaining. (*See id.*)

8 110. Eden advised O’Connor that Wyeth Ranch still had three postponements left.
9 (*See id.*)

10 111. O’Connor then emailed Michele Weaver, a CAMCO manager. O’Connor told
11 Weaver that Wyeth Ranch had a foreclosure sale set for that morning, that it could postpone the
12 sale three times, and that “[t]he mortgage company would like an extension so they can pay off
13 the account.” (*See id.*)

14 112. In her email to Weaver, O’Connor said she “will use all postponements then go to
15 sale on the 3rd sale date set,” “[u]nless otherwise directed by the board.” (*See id.*) Unless the
16 association directed otherwise, postponing foreclosure sales until the third sale date was
17 CAMCO’s standard practice. (*See* Saucedo Dep. at 44:9–25.)

18 113. According to the last email in the chain, Weaver “received confirmation” that
19 Wyeth Ranch did “NOT want to postpone.” (*See* email from Eden to O’Connor (Aug. 28,
20 2013), attached as Ex. 3-A to Marchai, B.T.’s Opp’n to SFR Invs. Pool 1, LLC’s Mot. for
21 Summ. J. (Feb. 3, 2016).).)

22 114. Wyeth Ranch refused to postpone the sale so Marchai could pay off the account
23 and proceeded with the foreclosure. (*See id.*)

24 115. On August 28, 2013, Alessi conducted a foreclosure sale. (App. at 198–99.)

25 116. At the foreclosure sale, SFR Investments Pool 1, LLC submitted the winning bid
26 of \$21,000.00. (App. at 198–99.)
27
28

1 117. At the time of the foreclosure, Wyeth Ranch's assessment ledger reflected a
2 \$10,679.12 balance. (*See* Saucedo Dep. at 46:7-12; *see also* Resident Transaction Detail (Oct. 16,
3 2015), attached as Ex. A-2.)

4 118. Wyeth Ranch received payment in full (\$10,679.12) of its assessment lien.
5 (*Sauceda* Dep. at 46:7-12; *see also* Ex. A-2.)

6 119. The Declaration of Value asserts that the Property has a "Transfer Tax Value" of
7 \$307,403.00. (*App.* at 198.)

8 120. Marchai's expert opined that the Property's fair market value on August 28,
9 2013, was \$360,000. (*See* Decl. of David J. Merrill ¶ 2, attached as Ex. 1 to Marchai, B.T.'s
10 Opp'n to SFR Invs. Pool 1, LLC and Wyeth Ranch Cmty. Ass'n's Mots. for Summ. J. (Aug. 14,
11 2017); *see also* Marchai, B.T.'s Initial Expert Disclosure, attached as Ex. 1-A to Marchai, B.T.'s
12 Opp'n to SFR Invs. Pool 1, LLC and Wyeth Ranch Cmty. Ass'n's Mots. for Summ. J. (Aug. 14,
13 2017).)

14 121. On September 9, 2013, Alessi recorded with the Clark County Recorder a Trus-
15 tee's Deed Upon Sale. (*App.* at 199.)

16 Disputed Facts

17 **Disputed Fact No. 1: Wyeth Ranch applied payments to the current quarter's dues and the remainder**
18 **to any prior dues.**

19 122. Yvette Saucedo, CAMCO's accounting director, gave conflicting testimony about
20 how Wyeth Ranch applied payments and partial payments. (*See* Saucedo Dep. at 8:16-9:3.)

21 123. Saucedo, who spent only 30 minutes reviewing the file and another 40 minutes
22 speaking with Wyeth Ranch's counsel, first testified that when a homeowner is on a payment
23 plan, any payments made under the plan are applied as specified in the plan. (*Sauceda* Dep. at
24 7:8-8:1, 11:24-12:6.)

25 124. According to Saucedo, if a homeowner was not on a payment plan, Wyeth Ranch
26 applied the payments to the account "generally." (*Sauceda* Dep. at 11:24-12:8, 13:5-8.) If the
27 homeowner were on a payment plan, "the breakdown of each payment would be specified in the
28 payment plan." (*Sauceda* Dep. at 11:24-12:6.)

1 125. Perez was not on a payment plan when she made a \$507.60 payment in April
2 2008. (*See* Saucedá Dep. at 17:17–20:2; *see also* Mot. at 5:3–4.)

3 126. Saucedá testified that Wyeth Ranch applied the \$507.60 payment first to April’s
4 association dues of \$420.00 and the remainder (\$87.60) to January 2008’s dues. (Saucedá Dep.
5 at 17:17–23.) Saucedá testified that Wyeth Ranch applied payments to the current quarter’s as-
6 sociation dues and any remainder to older, unpaid association dues. (Saucedá Dep. at 17:17–23.)
7 When asked how she knew this, Saucedá testified, “I just know that.” (Saucedá Dep. at 17:24–
8 25.)

9 127. But Wyeth Ranch’s documents contradict Saucedá’s testimony. A ledger Wyeth
10 Ranch prepared in September 2008 shows that Wyeth Ranch applied the \$507.60 payment first
11 to January 2008’s association dues (which the ledger does not show are due) and the remainder
12 to April 2008’s association dues. (*See* App. at 96.)

13 128. Hence, despite Saucedá’s testimony, Wyeth Ranch’s documents demonstrate
14 that it applied payments first to the oldest association dues. (*See* App. at 96.)

15 **Disputed Fact No. 2: Payment plans entered into between Perez and Alessi directed payment of the**
16 **current quarter’s association dues first.**

17 129. Saucedá testified that the terms of any payment plans entered into between Perez
18 and Alessi directed the application of payments first to the current quarter’s association dues.
19 (Saucedá Dep. at 26:6–27:7, 47:11–25.)

20 130. But the payment plan details Wyeth Ranch produced do not require the applica-
21 tion of payments first to the current quarter’s association dues. (*See* Saucedá Dep. at 26:6–27:7,
22 47:11–25; *see also* payment plan detail attached as Ex. A-3.)

23 131. Also, Perez’s payments were *not* first applied to the current quarter’s association
24 dues. Instead, they first were applied to Alessi’s collection costs. (*See* Undisputed Fact Nos. 36,
25 39, 44, 47, 50, 53, 60, 63, 75, 78, 86, & 99.)

26 132. And Perez made *no payments* consistent with the terms of any payment plans.
27 (*Compare* Ex. A-3 *with* App. at 120, 125, 129, 131, 133, 135, 145, 160, 162, 166, 183, & Ex. A-1.)
28

Disputed Fact No. 3: Perez made her payments under a payment plan.

133. Sauceda testified that if a homeowner was not on a payment plan, they were “likely current.” (*See* Sauceda Dep. at 11:19–12:8.) Although Perez was not “current” on her payments from April 2008 through August 2013, she also did not have a payment plan for the majority of this time. Sauceda’s testimony underlies her assumption that Perez made her payments under a payment plan. (*See id.*; *see also* Sauceda Dep. at 17:17–19:7.)

134. According to Wyeth Ranch’s records, Perez first entered into a payment plan on March 22, 2010. (*See* Alessi Log, attached as Ex. 7 to Def. Wyeth Ranch Cmty. Ass’n’s Mot. for Summ. J.)

