

CASE No. 82078
IN THE SUPREME COURT OF NEVADA

SFR INVESTMENTS POOL 1, LLC,
A NEVADA LIMITED LIABILITY
COMPANY,

Appellant,

vs.

NATIONSTAR MORTGAGE, LLC, A
Delaware Limited Liability Company,

Respondent.

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APPEAL

From the Eighth Judicial District Court, Clark County
The Honorable MARY KAY HOLTHUS, District Judge
District Court Case No. A-13-684715-C

**APPELLANT SFR INVESTMENTS POOL 1, LLC'S
REPLY IN SUPPORT OF MOTION TO STAY APPEAL**

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A. The Merits of SFR’s Petition are Not Before this Court.

Nowhere does NRAP 41(b) provide the Court may deny a stay based on the merits of a petition. Instead, it states, “the stay shall continue until final disposition by the Supreme Court” NRAP 41(b)(3)(B). The merits of SFR’s Petition are not before this Court, and are not a condition precedent to granting a stay.

B. *Collins* Does Have Bearing on the Present Case.

First, while Respondent argues SFR waived argument related to the issues in *Collins*, they acknowledge *Freytag* allowed an Appointments Clause challenge to be raised for the first time in the Supreme Court because it fell “in the category of nonjurisdictional structural constitutional objections that could be considered on appeal whether or not ruled upon below.”¹ Further, *Freytag* did not apply a rule specific to Appointment Clause claims. Instead, it invoked a non-waiver principle based on the “strong interest of the federal judiciary in maintaining the *constitutional plan of separation of power*,” of which the Appointment Clause is but a part.²

In fact, the case on which *Freytag* relied was not an Appointments Clause decision, but one involving another aspect of the “constitutional plan of separation of powers.”³ This Court understands *Freytag* addresses waiver of “constitutionally

¹ *Freytag v. C.I.R.*, 501 U.S. 868, 878-79 (1991).

² *Id.* at 879 (quoting *Glidden Co. v. Zdanok*, 370 U.S. 530, 536 (1962) (emphasis added)); *id.* at 878 (“The roots of the separation-of-powers concept embedded in the Appointments Clause are structural and political.”).

³ *Glidden*, 370 U.S. at 536 (finding no waiver of separation-of-powers challenge to lack of tenure protections for Court of Claims & Court of Customs Appeals judges).

based structural protection,” not just Appointments Clause claims.⁴ Justice Gorsuch described *Freytag* as holding “forfeited or waived arguments may be entertained when structural concerns” – not Appointments Clause Claims – “are at issue.”⁵

In its improperly overlength 12-page brief (*see* NRAP 27(d)(2)), Respondent does not contend raising this challenge at an earlier stage would have been anything but futile, given the basis of this challenge to FHFA’s structure arose only with the June 29, 2020 decision in *Seila Law LLC v. CFPB*, 140 S. Ct. 2183 (2020).⁶ Before then, the Supreme Court repeatedly upheld the constitutionality of independent agencies. *See id.* at 2198-2200. It was only in *Seila* that the Supreme Court held for the first time an independent agency headed by a *single* director removable only for cause violated separation of powers, overruling Ninth Circuit’s precedent upholding the same structure of the CFPB. *See id.* at 2200-07; *id.* at 2197.

Second, SFR does not argue *Collins* will completely dispose of this lawsuit, but rather that *Collins* may call into serious doubt the validity of the HERA claim

⁴ *Comm’n on Ethics v. Hardy*, 125 Nev. 285, 299 (2009). In *Freytag*, after rejecting waiver of the constitutional challenge, the Court held the Executive’s acquiescence in the alleged Appointment Clause violation did not deprive the Court of power to reach the question, based on preserving separation of powers. *See* 501 U.S. at 880. In *Hardy*, this Court relied on that passage to hold “constitutionally based structural protections cannot be waived by either the legislative or executive branch,” correctly viewing *Freytag* as addressing waiver of claims based on “structural protections” of separation-of-powers generally, not the Appointments Clause specifically.

⁵ *June Medical Svcs LLC v. Russo*, 140 S.Ct. 2103, 2175 (2020) (Gorsuch, J., dissenting).

⁶ *See, e.g., Curtis Publ’g Co. v. Butts*, 388 U.S. 130, 142-43 (1967) (“[T]he mere failure to interpose [a constitutional] defense prior to the announcement of a decision which might support it cannot prevent a litigant from later invoking such a ground.”).

here, making final relief premature. FHFA conceded its structure is unconstitutional so it is likely the Court will so find. *Collins* Federal Parties Reply Br. 23-26. The question is whether the challenged actions are ultra vires, and “must be set aside.” *Collins* Petr. Br. 65. If the Court agrees, its decision will have direct implications here, where the claim depends entirely on the Federal Foreclosure Bar, which applies only on conservatorship, a decision the statute leaves to the “discretion of the Director.” 12 U.S.C. § 4617(a)(2). If the Net Worth Sweep is invalid due to unconstitutional structure, it draws into question the validity of the conservatorship which, if ultra vires, destroys the Federal Foreclosure Bar claim here.

SFR is challenging applicability of the Federal Foreclosure Bar, which *Respondent* sought to use. It also calls into question any decisions regarding consent to foreclosure or the sweeping denial thereof. The Court will address the issue of the acting vs. appointed FHFA director in *Collins*. See *Collins*, Fed. Resps. Reply Br. 31-37; but see *Collins* Petr. Reply Br. 11-18 (arguing to the contrary). *Collins* may impact the basis of Respondent’s HERA claim, which is reason enough to stay pending the dispositions in *Collins* and *M&T Bank*. Respondent can then argue why *Collins* should not affect this case, and this Court can rule with the benefit of the *actual Collins* decision (versus what Respondent claims the Supreme Court *should* decide). Thus, while *Collins* is not directly on point, its effect could reach this case.

C. Any Delay Will Be Minimal.

Collins will be decided by late June, latest. The U.S. Supreme Court requested a response to SFR’s Petition in *M&T Bank*, despite respondents originally

waiving it, and they responded March 22, 2021. *See* SFR’s Motion at 1-2. The case goes to conference on April 23, 2021, with a decision anticipated April 26. Denying a stay could lead to pointless further litigation, forcing SFR to seek certiorari from this Court’s decision to ask the Supreme Court to vacate and remand for reconsideration in light of *Collins*.

D. The Stays Entered in Other Cases Support a Stay Here.

The fact stays have been or may be granted in similar cases has nothing to do with equities, and supports a stay here. *See* Respondent’s Opp. at 2, 10-11. If a stay is appropriate in one such case based on judicial economy and preventing unnecessary litigation, it is appropriate in all such cases. In fact, on March 19, 2021, this Court stayed issuance of remittitur pending the U.S. Supreme Court’s resolution in *M&T Bank*,⁷ and cases before the U.S. District Court have done likewise.⁸

Moreover, while Respondent notes the Clerk entered the Ninth Circuit stays pending *Collins*, and that motions to reconsider them were filed, they neglected to inform the Circuit that before the reconsideration motions, the U.S. Supreme Court ordered answers to the *M&T Bank* Petition. *See* Respondent’s Opp. at 8. Respondent also fails to directly address the implications of this—*i.e.*, an increased

⁷ *See JP Morgan Chase Bank v. SFR Investments Pool 1, LLC*, Case No. 77010, Order (Mar. 19, 2021); *Ditech Financial, LLC v. SFR Investments Pool 1, LLC*, Case No. 78430, Order (Mar. 19, 2021).

