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Oct 18 2021 12:58 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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Attorneys for SFR Investments Pool 1, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

SELENE FINANCE, L.P., a Limited
Partnership,

Defendant.

Case No.: A-20-813201-C
Dept. No.: XXXII

NOTICE OF APPEAL

PLEASE TAKE NOTICE THAT:

SFR INVESTMENTS POOL 1, LLC ("SFR") hereby appeals from the following orders and judgments:

1. Findings of Fact, Conclusions of Law and Order Granting Selene Finance, LP's Motion for Summary Judgment and Denying SFR Investments Pool 1, LLC's Motion for Summary Judgment; and

///

///

2. Any and all orders made appealable thereby.

DATED this 7th day of October, 2021.

KIM GILBERT EBRON

/s/ Jacqueline A. Gilbert

JACQUELINE A. GILBERT, ESQ.

Nevada Bar No. 10593

7625 Dean Martin Dr., Ste. 110

Las Vegas, NV 89139

Attorney for SFR Investments Pool 1, LLC

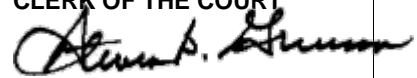
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of October, 2021, pursuant to NRCP 5(b)(2)(E),
I caused a true and correct copy of the foregoing **NOTICE OF APPEAL** to be delivered via the
Eighth Judicial District Court Electronic Filing System to the following:

DEFAULT ACCOUNT
Faith Harris
Christina Miller
Tonya Sessions
Brody Wight

NVefile@wrightlegal.net
fharris@wrightlegal.net
cmiller@wrightlegal.net
tsessions@wrightlegal.net
bwight@wrightlegal.net

/s/ Jacqueline A. Gilbert
an employee of KIM GILBERT EBRON



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SELENE FINANCE, L.P., a Limited
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Defendant.

Case No.: A-20-813201-C
Dept. No.: XXXII

CASE APPEAL STATEMENT

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 David M. Jones

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

SFR Investments Pool 1, LLC

Jacqueline A. Gilbert
Diana S. Ebron
Chantel M. Schimming
KIM GILBERT EBRON

7625 Dean Martin Dr., Suite 110
Las Vegas, NV 89139

- 4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):**

Selene Finance, L.P.

Christina V. Miller
Brody R. Wight
WRIGHT, FINLAY & ZAK, LLP
7785 W. Sahara Avenue, Suite 200
Las Vegas, NV 89117

- 5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):**

N/A

- 6. Indicate whether appellant was represented by appointed or retained counsel in the district court:**

Retained

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

Retained

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

N/A

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

April 2, 2020

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

NRS 116 foreclosure sale at which SFR successfully bid on and took title to the subject

property. Selene initially filed an action in federal court to quiet title and get declaration that the DOT survived the foreclosure sale. When SFR moved to dismiss as Selene waited more than 4 years following the sale to initiate its lawsuit to dispute the effect of the sale, Selene voluntarily dismissed its complaint. Then, without getting a judicial determination that the DOT survived, it initiated foreclosure proceedings. SFR filed the instant action to stop the sale, on the following causes of action: 1. Cancellation of Written Instrument – bank NOD and NOS because the chain of title appeared broken without proper transfer to Selene; and 2. Cancellation of Written Instrument – DOT – based on NRS 106.240.

Despite failing to produce the original note during discovery, the DC allowed the Bank to bring and considered what was purported to be the original note at the hearing on MSJs, when that note did not match the copies provided during discovery. Further, Selene’s predecessor sent a letter to the borrower stating it would accelerate the loan if default were not cured on or before October 8, 2009. The DC granted SJ in favor of Selene stating the instruments would not be cancelled or declared void. SFR believes there were questions of material fact that should have precluded SJ.

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

N/A

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

N/A

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

SFR is always willing to address settlement of the case.

DATED this 7th day of October, 2021.

KIM GILBERT EBRON

/s/ Jacqueline A. Gilbert

JACQUELINE A. GILBERT, ESQ.

Nevada Bar No. 10593

7625 Dean Martin Dr., Ste. 110

Las Vegas, NV 89139

Attorney for SFR Investments Pool 1, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of October, 2021, pursuant to NRCP 5(b)(2)(E),
I caused a true and correct copy of the foregoing **CASE APPEAL STATEMENT** to be delivered
via the Eighth Judicial District Court Electronic Filing System to the following:

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tsessions@wrightlegal.net
bwight@wrightlegal.net

/s/ Jacqueline A. Gilbert
an employee of KIM GILBERT EBRON

CASE SUMMARY**CASE NO. A-20-813201-C**

SFR Investments Pool 1 LLC, Plaintiff(s)
vs.
Selene Finance LP, Defendant(s)

§
§
§
§
§

Location: **Department 29**
 Judicial Officer: **Jones, David M**
 Filed on: **04/02/2020**
 Case Number History:
 Cross-Reference Case Number: **A813201**

CASE INFORMATION**Statistical Closures**

09/29/2021 Summary Judgment

Case Type: **Other Real Property**

Case Status: **09/29/2021 Closed**

DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number A-20-813201-C
 Court Department 29
 Date Assigned 01/04/2021
 Judicial Officer Jones, David M

PARTY INFORMATION**Plaintiff****SFR Investments Pool 1 LLC***Lead Attorneys*

Ebron, Diana S.
Retained
 702-485-3300(W)

Defendant**Selene Finance LP**

Miller, Christina V.
Retained
 702-949-3100(W)

DATE**EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

04/02/2020



Complaint

Filed By: Plaintiff SFR Investments Pool 1 LLC
[1] Complaint

04/02/2020



Initial Appearance Fee Disclosure

Filed By: Plaintiff SFR Investments Pool 1 LLC
[2] SFR Investments Pool 1, LLC's Initial Appearance Fee Disclosure (NRS Chapter 19)

04/02/2020



Disclosure Statement

Party: Plaintiff SFR Investments Pool 1 LLC
[3] Initial Disclosure Statement

04/02/2020



Summons

Filed by: Plaintiff SFR Investments Pool 1 LLC
[4] Summons - Selene Finance, L.P.

04/02/2020

















Notice of Lis Pendens

Filed by: Plaintiff SFR Investments Pool 1 LLC
[5] Notice of Lis Pendens














CASE SUMMARY

CASE NO. A-20-813201-C

04/03/2020	 Peremptory Challenge Filed by: Plaintiff SFR Investments Pool 1 LLC <i>[6] Peremptory Challenge</i>
04/03/2020	 Notice of Department Reassignment <i>[7] Notice of Department Reassignment</i>
04/06/2020	 Motion for Temporary Restraining Order Filed By: Plaintiff SFR Investments Pool 1 LLC <i>[8] SFR Investments Pool 1, LLC s Application For A Temporary Restraining Order/Motion for Preliminary Injunction</i>
04/06/2020	 Clerk's Notice of Hearing <i>[9] Notice of Hearing</i>
04/07/2020	 Summons Electronically Issued - Service Pending Party: Plaintiff SFR Investments Pool 1 LLC <i>[10] Summons - Selene Finance, L.P.</i>
04/15/2020	 Affidavit of Service Filed By: Plaintiff SFR Investments Pool 1 LLC Party Served: Defendant Selene Finance LP <i>[11] Affidavit of Service - Selene Finance, LP</i>
04/27/2020	 Opposition <i>[12] Opposition to Application for Temporary Restraining Order; Motion for Preliminary Injunction</i>
04/27/2020	 Initial Appearance Fee Disclosure Filed By: Defendant Selene Finance LP <i>[13] Initial Appearance Fee Disclosure</i>
05/04/2020	 Motion to Dismiss <i>[14] Motion to Dismiss Complaint With Prejudice</i>
05/06/2020	 Clerk's Notice of Hearing <i>[15] Notice of Hearing</i>
05/11/2020	 Reply in Support <i>[16] Reply in Support of Application for Temporary Restraining Order and Motion for Preliminary Injunction</i>
05/22/2020	 Opposition to Motion to Dismiss Filed By: Plaintiff SFR Investments Pool 1 LLC <i>[17] SFR INVESTMENTS POOL 1, LLC S OPPOSITION TO SELENE FINANCE, L.P. S MOTION TO DISMISS</i>
05/26/2020	 Errata Filed By: Plaintiff SFR Investments Pool 1 LLC <i>[18] SFR Investment Pool 1, LLC's Errata To Opposition To Selene Finance, L.P.'s Motion To Dismiss</i>
06/04/2020	 Stipulation and Order Filed by: Plaintiff SFR Investments Pool 1 LLC

CASE SUMMARY

CASE NO. A-20-813201-C

	<i>[19] Stipulation and Order to Continue Hearing Date</i>
06/12/2020	 Stipulation and Order <i>[20] Stipulation and Order to Continue Hearing Date</i>
06/25/2020	 Reply in Support <i>[21] Reply in Support of Motion to Dismiss Complaint With Prejudice</i>
07/08/2020	 Filing Fee Remittance Filed By: Defendant Selene Finance LP <i>[22] Filing Fee Remittance</i>
07/10/2020	 Supplement Filed by: Defendant Selene Finance LP <i>[23] Supplement in Support of Defendant Selene Finance, L.P.'s Motion to Dismiss Complaint with Prejudice</i>
07/20/2020	 Response Filed by: Plaintiff SFR Investments Pool 1 LLC <i>[24] Response to Supplement in Support of Motion to Dismiss</i>
10/09/2020	 Request Filed by: Defendant Selene Finance LP <i>[25] Request for Continued Hearing</i>
10/13/2020	 Clerk's Notice of Hearing <i>[26] Notice of Hearing</i>
12/04/2020	 Joint Case Conference Report Filed By: Plaintiff SFR Investments Pool 1 LLC <i>[27] Joint Case Conference Report</i>
12/04/2020	 Order Denying Motion Filed By: Plaintiff SFR Investments Pool 1 LLC <i>[28] Order Denying Plaintiff's Motion for Preliminary Injunction and Denying Defendant's Motion to Dismiss Complaint</i>
12/08/2020	 Notice of Entry of Order Filed By: Plaintiff SFR Investments Pool 1 LLC <i>[29] Notice of Entry of Order Denying Plaintiff's Motion for Preliminary Injunction & Denying Defendant's Motion to Dismiss Complaint</i>
01/04/2021	Case Reassigned to Department 29 <i>Judicial Reassignment to Judge David M. Jones</i>
01/08/2021	 Answer <i>[30] Selene Finance, LP's Answer to Complaint</i>
03/31/2021	 Scheduling and Trial Order <i>[31] Scheduling Order and Order Setting Civil Bench Trial, Pre-Trial and Calendar Call Scheduling Order</i>
04/15/2021	 Stipulation and Order Filed by: Plaintiff SFR Investments Pool 1 LLC

CASE SUMMARY

CASE NO. A-20-813201-C

[32] Stipulation and Order to Extend Discovery Deadline

06/02/2021



Motion for Summary Judgment

Filed By: Plaintiff SFR Investments Pool 1 LLC

[33] SFR Investments Pool 1, LLC's Motion for Summary Judgment

06/02/2021



Clerk's Notice of Hearing

[34] Notice of Hearing

06/03/2021



Motion for Summary Judgment

Filed By: Defendant Selene Finance LP

[35] Selene Finance, LP's Motion for Summary Judgment

06/03/2021



Clerk's Notice of Hearing

[36] Notice of Hearing

06/16/2021



Opposition to Motion For Summary Judgment

[37] Selene Finance, LP's Opposition to SFR Investments Pool 1, LLC's Motion for Summary Judgment

06/17/2021



Opposition to Motion

Filed By: Plaintiff SFR Investments Pool 1 LLC

[38] SFR Investments Pool 1, LLC's Opposition to Selene Finance, LP's Motion for Summary Judgment

06/30/2021



Acknowledgment

Filed By: Defendant Selene Finance LP

[39] Acknowledgement of the Inspection of the Original Collateral File

06/30/2021



Reply in Support

[40] Selene Finance, LP's Reply in Support of Its Motion for Summary Judgment

06/30/2021



Reply in Support

Filed By: Plaintiff SFR Investments Pool 1 LLC

[41] SFR Investments Pool 1, LLC's Reply in Support of Motion for Summary Judgment

07/01/2021



Pre-Trial Disclosure

Party: Defendant Selene Finance LP

[42] Defendant Selene Finance, LP's Pre-Trial Disclosure of Witnesses and Documents

07/02/2021



Pre-Trial Disclosure

Party: Plaintiff SFR Investments Pool 1 LLC

[43] SFR INVESTMENTS POOL 1, LLC S PRETRIAL DISCLOSURES

09/07/2021



Order

[44] Order Granting Motion for Summary Judgment

09/07/2021



Notice of Entry of Order

Filed By: Defendant Selene Finance LP

[45] Notice of Entry of Order

09/29/2021



Order to Statistically Close Case

[46] Civil Order to Statistically Close Case

CASE SUMMARY

CASE NO. A-20-813201-C

10/07/2021



Notice of Appeal

Filed By: Plaintiff SFR Investments Pool 1 LLC
[47] Notice of Appeal

10/07/2021



Case Appeal Statement

[48]

10/07/2021



Amended Notice of Appeal

Party: Plaintiff SFR Investments Pool 1 LLC
[49] Amended Notice of Appeal

DISPOSITIONS

09/07/2021

Summary Judgment (Judicial Officer: Jones, David M)