135. The payment plan commenced on April 1, 2010, and required monthly payments of \$669.87. (*See* Ex. A-3.)

136. Hence, Perez could not have made her February 12, 2010 payment (\$900.00) under the payment plan. (*Compare* Ex. A-3 *with* Undisputed Fact No. 35.)

137. And Perez never made a \$669.87 payment on or after April 1, 2010. (*See* App. at 120, 125, 129, 131, 133, 135, 145, 160, 162, 166, 183, & Ex. A-1.)

138. Sauceda testified Wyeth Ranch applied the \$590.40 it received in March 2010, first to January 2010’s dues and the remainder to January 2008’s dues. (Sauceda Dep. at 21:19–22:5.) According to Sauceda, that was Wyeth Ranch’s “policy.” (Sauceda Dep. at 22:3–5.)

139. But the ledger Wyeth Ranch prepared in September 2008 shows Wyeth Ranch’s “policy” was to apply payments first to the oldest association dues. (*See* App. at 96.) And Wyeth Ranch could *not* have applied the remainder of the payment to the January 2008 assessment because Wyeth Ranch’s report showed that Perez already paid the January 2008 association dues. (*See* App. at 96.)

140. On July 2, 2010, Wyeth Ranch sent Perez a letter terminating the March 2010 payment plan. (*See* Alessi Log, Ex. 7 to the Mot.)

141. Hence, the \$250 payment Perez made on August 2, 2010, was not paid under a payment plan.⁴ (*Compare* Ex. A-3 *with* Undisputed Fact No. 43.)

142. On August 6, 2010, the Alessi Log notes that Alessi sent another payment plan to Wyeth Ranch for approval. (*See* Alessi Log, Ex. 7 to the Mot.)

143. On September 7, 2010, the Alessi Log says Alessi contacted Wyeth Ranch for the payment plan's status. (*See* Alessi Log, Ex. 7 to the Mot.)

144. But the Alessi Log never says it received approval from Wyeth Ranch or Perez for a payment plan. (*See* Alessi Log, Ex. 7 to the Mot.)

145. Hence, Perez's payments on September 29, 2010 (\$220.00), November 30, 2010 (\$175.00), and March 10, 2011 (\$160.00), were not made under a payment plan. (*Compare* Alessi Log, Ex. 7 to the Mot. *with* Undisputed Fact Nos. 46, 49, & 52.)

146. The Alessi Log says that it entered into a payment plan with Perez on April 30, 2011. (*See* Alessi Log, Ex. 7 to the Mot.) But Wyeth Ranch did not produce a copy of this payment plan. (*See* Decl. of David J. Merrill ¶ 2, attached as Ex. B.) Hence, the parties cannot determine whether Perez made any payment consistent with the plan.

147. Nevertheless, the Alessi Log recognizes that the plan terminated on September 30, 2011, because of Perez's breach. (*See* Alessi Log, Ex. 7 to the Mot.) And the Alessi Log identifies no additional payment plans agreed to by Wyeth Ranch or Perez. (*See* Alessi Log, Ex. 7 to the Mot.)

148. Hence, Perez's March 19, 2012 (\$300.00), May 7, 2012 (\$295.00), July 26, 2012 (\$165.00), and November 13, 2012 (\$300.00) payments were not under the terms of any payment plan. (*Compare* Alessi Log, Ex. 7 to the Mot. *with* Undisputed Fact Nos. 74, 77, 85, & 98.)

149. Thus, as Saucedo testified, the payments made outside the confines of a payment plan were applied to Perez's account "generally." (Sauceda Dep. at 11:24–12:8, 13:5–8.)

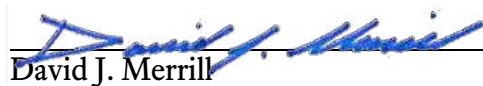
⁴ Wyeth Ranch claims that Perez entered into a payment plan on February 5. (*See* Mot. at 5:3–4.) This conflicts with the Alessi Log. (*See* Ex. 7 to the Mot.)

1 According to Wyeth Ranch's documents, when Wyeth Ranch applied payments "generally" to
2 the account, it first applied the payments to the oldest association dues. (*See App.* at 96.)

3 Dated this 19th day of October 2020.

4 David J. Merrill, P.C.

6 By:



David J. Merrill
Nevada Bar No. 6060
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
(702) 566-1935

Attorney for Marchai, B.T.

Certificate of Service

I certify that on the 19th day of October 2020, I served a copy of Marchai, B.T.'s Statement of Undisputed and Disputed Facts in Support of its Opposition to Wyeth Ranch Community Association's Motion for Summary Judgment electronically to the following through the Court's electronic service system:

Kim Gilbert Ebron

Diana Cline Ebron
E-Service for Kim Gilbert Ebron
Michael L. Sturm
Tomas Valerio

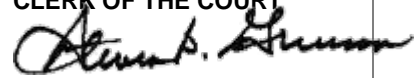
diana@kgelegal.com
eservice@kgelegal.com
mike@kgelegal.com
staff@kgelegal.com

Lipson, Neilson, Cole, Seltzer & Garin, P.C.

Brenda Correa
Kaleb Anderson
Megan Hummel
Renee Rittenhouse
Susana Nutt
Juan Cerezo
David Ochoa

bcorrea@lipsonneilson.com
kanderson@lipsonneilson.com
mhummel@lipsonneilson.com
rrittenhouse@lipsonneilson.com
snutt@lipsonneilson.com
jcerezo@lipsonneilson.com
dochoa@lipsonneilson.com


An employee of David J. Merrill, P.C.



LIPSON NEILSON P.C.
KALEB D. ANDERSON, ESQ.
Nevada Bar No. 7582
DAVID T. OCHOA, ESQ.
Nevada Bar No. 10414
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500
(702) 382-1512 - fax
kanderson@lipsonneilson.com
dochoa@lipsonneilson.com

Attorneys for Defendant Wyeth Ranch Community Association

DISTRICT COURT
CLARK COUNTY, NEVADA

MARCHAI, B.T., a Nevada business trust
Plaintiff,

v.

CRISTELA PEREZ, an individual, et al.
Defendants.

Case No.: A-13-689461-C
Dept. No.: XII

Consolidated with: A-16-742327-C

**DEFENDANT WYETH RANCH
COMMUNITY ASSOCIATION'S
REPLY IN SUPPORT OF ITS
MOTION FOR SUMMARY
JUDGMENT**

AND ALL RELATED CLAIMS AND ACTIONS.

Defendant WYETH RANCH COMMUNITY ASSOCIATION ("HOA"), by and through its counsel of record at the law firm of LIPSON NEILSON P.C., respectfully submits the following Reply in Support of its Motion for Summary Judgment.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Despite the case having been litigated for years, recently remanded, and set for trial, Marchai is attempting to amend its claims and argue new damages for the first time in its Opposition; all in an attempt to avoid summary judgment. Marchai has never before asserted anything different than either the deed of trust survived the sale, or otherwise the sale should be set aside as a wrongful foreclosure. Now in order to avoid summary judgment Marchai alleges for the first time that if the foreclosure on

1 superpriority portion of the lien is found and upheld, it has still been damaged by
2 misapplication of the proceeds of the sale after the sale. As will be explained below,
3 Marchai has never asserted this before in its Complaint, prior motions, written discovery
4 responses, or disclosures, including never providing a computation of damages for this
5 assertion.

