

Snell & Wilmer
LLP
LAW OFFICES
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
702.784.5200

1 Jeffrey Willis, Esq.
2 Nevada Bar No. 4797
3 Holly E. Cheong, Esq.
4 Nevada Bar No. 11936
5 SNELL & WILMER L.L.P.
6 3883 Howard Hughes Parkway, Suite 1100
7 Las Vegas, NV 89169
8 Telephone: (702) 784-5200
9 Facsimile: (702) 784-5252
10 Email: jwillis@swlaw.com
11 hcheong@swlaw.com

12 *Attorneys for Plaintiff HSBC Bank, USA, National*
13 *Association, as Trustee for Mortgageit Securities Corp.*
14 *Mortgage Loan Trust, Series 2007-1, Mortgage Pass-*
15 *Through Certificates*

16 **UNITED STATES DISTRICT COURT**
17 **DISTRICT OF NEVADA**

18 HSBC BANK, USA, NATIONAL
19 ASSOCIATION, AS TRUSTEE FOR
20 MORTGAGEIT SECURITIES CORP.
21 MORTGAGE LOAN TRUST, SERIES
22 2007-1, MORTGAGE PASS-THROUGH
23 CERTIFICATES, a national banking
24 association;

25 Plaintiff,

26 vs.

27 SFR INVESTMENTS POOL 1, LLC, a
28 Nevada limited liability company; VIA
VALENCIA/VIA VENTURA
HOMEOWNERS ASSOCIATION, a Nevada
non-profit corporation; ABSOLUTE
COLLECTION SERVICES, LLC, a Nevada
limited liability company;

Defendants.

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

Counter-Claimant,

vs.

Case No.: 2:17-cv-01512-APG-VCF

**STIPULATION AND ORDER TO
STAY LITIGATION PENDING
CERTIFIED QUESTION BEFORE
NEVADA SUPREME COURT, CASE
NO. 72931**

1 HSBC BANK, USA, NATIONAL
2 ASSOCIATION, AS TRUSTEE FOR
3 MORTGAGEIT SECURITIES CORP.
4 MORTGAGE LOAN TRUST, SERIES 2007-
5 1, MORTGAGE PASS-THROUGH
6 CERTIFICATES, national banking
7 association, CITIMORTGAGE, INC.;

8 MAGELLAN A. AQUINO, an individual,
9
10 Counter-Defendant/Cross-Defendants.
11
12

13 It is hereby stipulated and agreed by and between Plaintiff/Counter-Defendant HSBC
14 Bank, USA, National Association, as Trustee for Mortgageit Securities Corp. Mortgage Loan
15 Trust, Series 2007-1, Mortgage Pass-Through Certificates (“HSBC Bank”),
16 Defendant/Counterclaimant/Cross-Claimant SFR Investment Pool 1, LLC (“SFR”), Defendant
17 Via Valencia/Via Ventura Homeowners Association (the “HOA,”), and Defendant Absolute
18 Collection Services (collectively, the “Parties”), by and through their respective counsel:

19 1. This lawsuit is one of hundreds where the parties dispute the effect of a non-
20 judicial foreclosure sale held by an HOA pursuant to NRS 116.3116 *et seq.* (the “Statute”) for an
21 owner’s failure to pay HOA assessments.

22 2. On August 12, 2016, the Ninth Circuit issued a decision in *Bourne Valley Court*
23 *Trust v. Wells Fargo Bank, N.A.*, 832 F.3d 1154 (9th Cir. 2016), holding that NRS 116.3116 *et*
24 *seq.* is facially unconstitutional under the due process clause of the Fourteenth Amendment to the
25 United States Constitution.

26 3. On March 1, 2017, the Nevada Supreme Court issued a decision in *Saticoy Bay*
27 *LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage*, 388 P.3d 970 (Nev. 2017), holding
28 that NRS 116.3116 *et seq.* is not facially unconstitutional.

1. On May 3, 2017, this Court filed a certified question with the Nevada Supreme
Court in *SFR Investments Pool 1, LLC v. Bank of New York Mellon*, Case No. 72931, requesting
that the Nevada Supreme Court determine whether incorporation of NRS 107.090 into NRS
116.31168 requires homeowners’ associations to provide notices of default to lenders, even when
lenders do not affirmatively request notice (the “Certified Question”).

1 5. Staying this case pending a remittitur in the Certified Question will enable the
2 parties to present arguments and evidence to this Court with complete legal authority, thereby
3 promoting the most efficient use of the Court's and the parties' limited resources.

4 6. Because the Certified Question is fully briefed and submitted for decision without
5 oral argument before the Nevada Supreme Court, the stay is not indefinite.

6 7. Accordingly, the parties request that all proceedings in this lawsuit are stayed, and
7 all upcoming deadlines, hearings, and conferences be vacated.

8 8. The parties agree that SFR will maintain the property at issue in its current
9 condition and will abide by all obligations and responsibilities arising from SFR's alleged
10 ownership interest in the property, including but not limited to the payment of all applicable fees,
11 assessments, taxes, and other financial obligations.

12 9. The parties agree that upon written request and reasonable notice, SFR shall allow
13 HSBC Bank access to the property to inspect and ensure the property is being reasonably
14 maintained.

15 10. The parties agree that HSBC Bank will not pursue foreclosure against the property
16 at issue during the stay.

