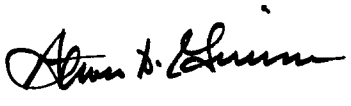
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A., AS TRUSTEE FOR BEAR STEARNS ALT-A TRUST 2006-4, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-4,

Plaintiff,

vs.

JOHN A. SANCHEZ; YORBANNA SANCHEZ; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; CTX MORTGAGE COMPANY, LLC; SFR INVESTMENTS POOL 1, LLC; DOES I-X; and ROES 1-10, inclusive,

Defendants,

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

Counter-claimant/Cross-Claimant/Third Party Plaintiff,

vs.

WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A., AS TRUSTEE FOR BEAR STEARNS ALT-A TRUST 2006-4, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-4; CTX MORTGAGE COMPANY, LLC, a Texas limited liability company; CITIBANK, N.A.

Case No. A-13-682006-C
Dept. No. XXXI

NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT

Docket 71236 Document 2016-28245

AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF STRUCTURED ASSET MORTGAGE INVESTMENTS II, INC., BEAR STEARNS ALT-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-4, a national association; JOHN A. SANCHEZ, an individual; YORBANNA SANCHEZ, an individual; DOES I-X; and ROE CORPORATIONS 1-10, inclusive,

Counter-claimant/Cross-Claimant/Third Party Defendant,.

PLEASE TAKE NOTICE that an **Order Denying Plaintiff's Motion for Summary Judgment and SFR Investments Pool 1, LLC's Motion for Summary Judgment** was entered by this court on December 23, 2015. A copy of said Order is attached hereto.

DATED this 24th day of December, 2015

HOWARD KIM & ASSOCIATES

/s/Diana Cline Ebron
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of December, 2015, pursuant to NRCP 5(b), I served the following parties listed below via Eighth Judicial District Court electronic service, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT** addressed to:

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DISTRICT COURT

CLARK COUNTY, NEVADA

WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A., AS TRUSTEE FOR BEAR STEARNS ALT-A TRUST 2006-4, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-4,

Plaintiff,

vs.

JOHN A. SANCHEZ; YORBANNA SANCHEZ; MORTGAGE ELECTRONIC REGRISTRATION SYSTEMS, INC.; CTX MORTGAGE COMPANY, LLC; SFR INVESTMENTS POOL 1, LLC; DOES I-X; and ROES 1-10, inclusive,

Defendants.

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

Counter-claimant/Cross-Claimant/Third Party Plaintiff,

vs.

WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A., AS TRUSTEE FOR BEAR STEARNS ALT-A TRUST 2006-4, MORTGAGE PASS-

Case No. A-13-682006-C

Dept. No. XXXI

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT

12-17-15 P01:29

THROUGH CERTIFICATES, SERIES 2006-4; CTX MORTGAGE COMPANY, LLC, a Texas limited liability company; CITIBANK, N.A. AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF STRUCTURED ASSET MORTGAGE INVESTMENTS II, INC., BEAR STEARNS ALT-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-4, a national association; JOHN A. SANCHEZ, an individual; YORBANNA SANCHEZ, an individual; DOES I-X; and ROE CORPORATIONS 1-10, inclusive,

Counter-defendant/Cross-defendants/Third Party Defendant.

This matter came before the Court on SFR Investments Pool 1, LLC's ("SFR") Motion for Summary Judgment, filed on August 19, 2015 ("SFR MSJ"), and Wilmington Trust, National Association, as Successor Trustee to Citibank, N.A., as Trustee for Bear Stearns Alt-a-Trust 2006-4, Mortgage Pass-Through Certificates, Series 2006-4's ("Wilmington Trust") Motion for Summary Judgment, filed on August 19, 2015 ("Wilmington Trust MSJ"). SFR filed an opposition to the Wilmington Trust MSJ on September 8, 2015, to which Wilmington Trust filed its reply on September 22, 2015. Wilmington Trust filed an opposition to the SFR MSJ on September 11, 2015, to which SFR filed its reply on September 22, 2015. Karen L. Hanks, Esq. appeared on behalf of SFR. Ann M. Hansen, Esq. appeared on behalf of Wilmington Trust.

Having reviewed and considered the full briefing and arguments of counsel, all applicable statutes and case law, for the reasons stated on the record, and good cause appearing, this Court finds as follows:

Wilmington Trust MSJ

1. Wilmington Trust made the following arguments in support of its motion for summary judgment.

   a. First, the sale by Giavanna ("Association") is void because the price paid, in the amount of $8,750.00, is grossly inadequate in comparison to the market value of real property located at 5540 Diano Marina Court, Las Vegas, Nevada 89081; Parcel No. 123-31-113-022 (the "Property").

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b. Second, Nevada Association Services, Inc. ("NAS"), agent for the Association, refused to provide a super-priority payoff amount to Wilmington Trust's predecessor-in-interest for purposes of tender.

c. Third, NRS 116.3116, et seq. is facially unconstitutional because it does not require actual notice to lienholders before a homeowners association can foreclose on the super-priority amount of the lien.

d. Fourth, NRS 116.3116 is unconstitutional because it is an uncompensated regulatory taking of property without just compensation.

e. Finally, the Association foreclosure sale was a constructively fraudulent transfer under the Uniform Fraudulent Transfers Act as codified in NRS Chapter 112.

Gross Inadequacy of Price

2. Wilmington Trust argues that the gross inadequacy of the price paid for the Property voids the Association foreclosure sale.

3. The Court considered Wilmington Trust's gross inadequacy of price argument to be a commercial unreasonableness argument. Wilmington Trust did not provide this Court with any evidence that the Association foreclosure sale at issue was tainted by fraud, unfairness, or oppression nor did it provide any other basis from which this Court could address this argument. In the absence of any support, this Court declines to find, based on the scant record before it, that there is no genuine issue of material fact as to whether the purchase was or was not commercially unreasonable.

4. Instead, based on the record provided, there are several material issues of fact in dispute including, among other things, whether Wilmington Trust received notice, whether and under what circumstances the foreclosure sale took place, whether the sale was an arm's-length transaction, whether the recitals were accurate and consistent with the rest of the transaction record, and whether there was a tender, among other things.

5. In light of the fact that this Court cannot find, as a matter of law, that Wilmington Trust's arguments are conclusive to the case and given there are material issues of fact about the transaction in dispute, there is no basis for a judgment on this issue.

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Facial Unconstitutionality of NRS 116.3116

6. Wilmington Trust argues that NRS 116 is unconstitutional on its face and as a result, it is void and unenforceable based on the lack of mandatory notice requirements to the lien holder. Wilmington Trust further contends that this Court can grant summary judgment on this legal basis.

7. In analyzing Wilmington Trust's argument, this Court must follow the well-established cannon of statutory interpretation—constitutional avoidance.

8. "It is elementary when the constitutionality of a statute is assailed, if the statute be reasonably susceptible of two interpretations, by one of which it would be unconstitutional and by the other valid, it is our plain duty to adopt that construction which will save the statute from constitutional infirmity." U.S ex rel Attorney Gen. v. Delaware & Hudson Co., 213 U.S. 366, 407, 29 S. Ct. 527, 535, 53 L.Ed. 836 (1909).; see also State v. Curler, 26 Nev. 347, 67 P. 1075, 1076 (1902) ("...it is a well-established rule of this and other courts that constitutional questions will never be passed upon, except when absolutely necessary to properly dispose of the particular case..."); Sheriff, Pershing Cnty., v. Andrews, 128 Nev. Adv. Op. 51, 286 P.3d 262, 263 (2012) ("It is well settled, however, that we should avoid considering the constitutionality of a statute unless it is absolutely necessary to do so.").

9. The reading of NRS 116's notice requirements in a way to be constitutionally valid requires that a foreclosing homeowners' association must provide notice to the following parties:

> (1) Any interested person who has recorded a request for notice with the proper county recorder must be mailed copies of the notice of default and election to sell and the notice of sale. See NRS 116.31163(1) (notice of default must be given to "[e]ach person who has requested notice pursuant to NRS 107.090 or 116.31168"), NRS 107.090(2) (a "request for a copy of the notice of default or of sale" must be "record[ed] in the office of the county recorder of the county in which any part of the real property is situated"), and NRS 116.31168(1) ("The request must identify the lien by stating the names of the unit's owner and the common-interest community."); see also NRS 116.311635(1)(b)(1) (notice of sale must be mailed to all persons entitled to receive a copy of the notice of default). This request-notice provision exists to allow interested parties who are not otherwise ascertainable an opportunity to receive notice and protect their interest.

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(2) Any other person holding or claiming an interest subordinate to the association's lien must be mailed copies of the notice of default and election to sell and the notice of sale. See NRS 116.31163(1) and NRS 116.311635(1)(b)(1), supra; see also NRS 116.31168(1) (incorporating requirements of NRS 107.090 to HOA foreclosures) and NRS 107.090(3)(b) (notice must be mailed to "[e]ach other person with an interest whose interest or claimed interest is subordinate to the [association's lien]."). This catch-all provision exists to provide notice to any other interested party whose identity is reasonably ascertainable.

(3) Any holders of a recorded security interest that encumbers the homeowner's interest must be mailed copies of (a) the notice of default and election to sell, if the security interest was recorded at least 30 days before notice of default was recorded, and (b) the notice of sale, if the security interest was recorded prior to the mailing of the notice of sale. See NRS 116.31163(2), supra, and NRS 116.311635(1)(b)(2) (HOA must mail notice of sale to security interest holder that "has notified the association, before the mailing of the notice of sale of the existence of the security interest."); see also NRS 111.320, supra, and First Nat. Bank v. Meyers, 40 Nev. 284, 161 P. 929, 931 (1916) (recording of the security interest gives notice to the world of that interest).

10. In SFR Investments Pool 1 v. U.S. Bank, 130 Nev. Adv. Op. 75, 334 P.3d 408, 419 (2014), reh'g denied (Oct. 16, 2014) ("SFR"), the Nevada Supreme Court stated that NRS 116 should be read in conjunction with NRS 107.090. Id. at 411.

11. The Nevada Supreme Court noted, "[i]n view of the fact that the 'requirements of law' include compliance with NRS 116.31162 through NRS 116.31168 and by incorporation, NRS 107.090, see NRS 116.31168(1), we conclude that U.S. Bank's due process challenge to the lack of adequate notice fails, at least at this early stage in the proceeding." Id. at 418.

12. Accordingly, as this Court must follow the directives of SFR, this Court finds that Wilmington Trust's due process challenge fails.

13. Even if this Court were to view the language quoted herein from SFR as dicta, this Court must still attempt to read the statute as Constitutional if there are different viewpoints as to what is meant by the provision.

14. In so doing, this Court would find, at this early stage of the pleadings, that a combined reading of NRS 116 and NRS 107.090 requires the foreclosing homeowners' association to provide notice to mortgage holders that have a timely recorded interest in the

subject property. Therefore, the facial challenge of NRS 116's notice requirements fails because the provisions of NRS 116 read as a whole, and in conjunction with well-established related law, ensures mortgage holders and other interested parties receive actual notice of a homeowners' association's impending non-judicial foreclosure sale.

15. Further, although NRS 116, on its face, provides for Constitutional notice as set forth in further detail above, there is still the issue of whether the mandates of the Due Process Clause are in fact triggered.

16. Regardless of how the constitutional challenge is characterized—"facial" or "as applied"—it must first identify some "state action" that runs afoul of the Fourteenth Amendment. See Lugar v. Edmondson Oil Co., 457 U.S. 922, 930, 102 S. Ct. 2744, 2750, 73 L. Ed. 2d 482 (1982) ("...the Due Process Clause protects individuals only from governmental and not from private action, plaintiffs had to demonstrate that the sale of their goods were accomplished by state action."); see also S.O.C., Inc. v. Mirage Casino-Hotel, 117 Nev. 403, 410, 23 P.3d 243, 247 (2001) ("The general rule is that the Constitution does not apply to private conduct."). "Embedded in our Fourteenth Amendment jurisprudence is a dichotomy between state action, which is subject to scrutiny under the Amendment's Due Process Clause, and private conduct, against which the Amendment affords no shield, no matter how unfair that conduct may be." Nat'l Collegiate Athletic Ass'n v. Tarkanian, 488 U.S. 179, 191, 109 S. Ct. 454, 461, 102 L. Ed. 2d 469 (1988) (holding state university's imposition of sanctions against legendary basketball coach Jerry Tarkanian in furtherance of the NCAA's rules and recommendations did not transform NCAA's private conduct into state action).

17. In examining the state action issue, where a private party's decisive conduct has caused harm to another private party, the question becomes "whether the State was sufficiently involved to treat that decisive conduct as state action." Nat'l Collegiate Athletic Ass'n v. Tarkanian, 488 U.S. at 192, 109 S. Ct. at 462.

18. The state's involvement may transform private conduct into state action when the state "delegates its authority to the private actor"; the state "knowingly accepts the benefits derived from unconstitutional behavior"; or when the state "creates the legal framework

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governing the [private] conduct[.]" Id. (citing for each proposition, respectively, West v. Atkins, 487 U.S. 42, 108 S. Ct. 2250, 101 L. Ed. 2d 40 (1988); Burton v. Wilmington Parking Authority, 365 U.S. 715, 722, 81 S. Ct. 856, 860, 6 L. Ed. 2d 45 (1961); and North Georgia Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601, 95 S. Ct. 719, 42 L. Ed. 2d 751 (1975) (holding state's garnishment statute, which permitted writ of garnishment to be issued in pending actions by court clerk, denied due process of law)).

19. The conduct at issue in this case—a non-judicial foreclosure authorized by Nevada law—centers the state-action analysis on Nevada's creation of the legal framework governing HOA non-judicial foreclosure actions.

20. There was no contention by Wilmington Trust that the state engaged in any direct conduct.

21. The inquiry here turns on whether the Nevada Legislature's enactment of the legal framework governing non-judicial foreclosure of homeowners' association liens constitutes sufficient state action to trigger the due process protections of the Fourteenth Amendment for mortgage holders. This Court finds that it does not.

22. The "State is responsible for the…act of a private party when the State, by its law, has compelled the act." Adickes v. S.H. Kress & Co., 398 U.S. 144, 170, 90 S. Ct. 1598, 1615, 26 L. Ed. 142 (1970). However, a State's mere acquiescence in a private action does not convert that action into that of the State. See Flagg Bros. v. Brooks, 436 U.S. 149, 164, 98 S. Ct. 1729, 1737, 56 L. Ed. 2d 185 (1978).

23. The United States Supreme Court dealt with a similar issue in Flagg Bros. v. Brooks. Id. In that case, Ms. Brooks faced eviction and was forced by circumstance to place her belongings in storage. Id. at 149 and 1730. Subsequently, she filed a lawsuit against the storage company, Flagg Brothers, alleging a violation of her Fourteenth Amendment rights. Id. Ms. Brooks argued that "Flagg Brothers' proposed action [wa]s properly attributable to the State because the State ha[d] authorized and encouraged it in enacting [the statutory framework authorizing the sale of her property to satisfy the storage lien]." Id. at 164 and 1737. The Court

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held that the state statute, together with private action conforming to the statute, was insufficient to establish state action, reasoning:

> Here, the State of New York has not compelled the sale of a bailor's good, but has merely announced the circumstances under which its courts will not interfere with a private sale. Indeed, the crux of respondents' complaint is not that the State *has* acted, but that it has *refused* to act. This statutory refusal to act is no different in principle from an ordinary statute of limitations whereby the State declines to provide a remedy for private deprivations of property after the passage of a given period of time.

Id. at 166 and 1738 (emphasis in original).

24. The issue presented with regards to NRS 116 is analogous. While the State of Nevada enacted NRS 116, its role was to set forth a procedure that a homeowners' association must fulfill to legally foreclose on an unpaid lien. The State of Nevada has not mandated that any particular homeowners' association must act or when it should act. The role of the State of Nevada in this and other similar situations is passive and cannot trigger state action.

