

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.

Electronically Filed
Apr 27 2021 04:50 p.m.
Supreme Court Case No. 82174
Elizabeth A. Brown
Dist. Court Case No. A-20-819412-B
Clerk of Supreme Court

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

**RESPONDENTS' OPPOSITION TO FEDERAL HOUSING FINANCE
AGENCY'S MOTION TO INTERVENE**

J. Colby Williams, Esq. (#5549)
Philip R. Erwin, Esq. (#11563)
CAMPBELL & WILLIAMS
710 South Seventh Street, Suite A
Las Vegas, Nevada 89101
Telephone: (702) 382-5222

Counsel for Respondents¹

¹ Additional counsel for Respondents identified below.

I. INTRODUCTION

The motion to intervene filed by the Federal Housing Finance Agency (“FHFA”) plainly contravenes Nevada law governing the recourse available to non-parties in appellate proceedings. Indeed, in its pending petition for writ of prohibition, FHFA acknowledged that “[t]he appropriate remedy for challenging an order by a non-party is by way of a petition for an extraordinary writ.” *See* Exhibit 1 (Petition for Writ of Prohibition) at 1 (citing *Gladys Baker Olsen Family Tr. v. Olsen*, 109 Nev. 838, 840, 858 P.2d 385, 386 (1993)). FHFA has further conceded elsewhere that longstanding Nevada precedent provides there is no mechanism for a non-party to intervene at the appellate level in the first instance. *See* Mot. at 4 (citing *Stephens v. First Nat’l Bank of Nev.*, 64 Nev. 292, 182 P.2d 146 (1947)). Nevertheless, FHFA moves to intervene in this appeal as a non-party even though there is no statute, rule or case in the State of Nevada that supports such a request. FHFA’s motion should be denied.²

² To be clear, Westland categorically rejects FHFA’s contentions that it is aggrieved by the district court’s entry of a preliminary injunction against Fannie Mae. Similarly, Westland strongly disputes that this matter implicates the anti-injunction provision in the Housing and Economic Recovery Act of 2008 (“HERA”). Because the instant Motion is fatally defective on procedural grounds, Westland will not consume the Court’s time and resources by responding to FHFA’s substantive arguments here, but will instead do so in response to FHFA’s pending writ petition.

II. ARGUMENT

FHFA premises its request to intervene on NRS 12.130(1)(a), which allows a non-party with an interest in the litigation to intervene at any time before trial. But, as this Court observed long ago, “[t]he statute makes no provision for intervention in the supreme court, in any case, at any stage of the proceedings, or at all.” *Stephens*, 64 Nev. at 304, 182 P.2d at 151. The *Stephens* court reviewed abundant legal authority from other jurisdictions and found “it is apparent that, in the absence of a permissive statute, such as does not exist in Nevada, the great weight of authority is opposed to intervention after a case has reached an appellate court.” *Id.* at 307, 182 P.2d at 153. Simply put, “it is not conducive to orderly procedure, and [] not contributory to the accomplishment of justice, to allow intervention in the appellate court[.]” *Id.* at 308, 182 P.2d at 153.³

This general rule remains unaltered in the approximately 75 years since *Stephens* was decided. For example, a Panel of the Court recently affirmed that “[i]t has been the consistent policy of this court to foster simplicity, clarity and certainty in our jurisdictional rules by refraining from ad hoc dispensations and exceptions

³ FHFA attempts to distinguish *Stephens* on grounds the rule forbidding intervention by a non-party at the appellate level applies only to appeals of final judgments, not interlocutory appeals such as this action. Notwithstanding FHFA’s failure to cite any legal authority supporting this novel contention, Westland submits that the Court’s rejection of appellate intervention “in any case, at any stage of the proceedings, or at all” provides the final word on the matter. 64 Nev. at 304, 182 P.2d at 151.

that would allow persons or entities that were not parties of record to appeal.” *In re Wynn Resorts, Ltd.*, 465 P.3d 1184, *1 (Nev. June 25, 2020) (citing *Olsen*, 109 Nev. at 841, 858 P.2d at 387); *see also Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 448, 874 P.2d 729, 735 (1994) (holding a party that did not intervene or otherwise become a party of record is not a “party” within the meaning of NRAP 3(a) and, thus, lacks standing to appeal from a district court’s order).

