

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE BANK OF NEW YORK MELLON,
F/K/A THE BANK OF NEW YORK, AS
TRUSTEE, FOR THE
CERTIFICATEHOLDERS OF CWABS,
INC. ASSET-BACKED CERTIFICATES,
SERIES 2006-25,
Appellant,
vs.
SFR INVESTMENTS POOL 1, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,
Respondent.

No. 81604

FILED

JAN 13 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

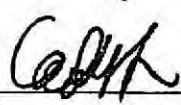
ORDER DIRECTING SUPPLEMENTAL BRIEFING

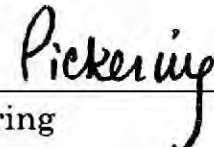
Appellant The Bank of New York Mellon (BNYM) asks this court to reverse the district court's order granting summary judgment against it and hold that its deed of trust remains a valid and enforceable lien on the title of the subject property at 4946 Droubay Drive, Las Vegas, Nevada 89122. Respondent SFR Investments Pool 1, LLC, defends judgment in its favor based in part on the preclusive effect of the federal district court's prior order granting its motion to dismiss BNYM's claim for quiet title/declaratory relief on statute-of-limitations grounds. *Bank of N.Y. Mellon v. Squire Vill. at Silver Springs Cmty. Ass'n*, No. 2:18-cv-005599-APG-CWH (D. Nev. Oct. 1, 2018), ECF No. 25. The federal district court's decision as to the continued existence of BNYM's lien is central to whether BNYM retains a valid interest in the subject property on which to non-judicially foreclose.

This court therefore requests supplemental briefing on two points, (1) the differences between claim and issue preclusion, which doctrine might apply in this situation, and why; and (2) we ask that the parties address whether BNYM retains the affirmative defense of tender,

see *SFR Invs. Pool 1, LLC v. Bank of New York Mellon*, No. 76644, 2020 WL 5634162, at *1 (Nev. Sept. 18, 2020) (Order of Affirmance) (holding that the affirmative defense of tender is not subject to a statute of limitations), given that the conclusive expiration presumption under NRS 106.240 has not yet run, cf. *Facklam v. HSBC Bank USA*, 133 Nev. 497, 499, 401 P.3d 1068, 1070–71 (2017) (holding that a statute of limitations does not apply to bar nonjudicial foreclosure because it is not an action at law), and given that, here, it is asserting the ongoing validity of its deed of trust defensively. Cf. *Bank of New York Mellon v. The Springs at Centennial Ranch Homeowners Ass'n*, No. 2:17-cv-01673-JAD-GWF, 2019 WL 1532859, at *4-*5 (D. Nev. Apr. 8, 2019) (granting summary judgment against the deed-of-trust holder on its affirmative quiet-title claim but denying summary judgment to the HOA-foreclosure-sale buyer on its quiet-title counterclaim, given that the deed of trust was asserted defensively). Briefing from each party must not exceed 15 pages in length. The appellant has 30 days from the date of this order to file and serve its supplemental brief, and respondent has 30 days to file and serve its responding supplemental brief. Appellants may file a reply brief of not more than 10 pages within 14 days of respondent's submission.

It is so ORDERED.


_____, J.
Cadish


_____, J.
Pickering


_____, J.
Herndon

cc: Hon. David M. Jones, District Judge
ZBS Law, LLP
Kim Gilbert Ebron
Eighth District Court Clerk