25. Accordingly, this Court finds state action does not exist in this situation sufficient to implicate the protections of the Due Process Clause of the Fourteenth Amendment.

26. As such, this Court must deny the Wilmington Trust MSJ without prejudice on this basis as NRS 116 is constitutional.[1]

Regulatory Taking

27. Wilmington Trust also argues that it was deprived of its property without notice as a result of Legislative action, in that the Legislature drafted and enacted a constitutional infirm statute. In sum, Wilmington Trust contends that there was an unlawful taking. This argument also fails.

28. The Fifth Amendment to the United States Constitution prohibits "private property be[ing] taken for public use, without just compensation." U.S. Const. amend. V. Article One of the Nevada Constitution correspondingly provides that "[p]rivate property shall not be taken for public use without just compensation having been first made, or secured[.]"

[1] The state action analysis is also applicable to the other Constitutional challenges.

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Nev. Const. art. 1, 8(6). In McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 669, 137 P.3d 1110, 1126 (2006), the Nevada Supreme Court found the Takings Clause of the Nevada Constitution to be more protective of property rights than that of the United States Constitution. It went on to explain what is a regulatory taking pursuant to the State Constitution as follows:

> [A] per se regulatory taking occurs when a public agency seeking to acquire property for a public use...fails to follow the [statutory eminent domain] procedures...and appropriates or permanently invades private property for public use without first paying just compensation.

Id. at 670.

29. "In deciding whether a particular governmental action has effected a taking, this Court focuses...both on the character of the action and on the nature and extent of the interference with rights in the parcel as a whole[.]" Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency, 535 U.S. 302, 327, 122 S. Ct. 1465, 1481, 152 L. Ed. 2d 517 (2002) (quoting Penn Cent. Transp. Co. v. City of New York, 438 U.S. 104, 130, 98 S. Ct. 2624, 2662, 57 L. Ed. 2d 631 (1978)).

30. Utilizing the analysis above, this Court does not find that Wilmington Trust has met its burden to show that legislative enactment of Chapter 116 is a governmental taking by regulation or that a private foreclosure of an association lien serves to further a public purpose. Instead, while the Legislature created the law that allowed the private foreclosure to take place, the government did not have the requisite interference with Wilmington Trust's rights to constitute a taking.

31. This is particularly true in the present case based on the undisputed timing of when the loan was made and when Wilmington Trust purchased its interest in the deed of trust. Specifically, the loan in this case and the resulting deed of trust were made long after NRS 116 was adopted. This is particularly true in light of the fact that Wilmington Trust bought its interest in the deed of trust after the Association foreclosure sale.

32. A taking must be of current rights, not those that may exist in the future. Even if the statute does not constitute a "taking", which this Court has found that it does not, Wilmington Trust did not have an interest in the Property when the alleged "taking" took place.

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33. Accordingly, the Wilmington Trust MSJ on the theory of regulatory taking fails.

///

Uniform Fraudulent Transfers Act

34. Wilmington Trust asserts that it "is entitled to avoid the sale as constructively fraudulent. The sale was a transfer of the Property from the Sanchez's to SFR within the meaning of the UFTA. The $8,750.00 paid for the Property was not reasonably equivalent value; as discussed above, the price is grossly inadequate. And finally, the first and third conditions above were met: at the time of the sale, the Sanchez's were engaged in a transaction for which their remaining assets were unreasonably small and were insolvent. The Sanchez's clearly could not pay their debts as they became due." Wilmington Trust MSJ at 26:5-12.

35. SFR argues that the Uniform Fraudulent Transfers Act ("UFTA") does not apply.

36. Based on the record provided to this Court, SFR asserts its title claim pursuant to a foreclosure sale conducted by the Association and/or its agent after the Sanchez's did not pay their Association assessments. There was not any contention provided to this Court that the Sanchez's were involved in the transfer of the Property. Instead, the transfer occurred by operation of law after the Sanchez's failed to pay sums the Association contends they owed for assessments.

37. Given the facts presented to this Court, the UFTA cannot be found, as a matter of law, to apply to the transaction at hand.

38. Accordingly, the Wilmington Trust MSJ must be denied without prejudice as to this assertion.

SFR MSJ

39. SFR made the following arguments in support of its motion for summary judgment.

a. First, SFR is entitled to its claims for quiet title and injunctive relief as the Association foreclosure sale extinguished any interest Wilmington Trust, or its predecessor(s) in interest, had in the Property.

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b. Second, the recitals in the foreclosure deed are conclusive proof that all necessary notices were sent and Wilmington Trust had actual notice of the sale and did not act.

c. Third, the Nevada Supreme Court, in SFR, concluded that NRS 116.3116(2) gives associations a true super-priority lien, the non-judicial foreclosure of which extinguishes a first deed of trust. SFR Investments Pool 1 v. U.S. Bank, 334 P.3d at 419. In this case, after the homeowners and Citibank—Wilmington Trust's predecessor in interest—failed to pay the Association assessments, the Association foreclosed on the delinquent assessments. In SFR, the Nevada Supreme Court recognized that a foreclosure deed "reciting compliance with notice provisions of NRS 116.31162 through NRS 116.31168 'is conclusive' as to the recitals 'against the unit's former owner, his or her heirs and assigns and all other persons." Id. (citing NRS 116.3116(2)). SFR MSJ at 9:13-21.

40. In its opposition, Wilmington Trust argues that summary judgment should not be granted as there are a multitude of disputed facts including material facts relating to notice, tender, and SFR's knowledge at the time it purchased the Property. Wilmington Trust Opposition at 7:4-7, 8:24, 9:1-10, 12:17-24, and 13:1-10. Wilmington Trust explains, in detail, how its predecessor attempted to tender payment to the Association and/or its agent, but that the attempted payment was rejected.

41. Based on the record provided to this Court, there are still genuine issues of material fact in dispute, including, inter alia, whether all the statutory notice requirements of NRS 116 were complied with, whether the recitals in the deed are accurate or fraudulent, whether there was an appropriate tender, and whether SFR should be considered a bona fide purchaser based on what it did or did not know.

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Wilmington Trust, National Association, as Successor Trustee to Citibank, N.A., as Trustee for Bear Stearns Alt-a-Trust 2006-4, Mortgage Pass-Through Certificates, Series 2006-4's Motion for Summary

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Judgment is DENIED without prejudice.

///

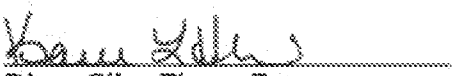
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IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that SFR Investments Pool 1, LLC's Motion for Summary Judgment is DENIED without prejudice.

IT IS SO ORDERED.

Dated this ____ day of _____, 2015.

_____
DISTRICT COURT JUDGE

Respectfully Submitted By:	Approved as to Form and Content:
HOWARD KIM & ASSOCIATES	**BALLARD SPAHR, LLP**
	_____
Diana Cline Ebron, Esq. Nevada Bar No. 10580 Karen L. Hanks, Esq. Nevada Bar No. 9578 1055 Whitney Ranch Drive, Suite 110 Henderson, Nevada 89014 *Attorneys for SFR Investments Pool 1, LLC*	Abran E. Vigil, Esq. Nevada Bar No. 7548 100 North City Parkway, Suite 1750 Las Vegas, Nevada 89106 *Attorneys for Plaintiff*

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Judgment is DENIED without prejudice.

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IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that SFR Investments Pool 1, LLC's Motion for Summary Judgment is DENIED without prejudice.

IT IS SO ORDERED.

Dated this 17 day of December, 2015.

JOANNA S. KISHNER
DISTRICT COURT JUDGE

Respectfully Submitted By:	Approved as to Form and Content:
HOWARD KIM & ASSOCIATES	**BALLARD SPAHR, LLP**
Diana Cline Ebron, Esq. Nevada Bar No. 10580 Karen L. Hanks, Esq. Nevada Bar No. 9578 1055 Whitney Ranch Drive, Suite 110 Henderson, Nevada 89014 *Attorneys for SFR Investments Pool 1, LLC*	Abran E. Vigil, Esq. Nevada Bar No. 7548 100 North City Parkway, Suite 1750 Las Vegas, Nevada 89106 *Attorneys for Plaintiff*

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ORDR

DISTRICT COURT

CLARK COUNTY, NEVADA

WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A., AS TRUSTEE FOR BEAR STERNS ALT-A TRUST 2006-4, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-4

Plaintiff,

vs.

JOHN A. SANCHEZ; YORBANNA SANCHEZ, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; CTX MORTGAGE COMPANY, LLC; SFR INVESTMENTS POOL 1, LLC; DOES I–X; and ROES 1–10, inclusive

Defendants.

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

Counter-Claimant/Cross-Claimant/Third-Party Plaintiff,

vs.

WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A., AS TRUSTEE FOR BEAR STERNS ALT-A TRUST 2006-4, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-4; CTX MORTGAGE COMPANY, LLC; CITIBANK, N.A., AS TRUSTEE FOR THE

Case No. A-13-682006-C

Dept. No. XXXI

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JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

CERTIFICATE HOLDERS OF STRUCTURED ASSET MORTGAGE INVESTMENTS II, INC., BEAR STERNS ALT-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-4, JOHN A. SANCHEZ, YORBANNA SANCHEZ, DOES I–X; and ROE CORPORATIONS 1–10, inclusive,

Counter-Defendant/ Cross-Defendants/Third Party Defendant.

WILMINGTON TRUST'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the Court for Trial on March 2-4, 2016, and March 17-18, 2016. Sylvia O. Semper, Esq. and Anthony Kaye, Esq. appeared on behalf of Plaintiff/Counterdefendant, WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A., AS TRUSTEE FOR BEAR STEARNS ALT-A TRUST 2006-4, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-4 ("Wilmington"). Karen L. Hanks, Esq. and Vanessa S. Goulet, Esq. appeared on behalf of Defendant/Counterclaimant, SFR INVESTMENTS POOL 1, LLC ("SFR). Having reviewed and considered the facts, testimony of witnesses and arguments of counsel, for the reasons stated on the record, and good cause appearing, the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

A. Wilmington Trust's Interest in the Property.

1. In April of 2006, John A. Sanchez purchased the real property located at located 5540 Diano Marina Court in North Las Vegas, Nevada (the "Property"). Trial Tr. Day 2, 83:1. The Property is located within a common-interest community, Giavanna Homeowner's Association (the "Association").

2. To finance the purchase of the Property, Mr. Sanchez and his spouse, Yorbanna Sanchez, obtained a loan from CTX Mortgage Company, LLC ("CTX"), for two hundred thirty-five thousand, two hundred forty-two dollars ($235,242.00) (the "Note"). Exhibit 20; Trial Tr. Day 2, 84:1–84:25; Trial Tr. Day 3, 12:4–12:10, 13:15–13:22.

3. The full purchase price of the Property was $294,053.00. Exhibit 1.

4. To secure the Note, the Sanchezes executed a Deed of Trust encumbering the Property (the "Deed of Trust"). Exhibit 2; Trial Tr. Day 2, 85:16–87:9.[1]

5. CTX caused the Deed of Trust to be recorded with the Clark County Recorder's Office on April 27, 2006. Exhibit 2.

6. The Note and Deed of Trust are presently held by Wilmington, in its capacity as Trustee of a residential, mortgage-backed, securitized trust known as Bear Stearns ALT-A Trust 2006-4, Mortgage Pass-Through Certificates, Series 2006-4 (the "Trust"). Trial Tr. Day 3, 7:20–8:4, 13:18–13:22.

7. Wilmington became the legal owner and holder of the Note and Deed of Trust in September 2013, when it succeeded Citibank, N.A. as Trustee

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[1] On April 27, 2006, a second Deed of Trust, which also secured the Note, was recorded with the Clark County Recorder's Office ("Second Deed of Trust"). (Exhibit 3) Mortgage Electronic Registration Systems, Inc. ("MERS") was designated as the beneficiary under the Second Deed of Trust and nominee for CTX. There are no recorded assignments of the Second Deed of Trust. As the Second Deed of Trust is not at issue in the present matter, it will not be referenced further.

of the Trust ("Citibank"). Exhibit 17 (During trial it was stated that Wilmington became the successor Trustee in December 2012. Trial Tr. Day 3, 9:21–10:5. However, the conflicting dates are inconsequential to the remainder of the Order.)

8. The Sanchezes have made no payments on the Note secured by the Deed of Trust since June 1, 2009. Exhibit 25; Trial Tr. Day 3, 23:13–24:12.

9. As of May 4, 2015, the balance due on the Note and secured by the Deed of Trust was three hundred thirty-eight thousand, sixty-six dollars and thirty-nine cents ($338,066.39), which amount has continued to increase since. Exhibit 32; Trial Tr. Day 3, 15:22–16:18.

10. As of March 12, 2016, the balance on the Note and secured by the Deed of Trust was three hundred fifty-three thousand, nine hundred ninety-nine dollars and thirty-two cents ($353,999.32). Trial Tr. Day 3, 17:1–17:19.

B. The Association's Foreclosure Process

The Property is subject to the Declaration of Covenants, Conditions, and Restrictions for Giavanna Homeowners Association ("Association"), recorded on July 25, 2005. Trial Tr. Day 2, 65:6–65:9, 73:10–73:18. 87:18–87:21; Exhibit 19. The CC&Rs include, *inter alia*, the requirement that homeowners or members of the Association pay periodic assessments to benefit the common-interest community.

11. On or about September 9, 2009, the Sanchezes informed CTX that they were considering bankruptcy. (Exhibit 24, at WT000328.) On October 12, 2009, the Sanchezes informed CTX that they did not plan on keeping the Property, as they were still considering bankruptcy. (Id. at WT000327.)

12. It was not disputed that Mr. and Mrs. Sanchez had stopped making loan payments around the time they stopped paying the Association's

assessments; and, indeed, have not made any payments since June 1, 2009. Exhibit 25; Trial Tr. Day 2, 110:3–110:5; Trial Tr. Day 3, 23:13–24:12.

13. On October 9, 2009, Nevada Association Services, Inc. ("NAS"), acting on behalf of the Association, recorded a "Notice of Delinquent Assessment Lien" against the Property (the "NODAL"). Exhibit 4; Trial Tr. Day 1, 69:7–69:10; Trial Tr. Day 2, 8:1–8:3.

14. The NODAL states that Mr. and Mrs. Sanchez owed the Association one thousand one hundred thirty-one dollars and twenty-five cents ($1,131.25) as of October 6, 2009. Exhibit 4; Trial Tr. Day 2, 10:4–10:7.

15. Two months later, on December 8, 2009, NAS recorded a "Notice of Default and Election to Sell Under Homeowners Association Lien" (the "Notice of Default"). Exhibit 5; Trial Tr. Day 2, 11:21–12:7.

16. The Notice of Default alleges Mr. and Mrs. Sanchez owed the Association two thousand one hundred fourteen dollars and fifty cents ($2,114.50) as of November 29, 2009. Exhibit 5; Trial Tr. Day 2, 11:21–12:7. It contained language in 14-point bold type as follows: WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! (Id.).

17. The Notice of Default was mailed to several parties, including but not limited to MERS as beneficiary under the First Deed of Trust, nominee for CTX under the First Deed of Trust, and c/o CTX, via regular and certified mail. (Exhibit 34, at NAS35-40.) MERS received the Notice of Default. (Id. at NAS41.)

18. The Notice of Default mailed to Mr. and Mrs. Sanchez was sent with two addresses listed on the envelope; and thus, it was seen as an erroneous address. As a consequence, these notices were returned by the U.S. Post Office as undeliverable. Exhibit 34 at NAS40–53; Trial Tr. Day 2, 50:3–50:18, 51:4–51:24; Trial Tr. Day 5, 70:23–71:12, 71:25–72:7, 73:15–80:4 There was no

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evidence presented that the Notice was re-sent after it was returned as undeliverable.

