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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

2:12-CV-2028 JCM (VCF)

FERRELL STREET TRUST, et al.,

Plaintiff(s),

v.

FEDERAL HOME LOAN
MORTGAGE CORPORATION, et al.,

Defendant(s).

ORDER

Presently before the court is a motion for summary judgment filed by defendant Federal Home Loan Mortgage Corporation (“FHLMC”). (Doc. # 38). Plaintiff Ferrell Street Trust filed a response in opposition, (doc. # 46), and FHLMC filed a reply, (doc. # 49).

Also before the court is Ferrell Street Trust’s motion for summary judgment. (Doc. # 36). FHLMC filed a response in opposition, (doc. # 41), and Ferrell Street Trust filed a reply, (doc. # 45).

This case involves a dispute over a property that was subject to an HOA “super priority” lien. Plaintiff claims that it purchased the property commonly known as 2794 Murray Hill Lane in Las Vegas, Nevada for the nominal amount of \$7,050.00 and thereby extinguished FHLMC’s \$111,000 deed of trust.

Over the last several months, the court has become all too familiar with Nev. Rev. Stat. § 116.3116, which grants priority to portions of liens arising from delinquent HOA assessments. Countless cases have been filed in Nevada posing the question as to whether a foreclosure of an

1 HOA’s “super priority” interest extinguishes deeds of trust that predate the HOA lien.

2 Courts at both the state and federal levels disagree as to the correct interpretation of this
3 provision. *See, e.g., 7912 Limbwood Court Trust v. Wells Fargo Bank, N.A.*, 2013 WL 5780793 (D.
4 Nev. 2013) (holding that foreclosure of an HOA super priority lien extinguishes a deed of trust);
5 *LVDG Series 125 v. Welles*, 2013 WL 6175813 (D. Nev. 2013) (holding that a deed of trust is not
6 extinguished following the foreclosure of an HOA super priority lien).

7 Despite the numerous cases presenting this precise question that have been filed in state
8 courts, the Nevada Supreme Court has yet to weigh in on the issue. At present, “there are over fifty
9 cases pending before the Nevada Supreme Court that turn upon this very question.” *Saticoy Bay LLC*
10 *v. Flagstar Bank, FSB*, No. 2:13-cv-1589-JCM-VCF (D. Nev. Feb. 28, 2014) (order granting motion
11 to stay). Though federal district courts can generally rule upon questions of state law, this power
12 becomes rather murky when there is no precedent from a state’s highest court to assist in interpreting
13 novel statutes. *See Ryman v. Sears, Roebuck & Co.*, 505 F.3d 993, 994 (9th Cir. 2007). This
14 difficulty is compounded further by the fact that Nevada has no intermediate appellate courts to
15 provide guidance before these questions reach the Nevada Supreme Court.

16 It is quite apparent that there is disagreement among state and federal courts regarding the
17 interpretation of Nev. Rev. Stat. § 116.3116. Therefore, out of respect for Nevada’s sovereignty and
18 interest in having its statutes interpreted by its own judges, the court finds it appropriate to deny the
19 instant motions without prejudice. The parties are free to re-file the instant motions upon a ruling
20 by the Nevada Supreme Court as to whether a foreclosure of an HOA “super priority” lien pursuant
21 to Nev. Rev. Stat. § 116.3116 extinguishes an earlier deed of trust.

22 Accordingly,

23 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant FHLMC’s
24 motion for summary judgment, (doc. # 38), be, and the same hereby is, DENIED without prejudice.

25 IT IS FURTHER ORDERED that plaintiff Ferrell Street Trust’s motion for summary
26 judgment, (doc. # 36), is DENIED without prejudice.

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IT IS FURTHER ORDERED that the parties shall have thirty (30) days from the entry of a ruling of the Nevada Supreme Court on the question identified above to renew their motions for summary judgment.

DATED June 27, 2014.


UNITED STATES DISTRICT JUDGE