Debtors: SFR Investments Pool 1 LLC (Plaintiff)

Creditors: Selene Finance LP (Defendant)

Judgment: 09/07/2021, Docketed: 09/07/2021

HEARINGS

05/18/2020



Minute Order (3:00 AM) (Judicial Officer: Bare, Rob)

Minute Order - No Hearing Held; Rescheduled

Journal Entry Details:

At the request of Court, for judicial economy, (1) Plaintiff's Application for Temporary Restraining Order and Motion for Preliminary Injunction presently set for a hearing on May 19, 2020 and (2) Defendant's Motion to Dismiss Complaint With Prejudice, presently set for a hearing on June 9, 2020, shall be CONSOLIDATED and shall be heard on June 9, 2020 at 9:30 a.m. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 05/18/20 ;

05/19/2020

CANCELED Motion for Preliminary Injunction (9:30 AM) (Judicial Officer: Bare, Rob)

Vacated - per Order

SFR Investments Pool 1, LLC s Application For A Temporary Restraining Order/Motion for Preliminary Injunction

06/26/2020



Minute Order (3:00 AM) (Judicial Officer: Bare, Rob)



Minute Order - No Hearing Held;

Journal Entry Details:

Department 32 Formal Request to Appear Telephonically for the July 2, 2020, hearing calendar. Please be advised that due to the COVID-19 pandemic, Department 32 will continue to conduct Court hearings REMOTELY using the Blue Jeans Video Conferencing system. You have the choice to appear either by phone or computer/video. Dial the following number: 1-408-419-1715 Meeting ID: 243 724 854 Meeting URL: <https://bluejeans.com/243724854> To connect by phone dial the number provided and enter the meeting ID followed by # To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by BlueJeans. You may also download the Blue Jeans app and join the meeting by entering the meeting ID PLEASE NOTE the following protocol each participant will be required to follow: Place your phone on MUTE while waiting for your matter to be called. Do NOT place the call on hold since some phones may play wait/hold music. Please do NOT use speaker phone as it causes a loud echo/ringing noise. Please state your name each time you speak so that the court recorder can capture a clear record. Please be mindful of rustling papers, background noise, and coughing or loud breathing. Please be mindful of where your camera is pointing. We encourage you to visit the [Bluejeans.com](https://bluejeans.com) website to get familiar with the Blue Jeans phone/videoconferencing system before your hearing. If your hearing gets continued to a different date after you have already received this minute order please note a new minute order will issue with a different meeting ID since the ID number changes with each meeting/hearing. Please be patient if you call in and we are in the middle of oral argument from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called. ;

CASE SUMMARY

CASE NO. A-20-813201-C

07/02/2020	<p>Motion to Dismiss (9:30 AM) (Judicial Officer: Bare, Rob)</p> <p><i>Motion to Dismiss Complaint With Prejudice</i></p> <p>Continued;</p>
07/02/2020	<p>Motion for Preliminary Injunction (9:30 AM) (Judicial Officer: Bare, Rob)</p> <p><i>SFR Investments Pool 1, LLC s Application For A Temporary Restraining Order/Motion for Preliminary Injunction</i></p> <p>Continued;</p>
07/02/2020	<p> All Pending Motions (9:30 AM) (Judicial Officer: Bare, Rob)</p> <p>Continued;</p> <p>Journal Entry Details:</p> <p><i>SFR Investments Pool 1, LLC s Application For A Temporary Restraining Order/Motion for Preliminary Injunction Motion to Dismiss Complaint with Prejudice Arguments by counsel regarding standing and further discovery needed on the Note and signatures. Court will allow discovery and instructed counsel to work together in good faith to create a discovery plan. Supplement briefing due 7/10/20; Reply due 7/20/20; foreclosure sale to be reset after the discovery plan. COURT INSTRUCTED counsel to contact the Court with the plan and to set a continuance date for the motions.;</i></p>
11/13/2020	<p> Minute Order (3:00 AM) (Judicial Officer: Bare, Rob)</p> <p><i>Formal Request to Appear Remotely</i></p> <p>Minute Order - No Hearing Held;</p> <p>Journal Entry Details:</p> <p><i>Department 32 Formal Request to Appear REMOTELY for the November 17, 2020, hearing calendar Please be advised that due to the COVID-19 pandemic, Department 32 will continue to conduct Court hearings REMOTELY using the Blue Jeans Video Conferencing system. You have the choice to appear either by phone or computer/video. Dial the following number: 1-408-419-1715 Meeting ID: 789 529 808 Meeting URL: https://bluejeans.com/789529808 To connect by phone dial the number provided and enter the meeting ID followed by # To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by BlueJeans. You may also download the Blue Jeans app and join the meeting by entering the meeting ID PLEASE NOTE the following protocol each participant will be required to follow: Place your phone on MUTE while waiting for your matter to be called. Do NOT place the call on hold since some phones may play wait/hold music. Please do NOT use speaker phone as it causes a loud echo/ringing noise. Please state your name each time you speak so that the court recorder can capture a clear record. Please be mindful of rustling papers, background noise, and coughing or loud breathing. Please be mindful of where your camera is pointing. We encourage you to visit the Bluejeans.com website to get familiar with the Blue Jeans phone/videoconferencing system before your hearing. If your hearing gets continued to a different date after you have already received this minute order please note a new minute order will issue with a different meeting ID since the ID number changes with each meeting/hearing. Please be patient if you call in and we are in the middle of oral argument from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 11/13/20 ;</i></p> <p><i>Department 32 Formal Request to Appear REMOTELY for the November 17, 2020, hearing calendar Please be advised that due to the COVID-19 pandemic, Department 32 will continue to conduct Court hearings REMOTELY using the Blue Jeans Video Conferencing system. You have the choice to appear either by phone or computer/video. Dial the following number: 1-408-419-1715 Meeting ID: 789 529 808 Meeting URL: https://bluejeans.com/789529808 To connect by phone dial the number provided and enter the meeting ID followed by # To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by BlueJeans. You may also download the Blue Jeans app and join the meeting by entering the meeting ID PLEASE NOTE the following protocol each participant will be required to follow: Place your phone on MUTE while waiting for your matter to be called. Do NOT place the call on hold since some phones may play wait/hold music. Please do NOT use speaker phone as it causes a loud echo/ringing noise. Please state your name each time you</i></p>

CASE SUMMARY

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11/16/2020



Minute Order (3:00 AM) (Judicial Officer: Bare, Rob)

Minute Order - No Hearing Held;

Journal Entry Details:

The Court notes Plaintiff SFR Investment Pool 1, LLC's Application for a Temporary Restraining Order and Motion for Preliminary Injunction and Defendant Selene Finance LP's Motion to Dismiss Complaint with Prejudice was heard on July 2, 2020. At the hearing, the Court ordered that the matter shall be continued and the foreclosure sale was delayed per stipulation. Defendant was permitted to file a supplement by July 10, 2020 and Plaintiff was permitted to file a reply to supplement by July 20, 2020. After a review of the pleadings, prior arguments made, and good cause appearing, pursuant to EDCR 2.23 and the Administrative Order 20-17, the Court FINDS and ORDERS as follows: Following facts are not in dispute. On June 4, 2008, Maria and Robert Hakeem ("borrowers") purchased the property located at 3767 Prairie Orchid Ave., North Las Vegas, NV 89081. Borrowers executed a deed of trust and identified PrimeLending as the Lender and MERS as the beneficiary. The deed was recorded on June 10, 2008. On August 1, 2011, MERS assigned its beneficial interest to BAC Home Loans Servicing ("BAC"). On or about August 29, 2012, the HOA foreclosed on the property due to borrower's lack of payment of the HOA dues and Plaintiff purchased the property at a foreclosure sale for \$6,600. The foreclosure deed was recorded on September 11, 2012. On September 1, 2015, BAC assigned its beneficial interest to Defendant. On December 17, 2019, notice of default and election to sell under deed of trust was recorded. The Notice of Sale was recorded on April 1, 2020. The sale date was initially set for May 21, 2020, but was pushed back and has not yet occurred. However, there are some factual matters in dispute. Plaintiff alleges that sometime between June 1 and September 1, 2009, Defendant wholly accelerated the loan and failed to decelerate the loan within 10 years. At this time, the only evidence of acceleration is that the Notice of Default filed on December 17, 2019, which states that "full payment was demanded", which implies that there was a prior acceleration. However, the actual document that shows the acceleration was not referenced in any of the pleadings. NRCP 12(b)(5) governs a motion to dismiss for failure to state a claim upon which relief can be granted. The court must accept all factual allegations in the complaint as true, and draw all inferences in the plaintiff's favor. *Buzz Stew, LLC v. City of Las Vegas*, 124 Nev. 224, 227-28 (2008). The test for determining whether the allegations of a complaint are sufficient to assert a claim for relief is whether the allegations give fair notice of the nature and basis of the legally sufficient claim and relief requested. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842 (1993). Dismissal is proper if the allegations in the complaint alone are insufficient to establish the elements of the claims for relief. *Buzz Stew*, 124 Nev. at 227. Additionally, NRCP 8(a) allows notice pleading, where all that is required in a complaint is a "short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks." Material which is properly submitted as part of the complaint may be considered on a motion to dismiss. *Hal Roach Studios Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990). The document is not "outside" the complaint if the complaint specifically refers to the document and if its authenticity is not questioned. *Branch v. Tunnell*, 14 F. 3d 449, 453 (9th Cir. 1994). To the extent that matters outside the complaint are presented to the court, "the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56." NRCP 12(b). A party may move for summary judgment at any time and must be granted if the pleadings and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Villescas v. CAN, Insurance Co.*, 109 Nev. 1075 (1993). "As a general rule, the court may not consider matters outside the pleading being attacked." *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). "However, the court may take into account matters of public record, orders, items present in the record of the case, and any exhibits attached to the complaint when ruling on a motion to dismiss for failure to state a claim upon which relief can be granted." *Id.* Additionally, "a document is not outside the complaint if the complaint specifically refers to the document and if its authenticity is not questioned." *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir.1994) overruled on other grounds by *Galbraith v. Cnty.*

CASE SUMMARY

CASE NO. A-20-813201-C


of Santa Clara, 307 F.3d 1119, 1125 26 (9th Cir.2002). Material which is properly submitted as part of the complaint may be considered on a motion to dismiss. *Hal Roach Studios Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990). The document is not "outside" the complaint if the complaint specifically refers to the document and if its authenticity is not questioned. *Branch v. Tunnell*, 14 F. 3d 449, 453 (9th Cir. 1994). To the extent that matters outside the complaint are presented to the court, "the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56." NRCP 12(b). A party may move for summary judgment at any time and must be granted if the pleadings and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Villescas v. CAN, Insurance Co.*, 109 Nev. 1075 (1993). NRS 106.240 states "the lien created of any mortgage or deed of trust upon any real property . shall at the expiration of 10 years after the debt secured by the mortgage or deed of trust according to the term thereof or any recorded written extension thereof become wholly due, terminate, and it shall be conclusively presumed that the debt has been regularly satisfied and the lien discharged." In *Pro-Max Corp. v. Feenstra*, 117 Nev. 90, 16 P.3d 1074 (2001), in discussing this statute, the Nevada Supreme Court ruled that this statute merely creates a conclusive presumption that a lien on real property is extinguished ten years after the debt becomes due. In *Posner v. U.S. Bank National Association*, 2020 WL 1310467 (D. Nev. Mar. 18, 2020), the United States District Court of Nevada also found that this statute does not constitute statute of limitation, but rather, creates a conclusive presumption that a lien on real property is extinguished 10 years after the debt becomes due. In *Bank of America, N.A. v. Madeira Canyon Homeowners Association*, 423 F.Supp.3d 1029 (D. Nev. 2019), the United States District Court of Nevada specific found that NRS 106.240 is not a statute of limitation, but a statute of repose, which "puts an outer limit on the right to bring a civil action" and it would "effect a legislative judgment that a defendant should be free from liability after the legislatively determined period of time." The limit on statute of repose is "measured not from the date on which the claim accrues but instead from the date of the last culpable act or omissions of the defendant." In the context of NRS 106.240, the limit on the party's ability to bring the action is dated from the borrower's failure to cure the default. In *Bank of New York Mellon v. Seven Hills Master Community Association*, 2020 WL 620273 (D. Nev. Feb. 10, 2020), the court also faced a question over NRS 106.240. The federal district court ruled that statute of repose applies at the maturity date listed on the deed of trust or 10 years from when the mortgage was accelerated by the lender/beneficiary taking some affirmative action to make it known to the owner/borrower that the option to accelerate the loan was taken. See also, *Bank of New York v. Ruddell*, 380 F.Supp.3d 1096 (D. Nev. Mar. 31, 2019). The difference between the statute of repose and statute of limitation is that former bar "causes of action after a certain period of time, regardless of whether damage or an injury has been discovered." The latter "forecloses suits after a fixed period of time following occurrence or discovery of an injury." *G and H Associates v. Ernest W. Hahn, Inc.*, 113 Nev. 265, 934 P.2d 229 (1997). That is, statute of repose cannot be tolled. *Id.* The relevant issue here is whether under NRS 106.240, Defendant, as the beneficiary, has the right to seek default and foreclose on the mortgage. The Court FINDS under *Wood v. Germann* and *Posner v. U.S. Bank National Association*, Plaintiff, who was not a party or an intended third party beneficiary to the 2011 and 2015 assignments, appear to lack standing to challenge those assignments. The Court FINDS that at the motion to dismiss stage, it must accept all factual allegations in the complaint as true and draw all inferences in Plaintiff's favor. Plaintiff itself recognizes that there is no document that states that Defendant or its predecessor accelerated the loan sometime in 2009. However, Plaintiff cites to the notice of default and election to sell under deed of trust, which was recorded on December 17, 2019, which references that sometime prior to that date, "full payment was demanded", which implies a prior demand being made. However, neither party provided any evidence on when such demand was made. Thus, discovery appears to be necessary to determine if any proof can be found with regards to acceleration of the loan in 2009 or at any other time. The Court FINDS that *Glass v. Select Portfolio Servicing, Inc.*, 2020 WL 3604042 (July 1, 2020), which Defendant cites to, is inapplicable to this case. In *Glass*, the Nevada Supreme Court did not apply NRS 106.240 because it found that the beneficiary had timely rescinded the notice of default. It has no bearing to the Court's decision in this case. The Court FINDS that Plaintiff's Application for Temporary Restraining Order and Motion for Preliminary Injunction is moot because the sale cannot occur while the matter is pending the resolution of the case. The Court ORDERS that Defendant's Motion to Dismiss shall be DENIED without prejudice. Plaintiff's Application for Temporary Restraining Order and Motion for Preliminary Injunction shall be DENIED as moot. Continued hearing set for November 17, 2020 shall be advanced and VACATED. Counsel for Plaintiff is directed to submit a proposed Order consistent with this Minute Order and the submitted briefing. Counsel may add language to further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. Defendant's counsel is to review and countersign as to form and content. Counsel is directed to have the proposed Order submitted to chambers within 10 days consistent with the AO 20-17. CLERK'S