⁸ *See, e.g., Ditech Financial, LLC v. SFR Investments Pool 1, LLC, et al.*, 2:17-cv-01772-RFB-PAL, U.S.D.C., District of Nevada, DktEntry 118 (Feb. 25, 2021); *Bank of America, N.A. v. Hidden Canyon Owners Association, et al.*, U.S.D.C., District of Nevada, 2:16-cv-02764-RFB-GWF, DktEntry 91, (Feb. 25, 2021).

likelihood of a decision on the merits, or a question regarding the application of *Collins* to this and other cases involving 12 U.S.C. § 4617(j)(3).⁹ Either possibility further supports staying the instant appeal.

Finally, Respondent argues that *Saticoy Bay*¹⁰ shows stay orders may be overturned, but they fail to provide the exhibits, which would show the case is inapposite and defeats Respondent's argument. First, the stay in *Saticoy Bay* was entered *sua sponte* by the Ninth Circuit pending resolution by this Court of certain inapposite state-law limitations certified questions in *U.S. Bank, Inc. v. Thunder Properties, Inc.*, 958 F.3d 794 (9th Cir. 2020).¹¹ Here the case before the Supreme Court is directly on point with this case. Second, it is no surprise that the motion for reconsideration in *Saticoy Bay* was granted because it was wholly *unopposed*.¹²

SFR's requested stay is appropriate and logical, and Respondent provides no viable argument as to why it should not be granted.

DATED: March 25, 2021.

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⁹ See Respondent's Opp. at 3 n.2; *see also* Appellant's Motion at 1-2.

¹⁰ See Respondent's Opp. at 8-9 (*citing Bank of Am. v. Saticoy Bay LLC Series 5328 Lochmor*, No. 20-15582, Order, (9th Cir. filed Oct. 30, 2020) ("*Saticoy Bay*").

¹¹ See *Saticoy Bay*, DktEntry 32, Appellee's and FHFA's joint motion for reconsideration of order staying appeal, attached as **Exhibit A**, at 1.

¹² See *id.*, Docket, attached as **Exhibit B**. The motion, DktEntry 32, was granted on October 30, 2020, DktEntry 33, without intervening response or opposition.

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on this 25th day of March, 2021. Electronic service of the foregoing **APPELLANT SFR INVESTMENTS POOL 1, LLC'S REPLY IN SUPPORT OF MOTION TO STAY APPEAL** shall be made in accordance with the Master Service List.

DATED: March 25, 2021.

/s/ Alexander Loglia
An employee of Kim Gilbert Ebron

Ex. A

EXHIBIT A

Bank of Am. v. Saticoy Bay LLC Series 5328
Lochmor, No. 20-15582, DktEntry 32,
Appellee's and Amicus Curiae Federal
Housing Finance Agency's Joint Motion For
Reconsideration of Sua Sponte Order
Staying Appeal
(October 13, 2020)

Ex. A

No. 20-15582

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

BANK OF AMERICA, N.A.,
Plaintiff-Appellee,

v.

SATICOY BAY LLC SERIES 5328 LOCHMOR,
Defendant-Appellant.

On Appeal from the United States District Court for the District of Nevada
The Honorable Richard F. Boulware, II, No. 2:16-cv-00917-RFB-BNW

**APPELLEE’S AND AMICUS CURIAE FEDERAL HOUSING
FINANCE AGENCY’S JOINT MOTION FOR RECONSIDERATION
OF SUA SPONTE ORDER STAYING APPEAL**

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On September 28, 2020, the Clerk entered a sua sponte order staying this appeal pending the Nevada Supreme Court’s resolution of certain state-law limitations questions certified in *U.S. Bank, Inc. v. Thunder Properties, Inc.*, 958 F.3d 794 (9th Cir. 2020) (“Order”). Appellee Bank of America, N.A. and *amicus curiae* Federal Housing Finance Agency (“FHFA”) respectfully and jointly move for reconsideration because the Order overlooks or misunderstands the facts of this case or the governing law, which together make the *state-law* questions certified in *Thunder Properties* irrelevant to this appeal, in which *federal law* controls. The Clerk of Court issued the Order under Circuit Rule 27-7. Accordingly, Bank of America and FHFA move under Circuit Rule 27-10.

On the surface, *Thunder Properties* and this case appear similar: Each involves a purchaser of property sold at a homeowners’ association foreclosure sale contending that it acquired free-and-clear title because, under state law, the sale purportedly extinguished the deed of trust encumbering the property.

But just beneath the surface lies a dispositive difference. In *Thunder Properties*, no party claims any federal statutory protection; that case therefore presents only *state-law* issues, and the claims will be subject to *state-law* limitations doctrine. In this case, by contrast, an entity in FHFA conservatorship, Fannie Mae (together with Freddie Mac, the “Enterprises”), owns the deed of trust, and a *federal* statute—12 U.S.C. § 4617(j)(3) (the “Federal Foreclosure Bar”)—therefore

protected the deed of trust from extinguishment. *E.g.*, *Berezovsky v. Moniz*, 869 F.3d 923, 930-31 (9th Cir. 2017). A *federal* limitations statute—12 U.S.C. § 4617(b)(12)(A) (the “HERA Limitations Provision”)—applies to claims based on the Federal Foreclosure Bar. *See M&T Bank v. SFR Invs. Pool 1, LLC*, 963 F.3d 854 (9th Cir. 2020). And in applying the HERA Limitations Provision—which requires courts to characterize all claims as either “tort” or “contract”—the characterization of state-law claims is a matter of *federal* law. *United States v. Neidorf*, 522 F.2d 916, 919 n.6 (9th Cir. 1975) (applying analogous statute). As a result, the limitations issues here are governed exclusively by *federal* law.

The Order contains no substantive explanation for the stay but could only make sense if the *state-law* limitations questions certified in *Thunder Properties* were relevant here. Bank of America and FHFA respectfully submit that this misunderstands the underlying facts or the controlling law. Because *M&T Bank* and *Neidorf* resolve the limitations issues in this case (and many others like it) as a matter of *federal* law, the *state-law* questions certified in *Thunder Properties* are irrelevant.

The Court should reconsider the Order, lift the stay, and proceed to the merits. This approach would be more equitable and efficient given the incentives facing the parties.¹

¹ In the interest of efficiency and simplicity, FHFA joins Bank of America’s motion rather than making a separate filing endorsing Bank of America’s position.

RELEVANT BACKGROUND

Appellant Saticoy Bay Series 5328 Lochmor (“Saticoy Bay”) appeals from a district court order holding that the Federal Foreclosure Bar protected Fannie Mae’s deed of trust from extinguishment through a state-law HOA foreclosure sale (the “HOA Sale”) at which Saticoy Bay purchased the property at issue. ER000002; *see* NRS 116.3116 (super-priority lien statute). The district court also held that Bank of America’s quiet-title claim was timely under the six-year period set by the HERA Limitations Provision for claims better characterized as based in contract than in tort. ER000007 (applying 12 U.S.C. § 4617(b)(12)(A)(i)).²

On appeal, Saticoy Bay challenges the district court’s order, including its statute-of-limitations ruling, arguing that the district court should have applied either the three-year period of the HERA Limitations Provision (for claims better characterized as based in tort) or a state law period for “[a]n action upon liability created by statute.” *See* Appellant’s Opening Br. (“AOB”) at 12-20 (Dkt. 13) (citing 12 U.S.C. § 4617(b)(12)(ii); NRS 11.190(3)).

