

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 69419

SATICOY BAY LLC SERIES 9641 CHRISTINE SEYER

Appellant,

vs.

FEDERAL NATIONAL MORTGAGE ASSOCIATION

Respondent.

Appeal from the Eighth Judicial District Court, Clark County
The Honorable Elissa F. Cadish, District Judge
District Court Case No. A690924

**MOTION OF AMICUS CURIAE FEDERAL HOUSING FINANCE
AGENCY TO PARTICIPATE IN ORAL ARGUMENT**

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The above-captioned appeal is scheduled for oral argument on November 6, 2017. Doc. No. 17-32455. Amicus curiae the Federal Housing Finance Agency (“FHFA”), an independent agency of the federal government, respectfully requests leave to participate in oral argument and to be allotted one third of Respondent’s time to argue. If argument is 15 minutes per side, as presently scheduled, FHFA would get 5 minutes and Fannie Mae would get 10 minutes. If the Court grants Saticoy Bay’s pending motion to extend argument to 30 minutes per side, FHFA would get 10 minutes and Fannie Mae would get 20 minutes.¹

This Court granted FHFA argument time as an amicus curiae in *Nationstar v. SFR Investments Pool 1, LLC*, 396 P.3d 754 (Nev. 2017), which also involved the interaction of federal law governing the Fannie Mae and Freddie Mac conservatorships with Nevada law governing homeowners’ association (“HOA”) foreclosures. FHFA respectfully submits that, as in *Nationstar*, extraordinary reasons warrant FHFA’s participation, and that its participation would again prove useful to the Court.

In further support of this request, and consistent with Nevada Rule of Appellate Procedure 29(h), FHFA respectfully submits the following:

¹ As an amicus, FHFA takes no position on that motion, but notes that it shares Fannie Mae’s expressed interest in bringing this appeal to resolution as expeditiously and efficiently as possible.

1. On June 23, 2016, FHFA filed an amicus brief in support of Respondent Federal National Mortgage Association (“Fannie Mae”). Doc. No. 16-19647. Fannie Mae has consented to FHFA’s participation in oral argument and has agreed to yield one third of its argument time to FHFA.

2. In 2008, Congress enacted the Housing and Economic Recovery Act (“HERA”), which established FHFA as the regulator for Fannie Mae and Freddie Mac (the “Enterprises”). 12 U.S.C. § 4617. FHFA’s mission is to strengthen and secure the Nation’s secondary mortgage market. To that end, in September 2008, FHFA exercised its authority under HERA and placed the Enterprises into FHFA conservatorships, where they remain today. The Enterprises in conservatorship continue to pursue the mission embodied in their federal statutory charters—i.e., to facilitate the nationwide secondary mortgage market and thereby enhance the equitable distribution of mortgage credit throughout the nation. *See City of Spokane v. Fannie Mae*, 775 F.3d 1113, 1114 (9th Cir. 2014).

3. As Conservator, FHFA has succeeded by law to all of the Enterprises’ “rights, titles, powers, and privileges . . . and [their] assets.” 12 U.S.C. § 4617(b)(2)(A)(i). HERA empowers FHFA as conservator to “preserve and conserve” the Enterprises’ assets. *Id.* § 4617(b)(2)(B)(iv). HERA also provides a statutory protection shielding the property interests of the Enterprises from

extinguishment while they are in the conservatorship of FHFA. *See* 12 U.S.C. § 4617(j)(3) (the “Federal Foreclosure Bar”).

4. At the time of the HOA foreclosure sale at issue in this case, Fannie Mae was in conservatorship of FHFA, and owned the mortgage loan at issue here. At its core, this case concerns whether the Federal Foreclosure Bar preempted a state law that would otherwise allow the homeowners’ association foreclosure sale to extinguish Fannie Mae’s deed of trust.

5. This appeal involves issues relating directly to FHFA’s own actions, including whether FHFA consented to the extinguishment of Fannie Mae’s property interest. The appeal also involves issues that relate directly to FHFA’s statutory authority as Conservator, including whether Fannie Mae’s property is also the property of FHFA as Conservator while Fannie Mae is under FHFA conservatorship.

6. NRAP 29(h) provides that the Court may grant the motion of an amicus curiae to participate in oral argument for “extraordinary reasons.” The circumstances presented here satisfy this requirement. FHFA is especially qualified to identify, consider, and present to the Court the legal and policy considerations underlying the above issues in this appeal, and is particularly well-situated to assist the Court in determining whether FHFA itself consented to the extinguishment of the deed-of-trust interest at stake. Moreover, as the Enterprises’

regulator and conservator, FHFA oversees the Enterprises' implementation of the law and policy embodied in their federal statutory charters, and these issues affect FHFA's and the Enterprises' statutory missions. Resolution of this case could have far-reaching effects on hundreds of similar cases that FHFA, the Enterprises, and the Enterprises' contractually authorized loan servicers (who manage the day-to-day administration of the Enterprises' mortgage loans) are litigating in state and federal courts across Nevada.

7. FHFA appreciated the opportunity to participate as an amicus in the oral argument of *Nationstar*, and respectfully submits that its participation aided the Court in resolving that case, which also involved issues of great interest to FHFA as Conservator. Just as this Court allowed FHFA argument time in *Nationstar*, FHFA is prepared and willing to argue before the Court here, and respectfully submits that its participation would be useful to the Court.

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For the foregoing reasons and those discussed in its amicus brief, FHFA respectfully requests leave to present oral argument to address the issues stated above during the time allotted for Fannie Mae.

DATED: September 28, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to NEFCR 9(b)(d)(e), I certify that on the 28th day of September, 2017, a true and correct copy of the **MOTION TO PARTICIPATE IN ORAL ARGUMENT**, was transmitted electronically through the Court's e-filing system to the attorney(s) associated with this case. If electronic notice is not indicated through the court's e-filing system, then a true and correct paper copy of the foregoing document was delivered via U.S. Mail.

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