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-20-813201-C

NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 11/16/20 ;

11/17/2020	CANCELED Request (9:30 AM) (Judicial Officer: Bare, Rob) <i>Vacated - per Order</i> <i>Defendant's Request for Continued Hearing</i>
07/07/2021	Motion for Summary Judgment (9:00 AM) (Judicial Officer: Jones, David M) <i>SFR Investments Pool 1, LLC's Motion for Summary Judgment</i> Motion Denied;
07/07/2021	Motion for Summary Judgment (9:00 AM) (Judicial Officer: Jones, David M) <i>Defendant Selene Finance, LP's Motion for Summary Judgment</i> Motion Granted;
07/07/2021	 All Pending Motions (9:00 AM) (Judicial Officer: Jones, David M) Matter Heard; Journal Entry Details: <i>DEFENDANT SELENE FINANCE, LP'S MOTION FOR SUMMARY JUDGMENT ... SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT Following arguments by counsel, COURT ORDERED, Defendant's motion GRANTED; Plaintiff's motion DENIED. Mr. Wight to prepare the order.;</i>
07/07/2021	CANCELED Status Check: Trial Setting (10:30 AM) (Judicial Officer: Jones, David M) <i>Vacated - per Judge</i>
07/21/2021	CANCELED Pre Trial Conference (10:30 AM) (Judicial Officer: Gibbons, Mark) <i>Vacated</i>
07/28/2021	CANCELED Calendar Call (10:30 AM) (Judicial Officer: Jones, David M) <i>Vacated</i>
08/02/2021	CANCELED Bench Trial (9:00 AM) (Judicial Officer: Jones, David M) <i>Vacated</i>

DATE	FINANCIAL INFORMATION																
	<table> <tr> <td>Defendant Selene Finance LP</td><td></td></tr> <tr> <td>Total Charges</td><td>646.00</td></tr> <tr> <td>Total Payments and Credits</td><td>646.00</td></tr> <tr> <td>Balance Due as of 10/11/2021</td><td>0.00</td></tr> <tr> <td>Plaintiff SFR Investments Pool 1 LLC</td><td></td></tr> <tr> <td>Total Charges</td><td>944.00</td></tr> <tr> <td>Total Payments and Credits</td><td>944.00</td></tr> <tr> <td>Balance Due as of 10/11/2021</td><td>0.00</td></tr> </table>	Defendant Selene Finance LP		Total Charges	646.00	Total Payments and Credits	646.00	Balance Due as of 10/11/2021	0.00	Plaintiff SFR Investments Pool 1 LLC		Total Charges	944.00	Total Payments and Credits	944.00	Balance Due as of 10/11/2021	0.00
Defendant Selene Finance LP																	
Total Charges	646.00																
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Plaintiff SFR Investments Pool 1 LLC																	
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Balance Due as of 10/11/2021	0.00																

DISTRICT COURT CIVIL COVER SHEET

County, Nevada
Case No. _____
(Assigned by Clerk's Office)

CASE NO: A-20-813201-C
Department 28

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): <p style="text-align: center;">SFR INVESTMENTS POOL 1, LLC</p>	Defendant(s) (name/address/phone): <p style="text-align: center;">SELENE FINANCE, L.P.</p>
Attorney (name/address/phone): <p style="text-align: center;">KAREN L. HANKS, ESQ. KIM GILBERT EBRON 7625 DEAN MARTIN DRIVE, SUITE 110 LAS VEGAS, NV 89139</p>	Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)

Civil Case Filing Types

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input checked="" type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

04.02.2020

Date

/s/Karen L. Hanks

Signature of initiating party or representative

See other side for family-related case filings.

FFCO

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

vs.

SELENE FINANCE, L.P., a Limited
Partnership,

Defendant.

Case No.: A-20-813201-C
Dept. No.: 29

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER GRANTING
SELENE FINANCE, LP'S MOTION FOR
SUMMARY JUDGMENT AND
DENYING SFR INVESTMENTS POOL
1, LLC'S MOTION FOR SUMMARY
JUDGMENT**

This matter came before the Court for hearing on July 7, 2021, on competing motions for summary judgment filed by Plaintiff SFR Investments Pool 1, LLC's ("SFR") and Defendant Selene Finance, L.P.'s ("Selene") with Diana Ebron of Kim Gilbert Ebron appearing on behalf of SFR and Brody Wight of Wright, Finlay & Zak, LLP appearing on behalf of Selene. The Court, having reviewed the competing motions for summary judgment, the oppositions to the motions, all replies in support of the motions, and all documents and affidavits attached to the briefing, having further considered the argument by counsel at the hearing on the motions, makes the following findings of fact and conclusions of law:

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///

///

1 **FINDINGS OF FACT**

2 1. On or about June 10, 2008, Maria R. Kersten and Robert D. Hakeem
3 (“Borrowers”) purchased real property located at 3767 Prairie Orchid Ave., North Las Vegas, NV
4 89081, APN: 123-31-211-049 (the “Property”).

5 2. Borrowers obtained a loan in the amount of \$188,231.00 to purchase the Property
6 evidenced by a Promissory Note and secured by a Deed of Trust.

7 3. The Promissory Note identifies Primelending, A Plainscapital Company
8 (“Primelending”) as the lender and payee (the “Note”). That Note now contains several
9 endorsements: Primelending first endorsed the Note to Taylor, Bean & Whitaker Mortgage Corp.
10 (“TBW”), TBW then endorsed the Note to the Secretary of Housing and Urban Development
11 (“HUD”), and HUD then endorsed the Note to CAM VII Trust.

12 4. Finally, attached to the last page of the Note is a document entitled, “Allonge to
13 the Note” (the “Allonge”). The Allonge states:

14 Statement of Purpose: This Note Allonge is attached to and makes part of the Note,
15 or the purpose of Note Holder Endorsements to evidence transfer of interest.

16 The Allonge contains the loan number, name of the Borrowers, date of the Note, amount of the
17 original loan, and the name of the original lender. It finally states, “Without Recourse, Pay to the
18 Order of: _____” and the rest is left blank. The Allonge is endorsed by CAM VII Trust.

19 5. The loan to the Borrowers is further secured by a First Deed of Trust (the “Deed
20 of Trust”) recorded against title to the Property on June 10, 2008. The Deed of Trust lists
21 Primelending as the lender and MERS as the beneficiary “solely as a nominee for [Primelending]
22 and [Primelending’s] successors and assigns.” (the Note and Deed of Trust are collectively
23 referred to herein as the “Loan”).

24 6. On August 1, 2011, MERS assigned the Deed of Trust to BAC Home Loans
25 Servicing LP fka Countrywide Home Loans Servicing LP (referred to herein along with its
26 successor by merger, Bank of America, N.A., as “BANA”). The Assignment was recorded against
27 the Property in the Clark County Recorder’s Office (the “2011 Assignment”).
28

1 7. The 2011 Assignment states that MERS “does hereby grant, sell, assign, transfer
2 and convey to [BANA] . . . all beneficial interest under that certain Deed of Trust . . . together
3 with the note(s) and obligations therein described and the money due and become due thereon
4 with interest and all rights accrued or to accrue under said Deed of Trust.”

5 8. On September 1, 2015, BANA then assigned the Deed of Trust to Selene (the
6 “2015 Assignment”). The 2015 Assignment was recorded against the Property in the Clark
7 County Recorder’s Office.

8 9. The Deed of Trust states that the Note “provides for monthly payments, with the
9 full debt, if not paid earlier, due and payable on July 1, 2038.” It further states that “Lender may,
10 except as limited by regulations issued by the Secretary, in the case of payment defaults, require
11 immediate payment in full of all sums secured by this Security Instrument[.]”

12 10. Similarly, the Note does not require acceleration upon default: “If Borrower
13 defaults by failing to pay in full any monthly payment, then Lender may, except as limited by
14 regulations of the Secretary in the case of payment defaults, require immediate payment in full of
15 the principal balance remaining due and all accrued interest.” The Note also expressly states that
16 “Lender may choose not to exercise this option without waiving its rights in the event of any
17 subsequent default.”

18 11. At some point in 2009, the Borrowers failed to make timely payments on the Loan,
19 and the Loan went into default.

20 12. On September 8, 2009, the then servicer of the Deed of Trust, BANA, sent a letter
21 to the Borrowers entitled “Notice of Intent to Accelerate” (the “2009 Notice of Intent” or “2009
22 Notice”). That Notice states that the Borrowers were in default in the amount of \$6,107.79. It
23 goes on to state, “[i]f the default is not cured on or before October 8, 2009, the mortgage payments
24 will be accelerated with the full amount remaining accelerated and becoming due and payable in
25 full, and foreclosure proceedings will be initiated at that time.”

26 13. The 2009 Notice references other ways of preventing acceleration other than
27 curing the default. It states, for example, that the Borrowers could enter a payment plan or a loan
28 modification that would prevent acceleration.

1 14. Although the Borrowers did not cure the default at that time, there was no evidence
2 presented to suggest that BANA took any further action to accelerate the debt or initiate
3 foreclosure proceedings at that time.

4 15. On December 7, 2012, BANA sent the Borrowers a letter regarding repayment of
5 the loan (the “2012 Letter”). The 2012 Letter states, “The total amount needed to reinstate or to
6 bring the account current is \$68,166.53,” which was significantly less than the principal obligation
7 under the mortgage, which the Letter states was \$186,486.50.

8 16. On May 17, 2013, BANA sent the Borrowers another nearly identical “Notice of
9 Intent to Accelerate and Foreclose” (the “May 2013 Notice of Intent” or “May 2013 Notice”).
10 The May 2013 Notice states that the Borrowers are in serious default but that they may reinstate
11 the loan by repaying all past due monthly charges and uncollected costs then totaling \$76,470.03,
12 which did not represent the full amount of the debt due under the Note and Deed of Trust, i.e. the
13 accelerated amount.

14 17. Just like the 2009 Notice, the May 2013 Notice similarly states, “[i]f the default is
15 not cured on or before June 26, 2013, the mortgage payments **will be accelerated** with the full
16 amount remaining accelerated and becoming due and payable in full, and foreclosure proceedings
17 will be initiated at that time.”

18 18. BANA sent the Borrowers a very similar Notice on July 5, 2013, stating a payment
19 of \$79,930.63 was necessary to bring the loan current (the “July 2013 Notice”). That July 2013
20 Notice contained the same language stating that the debt would be accelerated in the future and
21 BANA would initiate foreclosure if the Borrowers did not cure the default.

22 19. On April 22, 2014, the then servicer of the Deed of Trust, BSI Financial Services,
23 Inc. (“BSI”),¹ sent the Borrowers a fourth “Notice of default and Intent to Accelerate” (the “2014
24 Notice of Intent” or “2014 Notice”). The 2014 Notice states that the amount “due as of the date
25 of this letter” consisted of monthly payments and other fees totaling \$95,748.12, which was
26 significantly less than the principal amount of the debt due under the Note and Deed of Trust.

27
28 ¹ See, Decl. of Amy Intorcchia, **Exhibit 1**, ¶ 7; Notice of Servicing Transfer attached as **Exhibit 12**
[Selene 1059].

1 20. The Notice further states that if the loan is not brought current by May 27, 2014,
2 the failure to cure “may result in acceleration of the sums secured by the [Deed of Trust] and sale
3 of the property.”² BSI took no further action after sending the 2014 Notice. It did not take any
4 action to accelerate the loan and did not begin the foreclosure process.

5 21. After Selene became the servicer of the Loan, it recorded a “Notice of Default and
6 Election to sell Under Deed of Trust” (“NOD”) on December 17, 2019, in the Clark County
7 Recorder’s Office.

8 22. Selene then recorded a Notice of Trustee’s Sale against the Property on April 1,
9 2020, setting the foreclosure sale for May 21, 2020 (“Notice of Sale”).

