Case No. 69400

IN THE SUPREME COURT OF NEVADA

NATIONSTAR MORTGAGE, LLC

Appellant,

vs.

SFR INVESTMENTS POOL 1, LLC,

Respondent.

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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 NRAP 31(e) SUPPLEMENTAL AUTHORITIES

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Pursuant to NRAP 31(e), SFR Investments Pool 1, LLC ("SFR") submits the following supplemental authorities. Oral argument is scheduled for Tuesday, March 7, 2017, at 10:30 a.m.

Under 31(e), a litigant can file supplemental authorities "[w]hen pertinent and significant authorities come to a party's attention after the party's brief has been filed, but before a decision." NRAP 31(e). A notice of supplemental authorities should "state concisely and without argument the legal proposition for which each supplemental authority is cited," and identify the pages of the brief that are being supplemented. *Id.*

Consistent with 31(e), SFR submits the following authorities regarding whether private entities have standing to use federal law to preempt state statutes.

1. *Green Tree Servicing, LLC, v. Collegium Fund LLC*, No. 2:15–cv–0700–GMN–GWF, 2016 WL 5429652, at *4 (D. Nev. Sept. 27, 2016).

This case supplements the authorities cited in SFR's Answering Brief at pages 27-32. In *Green Tree*, Chief Judge Navarro concluded that a servicer could not invoke 12 U.S.C. § 4617(j)(3) in a case where neither FHFA nor a "regulated entity" (i.e. Fannie Mae or Freddie Mac) was a litigant. *Green Tree*, 2016 WL 5429652, at *4. Chief Judge Navarro explained, "[a]lthough Green Tree has alleged a close relationship between itself and Fannie Mae as Fannie Mae's servicer, it has not provided evidence demonstrating any hindrance to FHFA and Fannie Mae's ability

to protect their own interests. FHFA and Fannie Mae are the best proponents of their own rights. Green Tree therefore lacks prudential standing to raise these third parties' interests."

2. *Guild Mortg. Corp. v. Prestwick Ct. Tr.*, No. 2:15–cv–258–JCM–VCF, 2017 WL 714343, at *6 (D. Nev. Feb. 22, 2017).

This case supplements the authorities cited in SFR's Answering Brief at pages 27-32. In *Guild Mortg.*, Judge Mahan determined that a private litigant could not use federal law to preempt NRS Chapter 116, even when the mortgage was allegedly insured by the FHA.[1] Judge Mahan noted that "here, FHA is not a named party. Neither the complaint nor the counterclaim seeks to quiet title against FHA. Thus, this argument [i.e. that the foreclosure sale is void because the loan was insured by FHA] provides no support for Guild as the outcome of the instant case has no bearing on FHA's ability to quiet title."

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[1] "FHA" stands for the "Federal Housing Administration," which is "within" the United States Department of Housing and Urban Development. 42 U.S.C. § 3533(b); 42 U.S.C. § 3534(a). FHA should not be mistaken for the Federal Housing Finance Agency ("FHFA").

Copies of the aforementioned authorities are attached hereto.

DATED this 1st day of March 2017.

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on this 1st day of March, 2017. Electronic service of the foregoing **RESPONDENT'S NRAP 31(e) SUPPLEMENTAL AUTHORITIES** 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: Mar 1 2017 03:44 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 1st day of March 2017.

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

EXHIBIT A

2017 WL 714343
Only the Westlaw citation is currently available.
United States District Court,
D. Nevada.

Guild Mortgage Company, Plaintiff(s),
v.
Prestwick Court Trust, et al., Defendant(s).

Case No. 2:15–CV–258 JCM (VCF)
|
Signed 02/22/2017

ORDER

James C. Mahan, UNITED STATES DISTRICT JUDGE

***1** Presently before the court is plaintiff Guild Mortgage Company's ("Guild") motion for summary judgment. (ECF No. 40). Defendant Prestwick Court Trust ("Prestwick") filed a response (ECF No. 46), to which Guild replied (ECF No. 49).

Also before the court is Prestwick's motion for summary judgment (ECF No. 43), in which defendant Canyon Crest Master Association (the "HOA") joined (ECF No. 45). Guild filed a response (ECF No. 47), to which Prestwick replied (ECF No. 51).

I. Facts

This case involves a dispute over real property located at 247 Prestwick Court, Mesquite, Nevada (the "property").

On November 29, 2011, Anibal Estrada obtained a loan in the amount of $180,285.00 from Guild, which was secured by a deed of trust. (ECF No. 1 at 3).

On December 21, 2012, Alessi and Koenig, LLC ("A&K"), acting on behalf of the HOA, recorded a notice of delinquent assessment lien, stating an amount due of $1,253.27. (ECF No. 1 at 3). On May 26, 2013, A&K recorded a notice of default and election to sell to satisfy the delinquent assessment lien, stating an amount due of $2,469.81. (ECF No. 1 at 4).

On October 10, 2013, A&K recorded a notice of trustee's sale, stating an amount due of $4,538.40. (ECF No. 1 at 4). A&K also mailed the notice of trustee's sale by certified mail to Guild and other interested parties. (ECF No. 46–8).

On November 6, 2013, Prestwick purchased the property at the foreclosure sale for $20,100.00, and received a trustee's deed upon sale in favor of Prestwick. (ECF No. 1 at 4).

On February 12, 2015, Guild filed the underlying complaint, alleging five causes of action: (1) declaratory relief; (2) declaratory relief; (3) wrongful foreclosure; (4) declaratory relief; (5) declaratory relief; and (6) quiet title. (ECF No. 1).

On April 17, 2015, Prsetwick filed a counter/crossclaim, alleging two causes of action: (1) quiet title; and (2) declaratory relief. (ECF No. 10).

In the instant motions, Guild and Prestwick both move for summary judgment. The court will address each as it sees fit.

II. Legal Standard

The Federal Rules of Civil Procedure allow summary judgment when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that "there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a). A principal purpose of summary judgment is "to isolate and dispose of factually unsupported claims." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).

