

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. 83695

**NOTICE OF SUPPLEMENTAL
AUTHORITY PURSUANT TO
NRAP 31(e)**

Electronically Filed
May 27, 2022 02:43 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Pursuant to Nevada Rule of Appellate Procedure 31(e), Westland respectfully directs the Court's attention to a recent decision of the United States Court of Appeals for the Second Circuit. In *New Jersey Carpenters Health Fund v. NovaStar Mortgage, Inc.*, 28 F.4th 357 (2d Cir. 2022), the court rejected FHFA's argument that 12 U.S.C. § 4617(f) excused the agency from complying with a court-imposed deadline for opting out of a class action on behalf of a regulated entity it oversees as conservator, Freddie Mac. The Second Circuit ruled that, despite Section 4617(f), FHFA is normally "subject to court orders and deadlines" like any other litigant. *Id.*

at 375. That conclusion is relevant to the parties' dispute in this case over whether Section 4617(f) excuses FHFA's failure to timely raise this statute in the district court. *See* Westland Br. 30–34.

In rejecting FHFA's Section 4617(f) argument, the Second Circuit gave significant weight to FHFA's statutory authority as conservator to request a 45-day stay of court proceedings under 12 U.S.C. § 4617(b)(10). The Second Circuit made clear that Section 4617(f) does not "deprive[] any district court of subject matter jurisdiction" over FHFA as a conservator, and that the FHFA must be properly acting within the scope of its powers for Section 4617(f) to apply. 28 F.4th at 375. The Second Circuit reasoned that "[i]f, as FHFA contends, Congress had intended FHFA to have carte blanche to proceed at its own pace – or to refuse to proceed – in disregard of court orders or deadlines, there would have been no need" for Congress to give the conservator statutory authority to seek such a stay. *Id.* The Second Circuit also held the FHFA could not rely on general provisions, as opposed to express statutory provisions, when restricting a court's power, by stating FHFA "provides no HERA cite for such a proposition other than its own gloss on the general language in § 4617(f), and we have found no relevant provision in HERA." *Id.* at 372 [no express HERA denial of jurisdiction when FHFA is conservator, not receiver], 377 [no provision requiring HERA consent to suit], 378 [no HERA provision excluding class actions]. The Second Circuit's statutory analysis bears

upon Westland’s similar argument that Congress’s decision to specifically authorize FHFA to repudiate contracts under limited circumstances implies that the agency lacks statutory authority to breach contracts outside of those circumstances, that the Court is not deprived of jurisdiction, and the FHFA must exercise its powers and do so consistent with HERA’s scope. *See* Westland Br. 35–36 (discussing 12 U.S.C. § 4617(d)).

In *New Jersey Carpenters Health Fund*, the Second Circuit also observed that, even after the Supreme Court’s decision in *Collins v. Yellen*, 141 S. Ct. 1761 (2021), FHFA “as either a conservator or receiver is required to optimize the value of [Fannie’s and Freddie’s] assets.” 28 F.4th at 372 (citing 12 U.S.C. § 4617(b)(2)(E)). This observation is relevant to Westland’s argument that FHFA cannot invoke Section 4617(f) without demonstrating that the preliminary injunction prevents it from taking action that is necessary to put Fannie in a sound and solvent condition. *See* Westland Br. 42–45.

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Respectfully submitted,

DATED this 27th day of May, 2022

CAMPBELL & WILLIAMS

By /s/ J. Colby Williams

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Westland Village Square, LLC

CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I hereby certify that, in accordance therewith and on this 27th day of May 2022, I caused true and correct copies of the foregoing Notice of Supplemental Authority Pursuant to NRAP 31(a) to be delivered to the following counsel and parties:

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The Honorable Mark Denton
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/s/ Crystal B. Balaoro
An employee of Campbell & Williams