

Case No. 69400

IN THE SUPREME COURT OF NEVADA

NATIONSTAR MORTGAGE, LLC

Appellant,

vs.

SFR INVESTMENTS POOL 1, LLC,

Respondent.

Electronically Filed
Feb 13 2017 09:41 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

From the Eighth Judicial District Court, Clark County
The Honorable MICHAEL P. VILLANI, District Judge
District Court Case No. A-13-684715-C

**RESPONDENT'S RESPONSE TO MOTION OF AMICUS CURIAE
FEDERAL HOUSING FINANCE AGENCY TO PARTICIPATE IN ORAL
ARGUMENT**

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Respondent SFR Investments Pool 1, LLC (“SFR”) here by responds to amicus curiae, Federal Housing Finance Agency’s (“FHFA”), request to participate in oral argument.

SFR believes that the FHFA has failed to demonstrate an “extraordinary reason” for why it should be granted leave to participate in oral argument. NRAP 29(h). The issue here is straightforward: did Congress authorize a third-party to litigate and enforce HERA, and more specifically 12 U.S.C. § 4617(j)(3).

None of the policy reasons advanced by the FHFA can override the plain language of the statute. Even in discussing the issue, the FHFA states that the section in question is about “property of Freddie Mac.” Yet, the section in question refers to “property of the Agency [FHFA].” 12 U.S.C. § 4617(j)(3). Additionally, the FHFA fails to address the plain language of the statutes and its own regulations that limit who has the ability to exercise the authority given to the FHFA by Congress. *See* 12 U.S.C. § 4617(b)(2)(D)(ii); 12 C.F.R. § 1237.3(a)(7). The FHFA provides no explanation as to why it is “uniquely qualified to identify, consider, and present to the Court” the plain language of the statutes and regulations to which it is bound, other than its press release and statement. *See* Mot. ¶ 6. However, these documents are neither law nor proper rule. They provide nothing to assist this Court.

Furthermore, the FHFA knows how to bring or intervene in NRS 116 lawsuits in compliance with the plain language of HERA and its regulations. *See, e.g., FHFA, et al v. SFR, et al*, Case No. 2:15-cv-01338 (D.Nev.) (currently on appeal at the Ninth Circuit, Case No. 16-15962) (plaintiff); *Ditech Financial et al v. SFR et al*, 2:15-cv-02381 (D.Nev.) (plaintiff); *Saticoy Bay, LLC Series 1702 Empire Mine v. Federal National Mortgage Assoc.*, No. 2:14-cv-01975 (D. Nev.) (intervenor). Yet, the FHFA chose not to intervene in the underlying lawsuit nor did it substitute as a real party in interest. As such, FHFA is not a party to this appeal and has provided no “extraordinary reason” to argue. The FHFA’s request should be denied.

If this Court entertains the motion and allows the FHFA to participate, which it should not, then appellant Nationstar Mortgage, LLC (“Nationstar”) should relinquish time to FHFA from its allotted 15 minutes. However, to the extent this Court opts to allot the FHFA its requested 5 minutes additional, SFR requests that it be allowed the same amount of time in its response, for a total of 20 minutes, to respond to both the appellant’s arguments and FHFA’s arguments in support of appellant. If additional time was only granted to FHFA, then effectively the appellant’s position would be given substantially more time in argument than the respondent’s position.

To the extent that the FHFA is allowed to participate in oral argument, either from Nationstar's time or with its requested additional 5 minutes, SFR requests this Court confirm that FHFA's argument be made during the opening argument phase, not in rebuttal. If FHFA argues its amicus position on rebuttal, it will not present SFR with a chance to respond to the arguments set forth by the FHFA, resulting in extreme prejudice to SFR.

For the above reasons, SFR requests that any additional time granted to the FHFA for argument in support of appellant be added to SFR's response time. Additionally, SFR requests that this Court limits the FHFA's five minutes of argument to the appellant's opening argument phase thus allowing SFR a chance to respond to the FHFA's arguments.

DATED this 10th day of February 2017.

KIM GILBERT EBRON

/s/Jacqueline A. Gilbert

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 10th day of February, 2017. Electronic service of the foregoing **RESPONDENT'S RESPONSE TO MOTION OF AMICUS CURIAE FEDERAL HOUSING FINANCE AGENCY TO PARTICIPATE IN ORAL ARGUMENT** shall be made in accordance with the Master Service List as follows:

Docket Number and Case Title: 69400 - NATIONSTAR MORTG., LLC VS. SFR INV.'S POOL 1, LLC

Case Category Civil Appeal

Information current as of: Feb 10 2017 05:23 p.m.

Electronic notification will be sent to the following:

Ariel Stern
Jacqueline Gilbert
Howard Kim
Allison Schmidt
Robert Eisenberg
Darren Brenner
Leslie Bryan-Hart
John Tennert

Dated this 10th day of February 2017.

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