For purposes of summary judgment, disputed factual issues should be construed in favor of the non-moving party. *Lujan v. Nat'l Wildlife Fed.*, 497 U.S. 871, 888 (1990). However, to be entitled to a denial of summary judgment, the nonmoving party must "set forth specific facts showing that there is a genuine issue for trial." *Id.*

In determining summary judgment, a court applies a burden-shifting analysis. The moving party must first satisfy its initial burden. "When the party moving for summary judgment would bear the burden of proof at trial, it must come forward with evidence which would entitle it to a directed verdict if the evidence went uncontroverted at trial. In such a case, the moving party has the initial burden of establishing the absence of a genuine issue of fact on each issue material to its case." *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213

F.3d 474, 480 (9th Cir. 2000) (citations omitted).

***2** By contrast, when the nonmoving party bears the burden of proving the claim or defense, the moving party can meet its burden in two ways: (1) by presenting evidence to negate an essential element of the non-moving party's case; or (2) by demonstrating that the nonmoving party failed to make a showing sufficient to establish an element essential to that party's case on which that party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–24. If the moving party fails to meet its initial burden, summary judgment must be denied and the court need not consider the nonmoving party's evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159–60 (1970).

If the moving party satisfies its initial burden, the burden then shifts to the opposing party to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute, the opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient that "the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial." *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 631 (9th Cir. 1987).

In other words, the nonmoving party cannot avoid summary judgment by relying solely on conclusory allegations that are unsupported by factual data. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, the opposition must go beyond the assertions and allegations of the pleadings and set forth specific facts by producing competent evidence that shows a genuine issue for trial. *See Celotex*, 477 U.S. at 324.

At summary judgment, a court's function is not to weigh the evidence and determine the truth, but to determine whether there is a genuine issue for trial. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). The evidence of the nonmovant is "to be believed, and all justifiable inferences are to be drawn in his favor." *Id.* at 255. But if the evidence of the nonmoving party is merely colorable or is not significantly probative, summary judgment may be granted. *See id.* at 249–50.

III. Discussion

Under Nevada law, "[a]n action may be brought by any person against another who claims an estate or interest in real property, adverse to the person bringing the action for the purpose of determining such adverse claim." Nev. Rev. Stat. § 40.010. "A plea to quiet title does not require any particular elements, but each party must plead and prove his or her own claim to the property in question and a plaintiff's right to relief therefore depends on superiority of title." *Chapman v. Deutsche Bank Nat'l Trust Co.*, 302 P.3d 1103, 1106 (Nev. 2013) (citations and internal quotation marks omitted). Therefore, for plaintiff to succeed on its quiet title action, it needs to show that its claim to the property is superior to all others. *See also Breliant v. Preferred Equities Corp.*, 918 P.2d 314, 318 (Nev. 1996) ("In a quiet title action, the burden of proof rests with the plaintiff to prove good title in himself.").

A. Conclusive Recitals

Section 116.3116(1) of the Nevada Revised Statutes gives an HOA a lien on its homeowners' residences for unpaid assessments and fines; moreover, NRS 116.3116(2) gives priority to that HOA lien over all other liens and encumbrances with limited exceptions—such as "[a] first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent." Nev. Rev. Stat. § 116.3116(2)(b).

***3** The statute then carves out a partial exception to subparagraph (2)(b)'s exception for first security interests. *See* Nev. Rev. Stat. § 116.3116(2). In *SFR Investment Pool 1 v. U.S. Bank*, the Nevada Supreme Court provided the following explanation:

> As to first deeds of trust, NRS 116.3116(2) thus splits an HOA lien into two pieces, a superpriority piece and a subpriority piece. The superpriority piece, consisting of the last nine months of unpaid HOA dues and maintenance and nuisance-abatement charges, is "prior to" a first deed of trust. The subpriority piece, consisting of all other HOA fees or assessments, is subordinate to a first deed of trust.

334 P.3d 408, 411 (Nev. 2014) ("*SFR Investments*").

Chapter 116 of the Nevada Revised Statutes permits an HOA to enforce its superpriority lien by nonjudicial foreclosure sale. *Id.* at 415. Thus, "NRS 116.3116(2) provides an HOA a true superpriority lien, proper foreclosure of which will extinguish a first deed of trust." *Id.* at 419; *see also* Nev. Rev. Stat. § 116.31162(1) (providing that "the association may foreclose its lien by sale" upon compliance with the statutory notice and timing rules).

Subsection (1) of NRS 116.31166 provides that the recitals in a deed made pursuant to NRS 116.31164 of the following are conclusive proof of the matters recited:

> (a) Default, the mailing of the notice of delinquent assessment, and the recording of the notice of default and election to sell;
>
> (b) The elapsing of the 90 days; and
>
> (c) The giving of notice of sale[.]

Nev. Rev. Stat. § 116.31166(1)(a)–(c).[1] "The 'conclusive' recitals concern default, notice, and publication of the [notice of sale], all statutory prerequisites to a valid HOA lien foreclosure sale as stated in NRS 116.31162 through NRS 116.31164, the sections that immediately precede and give context to NRS 116.31166." *Shadow Wood Homeowners Assoc., Inc. v. N.Y. Cmty. Bancorp, Inc.*, 366 P.3d 1105, 1110 (Nev. 2016 ("*Shadow Wood* "). Nevertheless, courts retain the equitable authority to consider quiet title actions when a HOA's foreclosure deed contains statutorily conclusive recitals. *See id.* at 1112.

[1] The statute further provides as follows:
> 2. Such a deed containing those recitals is conclusive against the unit's former owner, his or her heirs and assigns, and all other persons. The receipt for the purchase money contained in such a deed is sufficient to discharge the purchaser from obligation to see to the proper application of the purchase money.
> 3. The sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the unit's owner without equity or right of redemption.
> Nev. Rev. Stat. § 116.31166(2)–(3).

