

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

FEDERAL HOUSING FINANCE  
AGENCY, in its capacity as  
Conservator for the Federal  
National Mortgage Association,

Petitioner,

vs.

EIGHTH JUDICIAL DISTRICT  
COURT, Clark County, Nevada;  
and THE HONORABLE NADIA  
KRALL, District Judge,

Respondents,

and

WESTLAND LIBERTY  
VILLAGE, LLC; WESTLAND  
VILLAGE SQUARE, LLC; and  
FEDERAL NATIONAL  
MORTGAGE ASSOCIATION,

Real Parties in Interest.

Case No. 82666

Electronically Filed  
Jun 21 2022 05:06 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**FHFA’S RESPONSE TO WESTLAND’S  
NOTICE OF SUPPLEMENTAL  
AUTHORITY**

Westland posits that *New Jersey Carpenters Health Fund v. NovaStar Mortgage, Inc.*, 28 F.4th 357 (2d Cir. 2022), supports arguments Westland asserts here. It does not. On those points, *NJ Carpenters* is fact-bound and irrelevant here.

In *NJ Carpenters*, Freddie Mac sought to opt out of a class action after a court-imposed deadline had passed. *Id.* at 363. FHFA, as Conservator, timely objected to

the terms of the class settlement and asked the District Court to (1) excuse Freddie Mac's missed deadline to opt-out, (2) recognize that 12 USC § 4617 precluded the District Court from including FHFA in its role as Conservator as a class member, from taking any action to restrain or affect the actions of the conservator, and from releasing claims held by the Conservator that were purportedly subject to the release provisions made part of the class settlement agreement; and (3) carve out the legal claims held by the Conservator for the Conservator to pursue separately but allow the remainder of the class action settlement to go forward.

The District Court refused, and the Second Circuit affirmed that refusal, in part over arguments that 12 U.S.C. § 4617 precluded the inclusion of Freddie Mac and FHFA in the class and empowered FHFA to pursue certain conservatorship estate claims outside the class action despite the opt-out deadline, *id.* at 379. FHFA respectfully disagrees with the Second Circuit's ruling and has until August 31, 2022 to seek review in the U.S. Supreme Court. Presently FHFA is considering its options, but that is of no moment here, as even on its own terms, *NJ Carpenters* does not support Westland.

*First*, Westland contends that “[t]he Second Circuit made clear that Section 4617(f) does not ‘deprive[] any district court of subject matter jurisdiction’ over FHFA as a conservator.” Notice at 2 (quoting *NJ Carpenters*, 28 F.4th at 375). The Second Circuit's conclusion is far narrower—that Section 4617(f) did not “deprive[]

the district court of subject matter jurisdiction *in this case to enforce the deadline for Freddie Mac to opt out of the Settlement Class.*” *NJ Carpenters*, 28 F.4th at 375 (emphasis added). The basis for that limited, case-specific conclusion is that Freddie Mac’s opting out after a court-ordered deadline has passed is not within the Conservator’s statutory powers and functions: As the Second Circuit explained, “§ 4617 (f) did not bar the district court’s denial of FHFA’s motion to excuse the untimeliness.” *Id.* at 376. Notwithstanding its ruling that Freddie Mac was a member of the settlement class, the court ruled that “FHFA . . . is not a member of the class,” thereby leaving FHFA as Conservator outside the district court’s jurisdiction in the case. *Id.* at 379. The Second Circuit did *not* suggest that Section 4617(f) is not a jurisdictional provision, or that Section 4617(f) does not preclude courts from granting relief that would restrain or affect the Conservator’s exercise of powers and functions it *does* have under HERA, such as those at issue here.

*Second*, Westland asserts that the Second Circuit’s paraphrase of 12 U.S.C. § 4617(b)(11)(E) as indicating that “FHFA ‘as either a conservator or receiver is required to optimize the value’” when disposing of specific assets, Notice at 3 (quoting *NJ Carpenters*, 28 F.4th at 372), supports its argument “that FHFA cannot invoke Section 4617(f) [in this case] without demonstrating that the preliminary injunction prevents it from taking action that is necessary to put Fannie in a sound and solvent condition,” Notice at 3. Westland is mistaken. Even if the Second

Circuit’s paraphrase is assumed to be correct, which FHFA does not concede, a requirement to optimize the value of specific assets at disposition does not equate to a requirement that an act be “necessary to soundness and solvency” for Section 4617(f) to apply. To the contrary, decades of decisions confirm that no such requirement exists. FHFA Suppl. Br. 6-12. The Second Circuit’s discussion cannot reasonably be read to upend that settled point of law.

At most, *NJ Carpenters* stands for the proposition that Section 4617 does not empower an entity in FHFA’s conservatorship to opt out of a class action after a court-ordered deadline had passed. Such a holding is irrelevant here because neither FHFA nor its conservatee Fannie Mae missed any court-ordered deadline. Indeed, the district court herein *could not* have imposed a deadline for the objection FHFA asserted to the preliminary injunction: Section 4617(f) embodies a jurisdictional limitation, and *any* party can raise a jurisdictional limitation at *any* time. *See* Reply in Supp. of Pet. for Writ of Prohibition at 3-11. This distinction renders *NJ Carpenters* inapposite.

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Nothing in *NJ Carpenters* changes the fact that Section 4617(f) bars the preliminary injunction in this case.

Dated: June 21, 2022

Respectfully Submitted,

FENNEMORE CRAIG, P.C.

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## CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I hereby certify that, in accordance therewith and on June 21, 2022, I caused true and correct copies of the foregoing Response to Notice of Supplemental Authority Pursuant to NRAP 31(a) to be delivered to the following counsel and parties:

VIA ELECTRONIC MAIL:

Real Party in Interest	Federal National Mortgage Association	Kelly H. Dove (Snell & Wilmer, LLP/Las Vegas) David L. Edelblute (Snell & Wilmer, LLP/Las Vegas) Lars K. Evensen (Holland & Hart LLP/Las Vegas) Sydney R. Gambia (Holland & Hart LLP/Las Vegas) Nathaniel G. Kanute (Snell & Wilmer, LLP/Reno) Bob L. Olson (Snell & Wilmer, LLP/Las Vegas) Joseph G. Went (Holland & Hart LLP/Las Vegas)
Real Party in Interest	Westland Liberty Village, LLC	Brian W. Barnes (Cooper & Kirk PLLC/Wash DC) John G. Benedict (Law Offices of John Benedict) Philip R. Erwin (Campbell & Williams) John W. Hofsaess J. Colby Williams (Campbell & Williams)
Real Party in Interest	Westland Village Square, LLC	Brian W. Barnes (Cooper & Kirk PLLC/Wash DC) John G. Benedict (Law Offices of John Benedict) Philip R. Erwin (Campbell & Williams)

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VIA U.S. MAIL:		
Respondent	The Honorable Nadia Krall District Court Judge, Dept. IV 200 Lewis Avenue Las Vegas, Nevada 89155	

June 21, 2022

/s/ Shawna Braselton  
An Employee of Fennemore Craig, P.C.