10 23. The Laurel Canyon Homeowners Association foreclosed on the Property under a
11 lien for past due assessments in September 2012.

12 24. After Selene recorded the NOD to foreclose on the Deed of Trust in 2019, SFR
13 filed the current suit alleging a claim for Cancellation of Written Instruments (Notice of Default
14 and Notice of Sale) and for Cancellation of Written Instrument (Deed of Trust) based on two
15 theories: (1) the Deed of Trust was terminated pursuant to NRS 106.240 and (2) the Deed of Trust
16 and underlying promissory note were separated and not reunited.

17 25. SFR argues in its competing Motion for Summary Judgment that BANA made the
18 debt wholly due some time in 2009 and failed to take actions to de-accelerate the loan, such that
19 the Deed of Trust was terminated pursuant to NRS 106.240.

20 26. SFR also argues that the Note and Deed of Trust were separated on origination and
21 were never reunited preventing Selene from foreclosing under the Deed of Trust. SFR argues that
22 Selene produced various copies of the Note during discovery and failed to produce the original,
23 wet-ink signature Note during the discovery period.

24 27. In regards to SFR’s first argument, Selene argues in its Motion for Summary
25 Judgment and in its Opposition to SFR’s Motion that (a) the debt was not accelerated in 2009, (b)
26 even if the debt was accelerated in 2009 it was decelerated thereafter, (c) that the provisions of
27 NRS 106.240 do not apply to accelerations, and (d) that NRS 106.240 is not a statute of repose.

28

² *Id.* at p. 2.

28. In regards to SFR's second argument, Selene argues in its opposition to SFR's Motion that the Note and Deed of Trust were either reunited when MERS assigned the Deed of Trust and Note to BANA or when Selene came into physical possession of the Note with the Allonge endorsing it in blank.

29. Selene brought the original, wet-ink signature Note to the hearing on the motions for summary judgment.

CONCLUSIONS OF LAW

Standard of Proof

1. “Summary judgment is appropriate ... when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law.” *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1031 (Nev. 2005). “While the pleadings and other evidence must be construed in the light most favorable to the nonmoving party, that party has the burden to ‘do more than simply show that there is some metaphysical doubt’ as to the operative facts to defeat a motion for summary judgment.” *Id.* at 1031 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586 (1986)). The governing law determines which “factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant.” *Id.*

SFR's NRS 106.240 Claims

2. NRS 106.240 states:

The lien heretofore or hereafter created of any mortgage or deed of trust upon any real property, appearing of record, and not otherwise satisfied and discharged of record, shall at the expiration of 10 years after the debt secured by the mortgage or deed of trust according to the terms thereof or any recorded written extension thereof become wholly due, terminate, and it shall be conclusively presumed that the debt has been regularly satisfied and the lien discharged.

3. SFR argues that the 2009 Notice of Intent accelerated the Borrowers' Loan in October 2009, which made the debt become "wholly due" on that date. It further argues that NRS 106.240 acts as a statute of repose preventing Selene from enforcing the Deed of Trust ten years after the Deed of Trust became wholly due. According to SFR, the debt in this case allegedly

1 became wholly due in October 2009, but Selene did not issue the NOD until December 2019,
2 more than ten years later. SFR argues, therefore, that NRS 106.240 bars Selene from foreclosing.

3 4. This Court first enquires whether the debt was actually accelerated by the 2009
4 Notice of Intent. SFR argues that the language of the Notice, which stated that the debt would be
5 accelerated in October 2009 if the default was not cured beforehand, acted as an automatic trigger
6 that accelerated the debt. Selene argues that the Notice only stated BANA's intent to accelerate
7 the debt but did not act as an automatic trigger.

8 5. The Nevada Supreme Court has held that where, as is the case here, a deed of trust
9 or other instrument permits an optional acceleration upon default of a loan, the activation of that
10 acceleration clause requires "affirmative action on the part of the creditor . . . in a manner so clear
11 and unequivocal that it leaves no doubt as to the lender's intention." *Clayton v. Gardner*, 107
12 Nev. 468, 470, 813 P.2d 997, 998 (1991).

13 6. Here, the 2009 Notice of Intent does not unequivocally accelerate the debt. It is
14 not clear beyond doubt that BANA intended the 2009 Notice of Intent to automatically trigger
15 acceleration if the default was not cured before October 2009. Rather, it is reasonable to interpret
16 the Notice as doing no more than communicating BANA's future intentions. BANA was required
17 to take further steps to accelerate the debt, and there is no evidence that BANA took those steps
18 here.

19 7. The various notices that BANA and the subsequent servicers sent the borrowers
20 after October 2009 further confirm that BANA did not intend the 2009 Notice to accelerate the
21 debt. The May 2013 Notice, July 2013 Notice and 2014 Notice each stated that the amount due
22 was less than the accelerated amount (the full amount of the debt due under the Note and Deed of
23 Trust), and those notices also threatened future acceleration just like the 2009 Notice. Viewed
24 together, these notices provide evidence that BANA and the subsequent servicers did not view
25 any of the notices of intent as automatically accelerating the debt and believed that further action
26 was necessary to accelerate.

27 8. Without any evidence that the debt was accelerated in 2009, SFR's claim under
28 NRS 106.240 fails as unsupported by the facts presented in the case. The Court sees no need to

1 address Selene's arguments regarding the interpretation of NRS 106.240 and does not now need
2 to determine whether accelerations trigger the "wholly due" date in the statute or whether NRS
3 106.240 is a statute of repose.

4 9. Thus, SFR's claims for cancellation of instruments based on NRS 106.240 fail.

5 10. Pursuant to the holding of the Nevada Supreme Court in *Edelstein v. Bank of N.Y.*
6 *Mellon*, 128 Nev. 505, 521, 286 P.3d 249, 259 (2012) ("*Edelstein*"), when a promissory note and
7 deed of trust are split on origination, the note and deed of trust must be reunited before the holder
8 of the deed of trust may foreclose on the property secured by the deed of trust. However, once the
9 note and deed of trust are reunited, any problem created by the separation of the deed of trust
10 "vanishes when the same entity acquires both the security deed and the note." (Internal citations
11 omitted).

12 11. Here, SFR argues that the Deed of Trust and Note were split on origination because
13 Primelending was the party entitled to repayment under the Note while MERS was named as a
14 beneficiary under the Deed of Trust. SFR further argues that the Note and Deed of Trust were
15 never reunited, and Selene does not now have the authority to conduct foreclosure under the Deed
16 of Trust.

17 12. While SFR was correct that the Note and Deed of Trust were split on origination,
18 Selene has produced evidence to show that the Note and Deed of Trust were reunited.

19 13. The Nevada Supreme Court in *Edelstein* outlined two ways that a deed of trust and
20 note may be reunited, both of which are applicable in this case.

21 14. First, when MERS is named as the beneficiary to a deed of trust as a nominee for
22 the lender named in a note as well as the lender's successors and assigns, MERS becomes the
23 agent of the lender, giving MERS the power to assign both the deed of trust on behalf of itself
24 and the note on behalf of the lender. *Id.* 128 Nev. at 521, 286 P.3d at 260. When MERS records
25 an assignment of the Note and Deed of Trust, it reunites the two instruments. *Id.*

26 15. Second, when an allonge is attached to a note endorsing it "in blank" (which means
27 that the party endorsing it states that the note should be paid to the order of ____, but leaves the
28 space to put the party blank), the party who physically possess the note is entitled to repayment,

1 and if that is the same party as the party that holds the deed of trust, the possession of both is
2 sufficient to reunite the note and deed of trust. *See id.* 128 Nev. at 523, 286 P.3d at 261.

3 16. For both of those reasons, the Nevada Supreme Court in *Edelstein* found that the
4 note and deed of trust in that case were reunited and the party holding both had authority to
5 conduct the foreclosure. *See id.*

6 17. This case is indistinguishable from *Edelstein*. First, MERS was named as the
7 beneficiary in the Deed of Trust solely as the nominee of Primelending as well as its successors
8 and assignees. Thus, MERS had the authority to assign the Note and Deed of Trust, and it assigned
9 both to BANA in the recorded 2011 Assignment, thereby reuniting the instruments. Then, when
10 BANA transferred the Deed of Trust to Selene in the 2015 assignment, the Note was automatically
11 transferred with the Deed of Trust. *See id.* 128 Nev. at 518, 286 P.3d at 258 (citing Restatement
12 (Third) of Prop.: Mortgages § 5.4(a) (1997) (noting that approach “a promissory note and a deed
13 of trust are automatically transferred together unless the parties agree otherwise”).

14 18. Second, the Note in this case contained several endorsements ending in the
15 Allonge with CAM VII Trust endorsing the Note in blank. The Allonge is attached to the Note
16 and enforceable. Since Selene is in physical possession of the Note signed in blank, it is entitled
17 to repayment under the Note and its simultaneous possession of the Deed of Trust as record
18 beneficiary thereof reunited both instruments.

19 19. Under either theory the Note and Deed of Trust were reunited and SFR’s claims
20 for cancellation of instruments fail.


21 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that SFR’s Motion for
22 Summary Judgment is DENIED.

23 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Selene’s Motion for
24 Summary Judgment is GRANTED.

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IT IS SO ORDERED.

Dated this _____ day of _____, 2021. Dated this 7th day of September, 2021



DISTRICT COURT JUDGE
1E8 8BF EE14 5672
David M Jones
District Court Judge

Respectfully submitted by:
WRIGHT, FINLAY & ZAK, LLP

/s/ Brody Wight
Brody R. Wight, Esq.
Nevada Bar No. 13615
7785 W. Sahara Ave., Suite 200
Las Vegas, Nevada 89117
Attorneys for Defendant, Selene Finance, L.P.

Approved as to form and content:
KIM GILBERT EBRON

/s/ Diana Ebron
Diana S. Ebron, Esq.
Nevada Bar No. 10580
7625 Dean Martin Dr., Suite 110
Las Vegas, Nevada 89074
Attorneys for Plaintiff SFR Investments Pool 1, LLC

Brody R. Wight

From: Brody R. Wight
Sent: Thursday, September 2, 2021 7:18 AM
To: 'Diana Ebron'
Cc: Savelt; Tonya Sessions; 3767 Prairie Orchid Ave. (de715b910+matter1042007581@maildrop.clio.com); Candi Fay; Jackie Gilbert; chandel schimming
Subject: RE: SFR v. Selene Finance A-20-813201-C Proposed Order (WFZ No. 681-2020391)

Diana,

I am sorry to hear about your brother. I hope everything is alright. Thank you for getting to this. I have accepted all of your changes and will attach and submit the clean version you sent to me with your e-signature attached.

Brody R. Wight, Esq.
Attorney



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Las Vegas, Nevada 89117
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(702) 475-7968 Main Ext 7034

bwight@wrightlegal.net

Wright, Finlay & Zak: Your Counsel for California, Nevada, Arizona, Washington, Oregon, New Mexico, Utah, Idaho, Wyoming, Hawaii, and South Dakota



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From: Diana Ebron <diana@kgelegal.com>
Sent: Wednesday, September 1, 2021 4:01 PM
To: Brody R. Wight <bwight@wrightlegal.net>
Cc: Savelt <Savelt@wrightlegal.net>; Tonya Sessions <tsessions@wrightlegal.net>; 3767 Prairie Orchid Ave. (de715b910+matter1042007581@maildrop.clio.com) <de715b910+matter1042007581@maildrop.clio.com>; Candi Fay <candifay@kgelegal.com>; Jackie Gilbert <jackie@kgelegal.com>; chandel schimming <chandel@kgelegal.com>
Subject: Re: SFR v. Selene Finance A-20-813201-C Proposed Order (WFZ No. 681-2020391)

Hi Brody,

Attached are my redlines and a clean version. If you are ok with my changes, you may submit with my esignature. Let me know if you have any questions.

Thanks,

Diana

From: Diana Ebron <diana@kgelegal.com>
Sent: Wednesday, September 1, 2021 1:55 PM
To: Brody R. Wight <bwight@wrightlegal.net>
Cc: Savelt <Savelt@wrightlegal.net>; Tonya Sessions <tsessions@wrightlegal.net>; 3767 Prairie Orchid Ave. (de715b910+matter1042007581@maildrop.clio.com) <de715b910+matter1042007581@maildrop.clio.com>; Candi Fay <candifay@kgelegal.com>; Jackie Gilbert <jackie@kgelegal.com>; chandel schimming <chandel@kgelegal.com>
Subject: Re: SFR v. Selene Finance A-20-813201-C Proposed Order (WFZ No. 681-2020391)

Hi Brody,

I'm so sorry. I am almost done but not quite. I found out Monday that one of my younger brothers is extremely ill with Covid and it's had me a bit distracted on top of everything else. I'll get it to you as soon as I can today.

Thanks,
Diana

From: Brody R. Wight <bwight@wrightlegal.net>
Sent: Wednesday, September 1, 2021 10:31 AM
To: Diana Ebron <diana@kgelegal.com>
Cc: Savelt <Savelt@wrightlegal.net>; Tonya Sessions <tsessions@wrightlegal.net>; 3767 Prairie Orchid Ave. (de715b910+matter1042007581@maildrop.clio.com) <de715b910+matter1042007581@maildrop.clio.com>; Candi Fay <candifay@kgelegal.com>; Jackie Gilbert <jackie@kgelegal.com>; chandel schimming <chandel@kgelegal.com>
Subject: RE: SFR v. Selene Finance A-20-813201-C Proposed Order (WFZ No. 681-2020391)

Hi Diana,

Do you have any progress on this order? I would like to submit it today if possible.