6 If Marchai knew this was where it was going to go after remand, it had the burden
7 to amend its pleadings and update its disclosures. To this point, Marchai is obviously
8 aware of this burden as it has previously, in this case, filed a Motion to amend its claims
9 after the deadline and argued a change in law as a basis. Additionally, Marchai filed a
10 motion to reopen discovery after the remand, but on a limited basis not related to the
11 application of proceeds after the sale.

12 Asserting a claim for the first time in an Opposition is not a request to amend, and
13 no request to amend has been submitted. No computation of the new alleged damages
14 has ever been provided. The HOA did not dispute that the Nevada Supreme Court
15 remanded on a question of fact, however, the HOA argued that question is limited and
16 specific to Quiet Title. The *Cranesbill* analysis is limited to the specific issue of applying
17 the partial payments. Although this may resolve Marchai's final claim of Quiet Title, the
18 HOA was granted summary judgment on Marchai's claim for Quiet Title earlier in this
19 case and that decision was not appealed.

20 Determination of this issue does not leave open claims against the HOA, as the
21 application of the payments will either lead to a completed superiority sale or a
22 completed subpriority sale. Neither of which leads to a violation of NRS 116 by the
23 HOA. Marchai's Quiet Title claim contained various arguments including that the sale
24 should be voided as commercially unreasonable, or the price was unconscionable.
25 However, those specific issues were addressed by the district court previously and not
26 appealed by Marchai. Thus, what is left on the Quiet Title claim that remains against
27 SFR only is the *Cranesbill* issue. The HOA does not have a title interest in the property,
28 it has a lien interest, and in regards to the lien interest there is no avenue for damages

1 against the HOA if the court finds that a non-parties partial payments did not save
2 Marchai. The HOA can foreclose on either the superpriority or subpriority portion of its
3 lien and it is not a wrongful foreclosure. Accordingly, the HOA is entitled to summary
4 judgment on all of Marchai's claims against it.

5 Marchai made the choice to not litigate the scenario of whether a superiority sale
6 was actually upheld and application of the proceeds after the sale. Marchai should not
7 be able to amend it claims or assert those damages now. Thus, on the claims actually
8 asserted against the HOA, the HOA is entitled to summary judgment, and this is true
9 despite Quiet Title remaining between Marchai and SFR.

10 **II. MARCHAI'S STATEMENT OF DISPUTED FACTS**

11 Marchai's statement of disputed facts all deal with the application of Borrower's/Prior
12 Owner's partial payments. *See Marchai, B.T.'s Statement of Undisputed and Disputed*
13 *Facts in Support of its Opposition to Wyeth Ranch Community Association's Motion for*
14 *Summary Judgment* at 11-15. As argued herein, the Court does not have to resolve
15 these disputed facts in order to grant the HOA summary judgment on the claims
16 remaining against it. The total balance foreclosed on is not disputed. *Id.* Whether that
17 total balance contained a superpriority portion will lead the Court to conclude whether it
18 was a superpriority sale or defaulted to a subpriority sale (with no superpriority portion
19 to the lien). However, resolving the limited *Cranesbill* issue either way will lead to a
20 valid superpriority or subpriority sale, and the valid sale resolves Marchai's claims
21 against the HOA (which no longer include Quiet Title against the HOA). Marchai's
22 argument that it has pages of disputed facts fails because its attempts to connect the
23 disputed facts to the claims against the HOA fail.

24 **III. STATEMENT OF UNDISPUTED FACTS**

25 On or around October 19, 2005, Cristela Perez ("Borrower") obtained a loan to
26 purchase the Property. See Complaint in Case No. A-16-742327-C, attached hereto as
27 Exhibit 1 ¶ 7. The loan was secured by a deed of trust with CMG Mortgage named as
28 beneficiary. *Id.* ¶ 8. The deed of trust was subsequently assigned to CitiMortgage, Inc.

1 and Stanwich Mortgage Loan Trust, Series 2012-6. *Id.* ¶¶ 22, 24. In March 2013, the
2 deed of trust was assigned to Plaintiff. *Id.* ¶ 27.

3 Sometime after purchasing the Property, Borrower defaulted on her quarterly
4 homeowners' assessments. See generally *id.*; see also Resident Transaction Detail,
5 Exhibit 2. Therefore, on November 5, 2007, the HOA, through Complete Association
6 Management Company ("CAMCO"), recorded a notice of delinquent violation lien. Ex. 1
7 ¶ 9; see also Notice of Delinquent Violation Lien, Exhibit 3. On or around October 8,
8 2008, the HOA, through Alessi & Koenig LLC ("Alessi") recorded a notice of delinquent
9 assessment lien. Ex. 1 ¶ 11; see also Notice of Delinquent Assessment Lien, Exhibit 4.
10 On January 5, 2009, the HOA, through Alessi, recorded a notice of default and election
11 to sell. Ex. 1 ¶ 12; see also Notice of Default and Election to Sell, Exhibit 5. On January
12 14, 2010, the HOA, through Alessi, recorded a notice of trustee's sale. Ex. 1 ¶ 13; see
13 also Notice of Trustee's Sale, Exhibit 6. The sale was scheduled for February 17, 2010.
14 *Id.*

15 On or around February 5, 2010, Borrower and her husband entered into a 12-
16 month payment plan with the HOA and the pending foreclosure sale was postponed.
17 See Account 84081, Exhibit 7. Borrower made four payments to the HOA between
18 March 2010 and October 2010, none of which brought her account current. See Ex 2 &
19 7. Thus, in November 2010, Alessi began preparation to re-notice the sale. Ex. 7.
20 Between November 2010 and March 2011, Borrower made two additional partial
21 payments on her account, but failed to bring her account current. Ex. 2 & 7. On March
22 9, 2011, the HOA, through Alessi, recorded a rescission of notice of the February 2010
23 trustee's sale. Ex. 1 ¶ 15. On March 29, 2011, the HOA, through Alessi, recorded a
24 second notice of trustee's sale. *Id.* ¶ 16; see also Notice of Trustee's Sale Exhibit 8. The
25 second sale was scheduled for May 8, 2011. *Id.* Copies of the notice were sent by
26 certified mail to CMG Mortgage, Inc.. See Certified Mailing Receipts, Exhibit 9.

27 ///

28 ///

1 On April 7, 2011, Alessi received a letter of hardship from Borrower and agreed,
2 once again, to postpone the sale. See Ex. 7. Borrower entered into a ten-month
3 payment plan to bring her assessments current. Ex. 2 & 7. By September 2011,
4 Borrower had once again breached her payment plan. *Id.* Therefore, on December 20,
5 2011, the HOA, through Alessi, recorded a second notice of delinquent assessment
6 lien. Ex. 1 ¶ 19, see also Notice of Delinquent Assessment (Lien), Exhibit 10.