Here, Prestwick has provided the recorded trustee's deed upon sale, the recorded notice of delinquent assessment, the recorded notice of default and election to sell, and the recorded notice of trustee's sale. (ECF No. 43). Pursuant to NRS 116.31166, these recitals in the recorded foreclosure deed are conclusive to the extent that they implicate compliance with NRS 116.31162 through NRS 116.31164, which provide the statutory prerequisites of a valid foreclosure. *See id.* at 1112 ("[T]he recitals made conclusive by operation of NRS 116.31166 implicate compliance only with the statutory prerequisites to foreclosure."). Therefore, pursuant to NRS 116.31166 and the recorded foreclosure deed, the foreclosure sale is valid to the extent that it complied with NRS 116.31162 through NRS 116.31164.

***4** Importantly, while NRS 116.3116 accords certain deed recitals conclusive effect—*e.g.*, default, notice, and publication of the notice of sale—it does not conclusively, as a matter of law, entitle Prestwick to success on its quiet title claim. *See Shadow Wood*, 366 P.3d at 1112 (rejecting contention that NRS 116.31166 defeats, as a matter of law, action to quiet title). Thus, the question remains whether Guild has demonstrated sufficient grounds to justify setting aside the foreclosure sale. *See id.* "When sitting in equity ... courts must consider the entirety of the circumstances that bear upon the equities. This includes considering the status and actions of all parties involved, including whether an innocent party may be harmed by granting the desired relief." *Id.*

B. Commercial Reasonability

NRS 116.3116 codifies the Uniform Common Interest Ownership Act ("UCIOA") in Nevada. *See* Nev. Rev. Stat. § 116.001 ("This chapter may be cited as the Uniform Common–Interest Ownership Act"); *SFR Investments Pool 1, LLC*, 334 P.3d at 410. NRS Chapter 116 includes an obligation of good faith. *See* Nev. Rev. Stat. § 116.1113 ("Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement."). Furthermore, numerous courts have interpreted the UCIOA and NRS 116.3116 as imposing a commercial reasonableness standard on foreclosure of association liens.[2]

[2] *See, e.g.*, *Bayview Loan Servicing, LLC v. Alessi & Koenig, LLC*, 962 F. Supp. 2d 1222, 1229 (D. Nev. 2013) ("[T]he sale for $10,000 of a Property that was worth $176,000 in 2004, and which was probably worth somewhat more than half as much when sold at the foreclosure sale, raises serious doubts as to commercial reasonableness."); *SFR Investments Pool 1, LLC*, 334 P.3d at 418 n.6 (noting bank's argument that purchase at association foreclosure sale was not commercially reasonable); *Thunder Props., Inc. v. Wood*, No. 3:14–cv–00068–RCJ–WGC, 2014 WL 6608836, at *2 (D. Nev. Nov. 19, 2014) (concluding that purchase price of "less than 2% of the amounts of the deed of trust" established commercial unreasonableness "almost conclusively"); *Rainbow Bend Homeowners Ass'n v. Wilder*, No. 3:13–cv–00007–RCJ–VPC, 2014 WL 132439, at *2 (D. Nev. Jan. 10, 2014) (deciding case on other grounds but noting that "the purchase of a residential property free and clear of all encumbrances for the price of delinquent HOA dues would raise grave doubts as to the commercial reasonableness of the sale under Nevada law"); *Will v. Mill Condo. Owners' Ass'n*, 848 A.2d 336, 340 (Vt. 2004) (discussing commercial reasonableness standard and concluding

> that "the UCIOA does provide for this additional layer of protection").

Prestwick relies on the conclusive deed recitals to support its assertion that the foreclosure sale was commercially reasonable and argues that price is not an issue pursuant to *SFR Investments*. (ECF No. 43 at 17). *SFR Investments*, however, does not hold that price is not considered in a commercial reasonability analysis. Thus, the deed recitals alone are insufficient to show that the foreclosure sale was commercially reasonable. *See, e.g.*, *Levers v. Rio King Land & Inv. Co.*, 560 P.2d 917, 920 (Nev. 1977) ("Every aspect of the disposition, including the method, manner, time, place, and terms, must be commercially reasonable.").

Guild argues that the foreclosure sale should be set aside because the sale price was grossly inadequate. (ECF No. 40 at 17). In particular, Guild asserts that Prestwick paid 10.75% of the property's value at the foreclosure sale and grossly inadequate sale price is sufficient to set aside a foreclosure sale under *Shadow Wood*. (ECF No. 40 at 15–17).

The court disagrees. In *Shadow Wood*, the Nevada Supreme Court held that an HOA's foreclosure sale may be set aside under a court's equitable powers notwithstanding any recitals on the foreclosure deed where there is a "grossly inadequate" sales price and "fraud, unfairness, or oppression." 366 P.3d at 1110; *see also Nationstar Mortg., LLC v. SFR Invs. Pool 1, LLC*, 184 F. Supp. 3d 853, 857–58 (D. Nev. 2016).

***5** In other words, "demonstrating that an association sold a property at its foreclosure sale for an inadequate price is not enough to set aside that sale; there must also be a showing of fraud, unfairness, or oppression." *Id.* at 1112; *see also Long v. Towne*, 639 P.2d 528, 530 (Nev. 1982) ("Mere inadequacy of price is not sufficient to justify setting aside a foreclosure sale, absent a showing of fraud, unfairness or oppression." (citing *Golden v. Tomiyasu*, 387 P.2d 989, 995 (Nev. 1963) (stating that, while a power-of-sale foreclosure may not be set aside for mere inadequacy of price, it may be if the price is grossly inadequate and there is "in addition proof of some element of fraud, unfairness, or oppression as accounts for and brings about the inadequacy of price" (internal quotation omitted)))). Thus, grossly inadequate sale price is insufficient to justify setting aside a foreclosure sale absent a showing fraud, oppression, or unfairness.

