

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 18 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

OCWEN LOAN SERVICING, LLC,

Plaintiff-counter-
defendant-Appellee,

v.

SUNDANCE AT THE SHADOWS
HOMEOWNERS' ASSOCIATION,

Defendant,

and

SFR INVESTMENTS POOL 1, LLC,

Defendant-counter-claimant-
Appellant.

No. 19-16889

D.C. No.
2:17-cv-01757-JAD-VCF

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Jennifer A. Dorsey, District Judge, Presiding

Submitted November 16, 2022**
San Jose, California

Before: SCHROEDER, GRABER, and FRIEDLAND, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Real property in Nevada was sold at a homeowners' association foreclosure sale. The Federal Home Loan Mortgage Corporation was in conservatorship and owned the deed of trust at the time. The loan servicer, Plaintiff Ocwen Loan Servicing, LLC, sought to quiet title. The purchaser of the property, Defendant SFR Investments Pool 1, LLC, then brought a crossclaim also seeking to quiet title. Defendant contends that it acquired title free and clear of all preexisting lien interests, but the district court held that 12 U.S.C. § 4617(j)(3) precludes extinguishment of lien interests through foreclosure without the consent of the Federal Housing Finance Agency ("FHFA"). FHFA did not consent. Accordingly, the court entered summary judgment in favor of Plaintiff. Defendant timely appeals.

The only issue on appeal concerns the timeliness of Plaintiff's claim. The foreclosure sale occurred on August 2, 2013, and Plaintiff filed its complaint on June 26, 2017, more than three years later. Defendant contends that a three-year statute of limitations for tort claims applies, so that Plaintiff's claim is untimely. We decided this very issue in M&T Bank v. SFR Investments Pool 1, LLC, 963 F.3d 854 (9th Cir. 2020), after the briefing in the present case was complete. We held that 12 U.S.C. § 4617(b)(12)(A)(i) governs and that it provides a six-year statute of limitations. 963 F.3d at 856. Accordingly, reviewing the grant of

summary judgment de novo, Feldman v. Allstate Ins. Co., 322 F.3d 660, 665 (9th Cir. 2003), we affirm the judgment in Plaintiff's favor.

Defendant's Motion to Certify a Question of Law to the Nevada Supreme Court, Docket No. 31, is denied.

AFFIRMED.