On May 1, 2020, this Court certified two questions to the Nevada Supreme Court in an unrelated case involving a dispute over the continued existence of a deed

² Bank of America acts as Fannie Mae’s contractually authorized servicer for this loan, and as such has standing to assert the Federal Foreclosure Bar. *See Saticoy Bay, LLC, Series 2714 Snapdragon v. Flagstar Bank, FSB*, 699 F. App’x 658 (9th Cir. 2017).

of trust following a state-law HOA foreclosure sale, but *not* involving an Enterprise-owned deed of trust, and therefore *not* implicating the Federal Foreclosure Bar, the HERA Limitations Provision, or any other federal law. *Thunder Props.*, 958 F.3d at 796-97. The district court in *Thunder Properties* had ruled that Nevada's five-year statute of limitations for quiet-title claims barred the lienholder's claim. *Id.* In the ensuing appeal, this Court certified two state-law questions to the Nevada Supreme Court:

1. When a lienholder whose lien arises from a mortgage for the purchase of a property brings a claim seeking a declaratory judgment that the lien was not extinguished by a subsequent foreclosure sale of the property, is that claim exempt from statute of limitations under *City of Fernley v. Nevada Department of Taxation*, 132 Nev. 32, 366 P.3d 699 (2016)?
2. If the claim described in (1) is subject to a statute of limitations:
 - a. Which limitations period applies?
 - b. What causes the limitations period to begin to run?

Id.

On June 25, 2020, this Court issued a straightforward, published decision in *M&T Bank*. Relying on this Circuit's precedent, the panel held that the HERA Limitations Provision's six-year period for contract claims governs quiet-title claims that implicate the Federal Foreclosure Bar. *See* 963 F.3d at 858-59. Three other unpublished decisions issued the same day reached the same conclusion. *Freddie Mac v. SFR Invs. Pool I, LLC*, 810 F. App'x 589 (9th Cir. 2020); *Nationstar Mortg.*

LLC v. Keynote Props., LLC, 810 F. App'x 570 (9th Cir. 2020); *Bourne Valley*, 810 F. App'x 492 (9th Cir. 2020).

On August 4, 2020, this Court denied the appellant's petition for rehearing of the *M&T Bank* decision. On August 10, 2020, that appellant, SFR, moved to stay the mandate in *M&T Bank* pending a writ of certiorari. The Court denied that motion the following day, without waiting for a response, and the mandate issued in due course on August 19, 2020.

On September 28, 2020, an order was issued that appears to have been executed by a Deputy Clerk on behalf of the Clerk of Court and the Court. The order stayed the proceedings in this appeal "pending the response of the Supreme Court of Nevada to this court's published order certifying two questions in [*Thunder Properties*]; or upon further order of this court." Order at 1 (Dkt. 29).

LEGAL STANDARD

Under Circuit Rule 27-7, "the Court may delegate to the Clerk or designated deputy clerks ... authority to decide motions filed with the Court. Orders issued pursuant to this section are subject to reconsideration pursuant to Circuit Rule 27-10." While the Order here was issued *sua sponte*, not in response to any motion, its text expressly states that the Clerk of Court, through a deputy clerk, issued the order under authority delegated by Circuit Rule 27-7.

Circuit Rule 27-10 specifies that a party may move for reconsideration of an

Order issued by a deputy clerk by “stat[ing] with particularity the points of law or fact which ... the Court has overlooked or misunderstood.” Such a motion will be evaluated first by the deputy clerk who issued the underlying order, and then, if he or she is “disinclined to grant” the motion, it “is referred to an appellate commissioner.” Cir. R. 27-10(b).

ARGUMENT

The Court’s precedential decisions in *M&T Bank* and *Neidorf* confirm that none of the state-law limitations questions at issue in *Thunder Properties* are relevant to this appeal. Reconsideration of the Order is therefore warranted, because the Order reflects a misunderstanding of the facts and law that make the *Thunder Properties* questions irrelevant here.

M&T Bank confirms that the HERA Limitations Provision—a federal statute—provides the applicable limitations period for the quiet-title claim Bank of America asserted here. Because the HERA Limitations Provision supplies limitations periods for “all claims” regardless of label or underlying theory, but then enumerates only two alternatives labeled “contract” and “tort,” the Court must characterize any claim that does not fall neatly into the contract or tort category as one or the other. *Neidorf*, in turn, confirms that the characterization of state-law claims for purposes of federal limitations statutes like the HERA Limitations Provision is a matter of federal law.

Together, *M&T Bank* and *Neidorf* exclude any possibility that the state-law questions certified in *Thunder Properties* could affect the limitations analysis here. Thus, the Court need not and should not wait for the Nevada Supreme Court to issue a decision on the certified state-law questions in *Thunder Properties*, because any such decision will be immaterial to the Court’s analysis and resolution of the legal questions *Saticoy Bay* has raised in this appeal.

The Court should reconsider its Order, lift the stay, reinstate the briefing calendar, and resolve this appeal promptly under the Court’s normal procedures.

I. Because the *Thunder Properties* Certified Questions Are Irrelevant to this Appeal, Imposing a Stay To Await Their Answer Reflects a Misunderstanding of the Facts and the Controlling Law.

The Order stays this case pending the Nevada Supreme Court’s answers to questions certified in another appeal that will have no bearing on this one. The *Thunder Properties* appeal is limited to questions of *state* law—whether any Nevada statute of limitations applies to quiet-title claims not implicating the Federal Foreclosure Bar, and, if so, what limitations period governs and what triggers the period. This appeal, by contrast, turns on the application of a *federal* statute—HERA—which governs both the limitations analysis and the substantive question of whether Fannie Mae’s deed of trust survived the HOA foreclosure sale. *M&T Bank* confirms that when a quiet-title claim is governed by the Federal Foreclosure Bar, the HERA Limitations Provision applies. *Neidorf* confirms that the Court looks to

federal law, not state law, to resolve the primary question presented when applying the HERA Limitations Provision—how to characterize the underlying claim.

Thus, there are no state-law questions that pose an obstacle to the resolution of this appeal; no matter how the Nevada Supreme Court answers the questions in *Thunder Properties*, it will have no effect on the issues here. Awaiting the Nevada Supreme Court’s resolution of the certified state-law limitations questions would thus serve no purpose here, as the HERA Limitations Provision governs.

A. *M&T Bank* Confirms That a Stay Is Unnecessary Here.

M&T Bank confirms that federal law, not state law, provides the governing statute of limitations here. It is true that this appeal and *Thunder Properties* each involve: (1) whether a deed of trust was extinguished through foreclosure of an HOA’s super-priority lien under NRS 116.3116; and (2) whether any claims arising from the HOA foreclosure sale were timely filed. But this appeal has a material distinguishing feature: The deed of trust at issue is an asset of an entity under FHFA’s conservatorship and is thus subject to HERA’s asset-protection provisions, *see* ER000007-10 (district court order finding that Fannie Mae owned the deed of trust and holding that the Federal Foreclosure Bar protected the deed of trust from extinguishment), as this Court has held in more than 20 similar cases. *E.g.*, *Berezovsky v. Moniz*, 869 F.3d 923, 930-31 (9th Cir. 2017) (affirming similar district court decision); *FHFA v. SFR Invs. Pool 1, LLC*, 893 F.3d 1136, 1146 (9th Cir.