Guild argues that the purchase price ($20,100.00) at the foreclosure sale (November 6, 2013) was grossly inadequate because it was 10.75% of the property's fair market value. (ECF No. 40). In support, Guild provides that its appraisal valued the property at $187,000.00 at the time of the foreclosure sale. (ECF No. 40 at 17).

The appraisal report attached to Guild's motion, however, states that the defined value of the property was "as of November 29, 2011" (ECF No. 40–1 at 34), almost two years before the foreclosure sale, not at the time of the foreclosure sale. Thus, Guild has not set forth any competent evidence that the sale price was grossly inadequate.

In light of the foregoing, the court will deny both motions for summary judgment as neither Guild nor Prestwick has sufficiently established this issue in its favor.

C. Bona Fide Purchaser Status

Guild and Prestwick dispute Prestwick's status as a bona fide purchaser. The issue of bona fide purchaser ("BFP") status is distinct from that of the conclusiveness of deed recitals. Specifically, the issue of BFP status concerns a buyer's knowledge of competing interests, whereas the other concerns a statutory presumption that can be equitably overcome under *Shadow Wood Homeowners Assoc., Inc. See, e.g.*, *Nationstar Mortg., LLC*, 184 F. Supp. 3d at 859–60.

A BFP is a person who purchases real property "for a valuable consideration and without notice of the prior equity, and without notice of facts which upon diligent inquiry would be indicated and from which notice would be imputed to him, if he failed to make such inquiry." *Bailey v. Butner*, 176 P.2d 226, 234 (Nev. 1947) (emphasis omitted); *see also Moore v. De Bernardi*, 220 P. 544, 547 (Nev. 1923) ("The decisions are uniform that the bona fide purchaser of a legal title is not affected by any latent equity founded either on a trust, [e]ncumbrance, or otherwise, of which he has no notice, actual or constructive."). Under Nevada law, "bona fide purchaser" means as follows:

> Any purchaser who purchases an estate or interest in any real property in good faith and for valuable consideration and who does not have actual knowledge, constructive notice of, or reasonable cause to know that there exists a defect in, or adverse rights, title or interest to, the real property is a bona fide purchaser.

Nev. Rev. Stat. § 111.180(1). In other words, a later-obtained interest can prevail over an earlier-obtained interest where the later purchaser has no knowledge of the previous interest and records his/her interest first. *See Nationstar Mortg., LLC*, 184 F. Supp. 3d at 860.

The court finds that genuine issues of fact exist regarding Prestwick's status as a bona fide purchaser so as to preclude summary judgment. A reasonable jury could conclude that Prestwick was not a bona fide purchaser because a reasonable purchaser would have perceived some risk that the foreclosure would not extinguish the first deed of trust as the law was not clear at the time of the sale that the foreclosure would extinguish the deed of trust. *See id.*

C. FHA–Insured Loan

***6** Guild argues that the foreclosure sale is void because the loan was insured by FHA. (ECF No. 40 at 44–45).

The single-family mortgage insurance program allows FHA to insure private loans, expanding the availability of mortgages to low-income individuals wishing to purchase homes. *See Sec'y of Hous. & Urban Dev. v. Sky Meadow Ass'n*, 117 F. Supp. 2d 970, 980–81 (C.D. Cal. 2000) (discussing program); *W Wash. & Sandhill Homeowners Ass'n v. Bank of Am., N.A.*, No. 2:13–cv–01845–GMN–GWF, 2014 WL 4798565, at *1 n.2 (D. Nev. Sept. 25, 2014) (same). If a borrower under this program defaults, the lender may foreclose on the property, convey title to HUD, and submit an insurance claim. 24 C.F.R. § 203.355. HUD's property disposition program generates funds to finance the program. *See* 24 C.F.R. § 291.1.

Allowing an HOA foreclosure to wipe out a first deed of trust on a federally-insured property thus interferes with the purposes of the FHA insurance program. Specifically, it hinders HUD's ability to recoup funds from insured properties. As this court previously stated in *SaticoyBayLLC, Series 7342 Tanglewood Park v. SRMOF II 2012–1 Trust*, the court reads the foregoing precedent to indicate that a homeowners' association foreclosure sale under NRS 116.3116 may not extinguish a federally-insured loan. No. 2:13–CV–1199 JCM (VCF), 2015 WL 1990076, at *4 (D. Nev. Apr. 30, 2015).

However, the instant case is distinguishable from these cases in that, here, FHA is not a named party. Neither the complaint nor the counterclaim seeks to quiet title against FHA. Thus, this argument provides no support for Guild as the outcome of the instant case has no bearing on FHA's ability to quiet title.

D. Failure to Tender

Under NRS 116.31166(1), the holder of a first deed of trust may pay off the superpriority portion of an HOA lien to prevent the foreclosure sale from extinguishing that security interest. *See* Nev. Rev. Stat. § 116.31166(1); *see also SFR Investments*, 334 P.3d at 414 ("But as a junior lienholder, U.S. Bank could have paid off the SHHOA lien to avert loss of its security ...."); *see also, e.g.*, *7912 Limbwood Ct. Trust v. Wells Fargo Bank, N.A., et al.*, 979 F. Supp. 2d 1142, 1149 (D. Nev. 2013) ("If junior lienholders want to avoid this result, they readily can preserve their security interests by buying out the senior lienholder's interest." (citing *Carillo v. Valley Bank of Nev.*, 734 P.2d 724, 725 (Nev. 1987); *Keever v. Nicholas Beers Co.*, 611 P.2d 1079, 1083 (Nev. 1980))).

