

United States Court of Appeals For the First Circuit

No. 20-2025

CYNTHIA BOSS,

Plaintiff, Appellee,

v.

FEDERAL HOUSING FINANCE AGENCY; FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Defendants, Appellants,

SANTANDER BANK, N.A.,

Defendant.

No. 20-2026

JUDITH A. SISTI,

Plaintiff, Appellee,

v.

FEDERAL HOME LOAN MORTGAGE CORPORATION; FEDERAL HOUSING FINANCE
AGENCY; NATIONSTAR MORTGAGE, LLC,

Defendants, Appellants.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

[Hon. John J. McConnell, Jr., Chief U.S. District Judge]

Before

Lynch and Kayatta, Circuit Judges,
and Woodcock,* District Judge.

Michael A.F. Johnson, with whom Dirk C. Phillips, Omomah I. Abebe, and Arnold & Porter Kaye Scholer LLP were on brief, for appellant Federal Housing Finance Authority.

Samuel C. Bodurtha and Hinshaw & Culbertson LLP on brief, for appellants Federal Housing Finance Authority, Federal National Mortgage Association, and Federal Home Loan Mortgage Corporation.

Joseph A. Farside, Jr., Krystle G. Tadesse, and Locke Lord LLP on brief for appellant Nationstar Mortgage LLC.

Steven S. Flores, with whom Michael Zabelin and Rhode Island Legal Services, Inc. were on brief, for appellees.

Bruce Bennett, Chané Buck, Lawrence D. Rosenberg, C. Kevin Marshall, and Jones Day on brief for amici curiae Institutional Investors in Fannie Mae and Freddie Mac.

Thomas A. Cox on brief for amicus curiae National Consumer Law Center.

June 8, 2021

* Of the District of Maine, sitting by designation.

LYNCH, Circuit Judge. Plaintiffs in these appeals, consolidated for oral argument, entered into mortgages giving their lenders the right, under Rhode Island law, to nonjudicially foreclose on their mortgages. The appeals concern whether these plaintiffs can bring constitutional due process claims against the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") (collectively, the "GSEs") after the Federal Housing Finance Agency ("FHFA"), acting as the GSEs' conservator, caused the GSEs to exercise their contractual rights to nonjudicially foreclose. For the reasons stated in Montilla v. Federal National Mortgage Ass'n, No. 20-1673 (1st Cir. June 8, 2021), Fannie Mae, Freddie Mac, and FHFA were not acting as the government when they did so. The plaintiffs' claims fail.

The decision of the district court is reversed with instructions to enter judgment in favor of Fannie Mae, Freddie Mac, and FHFA.