2018) (similar), *cert denied*, 139 S. Ct. 1618 (2019).³

HERA also includes a limitations provision that governs claims grounded in the provisions of that statutory scheme, including the Federal Foreclosure Bar. Specifically, the HERA Limitations Provision specifies the limitations periods applicable to all claims the Conservator could bring in relation to conservatorship assets. It reads:

[T]he applicable statute of limitations with regard to any action brought by the Agency as conservator or receiver shall be—

- (i) in the case of any contract claim, the longer of—
 - (I) the 6-year period beginning on the date on which the claim accrues; or
 - (II) the period applicable under State law; and
- (ii) in the case of any tort claim, the longer of—
 - (I) the 3-year period beginning on the date on which the claim accrues; or
 - (II) the period applicable under State law.

12 U.S.C. § 4617(b)(12)(A).

In *M&T Bank*, the Court held that a quiet-title claim invoking the Federal Foreclosure Bar is subject to HERA's six-year limitations period as a matter of

³ See also, e.g., *LN Mgmt., LLC v. JPMorgan Chase Bank, N.A.*, 957 F.3d 943, 950 (9th Cir. 2020) (same); *Ditech Fin., LLC v. Res. Grp., LLC*, --- F. App'x ---, 2020 WL 4917605, at *2 (9th Cir. Aug. 21, 2020); *Nationstar Mortg. LLC v. Haus*, 812 F. App'x 503 (9th Cir. 2020); *Freddie Mac v. SFR Invs. Pool 1, LLC*, 810 F. App'x 589, 591 (9th Cir. 2020); *Ditech Fin. LLC v. Saticoy Bay LLC Series 8829 Cornwall Glen*, 794 F. App'x 667, 668 (9th Cir. 2020); *Ditech Fin., LLC v. SFR Invs. Pool 1, LLC*, 793 F. App'x 490, 492 (9th Cir. 2019); *Williston Inv. Grp., LLC v. JPMorgan Chase Bank, NA*, -- F. App'x --, 2018 WL 4178105 (9th Cir. Aug. 31, 2018); *Saticoy Bay v. Flagstar Bank*, 699 F. App'x 658; *Elmer v. JP Morgan Chase & Co.*, 707 F. App'x 426, 428 (9th Cir. 2017).

federal law. 963 F.3d at 857-59. *First*, the Court confirmed that the HERA Limitations Provision applies to claims brought by Freddie Mac or its servicer, because Freddie Mac “[stood] in the shoes of” the FHFA with respect to the claim to quiet title to the deed of trust, which is property of the conservatorship,” and Freddie Mac’s servicer “[stood] in the same shoes as its assignor,” Freddie Mac. *Id.* at 857-58 (citations omitted).

Second, the Court concluded that under the HERA Limitations Provision, a six-year limitations period for “contract”-like claims, not the three-year limitations period for “tort”-like claims, applied. *See id.* at 858. The Court reasoned that the quiet-title claim was “entirely ‘dependent’ upon Freddie Mac’s lien on the property, an interest created by contract,” and noted that the plaintiffs did not “seek damages or claim a breach of duty resulting in injury to person or property, two of the traditional hallmarks of a tort action.” *Id.*

Third, the Court held that “even if the question were closer,” it would still apply the six-year period, because federal policy mandates that “[w]hen choosing between multiple potentially-applicable statutes,” the longer limitations period should apply. *Id.* at 858-59 (quoting *Wise v. Verizon Commc’ns, Inc.*, 600 F.3d 1180, 1307 (9th Cir. 1989)). Accordingly, the Court held that Freddie Mac and its servicer “had at least six years to bring their claims after the foreclosure sale” under HERA’s Limitations Provision. *Id.* at 859.

Finally, the parties in *M&T Bank* agreed that the lienholder’s claim for quiet title under Nevada law accrued on the date the HOA foreclosure sale occurred or the resulting deed was recorded, and this Court adopted that position. *See id.* at 859 (noting the “accrual of the cause of action in 2012 on the date of the foreclosure sale”). To Bank of America’s knowledge, no court has ever concluded otherwise and this is not a question disputed by the parties in this appeal; both agree that Bank of America’s claim accrued in March 2018 when the HOA Sale took place and was promptly reflected in the property records.

Thus, regardless of how the Nevada Supreme Court resolves the certified *state-law* questions in *Thunder Properties*, HERA’s six-year limitations period applies to Bank of America’s Federal Foreclosure Bar-based quiet-title claim here.⁴

For the Order to stand, the certified questions in *Thunder Properties* would have to be relevant to this appeal. But the only way for *Thunder Properties* to become relevant would be for this Court to abandon *M&T Bank* and conclude that the “contract” prong of HERA’s limitations provision is somehow inapplicable. In evaluating this Motion, the Court cannot assume that will happen; the Order is based

⁴ It is theoretically possible that the Nevada Supreme Court could rule that Nevada law provides for a period *longer* than six years, or indeed for *no* limitations period, on quiet-title claims (such as those here and in *Thunder Properties*) brought by a lienholder rather than a title holder; in that event, HERA would adopt the longer, state-law period. But because Bank of America’s assertion of the Federal Foreclosure Bar would be timely under the six-year floor HERA provides, such a ruling would not affect the outcome here.

on state-law questions certified to the Nevada Supreme Court, not on speculation about whether this Court might suddenly reverse itself on an issue of federal law. In any event, there is no reason to expect that to occur; *M&T Bank* is a unanimous decision that relies on longstanding Circuit precedent. 963 F.3d at 857-59 (citing *United States v. Thornburg*, 82 F.3d 886, 891 (9th Cir. 1996); *Stanford Ranch, Inc. v. Md. Cas. Co.*, 89 F.3d 618, 625 (9th Cir. 1996); and *Wise*, 600 F.3d at 1187 n.2). Moreover, the Court has denied both a petition for rehearing and a motion to stay the mandate in *M&T Bank*. See Orders, *M&T Bank*, No. 18-17395 (Aug. 4 & 11, 2020) (Dkt. Nos. 66, 68).

B. Under *Neidorf*, State Law Plays No Role in Characterizing Bank of America’s Claim for the Purpose of the HERA Limitations Provision.

To whatever extent the questions certified in *Thunder Properties* might be read to encompass whether quiet-title claims are more akin to tort or to contract as a matter of *Nevada* law, a stay of this appeal to await the Nevada Supreme Court’s answer would still not be warranted.

As an initial matter, that question is not presented in the *Thunder Properties* appeal—there, no party has argued that any of the state-law limitations periods potentially applicable to quiet-title claims *not* involving property of an entity under FHFA’s conservatorship turn on characterizing those claims as more akin to tort or to contract. And with good reason: Nevada’s statutory limitations scheme addresses

claims concerning title to and possession of real estate directly, without reference to contract or tort concepts. *See* NRS 11.070, 11.080.

But even if the question were one that the Nevada Supreme Court might address, the answer would have no bearing here, because *state law* does not control the characterization of claims for purposes of applying *federal* statutes of limitation like the HERA Limitations Provision. This Court’s decision in *Neidorf* is directly on point. There, in applying a closely analogous federal limitations statute to a state-law claim that did not fall neatly into either tort or contract, this Court held that “[t]he characterization of the claim as one in tort, contract or quasi-contract *must ... be a matter of federal law*[,] since the uniform limitations established by the [federal] statute would be compromised if limitations varied according to the labels attached to identical causes of action by different states.” 522 F.2d at 919 n.6 (applying 28 U.S.C. § 2415) (emphasis added).