Brody R. Wight, Esq.
Attorney



7785 W. Sahara Ave., Suite 200
Las Vegas, Nevada 89117
(702) 946-1345 Fax
(702) 475-7968 Main Ext 7034
bwight@wrightlegal.net

Wright, Finlay & Zak: Your Counsel for California, Nevada, Arizona, Washington, Oregon, New Mexico, Utah, Idaho, Wyoming, Hawaii, and South Dakota



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From: Diana Ebron <diana@kgelegal.com>
Sent: Friday, August 27, 2021 5:21 PM
To: Brody R. Wight <bwight@wrightlegal.net>
Cc: Savelt <Savelt@wrightlegal.net>; Tonya Sessions <tsessions@wrightlegal.net>; 3767 Prairie Orchid Ave. (de715b910+matter1042007581@maildrop.clio.com) <de715b910+matter1042007581@maildrop.clio.com>; Candi Fay <candifay@kgelegal.com>; Jackie Gilbert <jackie@kgelegal.com>; chandel schimming <chantel@kgelegal.com>
Subject: Re: SFR v. Selene Finance A-20-813201-C Proposed Order (WFZ No. 681-2020391)

Thanks, Brody. I forgot to order the transcript and the minute order doesn't shed much light on the discussion, which lasted quite awhile longer than I originally expected. I'll touch base with you Monday morning on the order. I need to go through all of the briefing again.

Have a good weekend,

Diana

From: Brody R. Wight <bwight@wrightlegal.net>
Sent: Friday, August 27, 2021 3:16 PM
To: Diana Ebron <diana@kgelegal.com>
Cc: Savelt <Savelt@wrightlegal.net>; Tonya Sessions <tsessions@wrightlegal.net>; 3767 Prairie Orchid Ave. (de715b910+matter1042007581@maildrop.clio.com) <de715b910+matter1042007581@maildrop.clio.com>; Candi Fay <candifay@kgelegal.com>; Jackie Gilbert <jackie@kgelegal.com>; chandel schimming <chantel@kgelegal.com>
Subject: RE: SFR v. Selene Finance A-20-813201-C Proposed Order (WFZ No. 681-2020391)

I did not. I don't want you to have to rush on this over the weekend. By Monday I would just like to know if you think we can come up with a joint proposed order. If you think we can come up with one, you can take a day to make any proposed edits.

Brody R. Wight, Esq.
Attorney



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(702) 946-1345 Fax
(702) 475-7968 Main Ext 7034
bwight@wrightlegal.net

Wright, Finlay & Zak: Your Counsel for California, Nevada, Arizona, Washington, Oregon, New Mexico, Utah, Idaho, Wyoming, Hawaii, and South Dakota



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From: Diana Ebron <diana@kgelegal.com>
Sent: Friday, August 27, 2021 2:03 PM
To: Brody R. Wight <bwight@wrightlegal.net>
Cc: Savelt <Savelt@wrightlegal.net>; Tonya Sessions <tsessions@wrightlegal.net>; 3767 Prairie Orchid Ave. (de715b910+matter1042007581@maildrop.clio.com) <de715b910+matter1042007581@maildrop.clio.com>; Candi Fay <candifay@kgelegal.com>; Jackie Gilbert <jackie@kgelegal.com>; chandel schimming <chantel@kgelegal.com>
Subject: Re: SFR v. Selene Finance A-20-813201-C Proposed Order (WFZ No. 681-2020391)

Did you happen to get a transcript of the hearing?

From: Diana Ebron <diana@kgelegal.com>
Sent: Friday, August 27, 2021 1:56 PM
To: Brody R. Wight <bwight@wrightlegal.net>
Cc: Savelt <Savelt@wrightlegal.net>; Tonya Sessions <tsessions@wrightlegal.net>; 3767 Prairie Orchid Ave. (de715b910+matter1042007581@maildrop.clio.com) <de715b910+matter1042007581@maildrop.clio.com>
Subject: Re: SFR v. Selene Finance A-20-813201-C Proposed Order (WFZ No. 681-2020391)

I'm so sorry. I'll get it to you by Monday morning, if not sooner.

From: Brody R. Wight <bwight@wrightlegal.net>
Sent: Friday, August 27, 2021 10:12 AM
To: Diana Ebron <diana@kgelegal.com>
Cc: Savelt <Savelt@wrightlegal.net>; Tonya Sessions <tsessions@wrightlegal.net>
Subject: Re: SFR v. Selene Finance A-20-813201-C Proposed Order (WFZ No. 681-2020391)

Hi Diana,

Have you had a chance to review the order on this? I am planning on submitting it on Monday afternoon. If I don't hear back, I will copy you on the submittal and let the court know we could not come to an agreement.

Sent from my iPhone

On Jul 28, 2021, at 2:51 PM, Brody R. Wight <bwight@wrightlegal.net> wrote:

Diana,

I have attached the proposed order granting summary judgment in the above-captioned case. Please review and let me know if you are willing to approve the order. I am, of course, open to making some changes to the order, but I will likely not agree to drastic changes.

Brody R. Wight, Esq.
Attorney

<image001.gif>

7785 W. Sahara Ave., Suite 200
Las Vegas, Nevada 89117
(702) 946-1345 Fax
(702) 475-7968 Main Ext 7034
bwight@wrightlegal.net

Wright, Finlay & Zak: Your Counsel for California, Nevada, Arizona, Washington, Oregon, New Mexico, Utah, Idaho, Wyoming, Hawaii, and South Dakota

<image002.png>

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<Proposed Order Granting Summary Judgment.docx>

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 SFR Investments Pool 1 LLC,
Plaintiff(s)

CASE NO: A-20-813201-C

7 vs.

DEPT. NO. Department 29

8
9 Selene Finance LP, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 9/7/2021

15 KGE Legal Staff

staff@kgelegal.com

16 KGE E-Service List

eservice@kgelegal.com

17 Diana Ebron

diana@kgelegal.com

18 DEFAULT ACCOUNT

NVefile@wrightlegal.net

19 Faith Harris

fharris@wrightlegal.net

20 Christina Miller

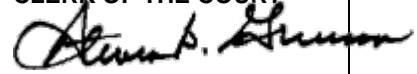
cmiller@wrightlegal.net

21 Brody Wight

bwight@wrightlegal.net

22 Candi Fay

candifay@kgelegal.com



NEOJ

WRIGHT, FINLAY & ZAK, LLP

Natalie C. Lehman, Esq.

Nevada Bar No. 12995

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Las Vegas, NV 89117

(702) 475-7964; Fax: (702) 946-1345

nlehman@wrightlegal.net

Attorneys for Defendant/Counter-Claimant, Mariners Atlantic Portfolio, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

SELENE FINANCE, L.P., a Limited
Partnership,

Defendant.

Case No.: A-20-813201-C

Dept. No.: XXVIII

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that a FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER GRANTING SELENE FINANCE, LP'S MOTION FOR SUMMARY
JUDGMENT AND DENYING SFR INVESTMENTS POOL 1, LLC'S MOTION FOR
SUMMARY JUDGMENT was entered in the above-entitled Court on the 7th day of September,
2021. A copy of which is attached hereto.

DATED this 7th day of September, 2021.

WRIGHT, FINLAY & ZAK, LLP

/s/ Brody Wight, Esq.

Brody R. Wight, Esq.

Nevada Bar No. 13615

7785 W. Sahara Ave., Suite 200

Las Vegas, Nevada 89117

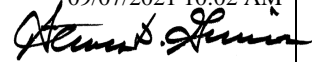
Attorneys for Defendant, Selene Finance, L.P.

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK,
3 LLP, and that on this 7th day of September, 2021, I did cause a true copy of **NOTICE OF**
4 **ENTRY OF ORDER** to be e-filed and e-served through the Eighth Judicial District EFP system
5 pursuant to NEFR 9 and/or by depositing a true copy of same in the United States Mail, at Las
6 Vegas, Nevada, addressed as follows:

7 Diana S. Ebron diana@kgelegal.com
8 Candi Fay candifay@kgelegal.com
9 KGE E-Service List eservice@kgelegal.com
KGE Legal Staff staff@kgelegal.com

10
11 /s/ Lisa Cox
12 An Employee of WRIGHT, FINLAY & ZAK, LLP
13
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CLERK OF THE COURT

FFCO

WRIGHT, FINLAY & ZAK, LLP
Christina V. Miller, Esq.
Nevada Bar No. 12448
Brody R. Wight, Esq.
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7785 W. Sahara Ave, Suite 200
Las Vegas, NV 89117
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cmiller@wrightlegal.net
bwight@wrightlegal.net
Attorneys for Defendant, Selene Finance, L.P.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

vs.

SELENE FINANCE, L.P., a Limited
Partnership,

Defendant.

Case No.: A-20-813201-C
Dept. No.: 29

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER GRANTING
SELENE FINANCE, LP'S MOTION FOR
SUMMARY JUDGMENT AND
DENYING SFR INVESTMENTS POOL
1, LLC'S MOTION FOR SUMMARY
JUDGMENT**

This matter came before the Court for hearing on July 7, 2021, on competing motions for summary judgment filed by Plaintiff SFR Investments Pool 1, LLC's ("SFR") and Defendant Selene Finance, L.P.'s ("Selene") with Diana Ebron of Kim Gilbert Ebron appearing on behalf of SFR and Brody Wight of Wright, Finlay & Zak, LLP appearing on behalf of Selene. The Court, having reviewed the competing motions for summary judgment, the oppositions to the motions, all replies in support of the motions, and all documents and affidavits attached to the briefing, having further considered the argument by counsel at the hearing on the motions, makes the following findings of fact and conclusions of law:

///

///

///

FINDINGS OF FACT

1. On or about June 10, 2008, Maria R. Kersten and Robert D. Hakeem (“Borrowers”) purchased real property located at 3767 Prairie Orchid Ave., North Las Vegas, NV 89081, APN: 123-31-211-049 (the “Property”).

2. Borrowers obtained a loan in the amount of \$188,231.00 to purchase the Property evidenced by a Promissory Note and secured by a Deed of Trust.

3. The Promissory Note identifies Primelending, A Plainscapital Company (“Primelending”) as the lender and payee (the “Note”). That Note now contains several endorsements: Primelending first endorsed the Note to Taylor, Bean & Whitaker Mortgage Corp. (“TBW”), TBW then endorsed the Note to the Secretary of Housing and Urban Development (“HUD”), and HUD then endorsed the Note to CAM VII Trust.

4. Finally, attached to the last page of the Note is a document entitled, “Allonge to the Note” (the “Allonge”). The Allonge states:

Statement of Purpose: This Note Allonge is attached to and makes part of the Note, or the purpose of Note Holder Endorsements to evidence transfer of interest.

The Allonge contains the loan number, name of the Borrowers, date of the Note, amount of the original loan, and the name of the original lender. It finally states, “Without Recourse, Pay to the Order of: _____” and the rest is left blank. The Allonge is endorsed by CAM VII Trust.

5. The loan to the Borrowers is further secured by a First Deed of Trust (the “Deed of Trust”) recorded against title to the Property on June 10, 2008. The Deed of Trust lists Primelending as the lender and MERS as the beneficiary “solely as a nominee for [Primelending] and [Primelending’s] successors and assigns.” (the Note and Deed of Trust are collectively referred to herein as the “Loan”).

6. On August 1, 2011, MERS assigned the Deed of Trust to BAC Home Loans Servicing LP fka Countrywide Home Loans Servicing LP (referred to herein along with its successor by merger, Bank of America, N.A., as “BANA”). The Assignment was recorded against the Property in the Clark County Recorder’s Office (the “2011 Assignment”).

1 7. The 2011 Assignment states that MERS “does hereby grant, sell, assign, transfer
2 and convey to [BANA] . . . all beneficial interest under that certain Deed of Trust . . . together
3 with the note(s) and obligations therein described and the money due and become due thereon
4 with interest and all rights accrued or to accrue under said Deed of Trust.”

5 8. On September 1, 2015, BANA then assigned the Deed of Trust to Selene (the
6 “2015 Assignment”). The 2015 Assignment was recorded against the Property in the Clark
7 County Recorder’s Office.

8 9. The Deed of Trust states that the Note “provides for monthly payments, with the
9 full debt, if not paid earlier, due and payable on July 1, 2038.” It further states that “Lender may,
10 except as limited by regulations issued by the Secretary, in the case of payment defaults, require
11 immediate payment in full of all sums secured by this Security Instrument[.]”

12 10. Similarly, the Note does not require acceleration upon default: “If Borrower
13 defaults by failing to pay in full any monthly payment, then Lender may, except as limited by
14 regulations of the Secretary in the case of payment defaults, require immediate payment in full of
15 the principal balance remaining due and all accrued interest.” The Note also expressly states that
16 “Lender may choose not to exercise this option without waiving its rights in the event of any
17 subsequent default.”

18 11. At some point in 2009, the Borrowers failed to make timely payments on the Loan,
19 and the Loan went into default.