7 On February 28, 2012, the HOA, through Alessi, recorded a second notice of
8 default and election to sell. Ex. 1 ¶ 20, see also Notice of Default and Election to Sell,
9 Exhibit 11. Copies of the notice were sent by certified mail to CMG Mortgage, Inc. See
10 Certified Mailing Receipts, Exhibit 12. On March 8, 2012, Borrower's husband contacted
11 Alessi and requested another payment plan. See email correspondence, Exhibit 13.
12 Although Borrower made two payments to Alessi between March 2012 and July 2012,
13 she failed to bring her account current. See Ex. 2 & 7. Therefore, on October 31, 2012,
14 the HOA, through Alessi, recorded a third notice of trustee's sale. Ex. 1 ¶ 25; see also
15 Notice of Trustee's Sale, Exhibit 14. The sale was scheduled for November 28, 2012.
16 *Id.* Copies of the notice were sent certified mail to CMG Mortgage, Inc. and
17 CitiMortgage, Inc. See Mailing Receipts, Exhibit 15. In response to the third notice of
18 sale, Borrower sent correspondence to the HOA requesting another payment plan. See
19 correspondence Exhibit 16. The sale was postponed accordingly. See Ex. 7.

20 On March 26, 2013, the HOA, through Alessi, received notification that Borrower
21 filed for Chapter 7 bankruptcy. Ex. 7. On July 31, 2013, the HOA, through Alessi,
22 recorded a fourth notice of trustee's sale. Ex. 1 ¶ 28; see also Notice of Trustee's Sale,
23 Exhibit 17. The sale was scheduled for August 28, 2013. *Id.* On August 28, 2013, Alessi
24 emailed the HOA's community management company, advising that "the mortgage
25 company is asking for an extension so they can get it paid off" and requesting
26 permission to postpone the sale. See email correspondence, Exhibit 18.

27 ///

28 ///

1 The HOA declined to postpone the sale. *Id.* That same day, the HOA, through
2 Alessi, sold the Property to SFR Investment Pool 1 LLC (“SFR”) for \$21,000. Ex. 1 ¶ 30.
3 A trustee’s deed upon sale was recorded in SFR’s favor in September 2013. See
4 Trustee’s Deed Upon Sale, Exhibit 19.

5 **IV. PROCEDURAL BACKGROUND**

6 In the District Court’s Order entered March 22, 2016, the Court found that Marchai
7 failed to establish the sale was commercially unreasonable, violated the takings or due
8 process clauses, or that the statute was unconstitutionally vague. Exhibit 20.

9 In the District Court’s Order entered January 24, 2017, the Court dismissed
10 Marchai’s Quiet Title Claim against the HOA. Exhibit 21.

11 In the District Court’s October 3, 2017 Order, the Court found that Notice was
12 proper, however, found for Marchai based on a determination that Borrower’s partial
13 payments paid off the superpriority portion of the lien. Exhibit 22.

14 On November 6, 2017, SFR filed its Case Appeal Statement and Notice of Appeal,
15 appealing the determination on the application of Borrower’s partial payments. Exhibit
16 23.

17 Marchai did not appeal the earlier orders or the determination on notice from the
18 October 3, 2017.

19 On March 18, 2020, the Nevada Supreme Court entered its Order Vacating
20 Judgment and Remanding. Exhibit 24. Within that Order the Nevada Supreme Court
21 found and affirmed that the 2008 Notice of Delinquent Assessment was the operative
22 notice to review superpriority and that a Borrower’s payments could satisfy the
23 superpriority portion of an HOA lien. However, the Court remanded on finding that
24 under *9352 Cranesbill Trust v. Wells Fargo Bank, N.A.*, 136 Nev., Adv. Op. 8 (Mar. 5,
25 2020), the facts surrounding the payments needed to be analyzed to determine if the
26 payments actually satisfied the superpriority portion of the lien.
27

28 ///

V. LEGAL ARGUMENT

A. Marchai Alleges a New Claim for Relief and New Damages for the First Time in its Opposition, Which Should Not Be Allowed.

Pursuant to NRCP 15(a), “a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court may properly deny leave to amend when factors such as bad faith, dilatory motive, undue delay, futility of amendment, or undue prejudice are present. See *Stephens v. Southern Nev. Music Co.*, 89 Nev. 104., 106, 507 P.2d 138, 139 (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). Here in its Opposition, Marchai is alleging for the first time that it suffered damages from a misapplication of proceeds after the sale if in fact it was a superpriority sale. However, Marchai has not sought leave to make this claim or allege these damages.

Additionally, the deadline to amend pleadings has passed. Pursuant to NRCP 16(b)(4), good cause is required to amend a schedule. “[T]he purpose of NRCP 16(b) is ‘to offer a measure of certainty in pretrial proceedings, ensuring that at some point both the parties and the pleadings will be fixed.’” *Nutton v. Sunset Station, Inc.*, 131 Nev. Adv. Op. 34, 357 P.3d 966, 971 (Nev. App. 2015) quoting *Parker v. Columbia Pictures Indus.*, 204 F.3d 326, 339-40 (2d Cir.2000). Because “[d]isregard of the [scheduling] order would undermine the court’s ability to control its docket, disrupt the agreed-upon course of the litigation, and reward the indolent and the cavalier” in order to extend a deadline imposed by a court order, the party seeking such an extension must establish good cause. *Nutton*, 131 Nev. Adv. Op. 34, 357 P.3d at 972 quoting *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992). NRCP 16 was drafter precisely to prevent this from occurring, and “[i]ts standards may not be short-circuited by an to those of Rule 15.” *Id.* at 971 quoting *Johnson*, 975 F.2d at 610. “[I]f the moving party was not diligent in at a least attempting to comply with the deadline, ‘the inquiry should end [there].’” *Id.* quoting *Johnson*, 975 F.2d at 609 (emphasis added). Thus, if there was a delay in moving to extend the deadline to amend pleadings, the moving party would be barred from doing so.

1 The foreclosure sale occurred in 2013. Exhibit 19. An interpleader action was
2 filed the same year and provided a breakdown of the distribution of the proceeds.
3 Interpleader Complaint case # A-13-690586-C, attached hereto at **Exhibit 25**. Thus,
4 there is no good cause for Marchai making this claim at this point in the litigation, and it
5 was instead done in bad faith with the realization that the Quiet Title claim against the
6 HOA had been dismissed and that the claim is necessary to avoid summary judgment in
7 the HOA's favor. See Exhibit 21 (Dismissal of Quiet Title Claim).

8 Review of the record demonstrates that Marchai has not previously alleged it is
9 entitled to proceeds that went to the HOA. In its Complaint Marchai's Fourth Cause of
10 Action is for a violation of NRS 116.1113 stating:

11 **Fourth Claim for Relief**

12 **(Violation of NRS § 116.1113 et seq.-Against Wyeth Ranch and
Alessi & Koenig)**

13 79. Marchai repeats and realleges each of the paragraphs set forth
above.

14 80. Wyeth Ranch and Alessi & Koenig wrongfully foreclosed upon
the property in violation of the Statute.