Neidorf rests on sound policy, advancing Congress’s purpose of establishing uniform minimum limitations periods for claims brought under HERA or comparable federal statutes. HERA empowers FHFA to place Freddie Mac, Fannie Mae, and other entities into conservatorships “for the purpose of reorganizing, rehabilitating, or winding up [their] affairs.” 12 U.S.C. § 4617(a)(2). Accordingly, Congress granted FHFA an array of powers, privileges, and exemptions from otherwise applicable laws when acting as Conservator. If state law governed the

question of how to characterize claims brought under HERA and its limitations periods, substantively identical claims might be subject to different limitations periods depending upon which state's law governed and how *that* state characterizes the claim. The *Neidorf* rule provides the Conservator with certainty, allowing it to focus its efforts on rehabilitating the Enterprises and stabilizing the mortgage and housing markets, rather than scouring state judicial decisions to determine how a claim has been characterized for state-law purposes.

Thus, how quiet-title claims, like the one here, should be characterized for the purposes of assigning them to a prong of the HERA Limitations Provision is controlled by federal law. And to the extent any question existed as to whether they are more properly characterized as contract or tort for that purpose, the Court resolved it in *M&T Bank*, holding that the claim is properly deemed contractual. *M&T Bank*, 963 F.3d at 858. There is no need to look to the Nevada Supreme Court for an irrelevant state-law perspective that, given *M&T Bank* and *Neidorf*, this Court could not adopt.

II. The Interests of Judicial Economy and Substantial Justice Are Best Served By Lifting the Stay.

Allowing this case to proceed to a decision on the merits would also serve the interests of judicial economy and substantial justice. At least twelve other appeals

raising the same or substantially similar issues are now pending before this Court,⁵ and dozens more are being litigated in federal (and state) district courts. Staying this appeal pending the Nevada Supreme Court's resolution of the certified questions in *Thunder Properties* is unnecessary in light of *M&T Bank*'s unequivocal holding that HERA's six-year limitations provision applies to claims invoking the Federal Foreclosure Bar. The fact that this Court denied a petition for rehearing in *M&T Bank* and then—without awaiting an opposition—denied a motion to stay the mandate in that case undermines any contention that a petition for certiorari is likely to be meritorious. Indeed, the Supreme Court will almost certainly deny any petition for certiorari given that no circuit split or conflict with a state court of last resort exists. *See* Sup. Ct. R. 10.

Lifting the stay will also serve the interests of justice. There is no guarantee as to when the Nevada Supreme Court will resolve the certified questions—in the recent past, the Nevada Supreme Court has taken more than a year to issue a response

⁵ *Ocwen Loan Servicing, LLC v. SFR Invs. Pool 1, LLC*, No. 19-16889; *Nationstar Mortg. LLC v. Saticoy Bay LLC Series 9229 Millikan Ave.*, No. 19-17043; *Nationstar Mortg. LLC v. 312 Pocono Ranch Tr.*, No. 19-17504; *Bank of America, N.A. v. SFR Invs. Pool 1, LLC*, No. 19-16922; *Fannie Mae v. Ferrell St. Tr.*, No. 20-15156; *Ditech Fin. LLC v. Dutch Oven Ct. Tr.*, No. 20-15066; *FHFA v. Las Vegas Dev. Grp.*, No. 20-15658; *Ditech Fin. LLC v. SFR Invs. Pool 1, LLC*, No. 20-15498; *Wells Fargo Bank, N.A. v. Pine Barrens St. Tr.*, No. 20-15698; *Fannie Mae v. Yan Lin*, No. 20-15815; and *Nationstar Mortg. LLC v. Travertine Lane Trust*, No. 19-17197.

Footnote continued on next page

to a certified question.⁶ And HOA sale purchasers like Saticoy Bay have every incentive to needlessly prolong the appeal process, as any delay in judgment accrues to its benefit. Having acquired this property for far less than fair market value, Saticoy Bay can reap substantial profits by renting out the property at market rates. Meanwhile, Fannie Mae—which made a substantially larger, market-priced investment in the now-defaulted loan secured by the property—receives no return whatsoever. Until the case is resolved, Saticoy Bay will collect additional, and unjust, economic returns from Fannie Mae’s invested capital, thereby undermining the Conservator’s statutory power to “preserve and conserve” Enterprise assets. *See* 12 U.S.C. §§ 4617(b)(2)(B)(iv), 4617(b)(2)(D)(ii).

CONCLUSION

Because the questions certified in *Thunder Properties* are not relevant to this appeal, the current stay to await their answer is grounded in a misunderstanding of fact or law and serves no legitimate purpose. That alone is sufficient grounds for reconsideration. As importantly, the delay that continuing the stay inevitably will entail undermines the parties’ and the Court’s interest in timely resolution of this case. Bank of America and FHFA therefore respectfully request that the Court

⁶ *See Magliarditi v. TransFirst Grp., Inc.*, No. 73889, 2019 WL 5390470 (Nev. Oct. 21, 2019) (unpublished disposition) (deciding question certified in September 2017); *Ditech Fin. LLC v. Buckles*, 401 P.3d 215 (Nev. 2017) (decision issued in September 2017 on question certified in May 2016).

reconsider its Order staying the appeal, lift the stay of proceedings, and reinstate a briefing schedule that will move this case efficiently to resolution on the merits.

Dated: October 13, 2020

Respectfully submitted,

<div>By: <u>/s/ Alex McFall</u> Alex McFall BRADLEY ARANT BOULT CUMMINGS LLP Roundabout Plaza 1600 Division St., Suite 700 Nashville, TN 37203 Telephone: (615) 252-4629 Facsimile: (615) 248-3029 <i>amcfall@bradley.com</i></div> <div><i>Attorney for Appellee Bank of America N.A.</i></div>	<div>By: <u>/s/ Michael A.F. Johnson</u> Michael A. F. Johnson Dirk C. Phillips ARNOLD & PORTER KAYE SCHOLER LLP 601 Massachusetts Ave., NW Washington, DC 20001 Tel: (202) 942-5783 Fax: (202) 942-5999 <i>michael.johnson@arnoldporter.com</i></div> <div>By: <u>/s/ Leslie Bryan Hart</u> Leslie Bryan Hart, Esq. John D. Tennert, Esq. 7800 Rancharra Parkway Reno, Nevada 89511 Tel: (775) 788-2228 Fax: (775) 788-2229 <i>lhart@fclaw.com;</i> <i>jtennert@fclaw.com</i></div> <div><i>Attorneys for Amicus Curiae Federal Housing Finance Agency</i></div>
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**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 15. Certificate of Service for Electronic Filing

9th Cir. Case Number(s): No. 20-15582

I hereby certify that I electronically filed the foregoing/attached document(s) on this date with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system.

Service on Case Participants Who Are Registered for Electronic Filing:

[☒] I certify that I served the foregoing/attached document(s) via email to all registered case participants on this date because it is a sealed filing or is submitted as an original petition or other original proceeding and therefore cannot be served via the Appellate Electronic Filing system.

