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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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CARRINGTON MORTGAGE SERVICES,
LLC,

Case No. 2:15-CV-1377 JCM (NJK)

Plaintiff(s),

ORDER

v.

SFR INVESTMENTS POOL 1, LLC,

Defendant(s).

Presently before the court is plaintiff/counterdefendant Carrington Mortgage Services, LLC's ("CMS") motion for reconsideration. (ECF No. 110). Defendant Oak Park Homeowners Association ("the HOA") (ECF No. 116), and defendant SFR Investments Pool 1, LLC ("SFR") (ECF No. 117) filed responses, to which CMS replied (ECF No. 119).

I. Facts

This case involves a dispute over real property located at 909 Veranda View Avenue, Las Vegas, Nevada 89123 (the "property").

On September 25, 2008, Samuel and Harry Juergens obtained a loan in the amount of \$171,311.00 from Taylor, Bean & Whitaker Mortgage Corp. ("TBW") to purchase the property, which was secured by a deed of trust recorded on November 3, 2008. (ECF No. 37). The loan was insured by the Federal Housing Administration ("FHA"). (ECF No. 37).

On April 14, 2010, defendant Nevada Association Services, Inc. ("NAS"), acting on behalf of the HOA, recorded a notice of delinquent assessment lien. (ECF No. 37). On December 1, 2010, NAS recorded a notice of default and election to sell to satisfy the delinquent assessment lien. (ECF No. 37).

1 On January 4, 2011, Bank of America, N.A.’s (“BANA”) prior counsel Miles, Bauer,
2 Bergstrom & Winters, LLP (“MBBW”) requested a superpriority demand payoff from NAS. (ECF
3 No. 37). On January 25, 2011, MBBW received a payoff demand from NAS, with a full lien
4 payoff in the amount of \$3,281.56. (ECF No. 37). MBBW determined the superpriority portion
5 of the lien to be \$503.10, and tendered that amount to NAS on February 25, 2011, which NAS
6 allegedly rejected. (ECF No. 37).

7 On July 28, 2011, the deed of trust was assigned to BAC Home Loans Servicing, LP, f/k/a
8 Countrywide Home Loan Servicing, LP via an assignment deed recorded August 1, 2011. (ECF
9 No. 37).

10 On August 23, 2012, NAS sent, by certified mail, to BAC (among others) a notice of
11 trustee’s sale. (ECF No. 44-1 at 82–88). On August 27, 2012, NAS recorded a notice of trustee’s
12 sale. (ECF No. 37). On December 28, 2012, SFR purchased the property at the foreclosure sale
13 for \$7,400.00. (ECF No. 37). A foreclosure deed in favor of SFR was recorded on January 3,
14 2013. (ECF No. 37).

15 On September 5, 2014, BANA recorded a request for notice pursuant to NRS 116.3118.
16 (ECF No. 50 at 4). On December 23, 2014, BANA assigned its beneficial interest under the deed
17 of trust to CMS via an assignment deed, which was recorded on January 29, 2015. (ECF Nos. 37,
18 50).

19 On July 20, 2015, CMS filed a complaint (ECF No. 1), which was later amended on
20 February 29, 2016 (ECF No. 37). In the amended complaint, CMS alleges nine claims for relief:
21 (1) quiet title/declaratory relief against SFR, the HOA, and NAS; (2) preliminary injunction against
22 SFR; (3) wrongful/statutorily defective foreclosure against the HOA and NAS; (4) negligence
23 against the HOA and NAS; (5) negligence per se against the HOA and NAS; (6) unjust enrichment
24 against SFR, the HOA, and NAS; (7) breach of contract against the HOA and NAS; (8)
25 misrepresentation against the HOA; and (9) breach of good faith and fair dealing against the HOA
26 and NAS. (ECF No. 37).

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1 On August 20, 2015, SFR filed a crossclaim, alleging three claims for relief: (1) quiet
2 title/declaratory relief against CMS, BANA, and the Juergens; (2) preliminary and permanent
3 injunction; and (3) slander of title against CMS and BANA. (ECF No. 12).

4 On February 8, 2017, the court dismissed all of CMS’s claims (ECF No. 1) except for
5 claims (1) and (3). (ECF No. 91). In that same order, the court denied SFR’s (ECF No. 44) and
6 BANA’s (ECF No. 45) motions for summary judgment. (ECF No. 91).

7 On March 9, 2017, CMS filed a motion for judgment on the pleadings. (ECF No. 96). On
8 July 3, 2017, the court denied CMS’s motion and dismissed CMS’s wrongful foreclosure claim
9 against the HOA for failure to mediate pursuant to NRS 38.310. (ECF No. 107). The court also
10 held that SFR is entitled to judgment as a matter of law on its quiet title claim against CMS and
11 BANA because CMS had no interest in the deed of trust until after the HOA sale. *Id.* Judgment
12 was then entered in favor of SFR. (ECF No. 108).