15 81. Given the above-enumerated violations of the Statute, Marchai
16 asserts that Wyeth Ranch's purported sale of the property be
voided and set aside and requests any and all damages flowing
17 from these violations.

18 **Marchai's Complaint** at 11 (emphasis added, underlined). Thus, Marchai's
19 violation of NRS 116.1113 is pled similar to wrongful foreclosure and directs the
20 review to wrongful foreclosure. It makes sense that Marchai would do this as
21 Wrongful foreclosure is actually limited to whether the debt foreclosed on existed,
22 and other allegations such as notice issues are better pled as a violation of the
23 statute. However, in linking the claims Marchai does not address these proceeds
24 in either the violation of NRS 116.1113 or the wrongful foreclosure claim. Marchai
25 does not address proceeds after the sale and does not provide a calculation for
26 any related damages: See Cause of Action for Wrongful foreclosure as stated
27 below:
28

Third Claim for Relief

(Wrongful Foreclosure-Against SFR, Wyeth Ranch, and Alessi & Koenig)

67. Marchai repeats and realleges each of the paragraphs set forth above.

68. SFR wrongfully purported to purchase Marchai's property in violation of the Statute and common law.

69. The foreclosure sale was wrongful because the foreclosure itself was contrary to law, in that:

(a) The Statute on its face violates Marchai's constitutional rights, in particular Marchai's rights to due process under both the Nevada and United States Constitutions.

(b) The purported foreclosure pursuant to the Statute effected a regulatory taking of Marchai's secured interest in the property without just compensation in violation of the Fifth Amendment to the United States Constitution.

(c) Any purported notice provided was also inadequate, insufficient, and in violation of Marchai's rights to due process under both the United States and Nevada Constitutions.

(d) The lien, or a portion thereof, had expired by the time of the foreclosure.

(e) Perez paid more than nine months of association dues following Wyeth Ranch's institution of an action to enforce its lien.

70. SFR is not a bona fide purchaser of the Property.

71. SFR's \$21,000.00 purchase price for the property was unconscionable.

72. The sale and purchase of the property was not commercially reasonable.

73. Based upon the foregoing, Marchai requests an order declaring that the purported foreclosure sale did not extinguish Marchai's deed of trust, which continues as a valid encumbrance against the property.

74. Based upon the foregoing, Marchai requests an order declaring that the purported foreclosure sale be voided and set aside because SFR is not a bona fide purchaser of the property.

75. Based upon the foregoing, Marchai requests an order setting aside the purported foreclosure sale as void because SFR's \$21,000.00 purchase price for the property was not commercially reasonable.

76. Based upon the foregoing, Marchai requests an order declaring that the purported foreclosure sale be voided and set aside because SFR's \$21,000.00 purchase price for the property was unconscionable.

77. Marchai has been damaged by SFR, Wyeth Ranch, and Alessi & Koenig's conduct as specified herein in an amount to be proven at trial.

78. Marchai has been required to engage the services of an attorney to protect its interests in the property and is entitled to recover its reasonable attorney's fees and costs incurred in connection with this action.

1 Marchai's Complaint at 9 -11. In *Bank of Am., N.A. v. Las Vegas Rental & Repair, LLC*,
2 2019 Nev. Unpub. LEXIS 1256, *2-3, 451 P.3d 547, 2019 WL 611913, It was either not
3 disputed, or if it was, the Nevada Supreme Court determined that Lender actually
4 sought the excess proceeds from the foreclosure sale, stating: "However, we conclude
5 that summary judgment was improper on appellant's claim for breach of the duty of
6 good faith. In particular, appellant sought the excess proceeds from the foreclosure
7 sale after the HOA was paid the superpriority portion of its lien and allowable costs and
8 fees. If the foreclosure sale extinguished appellant's deed of trust, appellant would have
9 been entitled to the excess proceeds. See *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*,
10 130 Nev. 742, 743, 334 P.3d 408, 409 (2014). Here, Marchai has not timely sought
11 these damages or even made a request to amend.
12

13
14 Marchai, may allege the 2019 case is new law, but the case cites to the 2014
15 *SFR* decision, and Marchai has already alleged it was not new law. See Opposition at
16 15, note 5, stating: "Presumably Wyeth Ranch will argue that it did not understand the
17 law at the time of the foreclosure when it applied the full amount of the proceeds to
18 Perez's account." Even assuming it is new law, Marchai is aware of how to file for leave
19 to amend based on the same and did not do so. Marchai previously filed a Motion to
20 amend its claims after the deadline and argued a change in law as a basis. **See**
21 **Marchai's August 18, 2016 Motion**. Marchai did not previously seek these damages
22 and the case was not remanded to review these damages. Additionally, Marchai filed a
23 motion to reopen discovery after the remand, but on a limited basis not related to the
24 application of proceeds after the sale. **See Marchai's August 13, 2020, Motion to**
25 **Reopen Discovery**.
26

27
28 Review of additional documents from the litigation also demonstrate that Marchai
has not previously sought proceeds that went to the HOA. As argued above Marchai's

violation of NRS 116.1113 claim in the Complaint directs review to wrongful foreclosure. In responses to written discovery requests regarding wrongful foreclosure Marchai never alleges facts related to the application of the proceeds after the sale. See Responses to Written Discovery (specifically responses to interrogatories 13 – 15) attached hereto as **Exhibit 26**. Marchai's response also incorporates its Motion for summary judgment at the time into its written discovery response for further information. *Id.* However, the motion for summary judgment similarly does not seek proceeds after the sale. **See Marchai's January 14, 2016 Motion for Summary Judgment.**

Further, Marchai's last disclosure or witnesses and documents does not include a computation of damages that seeks proceeds after the sale. Marchai's last disclosure states:

(C) A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary matter, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

Marchai primarily judicial foreclosure and a ruling that Wyeth Ranch Community Association's foreclosure did not extinguish Marchai's deed of trust or, if it did, that the sale was void or voidable. If the Court does not grant judicial foreclosure, declare that Wyeth Ranch's foreclosure did not extinguish Marchai's deed of trust, or set aside the foreclosure sale as void or voidable, Marchai seeks damages in the amount of the fair market value of the property. According to Marchai's expert, the property had a fair market value of \$360,000 at the time of Wyeth Ranch's foreclosure. See Marchai, B.T.'s Initial Expert Disclosure (Apr. 25, 2017).

See Marchai's Third Supplemental Disclosure and Expert Report, attached hereto as **Exhibit 27**. The damages requested demonstrate Marchai has not sought proceeds from the sale.

Nevada Rule of Civil Procedure 16.1(a)(1)(A)(iv) requires a party to disclose a computation of damages without awaiting a discovery request:

(a) Required Disclosures.

(1) Initial Disclosure.