Here, Guild does not argue that it attempted to pay the deficiency amount prior to the foreclosure sale so as to preserve its interest. Pursuant to the notice of trustee's sale, $4,538.40 was due. (ECF No. 1 at 4). Had Guild paid the noticed amount, the HOA's interest would have been subordinate to the first deed of trust. *See* Nev. Rev. Stat. § 116.31166(1); *see also SFR Investments*, 334 P.3d at 418 (noting that the deed of trust holder can pay the entire lien amount and then sue for a refund). Rather than paying the noticed amount and preserving its interest, Guild now seeks to profit from its own failure to follow the rules set forth in the statutes. *Cf.* Nev. Rev. Stat. § 107.080 (allowing trustee's sale under a deed of trust only when a subordinate interest has failed to make good the deficiency in performance or payment for 35 days); Nev. Rev. Stat. § 40.430 (barring judicially ordered foreclosure sale if the deficiency is made good at least 5 days prior to sale).

E. Constitutional Arguments

1. 5th & 8th Amendments

***7** Guild argues that the HOA assessments are punitive in violation of the 8th Amendment. (ECF No. 40 at 34–35). The 8th Amendment provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. Guild provides no authority to support that the 8th Amendment is applicable under the present circumstances, nor does it assert an injury arising therefrom. Accordingly, the court will deny Guild's motion for summary judgment on this issue.

Next, Guild contends that NRS 116.3116 *et seq.* violates the 5th Amendment takings clause. (ECF No. 40 at 36–42). The takings clause prohibits the state from taking private property for public use without just compensation. U.S. Const. amend. V; Nev. Const. art. 1, § 8(6). Guild's contention, however, has been specifically rejected. *See, e.g.*, *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage, a Div. of Wells Fargo Bank, N.A.*, 133 Nev. Adv. Op. 5, —— P.3d ——, 2017 WL 398426 (Nev. Jan. 26, 2017) ("[T]he extinguishment of a subordinate deed of trust through an HOA's nonjudicial foreclosure does not violate the Takings Clauses.").

2. Due Process

Guild argues that NRS 116.3116 *et seq.* violates due process. (ECF No. 40 at 49–55). In support, Guild provides a lengthy due process analysis. (ECF No. 40 at 49–55).

In *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*, the Ninth Circuit held that NRS 116.3116's "opt-in" notice scheme, which required a HOA to alert a mortgage lender that it intended to foreclose only if the lender had affirmatively requested notice, facially violated mortgage lenders' constitutional due process rights. 832 F.3d 1154, 1157–58 (9th Cir. 2016). The facially unconstitutional provision, as identified in *Bourne Valley*, exists in NRS 116.31163(2). *See id.* at 1158. At issue is the "opt-in" provision that unconstitutionally shifts the notice burden to holders of the property interest at risk. *See id.*

To state a procedural due process claim, Guild must allege "(1) a deprivation of a constitutionally protected liberty or property interest, and (2) a denial of adequate procedural protections." *Brewster v. Bd. of Educ. of Lynwood Unified Sch. Dist.*, 149 F.3d 971, 982 (9th Cir. 1998). Guild has satisfied the first element as a deed of trust is a property interest under Nevada law. *See* Nev. Rev. Stat. § 107.020 *et seq.*; *see also Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 798 (1983) (stating that "a mortgagee possesses a substantial property interest that is significantly affected by a tax sale"). However, Guild fails on the second prong.

Due process does not require actual notice. *Jones v. Flowers*, 547 U.S. 220, 226 (2006). Rather, it requires notice "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *see also Bourne Valley Court Trust*, 832 F.3d at 1158.

Here, adequate notice was given to the interested parties prior to extinguishing a property right. A&K recorded the notice of foreclosure sale on October 10, 2013, and also mailed the notice of foreclosure sale to Guild and other interested parties by certified mail. Nor does Guild assert that it did not receive the notice of the foreclosure sale.

As a result, the notice of trustee's sale was sufficient notice to cure any constitutional defect inherent in NRS 116.31163(2) as it put Guild on notice that its interest was subject to pendency of action and offered all of the required information. Thus, Guild's motion for summary judgment will be denied as to this issue.

IV. Conclusion

***8** Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Guild's motion for summary judgment (ECF No. 40) be, and the same hereby is, DENIED.

IT IS FURTHER ORDERED that Prestwick's motion for summary judgment (ECF No. 43) be, and the same hereby is, DENIED.

All Citations

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EXHIBIT B

2016 WL 5429652
Only the Westlaw citation is currently available.
United States District Court,
D. Nevada.

Green Tree Servicing, LLC, Plaintiff,
v.
Collegium Fund LLC, Series 31, a Nevada limited liability company; Tierra De Las PalmAs OwnerS Association, Defendants.
Tierra De Las PalmAs OwnerS Association, Third–Party Plaintiff,
v.
Absolute Collection Services, LLC, a Nevada limited liability company, Third–Party Defendant.
Collegium Fund LLC, Series 31, a Nevada limited liability company; Counterclaim Plaintiff,
v.
Green Tree Servicing, LLC; Joseph P. Sauer, an individual; Cynthia A. Sauer, an individual, Counterclaim Defendants.

Case No.: 2:15–cv–0700–GMN–GWF
|
Signed 09/27/2016

ORDER

Gloria M. Navarro, Chief Judge United States District Court

***1** Pending before the Court is a Motion for Summary Judgment filed by Defendant Collegium Fund LLC, Series 31 ("Collegium Fund"). (ECF No. 58). Plaintiff Green Tree Servicing LLC ("Green Tree") filed a Response (ECF No. 63), and Collegium Fund filed a Reply (ECF No. 70).

Also pending before the Court is a Motion for Summary Judgment filed by Green Tree. (ECF No. 59). Third–Party Plaintiff Tierra De Las Paimas Owners Association (the "HOA") and Collegium Fund both filed Responses (ECF Nos. 62, 64), and Green Tree filed a Reply to each Response (ECF Nos. 66, 71).

