

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 U.S. BANK AS TRUSTEE FOR GSAA )  
4 HOME EQUITY TRUST 2006-9, ASSET- )  
5 BACKED CERTIFICATES, SERIES 2006-9, )

Case No.: 2:15-cv-01177-GMN-VCF

6 Plaintiff, )

ORDER

7 vs. )

8 DIAMOND CREEK HOMEOWNERS' )  
9 ASSOCIATION; UNDERWOOD )  
10 PARTNERS, LLC; NV EAGLES, LLC; DOE )  
11 INDIVIDUALS I-X, inclusive; and ROE )  
12 CORPORATIONS I-X, inclusive, )

13 Defendants )

14 NV EAGLES, LLC, )

15 Counterclaimant, )

16 vs. )

17 U.S. BANK AS TRUSTEE FOR GSAA )  
18 HOME EQUITY TRUST 2006-9, ASSET- )  
19 BACKED CERTIFICATES, SERIES 2006-9, )

20 Counterdefendant )

21 NV EAGLES, LLC, )

22 Third-Party Plaintiff, )

23 vs. )

24 GARRETT C. PATTIANI, )

25 Third-Party Defendant. )

1 Pending before the Court is the Motion for Summary Judgment (ECF No. 48) filed by  
2 Defendant NV Eagles, LLC (“NV Eagles”), the Motion to Dismiss (ECF No. 55) filed by  
3 Defendant Diamond Creek Homeowners’ Association (the “HOA”), and the Motion for  
4 Summary Judgment (ECF No. 59) filed by Plaintiff U.S. Bank as Trustee for GSAA Home  
5 Equity Trust 2006-9, Asset-Backed Certificates, Series 2006-9 (“U.S. Bank”). Each of the  
6 pending motions has been fully briefed. However, because the Court finds that an unsettled  
7 question of state law is at least partially dispositive in this case, the Court certifies the following  
8 question to the Nevada Supreme Court:

9 Does the rule of SFR Investments Pool I, LLC v. U.S. Bank, N.A.,  
10 334 P.3d 408 (Nev. 2014) that foreclosures under NRS 116.3116  
11 extinguish first security interests apply retroactively to foreclosures  
which occurred prior to the date of that decision?

12 **I. BACKGROUND**

13 This case arises out of a homeowners’ association foreclosure sale. On February 21,  
14 2006, Garrett C. Pattiani (“Pattiani”) purchased real property located at 9426 Cormorant Lake  
15 Way, Las Vegas, Nevada 89178-8231 (the “Property”), giving lender Nationstar Mortgage  
16 LLC (“Nationstar”) a promissory note for \$284,360 (the “Note”), secured by a deed of trust  
17 (the “DOT”) against the Property. (Compl. ¶¶ 9, 14, ECF No. 1). On October 24, 2014,  
18 Nationstar assigned the DOT to Plaintiff U.S. Bank via a corporate assignment of deed of trust.  
19 (Id. ¶ 15). After recording a Notice of Delinquent Assessment Lien (the “NDAL”), a Notice of  
20 Default and Election to Sell (“the “NOD”), and a Notice of Foreclosure Sale (the “NOS”), the  
21 HOA, through its agent Alessi & Koenig, LLC (“Alessi & Koenig”), sold the Property at  
22 auction to Defendant Underwood Partners, LLC (“Underwood”) for \$11,000 on April 24, 2013.  
23 (Id. ¶¶ 21–26, 33–34). U.S. Bank further alleges that none of the pre-sale notices identified the  
24 super-priority amount and failed to describe the “deficiency in payment” required by Chapter  
25

1 116 of the Nevada Revised Statutes. (Id. ¶¶ 21–32). U.S. Bank also alleges that Underwood  
2 transferred the Property to NV Eagles on September 18, 2013. (Id. ¶ 35).

3 U.S. Bank sued the HOA, Underwood, and NV Eagles in this Court to, inter alia, quiet  
4 title to the Property, i.e., for a declaration that the DOT still encumbers the Property because  
5 the HOA sale was not in accordance with Chapter 116, did not provide an opportunity to cure  
6 the default, was commercially unreasonable, and did not comport with due process. (Id. ¶¶ 36–  
7 48). Underwood and NV Eagles answered and NV Eagles filed a counterclaim against U.S.  
8 Bank to quiet title to the Property, i.e., for a declaration that NV Eagles is the title owner of the  
9 Property, that its deed is valid and enforceable, that the HOA sale extinguished U.S. Bank’s  
10 DOT, and that NV Eagles’ title is superior to any adverse interest in the Property. (Answer,  
11 ECF No. 18). NV Eagles also filed a Third-Party Complaint against Pattiani for the same  
12 declarations. (Id.). Pattiani does not appear to have been served with any pleading.