(A) In General. Except as exempted by Rule 16.1(a)(1)(B) or as otherwise stipulated or ordered by the court, **a party must, without awaiting a discovery request, provide to the other parties:**

(iv) **a computation of each category of damages claimed** by the disclosing party — who must make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered;

Nev. R. Civ. P. 16.1(a)(1)(A)(iv) (emphasis added in bold and underlined). If, as here, a party fails to comply with the rules of disclosure under NRCP 16.1, the court must impose appropriate sanctions, such as "[a]n order prohibiting the use of any witness, document or tangible thing which should have been disclosed, produced, exhibited, or exchanged pursuant to Rule 16.1(a)." NRCP 16.1(e)(3)(b). Moreover, the Nevada Supreme Court recently clarified that "when a party has failed to abide by NRCP 16.1's disclosure requirements, NRCP 37(c)(1) provides the appropriate analytical framework for district courts to employ in determining the consequence of that failure." *Pizarro-Ortega v. Cervantes-Lopez*, 396 P.3d 783, 787 (Nev. 2017), reh'g denied (Sept. 28, 2017). NRCP 37(c)(1) provides that a party cannot rely upon any undisclosed evidence or witnesses unless it shows that there was a substantial justification for the failure to disclose or it shows the failure was harmless. *Id.* (quoting NRCP 37(c)(1); and citing NRCP 16.1(e)(3)(B)). As such, the Court in *Pizzaro-Ortega* held that the trial court erred as a matter of law to the extent it absolved the plaintiffs of their obligation to provide a computation of damages under NRCP 16.1(a)(1)(C). *Id.*

Such failures are not justified as the Plaintiff presumably had in its possession the documents, facts, and information necessary to calculate damages. *See Pizarro-*

1 *Ortega v. Cervantes-Lopez*, 396 P.3d 783, 787 (Nev. 2017), reh'g denied (Sept. 28,
2 2017). Furthermore, the failure to produce a timely and compliant damages
3 computation was not harmless as this case has continued for years without the
4 Association knowing about the request for these damages.

5 Marchai, has never previously alleged the HOA misapplied proceeds after the
6 sale. Marchai has not requested to amend to add this claim. Marchai has never
7 provided a computation of damages for misapplied proceeds. For the reasons provided
8 above, any request to amend or provide proof of these damages at this point in the
9 litigation should be denied.
10

11 **B. The HOA is Entitled to Summary Judgment on Marchai's Wrongful**
12 **Foreclosure Claim, Violation of NRS 116.1113 Claim Pled as**
13 **Wrongful Foreclosure, and Intentional Interference With Contract**
14 **Claim.**

15 As argued in the HOA's motion there are various ways a subpriority sale may
16 occur, and HOA is not required to provide a superpriority sale. See HOA's Motion for
17 Summary Judgment at 13. The HOA is required to provide a non-warranty deed after
18 the foreclosure (see NRS 116.31164(3)(a)), and had no obligation to disclose it was
19 foreclosing on a superpriority lien if it has one.¹ Marchai argues in its opposition "that
20 Wyeth Ranch's witness testified that Perez's payments did not satisfy the superpriority
21 portion of the lien." Marchai's Opposition at 10. Marchai, would like the Court to keep
22 the HOA in the case to tell the HOA it was wrong on its belief that superpriority amounts
23 remained at the time of foreclosure. However, even assuming Marchai is correct that
24 the HOA's witness was wrong (meaning it wasn't superpriority), then a subpriority sale
occurred and Marchai was not damaged. Marchai is conflating the testimony on a belief

25 ¹ See *Pennymac Corp. v. Javalina Options Ltd.*, 2019 Nev. Unpub. LEXIS 1174, *6, 450 P.3d 915,
26 2019 WL 5491000, stating: "... nothing in the CC&Rs supports appellant's arguments that the HOA
27 chose to conduct a subpriority-only sale, and. . . the HOA's failure to delineate
28 the superpriority amount in the foreclosure notices is not evidence of such a choice. Citing: *SFR*
Inns. Pool 1, LLC v. U.S. Bank, N.A., 130 Nev. 742, 757, 334 P.3d 408, 418 (2014) (observing that it
was "appropriate" for the notices to state the total lien amount because they are sent to the
homeowner and other junior lienholders).

1 with a guarantee that it was a superpriority sale, and the HOA does not have to provide
2 such a guarantee, nor did it ever provide such a guarantee. Marchai is not providing the
3 court a scenario under the claims as pled and the limited factual determination
4 remaining, where Marchai was both damaged and there is a causal nexus to a legal
5 violation by the HOA.

6 Marchai, argues for the following definition of wrongfully foreclosure: “Under
7 Nevada Law, a wrongful foreclosure occurs when “no breach of condition or failure of
8 performance existed . . . which would have authorized the foreclosure.” Marchai’s
9 Opposition at 10 citing: *Collins v. Union Fed. Sav. & Loan Ass’n*, 99 Nev. 284, 304, 662
10 P.2d 610, 623 (1983). Under its own definition no wrongful foreclosure occurred. It is
11 not disputed that the homeowner defaulted on its obligation to pay HOA assessments,
12 and it is not disputed that the HOA foreclosed on the correct total balance owing.
13 Marchai incorrectly argues the HOA guaranteed a superpriority and it is wrongful
14 foreclosure if there was no superpriority portion. Marchai wants to equate the existence
15 of a superiority portion to the existence of the debt, however, the existence of a
16 superpriority portion is really about the state or condition of the debt as superpriority or
17 subpriority, and not about whether it actually existed. There is no reasonable
18 expectation of a superpriority sale. The foreclosure sale is inherently risky. The HOA did
19 not make such a guarantee about the state or condition of the debt, and does not make
20 a guarantee when it provides a non-warranty deed; as for a variety of reasons it can be
21 a subpriority sale, only one of which is tender of the superpriority portion. Despite the
22 remaining dispute to resolve title between Marchai and SFR, the court can find the HOA
23 either performed a valid superpriority sale or a valid subpriority sale on a debt that
24 existed; which would resolve wrongful foreclosure now in the HOA’s favor, as it is not
25 disputed that the debt actually existed.

26 Similarly, Marchai pled its breach of NRS 116.1113 claim on the same
27 allegations as wrongful foreclosure. This was done because Marchai recognizes in its
28 own definition of wrongful foreclose that notice issues with the sale may not be properly

1 alleged in the pleadings as a wrongful foreclosure, if wrongful foreclosure is dependent
2 on showing the debt did not actually exist. Thus, breach of NRS 116.1113 is often used
3 simultaneously with claims of wrongful foreclosure. However, here there are no notice
4 issues or reasons to set aside the sale. As breach of NRS 116.1113 is pled similar to
5 wrongful foreclosure for the same reasons above no breach occurred; the HOA is not
6 guaranteeing a superiority sale, or the state or condition of the debt in terms of that
7 aspect of superpriority or subpriority. Disputes about Notice Issues and Commercial
8 Reasonableness have already been resolved. Marchai argues: “Wyeth Ranch could not
9 have foreclosed upon the lien’s superpriority part, and any claim it did results in a
10 wrongful foreclosure.” Marchai’s Opposition at 13. The HOA has no legal claim to
11 confirm a superpriority sale, as either a superpriority sale or subpriority are valid, and it
12 can be impossible to predict which may actually occur, as for example, in any given sale
13 their could have been an unknown federal interest that prevented a superpriority
14 foreclosure.