I. BACKGROUND

The present action involves the parties' interests in real property located at 2220 Mediterranean Sea Avenue, North Las Vegas, NV 89031 (the "Property"). On December 21, 2009, Joseph P. Sauer and Cynthia A. Sauer (the "Sauers") obtained a loan in the amount of $96,950.00 from Bank of America, N.A. ("BANA") that was secured by a Deed of Trust on the Property. (Deed of Trust, ECF No. 58–2, 59–2).[1] The Deed of Trust named BANA as the beneficiary and Recon Trust Company as the trustee. (*Id.*). Fannie Mae purportedly purchased the Sauer Loan on January 29, 2010 and has owned it ever since. (*See* Curcio Decl. ¶ 4, ECF No. 59–3); (Ex. A to Curcio Decl. at 5, ECF No. 59–3). Green Tree asserts that on December 31, 2012, BANA transferred servicing to "Fannie Mae/Ditech Financial LLC subservicer."[2] (Ex. A to Curcio Decl. at 9) ("Servicing Transfer Request Detail" with this date as the effective date). On January 10, 2013, BANA executed an Assignment of Deed of Trust to Green Tree. (Assignment of Deed of Trust, ECF No. 59–4).

[1] Both Collegium Fund and Green Tree attach the Deed of Trust to their Motions for Summary Judgment. (ECF Nos. 58–2, 59–2). The Court takes judicial notice of the publicly recorded documents attached to the Motions for Summary Judgment, which are all recorded in the Clark County Recorder's office. (*See, e.g.*, Exs. 1–2, 4–8 to Green Tree's MS J, ECF Nos. 59-1–2, 59-4–8); *see also* *Mack v. S. Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986) (recognizing judicial notice of publicly recorded documents)

[2] Green Tree is "now known as Ditech Financial LLC." (Green Tree MSJ 2:9, ECF No. 59).

On September 6, 2008, FHFA's Director placed Fannie Mae and Freddie Mac into conservatorships pursuant to HERA. *See* 12 U.S.C. § 4617(a)(2); (*see also* Green Tree MSJ 2:17–23, 4:13–14).

On March 26, 2013, Absolute Collection Services, LLC ("ACS"), as agent and trustee for the HOA, recorded a Notice of Delinquent Assessment Lien against the Property for $827.85. (Not. Delinquent Assessment Lien, ECF No. 59–5). Then on July 24, 2013, ACS recorded a Notice of Default and Election to Sell, warning that the HOA would foreclose on its lien unless the assessment payments were brought up to date. (Not. Default & Election to Sell, ECF No. 59–6). On November 4, 2013, ACS, as agent and trustee for the HOA, recorded a Notice of Trustee's Sale, setting a foreclosure sale of the Property on January 14, 2014. (Not. Trustee's Sale, ECF

No. 59–7). Collegium Fund subsequently purchased the Property as the highest bidder at the January 14, 2014 foreclosure sale. (Corrective Foreclosure Deed, ECF Nos. 59–1).[3] Green Tree asserts that at no time during the process did FHFA, as conservator of Fannie Mae, consent to the HOA's foreclosure. (*See* Green Tree MSJ 3:13–14, 7:10–12); (*see also* FHFA Statement, Ex. 10 to Green Tree MSJ, ECF No. 59–10).

[3] There are two Foreclosure Deeds, one recorded on January 16, 2014 (Foreclosure Deed, ECF No. 59–8), and one recorded on February 14, 2014 (Corrective Foreclosure Deed, ECF No. 59–1). It appears that the first one mistakenly stated that Collegium Fund LLC, Series 32 was the Grantee, which was then remedied through the corrective deed, amending the Grantee name to Collegium Fund LLC, Series 31.

***2** Green Tree initiated this action on April 16, 2015, asserting, *inter alia*, a claim for quiet title against Collegium Fund, but also named the HOA. (Compl. ¶¶ 55–64, ECF No. 1). In the HOA's Answer, it also asserted a third-party complaint against ACS related to indemnity. (ECF No. 10). In Collegium Fund's Answer, it also asserted counterclaims against Green Tree and a third-party complaint against the Sauers. (ECF No. 11). On June 9, 2015, the Court granted the parties' Stipulation for Green Tree to file an Amended Complaint (ECF No. 20), which it filed on June 10, 2015. (ECF No. 21). Collegium Fund and the HOA both filed Answers to the Amended Complaint. (ECF Nos. 22, 27). Collegium Fund also filed a Motion to Amend its Counterclaim and Third-Party Complaint (ECF No. 29), which Magistrate Judge George Foley, Jr. granted because no opposition was filed (ECF No. 34). ACS filed its Answer to the HOA's third-party complaint (ECF No. 35), and Green tree filed its Answer to Collegium Fund's counterclaims (ECF No. 38).

Green Tree then filed a Motion for Leave to File Second Amended Complaint ("SAC") (ECF No. 40), which Magistrate Judge Foley granted because no opposition was filed (ECF No. 52). On November 12, 2015, Green Tree filed its SAC, which was the first document to indicate that Fannie Mae had an interest in the Property. (*Compare* Am. Compl. ¶ 14, ECF No. 21, *with* SAC ¶ 9–12, ECF No. 53). Collegium Fund filed an Answer to Green Tree's SAC. (ECF No. 54). Subsequently, both Collegium Fund and Green Tree filed the instant Motions for Summary Judgment. (ECF Nos. 58–59).[4]

[4] Following the filings of these motions, the parties filed a Stipulation to Dismiss the Third Cause of Action of Green Tree's SAC: "Violation of Automatic Bankruptcy Stay versus the HOA." (ECF No. 60). The Court granted this Stipulation on January 26, 2016. (ECF No. 61).

II. LEGAL STANDARD

The Federal Rules of Civil Procedure provide for summary adjudication when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Material facts are those that may affect the outcome of the case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. *See id.* "Summary judgment is inappropriate if reasonable jurors, drawing all inferences in favor of the nonmoving party, could return a verdict in the nonmoving party's favor." *Diaz v. Eagle Produce Ltd. P'ship*, 521 F.3d 1201, 1207 (9th Cir. 2008) (citing *United States v. Shumway*, 199 F.3d 1093, 1103–04 (9th Cir. 1999)). A principal purpose of summary judgment is "to isolate and dispose of factually unsupported claims." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).