20 12. On September 8, 2009, the then servicer of the Deed of Trust, BANA, sent a letter
21 to the Borrowers entitled “Notice of Intent to Accelerate” (the “2009 Notice of Intent” or “2009
22 Notice”). That Notice states that the Borrowers were in default in the amount of \$6,107.79. It
23 goes on to state, “[i]f the default is not cured on or before October 8, 2009, the mortgage payments
24 will be accelerated with the full amount remaining accelerated and becoming due and payable in
25 full, and foreclosure proceedings will be initiated at that time.”

26 13. The 2009 Notice references other ways of preventing acceleration other than
27 curing the default. It states, for example, that the Borrowers could enter a payment plan or a loan
28 modification that would prevent acceleration.

1 14. Although the Borrowers did not cure the default at that time, there was no evidence
2 presented to suggest that BANA took any further action to accelerate the debt or initiate
3 foreclosure proceedings at that time.

4 15. On December 7, 2012, BANA sent the Borrowers a letter regarding repayment of
5 the loan (the “2012 Letter”). The 2012 Letter states, “The total amount needed to reinstate or to
6 bring the account current is \$68,166.53,” which was significantly less than the principal obligation
7 under the mortgage, which the Letter states was \$186,486.50.

8 16. On May 17, 2013, BANA sent the Borrowers another nearly identical “Notice of
9 Intent to Accelerate and Foreclose” (the “May 2013 Notice of Intent” or “May 2013 Notice”).
10 The May 2013 Notice states that the Borrowers are in serious default but that they may reinstate
11 the loan by repaying all past due monthly charges and uncollected costs then totaling \$76,470.03,
12 which did not represent the full amount of the debt due under the Note and Deed of Trust, i.e. the
13 accelerated amount.

14 17. Just like the 2009 Notice, the May 2013 Notice similarly states, “[i]f the default is
15 not cured on or before June 26, 2013, the mortgage payments **will be accelerated** with the full
16 amount remaining accelerated and becoming due and payable in full, and foreclosure proceedings
17 will be initiated at that time.”

18 18. BANA sent the Borrowers a very similar Notice on July 5, 2013, stating a payment
19 of \$79,930.63 was necessary to bring the loan current (the “July 2013 Notice”). That July 2013
20 Notice contained the same language stating that the debt would be accelerated in the future and
21 BANA would initiate foreclosure if the Borrowers did not cure the default.

22 19. On April 22, 2014, the then servicer of the Deed of Trust, BSI Financial Services,
23 Inc. (“BSI”),¹ sent the Borrowers a fourth “Notice of default and Intent to Accelerate” (the “2014
24 Notice of Intent” or “2014 Notice”). The 2014 Notice states that the amount “due as of the date
25 of this letter” consisted of monthly payments and other fees totaling \$95,748.12, which was
26 significantly less than the principal amount of the debt due under the Note and Deed of Trust.

27
28 ¹ See, Decl. of Amy Intorcchia, **Exhibit 1**, ¶ 7; Notice of Servicing Transfer attached as **Exhibit 12**
[Selene 1059].

1 20. The Notice further states that if the loan is not brought current by May 27, 2014,
2 the failure to cure “may result in acceleration of the sums secured by the [Deed of Trust] and sale
3 of the property.”² BSI took no further action after sending the 2014 Notice. It did not take any
4 action to accelerate the loan and did not begin the foreclosure process.

5 21. After Selene became the servicer of the Loan, it recorded a “Notice of Default and
6 Election to sell Under Deed of Trust” (“NOD”) on December 17, 2019, in the Clark County
7 Recorder’s Office.

8 22. Selene then recorded a Notice of Trustee’s Sale against the Property on April 1,
9 2020, setting the foreclosure sale for May 21, 2020 (“Notice of Sale”).

10 23. The Laurel Canyon Homeowners Association foreclosed on the Property under a
11 lien for past due assessments in September 2012.

12 24. After Selene recorded the NOD to foreclose on the Deed of Trust in 2019, SFR
13 filed the current suit alleging a claim for Cancellation of Written Instruments (Notice of Default
14 and Notice of Sale) and for Cancellation of Written Instrument (Deed of Trust) based on two
15 theories: (1) the Deed of Trust was terminated pursuant to NRS 106.240 and (2) the Deed of Trust
16 and underlying promissory note were separated and not reunited.

17 25. SFR argues in its competing Motion for Summary Judgment that BANA made the
18 debt wholly due some time in 2009 and failed to take actions to de-accelerate the loan, such that
19 the Deed of Trust was terminated pursuant to NRS 106.240.

20 26. SFR also argues that the Note and Deed of Trust were separated on origination and
21 were never reunited preventing Selene from foreclosing under the Deed of Trust. SFR argues that
22 Selene produced various copies of the Note during discovery and failed to produce the original,
23 wet-ink signature Note during the discovery period.

24 27. In regards to SFR’s first argument, Selene argues in its Motion for Summary
25 Judgment and in its Opposition to SFR’s Motion that (a) the debt was not accelerated in 2009, (b)
26 even if the debt was accelerated in 2009 it was decelerated thereafter, (c) that the provisions of
27 NRS 106.240 do not apply to accelerations, and (d) that NRS 106.240 is not a statute of repose.

28 _____
² *Id.* at p. 2.

28. In regards to SFR's second argument, Selene argues in its opposition to SFR's Motion that the Note and Deed of Trust were either reunited when MERS assigned the Deed of Trust and Note to BANA or when Selene came into physical possession of the Note with the Allonge endorsing it in blank.

29. Selene brought the original, wet-ink signature Note to the hearing on the motions for summary judgment.

CONCLUSIONS OF LAW

Standard of Proof

1. “Summary judgment is appropriate ... when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law.” *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1031 (Nev. 2005). “While the pleadings and other evidence must be construed in the light most favorable to the nonmoving party, that party has the burden to ‘do more than simply show that there is some metaphysical doubt’ as to the operative facts to defeat a motion for summary judgment.” *Id.* at 1031 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586 (1986)). The governing law determines which “factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant.” *Id.*

SFR's NRS 106.240 Claims

2. NRS 106.240 states:

The lien heretofore or hereafter created of any mortgage or deed of trust upon any real property, appearing of record, and not otherwise satisfied and discharged of record, shall at the expiration of 10 years after the debt secured by the mortgage or deed of trust according to the terms thereof or any recorded written extension thereof become wholly due, terminate, and it shall be conclusively presumed that the debt has been regularly satisfied and the lien discharged.

3. SFR argues that the 2009 Notice of Intent accelerated the Borrowers' Loan in October 2009, which made the debt become "wholly due" on that date. It further argues that NRS 106.240 acts as a statute of repose preventing Selene from enforcing the Deed of Trust ten years after the Deed of Trust became wholly due. According to SFR, the debt in this case allegedly

1 became wholly due in October 2009, but Selene did not issue the NOD until December 2019,
2 more than ten years later. SFR argues, therefore, that NRS 106.240 bars Selene from foreclosing.

3 4. This Court first enquires whether the debt was actually accelerated by the 2009
4 Notice of Intent. SFR argues that the language of the Notice, which stated that the debt would be
5 accelerated in October 2009 if the default was not cured beforehand, acted as an automatic trigger
6 that accelerated the debt. Selene argues that the Notice only stated BANA's intent to accelerate
7 the debt but did not act as an automatic trigger.

8 5. The Nevada Supreme Court has held that where, as is the case here, a deed of trust
9 or other instrument permits an optional acceleration upon default of a loan, the activation of that
10 acceleration clause requires "affirmative action on the part of the creditor . . . in a manner so clear
11 and unequivocal that it leaves no doubt as to the lender's intention." *Clayton v. Gardner*, 107
12 Nev. 468, 470, 813 P.2d 997, 998 (1991).

13 6. Here, the 2009 Notice of Intent does not unequivocally accelerate the debt. It is
14 not clear beyond doubt that BANA intended the 2009 Notice of Intent to automatically trigger
15 acceleration if the default was not cured before October 2009. Rather, it is reasonable to interpret
16 the Notice as doing no more than communicating BANA's future intentions. BANA was required
17 to take further steps to accelerate the debt, and there is no evidence that BANA took those steps
18 here.

19 7. The various notices that BANA and the subsequent servicers sent the borrowers
20 after October 2009 further confirm that BANA did not intend the 2009 Notice to accelerate the
21 debt. The May 2013 Notice, July 2013 Notice and 2014 Notice each stated that the amount due
22 was less than the accelerated amount (the full amount of the debt due under the Note and Deed of
23 Trust), and those notices also threatened future acceleration just like the 2009 Notice. Viewed
24 together, these notices provide evidence that BANA and the subsequent servicers did not view
25 any of the notices of intent as automatically accelerating the debt and believed that further action
26 was necessary to accelerate.

27 8. Without any evidence that the debt was accelerated in 2009, SFR's claim under
28 NRS 106.240 fails as unsupported by the facts presented in the case. The Court sees no need to

1 address Selene's arguments regarding the interpretation of NRS 106.240 and does not now need
2 to determine whether accelerations trigger the "wholly due" date in the statute or whether NRS
3 106.240 is a statute of repose.

4 9. Thus, SFR's claims for cancellation of instruments based on NRS 106.240 fail.

5 10. Pursuant to the holding of the Nevada Supreme Court in *Edelstein v. Bank of N.Y.*
6 *Mellon*, 128 Nev. 505, 521, 286 P.3d 249, 259 (2012) ("*Edelstein*"), when a promissory note and
7 deed of trust are split on origination, the note and deed of trust must be reunited before the holder
8 of the deed of trust may foreclose on the property secured by the deed of trust. However, once the
9 note and deed of trust are reunited, any problem created by the separation of the deed of trust
10 "vanishes when the same entity acquires both the security deed and the note." (Internal citations
11 omitted).

12 11. Here, SFR argues that the Deed of Trust and Note were split on origination because
13 Primelending was the party entitled to repayment under the Note while MERS was named as a
14 beneficiary under the Deed of Trust. SFR further argues that the Note and Deed of Trust were
15 never reunited, and Selene does not now have the authority to conduct foreclosure under the Deed
16 of Trust.

17 12. While SFR was correct that the Note and Deed of Trust were split on origination,
18 Selene has produced evidence to show that the Note and Deed of Trust were reunited.

19 13. The Nevada Supreme Court in *Edelstein* outlined two ways that a deed of trust and
20 note may be reunited, both of which are applicable in this case.

21 14. First, when MERS is named as the beneficiary to a deed of trust as a nominee for
22 the lender named in a note as well as the lender's successors and assigns, MERS becomes the
23 agent of the lender, giving MERS the power to assign both the deed of trust on behalf of itself
24 and the note on behalf of the lender. *Id.* 128 Nev. at 521, 286 P.3d at 260. When MERS records
25 an assignment of the Note and Deed of Trust, it reunites the two instruments. *Id.*

26 15. Second, when an allonge is attached to a note endorsing it "in blank" (which means
27 that the party endorsing it states that the note should be paid to the order of ____, but leaves the
28 space to put the party blank), the party who physically possess the note is entitled to repayment,

1 and if that is the same party as the party that holds the deed of trust, the possession of both is
2 sufficient to reunite the note and deed of trust. *See id.* 128 Nev. at 523, 286 P.3d at 261.

3 16. For both of those reasons, the Nevada Supreme Court in *Edelstein* found that the
4 note and deed of trust in that case were reunited and the party holding both had authority to
5 conduct the foreclosure. *See id.*

6 17. This case is indistinguishable from *Edelstein*. First, MERS was named as the
7 beneficiary in the Deed of Trust solely as the nominee of Primelending as well as its successors
8 and assignees. Thus, MERS had the authority to assign the Note and Deed of Trust, and it assigned
9 both to BANA in the recorded 2011 Assignment, thereby reuniting the instruments. Then, when
10 BANA transferred the Deed of Trust to Selene in the 2015 assignment, the Note was automatically
11 transferred with the Deed of Trust. *See id.* 128 Nev. at 518, 286 P.3d at 258 (citing Restatement
12 (Third) of Prop.: Mortgages § 5.4(a) (1997) (noting that approach “a promissory note and a deed
13 of trust are automatically transferred together unless the parties agree otherwise”).

14 18. Second, the Note in this case contained several endorsements ending in the
15 Allonge with CAM VII Trust endorsing the Note in blank. The Allonge is attached to the Note
16 and enforceable. Since Selene is in physical possession of the Note signed in blank, it is entitled
17 to repayment under the Note and its simultaneous possession of the Deed of Trust as record
18 beneficiary thereof reunited both instruments.

19 19. Under either theory the Note and Deed of Trust were reunited and SFR’s claims
20 for cancellation of instruments fail.

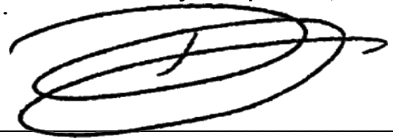
21 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that SFR’s Motion for
22 Summary Judgment is DENIED.

23 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Selene’s Motion for
24 Summary Judgment is GRANTED.

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IT IS SO ORDERED.

Dated this _____ day of _____, 2021. Dated this 7th day of September, 2021



DISTRICT COURT JUDGE
1E8 8BF EE14 5672
David M Jones
District Court Judge

Respectfully submitted by:
WRIGHT, FINLAY & ZAK, LLP

/s/ Brody Wight
Brody R. Wight, Esq.
Nevada Bar No. 13615
7785 W. Sahara Ave., Suite 200
Las Vegas, Nevada 89117
Attorneys for Defendant, Selene Finance, L.P.

