

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 13 2019

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DEUTSCHE BANK NATIONAL TRUST
COMPANY, as Trustee for Morgan Stanley
ABS Capital I Inc. Trust 2006-HE8
Mortgage Pass-Through Certificates, Series
2006-HE8,

Plaintiff-counter-
defendant-Appellee,

v.

SFR INVESTMENTS POOL 1, LLC,

Defendant-counter-claimant-
cross-claimant-Appellant.

No. 18-15326

D.C. No.

2:17-cv-00259-GMN-NJK

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Gloria M. Navarro, District Judge, Presiding

Submitted December 10, 2019**
Pasadena, California

Before: BEA, COLLINS, and BRESS, Circuit Judges.

SFR Investments Pool 1, LLC (“SFR”) appeals the district court’s grant of

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

summary judgment against it and in favor of Deutsche Bank National Trust Company, as Trustee for Morgan Stanley ABS Capital I Inc. Trust 2006-HE8 Mortgage Pass-Through Certificates, Series 2006-HE8 (“Deutsche Bank”). Reviewing de novo, *Berezovsky v. Moniz*, 869 F.3d 923, 927 (9th Cir. 2017), we reverse.

The district court granted summary judgment to Deutsche Bank solely on the ground that, under *Bourne Valley Court Trust v. Wells Fargo Bank, NA*, 832 F.3d 1154 (9th Cir. 2016), the homeowners’ association (“HOA”) “foreclosed under a facially unconstitutional notice scheme.” The Ninth Circuit recently held that Nevada’s HOA foreclosure scheme is not facially unconstitutional, because our decision in *Bourne Valley* was based on a construction of Nevada law that the Nevada Supreme Court has since made clear was erroneous. *See Bank of Am., N.A. v. Arlington W. Twilight Homeowners Ass’n*, 920 F.3d 620, 623–24 (9th Cir. 2019) (“*Arlington West*”) (recognizing that *Bourne Valley* “no longer controls the analysis” in light of *SFR Investments Pool 1, LLC v. Bank of New York Mellon*, 422 P.3d 1248 (Nev. 2018) (“*Star Hill*”)).¹

The judgment in favor of Deutsche Bank against SFR is **REVERSED**. In addition, the district court’s dismissal with prejudice of SFR’s crossclaims is **REVERSED**. The case is **REMANDED** for further proceedings consistent with

¹ Neither *Arlington West* nor *Star Hill* is an advisory opinion.

this memorandum disposition. The parties shall bear their own costs on appeal.