19. After at least 90 days had elapsed from the date of mailing of the Notice of Default, NAS recorded a Notice of Foreclosure Sale on April 2, 2010, ("First Notice of Sale"). (Exhibit 34, at NAS90.)

20. The Notice of Sale was mailed to several parties including, but not limited to, the Sanchezes, MERS as beneficiary under the First Deed of Trust, nominee for CTX under the First Deed of Trust, and c/o CTX, and the Ombudsmen, via regular and certified mail. (Exhibit 34, at NAS77; 78).

21. The Notice of Sale was also personally served on the Sanchezes. (Exhibit 34, at NAS88).

22. NAS also caused the Notice of Sale to be posted for 20 days successively in a public place. (Exhibit 34, at NAS92).

23. NAS also caused the Notice of Sale to be published three times, once each week, for three successive weeks in a newspaper. (Exhibit 34, at NAS95).

24. Mr. and Mrs. Sanchez jointly filed a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code on April 28, 2010. Voluntary Petition, *In re Sanchez*, No. 10-17621-lbr (Bankr. D. Nev. April 28, 2010); Trial Tr. Day 2, 90:16–90:21; Trial Tr. Day 2, 97:7–101:2 (taking judicial notice of the bankruptcy filing).

25. The Bankruptcy Court entered a discharge order in Mr. and Mrs. Sanchez's bankruptcy case on August 9, 2010, and three days later, the case was closed. Discharge of Debtor *In re Sanchez*, No. 10-17621-lbr (Bankr. D. Nev. Aug. 9, 2010); Final Decree *In re Sanchez*, No. 10-17621-lbr (Bankr. D. Nev. Aug. 12, 2010); Trial Tr. Day 2, 101:22–102:7.

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26. Following the discharge, on September 22, 2010, Citibank, then owner and holder of the Note and Deed of Trust (as Trustee of the Trust) commenced non-judicial foreclosure proceedings against the Property based on Mr. Sanchez's default on his loan obligations. Trial Tr. Day 3, 31:9–31:11.

27. Quality Loan Servicing Corp. ("Quality"), as foreclosure agent for CTX, recorded a Notice of Default and Election to Cause Sale of Real Property on September 22, 2010. (Exhibit 36.)

28. Thereafter, on November 23, 2010, CTX assigned beneficial interest in the First Deed of Trust to Citibank, N.A. ("Citibank"), as trustee for Bear Stearns Alt-A Trust 2006-4, Mortgage Pass Through Certificates, Series 2006-4 ("Bear Stearns Trust" or "Investor") (Exhibit 6).

29. On December 8, 2010, a Substitution of Trustee was recorded, substituting Quality as the new Trustee under the First Deed of Trust. (Exhibit 7.

30. A Certificate of Foreclosure Mediation was recorded on December 21, 2010. (Exhibit 8.) On January 5, 2011, Quality recorded a Notice of Trustee's Sale scheduling its foreclosure sale for January 28, 2011. (Exhibit 9.) On April 5, 2011, Quality recorded another Notice of Trustee's Sale scheduling its foreclosure sale for May 23, 2011. (Exhibit 10.)

31. On February 10, 2011, Quality and NAS communicated via email regarding the status of Citibank's foreclosure. (Exhibit 34, at NAS134.) On March 2, 2011, Quality and NAS communicated again via email regarding the status of Citibank's foreclosure. (*Id.,* at NAS135.) On April 13, 2011, NAS wrote a letter to Camco on behalf of Giavanna stating *inter alia,* "A Senior Notice of Sale has been recorded on the above-referenced property and the sale date is currently set for 05/23/2011." (*Id.* At NAS 136) On June 8, 2011, Quality and NAS communicated via email regarding the status of Citibank's foreclosure. (*Id.,* at NAS141.) On July 15, 2011, Quality and NAS communicated via email

regarding the status of Citibank's foreclosure. (*Id.,* at NAS142.) On October 17, 2011, Quality and NAS communicated via email regarding the status of Citibank's foreclosure. (*Id.,* at NAS143.) Thus, prior to NAS initiating its Notice of Foreclosure Sale it was aware that Citibank had been in the process of foreclosing. The emails do not show that NAS informed Quality that it was intending to move forward on its foreclosure of the HOA lien.

32. On February 13, 2012, NAS recorded a Notice of Foreclosure Sale ("Second Notice of Sale"). (Exhibit 11.)

33. The Second Notice of Sale was mailed to several parties, including but not limited to the Sanchezes, Citibank, Quality, JPMorgan Chase Bank, N.A. (the then-servicer of the First Deed of Trust) ("Chase"), CTX, MERS and The Ombudsman, via regular and certified mail. (Exhibit 34, at NAS167-171.) Citibank, Chase, CTX, MERS and The Ombudsman received the Second Notice of Sale. (*Id.* at NAS179-180.)

34. On February 23, 2012, Chase, servicer for Citibank, notated its file in pertinent part, "HOA lien details. The HOA lien will survive the foreclosure and will need to be taken care in REO should the property revert. A copy of the lien has been uploaded. The agency involved would need to be contacted . . . Has lien started a foreclosure action? Yes. Do the delinquent dues hold any priority? Yes." (Exhibit 24, at WT000244 - WT000245; *see also* Deposition of Patrick Pittman, NRCP 30(b)(6) witness for Wilmington, at 27:10-25, 28:1-6, 29:10-16 and 30:1-4.)

35. On August 7, 2012, NAS recorded a Notice of Foreclosure Sale setting a sale to foreclose on the Association's lien for September 7, 2012, at NAS's offices. ("Third Notice of Sale") (Exhibit 12; Trial Tr. Day 2, 34:10–34:16, 39:5–39:9; Trial Tr. Day 5, 24:21–24:11.)

36. The Third Notice of Sale was mailed to several parties, including but not limited to the Sanchezes, Citibank, Quality, Chase, CTX, MERS and The Ombudsman, via regular and certified mail. (Exhibit 34, at NAS212-216.)

37. The Third Notice of Sale was also personally served on the Sanchezes. (Exhibit 34, at NAS231).

38. NAS's Status Report for the Property indicates that the sale was not orally postponed on September 7, 2012, at the time and place set for the sale, but was instead postponed on September 4, 2012. Exhibit 34 at NAS301–302; Trial Tr. Day 1, 72:16–73:22 ("Q: According to this record at least, the sale was postponed prior to the 9/7 sale date. A: Okay. I understand. Yes.").

39. NAS had no basis for disputing that the sale was postponed prior to the September 7th sale date as their witness had no first-hand knowledge nor was there any documentation. (Trial Tr. Day 1, 73:15–73:22.)

40. Instead, NAS's 30(b)(6) witness testified that the entries made in the NAS Status Report indicate "the date is when an activity is completed." (Trial Tr. Day 5, 62:11–62:23; Exhibit 34 at NAS302.)

41. Though NAS's records included certificates of postponement when sales were previously postponed on the day of a sale, there is no certificate of postponement for the sale scheduled on September 7, 2012. (*See generally* Exhibit 34 at NAS96, NAS106; Trial Tr. Day 1, 64:20–65:22.)

42. NAS did not notify Citibank of the postponement.

43. On October 1, 2012, McCarthy & Holthus, counsel for Citibank's loan servicer, faxed and mailed a letter to NAS stating, "We may be willing to consider paying the 9-month priority obligation at this time if you are willing to provide a 9-month priority demand statement accordingly." (Exhibit 34 at NAS239–240; Trial Tr. Day 3, 20:19–20:23, 21:21–21:24.)

44. NAS did not provide a 9-month priority payoff statement or otherwise respond to Citibank; thus, failing to provide, for instance, the impending sale date. (Trial Tr. Day 1, 88:13–88:25; Trial Tr. Day 3, 21:25–22:4.)

45. NAS routinely disregarded lenders' requests for payoff information and its practice was to not respond to requests for payoff amounts. (Trial Tr. Day 1, 77:3–77:24; 78:13–78:19, 88:13–88:25.)

46. As a matter of "policy," NAS required lenders to provide written consent from borrowers before disclosing the superpriority amount, though NAS did not so advise lenders of this supposed requirement. (Trial Tr. Day 1, 77:3–77:24; 78:13–78:19, 88:13–88:25.)

47. NAS ignored Citibank's request. Trial Tr. Day 1, 88:13–88:25. Citibank did not follow up on its request nor tender any funds to NAS or the HOA.

48. NAS did not provide the Association with information that it had received the letter from McCarthy & Holthus. The Association's witness stated that if NAS had provided Citibank's request to the Association, the Association would have, at a minimum, discussed it at an Association board meeting and likely responded to it. (Trial Tr. Day 2, 75:9–79:9.)

49. At the time the letter was received, NAS had a policy of asserting that the Fair Debt Collection Practices Act ("FDCPA") did not allow disclosure of the amount due to the beneficiary of the first deed of trust or its agent. Trial Tr. Day 1, 77:3–77:24. At the time of trial, NAS could not identify which provision of the FDCPA would prohibit debt collectors from disclosing pay-off amounts to senior lenders and stated that it has since dispensed with this "policy." (Trial Tr. Day 4, 102:15–102:17, 103:12–104:11.)

50. Although NAS did not disclose the amount owed, they could have done so in the instant case as Mr. and Mrs. Sanchez had implicitly consented to disclosure since the CC&R's governing the Association provided that a lender

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who provides "written request to the Association will be entitled to timely written notice of ... any delinquency in the payment of assessments or charges owed by an owner of a lot...." (Exhibit 19 at 52; Trial Tr. Day 1, 112:21–113:12; Trial Tr. Day 2, 74:2–74:18.)

51. Based on the trial testimony, neither the President of the Association, nor the Association's Board, familiarized itself with the contents of the CC&Rs or even looked at the CC&Rs. (Trial Tr. Day 2, 74:13–75:4.)

52. Rather, the Association trusted its collection agency, NAS, to comply with the CC&Rs. (Trial Tr. Day 2, 75:1–75:4.)

53. While the Association stated that it relied on its collection agency to be familiar with the CC&Rs, the NAS witness stated that NAS did not review the CC&Rs or familiarize itself with the contents of the CC&Rs. (Trial Tr. Day 1 at 111:8–111:13) ("Q: So you know in approximately October 2012 whether or not the CC&Rs would have been a document looked at by NAS? A: No, we didn't look at them. . . .").

54. On October 8, 2012, Quality rescinded its Notice of Default and Election to Cause Sale of Real Property. (Exhibit 14.)

55. Four days later, on October 12, 2012, NAS sold the Property to SFR, for eight thousand seven hundred and fifty dollars ($8,750.00) (the "HOA Sale"). (Exhibit 15; Exhibit 34 at NAS275; 297–99; Trial Tr. Day 1, 114:13–114:21.)

56. The taxable value of the Property as of the date of the sale was one hundred thousand, two hundred and six dollars ($100,206.00.) (Exhibit 43; Exhibit 34 at NAS206; Trial Tr. Day 1, 33:12–33:15.)

57. The Director at the Clark County Assessor's Office testified that the taxable value of the Property was equal to or less than the fair market value of the Property as of the date of the sale. (Trial Tr. Day 1, 30:19–30:21.) ("Q: So

does that mean that ordinarily taxable value is less than fair market value? A: Typically, yes.")

58. Mr. and Mrs. Sanchez claimed the Property was worth ninety-nine thousand dollars ($99,000.00) in bankruptcy schedules filed in federal court. (Trial Tr. Day 2, 99:5–99:8, 100:22–101:2; taking judicial notice of the contents of the bankruptcy petition; Trial Tr. Day 2, 95:5–95:16, 117:7–117:10.)

59. Mrs. Sanchez testified in court that she believed the Property was worth more than ninety-nine thousand dollars ($99,000.00). (Trial Tr. Day 2, 118:23–119:8.)

60. On the date of the sale, Mr. and Mrs. Sanchez were insolvent, as evidenced by their recent bankruptcy and that they were not paying their debts, including their payments on the Note and their payments to the Association, as they came due. (Trial Tr. Day 2, 88:1–88:24, 110:3–110:5.)

61. The Court has no direct evidence as to how many bidders appeared for the sale or whether any other amounts were bid for the property. (Trial Tr. Day 1, 115:2–115:4) ("Q: . . . Did NAS normally keep bid sheets? A: Not bid sheets . . . .").

62. NAS testified that it does not attempt to obtain an evaluation of what the fair market price is for properties it auctions at homeowners association sales. (Trial Tr. Day 1, 118:20–118:24) ("Q: . . . When conducting a foreclosure sale, would NAS make any effort to determine what the fair market value of the property was in advance of the sale? A: No."); (Day 1, 119:3–119:5) ("Q: Okay. So they're not auctioning the property then to maximize the value at the sale? A: No.")

63. Neither CTX nor Citibank made any payment(s) towards the Association lien prior to the sale. (Exhibit 37, at 4:24-27; Exhibit 37, Response to Request for Admission No. 9)

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64. On October 19, 2012, the Foreclosure Deed relating to the sale to SFR was recorded. (Exhibit 15.)

65. NAS failed to pay any of the proceeds of the sale to Citibank despite Citibank's lien which had priority over the Association's sub-priority portion of the Association lien. (Exhibit 34 at NAS279; Trial Tr. Day 1, 119:10–119:19, 120:3–120:6.)

66. Instead, NAS paid off the Association's lien in full, paid its own collection expenses, and disbursed a small amount to a second-position lender. (Exhibit 34 at NAS279; Trial Tr. Day 1, 119:10–119:19.)

C. Facts Related to SFR and the Events Following the Association's Purported Sale

67. SFR is a commercial entity formed to build and maintain a long-term rental portfolio. (Trial Tr. Day 2, 133:7–133:9.)

68. SFR has purchased approximately 650 properties. (Trial Tr. Day 2, 134:10–134:16.)

69. All of the properties SFR has purchased went through a homeowner's association foreclosure sale before SFR obtained them, either at the foreclosure sale, from a homeowners association, or from a third-party investor. (Trial Tr. Day 2, 134:22–135:4.)

70. SFR regularly communicates with NAS. (Trial Tr. Day 2, 136:1–136:2.)

71. SFR, in general, conducts some pre-sale investigation into the foreclosure process including checking the Recorder's website and investigating whether a property is subject to any liens prior to bidding on a property at a foreclosure sale. (Trial Tr. Day 2, 143:1–143:6.)

72. There was no testimony by SFR as to what, if any, pre-sale investigation it did on the specific property at issue rather the testimony provided by SFR was as to their general pre-sale investigation practices. (Trial Tr. Day 2, 140:12–140:22.)

73. SFR made no effort to determine whether the assessment amounts were accurate. (Trial Tr. Day 2, 141:15–141:17.)

74. However, SFR anticipated future litigation over properties sold at foreclosure sales that were subject to first position deeds of trust because the holders of such deeds might sue to foreclose their interests.

75. Accordingly, SFR investigated whether there were first deeds of trust on properties before bidding at HOA foreclosure sales. (Trial Tr. Day 2, 143:17–143:22; SFR investigates recorded deeds of trust "[b]ecause that might signify future litigation."); (Exhibit 35 at GIA62; admitting "the lienholder/lender may have the right to foreclose on the Leased Property if the borrower does not pay on the loan").

76. SFR did not produce a witness with personal knowledge of the October 12, 2012, HOA Sale. As a result, SFR did not know: (1) if anyone on behalf of SFR attended the sale; (2) how many people attended the sale; (3) how many bids were placed at the sale; (4) if there were any communications between SFR and NAS prior to the HOA Sale; and (5) what representations were made by NAS to SFR with respect to the property, including what was cried out at the sale. (Trial Tr. Day 2, 146:10–18:3.)