Service on Case Participants Who Are NOT Registered for Electronic Filing:

[☐] I certify that I served the foregoing/attached document(s) on this date by hand delivery, mail, third party commercial carrier for delivery within 3 calendar days, or, having obtained prior consent, by email to the following unregistered case participants (*list each name and mailing/email address*):

--

Description of Document(s) (*required for all documents*):

APPELLEE AND AMICUS CURIAE FEDERAL HOUSING FINANCE AGENCY'S MOTION FOR RECONSIDERATION OF SUA SPONTE ORDER STAYING APPEAL PURSUANT TO CIRCUIT RULE 27-10

Signature /s/ Alex McFall

Date October 13, 2020

Ex. B

EXHIBIT B

Bank of Am. v. Saticoy Bay LLC Series
5328 Lochmor, No. 20-15582
Docket

Ex. B

General Docket
United States Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 20-15582
Nature of Suit: 4290 Other Real Property Actions
 Bank of America, N.A. v. Saticoy Bay LLC Series 5328, et al
Appeal From: U.S. District Court for Nevada, Las Vegas
Fee Status: Paid

Docketed: 04/03/2020
Termed: 03/16/2021

Case Type Information:

- 1) civil
- 2) private
- 3) null

Originating Court Information:

District: 0978-2 : [2:16-cv-00917-RFB-BNW](#)
Trial Judge: Richard F. Boulware, II, District Judge
Date Filed: 04/22/2016
Date Order/Judgment: 03/05/2020

Date Order/Judgment EOD:
 03/05/2020

Date NOA Filed:
 04/02/2020

Date Rec'd COA:
 04/02/2020

Prior Cases:

None

Current Cases:

None

BANK OF AMERICA, N.A.
 Plaintiff-counter-defendant - Appellee,

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v.

LOS PRADOS COMMUNITY ASSOCIATION
 Defendant,

NEVADA ASSOCIATION SERVICES, INC.

Defendant,

SATICOY BAY LLC SERIES 5328 LOCHMOR
Defendant-counter-claimant - Appellant,

Michael F. Bohn, Attorney
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Amicus Curiae,

Michael A. Johnson
Direct: 202-942-5654
[COR LD NTC Retained]
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Avenue, NW
Washington, DC 20001

BANK OF AMERICA, N.A.,

Plaintiff-counter-defendant - Appellee,

v.

LOS PRADOS COMMUNITY ASSOCIATION; NEVADA ASSOCIATION SERVICES, INC.,

Defendants,

and

SATICOY BAY LLC SERIES 5328 LOCHMOR,

Defendant-counter-claimant - Appellant.

- 04/03/2020 ☐ [1](#)
28 pg, 980.11 KB DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Appellant Saticoy Bay LLC Series 5328 Lochmor Mediation Questionnaire due on 04/10/2020. Appellant Saticoy Bay LLC Series 5328 Lochmor opening brief due 06/01/2020. Appellee Bank of America, N.A. answering brief due 07/01/2020. Appellant's optional reply brief is due 21 days after service of the answering brief. [11650733] (JBS) [Entered: 04/03/2020 09:02 AM]
- 04/09/2020 ☐ 2 Filed (ECF) notice of appearance of Stephen Colmery Parsley (Bradley Arant Boult Cummings LLP, One Federal Place, 1819 5th Avenue North, Birmingham, AL 35203) for Appellee Bank of America, N.A.. Date of service: 04/09/2020. (Party was previously proceeding with counsel.) [11656620] [20-15582] (Parsley, Stephen) [Entered: 04/09/2020 02:40 PM]
- 04/09/2020 ☐ 3 Added Attorney(s) Stephen Colmery Parsley for party(s) Appellee Bank of America, N.A., in case 20-15582. [11656657] (QDL) [Entered: 04/09/2020 02:56 PM]
- 04/10/2020 ☐ 4 Filed (ECF) notice of appearance of Richard Aaron Chastain (Bradley Arant Boult Cummings LLP, One Federal Place, 1819 5th Avenue North, Birmingham, AL 35203) for Appellee Bank of America, N.A.. Date of service: 04/10/2020. (Party was previously proceeding with counsel.) [11657137] [20-15582] (Chastain, Richard) [Entered: 04/10/2020 09:40 AM]
- 04/10/2020 ☐ 5 Added Attorney(s) Richard Aaron Chastain for party(s) Appellee Bank of America, N.A., in case 20-15582. [11657144] (NAC) [Entered: 04/10/2020 09:43 AM]
- 04/10/2020 ☐ [6](#)
4 pg, 88.75 KB Filed (ECF) Appellant Saticoy Bay LLC Series 5328 Lochmor Mediation Questionnaire. Date of service: 04/10/2020. [11657465] [20-15582] (Bohn, Michael) [Entered: 04/10/2020 11:52 AM]
- 04/10/2020 ☐ 7 The Mediation Questionnaire for this case was filed on 04/10/2020.
To submit pertinent **confidential** information directly to the Circuit Mediators, please use the following [link](#). Confidential submissions may include any information relevant to mediation of the case and settlement potential, including, but not limited to, settlement history, ongoing or potential settlement discussions, non-litigated party related issues, other pending actions, and timing considerations that may impact mediation efforts.[11657548]. [20-15582] (AD) [Entered: 04/10/2020 12:44 PM]
- 04/13/2020 ☐ [8](#)
5 pg, 166.46 KB MEDIATION CONFERENCE SCHEDULED - DIAL-IN AssessmentConference, 05/04/2020, 11:00 a.m., PACIFIC Time. The briefing schedule previously set by the court remains in effect. See order for instructions and details. [11659217] (VS) [Entered: 04/13/2020 01:39 PM]
- 05/04/2020 ☐ [9](#)
1 pg, 93.18 KB MEDIATION CONFERENCE SCHEDULED - DIAL-IN FurtherConference, 05/18/2020, 11:00 a.m., Pacific Time. See order for details. [11679377] (VS) [Entered: 05/04/2020 11:22 AM]
- 05/18/2020 ☐ [10](#)
2 pg, 34.47 KB Filed order MEDIATION (SL):This case is RELEASED from the Mediation Program. The briefing schedule previously set by the court is amended as follows: appellant's opening brief is due June 15, 2020; appellee's answering brief is due July 15, 2020; appellant's optional reply brief is due within 21 days from the service date of the answering brief. Counsel are requested to contact the Circuit Mediator by email (stephen_liacouras@ca9.uscourts.gov) should circumstances develop that warrant settlement discussions. [11694028] (JPD) [Entered: 05/18/2020 01:54 PM]
- 06/15/2020 ☐ 11 Filed (ECF) Streamlined request for extension of time to file Opening Brief by Appellant Saticoy Bay LLC Series 5328 Lochmor. New requested due date is 07/15/2020. [11721828] [20-15582] (Bohn, Michael) [Entered: 06/15/2020 01:29 PM]
- 06/15/2020 ☐ 12 **Streamlined request [11] by Appellant Saticoy Bay LLC Series 5328 Lochmor to extend time to file the brief is approved. Amended briefing schedule: Appellant Saticoy Bay LLC Series 5328 Lochmor opening brief due 07/15/2020. Appellee Bank of America, N.A. answering brief due 08/14/2020. The optional reply brief is due 21 days from the date of service of the answering brief.** [11722310] (JN) [Entered: 06/15/2020 03:47 PM]
- 07/15/2020 ☐ [13](#)
70 pg, 316.84 KB Submitted (ECF) Opening Brief for review. Submitted by Appellant Saticoy Bay LLC Series 5328 Lochmor. Date of service: 07/15/2020. [11754514] [20-15582] (Bohn, Michael) [Entered: 07/15/2020 05:48 PM]
- 07/15/2020 ☐ [14](#)
518 pg, 27.81 MB Submitted (ECF) excerpts of record. Submitted by Appellant Saticoy Bay LLC Series 5328 Lochmor. Date of service: 07/15/2020. [11754515] [20-15582] (Bohn, Michael) [Entered: 07/15/2020 05:51 PM]
- 07/16/2020 ☐ [15](#)
2 pg, 95.34 KB Filed clerk order: The opening brief [\[13\]](#) submitted by Saticoy Bay LLC Series 5328 Lochmor is filed. Within 7 days of the filing of this order, filer is ordered to file 6 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: blue. The excerpts of record [\[14\]](#) submitted by Saticoy Bay LLC Series 5328 Lochmor are filed. Within 7 days of this order, filer is ordered to file 3 copies of the excerpts in paper format securely bound on the left side, with white covers. The paper copies shall be submitted to the principal office of the Clerk. [11755228] (SML) [Entered: 07/16/2020 12:06 PM]
- 07/20/2020 ☐ 16 Filed (ECF) notice of appearance of Erin Alexandra McFall (Bradley Arant Boult Cummings LLP, 1600 Division Street, Suite 700, Nashville, TN 37203) for Appellee Bank of America, N.A.. Date of service: 07/20/2020. (Party was previously proceeding with counsel.) [11758094] [20-15582] (McFall, Erin) [Entered: 07/20/2020 08:51 AM]