Other states that similarly lack permissive statutes allowing appellate intervention have reached the same result as the *Stephens* court. *See, e.g., Teleco, Inc. v. Corp. Comm’n of State of Okla.*, 649 P.2d 772, 773 (Okla. 1982) (“Generally, intervention at the appellate stage is impermissible.”); *In re Estate of Keen*, 488 S.W.3d 73, 76 n.2 (Mo. Ct. App. 2016) (“[A]bsent a suggestion of death, this appellate court has no authority under the statutes, the rules or the case law to permit addition or substitution of parties.”) (citing *Aetna Life Ins. Co. v. Litteer*, 621 S.W.2d 376, 379 (Mo. Ct. App. 1981)); *see also* 4 C.J.S. Appeal and Error § 342 (“Generally, in the absence of a permissive statute, intervention should not be allowed after a case has reached an appellate court[.]”).

Tellingly, FHFA analyzes its request for intervention under the framework established by NRCP 24. *See* Mot. at 4-10. But the Rules of Civil Procedure “govern the procedure in the district courts in all suits of a civil nature[.]” NRCP 1, and have no application to appellate proceedings before this Court. Rather, the Rules

of Appellate Procedure “govern procedure in the Supreme Court of Nevada[,]” NRAP 1(a), and do not create a mechanism for a non-party to intervene at the appellate level in the first instance. This is yet another reason why FHFA’s motion should be denied. *See, e.g., Simon v. Simon*, 957 N.E.2d 980, 989 (Ind. Ct. App. 2011) (denying request for intervention because “[t]here are no appellate rules providing for intervention in an appeal.”); *Envirotech Corp. v. Callahan*, 872 P.2d 487, 501 (Utah Ct. App. 1994) (“C-H may not intervene for the first time on appeal. Rule 24 of the Utah Rules of Civil Procedure provides that a party may intervene under proper circumstances. However, the rule contemplates timely intervention at the trial court and not for the first time on appeal.”).

There is no statute, rule or case in Nevada that allows a non-party like FHFA to intervene for the first time in this appeal. To the contrary, this Court has held that the appropriate remedy for a non-party seeking to challenge a district court order is to pursue writ relief. FHFA has already filed a petition for writ of prohibition, and the Court directed an answer on April 15, 2021. Meanwhile, FHFA’s motion for intervention is procedurally defective and barred by well-settled Nevada precedent. The Court’s analysis can end there.

.....

.....

.....

III. CONCLUSION

Based on the foregoing, Westland respectfully requests that the Court deny FHFA's Motion to Intervene in its entirety.

Dated: April 27, 2021

CAMPBELL & WILLIAMS

By /s/ J. Colby Williams

J. COLBY WILLIAMS, ESQ. (5549)

PHILIP R. ERWIN, ESQ. (11563)

JOHN BENEDICT, ESQ. (5581)

The Law Offices of John Benedict

JOHN W. HOFSAESS, ESQ.

(admitted *pro hac vice*)

Westland Real Estate Group

Attorneys for Respondents

CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I hereby certify that, in accordance therewith and on this 27th day of April 2021, I caused true and correct copies of the foregoing Opposition to Motion to Reconsider to be delivered to the following counsel and parties:

VIA ELECTRONIC MAIL:

Kelly H. Dove, Esq.
Nathan G. Kanute, Esq.
Bob L. Olson, Esq.
Snell & Wilmer L.L.P.
3883 Howard Hughes Parkway, Suite 110
Las Vegas, Nevada 89169

Michael A.F. Johnson, Esq.
Arnold & Porter
Kaye Scholer, LLP
601 Massachusetts Ave. NW
Washington, D.C. 20001

Joseph G. Went, Esq.
Lars K. Evensen, Esq.
Sydney R. Gambee, Esq.
Holland & Hart L.L.P.
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

Leslie Bryan Hart, Esq.
John D. Tennert, Esq.
Fennemore Craig, P.C.
7800 Rancharra Parkway
Reno, NV 89511

/s/ **John Y. Chong**
An Employee of Campbell & Williams