77. As the status of the law had not been ruled on by the Nevada Supreme Court, SFR understood when it purportedly obtained the Property that the Property could still be foreclosed upon by the holder of the Note and Deed of Trust, and in fact instructed Mr. and Mrs. Sanchez that the Property could still be

foreclosed upon. (Trial Tr. Day 2, 125:19–126:7, 126:22–127:10; Exhibit 25 at GIA62.)

78. While Mr. and Mrs. Sanchez were paying their mortgage, their payments were between $1,800.00 and $2,500.00 each month. (Trial Tr. Day 2, 110:6–110:13.)

79. Immediately after the purported sale, SFR rented the Property to Mr. and Mrs. Sanchez for nine hundred seventy-five ($975) a month (nearly 50% discount off their mortgage payments). (Exhibit 35 at GIA53–62; Trial. Tr. Day 2, 110:14–110:18; 149:23–150:2)

80. SFR admitted to Mr. and Mrs. Sanchez that Citibank had the right to foreclose on the Property if Mr. and Mrs. Sanchez did not pay on the Note. (Exhibit 35 at GIA62) ("[T]he lienholder/lender may have the right to foreclose on the Leased Property if the borrower does not pay on the loan.").

81. On the Residential Lease Agreement, SFR set forth to Mr. and Mrs. Sanchez that "SFR is in the process of negotiating with any lien holder/lender that maintained its security interest in the property after the homeowner's association sale." (Exhibit 35 at GIA62; Trial Tr. Day 2, 161:2–161:25.)

82. SFR instructed Mr. and Mrs. Sanchez to forward all communications from the lender to SFR rather than instructing them to respond to lender inquiries. (Trial Tr. Day 2, 122:15–122:23; 124:20–124:24, 163:16–163:19.)

83. Mr. and Mrs. Sanchez understood that SFR would handle any issues related to a lender in the event there was a possible foreclosure. (Trial Tr. Day 2, 128:2–128:6.)

84. SFR did not, at any time, negotiate with Wilmington Trust or Citibank on behalf of Mr. and Mrs. Sanchez. (Trial Tr. Day 2, 163:20–163:22; Trial Tr. Day 3, 33:7–33:9, 35:5–35:15, 99:15–99:16.)

85. Mr. and Mrs. Sanchez ignored Citibank's attempt to contact them to negotiate, in the ordinary course, for a loan modification that might have allowed them to avoid this foreclosure action. (Trial Tr. Day 2, 122:3–125:4; Trial Tr. Day 3, 33:7–33:9, 35:5–35:15.)

86. Wilmington Trust and its predecessors have continued to pay real estate taxes and insurance for the Property since the date of the purported sale, amounting to approximately $3,200 per year. (Exhibits 25, 31; Trial Tr. Day 3, 24:13–29:8.)

87. SFR had no personal or economic relationship with NAS. (Deposition of Debbie Kluska, at 114:12-21, 116:7-20.)

88. SFR had no personal or economic relationship with the Association. (Deposition of Vinnay Kumar Verma, NRCP 30(b)(6) witness for the Association, at 52:6-12, 56:1-10.)

89. Wilmington's predecessors in interest (CTX and Citibank) were aware of the Association foreclosure sale prior to October 12, 2012. (Exhibit 37, at 3:21-23; see also, Exhibit 37, Response to Request for Admission No. 1) However, prior to the sale, neither CTX nor Citibank participated in any civil or administrative proceeding to challenge the sale or dispute any portion of the Association lien amount. (*Id.* at 4:3-7; *see also* Deposition of Patrick Pittman, at 43:20-24; *see also*, Exhibit 37, Response to Request for Admission No. 3) Neither CTX nor Citibank made any payment(s) towards the Association lien prior to the sale. (Exhibit 37, at 4:24-27; *see also* Deposition of Patrick Pittman, at 33:5-8; 41:20-25 through 42:1-14; *see also* Exhibit 37, Response to Request for Admission No. 9)

90. Wilmington filed its Complaint for judicial foreclosure on May 17, 2013.

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91. On November 27, 2013, the Sanchezes were dismissed from this action with prejudice. On February 14, 2014, Third-Party Defendant Citibank, N.A. was dismissed from this action with prejudice. On June 24, 2014, default was entered against Cross-Defendant, CTX Mortgage Company, LLC, as holder of the Second Deed of Trust.

92. On September 18, 2014, the Nevada Supreme Court issued its opinion in *SFR Investments Pool 1 v. U.S. Bank* (hereinafter the "*SFR* Decision"), concluding that NRS 116.3116(2) gives associations a true super-priority lien, the non-judicial foreclosure of which extinguishes a first deed of trust. *SFR Investments Pool 1 v. U.S. Bank*, 334 P.3d 408, 419 (2014).

93. On October 23, 2014, Select Portfolio Servicing, Inc. ("SPS"), servicer for Wilmington, notates its file that in light of the *SFR* Decision, Wilmington's Complaint should be amended to dismiss the judicial foreclosure claim and allege declaratory relief against SFR. (Exhibit 25, at WT000448.)

94. Wilmington asserted a claim for judicial foreclosure pursuant to the provisions of NRS 40.430, *et seq.* SFR asserted the following affirmative defenses: (1) Wilmington fails to state a claim upon which relief may be granted; (2) Wilmington is not entitled to relief from or against SFR, as Wilmington has not sustained any loss, injury, or damage that resulted from any act, omission, or breach by SFR; (3) the occurrence referred to in the Complaint, and all injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of Wilmington; (4) the occurrence referred to in the Complaint, and all injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of a third party or parties over whom SFR had no control; (5) Wilmington has failed to satisfy and/or cannot satisfy conditions precedent to setting aside the Association foreclosure sale; (6) any and all acts alleged to have been committed by SFR, if any, were reasonably undertaken to protect the tangible and intangible

assets of SFR and, therefore, were justified and/or privileged; (7) SFR did not breach any statutory or common law duties allegedly owed to Wilmington; (8) Wilmington's claims are barred because SFR complied with applicable statutes and with the requirements and regulations of the State of Nevada; (9) Wilmington's causes of action are barred in whole or in part by the applicable statues of limitations or repose, or by the equitable doctrines of laches, waiver, estoppel, and ratification; (10) Wilmington is not entitled to equitable relief because it has an adequate remedy at law; (11) Wilmington's damages, if any, were the result of intervening, superseding, concurrent, and/or contributing causes; any alleged action or alleged omission on the part of SFR was not the proximate cause of Wilmington's alleged damages; (12) Wilmington has no standing to enforce the Deed of Trust and the underlying promissory note; (13) pursuant to Nevada Rule of Civil Procedure 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry at the time of filing SFR's Answer; therefore, SFR reserves the right to amend its Answer to assert any affirmative defenses if subsequent investigation warrants.

95. SFR asserted the following claims for relief: (1) quiet title/declaratory relief pursuant to NRS 30.010 and NRS 116.3116; (2) unjust enrichment;[2] and (3) permanent injunction. Wilmington asserted *inter alia* the following affirmative defenses:[3] (1) SFR fails to state a claim against Wilmington on which relief can be granted; (2) SFR's Counterclaim and Third Party Complaint are barred or limited by the doctrines of estoppel, waiver and/or

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[2] SFR agreed to abandon this cause of action in the event title is quieted in favor of SFR.

[3] Wilmington agreed to abandon its third, fifth, sixth, seventh, tenth, fourteenth and sixteenth affirmative defenses.

defense; (4) SFR's Counterclaim and Third Party Complaint are barred or limited by the doctrine of unclean hands, *in pari delicto*, and failure to do equity; (8) The Association that effected a sale relative to the Property, and/or its agent, failed to provide Defendants with all necessary notices pursuant to NRS Chapter 116, NRS Chapter 107, and/or the CC&R's for the Association, as applicable; (9) any purported sale of the Property is void, because the Board of Directors for the Association failed to provide notice and hearing pursuant to the Association's CC&R's; (11) SFR takes title, if any, subordinate in time and right to Wilmington's interests, rights, liens, and claims in the subject property; (12) SFR has failed to name each party necessary for full and adequate relief essential in this action; (13) the process was insufficient in this matter; and (15) SFR has failed to join all indispensable parties.

96. Wilmington asserted a number of claims and defenses which were at issue during the trial including: (1) inadequacy of price (commercial unreasonableness); (2) Wilmington tendered/cured the superpriority portion of the Association lien prior to the non-judicial foreclosure sale; (3) violation of the Uniform Fraudulent Transfer Act ("UFTA"); (4) that the Association foreclosure notices contained improper amounts because the Sanchezes obtained a discharge of the pre-Petition debt owed to the Association in bankruptcy proceedings; (5) that the Association foreclosure notices were insufficient because they did not contain a superpriority amount nor the actual date of the sale; and, (6) that SFR is not a bona fide purchaser.

CONCLUSIONS OF LAW

1. NRS 116.3116(1) gives an HOA a lien on its homeowners' residences for construction penalties, assessments, and fines. NRS 116.3116(2) elevates the priority of the HOA lien over other liens, with some exceptions,

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including one for a first security interest recorded before the assessment became delinquent.

2. NRS 116.3116(2) further provides that an HOA lien is prior to such a first security interest "to the extent of the assessments for common expenses [i.e., HOA dues] based on the periodic budget. . . which would have become due in the absence of acceleration during the nine months immediately preceding institution of an action to enforce the lien.

3. The testimony and the documentation provided by NAS and the other witnesses regarding the lien show that the HOA lien foreclosed here included HOA dues which would have become due during the nine months prior to institution of an action to enforce the lien. Thus, the HOA lien which was foreclosed on, included a superpriority portion which was superior to the Deed of Trust.

4. Under Nevada law, certain presumptions are made pursuant to NRS 47.250(16)-(18) which provides in relevant part that there are disputable presumptions "that the law has been obeyed"; "that a trustee or other person, whose duty it was to convey real property to a particular person, has actually conveyed to that person, when such presumption is necessary to perfect the title of such person or a successor in interest"; "that private transactions have been fair and regular"; and "that the ordinary course of business has been followed.") As a result, it is presumed that: (1) the Association and NAS obeyed the law; (2) the Property was conveyed to SFR; (3) the Association non-judicial foreclosure sale was "fair and regular;" and (4) the Association foreclosure proceedings were conducted in the "ordinary course of business." NRS 47.250(16)-(18).

5. "A presumption not only fixes the burden of going forward with evidence, but it also shifts the burden of proof." *Yeager v. Harrah's Club, Inc.*, 111 Nev. 830, 834, 897 P.2d 1093, 1095 (1995) (*citing Vancheri v. GNLV Corp.*,

105 Nev. 417, 421, 777 P.2d 366, 368 (1989).) "These presumptions impose on the party, against whom it is directed, the burden of proving that the nonexistence of the presumed fact is more probable than its existence." *Id.* (citing NRS 47.180.) Here, Wilmington has not met its burden of overcoming the presumptions as outlined in NRS 47.250(16)-(18). First, while Wilmington presented evidence that there were issues relating to the mailing of the notices to the Sanchezes, it did not provide evidence that the double mailing address impacted its rights or the rights of its predecessors. Thus, while there were some irregularities regarding the Sanchezes, Wilmington did not refute the presumption that the Association and NAS' complied with that provision of NRS 116.

6. Second, as the Foreclosure Deed evidences that title to the Property was conveyed to SFR, Wilmington similarly has not overcome this presumption. The deed was properly recorded and there was no evidence to the contrary.

7. While Wilmington has presented evidence to refute the presumption that the Association non-judicial foreclosure sale was fair and regular, the evidence presented was not sufficient. First, Wilmington presented evidence, noted above, regarding the notices to the Sanchezes that were not delivered due to there being a double address line. In response, SFR presented evidence that: (1) NAS published the Notice of Sale in a newspaper in general circulation in Clark County for three consecutive weeks (Exhibit 34, at NAS204, 229-230); (2) NAS attempted to personally serve the Sanchezes with the Notice of Sale, and thereafter posted it on the Property in a conspicuous place (Exhibit 34, at NAS204, 229, 231, 234); (3) NAS posted the Notice of Sale in three public places in Clark County (Exhibit 34, at NAS204, 229,

232-233); and (4) the Association non-judicial foreclosure sale was held in a public place as indicated on the Notice of Sale (Exhibit 12, 15).[4]

8. The second contention by Wilmington similarly fails. Wilmington asserted that NAS did not meet its obligation to act in good faith in conducting the HOA Sale. NRS 116.3116 (2012).[5] Specifically, it contended that the following defects in the foreclosure process demonstrate fraud, unfairness, or oppression and warrant setting aside the sale:

a. NAS failed to properly postpone the sale in accordance with the requirements of NRS 116.31164(1), and did not notify Citibank of the postponement. *See* NRS 116.31164(1) (2012) (noting that a sale may be postponed "by proclamation made to the persons assembled at the time and place previously set and advertised for the sale").

b. Neither the Association nor NAS investigated the CC&Rs, familiarized themselves with the CC&Rs' requirements, or ensured they complied with the CC&Rs.

c. Because NAS believed it was selling the Property subject to the Trust Deed, NAS did not take adequate steps to ensure a competitive bidding process or a fair market price, in violation of

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[4] While the issue was not considered by the Court because of a waiver by Wilmington (discussed below), it should be noted that Wilmington's allegation, that Notice of Sale was insufficient because the Association foreclosure sale did not ultimately occur on the date listed in the Notice of Sale, would fail anyway because the evidence shows that NAS postponed the sale "by such advertisement and notice as it considers reasonable or, without further advertisement or notice, by proclamation made to the persons assembled at the time and place previously set and advertised for the sale." NRS 116.31164(1)-(2); *see also* Exhibit 34, at NAS236-237; *see also* Deposition of Debbie Kluska, at 84:21-87:6.

[5] Good faith is defined as "honesty in fact and the observance of reasonable standards of fair dealing in the conduct or transaction involved." Uniform Common Interest Ownership Act § 1-201.

its obligation to act in good faith. *See* NRS 116.1113 (2012) ("Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement."). As a result, SFR was the only bidder at the sale.

d. NAS had an unjustifiable policy of not responding to lender payoff inquiries and, in accordance with that policy, did not respond to Citibank's request for payoff information even though the CC&Rs required NAS to respond and there was no good faith basis for NAS not to respond.

e. Though the Association only had a superpriority lien for nine months of assessment dues, NAS paid off the Association's lien in full, paid NAS's own collection expenses, disbursed a small amount to a second-position lender, and failed to pay <u>any</u> of the proceeds to Citibank despite Citibank's lien, which had priority over the Association's sub-priority portion of the Association lien and the second-position lender, all in violation of NRS 116.3116(2)(c) and NRS 116.31164.

9. In response to the assertion that the sale was not properly postponed, neither side was able to present a witness with first-hand knowledge as to whether there was or was not notice of the sale being postponed provided at the prior sale date. Wilmington relied on notes by NAS which were not substantiated by the person who prepared them. Similarly, SFR presented evidence through witnesses that it was the general practice of NAS to orally announce postponements and the documentation provided by NAS supported that it was their custom and practice to "cry" a new sale date at the originally scheduled date but did not provide anyone who could testify as to what

happened on the day in question. In the absence of any evidence to rebut what was contended to be the custom and practice, the Court cannot affirmatively find that NAS did not notice the new sale date.