Approved as to form and content:
KIM GILBERT EBRON

/s/ Diana Ebron
Diana S. Ebron, Esq.
Nevada Bar No. 10580
7625 Dean Martin Dr., Suite 110
Las Vegas, Nevada 89074
Attorneys for Plaintiff SFR Investments Pool 1, LLC

Brody R. Wight

From: Brody R. Wight
Sent: Thursday, September 2, 2021 7:18 AM
To: 'Diana Ebron'
Cc: Savelt; Tonya Sessions; 3767 Prairie Orchid Ave. (de715b910+matter1042007581@maildrop.clio.com); Candi Fay; Jackie Gilbert; chandel schimming
Subject: RE: SFR v. Selene Finance A-20-813201-C Proposed Order (WFZ No. 681-2020391)

Diana,

I am sorry to hear about your brother. I hope everything is alright. Thank you for getting to this. I have accepted all of your changes and will attach and submit the clean version you sent to me with your e-signature attached.

Brody R. Wight, Esq.
Attorney



7785 W. Sahara Ave., Suite 200
Las Vegas, Nevada 89117
(702) 946-1345 Fax
(702) 475-7968 Main Ext 7034

bwight@wrightlegal.net

Wright, Finlay & Zak: Your Counsel for California, Nevada, Arizona, Washington, Oregon, New Mexico, Utah, Idaho, Wyoming, Hawaii, and South Dakota



PLEASE BE ADVISED THAT THIS FIRM IS A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

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From: Diana Ebron <diana@kgelegal.com>
Sent: Wednesday, September 1, 2021 4:01 PM
To: Brody R. Wight <bwight@wrightlegal.net>
Cc: Savelt <Savelt@wrightlegal.net>; Tonya Sessions <tsessions@wrightlegal.net>; 3767 Prairie Orchid Ave. (de715b910+matter1042007581@maildrop.clio.com) <de715b910+matter1042007581@maildrop.clio.com>; Candi Fay <candifay@kgelegal.com>; Jackie Gilbert <jackie@kgelegal.com>; chandel schimming <chandel@kgelegal.com>
Subject: Re: SFR v. Selene Finance A-20-813201-C Proposed Order (WFZ No. 681-2020391)

Hi Brody,

Attached are my redlines and a clean version. If you are ok with my changes, you may submit with my esignature. Let me know if you have any questions.

Thanks,

Diana

From: Diana Ebron <diana@kgelegal.com>
Sent: Wednesday, September 1, 2021 1:55 PM
To: Brody R. Wight <bwight@wrightlegal.net>
Cc: Savelt <Savelt@wrightlegal.net>; Tonya Sessions <tsessions@wrightlegal.net>; 3767 Prairie Orchid Ave. (de715b910+matter1042007581@maildrop.clio.com) <de715b910+matter1042007581@maildrop.clio.com>; Candi Fay <candifay@kgelegal.com>; Jackie Gilbert <jackie@kgelegal.com>; chanel schimming <chanel@kgelegal.com>
Subject: Re: SFR v. Selene Finance A-20-813201-C Proposed Order (WFZ No. 681-2020391)

Hi Brody,

I'm so sorry. I am almost done but not quite. I found out Monday that one of my younger brothers is extremely ill with Covid and it's had me a bit distracted on top of everything else. I'll get it to you as soon as I can today.

Thanks,
Diana

From: Brody R. Wight <bwight@wrightlegal.net>
Sent: Wednesday, September 1, 2021 10:31 AM
To: Diana Ebron <diana@kgelegal.com>
Cc: Savelt <Savelt@wrightlegal.net>; Tonya Sessions <tsessions@wrightlegal.net>; 3767 Prairie Orchid Ave. (de715b910+matter1042007581@maildrop.clio.com) <de715b910+matter1042007581@maildrop.clio.com>; Candi Fay <candifay@kgelegal.com>; Jackie Gilbert <jackie@kgelegal.com>; chanel schimming <chanel@kgelegal.com>
Subject: RE: SFR v. Selene Finance A-20-813201-C Proposed Order (WFZ No. 681-2020391)

Hi Diana,

Do you have any progress on this order? I would like to submit it today if possible.

Brody R. Wight, Esq.
Attorney



7785 W. Sahara Ave., Suite 200
Las Vegas, Nevada 89117
(702) 946-1345 Fax
(702) 475-7968 Main Ext 7034
bwight@wrightlegal.net

Wright, Finlay & Zak: Your Counsel for California, Nevada, Arizona, Washington, Oregon, New Mexico, Utah, Idaho, Wyoming, Hawaii, and South Dakota



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From: Diana Ebron <diana@kgelegal.com>
Sent: Friday, August 27, 2021 5:21 PM
To: Brody R. Wight <bwight@wrightlegal.net>
Cc: Savelt <Savelt@wrightlegal.net>; Tonya Sessions <tsessions@wrightlegal.net>; 3767 Prairie Orchid Ave. (de715b910+matter1042007581@maildrop.clio.com) <de715b910+matter1042007581@maildrop.clio.com>; Candi Fay <candifay@kgelegal.com>; Jackie Gilbert <jackie@kgelegal.com>; chandel schimming <chantel@kgelegal.com>
Subject: Re: SFR v. Selene Finance A-20-813201-C Proposed Order (WFZ No. 681-2020391)

Thanks, Brody. I forgot to order the transcript and the minute order doesn't shed much light on the discussion, which lasted quite awhile longer than I originally expected. I'll touch base with you Monday morning on the order. I need to go through all of the briefing again.

Have a good weekend,

Diana

From: Brody R. Wight <bwight@wrightlegal.net>
Sent: Friday, August 27, 2021 3:16 PM
To: Diana Ebron <diana@kgelegal.com>
Cc: Savelt <Savelt@wrightlegal.net>; Tonya Sessions <tsessions@wrightlegal.net>; 3767 Prairie Orchid Ave. (de715b910+matter1042007581@maildrop.clio.com) <de715b910+matter1042007581@maildrop.clio.com>; Candi Fay <candifay@kgelegal.com>; Jackie Gilbert <jackie@kgelegal.com>; chandel schimming <chantel@kgelegal.com>
Subject: RE: SFR v. Selene Finance A-20-813201-C Proposed Order (WFZ No. 681-2020391)

I did not. I don't want you to have to rush on this over the weekend. By Monday I would just like to know if you think we can come up with a joint proposed order. If you think we can come up with one, you can take a day to make any proposed edits.

Brody R. Wight, Esq.
Attorney



7785 W. Sahara Ave., Suite 200
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bwight@wrightlegal.net

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From: Diana Ebron <diana@kgelegal.com>
Sent: Friday, August 27, 2021 2:03 PM
To: Brody R. Wight <bwight@wrightlegal.net>
Cc: Savelt <Savelt@wrightlegal.net>; Tonya Sessions <tsessions@wrightlegal.net>; 3767 Prairie Orchid Ave. (de715b910+matter1042007581@maildrop.clio.com) <de715b910+matter1042007581@maildrop.clio.com>; Candi Fay <candifay@kgelegal.com>; Jackie Gilbert <jackie@kgelegal.com>; chandel schimming <chantel@kgelegal.com>
Subject: Re: SFR v. Selene Finance A-20-813201-C Proposed Order (WFZ No. 681-2020391)

Did you happen to get a transcript of the hearing?

From: Diana Ebron <diana@kgelegal.com>
Sent: Friday, August 27, 2021 1:56 PM
To: Brody R. Wight <bwight@wrightlegal.net>
Cc: Savelt <Savelt@wrightlegal.net>; Tonya Sessions <tsessions@wrightlegal.net>; 3767 Prairie Orchid Ave. (de715b910+matter1042007581@maildrop.clio.com) <de715b910+matter1042007581@maildrop.clio.com>
Subject: Re: SFR v. Selene Finance A-20-813201-C Proposed Order (WFZ No. 681-2020391)

I'm so sorry. I'll get it to you by Monday morning, if not sooner.

From: Brody R. Wight <bwight@wrightlegal.net>
Sent: Friday, August 27, 2021 10:12 AM
To: Diana Ebron <diana@kgelegal.com>
Cc: Savelt <Savelt@wrightlegal.net>; Tonya Sessions <tsessions@wrightlegal.net>
Subject: Re: SFR v. Selene Finance A-20-813201-C Proposed Order (WFZ No. 681-2020391)

Hi Diana,

Have you had a chance to review the order on this? I am planning on submitting it on Monday afternoon. If I don't hear back, I will copy you on the submittal and let the court know we could not come to an agreement.

Sent from my iPhone

On Jul 28, 2021, at 2:51 PM, Brody R. Wight <bwight@wrightlegal.net> wrote:

Diana,

I have attached the proposed order granting summary judgment in the above-captioned case. Please review and let me know if you are willing to approve the order. I am, of course, open to making some changes to the order, but I will likely not agree to drastic changes.

Brody R. Wight, Esq.
Attorney

<image001.gif>

7785 W. Sahara Ave., Suite 200
Las Vegas, Nevada 89117
(702) 946-1345 Fax
(702) 475-7968 Main Ext 7034
bwight@wrightlegal.net

Wright, Finlay & Zak: Your Counsel for California, Nevada, Arizona, Washington, Oregon, New Mexico, Utah, Idaho, Wyoming, Hawaii, and South Dakota

<image002.png>

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<Proposed Order Granting Summary Judgment.docx>

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 SFR Investments Pool 1 LLC,
Plaintiff(s)

CASE NO: A-20-813201-C

7 vs.

DEPT. NO. Department 29

8
9 Selene Finance LP, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 9/7/2021

15 KGE Legal Staff

staff@kgelegal.com

16 KGE E-Service List

eservice@kgelegal.com

17 Diana Ebron

diana@kgelegal.com

18 DEFAULT ACCOUNT

NVefile@wrightlegal.net

19 Faith Harris

fharris@wrightlegal.net

20 Christina Miller

cmiller@wrightlegal.net

21 Brody Wight

bwight@wrightlegal.net

22 Candi Fay

candifay@kgelegal.com

23
24
25
26
27
28

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Real Property

COURT MINUTES

May 18, 2020

A-20-813201-C SFR Investments Pool 1 LLC, Plaintiff(s)
vs.
Selene Finance LP, Defendant(s)

May 18, 2020

3:00 AM

Minute Order

Rescheduled

HEARD BY: Bare, Rob

COURTROOM: Chambers

COURT CLERK: Carolyn Jackson

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- At the request of Court, for judicial economy, (1) Plaintiff's Application for Temporary Restraining Order and Motion for Preliminary Injunction presently set for a hearing on May 19, 2020 and (2) Defendant's Motion to Dismiss Complaint With Prejudice, presently set for a hearing on June 9, 2020, shall be CONSOLIDATED and shall be heard on June 9, 2020 at 9:30 a.m.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 05/18/20

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Real Property

COURT MINUTES

June 26, 2020

A-20-813201-C	SFR Investments Pool 1 LLC, Plaintiff(s) vs. Selene Finance LP, Defendant(s)
---------------	--

June 26, 2020

3:00 AM

Minute Order

HEARD BY: Bare, Rob

COURTROOM: Chambers

COURT CLERK: Alice Jacobson

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Department 32 Formal Request to Appear Telephonically for the July 2, 2020, hearing calendar.

Please be advised that due to the COVID-19 pandemic, Department 32 will continue to conduct Court hearings REMOTELY using the Blue Jeans Video Conferencing system. You have the choice to appear either by phone or computer/video.

Dial the following number: 1-408-419-1715

Meeting ID: 243 724 854

Meeting URL: <https://bluejeans.com/243724854>

To connect by phone dial the number provided and enter the meeting ID followed by #

To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by BlueJeans.

You may also download the Blue Jeans app and join the meeting by entering the meeting ID

PLEASE NOTE the following protocol each participant will be required to follow:

Place your phone on MUTE while waiting for your matter to be called.

Do NOT place the call on hold since some phones may play wait/hold music.

Please do NOT use speaker phone as it causes a loud echo/ringing noise.

Please state your name each time you speak so that the court recorder can capture a clear record.

Please be mindful of rustling papers, background noise, and coughing or loud breathing.

Please be mindful of where your camera is pointing.

We encourage you to visit the [Bluejeans.com](https://www.bluejeans.com) website to get familiar with the Blue Jeans phone/videoconferencing system before your hearing.

If your hearing gets continued to a different date after you have already received this minute order please note a new minute order will issue with a different meeting ID since the ID number changes with each meeting/hearing.

Please be patient if you call in and we are in the middle of oral argument from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Real Property

COURT MINUTES

July 02, 2020

A-20-813201-C SFR Investments Pool 1 LLC, Plaintiff(s)
vs.
Selene Finance LP, Defendant(s)

July 02, 2020

9:30 AM

All Pending Motions

HEARD BY: Bare, Rob

COURTROOM: RJC Courtroom 03C

COURT CLERK: Alice Jacobson

RECORDER: Kaihla Berndt

REPORTER:

PARTIES

PRESENT:

Hanks, Karen
Miller, Christina V.