- 07/20/2020 ☐ 17 Added Attorney(s) Erin Alexandra McFall for party(s) Appellee Bank of America, N.A., in case 20-15582. [11758099] (QDL) [Entered: 07/20/2020 08:52 AM]
- 07/20/2020 ☐ 18 Filed (ECF) Streamlined request for extension of time to file Answering Brief by Appellee Bank of America, N.A.. New requested due date is 09/15/2020. [11758157] [20-15582] (McFall, Erin) [Entered: 07/20/2020 09:05 AM]
- 07/20/2020 ☐ 19 **Streamlined request [18] by Appellee Bank of America, N.A. to extend time to file the brief is approved in part. Streamlined requests allow for a 30 day extension of time to file the brief. Amended briefing schedule: Appellee Bank of America, N.A. answering brief due 09/14/2020. The optional reply brief is due 21 days from the date of service of the answering brief.** [11758664] (JN) [Entered: 07/20/2020 12:01 PM]
- 07/24/2020 ☐ 20 Received 3 paper copies of excerpts of record [14] in 3 volume(s) filed by Appellant Saticoy Bay LLC Series 5328 Lochmor. [11765987] (LA) [Entered: 07/24/2020 06:33 PM]
- 07/24/2020 ☐ 21 Received 6 paper copies of Opening Brief [13] filed by Saticoy Bay LLC Series 5328 Lochmor. [11766094] (SD) [Entered: 07/25/2020 01:12 PM]
- 09/14/2020 ☐ 22
4 pg, 134.94 KB Filed (ECF) Appellee Bank of America, N.A. Unopposed Motion to extend time to file Answering brief until 09/17/2020. Date of service: 09/14/2020. [11822865] [20-15582] (McFall, Erin) [Entered: 09/14/2020 01:53 PM]
- 09/17/2020 ☐ 23
125 pg, 11.33 MB Submitted (ECF) Answering Brief for review. Submitted by Appellee Bank of America, N.A.. Date of service: 09/17/2020. [11827817] [20-15582] (McFall, Erin) [Entered: 09/17/2020 01:44 PM]
- 09/24/2020 ☐ 24
35 pg, 146.35 KB Submitted (ECF) Amicus brief for review (by government or with consent per FRAP 29(a)). Submitted by Federal Housing Finance Agency. Date of service: 09/24/2020. [11835998] [20-15582] (Johnson, Michael) [Entered: 09/24/2020 02:54 PM]
- 09/25/2020 ☐ 25 Entered appearance of Amicus Curiae FHFA. [11837178] (SML) [Entered: 09/25/2020 01:05 PM]
- 09/25/2020 ☐ 26
2 pg, 94.51 KB Filed clerk order: The amicus brief [24] submitted by FHFA is filed. Within 7 days of the filing of this order, filer is ordered to file 6 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: green. The paper copies shall be submitted to the principal office of the Clerk. [11837181] (SML) [Entered: 09/25/2020 01:05 PM]
- 09/25/2020 ☐ 27
1 pg, 100.19 KB Filed clerk order (Deputy Clerk: LBS): Appellee's unopposed motion (Docket Entry No. [22]) for an extension of time to file the answering brief is granted. The Clerk will file the answering brief submitted at Docket Entry No. [23]. (JPD) [Entered: 09/25/2020 04:40 PM]
- 09/25/2020 ☐ 28
2 pg, 94.44 KB Filed clerk order: The answering brief [23] submitted by Bank of America, N.A. is filed. Within 7 days of the filing of this order, filer is ordered to file 6 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be submitted to the principal office of the Clerk. [11837815] (SML) [Entered: 09/25/2020 04:59 PM]
- 09/28/2020 ☐ 29
2 pg, 134.13 KB Filed clerk order (Deputy Clerk: JF): The court stays proceedings in this appeal pending the response of the Supreme Court of Nevada to this court's published order certifying two questions in U.S. Bank, Inc. v. Thunder Properties, Inc., No.17-16399, 2020 WL 2091095 (9th Cir. May 1, 2020); or upon further order of this court. [11839469] (JPD) [Entered: 09/28/2020 02:34 PM]
- 09/29/2020 ☐ 30 Received 6 paper copies of Amicus Brief [24] filed by FHFA. [11841034] (MAE) [Entered: 09/29/2020 02:04 PM]
- 09/29/2020 ☐ 31 Received 6 paper copies of Answering Brief [23] filed by Bank of America, N.A.. [11841115] (MAE) [Entered: 09/29/2020 02:21 PM]
- 10/13/2020 ☐ 32
19 pg, 254.04 KB Filed (ECF) Appellee Bank of America, N.A. motion for reconsideration of non-dispositive Clerk Order of 09/28/2020. Date of service: 10/13/2020. [11857273] [20-15582] (McFall, Erin) [Entered: 10/13/2020 05:48 PM]
- 10/30/2020 ☐ 33
2 pg, 99.09 KB Filed clerk order (Deputy Clerk: JLF): The joint motion to lift the stay of proceedings (Docket Entry No. [32]) is granted. Principal briefing is complete. The optional reply brief is due December 1, 2020. [11877590] (JPD) [Entered: 10/30/2020 03:23 PM]
- 11/06/2020 ☐ 34 This case is being considered for an upcoming oral argument calendar in Las Vegas.
- Please review the Las Vegas sitting dates for March 2021 at http://www.ca9.uscourts.gov/court_sessions. If you have an unavoidable conflict on any of the dates, please file [Form 32](#) within 3 business days of this notice using the CM/ECF filing type **Response to Case Being Considered for Oral Argument**. Please follow the form's [instructions](#) carefully.

When setting your argument date, the court will try to work around unavoidable conflicts; the court is not able to accommodate mere scheduling preferences. You will receive notice that your case has been

assigned to a calendar approximately 10 weeks before the scheduled oral argument date.