13 In the instant motion, CMS seeks the court to reconsider its July 3, 2017 order. (ECF No.
14 110). Specifically, CMS argues (1) its wrongful foreclosure claim against the HOA should not
15 have been dismissed and, (2) the court should not have granted judgment in favor of SFR and
16 against CMS as to SFR’s quiet title claim. *Id.*

17 **II. Legal Standard**

18 A motion for reconsideration “should not be granted, absent highly unusual
19 circumstances.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000).
20 “Reconsideration is appropriate if the district court (1) is presented with newly discovered
21 evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is
22 an intervening change in controlling law.” *School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263
23 (9th Cir. 1993); *Fed. R. Civ. P. 60(b)*. “A motion to alter or amend a judgment must be filed no
24 later than 28 days after the entry of the judgment.” *Fed. R. Civ. P. 59(e)*.

25 Rule 59(e) “permits a district court to reconsider and amend a previous order[;]” however,
26 “the rule offers an extraordinary remedy, to be used sparingly in the interests of finality and
27 conservation of judicial resources.” *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003)
28 (internal quotations omitted). A motion for reconsideration “may not be used to raise arguments .

1 . . for the first time when they could reasonably have been raised earlier in litigation.” Kona
2 Enters., Inc., 229 F.3d at 890; see also LR 59-1(b) (“Motions for reconsideration are disfavored.
3 A movant must not repeat arguments already presented unless (and only to the extent) necessary
4 to explain controlling, intervening law or to argue new facts. A movant who repeats arguments
5 will be subject to appropriate sanctions.”).

6 **III. Discussion**

7 a. *Dismissal of CMS’s wrongful foreclosure claim*

8 The court’s July 3, 2017 order dismissed CMS’s wrongful foreclosure claim against the
9 HOA for failure to first submit the claim to mediation pursuant to NRS 38.310 and McKnight
10 Family, LLP v. Adept Mgmt., 310 P.3d 555 (Nev. 2013). (ECF No. 107). CMS argues the court
11 dismissed its wrongful foreclosure claim in error because the HOA’s motion to dismiss did not
12 argue for dismissal for failure to comply with NRS 38.310. *Id.* CMS now offers evidence that
13 CMS and the HOA have in fact previously participated in an unsuccessful mediation pursuant to
14 NRS 38.310 on April 21, 2016. (ECF No. 110, Ex. 9).

15 As neither CMS nor SFR submitted any evidence of the mediation in advance of CMS’s
16 instant motion, the court properly dismissed CMS’s wrongful foreclosure claim for failure to
17 comply with NRS 38.310 without prejudice. The court can, at any time, dismiss on jurisdictional
18 grounds. Fed. R. Civ. P. 12(b)(1). Now having presented evidence that a failed mediation took
19 place subsequent to the filing of its complaint, CMS is not barred from refileing its wrongful
20 foreclosure claim, evincing its compliance with NRS 38.310.

21 However, given the court’s finding in its July 3, 2017 order that CMS failed to set forth
22 any evidence to set aside the foreclosure sale, i.e., evidence of fraud, unfairness, or oppression,
23 CMS’s wrongful foreclosure claim fails substantively as well.

24 b. Judgment on the pleadings

25 CMS next argues that granting judgment in favor of SFR as to SFR’s quiet title claim
26 against CMS amounted to clear error on the part of the court. (ECF No. 110). Five months earlier,
27 the court had denied SFR’s motion for summary judgment on its quiet title claim holding that
28 “genuine issues exist as to SFR’s status as a bona fide purchaser so as to preclude summary

1 judgment” on SFR’s quiet title claim. (ECF No. 91). CMS claims that SFR has not submitted any
2 new evidence in support of its bona fide purchaser status since the court denied SFR’s summary
3 judgment motion on February 8, 2017. (ECF No. 110).

4 However, as the court’s July 3, 2017 order (ECF No. 107) held that CMS failed to set forth
5 a compelling argument that the foreclosure sale was commercially unreasonable in any way, SFR’s
6 status as a bona fide purchaser is not relevant here. See, e.g., *Nationstar Mortg., LLC v. SFR*
7 *Investments Pool 1, LLC*, No. 70653, 2017 WL 1423938, at *3 n.3 (Nev. App. Apr. 17, 2017)
8 (citing *Shadow Wood*, 366 P.3d at 1114).

9 Further, CMS argues that granting judgment in favor of SFR on its quiet title claim
10 reasoning that CMS failed to show that its interest in the property was superior to SFR’s was clear
11 error on the part of the court. (ECF No. 110). CMS cites the July 3, 2017 order’s statement that
12 “[t]he loan was insured by the Federal Housing Administration (“FHA”)” (ECF No. 107 at 1) as
13 dispositive of CMS’s superior interest in the property. (ECF No. 110). The court disagrees.

14 Under the Property Clause of the United States Constitution, only “Congress shall have the
15 power to dispose of and make all needful rules and regulations respecting the territory or other
16 property belonging to the United States” U.S. Const. Art. IV, § 3, cl. 2. The Supremacy
17 Clause provides that the “Constitution . . . shall be the supreme law of the land” U.S. Const.
18 Art. VI, cl. 2. “State legislation must yield under the Supremacy Clause of the Constitution to the
19 interests of the federal government when the legislation as applied interferes with the federal
20 purpose or operates to impede or condition the implementation of federal policies and programs.”
21 *Rust v. Johnson*, 597 F.2d 174, 179 (9th Cir. 1979).