10. Even if there was such an error, in looking at the totality of the circumstances, Wilmington has not established that it or its predecessors took some type of action to protect its rights or that SFR knew of the purported error. Accordingly, equity would still favor SFR. With respect to Wilmington's position that NAS did not familiarize itself with the CC&Rs or ensure that there was a competitive bidding process, SFR responded that even if Wilmington's assertions were accurate, they as a third-party purchaser cannot be disadvantaged due to the alleged conduct of NAS. The Court, consistent with *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105 (Nev. 2016) agrees. While there was testimony that at least one member of the HOA was not familiar with the CC&Rs and that NAS was also not familiar with the CC&Rs, the Nevada Supreme Court's directive in *Shadow Wood* was to address and balance the equities of the entire case as to all parties. The record does not show that SFR knew of the deficiencies of knowledge relating to the CC&Rs or that there was any collusion between the HOA and SFR or NAS and SFR. In the absence of any collusion or knowledge that there may be provisions in the CC&Rs that were not complied with, the Court cannot penalize SFR for the asserted actions of other individuals or entities. The equities lie in favor of SFR.

11. Similarly, while NAS acknowledged that it had a prior policy of not providing the HOA payoff amounts to lenders such as Wilmington's predecessor, Wilmington did not provide sufficient evidence, either in support of their claims that SFR can be held accountable for NAS' policy, or that SFR knew that in this case there had been a request by a law firm regarding the payoff amount. Further, as Wilmington's witness, Patrick Pittman, acknowledged credibly that he

was not aware that an inquiry had been made by the McCarthy & Holthus at the time of his deposition, but found out about the communication prior to trial, Wilmington could not contend that it relied on the communication to its detriment with respect to SFR.

12. Similarly, while Wilmington asserts that NAS did not properly payout the remaining funds and kept excess funds inappropriately, Wilmington does not show a nexus between that conduct and the validity of SFR's rights *vis a vis* its purchase of the home through the HOA sale. As with other contentions by Wilmington, the aggrieved conduct is asserted against a non-party (i.e. the HOA or NAS) and not SFR. In the absence of any evidence that SFR colluded with or was aware at the time of purchase of either the existence of Wilmington's predecessor's interest or engaged in some conduct with either the HOA or NAS, Wilmington failed to rebut SFR's claims and failed to establish its own claims. As a result, the Association non-judicial foreclosure sale and the Foreclosure Deed are valid.

13. It is also important to note that Wilmington has presented no evidence to overcome the presumption of receipt of the Association foreclosure notices as outlined in NRS 47.250(13).[6] As a result, it is presumed that the Association foreclosure notices were received by the Bear Stearns Trust.

14. It is also presumed "[t]hat a person intends the ordinary consequences of that person's voluntary act." NRS 47.250(2). The evidence shows that the Bear Stearns Trust through its Trustees and agents, including, but not limited to, Citibank and Wilmington acted voluntarily by: (1) not creating an

[6] However, even if this undisputed presumption was not enough, which it is, receipt of the Association foreclosure notices is further substantiated by the fact that: (1) MERS acknowledged receipt of the Notice of Default (Exhibit 34, at NAS41); (2) Citibank, Chase and MERS acknowledged receipt of the Second Notice of Sale (*Id.* at NAS179-180); and, (3) Chase and MERS received the Third Notice of Sale (*Id.* at NAS225-226).

escrow account for payment of the Association's periodic assessments on behalf of the Sanchezes; (2) not paying the assessments directly to the Association and adding the sum paid to the first Deed of Trust as provided in the Planned Unit Development Rider (Exhibit 2); (3) not paying any portion of the Association lien and adding the sum paid to the first Deed of Trust as provided in the Planned Unit Development Rider (Exhibit 2); (4) not foreclosing on the first Deed of Trust before the Association foreclosed; (5) not filing a Complaint with the Nevada Real Estate Division or seeking an injunction to enjoin the Association foreclosure sale (Exhibit 37, at 4:3-7; *see also* Deposition of Patrick Pittman, at 43:20-24); (6) not filing or recording a lis pendens to challenge the Association foreclosure sale; (7) not attending the Association foreclosure sale (Exhibit 37, at 4:7-10; *see also* Deposition of Patrick Pittman, at 33:9-14); and (8) not amending its Complaint to assert declaratory relief as noted by its servicer in October 2013.

15. Further, it should be noted that the Nevada Supreme Court contemplated the plethora of activities which could have been undertaken by Citibank and Wilmington in order to protect the Bear Stearns Trust's interest in the first Deed of Trust. SFR, 334 P.3d at 414, 418, ("[The Bank] could have paid off the [Association] lien to avert loss of its security; it also could have established an escrow for [Association] assessments to avoid having to use its own funds to pay delinquent dues. 1982 UCIOA § 3116 cmt. 1; 1994 & 2008 UCIOA § 3–116 cmt. 2. Wilmington did not establish that it or its predecessors took any action to protect its rights other than there was an inquiry letter from a prior law firm which, based on the lack of testimony, no one followed up on. Accordingly, the HOA foreclosure extinguished the Deed of Trust's security interest in the property. While the Court is cognizant that a comparison of the eight thousand seven hundred and fifty dollars ($8,750.00) price paid by SFR at the HOA Sale to the value of the property of at least ninety-nine thousand dollars ($99,000.00) at

the time of the HOA Sale, shows that the property sold for less than 10% of its fair market value, that fact alone does not require a judgment in favor of Wilmington. Pursuant to *Shadow Wood Homeowners Ass'n, Inc. v. N.Y. Community Bancorp, Inc.*, this low price can be a factor for the Court to take into consideration when evaluating the totality of the case. *Shadow Wood Homeowners' Ass'n v. New York Community Bancorp, Inc.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105 (Nev. 2016). While Wilmington asserted that the HOA Sale is void as the price SFR purportedly paid for the Property was less than 20% of the fair market value of the property, and thus, grossly inadequate; and cited *Shadow Wood* and the Restatement (Third) of Prop.: Mortgages § 8.3 cmt. b (1997) in support of that proposition, the Court does not find that *Shadow Wood* stands for the proposition contended by Wilmington. Indeed in its March 2016 ruling in *Centeno v. JP Morgan Chase Bank, N.A.*, 67365, 2016 WL 1122449, at *1 (Nev. Mar. 18, 2016) the Nevada Supreme Court addressed the impact of a low sales price on the validity of the sale. It held that "…[t]his court's reaffirmation in *Shadow Wood Homeowners' Ass'n v. New York Community Bancorp, Inc.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105 (Nev. 2016), that a low sales price is not a basis for voiding a foreclosure sale absent "fraud, unfairness, or oppression," undermines the second basis for the district court's decision…" *Id.* at 2[7] Thus, by the Supreme Court's own interpretation of the language in *Shadow Wood* cited in the present case, the Nevada Supreme Court found that a low price alone did not merit setting aside a foreclosure sale.

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[7] While the *Centeno* case is unpublished it was filed on March 18, 2016. Thus, pursuant to ADKT 504 which eliminated the provisions of Supreme Court Rule 123 and modified NRAP 36, the Court can take the holding into account in accordance with the rules. The Court views the decision in *Centeno* as an interpretation of the Nevada Supreme Court's decision in *Shadow Wood Homeowners' Ass'n v. New York Community Bancorp, Inc.*, and not in conflict with the Nevada Supreme Court's *en banc* decision. Therefore, the Court finds it appropriate to take the holding of the *Centeno* case into account in its analysis of the present case.

16. Wilmington also contended at trial that SFR had the burden of proving it was a bona fide purchaser for value. *Bailey v. Butner*, 64 Nev. 1, 176 P.2d 226, 228 (Nev. 1947). To be a bona fide purchaser, SFR must prove that it purchased the Property for value without notice of a competing or superior interest in the Property. *Berge v. Fredericks*, 95 Nev. 183, 185, 591 P.2d 246, 247 (1979).

17. Wilmington further contended that as a commercial purchaser, SFR was under a duty to conduct due diligence prior to its purchase of the Property. *Land Baron Inv. v. Bonnie Springs Family LP*, 356 P.3d 511, 517 (Nev. 2015). It also asserted that SFR assumed the risk of mistake associated with the Property. *Id.* It further contended that SFR also had a duty to act in good faith. *Premier One Holdings, Inc. v. JPMorgan Chase Bank, N.A.*, No. A-13-674899, 2015 WL 1417366 *3 (Nev. 8th Dist. Ct. Feb. 18, 2015).

18. With respect to each of these arguments, Wilmington did not establish that SFR did not act in good faith or that it was aware of the potential request for pay off or that Wilmington or its predecessors were trying to communicate with the Sanchezes prior to the sale. While Wilmington points to conduct by SFR after the foreclosure sale was completed, and contends that entities or individuals not parties to the action acted inappropriately, there was no evidence presented that showed that SFR knew about Wilmington or its predecessors' efforts regarding the property. Further, SFR provided testimony that it was not aware of the conduct between Wilmington or its predecessors and the Sanchezes prior to purchasing the property. Instead, SFR presented evidence that it looked at various factors prior to purchasing a property at an HOA sale, but it did not go into detail to determine what actions may or may not be pending with a potential lender. The Court cannot impose an obligation to SFR to conduct the additional inquiries noted by Wilmington. Instead, as the

Supreme Court pointed out in *Bonnie Springs*, if SFR chose not to conduct a full due diligence of the property it thought it was purchasing; it was doing so at its own risk. It was not, however, waiving its rights to assert that the sale was proper.

19. Wilmington also contended that the HOA Sale is voidable and should be voided as a fraudulent transfer under the Uniform Fraudulent Transfers Act as codified in NRS Chapter 112 (the "UFTA") because: (1) Mr. and Mrs. Sanchez were insolvent at the time of the Property's transfer; (2) Wilmington Trust's claim against Mr. and Mrs. Sanchez arose before the HOA Sale when both borrowed funds for the purchase of the Property in 2006; and, (3) reasonably equivalent value was not exchanged for the Property. NRS 112.190(1). The evidence presented does not support Wilmington's contention as set forth herein.

20. In sum, based on the totality of the evidence presented, SFR has established its claim for quiet title. Wilmington has not established its defenses nor has it prevailed on its counter claims.

21. Further, the Court also looked at the entirely of the case in light of the equities of the sale and the Court's equitable powers described in *Shadow Wood Homeowners Ass'n, Inc. v. N.Y. Community Bancorp, Inc.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105 (2016). In so doing, the Court, as set forth in more detail above, does not find a basis to either set aside the sale, nor find that SFR purchased the Property subject to Wilmington's Deed of Trust.

22. Any conclusion of law which should be a find of fact shall be treated as such.

CONCLUSION

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that SFR Investment Pool, Inc. shall have judgment accordingly on its First Cause of

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Action for Quiet Title/ Declaratory Relief and on its Third Cause of Action for Permanent Injunction, the same to be entered concurrently with the entry hereof.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Wilmington's claims are DISMISSED WITH PREJUDICE and Wilmington shall take nothing by way of those claims.

Dated this 4th day of August, 2016.

JOANNA S. KISHNER
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was provided to all counsel, and/or parties listed below, as a courtesy not comprising formal written notice of entry, via one or more of the following manners: Email, Facsimile, U.S. mail, Electronic Service (E-Service) if the Attorney/Party has signed up as required, and/or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

SYLVIA O. SEMPER, ESQ.
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BALLARD SPAHR, LLP.

KAREN L. HANKS, ESQ.
VANESSA S. GOULET, ESQ.
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JUDG

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A., AS TRUSTEE FOR BEAR STERNS ALT-A TRUST 2006-4, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-4 Plaintiff, vs. JOHN A. SANCHEZ; YORBANNA SANCHEZ, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; CTX MORTGAGE COMPANY, LLC; SFR INVESTMENTS POOL 1, LLC; DOES I–X; and ROES 1–10, inclusive Defendants.	CASE NO.: A-13-682006-C DEPT NO.: XXXI **JUDGMENT**
SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Counter-Claimant/Cross-Claimant/Third-Party Plaintiff, vs. WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A., AS TRUSTEE FOR BEAR STERNS ALT-A TRUST 2006-4, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-4; CTX MORTGAGE COMPANY, LLC; CITIBANK, N.A., AS TRUSTEE FOR THE CERTIFICATE HOLDERS OF	

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DISTRICT JUDGE
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STRUCTURED ASSET MORTGAGE INVESTMENTS II, INC., BEAR STERNS ALT-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-4, JOHN A. SANCHEZ, YORBANNA SANCHEZ, DOES I–X; and ROE CORPORATIONS 1–10, inclusive,

Counter-Defendant/
Cross-Defendants/Third
Party Defendant.

This matter came before the Court for Trial on March 2-4, 2016, and March 17-18, 2016. Sylvia O. Semper, Esq. and Anthony Kaye, Esq. appeared on behalf of Plaintiff/Counterdefendant, WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A., AS TRUSTEE FOR BEAR STEARNS ALT-A TRUST 2006-4, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-4 ("Wilmington"). Karen L. Hanks, Esq. and Vanessa S. Goulet, Esq. appeared on behalf of Defendant/Counterclaimant, SFR INVESTMENTS POOL 1, LLC ("SFR).

The Court, having considered the papers submitted, heard arguments made on behalf of the parties, considered the testimony at trial and the credibility of the witnesses, reviewed the exhibits introduced at trial, heard the arguments of counsel, and for the reasons set forth in the Findings of Fact and Conclusions of Law entered concurrently herewith:

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that SFR shall have JUDGMENT on its First Cause of Action for Quiet Title/Declaratory Relief and on its Third Cause of Action for Permanent Injunction and JUDGMENT IS HEREBY ENTERED on those causes of action.

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DISTRICT JUDGE
DEPARTMENT XXXI
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IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Wilmington's claims on file herein are DISMISSED WITH PREJUDICE, that Wilmington take nothing by reason thereof; and that SFR shall have JUDGMENT on Wilmington's claims accordingly.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any issue pertaining to attorneys' fees shall be determined by timely motion practice in accordance with NRS 18.010; and,

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that costs of the suit, pursuant to NRS 18.020 and NRS 18.110, shall be determined by timely application thereof.

COUNSEL FOR SFR IS DIRECTED TO PROVIDE PROMPT WRITTEN NOTICE OF ENTRY HEREOF.

Dated this 4th day of August, 2016.

JOANNA S. KISHNER
DISTRICT COURT JUDGE

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was provided to all counsel, and/or parties listed below, as a courtesy not comprising formal written notice of entry, via one or more of the following manners: Email, Facsimile, U.S. mail, Electronic Service (E-Service) if the Attorney/Party has signed up as required, and/or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

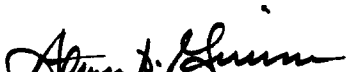
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A., AS TRUSTEE FOR BEAR STERNS ALT-A TRUST 2006-4, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-4, Plaintiff, vs. JOHN A. SANCHEZ; YORBANNA SANCHEZ, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; CTX MORTGAGE COMPANY, LLC; SFR INVESTMENTS POOL 1, LLC; DOES I-X; and ROES 1-10, inclusive, Defendants.	Case No. A-13-682006-C Dept. No. XXXI **NOTICE OF ENTRY OF JUDGMENT**
SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Counter-Claimant/Cross-Claimant/Third-Party Plaintiff, vs. WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A., AS TRUSTEE FOR BEAR STERNS ALT-A TRUST 2006-4, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-4; CTX	

MORTGAGE COMPANY, LLC; CITIBANK, N.A., AS TRUSTEE FOR THE CERTIFICATE HODERS OF STRUCTURED ASSET MORTGAGE INVESTMENTS II, INC., BEAR STERNS ALT-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-4, JOHN A. SANCHEZ, YORBANNA SANCHEZ, DOES I-X; and ROE CORPORATIONS 1-10, inclusive,

Counter-Defendant/Cross-Defendants/Third-Party Defendant.

PLEASE TAKE NOTICE that on August 5, 2016 this Court entered a **Notice of Entry of Judgment.** A copy of said Judgment is attached hereto.

DATED this 8th day of August, 2016.

KIM GILBERT EBRON

/s/ Diana Cline Ebron
DIANA CLINE EBRON, ESQ.
Nevada Bar No. 10580
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
Attorney for SFR Investments Pool 1, LLC.