If the parties wish to discuss settlement before an argument date is set, they should jointly request referral to the mediation unit by filing a letter **within 3 business days of this notice**, using CM/ECF (**Type of Document:** Correspondence to Court; **Subject:** request for mediation). [11884960] (KJC) [Entered: 11/06/2020 02:49 PM]

11/10/2020 ☐ [35](#)
7 pg, 364.23 KB

Filed (ECF) Appellee Bank of America, N.A. citation of supplemental authorities. Date of service: 11/10/2020. [11887578] [20-15582] (McFall, Erin) [Entered: 11/10/2020 06:27 AM]

11/23/2020 ☐ 36

This case is being considered for an upcoming oral argument calendar in San Francisco.

Please review the San Francisco sitting dates for March 2021 and the 2 subsequent sitting months in that location at http://www.ca9.uscourts.gov/court_sessions. If you have an unavoidable conflict on any of the dates, please file [Form 32](#) **immediately** using the CM/ECF filing type **Response to Case Being Considered for Oral Argument**. Please follow the form's [instructions](#) carefully.

When setting your argument date, the court will try to work around unavoidable conflicts; the court is not able to accommodate mere scheduling preferences. You will receive notice that your case has been assigned to a calendar approximately 10 weeks before the scheduled oral argument date.

If the parties wish to discuss settlement before an argument date is set, they should jointly request referral to the mediation unit by filing a letter **immediately**, using CM/ECF (**Type of Document:** Correspondence to Court; **Subject:** request for mediation). [11904081] (KJC) [Entered: 11/23/2020 04:05 PM]

11/30/2020 ☐ 37

Filed (ECF) Streamlined request for extension of time to file Reply Brief by Appellant Saticoy Bay LLC Series 5328 Lochmor. New requested due date is 12/31/2020. [11909123] [20-15582] (Bohn, Michael) [Entered: 11/30/2020 11:49 AM]

11/30/2020 ☐ 38

Streamlined request [37] by Appellant Saticoy Bay LLC Series 5328 Lochmor to extend time to file the brief is not approved because the case has been assigned to a panel. You will have to file a written motion. [11909223] (JN) [Entered: 11/30/2020 12:34 PM]

12/01/2020 ☐ [39](#)
4 pg, 51.57 KB

Filed (ECF) Appellant Saticoy Bay LLC Series 5328 Lochmor Motion to extend time to file Reply brief until 01/15/2021. Date of service: 12/01/2020. [11911191] [20-15582] (Bohn, Michael) [Entered: 12/01/2020 01:44 PM]

12/27/2020 ☐ 40

Notice of Oral Argument on Friday, March 12, 2021 - 09:30 A.M. - Courtroom 3 - Scheduled Location: San Francisco CA.
The hearing time is the local time zone at the scheduled hearing location, even if the argument is fully remote.

View the Oral Argument Calendar for your case [here](#).

NOTE: Although your case is currently scheduled for oral argument, the panel may decide to submit the case on the briefs instead. See Fed. R. App. P. 34. Absent further order of the court, if the court does determine that oral argument is required in this case, any argument may be held **remotely** with all of the judges and attorneys appearing by video or telephone. Travel to a courthouse will not be required. If the panel determines that it will hold oral argument, the Clerk's Office will be in contact with you directly at least two weeks before the set argument date to make any necessary arrangements for remote appearance.

Be sure to review the [GUIDELINES](#) for important information about your hearing, including when to be available (30 minutes before the hearing time) and when and how to submit additional citations (filing electronically as far in advance of the hearing as possible).

If you are the specific attorney or self-represented party who will be arguing, use the [ACKNOWLEDGMENT OF HEARING NOTICE](#) filing type in CM/ECF no later than 21 days before Friday, March 12, 2021. No form or other attachment is required. If you will not be arguing, do not file an acknowledgment of hearing notice.[11945356]. [20-15582] (AW) [Entered: 12/27/2020 06:14 AM]

01/05/2021 ☐ 41

Filed text clerk order (Deputy Clerk: OC):Appellant's unopposed motion to extend the time to file a reply brief to January 15, 2021 ([\[39\]](#)), is granted. [11952724] (OC) [Entered: 01/05/2021 11:51 AM]

01/15/2021 ☐ [42](#)
42 pg, 211.89 KB

Submitted (ECF) Reply Brief for review. Submitted by Appellant Saticoy Bay LLC Series 5328 Lochmor. Date of service: 01/15/2021. [11966613] [20-15582] (Bohn, Michael) [Entered: 01/15/2021 04:58 PM]

01/19/2021 ☐ [43](#)
2 pg, 94.8 KB

Filed clerk order: The reply brief [\[42\]](#) submitted by Saticoy Bay LLC Series 5328 Lochmor is filed. Within 7 days of the filing of this order, filer is ordered to file 6 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be submitted to the principal office of the Clerk. [11967216] (SML) [Entered: 01/19/2021 09:27 AM]

01/28/2021	<input type="checkbox"/> 44	Received 6 paper copies of Reply Brief [42] filed by Saticoy Bay LLC Series 5328 Lochmor. (sent to panel) [11984956] (SD) [Entered: 01/28/2021 02:18 PM]
02/19/2021	<input type="checkbox"/> 45 7 pg, 146.91 KB	Filed (ECF) Amicus Curiae FHFA Unopposed Motion for miscellaneous relief [Participate in Oral Argument]. Date of service: 02/19/2021. [12009904] [20-15582] (Johnson, Michael) [Entered: 02/19/2021 01:47 PM]
02/19/2021	<input type="checkbox"/> 46	Filed (ECF) Acknowledgment of hearing notice by Attorney Michael A. Johnson for Amicus Curiae FHFA. Hearing in San Francisco on 03/12/2021 at 09:30 A.M. (Courtroom: 3). Filer sharing argument time: No. (Argument minutes: 15.) Special accommodations: NO. Filer admission status: I certify that I am admitted to practice before this Court. Date of service: 02/19/2021. [12009921] [20-15582]--[COURT UPDATE: Edited docket text to reflect correct hearing date. 02/19/2021 by QDL] (Johnson, Michael) [Entered: 02/19/2021 01:52 PM]
02/19/2021	<input type="checkbox"/> 47 2 pg, 100.47 KB	Filed clerk order (Deputy Clerk: OC): The court is of the unanimous opinion that the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument. This case shall be submitted on the briefs and record, without oral argument, on March 12, 2021, in San Francisco, California. Fed. R. App. P. 34(a)(2). The unopposed motion of the Federal Housing Finance Agency to participate in oral argument, Docket No. [45] , is denied as moot. [12010451] (OC) [Entered: 02/19/2021 04:50 PM]
03/12/2021	<input type="checkbox"/> 48	SUBMITTED ON THE BRIEFS TO J. CLIFFORD WALLACE, RONALD M. GOULD and MICHELLE T. FRIEDLAND. [12040672] (ER) [Entered: 03/15/2021 09:46 AM]
03/16/2021	<input type="checkbox"/> 49 10 pg, 311.32 KB	FILED MEMORANDUM DISPOSITION (J. CLIFFORD WALLACE, RONALD M. GOULD and MICHELLE T. FRIEDLAND) AFFIRMED. FILED AND ENTERED JUDGMENT. [12042461] (MM) [Entered: 03/16/2021 09:42 AM]

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