22 In *Rust*, the Ninth Circuit held that a city’s foreclosure on property insured by the Federal
23 National Mortgage Association was invalid under the Supremacy Clause. The court reasoned that
24 upholding the sale “would run the risk of substantially impairing the Government’s participation
25 in the home mortgage market and of defeating the purpose of the National Housing Act.” *Id.*

26 On this basis, courts consistently apply federal law, ignoring conflicting state law, when
27 determining rights related to federally owned and insured loans. *United States v. Stadium*
28 *Apartments, Inc.*, 425 F.2d 358, 362 (9th Cir. 1970) (holding that federal law applies to FHA-

1 insured mortgages “to assure the protection of the federal program against loss, state law to the
2 contrary notwithstanding”); see also *United States v. Victory Highway Vill., Inc.*, 662 F.2d 488,
3 497 (8th Cir. 1981) (citing Ninth Circuit case law) (“We note that federal law, not [state] law,
4 governs the rights and liabilities of the parties in cases dealing with the remedies available upon
5 default of a federally held or insured loan.”). Foreclosure on federal property is prohibited where
6 it interferes with the statutory mission of a federal agency. See *United States v. Lewis Cnty.*, 175
7 F.3d 671, 678 (9th Cir. 1999) (holding that the state could not foreclose on federal Farm Service
8 Agency property for non-payment of taxes).

9 Indeed, federal district courts in this circuit have set aside HOA foreclosure sales on
10 property and supremacy clause grounds in cases involving federally insured loans. *Saticoy Bay*
11 *LLC, Series 7342 Tanglewood Park v. SRMOF II 2012-1 Trust*, No. 2:13-cv-1199-JCM-VCF,
12 2015 WL 1990076, at *1 (D. Nev. Apr. 30, 2015); see also *Sec’y of Hous. & Urban Dev. v. Sky*
13 *Meadow Ass’n*, 117 F. Supp. 2d 970, 982 (C.D. Cal. 2000) (voiding HOA’s non-judicial
14 foreclosure on HUD property, quieting title in HUD’s favor based on property and supremacy
15 clauses); *Yunis v. United States*, 118 F. Supp. 2d 1024, 1027, 1036 (C.D. Cal. 2000) (voiding
16 HOA’s non-judicial foreclosure sale of property purchased under Veteran’s Association Home
17 Loan Guarantee Program); *Wash. & Sandhill Homeowners Ass’n v. Bank of Am., N.A.*, No. 2:13-
18 cv-01845-GMN-GWF, 2014 WL 4798565, at *6 (D. Nev. Sept. 25, 2014) (holding that property
19 and supremacy clauses barred foreclosure sale where mortgage interest was federally insured).

20 The single-family mortgage insurance program allows FHA to insure private loans,
21 expanding the availability of mortgages to low-income individuals wishing to purchase homes.
22 See *Sky Meadow Ass’n*, 117 F. Supp. 2d at 980–81 (discussing program); *Wash. & Sandhill*
23 *Homeowners Ass’n*, 2014 WL 4798565, at *1 n.2 (same). If a borrower under this program
24 defaults, the lender may foreclose on the property, convey title to HUD, and submit an insurance
25 claim. 24 C.F.R. 203.355. HUD’s property disposition program generates funds to finance the
26 program. See 24 C.F.R. § 291.1.

27 Allowing an HOA foreclosure to wipe out a first deed of trust on a federally-insured
28 property thus interferes with the purposes of the FHA insurance program. Specifically, it hinders

1 HUD's ability to recoup funds from insured properties. However, SFR does not seek to quiet title
2 against FHA or another federal institution or organization, and CMS has not indicated any
3 authority giving it standing to assert the federal interests supposedly at issue here. (ECF No. 1).
4 Thus, this argument does not have merit because the outcome of the instant case has no bearing on
5 FHA's ability to defend its interest or, alternatively, because CMS has not successfully pled its
6 standing to raise these issues.

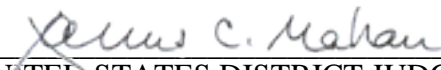
7 Accordingly, the court declines to reconsider its previous order granting judgment in favor
8 of SFR as to SFR's quiet title claim.

9 **IV. Conclusion**

10 Based on the aforementioned, the court will deny CMS's motion for reconsideration (ECF
11 No. 110) to the extent that it seeks reconsideration of the court's July 3, 2017 order (ECF No. 107)
12 dismissing CMS's wrongful foreclosure claim and granting judgment in favor of SFR against CMS
13 on SFR's quiet title claim.

14 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that CMS's motion for
15 reconsideration (ECF No. 110) be, and the same hereby is, DENIED consistent with the foregoing.

16 DATED March 19, 2018.

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19 UNITED STATES DISTRICT JUDGE
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