

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

1
2
3
4 WELLS FARGO BANK, N.A.,)
5)
6 Plaintiff,)
7 vs.)
8)
9 MEI-GSR HOLDINGS, LLC, and GRAND)
10 SIERRA RESORT UNIT-OWNERS')
11 ASSOCIATION,)
12 Defendants.)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

Case No.: 2:15-cv-00654-GMN-VCF

ORDER

Pending before the Court is the Motion to Dismiss (ECF No. 21) filed by Defendant MEI-GSR Holdings, LLC (“MEI-GSR”), which has been fully briefed. However, because the Court finds that an unsettled question of state law is at least partially dispositive in this case, the Court certifies the following question to the Nevada Supreme Court:

Does the rule of *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014) that foreclosures under NRS 116.3116 extinguish first security interests apply retroactively to foreclosures which occurred prior to the date of that decision?

I. BACKGROUND

This case arises out of a homeowners’ association foreclosure sale. On May 1, 2007, Elizabeth L. Andres Mecua purchased real property located at 2500 East Second Street #1940, Reno, Nevada 89595 (the “Property”), giving lender Bank of America, N.A. (“BANA”) a promissory note for \$227,324.00 (the “Note”), secured by a deed of trust (the “DOT”) against the Property. (Am. Compl. ¶ 11, ECF No. 20; Ex. A to Am. Compl., ECF No. 20-1). On October 22, 2013, BANA assigned the DOT to Plaintiff Wells Fargo Bank, N.A. (“Wells

1 Fargo”) via a corporate assignment of deed of trust. (Am. Compl ¶ 12; Ex. B to Am. Compl.,
2 ECF No. 20-2).

3 After recording a Notice of Delinquent Assessment Lien, a Notice of Default and
4 Election to Sell, and a Notice of Foreclosure Sale, Defendant Grand Sierra Resort Unit-
5 Owners’ Association (the “HOA”), through its agent Alessi & Koenig, LLC, sold the Property
6 at the foreclosure sale to Defendant MEI-GSR for \$4,300.00 on June 6, 2013. (Am. Compl. ¶¶
7 16–18, 24–25; Ex. C to Am. Compl., ECF No. 20-3). Wells Fargo alleges that the pre-sale
8 notices failed to identify the super-priority amount and also failed to describe the “deficiency in
9 payment” required by Chapter 116 of the Nevada Revised Statutes. (Id. ¶¶ 19–23).

10 Wells Fargo sued MEI-GSR and the HOA in this Court to, inter alia, quiet title to the
11 Property, i.e., for a declaration that the DOT still encumbers the Property because the HOA sale
12 was not in accordance with Chapter 116, did not provide an opportunity to cure the default, was
13 commercially unreasonable, and did not comport with due process. (Id. ¶¶ 35–52).

14 **II. LEGAL STANDARD**

15 Pursuant to Rule 5 of the Nevada Rules of Appellate Procedure (“Rule 5”), a United
16 States District Court may certify a question of law to the Nevada Supreme Court “upon the
17 court’s own motion.” Nev. R. App. P. 5(a)–(b). Under Rule 5, the Nevada Supreme Court has
18 the power to answer such a question that “may be determinative of the cause then pending in
19 the certifying court and . . . it appears to the certifying court there is no controlling precedent in
20 the decisions of the Supreme Court of this state.” Nev. R. App. P. 5(a).

21 Rule 5 also provides that a certification order must specifically address each of six
22 requirements:

- 23 (1) The questions of law to be answered;
- 24 (2) A statement of all facts relevant to the questions certified;
- 25 (3) The nature of the controversy in which the questions arose;
- (4) A designation of the party or parties who will be the appellant(s) and the
party or parties who will be the respondent(s) in the Supreme Court;

1 (5) The names and addresses of counsel for the appellant and respondent; and
2 (6) Any other matters that the certifying court deems relevant to a
determination of the questions certified.

3 Nev. R. App. P. 5(c).

4 **III. DISCUSSION**

5 In this case, the Court is sitting in diversity jurisdiction; thus Nevada substantive law
6 controls. Because the relevant facts are set forth above, the Court addresses the remaining five
7 requirements below.