17 11. The parties agree that SFR will not sell, transfer, or convey the property while this
18 case is stayed.

19 12. The parties further agree that their claims and defenses will be tolled, if necessary,
20 for the duration of the stay, beginning on the date this stipulation is filed until the Court issues an
21 order lifting the stay.

22 13. This stay will expire after the Nevada Supreme Court issues a remittitur in the
23 Certified Question.

24 14. Within fifteen (15) days after the remittitur is issued, the parties shall file a notice
25 informing the Court that the stay has expired.

26 15. The parties agree that upon dissolution of this stay, the parties will meet and confer
27 and submit a stipulation and order setting forth an updated discovery schedule.

28 ///

1 16. SFR and HSBC Bank agree that HSBC Bank shall respond to SFR’s written
2 discovery requests, served on or about April 6, 2018, within forty-five (45) days after an order
3 lifting the stay is entered.

4 17. SFR agrees to vacate HSBC Bank’s deposition, currently set for April 25, 2018.
5 After an order lifting the stay is entered, the parties will provide HSBC Bank with at least sixty
6 (60) days notice of any deposition of HSBC Bank’s person most knowledgeable, or any other
7 employee, representative, or agent of HSBC Bank identified for any deposition in this matter.

8 **IT IS SO STIPULATED.**

9
10 DATED this 17th day of April, 2018

DATED this 17th day of April, 2018

11 By: /s/ Holly E. Cheong

By: /s/ Diana S. Ebron

12 Jeffrey Willis, Esq.
13 Nevada Bar No. 4797
14 Holly E. Cheong, Esq.
15 Nevada Bar No. 11936
16 Snell & Wilmer, L.L.P.
17 3883 Howard Hughes Parkway, Suite 1100
18 Las Vegas, NV 89169
19 Telephone: (702) 784-5200
20 Facsimile: (702) 784-5252
jwillis@swlaw.com
hcheong@swlaw.com
*Attorneys for Plaintiff HSBC Bank, USA,
National Association, as Trustee for
Mortgageit Securities Corp. Mortgage
Loan Trust, Series 2007-1, Mortgage Pass-
Through Certificates*

Diana S. Ebron, Esq.
Nevada Bar No. 10580
Jacqueline A. Gilbert, Esq.
Nevada Bar No. 10593
Karen L. Hanks, Esq.
Nevada Bar No. 9578
Kim Gilbert Ebron
7625 Dean Martin Drive, Suite 110
Las Vegas, NV 89139
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
diana@kgelegal.com
jackie@kgelegal.com
karen@kgelegal.com
*Attorneys for Defendant SFR
Investments Pool 1, LLC*

21 **SIGNATURES CONTINUED ON NEXT PAGE**

22
23
24
25
26
27
28

1 DATED this 17th day of April, 2018

2 By: /s/ Shane D. Cox
3 Shane D. Cox, Esq.
4 Nevada Bar No. 13852
5 Absolute Collection Services, LLC
6 8440 West Lake Mead Boulevard, Suite
7 210
8 Las Vegas, NV 89128
9 Telephone: (702) 531-3394
10 Facsimile: (702) 531-3396
11 shane@absolute-collection.com
12 *Attorneys for Defendant Absolute*
13 *Collection, LLC*

DATED this 17th day of April, 2018

By: /s/ Ashlie L. Surur
Ashlie L. Surur, Esq.
Nevada Bar No. 11290
Hall, Jaffe & Clayton, L.L.P.
7425 Peak Drive
Las Vegas, NV 89128
Telephone: (702) 316-4111
Facsimile: (702) 316-4114
asurur@lawhjc.com
Attorneys for Defendant Via
Valencia/Via Ventura Homeowners
Association

ORDER

11 The Court having considered the attached stipulation of the parties, IT IS ORDERED

12 THAT:

- 13 1. All proceedings in this lawsuit are stayed, and all upcoming deadlines, hearings, and
- 14 conferences be vacated.
- 15 2. SFR will maintain the property at issue in its current condition and will abide by all
- 16 obligations and responsibilities arising from SFR's alleged ownership interest in the
- 17 property, including but not limited to the payment of all applicable fees, assessments,
- 18 taxes, and other financial obligations.
- 19 3. Upon written request and reasonable notice, SFR shall allow HSBC Bank access to the
- 20 property to inspect and ensure the property is being reasonably maintained.
- 21 4. HSBC Bank will not pursue foreclosure against the property at issue during the stay.
- 22 5. SFR will not sell, transfer, or convey the property while this case is stayed.
- 23 6. The parties' claims and defenses will be tolled, if necessary, for the duration of the stay,
- 24 beginning on the date this stipulation is filed until the Court issues an order lifting the
- 25 stay.
- 26 7. This stay will expire after the Nevada Supreme Court issues a remittitur in the Certified
- 27 Question, *SFR Investments Pool 1, LLC v. Bank of New York Mellon*, Case No. 72931.
- 28

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

8. Within fifteen (15) days after the remittitur is issued, the parties shall file a notice informing the Court that the stay has expired.
9. Upon dissolution of this stay, the parties will meet and confer and submit a stipulation and order setting forth an updated discovery schedule.

IT IS SO ORDERED:



U.S. DISTRICT COURT JUDGE

Dated: April 19, 2018.