In determining summary judgment, a court applies a burden-shifting analysis. "When the party moving for summary judgment would bear the burden of proof at trial, it must come forward with evidence which would entitle it to a directed verdict if the evidence went uncontroverted at trial. In such a case, the moving party has the initial burden of establishing the absence of a genuine issue of fact on each issue material to its case." *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (citations omitted). In contrast, when the nonmoving party bears the burden of proving the claim or defense, the moving party can meet its burden in two ways: (1) by presenting evidence to negate an essential element of the nonmoving party's case; or (2) by demonstrating that the nonmoving party failed to make a showing sufficient to establish an element essential to that party's case on which that party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–24. If the moving party fails to meet its initial burden, summary judgment must be denied and the court need not consider the nonmoving party's evidence. *See Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 159–60 (1970).

***3** If the moving party satisfies its initial burden, the burden then shifts to the opposing party to establish that a genuine issue of material fact exists. *See* *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute, the opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient that "the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial." *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987). In other words, the nonmoving party cannot avoid summary judgment by relying solely on conclusory allegations that are unsupported by factual data. *See* *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, the opposition must go beyond the assertions and allegations of the pleadings and set forth "specific facts" by producing competent evidence that shows a genuine issue for trial. *See* *Celotex Corp.*, 477 U.S. at 324.

At summary judgment, a court's function is not to weigh the evidence and determine the truth but to determine whether there is a genuine issue for trial. *See* *Anderson*, 477 U.S. at 249. The nonmoving party's evidence is "to be believed, and all justifiable inferences are to be drawn in his favor." *Id.* at 255. However, if the evidence of the nonmoving party is "merely colorable, or is not significantly probative, summary judgment may be granted." *See* *id.* at 249–50 (citations omitted).

III. DISCUSSION

A. Green Tree's Motion for Summary Judgment

Green Tree asserts, *inter alia*, that 12 U.S.C. § 4617(j)(3) "preempts any Nevada law ... that would otherwise permit the HOA's foreclosure of its superpriority lien to extinguish [Fannie Mae's] interest in property while [Fannie Mae is] under FHFA's conservatorship." (Green Tree MSJ 8:7–9). Green Tree also contends: "Fannie Mae's interest here ... was a protected property interest under Section 4617(j)(3)." (*Id.* 10:4–6). Further, Green Tree argues that the HOA foreclosure sale did "not extinguish the property interests of Fannie Mae under Section 4617(j)(3) [when] conducted without FHFA's consent." (*Id.* 11:1–2). Ultimately, Green Tree asserts that Section 4617(j)(3) "defeats Collegium [Fund]'s claim to an interest in the Property free and clear of the Deed of Trust." (*Id.* 8:4–5).

The Court addressed the applicability of 12 U.S.C. § 4617(j)(3) in *Skylights LLC v. Byron*, 112 F. Supp. 3d. 1145 (D. Nev. 2015). After addressing many different arguments regarding the applicability of Section 4617(j)(3), the Court held that the plain language of Section 4617(j)(3) prohibits property of FHFA from being subject to a foreclosure without its consent. *Skylights LLC*, 112 F. Supp. 3d. at 1158–59.

Here, Collegium Fund disputes that Fannie Mae owns an interest in the Property. (*See, e.g.*, Collegium Resp. 9:3–12:20, ECF No. 64). However, Green Tree has provided a Declaration from Fannie Mae, along with supporting business records. (Curcio Decl. & Ex. A, ECF No. 59-3). This Court has previously acknowledged such an interest based on comparable support. *See Elmer v. Freddie Mac*, No. 2:14–cv–01999–GMN–NJK, 2015 WL 4393051 (D. Nev. July 13, 2015); *Williston Inv. Grp., LLC v. JP Morgan Chase Bank, N.A.*, No. 2:14–cv–02038–GMN–PAL, 2015 WL 4276144 (D. Nev. July 13, 2015). Accordingly, the Court finds that Fannie Mae has held an interest in the Property since January 29, 2010. (*See* Curcio Decl. ¶ 4); (Ex. A to Curcio Decl. at 5).

Previously, this Court has held that if FHFA held an interest in the Deed of Trust as conservator for Fannie Mae prior to the HOA foreclosure, then § 4617(j)(3) prevents the HOA's foreclosure on the Property from extinguishing the Deed of Trust. *See* *Skylights LLC*, 112 F. Supp. 3d. 1145; *Elmer*, 2015 WL 4393051; *Williston Inv. Grp.*, 2015 WL 4276144. Here, however, unlike in *Skylights* and the other eight cases from this District cited by Green Tree for the same proposition (*see* Green Tree MSJ 3:16–4:3), neither FHFA nor Fannie Mae are parties or intervenors in this case. As such, the Court finds it proper to conduct an analysis regarding prudential standing. *City of Los Angeles v. Cty. of Kern*, 581 F.3d 841, 845–46 (9th Cir. 2009) (indicating that the Court may raise prudential standing *sua sponte*).

***4** Prudential standing is "not compelled by the language of the Constitution." *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 471, 474–75 (1982). Rather, prudential standing involves "judicially self-imposed limits on the exercise of federal jurisdiction." *Kern*, 581 F.3d at 845 (quotation omitted). "Among other requirements, the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Mills v. United States*, 742 F.3d 400, 406 (9th Cir. 2014) (quoting *Valley Forge*, 454 U.S. at 474). Consequently, courts "typically decline to hear cases asserting rights properly belonging to third parties rather than the plaintiff." *McCollum v. Cal. Dept. of Corr. & Rehab.*, 647 F.3d 870, 878 (9th Cir. 2011).