8 First, whether the rule announced in *SFR Invs. Pool I, LLC v. U.S. Bank, N.A.*, 334 P.3d
9 408 (Nev. 2014) that foreclosures under NRS § 116.3116 extinguish first security interests
10 applies retroactively to foreclosures which occurred prior to the date of that decision is a
11 question of state law.

12 Second, the retroactivity of SFR is at least partially dispositive to the present case. If
13 that rule is not retroactive, because the HOA sale in this case occurred prior to the issuance of
14 the SFR decision, Wells Fargo would be entitled to a declaration that the DOT still encumbers
15 the Property.

16 Third, there is no controlling precedent as to the retroactivity of SFR. One court in this
17 district has discussed this issue, finding that SFR did not apply retroactively pursuant to the test
18 outlined in *Breithaupt v. USAA Prop. & Cas. Ins. Co.*, 867 P.2d 402 (Nev. 1994). See *Trust v.*
19 *K & P Homes*, 2:15-cv-01534-RCJ-VCF, 2015 WL 6962860, at *5 (D. Nev. Nov. 9, 2015).
20 However, shortly after this ruling, the court decided to certify to the Nevada Supreme Court the
21 same retroactivity question at issue in the instant order. See *Trust v. K & P Homes*, 2:15-cv-
22 01534-RCJ-VCF, 2016 WL 923091 (D. Nev. Mar. 9, 2016).

23 Accordingly, under Rule 5, answering this certified question is within the power of the
24 Nevada Supreme Court, and the Court finds that a determination of this question would
25 promote judicial efficiency.

1 **IV. CONCLUSION**

2 **IT IS HEREBY ORDERED** that the Motion to Dismiss (ECF No. 21) filed by
3 Defendant MEI-GSR is **DENIED without prejudice** with permission to renew within thirty
4 (30) days of the resolution of the Court's Certified Question to the Nevada Supreme Court.

5 **IT IS FURTHER ORDERED** that the following question of law is **CERTIFIED to**
6 **the Nevada Supreme Court** pursuant to Rule 5 of the Nevada Rules of Appellate Procedure:

7 Whether the rule of SFR Investments Pool I, LLC v. U.S. Bank,
8 N.A., 334 P.3d 408 (Nev. 2014) that foreclosures under NRS
9 § 116.3116 extinguish first security interests applies retroactively to
foreclosures which occurred prior to the date of that decision.

10 See Nev. R. App. P. 5(c)(1). The nature of the controversy and a statement of facts are
11 discussed above. See Nev. R. App. P. 5(c)(2)–(3). Plaintiff Wells Fargo is designated as the
12 Appellant, and Defendants MEI-GSR and Grand Sierra Resort Unit-Owners' Association are
13 designated as the Respondents. See Nev. R. App. P. 5(c)(4). The names and addresses of
14 counsel are as follows:

15 **Counsel for Plaintiff Wells Fargo**

16 Ariel E. Stern, Eric Sebastian Powers, and Darren T Brenner
17 Akerman LLP
18 1160 Town Center Drive, Suite 330
Las Vegas, NV 89144

19 **Counsel for Defendant MEI-GSR**

20 H. Stan Johnson
21 Cohen-Johnson, LLC
22 225 E. Warm Springs Road, Suite 100
Las Vegas, NV 89119

23 **Counsel for Defendant Grand Sierra Resort Unit-Owners' Association**

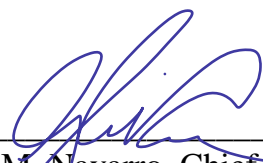
24 H. Stan Johnson
25 Cohen-Johnson, LLC
225 E. Warm Springs Road, Suite 100
Las Vegas, NV 89119

1 Vanessa Goulet and Steven T. Loizzi, Jr.
2 Alessi & Koenig, LLC
3 9500 W. Flamingo Road, Suite 205
4 Las Vegas, NV 89147

5 See Nev. R. App. P. 5(c)(5). Further elaboration upon the certified question is included in this
6 Order.

7 **IT IS FURTHER ORDERED** that the Clerk of the Court shall forward a copy of this
8 Order to the Clerk of the Nevada Supreme Court under the official seal of the United States
9 District Court for the District of Nevada. See Nev. R. App. P. 5(d).

10 **DATED** this 7 day of July, 2016.

11
12
13 
14 _____
15 Gloria M. Navarro, Chief Judge
16 United States District Judge
17
18
19
20
21
22
23
24
25