Attorney
Attorney

JOURNAL ENTRIES

- SFR Investments Pool 1, LLC s Application For A Temporary Restraining Order/Motion for Preliminary Injunction

Motion to Dismiss Complaint with Prejudice

Arguments by counsel regarding standing and further discovery needed on the Note and signatures. Court will allow discovery and instructed counsel to work together in good faith to create a discovery plan. Supplement briefing due 7/10/20; Reply due 7/20//20; foreclosure sale to be reset after the discovery plan. COURT INSTRUCTED counsel to contact the Court with the plan and to set a continuance date for the motions.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Real Property

COURT MINUTES

November 13, 2020

A-20-813201-C SFR Investments Pool 1 LLC, Plaintiff(s)
vs.
Selene Finance LP, Defendant(s)

November 13, 2020 3:00 AM Minute Order

HEARD BY: Bare, Rob

COURTROOM: Chambers

COURT CLERK: Carolyn Jackson

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Department 32 Formal Request to Appear REMOTELY for the November 17, 2020, hearing calendar

Please be advised that due to the COVID-19 pandemic, Department 32 will continue to conduct Court hearings REMOTELY using the Blue Jeans Video Conferencing system. You have the choice to appear either by phone or computer/video.

Dial the following number: 1-408-419-1715

Meeting ID: 789 529 808

Meeting URL: <https://bluejeans.com/789529808>

To connect by phone dial the number provided and enter the meeting ID followed by #

To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by BlueJeans.

You may also download the Blue Jeans app and join the meeting by entering the meeting ID

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Please state your name each time you speak so that the court recorder can capture a clear record.

Please be mindful of rustling papers, background noise, and coughing or loud breathing.

Please be mindful of where your camera is pointing.

We encourage you to visit the Bluejeans.com website to get familiar with the Blue Jeans phone/videoconferencing system before your hearing.

If your hearing gets continued to a different date after you have already received this minute order please note a new minute order will issue with a different meeting ID since the ID number changes with each meeting/hearing.

Please be patient if you call in and we are in the middle of oral argument from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 11/13/20

- Department 32 Formal Request to Appear REMOTELY for the November 17, 2020, hearing calendar

Please be advised that due to the COVID-19 pandemic, Department 32 will continue to conduct Court hearings REMOTELY using the Blue Jeans Video Conferencing system. You have the choice to appear either by phone or computer/video.

Dial the following number: 1-408-419-1715

Meeting ID: 789 529 808

Meeting URL: <https://bluejeans.com/789529808>

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Please be mindful of where your camera is pointing.

We encourage you to visit the Bluejeans.com website to get familiar with the Blue Jeans phone/videoconferencing system before your hearing.

If your hearing gets continued to a different date after you have already received this minute order please note a new minute order will issue with a different meeting ID since the ID number changes with each meeting/hearing.

Please be patient if you call in and we are in the middle of oral argument from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 11/13/20

**DISTRICT COURT
CLARK COUNTY, NEVADA****Other Real Property****COURT MINUTES****November 16, 2020**

A-20-813201-C SFR Investments Pool 1 LLC, Plaintiff(s)
vs.
Selene Finance LP, Defendant(s)

November 16, 2020 3:00 AM Minute Order

HEARD BY: Bare, Rob

COURTROOM: Chambers

COURT CLERK: Carolyn Jackson

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- The Court notes Plaintiff SFR Investment Pool 1, LLC's Application for a Temporary Restraining Order and Motion for Preliminary Injunction and Defendant Selene Finance LP's Motion to Dismiss Complaint with Prejudice was heard on July 2, 2020. At the hearing, the Court ordered that the matter shall be continued and the foreclosure sale was delayed per stipulation. Defendant was permitted to file a supplement by July 10, 2020 and Plaintiff was permitted to file a reply to supplement by July 20, 2020. After a review of the pleadings, prior arguments made, and good cause appearing, pursuant to EDCR 2.23 and the Administrative Order 20-17, the Court FINDS and ORDERS as follows:

Following facts are not in dispute. On June 4, 2008, Maria and Robert Hakeem ("borrowers") purchased the property located at 3767 Prairie Orchid Ave., North Las Vegas, NV 89081. Borrowers executed a deed of trust and identified PrimeLending as the Lender and MERS as the beneficiary. The deed was recorded on June 10, 2008. On August 1, 2011, MERS assigned its beneficial interest to BAC Home Loans Servicing ("BAC"). On or about August 29, 2012, the HOA foreclosed on the property due to borrower's lack of payment of the HOA dues and Plaintiff purchased the property at a foreclosure sale for \$6,600. The foreclosure deed was recorded on September 11, 2012. On September 1, 2015, BAC assigned its beneficial interest to Defendant. On December 17, 2019, notice of default and election to sell under deed of trust was recorded. The Notice of Sale was recorded on

April 1, 2020. The sale date was initially set for May 21, 2020, but was pushed back and has not yet occurred.

However, there are some factual matters in dispute. Plaintiff alleges that sometime between June 1 and September 1, 2009, Defendant wholly accelerated the loan and failed to decelerate the loan within 10 years. At this time, the only evidence of acceleration is that the Notice of Default filed on December 17, 2019, which states that "full payment was demanded", which implies that there was a prior acceleration. However, the actual document that shows the acceleration was not referenced in any of the pleadings.

NRCP 12(b)(5) governs a motion to dismiss for failure to state a claim upon which relief can be granted. The court must accept all factual allegations in the complaint as true, and draw all inferences in the plaintiff's favor. *Buzz Stew, LLC v. City of Las Vegas*, 124 Nev. 224, 227-28 (2008). The test for determining whether the allegations of a complaint are sufficient to assert a claim for relief is whether the allegations give fair notice of the nature and basis of the legally sufficient claim and relief requested. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842 (1993). Dismissal is proper if the allegations in the complaint alone are insufficient to establish the elements of the claims for relief. *Buzz Stew*, 124 Nev. at 227. Additionally, NRCP 8(a) allows notice pleading, where all that is required in a complaint is a "short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks." Material which is properly submitted as part of the complaint may be considered on a motion to dismiss. *Hal Roach Studios Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990). The document is not "outside" the complaint if the complaint specifically refers to the document and if its authenticity is not questioned. *Branch v. Tunnell*, 14 F. 3d 449, 453 (9th Cir. 1994). To the extent that matters outside the complaint are presented to the court, "the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56." NRCP 12(b). A party may move for summary judgment at any time and must be granted if the pleadings and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Villescas v. CAN, Insurance Co.*, 109 Nev. 1075 (1993). "As a general rule, the court may not consider matters outside the pleading being attacked." *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). "However, the court may take into account matters of public record, orders, items present in the record of the case, and any exhibits attached to the complaint when ruling on a motion to dismiss for failure to state a claim upon which relief can be granted." *Id.* Additionally, "a document is not outside the complaint if the complaint specifically refers to the document and if its authenticity is not questioned." *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir.1994) overruled on other grounds by *Galbraith v. Cnty. of Santa Clara*, 307 F.3d 1119, 1125 26 (9th Cir.2002). Material which is properly submitted as part of the complaint may be considered on a motion to dismiss. *Hal Roach Studios Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990). The document is not "outside" the complaint if the complaint specifically refers to the document and if its authenticity is not questioned. *Branch v. Tunnell*, 14 F. 3d 449, 453 (9th Cir. 1994). To the extent that matters outside the complaint are presented to the court, "the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56." NRCP 12(b). A party may move for summary judgment at any time and must be granted if the pleadings and affidavits show that there is no genuine issue as to

any material fact and that the moving party is entitled to a judgment as a matter of law. *Villescas v. CAN, Insurance Co.*, 109 Nev. 1075 (1993).

NRS 106.240 states "the lien created of any mortgage or deed of trust upon any real property . shall at the expiration of 10 years after the debt secured by the mortgage or deed of trust according to the term thereof or any recorded written extension thereof become wholly due, terminate, and it shall be conclusively presumed that the debt has been regularly satisfied and the lien discharged." In *Pro-Max Corp. v. Feenstra*, 117 Nev. 90, 16 P.3d 1074 (2001), in discussing this statute, the Nevada Supreme Court ruled that this statute merely creates a conclusive presumption that a lien on real property is extinguished ten years after the debt becomes due. In *Posner v. U.S. Bank National Association*, 2020 WL 1310467 (D. Nev. Mar. 18, 2020), the United States District Court of Nevada also found that this statute does not constitute statute of limitation, but rather, creates a conclusive presumption that a lien on real property is extinguished 10 years after the debt becomes due.

In *Bank of America, N.A. v. Madeira Canyon Homeowners Association*, 423 F.Supp.3d 1029 (D. Nev. 2019), the United States District Court of Nevada specific found that NRS 106.240 is not a statute of limitation, but a statute of repose, which "puts an outer limit on the right to bring a civil action" and it would "effect a legislative judgment that a defendant should be free from liability after the legislatively determined period of time." The limit on statute of repose is "measured not from the date on which the claim accrues but instead from the date of the last culpable act or omissions of the defendant." In the context of NRS 106.240, the limit on the party's ability to bring the action is dated from the borrower's failure to cure the default. In *Bank of New York Mellon v. Seven Hills Master Community Association*, 2020 WL 620273 (D. Nev. Feb. 10, 2020), the court also faced a question over NRS 106.240. The federal district court ruled that statute of repose applies at the maturity date listed on the deed of trust or 10 years from when the mortgage was accelerated by the lender/beneficiary taking some affirmative action to make it known to the owner/borrower that the option to accelerate the loan was taken. See also, *Bank of New York v. Ruddell*, 380 F.Supp.3d 1096 (D. Nev. Mar. 31, 2019).

The difference between the statute of repose and statute of limitation is that former bar "causes of action after a certain period of time, regardless of whether damage or an injury has been discovered." The latter "forecloses suits after a fixed period of time following occurrence or discovery of an injury." *G and H Associates v. Ernest W. Hahn, Inc.*, 113 Nev. 265, 934 P.2d 229 (1997). That is, statute of repose cannot be tolled. *Id.*

The relevant issue here is whether under NRS 106.240, Defendant, as the beneficiary, has the right to seek default and foreclose on the mortgage.

The Court FINDS under *Wood v. Germann* and *Posner v. U.S. Bank National Association*, Plaintiff, who was not a party or an intended third party beneficiary to the 2011 and 2015 assignments, appear to lack standing to challenge those assignments.

The Court FINDS that at the motion to dismiss stage, it must accept all factual allegations in the

complaint as true and draw all inferences in Plaintiff's favor. Plaintiff itself recognizes that there is no document that states that Defendant or its predecessor accelerated the loan sometime in 2009. However, Plaintiff cites to the notice of default and election to sell under deed of trust, which was recorded on December 17, 2019, which references that sometime prior to that date, "full payment was demanded", which implies a prior demand being made. However, neither party provided any evidence on when such demand was made. Thus, discovery appears to be necessary to determine if any proof can be found with regards to acceleration of the loan in 2009 or at any other time.

The Court FINDs that *Glass v. Select Portfolio Servicing, Inc.*, 2020 WL 3604042 (July 1, 2020), which Defendant cites to, is inapplicable to this case. In *Glass*, the Nevada Supreme Court did not apply NRS 106.240 because it found that the beneficiary had timely rescinded the notice of default. It has no bearing to the Court's decision in this case.

The Court FINDs that Plaintiff's Application for Temporary Restraining Order and Motion for Preliminary Injunction is moot because the sale cannot occur while the matter is pending the resolution of the case.

The Court ORDERS that Defendant's Motion to Dismiss shall be DENIED without prejudice. Plaintiff's Application for Temporary Restraining Order and Motion for Preliminary Injunction shall be DENIED as moot. Continued hearing set for November 17, 2020 shall be advanced and VACATED.

Counsel for Plaintiff is directed to submit a proposed Order consistent with this Minute Order and the submitted briefing. Counsel may add language to further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. Defendant's counsel is to review and countersign as to form and content. Counsel is directed to have the proposed Order submitted to chambers within 10 days consistent with the AO 20-17.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 11/16/20

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Real Property

COURT MINUTES

July 07, 2021

A-20-813201-C SFR Investments Pool 1 LLC, Plaintiff(s)
vs.
Selene Finance LP, Defendant(s)

July 07, 2021

9:00 AM

All Pending Motions

HEARD BY: Jones, David M

COURTROOM: RJC Courtroom 15A

COURT CLERK: Michaela Tapia

RECORDER: Melissa Delgado-Murphy

REPORTER:

PARTIES

PRESENT:

Ebron, Diana S.

Attorney

Wight, Brody R.

Attorney

JOURNAL ENTRIES

- DEFENDANT SELENE FINANCE, LP'S MOTION FOR SUMMARY JUDGMENT ... SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT

Following arguments by counsel, COURT ORDERED, Defendant's motion GRANTED; Plaintiff's motion DENIED. Mr. Wight to prepare the order.



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

DIANA S. EBRON, ESQ.
7925 DEAN MARTIN DR., SUITE 110
LAS VEGAS, NV 89139

DATE: October 11, 2021
CASE: A-20-813201-C

RE CASE: SFR INVESTMENTS POOL 1, LLC vs. SELENE FINANCE, L.P.

NOTICE OF APPEAL FILED: October 7, 2021

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the District Court.*
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING SELENE FINANCE, LP'S MOTION FOR SUMMARY JUDGMENT AND DENYING SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

SFR INVESTMENTS POOL 1, LLC,

Plaintiff(s),

vs.

SELENE FINANCE, L.P.,

Defendant(s),

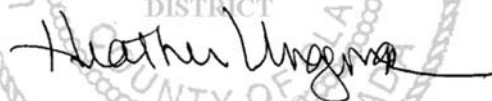
Case No: A-20-813201-C

Dept No: XXIX

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 11 day of October 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