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

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of August, 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **NOTICE OF ENTRY OF JUDGMENT** to the following parties:

Ballard Spahr	
Contact	**Email**
Abran Vigil	vigila@ballardspahr.com
Mary Kay Carlton	carltonm@ballardspahr.com
SLC Docket Clerk	DocketClerk_SaltLakeCity@ballardspahr.com

Ballard Spahr LLP	
Contact	**Email**
Lindsay Demaree	demareel@ballardspahr.com
Sarah Walton	waltons@ballardspahr.com

/s/ Tomas Valerio
An Employee of Kim Gilbert Ebron

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

Electronically Filed
08/05/2016 07:19:24 AM

JUDG

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A., AS TRUSTEE FOR BEAR STERNS ALT-A TRUST 2006-4, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-4 Plaintiff, vs. JOHN A. SANCHEZ; YORBANNA SANCHEZ, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; CTX MORTGAGE COMPANY, LLC; SFR INVESTMENTS POOL 1, LLC; DOES I–X; and ROES 1–10, inclusive Defendants.	CASE NO.: A-13-682006-C DEPT NO.: XXXI **JUDGMENT**
SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Counter-Claimant/Cross-Claimant/Third-Party Plaintiff, vs. WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A., AS TRUSTEE FOR BEAR STERNS ALT-A TRUST 2006-4, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-4; CTX MORTGAGE COMPANY, LLC; CITIBANK, N.A., AS TRUSTEE FOR THE CERTIFICATE HOLDERS OF	

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

STRUCTURED ASSET MORTGAGE INVESTMENTS II, INC., BEAR STERNS ALT-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-4, JOHN A. SANCHEZ, YORBANNA SANCHEZ, DOES I–X; and ROE CORPORATIONS 1–10, inclusive,

Counter-Defendant/ Cross-Defendants/Third Party Defendant.

This matter came before the Court for Trial on March 2-4, 2016, and March 17-18, 2016. Sylvia O. Semper, Esq. and Anthony Kaye, Esq. appeared on behalf of Plaintiff/Counterdefendant, WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A., AS TRUSTEE FOR BEAR STEARNS ALT-A TRUST 2006-4, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-4 ("Wilmington"). Karen L. Hanks, Esq. and Vanessa S. Goulet, Esq. appeared on behalf of Defendant/Counterclaimant, SFR INVESTMENTS POOL 1, LLC ("SFR).

The Court, having considered the papers submitted, heard arguments made on behalf of the parties, considered the testimony at trial and the credibility of the witnesses, reviewed the exhibits introduced at trial, heard the arguments of counsel, and for the reasons set forth in the Findings of Fact and Conclusions of Law entered concurrently herewith:

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that SFR shall have JUDGMENT on its First Cause of Action for Quiet Title/Declaratory Relief and on its Third Cause of Action for Permanent Injunction and JUDGMENT IS HEREBY ENTERED on those causes of action.

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Wilmington's claims on file herein are DISMISSED WITH PREJUDICE, that Wilmington take nothing by reason thereof; and that SFR shall have JUDGMENT on Wilmington's claims accordingly.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any issue pertaining to attorneys' fees shall be determined by timely motion practice in accordance with NRS 18.010; and,

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that costs of the suit, pursuant to NRS 18.020 and NRS 18.110, shall be determined by timely application thereof.

COUNSEL FOR SFR IS DIRECTED TO PROVIDE PROMPT WRITTEN NOTICE OF ENTRY HEREOF.

Dated this 4th day of August, 2016.

JOANNA S. KISHNER
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was provided to all counsel, and/or parties listed below, as a courtesy not comprising formal written notice of entry, via one or more of the following manners: Email, Facsimile, U.S. mail, Electronic Service (E-Service) if the Attorney/Party has signed up as required, and/or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

SYLVIA O. SEMPER, ESQ.
ANTHONY KAYE, ESQ.
BALLARD SPAHR, LLP.

KAREN L. HANKS, ESQ.
VANESSA S. GOULET, ESQ.
KIM, GILBERT & EBRON

TRACY L. CORDOBA-WHEELER
Judicial Executive Assistant

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**July 30, 2013**

A-13-682006-C Wilmington Trust Nation Association, Plaintiff(s)
vs.
John Sanchez , Defendant(s)

July 30, 2013 **9:30 AM** **Motion to Dismiss**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Cline, Diana S.	Attorney
Jacovino, Janice E	Attorney
Rosenberg, David A.	Attorney

JOURNAL ENTRIES

- Matter argued and submitted. Court stated its findings and ORDERED, Plaintiff's Motion to Dismiss SFR Investments Pool 1, LLC's Counterclaim is DENIED WITHOUT PREJUDICE Defense counsel to prepare the Order, circulating to Plaintiff's counsel for approval as to form and content.

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**October 28, 2014**

A-13-682006-C Wilmington Trust Nation Association, Plaintiff(s)
vs.
John Sanchez , Defendant(s)

October 28, 2014 **9:00 AM** **Status Check**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Cline, Diana S.	Attorney
Crowton, Chelsea A., ESQ	Attorney

JOURNAL ENTRIES

- STATUS CHECK

COURT ORDERED, Stay LIFTED, effective this date. Ms. Crowton states parties have agreed to proceed with scheduling 16.1 and discovery. COURT ORDERED, 30 days for JCCR. Plaintiff's counsel to prepare the order lifting stay, circulating to Defense counsel. Matter SET for Status Check regarding receipt of proposed order.

11/14/14 STATUS CHECK: ORDER (CHAMBERS)

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**June 02, 2015**

A-13-682006-C Wilmington Trust Nation Association, Plaintiff(s)
vs.
John Sanchez , Defendant(s)

June 02, 2015 **9:00 AM** **Status Check**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Hanks, Karen	Attorney
Hansen, Ann Marie	Attorney

JOURNAL ENTRIES

- STATUS CHECK

Upon Court's inquiry, Ms. Hanks states Mr. Sanchez has been or will be defaulted out. Ms. Hansen advised still working on discovery issues, close of discovery was May 18, however, have had issues with some of the depositions, homeowner association deposition was set for May 18, were properly subpoenaed and no one appeared, trying to get reset, may be filing motion to compel, NAS deposition did not go forward (deponent was sick), may not make dispositive motion cut-off date (6/17/15). Counsel estimate 1.5 to 2 days for trial. COURT ORDERED, Pre Trial Conference, Calendar Call and Trial Date VACATED and RESET. Court DIRECTED counsel to provide stipulation regarding agreed upon cut-off dates by Friday 6/5/15.

9/24/15 10:15 AM PRE TRIAL CONFERENCE

10/20/15 9:00 AM CALENDAR CALL

10/26/15 9:00 AM BENCH TRIAL (STACK)

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**August 11, 2015**

A-13-682006-C Wilmington Trust Nation Association, Plaintiff(s)
vs.
John Sanchez , Defendant(s)

August 11, 2015 **10:30 AM** **Motion to Coordinate**

HEARD BY: Bare, Rob **COURTROOM:** RJC Courtroom 03C

COURT CLERK: Billie Jo Craig

RECORDER: Carrie Hansen

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- DEFENDANT SFR INVESTMENTS POOL 1 LLC'S MOTION FOR PRE-TRIAL COORDINATION ON ORDER SHORTENING TIME

Attorneys Edgar Smith, Richard Vilkin, Diana Cline, Karen Hanks present.
Sign-up sheets Left Side Filed in A662394: Robert Anderlik, Taylor Anello, Thomas N. Beckom, Jonathan D. Blum, Darren Brenner, Michael Brooks, Diana Cline, Britannica Collins, Chelsea Crowton, Peter Dunkley, Jessica Friedman, Charles Geisendorf, David Gluth, Karen Hanks, Joshua O. Igeleke, Michael Li, Steven Loizzi Jr., Elizabeth Lowell, Erica D. Loyd, Matthew McAlonis, David J. Merrill, Patrick Orme, Robin Perkins, Benjamin Petiprin (appeared telephonically), Edgar C. Smith, Kevin S. Soderstrom, Ashlie Surer, Abe Vigil, Richard Vilkin, Shawn Walkenshaw, David Winterton.

Upon inquiry of the Court, Ms. Hanks advised the Motion was filed and heard in this Court as this Court had the lowest case number. Colloquy regarding coordinating the HOA cases as to Discovery, Trials, and witness availability. Counsel suggested a more specific Case Management Plan for a Special Discovery Master to deal with these cases as the various District Court Judges thoughts vary. Court noted he talked briefly with Chief Judge David Barker and Chief Civil Judge Betsy Gonzalez. The Court noted Court Administration would be interested in addressing this issue. Court inquired if Ms. Hanks would be the point of contact, and she advised she would. She provided her E-mail

address:
Karen@hkimlaw.com

Statement by Mr. Vilkin regarding having a meeting first to determine what counsel will agree on as to the Case Management Plan.

Statements from Attorney Surur regarding coordination for Discovery procedures and noted her two cases where one was Dismissed and the other was pending a Motion to Dismiss where the Court had no jurisdiction.

Statements from Attorney Brooks, who had multiple cases, regarding setting deadlines for counsel to submit a plan to in-house counsel, which may take 2 to 3 weeks.

Attorney Brenner advised a Case Management Plan would first be needed as there are 10 different banks and in-house counsel. He would then be in a position to respond.

COURT ORDERED, Ms. Hanks to submit a Proposed Case Management Plan to counsel by 8/25/15. Counsel to respond by 9/29/15. Matter SET for Status Check: Proposed Case Management Plan to determine when a Continued Hearing on this Motion to Coordinate to be heard.

9/1/15 10:30 AM STATUS CHECK: PROPOSED CASE MANAGEMENT PLAN
(IN A662394 ONLY)

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**September 24, 2015**

A-13-682006-C Wilmington Trust Nation Association, Plaintiff(s)
vs.
John Sanchez , Defendant(s)

September 24, 2015 10:15 AM Pre Trial Conference

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Hanks, Karen	Attorney
Vigil, Abran E.	Attorney

JOURNAL ENTRIES

- PRE TRIAL CONFERENCE

Counsel estimate 2 full days for trial. COURT ORDERED, Calendar Call and Trial Date VACATED and RESET. Pre trial memo now due by noon on 11/4/15.

11/5/15 9:00 AM CALENDAR CALL

11/18/15 11:00 AM BENCH TRIAL #2

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**September 29, 2015**

A-13-682006-C Wilmington Trust Nation Association, Plaintiff(s)
vs.
John Sanchez , Defendant(s)

September 29, 2015 9:30 AM All Pending Motions

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Hanks, Karen	Attorney
Hansen, Ann Marie	Attorney

JOURNAL ENTRIES

- PLAINTIFF WILMINGTON TRUST'S MOTION FOR SUMMARY JUDGMENT...SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT

Both matters argued and submitted. RULING DEFERRED; Court will further review and a Decision will issue from Chambers.

CONTINUED FOR DECISION: 10/2/15 (CHAMBERS)

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**October 02, 2015**

A-13-682006-C Wilmington Trust Nation Association, Plaintiff(s)
vs.
John Sanchez , Defendant(s)

October 02, 2015 **3:00 AM** **All Pending Motions**

HEARD BY: Kishner, Joanna S. **COURTROOM:**

COURT CLERK: Sandra Harrell

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT...PLAINTIFF WILMINGTON TRUST'S MOTION FOR SUMMARY JUDGMENT

Pursuant to the upcoming oral arguments that will be heard in front of the Nevada Supreme Court in Mackensie Family, LLC vs. Wells Fargo Bank, N.A. on October 5, 2015 and Parks v. Wells Fargo Bank on October 6, 2015, the Court is deferring ruling on the pending motions in this case until November 6, 2015 in order to fully evaluate all relevant information that might arise during those arguments. Therefore, the decision on the pending motions will be placed on Department XXXI's November 6, 2015 calendar.

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**November 20, 2015**

A-13-682006-C Wilmington Trust Nation Association, Plaintiff(s)
vs.
John Sanchez , Defendant(s)

November 20, 2015 **3:00 AM** **All Pending Motions**

HEARD BY: Kishner, Joanna S. **COURTROOM:**

COURT CLERK: Sandra Harrell

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT...PLAINTIFF WILMINGTON TRUST'S MOTION FOR SUMMARY JUDGMENT

This matter came on for hearing on September 29, 2015 on Plaintiff Wilmington Trust's Motion for Summary Judgment (footnote 1) and Defendant SFR Investments Pool 1, LLC's Motion for Summary Judgment. Present at the hearing was Ann Hansen, Esq., counsel for Plaintiff/Counter-Defendant/Cross-Defendant/Third Party Defendant Wilmington Trust, National Association, as Successor Trustee to Citibank, N.A., as Trustee for Bear Stearns ALT-A Trust 2006-4, Mortgage Pass-Through Certificates, Series 2006-4 ("Wilmington Trust") and Karen Hanks, Esq., counsel for cross-defendant/third-party plaintiff SFR Investments Pool 1 LLC. After hearing all arguments on the Motion and after discussion with the parties regarding pending decisions by the Nevada Supreme Court, the Court Deferred ruling on the Motion to its Chamber's Calendar. After a full review of all the papers, pleadings, documents on file, and all applicable statutes and case law, the Court finds as follows.

Plaintiff made the following arguments in support of its Motion for Summary Judgment. First, the sale is void because the foreclosure sale price of $8,750.00 is grossly inadequate in comparison to the market value of the property. NAS also refused to provide a priority pay-off amount to the lender.

Second, NRS 116.3116, et seq. (the "Statute") is facially unconstitutional because it does not require actual notice to lienholders before a homeowners association can foreclose on the super-priority amount of the lien Third, NRS 116.3116 is also unconstitutional because it is an uncompensated regulatory taking of property without just compensation. Finally, the foreclosure sale was a constructively fraudulent transfer under the Uniform Fraudulent Transfers Act as codified in NRS Chapter 112. (Plaintiff's Motion pp.5-6)

(footnote 1) The Motion was labeled as Plaintiff s Motion for Summary Judgment and thus the Court keeps that designation when referring to the moving party.

Commercial Unreasonableness

Plaintiff argues that the failure to buy the property in a commercially reasonable manner voids the HOA foreclosure sale.

Plaintiff does not provide the Court any evidence that the HOA foreclosure sale at issue was tainted by fraud, unfairness or oppression or provide any other basis from which the Court could address its argument. In the absence of any support the Court declines to find based on the scant record before it that there is no genuine issue of material fact as to whether the purchase was or was not commercially reasonable. Instead, based on the record provided there are several material issues of fact in dispute including whether Plaintiff received notice, whether and under what circumstances did the foreclosure sale take place, was the transaction an arms length transaction, were the recitals accurate and consistent with the rest of the transaction record, was there a tender and other concerns raised in the pleadings.

In light of the fact the Court cannot find as a matter of law the arguments of Plaintiff are conclusive as to the case and given there are material issues of fact about the transaction that are in dispute, there is no basis for judgment.

NRS 116.3116 is Constitutional

Defendant argues that NRS 116.3116 is Unconstitutional on its face and as a result void and unenforceable based on the lack of mandatory notice requirements to the lien holder. It further contends that the Court can grant summary judgment on this legal basis.

In analyzing Defendant's argument the Court must follow the well-established cannon of statutory interpretation-constitutional avoidance. "It is elementary when the constitutionality of a statute is assailed, if the statute be reasonably susceptible of two interpretations, by one of which it would be unconstitutional and by the other valid, it is our plain duty to adopt that construction which will save the statute from constitutional infirmity." U S ex rel Attorney Gen. v. Delaware & Hudson Co, 213 U.S. 366 (1909); see also State v. Curler, 26 Nev. 347, 67 P. 1075, 1076 (1902) ("it is a well-established rule of this and other courts that constitutional questions will never be passed upon, except when absolutely necessary to properly dispose of the particular case'). Sheriff, Pershing Cnty. v. Andrews,

128 Nev. Adv. Op. 51, 286 P.3d 262, 263 (2012) ("It is well settled, however, that we should avoid considering the constitutionality of a statute unless it is absolutely necessary to do so.")