## 13 **II. LEGAL STANDARD**

14 Pursuant to Rule 5 of the Nevada Rules of Appellate Procedure (“Rule 5”), a United  
15 States District Court may certify a question of law to the Nevada Supreme Court “upon the  
16 court’s own motion.” Nev. R. App. P. 5(a)–(b). Under Rule 5, the Nevada Supreme Court has  
17 the power to answer such a question that “may be determinative of the cause then pending in  
18 the certifying court and . . . it appears to the certifying court there is no controlling precedent in  
19 the decisions of the Supreme Court of this state.” Nev. R. App. P. 5(a).

20 Rule 5 also provides that a certification order must specifically address each of six  
21 requirements:

- 22 (1) The questions of law to be answered;
- 23 (2) A statement of all facts relevant to the questions certified;
- 24 (3) The nature of the controversy in which the questions arose;
- 25 (4) A designation of the party or parties who will be the appellant(s) and the  
party or parties who will be the respondent(s) in the Supreme Court;
- (5) The names and addresses of counsel for the appellant and respondent; and

1 (6) Any other matters that the certifying court deems relevant to a  
2 determination of the questions certified.

3 Nev. R. App. P. 5(c).

4 **III. DISCUSSION**

5 In this case, the Court is sitting in diversity jurisdiction; thus Nevada substantive law  
6 controls. Because the relevant facts are set forth above, the Court addresses the remaining five  
7 requirements below.

8 First, whether the rule announced in *SFR Invs. Pool I, LLC v. U.S. Bank, N.A.*, 334 P.3d  
9 408 (Nev. 2014) that foreclosures under NRS § 116.3116 extinguish first security interests  
10 applies retroactively to foreclosures which occurred prior to the date of that decision is a  
11 question of state law.

12 Second, the retroactivity of SFR is at least partially dispositive to the present case. If  
13 that rule is not retroactive, because the HOA sale in this case occurred prior to the issuance of  
14 the SFR decision, U.S. Bank would be entitled to a declaration that the DOT still encumbers the  
15 Property, and NV Eagles could not prevail on its counterclaim for a declaration that the HOA  
16 sale extinguished the DOT.

17 Third, there is no controlling precedent as to the retroactivity of SFR. One court in this  
18 district has discussed this issue, finding that SFR did not apply retroactively pursuant to the test  
19 outlined in *Breithaupt v. USAA Prop. & Cas. Ins. Co.*, 867 P.2d 402 (Nev. 1994). See *Trust v.*  
20 *K & P Homes*, 2:15-cv-01534-RCJ-VCF, 2015 WL 6962860, at \*5 (D. Nev. Nov. 9, 2015).  
21 However, shortly after this ruling, the court decided to certify to the Nevada Supreme Court the  
22 same retroactivity question at issue in the instant order. See *Trust v. K & P Homes*, 2:15-cv-  
23 01534-RCJ-VCF, 2016 WL 923091 (D. Nev. Mar. 9, 2016).

1           Accordingly, under Rule 5, answering this certified question is within the power of the  
2 Nevada Supreme Court, and the Court finds that a determination of this question would  
3 promote judicial efficiency.

4 **IV. CONCLUSION**

5           **IT IS HEREBY ORDERED** that the Motion for Summary Judgment (ECF No. 48)  
6 filed by Defendant NV Eagles, LLC, the Motion to Dismiss (ECF No. 55) filed by Defendant  
7 Diamond Creek Homeowners' Association, and the Motion for Summary Judgment (ECF No.  
8 59) filed by Plaintiff U.S. Bank as Trustee for GSAA Home Equity Trust 2006-9, Asset-Backed  
9 Certificates, Series 2006-9 are all **DENIED without prejudice** with permission to renew these  
10 motions within thirty (30) days of the resolution of the Court's Certified Question to the  
11 Nevada Supreme Court.

12           **IT IS FURTHER ORDERED** that the following question of law is **CERTIFIED to**  
13 **the Nevada Supreme Court** pursuant to Rule 5 of the Nevada Rules of Appellate Procedure:

14                       Whether the rule of SFR Investments Pool I, LLC v. U.S. Bank,  
15                       N.A., 334 P.3d 408 (Nev. 2014) that foreclosures under NRS §  
16                       116.3116 extinguish first security interests applies retroactively to  
                          foreclosures which occurred prior to the date of that decision.

17 See Nev. R. App. P. 5(c)(1). The nature of the controversy and a statement of facts are  
18 discussed above. See Nev. R. App. P. 5(c)(2)–(3). Plaintiff U.S. Bank is designated as the  
19 Appellant, and Defendants Diamond Creek Homeowners' Association, NV Eagles, LLC, and  
20 Underwood Partners, LLC are designated as the Respondents. See Nev. R. App. P. 5(c)(4). The  
21 names and addresses of counsel are as follows:

22                       **Counsel for Plaintiff U.S. Bank**

23                       Christine M. Parvan and Allison R. Schmidt  
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