IN THE SUPREME COURT OF THE STATE OF NEVADA

FEDERAL NATIONAL MORTGAGE ASSOCIATION,

Appellant,

vs.

WESTLAND LIBERTY VILLAGE, LLC, a Nevada Limited Liability Company; and WESTLAND VILLAGE SQUARE, LLC, a Nevada Limited Liability Company,

Respondents.

Supreme Court Case No. 82174

Dist. Court Case No. A-20-819412-B

Appeal from the Eighth Judicial District Court of the State of Nevada, in and for County of Clark

RESPONDENTS' OPPOSITION TO MOTION TO RECONSIDER

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I. INTRODUCTION

The motion for reconsideration filed by Appellant Federal National Mortgage Association ("Fannie Mae") is a transparent effort to obtain another bite at the apple after the Court largely denied Fannie Mae's 25-page motion to stay the district court's preliminary injunction order (the "Order"). Fannie Mae moved to stay 17 separate provisions of the Order designed to prohibit Fannie Mae from treating Westland as a borrower in default. One such provision was paragraph 5(o) which enjoined Fannie Mae from taking adverse action against any Westland entity on new loan or refinancing applications based on the defective notices of default at issue in this litigation. This Court stayed the Order to the extent it required Fannie Mae to rescind the notices of default, but left the remainder of the district court's ruling in effect such that Fannie Mae is enjoined from pursuing foreclosure proceedings and related adverse actions—including the conduct prohibited by paragraph 5(o)—during the pendency of this appeal.

Here, Fannie Mae seeks "reconsideration" of the Court's refusal to stay paragraph 5(o), but fails to identify any changed circumstances or new law that would warrant such relief. Fannie Mae, in fact, does not even address the legal standard that governs the Court's analysis of its motion for reconsideration. Rather, Fannie May advances four pages of new facts related to the ACheck system and expands on its prior arguments as to why paragraph 5(o) should be stayed pending

this appeal. Simply put, Fannie Mae has essentially submitted a supplement to its original motion masquerading as a motion for reconsideration. The Court should deny Fannie Mae's improper request for reconsideration, particularly when its arguments are premised on an overblown depiction of paragraph 5(o)'s narrow prohibitions.

II. ARGUMENT

A. Fannie Mae Did Not Even Attempt To Satisfy The Legal Standard For Reconsideration Of The Order.

Reconsideration is generally appropriate only where "new issues of fact or law are raised supporting a ruling contrary to the ruling already reached." *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). Here, Fannie Mae did not submit any ***new*** issues of fact or law warranting reconsideration of the Court's stay order. Instead, Fannie Mae merely expanded upon the same unconvincing arguments that were previously rejected by this Court on the first go-around. *Compare* Expedited Motion to Stay Pending Appeal at 16 *with* Motion to Reconsider.

Because Fannie Mae could have easily advanced these arguments in its original motion to stay, it cannot now seek reconsideration based on expanded arguments that did not fit within the prior (enlarged) page limit. *See In re Negrete*, 183 B.R. 195, 197 (9th Cir. BAP 1995) ("Motions for reconsideration which merely revisit the same issues already ruled upon by the [ ] court, or which advance

supporting facts that were otherwise available when the issues were originally briefed, will generally not be granted) (citing *Van Skiver v. United States*, 952 F.2d 1241, 1243 (10th Cir. 1991)); *Wallis v. J.R. Simplot Co.*, 26 F.3d 885, 892 n. 6 (9th Cir. 1994) (holding that "[e]vidence is not newly discovered [for the purposes of a motion for reconsideration] if it was in the party's possession at the time of summary judgment or could have been discovered with reasonable diligence").

The Court may also grant reconsideration if the stay order is "clearly erroneous." *See Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). But nowhere does Fannie Mae contend that this Court's refusal to stay paragraph 5(o) of the Order meets that stringent standard. Nor can it as the Court's decision not to stay the prohibitory aspects of paragraph 5(o) was a fact-intensive exercise of the Court's discretion under NRAP 8(c). *See State v. Robles-Nieves*, 129 Nev. 537, 541-42, 306 P.3d 399, 402-403 (2013) (discussing the Court's discretion to apply NRAP 8(c) factors and case-specific nature of the analysis).

Because "a motion for reconsideration is not an avenue to re-litigate the same issues and arguments upon which the court has already ruled," *Brown v. Kinross Gold, U.S.A.*, 278 F.Supp.2d 1280 (D. Nev. 2005), the Court should summarily deny Fannie Mae's recycled request for a stay of paragraph 5(o) of the Order pending appeal.

B. Fannie Mae's Arguments In Support Of Reconsideration Are Premised On A Skewed Reading Of Paragraph 5(o).

Notwithstanding the legal flaws in its request for reconsideration, Fannie Mae misconstrues the meaning of paragraph 5(o) in an attempt to generate a "sky-is-falling" narrative regarding its purported lending obligations. Specifically, Fannie Mae claims "it is clear that Westland intends that Fannie Mae be broadly prohibited from employing the ACheck system as to any 'Westland entity,' including entities created after the injunction was entered." *See* Mot. at 5. Fannie Mae further asserts that paragraph 5(o) will result in forced contracting by requiring Fannie Mae to "enter unwanted long-term lending relationships" on favorable terms with Westland and its affiliates. *Id.* at 5-8. Neither contention is accurate.