15 The remaining issue is application of payments. With constitutionality,
16 commercial reasonableness, notice, etc., resolved there was a valid sale here. There
17 was a valid sale and SFR was the Purchaser. The application of payments leaves open
18 whether SFR took subject to the deed of trust, or whether the deed of trust was
19 extinguished by the foreclosure sale, but there is no basis to void the sale, or reason to
20 keep the HOA in the case to continue to trial for the purpose of declaratory relief on
21 whether SFR took title subject to the deed of trust or not. The *Cranesbill* decision
22 reflects a break from the idea that the payments should just be applied by the Court in
23 hindsight to benefit the Lender. There is no legal obligation or good faith requirement to
24 apply partial payments toward superpriority portions of the lien first. *See Cranesbill*.
25 Thus, despite how the court may determine the application of payments, the HOA is
26 entitled to summary judgment on Marchai’s breach of NRS 116.1113 claim.

27 ///

28 ///

1 Finally, on Marchai's Intentional Interference of contract claim, as argued in detail
2 in the HOA's Motion, it is not likely this claim survive remand. If it did, the Nevada
3 Supreme Court reconsidering the *Jessup* case en banc stated: "foreclosing on a
4 statutory lien that the Legislature has given priority over a first deed of trust does not
5 demonstrate tortious interference with appellants' deed of trust. See *J.J. Indus., LLC v.*
6 *Bennett*, 119 Nev. 269, 274, 1264, 71 P.3d 1264, 1267 (2003) (listing as one of the
7 elements of a tortious interference claim "an intentional act[] intended or designed to
8 disrupt the contractual relationship")." *Bank of Am. v. Jessup*, 2020 Nev. Unpub. LEXIS
9 471, *5, 462 P.3d 255. Marchai's contract inherently recognized the statute and the
10 possibility of a superpriority lien foreclosure.

11 Thus, the HOA is entitled to summary judgment on all of Marchai's claims that
12 still exist against it.

13 **VI. CONCLUSION**

14 Based on the foregoing arguments, the HOA respectfully requests that summary
15 judgment be entered in its favor on all claims for relief set forth in Marchai's complaint.

16 DATED this 2nd day of November, 2020.

17 LIPSON NEILSON P.C.

18 /s/ David Ochoa

19 By: _____

20 KALEB D. ANDERSON, ESQ.
Nevada Bar No. 7582
21 DAVID T. OCHOA, ESQ.
Nevada Bar No. 10414
22 9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144

23 *Attorneys for Defendant*
24 *Wyeth Ranch Community Association*

CERTIFICATE OF SERVICE

I certify that on the 2nd day of November, 2020, I electronically transmitted the foregoing **DEFENDANT WYETH RANCH COMMUNITY ASSOCIATION'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT** to the Clerk's Office using the Odyssey eFileNV & Serve system for filing and transmittal to the following Odyssey eFileNV & Serve registrants addressed to:

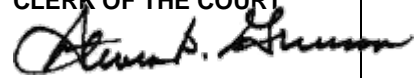
David J. Merrill, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
david@djmerillpc.com

Attorney for Plaintiff Marchai, B.T.

Diana Cline Ebron, Esq.
Jacqueline A. Gilbert, Esq.
Karen L. Hanks, Esq.
KIM GILBERT EBRON
7625 Dean Martin Drive, Suite 110
Las Vegas, NV 89139
diana@kgelegal.com
jackie@kgelegal.com
karen@kgelegal.com

*Attorneys for SFR Investments Pool 1,
LLC*

/s/ Juan Cerezo
An employee of LIPSON NEILSON P.C.



ODM
David J. Merrill
Nevada Bar No. 6060
David J. Merrill, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 566-1935
Facsimile: (702) 993-8841
Email: david@djmerrillpc.com
Attorney for Marchai, B.T.

DISTRICT COURT
CLARK COUNTY, NEVADA

MARCHAI, B.T., a Nevada business trust,

Plaintiff,

v.

CRISTELA PEREZ, an individual; *et al.*

Defendants.

Case No.: A-13-689461-C

Dept. No. XI

Consolidated with: A-16-742327-C

AND ALL RELATED CLAIMS AND AC-
TIONS

**Order Denying Defendant Wyeth Ranch Community Asso-
ciation's Motion for Summary Judgment**

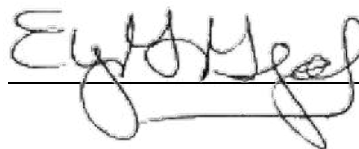
Defendant Wyeth Ranch Community Association's Motion for Summary Judgment came before this Court on the 10th day of November 2020. David T. Ochoa of Lipson Neilson P.C. appeared for Wyeth Ranch. David J. Merrill of David J. Merrill, P.C. appeared for Marchai, B.T. And Jason G. Martinez of Kim Gilbert Ebron appeared for SFR Investments Pool 1, LLC. The

DAVID J. MERRILL, P.C.
10161 PARK RUN DRIVE, SUITE 150
LAS VEGAS, NEVADA 89145
(702) 566-1935

DAVID J. MERRILL, P.C.
10161 PARK RUN DRIVE, SUITE 150
LAS VEGAS, NEVADA 89145
(702) 566-1935

1 Court, having considered the motion, Marchai's opposition, Wyeth Ranch's reply, the argument
2 of counsel, and good cause appearing therefor:

3 **It is hereby ordered** that the motion is **denied**. Genuine issues of material fact concern-
4 ing the application of payments before and after Wyeth Ranch's foreclosure preclude summary
5 judgment.

6
7 

November 23, 2020

8
9
10
11
12 Submitted by:

13 David J. Merrill, P.C.

14
15 By: /s/ David J. Merrill
16 David J. Merrill
17 Nevada Bar No. 6060
18 10161 Park Run Drive, Suite 150
19 Las Vegas, Nevada 89145
20 (702) 566-1935
21 Attorney for Marchai, B.T.

22
23 Approved as to form:

24 Kim Gilbert Ebron

25 By: /s/ Karen L. Hanks
26 Karen L. Hanks
27 Nevada Bar No. 9578
28 7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
(702) 485-3300
Attorneys for SFR Investments Pool 1, LLC



David Merrill <david@djmerillpc.com>

RE: Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order Denying Wyeth Ranch Community Association's Motion for Summary Judgment

1 message

Karen Hanks <karen@kgelegal.com>

Wed, Nov 18, 2020 at 2:47 PM

To: David Merrill <david@djmerillpc.com>, David Ochoa <DOchoa@lipsonneilson.com>

You can insert my e-signature.

KAREN L. HANKS, ESQ.

KIM GILBERT EBRON

7625 Dean Martin Dr., Suite 110

Las Vegas, NV 89139

Phone: (702) 485-3300

Fax: (702) 485-3301

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 all 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 and jackie@kgelegal.com.

Sent from [Mail](#) for Windows 10

From: David Merrill**Sent:** Wednesday, November 18, 2020 11:24 AM**To:** David Ochoa; Karen Hanks**Subject:** Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order Denying Wyeth Ranch Community Association's Motion for Summary Judgment

David and Karen,

I have attached a draft of the Order Denying Wyeth Ranch Community Association's Motion for Summary Judgment. Please advise as soon as possible if you have any suggested revisions. If I do not hear from you, I will submit to the Court on Friday. Thank you.