The reading of Chapter 116's notice requirements in a way to be constitutionally valid requires that a foreclosing homeowners' association must provide notice to the following parties:

(1) Any interested person who has recorded a request for notice with the proper county recorder must be mailed copies of the notice of default and election to sell and the notice of sale. See NRS 116.31163(1) (notice of default must be given to "[e]ach person who has requested notice pursuant to NRS 107.090 or 116.31168"), NRS 107.090(2) (a "request for a copy of the notice of default or of sale" must be "record[ed] in the office of the county recorder of the county in which any part of the real property is situated"), and NRS 116.31168(1) ('The request must identify the lien by stating the names of the unit's owner and the common-interest community."); see also NRS 116.311635(1)(b)(1) (notice of sale must be mailed to all persons entitled to receive a copy of the notice of default). This request-notice provision exists to allow interested parties who are not otherwise ascertainable an opportunity to receive notice and protect their interest.

(2) Any other person holding or claiming an interest subordinate to the association's lien must be mailed copies of the notice of default and election to sell and the notice of sale. See NRS 116.31163(1) and .311635(1)(b)(1), supra; see also NRS 116.31168(1) (incorporating requirements of NRS 107.090 to HOA foreclosures) and NRS 107.090(3)(b) (notice must be mailed to "[e]ach other person with an interest whose interest or claimed interest is subordinate to the [association's lien]."). This catch-all provision exists to provide notice to any other interested party whose identity is reasonably ascertainable.

(3) Any holders of a recorded security interest that encumbers the homeowner's interest must be mailed copies of (a) the notice of default and election to sell, if the security interest was recorded at least 30 days before notice of default was recorded, and (b) the notice of sale, if the security interest was recorded prior to the mailing of the notice of sale. See NRS 116.31163(2), supra, and NRS 116.311635(1)(b)(2) (HOA must mail notice of sale to security interest holder that "has notified the association, before the mailing of the notice of sale of the existence of the security interest."); see also NRS 111.320, supra, and First Nat. Bank v. Meyers, 40 Nev. 284, 161 P. at 931 (recording of the security interest gives notice to the world of that interest).

The SFR, the Court stated that NRS 116 should be read in conjunction with NRS 107.090. The Court noted "In view of the fact that the requirements of law include compliance with NRS 116.31162 through NRS 116.31168 and by incorporation, NRS 107.090, see NRS 116.31168(1), we conclude that U.S. Bank's due process challenge to the lack of adequate notice fails, at least at this early stage of the proceeding." Id. Accordingly, as this Court must follow the directives of SFR, this Court finds that Defendant's due process challenge fails.

Even if the Court were to view the language quoted herein from SFR as dicta, the Court must still attempt to read the statute as Constitutional if there are different viewpoints as to what is meant by

the provision. In so doing, the Court would find at this early stage of the pleadings that a combined reading of NRS 116 and NRS 107.090 requires the foreclosing homeowners' association to provide notice to mortgage holders that have timely recorded interest in the subject property. Therefore, the facial challenge of Chapter 116's notice requirements fails because the provisions of Chapter 116 read as a whole and in conjunction with well-established related law ensures mortgage holders and other interested parties receive actual notice of a homeowners' association's impending non-judicial foreclosure sale.

Further, although Chapter 116, on its face, provides for Constitutional notice as set forth in further detail above, there is still the issue of whether the mandates of the Due Process Clause are in fact triggered. Regardless of how the constitutional challenge is characterized - "facial" or "as applied" - it must first identify some "state action" that runs afoul of the Fourteenth Amendment. See Lugar v. Edmondson Oil Co., 457 U.S. 922, 930 (1982) ("the Due Process Clause protects individuals only from governmental and not from private action, plaintiffs had to demonstrate that the sale of their goods was accomplished by state action"); See also S.O.C., Inc. v. Mirage Casino-Hotel, 117 Nev. 403, 410, 23 P.3d 243, 247 (2001) ("The general rule is that the Constitution does not apply to private conduct."). "Embedded in our Fourteenth Amendment jurisprudence is a dichotomy between state action, which is subject to scrutiny under the Amendment's Due Process Clause, and private conduct, against which the Amendment affords no shield, no matter how unfair that conduct may be." Nat'l Collegiate Athletic Ass'n v. Tarkanian, 488 U.S. 179, 191 (1988) (holding state university's imposition of sanctions against legendary basketball coach Jerry Tarkanian in furtherance of the NCAA's rules and recommendations did not transform NCAA's private conduct into state action).

In examining the state-action issue where a private party's decisive conduct has caused harm to another private party, the question becomes "whether the State was sufficiently involved to treat that decisive conduct as state action." Tarkanian, 488 U.S. at 192. The State's involvement may transform private conduct into state action when the State delegates its authority to the private actor; the State knowingly accepts benefits derived from unconstitutional behavior; or when the State creates the legal framework governing the private conduct. Id. (citing for each proposition, respectively, West v. Atkins, 487 U.S. 42 (1988); Burton v. Wilmington Parking Authority, 365 U.S. 715, 722 (1961); and North Georgia Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601 (1975) (holding state's garnishment statute, which permitted writ of garnishment to be issued in pending actions by court clerk, denied due process of law)).

The conduct at issue in this case, a non-judicial foreclosure authorized by Nevada law, centers the state-action analysis on the Nevada's creation of the legal framework governing HOA non-judicial foreclosure actions. There was not a contention by Defendant that the state engaged in any direct conduct. The inquiry here turns on whether the Nevada Legislature's enactment of the legal framework governing non-judicial foreclosure of homeowners' association liens constitutes sufficient state action to trigger the due process protections of the Fourteenth Amendment for mortgage holders. This Court finds it is not.

The "State is responsible for the . . . act of a private party when the State, by its law, has compelled the

act." Adickes v. S. H. Kress & Co., 398 U.S. 144, 170 (1970). However, a State's mere acquiescence in a private action does not convert that action into that of the State. See Flagg Bros. v. Brooks, 436 U.S. 149, 164 (1978).

The United States Supreme Court dealt with a similar issue in Flagg Bros. v. Brooks. In that case Ms. Brooks faced eviction, and was forced by circumstance to place her belongings in storage. Subsequently, she filed a lawsuit against the storage company, Flagg Brothers, alleging a violation of her Fourteenth Amendment rights. Ms. Brooks argued that "Flagg Brothers' proposed action [wa]s properly attributable to the State because the State ha[d] authorized and encouraged it in enacting [the statutory framework authorizing the sale of her property to satisfy the storage lien]." Id., at 164. The Court held that the state statute, together with private action conforming to the statute, was insufficient to establish state action, reasoning:

"Here, the State of New York has not compelled the sale of a bailor's goods, but has merely announced the circumstances under which its courts will not interfere with a private sale. Indeed, the crux of respondents' complaint is not that the State has acted, but that it has refused to act. This statutory refusal to act is no different in principle from an ordinary statute of limitations whereby the State declines to provide a remedy for private deprivations of property after the passage of a given period of time." Id. at 166 (emphasis in original).

The issue presented with regards to NRS 116 is analogous. While the State of Nevada, enacted Chapter 116 its role was to set forth a procedure that homeowners' association must fulfill to legally foreclose on an unpaid lien. The State of Nevada has mandated that any particular home owners association must act or when it should act. The role of the State of Nevada in this and other similar situations is passive and cannot trigger state action. Accordingly, this Court finds state action does not exist in this situation sufficient to implicate the protections of the Due Process Clause of the Fourteenth Amendment.

The Court must deny Plaintiff's Motion without prejudice on this basis as the statute is Constitutional. (footnote 2)

(footnote 2) The state action analysis is also applicable to the other Constitutional challenges.

Regulatory Taking

Plaintiff also argues that they were deprived of their property without notice as the result of Legislative action in that the Legislature drafted and enacted a constitutionally infirm statute. In sum Plaintiff contends that there was an unlawful taking.

This argument also fails. The Fifth Amendment to the United States Constitution prohibits "private property be[ing] taken for public use without just compensation." U.S. Const. amend. V. Article One of the Nevada Constitution correspondingly provides that "[p]rivate property shall not be taken for

public use without just compensation having been first made, or secured." Nev. Const. art. I, 8(6). In McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 669, 137 P.3d 1110, 1126 (2006). The Nevada Supreme Court found the Takings Clause of the Nevada Constitution to be more protective of property rights than that of the United States Constitution. It went on to explain what is a regulatory taking pursuant to the State Constitution as follows: "a per se regulatory taking occurs when a public agency seeking to acquire property for a public use . . . fails to follow the [statutory eminent domain] procedures . . . and appropriates or permanently invades private property for public use without first paying just compensation." Id. at 670. "In deciding whether a particular governmental action has effected a taking, this Court focuses . . . both on the character of the action and on the nature and extent of the interference with rights in the parcel as a whole." Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency, 535 U.S. 302, 327 (2002) (quoting San Diego Gas & Elec. Co. v. San Diego, 450 U.S. 621, 636 (1981)).

Utilizing the analysis above, the Court does not find that Plaintiff has met its burden to show that legislative enactment of Chapter 116 is a government taking by regulation or that a private foreclosure of an HOA lien serves to further a public purpose. Instead, while the Legislature created the law that allowed the private foreclosure to take place, the government did not have the requisite interference with Plaintiff's rights to constitute a taking.

This is particularly true in the present case based on the undisputed timing of when the loan was made and when Wilmington Trust purchased its interest in the deed. Specifically, the loan in this case, and the resulting deed of trust, were made long after NRS 116 was adopted. Thus, the adoption of the statutes did nothing to affect Wilmington Trust's interest in this loan. This is particularly true in light of the fact that Wilmington Trust bought its interest in the deed of trust after the Association foreclosure sale. A taking must be of current rights, not those that may exist in the future. Even if the statute does constitute a "taking", which the Court has found that it does not, Wilmington Trust didn't have an interest in the property when the alleged "taking" took place.

Accordingly, Plaintiff's argument for summary judgment on the theory of regulatory taking fails.

UFTA

Wilmington Trust asserts that it "is entitled to avoid the sale as constructively fraudulent. The sale was a transfer of the Property from the Sanchez's to SFR within the meaning of the UFTA. The $8,750.00 paid for the Property was not reasonably equivalent value; as discussed above, the price is grossly inadequate. And finally, the first and third conditions above were met: at the time of the sale, the Sanchez's were engaged in a transaction for which their remaining assets were unreasonably small and were insolvent. The Sanchez's clearly could not pay their debts as they became due". (Plaintiff's Motion pg. 25) SFR argues that the UFTA does not apply.

Based on the record provided to the Court, SFR asserts it title claim pursuant to a foreclosure sale conducted by the HOA and/or its agents after the Sanchez's did not pay their HOA assessments. There was not any contention provided to the Court that the Sanchez's were involved in the transfer

of property. Instead, the transfer occurred by operation of law after the Sanchez's failed to pay sums the HOA contends they owed for assessments. Given the facts presented to the Court, the UFTA cannot be found as matter of law to apply to the transaction at hand. Accordingly, Wilmington Trust's Motion must be denied without prejudice as to this assertion.

Accordingly, it is HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion for Summary Judgment is DENIED without prejudice.

Defendant's Motion for Summary Judgment

Defendant argues in the Motion for Summary Judgment that Summary Judgment is appropriate as to their claims for quiet title and permanent injunction because the foreclosure sale extinguished any interest Defendants had in the property. Further, it is argued that the recitals in the foreclosure deed are conclusive proof that all necessary notices were sent, and Plaintiff had actual notice of the sale and did not act. Defendant asserts that "On September 18, 2014, the Nevada Supreme Court issued its opinion in SFR Investments Pool I, LLC v. U.S. Bank, N.A., concluding that NRS 116.3 116(2) gives associations a true super- priority lien, the non-judicial foreclosure of which extinguishes a first deed of trust. 334 P.3d 408, 419 (Nev. 2014). In this case, after the homeowners and Citibank (Wilmington Trust's predecessor in interest) failed to pay the Association assessments, the Association foreclosed on the delinquent assessments. In SFR, the Nevada Supreme Court recognized that a foreclosure deed "reciting compliance with notice provisions of NRS 116.31162 through NRS 116.31168 "is conclusive" as to the recitals "against the unit's former owner, his or her heirs and assigns and all other persons." Id. at419 citing NRS 116.3116.31166(2). (Defendant's Motion at pg. 9)

In its Opposition, Wilmington Trust sets forth that summary judgment should not be granted as there are a multitude of disputed facts including material facts relating to Notice (See e.g. Plaintiff's Opposition at pg. 7.) and Tender (See e.g. Plaintiff's Opposition at pg. 8.) and Defendant's knowledge at the time of purchase. (See e.g. Plaintiff's Opposition at pp 12-13) It goes on to detail how its predecessor attempted to tender payment but it was rejected.

Based on the record provided to the Court, There are still genuine issues of material fact in dispute including inter alia, whether all the statutory notice requirements of NRS 116 were complied with and whether the recitals in the deed are accurate or fraudulent, whether there was appropriate tender, and whether Defendant should be considered a bona fide purchaser based on what it did or did not know.

Therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED Defendant's Motion for Summary Judgment is DENIED, without prejudice.

Counsel for Defendant to prepare the Order regarding Plaintiff's Motion including detailed Findings of Fact and Conclusions of Law, circulate it to opposing counsel and submit it to Chambers in accordance with EDCR 7.21. Counsel for Plaintiff to prepare the Order regarding Defendant's Motion

including detailed Findings of Fact and Conclusions of Law, circulate it to opposing counsel and submit it to Chambers in accordance with EDCR 7.21. If the parties jointly choose to submit a combined Order regarding both Motions, then when that Order is submitted a cover letter should briefly inform the Court that the Orders are combined by the mutual agreement of the parties. Such Order(s) should set forth a synopsis of the supporting reasons proffered to the Court in the pleadings and arguments. This Decision sets forth the Court's intended disposition on the subjects presented but anticipates further Order(s) of the Court to make such disposition effective as Order(s) or Judgment.

A status check is hereby set on Department XXXI's Chamber Calendar for December 4, 2015 re: submission of the Orders. If the Orders are received before that date, the status check will be vacated. If the Orders are not timely received the Court will set a status check on its Tuesday or Thursday motion calendar where appearances by all counsel will be mandatory.

12/4/15 STATUS CHECK: ORDERS (CHAMBERS)

CLERK'S NOTE: The above minute order has been distributed via e-mail to Ann Marie Hansen, Esq, and Karen Hanks, Esq..\sjh 11-20-15

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**December 03, 2015**

A-13-682006-C Wilmington Trust Nation Association, Plaintiff(s)
vs.
John Sanchez , Defendant(s)

December 03, 2015 **10:15 AM** **Pre Trial Conference**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Hanks, Karen	Attorney
Vigil, Abran E.	Attorney

JOURNAL ENTRIES

- PRE TRIAL CONFERENCE

Counsel estimate 1-2 day bench trial. Trial dates discussed. COURT ORDERED, Matter SET for Trial. Pre trial memo now due 1/12/15. Mr. Vigil requested additional time to prepare order from last hearing; Request GRANTED; Status Check on receipt of order rescheduled from 12/4/15 to 12/11/15 in Chambers.