Section 5(o) of the Order specifically provides that Fannie Mae may not:

> Take any adverse action against any Westland entity in relation to other loans, discriminate against or blacklist any Westland entity on new loan or loan refinancing applications, including by placing Westland on "a-check," adding a fee to any loan quoted or adding an interest rate surcharge to such applications, ***based on the purported default that arose from failing to deposit the additional $2.85 million into escrow.***

APP1511 (emphasis added).[2]

By its plain language, paragraph 5(o) simply prevents Fannie Mae from

[2] Tellingly, Fannie Mae completely ignores the emphasized language in paragraph 5(o) and instead claims that this provision "categorically prohibit[s] Fannie Mae from taking '***any*** adverse action against ***any*** Westland entity' in relation to any other loans and new loans and refinancing applications." *See* Mot. at 7 (emphasis in original).

imposing adverse consequences on Westland and its affiliates based on the existence of the disputed defaults. Nothing in paragraph 5(o) prevents Fannie Mae from utilizing the ACheck system with respect to other loans or loan applications related to Westland. This provision merely prohibits Fannie Mae from flagging Westland and its affiliates with a "do not process" label in the ACheck system based solely on the existence of the defective defaults. *See* Mot. at 4. Accordingly, like the other provisions of the Order this Court declined to stay pending appeal, paragraph 5(o) accomplishes the district court's intended purpose of halting the adverse effects on Westland and its affiliates "flowing" from the notices of default entered by Fannie Mae.

Similarly, paragraph 5(o) does not require Fannie Mae to grant Westland and its affiliates "most-favored nation" status or to contract with Westland-related entities on improved terms under the threat of contempt sanctions. Again, Fannie Mae is only prohibited from deviating from its standard lending practices with Westland on grounds that the notices of default were entered on the subject properties. Put another way, Fannie Mae may refuse to lend to Westland and its affiliates, but it may not refuse to lend if one of the reasons for doing so is the existence of the purported notices of defaults that are the subject of the Order.

Fannie Mae's contentions that paragraph 5(o) violates NRCP 65(d) by extending protection to non-party Westland affiliates also misses the mark. The

penalties imposed by Fannie Mae as a result of the defective default notices not only impact the two Westland entities that are parties in this matter, but also impose the same negative effects on any other entity with which Westland is affiliated. It would defy common sense for the Order to prevent adverse consequences flowing from the notices of default as to the two Westland parties in this case while allowing those same consequences to continue uninhibited with respect to the other entities in the Westland Real Estate Group which are indisputably not in default.

Thus, while NRCP 65(d) limits the parties whose conduct may be enjoined,[3] "[t]here is no general requirement that an injunction affect only the parties in the suit." *Bresgal v. Brock*, 843 F.2d 1163, 1169 (9th Cir. 1987). To that end, "an injunction is not necessarily made overboard by extending benefit or protection to persons other than the prevailing parties in the lawsuit [ ] *if such breadth is necessary to give the prevailing parties the relief to which they are entitled*." *Id.* at 1170 (emphasis in original); *see also City of Chicago v. Barr*, 961 F.3d 882, 920-21 (7th Cir. 2020) ("a court may impose the equitable relief necessary to render complete relief to the [movant], even if that relief extends incidentally to non-parties.") (citing

[3] NRCP 65(d)(2) provides that injunctions may restrict the conduct of parties as well as non-party agents, servants, employees, and any "other persons who are in active concert or participation" with the party. Fannie Mae, however, complains that the Order extends protections to non-party affiliates of Westland. As such, the issue of which parties may be enjoined (as opposed to protected) by the Order is not relevant here.

Califano v. Yamasaki, 442 U.S. 682, 702 (1979)). Fannie Mae's contention that the district court exceeded its authority by protecting Westland affiliates from the adverse effects of the purported default notices is contrary to law as the inclusion of Westland's affiliates in paragraph 5(o) was necessary to grant complete relief.[4]

In short, Fannie Mae's objection to paragraph 5(o) arises from its inexplicable desire to continue punishing Westland and its affiliates based on the spurious default notices. But the district court enjoined Fannie Mae from doing just that, and this Court denied Fannie's Mae's request for a stay of that provision during the pendency of this appeal. Fannie Mae can present its arguments concerning paragraph 5(o) and the other provisions of the district court's Order on appeal, but there is no basis for reconsideration of the Court's stay order.

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[4] Fannie Mae cites *Richards v. Jefferson Cty., Ala*, 517 U.S. 793 (1996) for the proposition that the district court lacked the power to issue orders concerning non-parties. The *Richards* court, however, addressed the application of res judicata and whether a party without notice of the proceeding could be bound by an adverse judgment. *Id.* Thus, *Richards* is inapposite where, as here, the sole question is whether the court may extend the benefits of injunctive relief to non-party affiliates of Westland.

III. CONCLUSION

Based on the foregoing, Westland respectfully requests that the Court deny Fannie Mae's Motion to Reconsider in its entirety.

Dated: March 5, 2021

CAMPBELL & WILLIAMS

By /s/ ***J. Colby Williams***

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I hereby certify that, in accordance therewith and on this 5th day of March 2021, I caused true and correct copies of the foregoing Opposition to Motion to Reconsider to be delivered to the following counsel and parties:

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