AA 233

--

David J. Merrill

David J. Merrill, P.C.

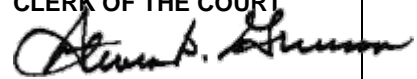
10161 Park Run Drive, Suite 150

Las Vegas, Nevada 89145

Office: (702) 566-1935

Mobile: (702) 577-0268

Fax: (702) 993-8841



1 **NEOJ**
David J. Merrill
2 Nevada Bar No. 6060
David J. Merrill, P.C.
3 10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
4 Telephone: (702) 566-1935
Facsimile: (702) 993-8841
5 E-mail: david@djmerrillpc.com
Attorney for Marchai, B.T.
6
7

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 MARCHAI, B.T., a Nevada business trust,
11 Plaintiff,

12 v.

13 CRISTELA PEREZ, an individual; *et al.*
14 Defendants.

Case No.: A-13-689461-C
Dept. No. XI

Consolidated with: A-16-742327-C

15
16 AND ALL RELATED CLAIMS AND AC-
TIONS
17

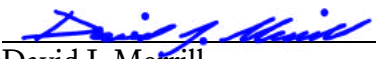
18 **Notice of Entry of Order**

19 **Take notice** that on the 24th day of November 2020, the Court entered an Order Deny-
20 ing Defendant Wyeth Ranch Community Association's Motion for Summary Judgment, a copy
21 of which is attached.

22 Dated this 30th day of November 2020.

23 David J. Merrill, P.C.

24
25 By:


David J. Merrill
Nevada Bar No. 6060
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
(702) 566-1935
Attorney for Marchai, B.T.

Certificate of Service

I hereby certify that on the 30th day of November 2020, a copy of the Notice of Entry of Order was served electronically to the following through the Court's electronic service system:

Kim Gilbert Ebron

Diana Cline Ebron
E-Service for Kim Gilbert Ebron
Michael L. Sturm
Tomas Valerio

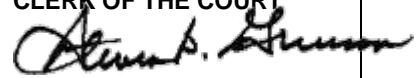
diana@kgelegal.com
eservice@kgelegal.com
mike@kgelegal.com
staff@kgelegal.com

Lipson, Neilson, Cole, Seltzer & Garin, P.C.

Brenda Correa
Kaleb Anderson
Megan Hummel
Renee Rittenhouse
Susana Nutt
Juan Cerezo
David Ochoa

bcorrea@lipsonneilson.com
kanderson@lipsonneilson.com
mhummel@lipsonneilson.com
rrittenhouse@lipsonneilson.com
snutt@lipsonneilson.com
jcerezo@lipsonneilson.com
dochoa@lipsonneilson.com


An employee of David J. Merrill, P.C.



ODM
David J. Merrill
Nevada Bar No. 6060
David J. Merrill, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 566-1935
Facsimile: (702) 993-8841
Email: david@djmerrillpc.com
Attorney for Marchai, B.T.

DISTRICT COURT
CLARK COUNTY, NEVADA

MARCHAI, B.T., a Nevada business trust,

Plaintiff,

v.

CRISTELA PEREZ, an individual; *et al.*

Defendants.

Case No.: A-13-689461-C

Dept. No. XI

Consolidated with: A-16-742327-C

AND ALL RELATED CLAIMS AND AC-
TIONS

**Order Denying Defendant Wyeth Ranch Community Asso-
ciation's Motion for Summary Judgment**

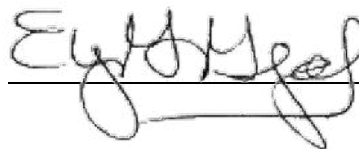
Defendant Wyeth Ranch Community Association's Motion for Summary Judgment came before this Court on the 10th day of November 2020. David T. Ochoa of Lipson Neilson P.C. appeared for Wyeth Ranch. David J. Merrill of David J. Merrill, P.C. appeared for Marchai, B.T. And Jason G. Martinez of Kim Gilbert Ebron appeared for SFR Investments Pool 1, LLC. The

DAVID J. MERRILL, P.C.
10161 PARK RUN DRIVE, SUITE 150
LAS VEGAS, NEVADA 89145
(702) 566-1935

DAVID J. MERRILL, P.C.
10161 PARK RUN DRIVE, SUITE 150
LAS VEGAS, NEVADA 89145
(702) 566-1935

1 Court, having considered the motion, Marchai's opposition, Wyeth Ranch's reply, the argument
2 of counsel, and good cause appearing therefor:

3 **It is hereby ordered** that the motion is **denied**. Genuine issues of material fact concern-
4 ing the application of payments before and after Wyeth Ranch's foreclosure preclude summary
5 judgment.

6
7 

November 23, 2020

8
9
10
11
12 Submitted by:

13 David J. Merrill, P.C.

14
15 By: /s/ David J. Merrill
16 David J. Merrill
17 Nevada Bar No. 6060
18 10161 Park Run Drive, Suite 150
19 Las Vegas, Nevada 89145
20 (702) 566-1935
21 Attorney for Marchai, B.T.

22 Approved as to form:

23 Kim Gilbert Ebron

24 By: /s/ Karen L. Hanks
25 Karen L. Hanks
26 Nevada Bar No. 9578
27 7625 Dean Martin Drive, Suite 110
28 Las Vegas, Nevada 89139
(702) 485-3300
Attorneys for SFR Investments Pool 1, LLC



David Merrill <david@djmerillpc.com>

RE: Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order Denying Wyeth Ranch Community Association's Motion for Summary Judgment

1 message

Karen Hanks <karen@kgelegal.com>

Wed, Nov 18, 2020 at 2:47 PM

To: David Merrill <david@djmerillpc.com>, David Ochoa <DOchoa@lipsonneilson.com>

You can insert my e-signature.

KAREN L. HANKS, ESQ.

KIM GILBERT EBRON

7625 Dean Martin Dr., Suite 110

Las Vegas, NV 89139

Phone: (702) 485-3300

Fax: (702) 485-3301

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 all 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 and jackie@kgelegal.com.

Sent from [Mail](#) for Windows 10

From: David Merrill**Sent:** Wednesday, November 18, 2020 11:24 AM**To:** David Ochoa; Karen Hanks**Subject:** Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order Denying Wyeth Ranch Community Association's Motion for Summary Judgment

David and Karen,

I have attached a draft of the Order Denying Wyeth Ranch Community Association's Motion for Summary Judgment. Please advise as soon as possible if you have any suggested revisions. If I do not hear from you, I will submit to the Court on Friday. Thank you.

AA 239

11/18/2020

David J. Merrill, P.C. Mail - RE: Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order Denying Wyeth Ranch Community Association's Motion fo...

--

David J. Merrill

David J. Merrill, P.C.

10161 Park Run Drive, Suite 150

Las Vegas, Nevada 89145

Office: (702) 566-1935

Mobile: (702) 577-0268

Fax: (702) 993-8841

AA 240