1/19/15 9:00 AM CALENDAR CALL

1/26/15 11:00 AM BENCH TRIAL #2

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**January 12, 2016**

A-13-682006-C Wilmington Trust Nation Association, Plaintiff(s)
vs.
John Sanchez , Defendant(s)

January 12, 2016 **9:30 AM** **Motion to Continue Trial**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Demaree, Lindsay C	Attorney
Hanks, Karen	Attorney

JOURNAL ENTRIES

- Discussion regarding available dates for trial. COURT ORDERED, Plaintiff's Unopposed Motion to Continue Trial is GRANTED. COURT FURTHER ORDERED, Calendar Call and Trial Date VACATED and RESET. Pre trial memo now due 2/22/16; Exhibits due 2/25/16. Counsel for Plaintiff to prepare the Order, circulating to Ms. Hanks for approval as to form and content. Matter SET for Status Check regarding receipt of proposed order.

2/25/16 9:00 AM CALENDAR CALL

3/2/16 11:00 AM BENCH TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**February 16, 2016**

A-13-682006-C Wilmington Trust Nation Association, Plaintiff(s)
vs.
John Sanchez , Defendant(s)

February 16, 2016 **9:00 AM** **Status Check**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Billie Jo Craig

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT: Vigil, Abran E. Attorney

JOURNAL ENTRIES

- COURT ORDERED, matter to TRAIL as no parties present when case called. RECALLED. Mr. Vigil present. Colloquy regarding status of the case. Upon inquiry of the Court, Mr. Vigil advised the Proposed Order was signed by his associate but not marked as such. The Court returned the Order to him. Mr. Vigil advised he would resubmit an Order to the Court this afternoon with verification.

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**February 25, 2016**

A-13-682006-C Wilmington Trust Nation Association, Plaintiff(s)
vs.
John Sanchez , Defendant(s)

February 25, 2016 **9:00 AM** **All Pending Motions**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Shelley Boyle

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Goulet, Vanessa S.	Attorney
Hanks, Karen	Attorney
Vigil, Abran E.	Attorney

JOURNAL ENTRIES

- Anthony C. Kaye, also present, on behalf of Wilmington Trust Nation Association.

UNOPPOSED MOTION TO ASSOCIATE COUNSEL (ANTHONY C. KAYE)...CALENDAR CALL

UNOPPOSED MOTION TO ASSOCIATE COUNSEL (ANTHONY C. KAYE)
Upon Court's inquiry, counsel agreed to advance the Pro Hace Vice Motion to Associate Counsel (Anthony C. Kaye) set for 02/26/16, to today. With there being no opposition, COURT ORDERED, Motion GRANTED.

CALENDAR CALL
Colloquy regarding the timeliness of the Pre-Trial memorandums. Counsel provided exhibits to the Court, Ms. Hanks advised she estimates she will have two witnesses, Mr. Vigil advised he estimates he will have 8 witnesses. Colloquy regarding opening statements; counsel's proposed Findings of Fact and Conclusions of Law are DUE by mid-day 03/01/16. Colloquy regarding briefs, any special requirements in relation to technical needs, ADA concerns, and scheduling.

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**March 02, 2016**

A-13-682006-C Wilmington Trust Nation Association, Plaintiff(s)
vs.
John Sanchez , Defendant(s)

March 02, 2016 **11:00 AM** **Bench Trial**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Goulet, Vanessa S.	Attorney
Hanks, Karen	Attorney
Kaye, Anthony C.	Attorney
Semper, Sylvia O.	Attorney

JOURNAL ENTRIES

- BENCH TRIAL BEGINS

Also present, Anthony Kaye, Esq., pro hac vice (Utah Bar #8611), on behalf of Plaintiff.

Exclusionary Rule Invoked

Openings Statements by Ms. Semper and Ms. Hanks.

Testimony and exhibits presented. (See worksheets)

CONTINUED TO: 3/3/16 10:30 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**March 03, 2016**

A-13-682006-C Wilmington Trust Nation Association, Plaintiff(s)
vs.
John Sanchez , Defendant(s)

March 03, 2016 **10:30 AM** **Bench Trial**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Goulet, Vanessa S.	Attorney
Hanks, Karen	Attorney
Kaye, Anthony C.	Attorney
Semper, Sylvia O.	Attorney

JOURNAL ENTRIES

- BENCH TRIAL CONTINUES

Testimony and exhibits presented. (See worksheets)

CONTINUED TO: 3/4/16 8:30 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**March 04, 2016**

A-13-682006-C Wilmington Trust Nation Association, Plaintiff(s)
vs.
John Sanchez , Defendant(s)

March 04, 2016 **8:30 AM** **Bench Trial**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Goulet, Vanessa S.	Attorney
Hanks, Karen	Attorney
Kaye, Anthony C.	Attorney
Semper, Sylvia O.	Attorney

JOURNAL ENTRIES

- BENCH TRIAL CONTINUES

Testimony and exhibits presented. (See worksheets)

Administrative matters discussed.

CONTINUED TO: 3/17/16 1:00 PM

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**March 17, 2016**

A-13-682006-C Wilmington Trust Nation Association, Plaintiff(s)
vs.
John Sanchez , Defendant(s)

March 17, 2016 **1:00 PM** **Bench Trial**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Goulet, Vanessa S.	Attorney
Hanks, Karen	Attorney
Kaye, Anthony C.	Attorney
Semper, Sylvia O.	Attorney

JOURNAL ENTRIES

- BENCH TRIAL CONTINUES

WILMINGTON TRUST'S MOTION FOR LEAVE TO AMEND ITS REPLY TO COUNTERCLAIM ON ORDER SHORTENING TIME:

Arguments by counsel. COURT ORDERED, motion GRANTED IN PART; Granted as to #16, #17, #18, #19, #20, #21, #22; Denied as to #23. Counsel for Plaintiff to prepare the Order.

Plaintiff rested.

Ms. Hanks made an Oral Motion for NRCP 52C. Arguments by counsel. COURT ORDERED, Oral Motion is DENIED.

Court will allow briefing on Bankruptcy issue regarding notice of default.

Testimony presented.

CONTINUED TO: 3/18/16 9:00 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**March 18, 2016**

A-13-682006-C Wilmington Trust Nation Association, Plaintiff(s)
vs.
John Sanchez , Defendant(s)

March 18, 2016 **9:00 AM** **Bench Trial**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Goulet, Vanessa S.	Attorney
Hanks, Karen	Attorney
Kaye, Anthony C.	Attorney
Semper, Sylvia O.	Attorney

JOURNAL ENTRIES

- BENCH TRIAL CONTINUES

Testimony presented.

Defense rested.

Closing arguments.

Court noted counsel may provide findings of fact and conclusions of law and briefing on Bankruptcy related issue, although not required, by noon on 4/22/16. Counsel to also provide their findings of fact and conclusions of law in Word format (.doc, .docx) to the Court's Law Clerk or Judicial Executive Assistant.

COURT ORDERED, All exhibits not offered nor admitted returned to counsel.

BENCH TRIAL CONCLUDED

CONTINUED FOR DECISION

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**June 17, 2016**

A-13-682006-C Wilmington Trust Nation Association, Plaintiff(s)
vs.
John Sanchez , Defendant(s)

June 17, 2016 **3:00 AM** **Bench Trial**

HEARD BY: Kishner, Joanna S. **COURTROOM:**

COURT CLERK: Keri Cromer

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- COURT ORDERED, 6/17/2016 matter VACATED.

CLERK'S NOTE: The above minute order has been distributed via facsimile to: Christopher L. Benner, Esq. (702-946-1345) and Howard C. Kim, Esq. (702-485-3301),

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**August 05, 2016**

A-13-682006-C Wilmington Trust Nation Association, Plaintiff(s)
vs.
John Sanchez , Defendant(s)

August 05, 2016 **3:00 AM** **Bench Trial**

HEARD BY: Kishner, Joanna S. **COURTROOM:**

COURT CLERK: Sandra Harrell

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- BENCH TRIAL DECISION

Please see "Findings of Fact and Conclusions of Law" and "Judgment" filed separately on 8/5/16.\sjh

VAULT EXHIBIT FORM

CASE NO: A682006	TRIAL DATE: 3/2/2016
DEPT. NO: 31	JUDGE: JOANNA S. KISHNER
	CLERK: SANDRA HARRELL
WILMINGTON TRUST NATION ASSOCIATION	RECORDER: RACHELLE HAMILTON
PLAINTIFF:	
	SYLVIA SEMPER / ANTHONY KAYE (PRO HAC)
JOHN SANCHEZ	COUNSEL FOR PLAINTIFF:
DEFENDANT:	KAREN HANKS / VANESSA GOULET
	COUNSEL FOR DEFENDANT:

SEE ATTACHED			
Joint Exhibit List			
Deposition Log			
Witness List			
COURT ORDERED, All Exhibits Not Offered Nor Admitted Returned to Counsel.			

Wilmington Trust v. Sanchez, et al.

Clark County District Court
Case No. A-13-682006-C
Dept. No. XXXI

JOINT TRIAL EXHIBIT LIST

Ex. #	Description, including Bate # and Date			Date Offered	Objection	Date Admitted
1.	Grant, Bargain, Sale Deed	WT001-WT003	04/27/06	3-4-16	Stip	3-4-16
2.	Deed of Trust	WT004-WT032	04/27/06	↓	↓	↓
3.	Deed of Trust – Second Mortgage	WT033-WT045	04/27/06	↓	↓	↓
4.	Notice of Delinquent Assessment Lien	WT046	10/09/09	3-3-16	Stip	3-3-16
5.	Notice of Default and Election to Sell Under Homeowners Association Lien	WT047-WT048	12/08/09	3-4-16	Stip	3-4-16
6.	Assignment of Deed of Trust	WT054-WT055	11/23/10	↓	↓	↓
7.	Substitution of Trustee	WT056-WT057	12/08/10	↓	↓	↓
8.	Certificate – Foreclosure Mediation Program	WT058	12/21/10	↓	↓	↓
9.	Notice of Trustee's Sale	WT059-WT060	01/05/11	↓	↓	↓
10.	Notice of Trustee's Sale	WT061-WT062	04/05/11	↓	↓	↓
11.	Notice of Foreclosure Sale	WT063-WT064	02/13/12	3-3-16	Stip	3-3-16
12.	Notice of Foreclosure Sale	WT065-WT066	08/07/12	3-4-16	Stip	3-4-16
13.	Substitution of Trustee	WT067	09/06/12	↓	↓	↓
14.	Notice of Rescission of Notice of Default	WT068-WT069	10/08/12	↓	↓	↓

Ex. #	Description, including Bate # and Date			Date Offered	Objection	Date Admitted
15.	Foreclosure Deed	WT070-WT072	10/19/12	3-4-16	Stip	3-4-16
16.	Notice of Lis Pendens	WT073-WT076	06/27/13	↓	↓	↓
17.	Corporate Assignment of Deed of Trust	WT077-WT078	09/09/13	↓	↓	↓
18.	Notice of Pendency of Action	WT079-WT082	10/03/13	↓	↓	↓
19.	Declaration of Covenants, Conditions, and Restrictions for Giavanna	WT083-WT154	07/25/05	3-3-16	Stip	3-3-16
20.	Adjustable Rate Note	WT000155-WT000162	04/11/06	↓	↓	↓
21.	Loan Modification Agreement	WT000163-WT000165	08/29/08	3-4-16	Stip	3-4-16
22.	EMC Mortgage Letters of Default	WT000166-WT000169	08/03/10	↓	↓	↓
23.	Limited Power of Attorney	WT000170-WT000174	10/16/12	↓	↓	↓
24.	JPMorgan Chase, N.A. All Activity Report	WT000175-WT000386	01/01/00-01/06/15	↓	↓	↓
25.	Chase Detailed Transaction Report	WT000387-WT000415	01/06/15	↓	↓	↓
26.	Broker Price Opinion	WT000416-WT000422	10/09/13	3-17-16	Y	
27.	Broker Price Opinion	WT000423-WT000430	04/21/14	3-17-16	Y	Withdrawn
28.	Broker Price Opinion	WT000431-WT000438	10/24/14	3-17-16	Y	Withdrawn
29.	Broker Price Opinion	WT000439-WT000447	04/28/15	3-17-16	Y	Withdrawn
30.	SPS Contact History Report	WT000448-WT000460	05/04/15	3-4-16	Stip	3-4-16
31.	SPS Payment History Report	WT000461-WT000468	05/04/15	↓	↓	↓

Ex. #	Description, including Bate # and Date			Date Offered	Objection	Date Admitted
32.	SPS Payoff Calculation Totals	WT000469	05/04/15	3-4-16	Stip	3-4-16
33.	Resignation, Successor Appointment and Acceptance Agreement	WT000470-WT000504	12/03/12	↓	↓	↓
34.	Documents Produced by Nevada Association Services	NAS1-NAS302	09/12/15	3-2-16	N	3-2-16
35.	Documents Produced by Giavanna HOA Association	GIA001-GIA076	10/07/15	3-3-16	Stip	3-3-16
36.	Notice of Breach and Default and of Election to Cause Sale of Real Property Under Deed of Trust	SFR44-SFR46	09/22/10	3-4-16	Stip	3-4-16
37.	Wilmington Trust's Responses to Requests for Admission		05/11/15	↓	↓	↓
38.	Wilmington Trust's Responses to Interrogatories		05/11/15	↓	↓	↓
39.	Wilmington Trust's Responses to Requests for Production		05/11/15	↓	↓	↓
40.	SFR's Responses to Interrogatories		05/20/15	3-3-16	Y	3-3-16
41.	SFR's Responses to Requests for Production		05/20/15	3-4-16	Stip	3-4-16
42. Notice of Foreclosure Sale				3-3-16	Stip	3-3-16
43. Assessor Record				3-2-16	N	3-2-16

EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE

NOTICE OF DEFICIENCY

ON APPEAL TO NEVADA SUPREME COURT

ABRAN E. VIGIL
100 NORTH CITY PARKWAY, SUITE 1750
LAS VEGAS, NV 89106

DATE: September 8, 2016
CASE: A-13-682006-C

RE CASE: WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A. AS TRUSTEE FOR BEAR STEARNS ALT-A TRUST 2006-4, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-4 vs. JOHN A. SANCHEZ; YORBANNA SANCHEZ; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; CTX MORTGAGE COMPANY, LLC; SFR INVESTEMENTS POOL 1, LLC

NOTICE OF APPEAL FILED: September 6, 2016

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

☐ Case Appeal Statement
- NRAP 3 (a)(1), Form 2

☐ Order

☒ Notice of Entry of Order (RE: 08/05/2016 Wilmington Trust's Findings of Fact and Conclusions of Law)

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 (e) 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; ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT; NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT; WILMINGTON TRUST'S FINDINGS OF FACT AND CONCLUSIONS OF LAW; JUDGMENT; NOTICE OF ENTRY OF JUDGMENT; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A. AS TRUSTEE FOR BEAR STEARNS ALT-A TRUST 2006-4, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-4,

Plaintiff(s),

vs.

JOHN A. SANCHEZ; YORBANNA SANCHEZ; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; CTX MORTGAGE COMPANY, LLC; SFR INVESTEMENTS POOL 1, LLC,

Defendant(s),

Case No: A-13-682006-C

Dept No: XXXI

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 8 day of September 2016.

Steven D. Grierson, Clerk of the Court

Chaunte Pleasant

Chaunte Pleasant, Deputy Clerk

Ballard Spahr LLP
100 NORTH CITY PARKWAY – SUITE 1750
LAS VEGAS, NEVADA 89106-4617

BankWest of Nevada
2700 West Sahara Ave.
Las Vegas, NV 89102

94-177/1224
01

DATE	CHECK NO.
9/6/16	003474

PAY TWO HUNDRED FIFTY DOLLARS NO/100----------

AMOUNT
$250.00

TO THE ORDER OF Clerk, Supreme Court of Nevada

A-13-682006-C

OPERATING ACCOUNT

Lucy C. Ne

⑈003474⑈ ⑆122401778⑆ 7500000103⑈