There are two rationales for this aspect of prudential standing. First, it avoids unnecessary adjudication of third

party's rights, and "it may be that in fact the holders of those rights either do not wish to assert them, or will be able to enjoy them regardless of whether the in-court litigant is successful or not." *Singleton v. Wulff*, 428 U.S. 106, 113–14 (1976). "Second, third parties themselves usually will be the best proponents of their own rights." *Id.* at 114. However, a plaintiff may be allowed to assert a third party's rights "when (1) the party asserting the right has a close relationship with the person who possesses the right and (2) there is a hindrance to the possessor's ability to protect his own interests." *Mills*, 742 F.3d at 407 (quotation omitted).

Here, as explained above, Green Tree seeks to assert legal rights and interests that belong to FHFA and Fannie Mae under 12 U.S.C. § 4617(j)(3). Although Green Tree has alleged a close relationship between itself and Fannie Mae as Fannie Mae's servicer, it has not provided evidence demonstrating any hindrance to FHFA and Fannie Mae's ability to protect their own interests. FHFA and Fannie Mae are the best proponents of their own rights. *See Singleton*, 428 U.S. at 114. Green Tree therefore lacks prudential standing to raise these third parties' interests. Accordingly, Green Tree's Motion for Summary Judgment is denied.

B. Collegium Fund's Motion for Summary Judgment

Collegium Fund asserts, *inter alia*, that the HOA foreclosure sale at which it bought the Property did not violate due process, and Collegium Fund believes it is entitled to free and clear title to the Property. (*See* Collegium Fund MSJ 10:6–14:3, ECF No. 58).

Lenders and investors have been at odds over the legal effect of an HOA nonjudicial foreclosure of a superpriority lien on a lender's first trust deed pursuant to Nevada Revised Statutes § 116.3116. *See Freedom Mortg. Corp. v. Las Vegas Dev. Grp., LLC*, 106 F. Supp. 3d 1174, 1180 (D. Nev. 2015). The Nevada Supreme Court seemed to have settled the debate in *SFR Invs. Pool 1, LLC v. U.S. Bank*, 334 P.3d 408, 419 (Nev. 2014), holding that "NRS 116.3116(2) gives an HOA a true superpriority lien, proper foreclosure of which will extinguish a first deed of trust." SFR, 334 P.3d at 419.

However, on August 12, 2016, two members of a Ninth Circuit panel held in *Bourne Valley Court Trust v. Wells Fargo Bank* that Chapter 116's nonjudicial foreclosure scheme "facially violated mortgage lenders' constitutional due process rights" before it was amended in 2015. *Bourne Valley Ct. Trust v. Wells Fargo Bank*, 2016 WL 4254983, at *5 (9th Cir. Aug. 12, 2016). As a result, *Bourne Valley* is likely dispositive of this and the hundreds of other foreclosure cases pending in both state and federal court. To save the parties from the need to invest resources briefing the effect of the *Bourne Valley* opinion before the finality of that opinion has been determined, the Court **STAYS** all proceedings in this case pending exhaustion of all appeals of *Bourne Valley*.

i. Legal Standard regarding Stay

***5** "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes of action on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). "A trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case." *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979). In deciding whether to grant a stay, a court may weigh the following: (1) the possible damage which may result from the granting of a stay; (2) the hardship or inequity which a party may suffer in being required to go forward; (3) the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay. *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962). However, "[o]nly in rare circumstances will a litigant in one case be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both." *Landis*, 299 U.S. at 255. A district court's decision to grant or deny a *Landis* stay is a matter of discretion. *See Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007).

ii. Discussion regarding Stay

At the center of this case are the HOA–foreclosure sale conducted pursuant to Nevada Revised Statutes § 116.3116 and the competing arguments that the foreclosure sale either extinguished the bank's security interest under the *SFR* holding or had no legal effect because the statutory scheme violates due process. Because the Ninth Circuit in *Bourne Valley* held that the scheme was facially unconstitutional, *see Bourne Valley*, 2016 WL 4254983, at *5, the *Bourne Valley* opinion and any modification of that opinion have the potential to be dispositive of this case. Under this circumstance, the

Landis factors weigh strongly in favor of staying this action pending final resolution of the *Bourne Valley* decision. Indeed, the possible prejudice to the parties is minimal as the only potential harm is that the parties may wait longer for resolution of this case if it is stayed. However, if this case is not stayed, a delay would also result from any motions for reconsideration that may be necessitated if the current decision in the *Bourne Valley* case does not stand. Accordingly, a stay is not likely to appreciably lengthen the life of this case. Further, in the absence of a stay, judicial resources may be unnecessarily expended to resolve issues which may ultimately be decided by higher courts to which this Court is bound to adhere. Because the *Bourne Valley* decision is squarely on point, the orderly course of justice likewise weighs in favor of a stay. Accordingly, the Court finds that staying this action pending final resolution of *Bourne Valley* would be efficient for the Court's own docket and the fairest course for the parties. *See* *Leyva*, 593 F.2d at 863.

IV. CONCLUSION

IT IS THEREFORE ORDERED that this case is administratively **STAYED** pending exhaustion of all appeals of *Bourne Valley Court Trust v. Wells Fargo Bank*, No. 15–15233 (9th Cir. Aug. 12, 2016). Once exhaustion occurs, any party may move to lift the stay. Until that time, all proceedings in this action are stayed.

IT IS FURTHER ORDERED that all pending motions are **DENIED** without prejudice with leave to refile within twenty-one days after the stay is lifted.

IT IS FURTHER ORDERED that Collegium Fund shall care for, preserve, and maintain the Property.

IT IS FURTHER ORDERED that, beginning on March 22, 2017, the parties must file a joint status report updating the Court on the status of this case every one-hundred and eighty days. Along with the joint status report, Collegium Fund shall submit a statement affirming that all expenses necessary to maintain the property, including but not limited to, timely and full payment of all homeowners association assessments, property taxes, and property insurance premiums due and owing or past due at any time during the effective period of this Stay are current and up to date.

***6 IT IS FURTHER ORDERED** that this Order does not prevent the parties from continuing to engage in settlement conference negotiations with the assistance of the Magistrate Judge.

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