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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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NATIONSTAR MORTGAGE, LLC,

Plaintiff,

v.

SAHARA SUNRISE HOMEOWNERS
ASSOCIATION; RIVER GLIDER
AVENUE TRUST; DOE INDIVIDUALS I-
X, inclusive; and ROE CORPORATIONS
I-X, inclusive,

Defendants.

Case No. 2:15-cv-01597-MMD-NJK

ORDER

(Def.'s Motion to Stay – ECF No. 68)

This case arises out of a homeowner association's ("HOA") foreclosure and involves the notice provisions applicable to foreclosure sales under Nevada Revised Statutes ("NRS") Chapter 116. Before the Court is Defendant River Glider Avenue Trust's ("River Glider") Motion to Stay. (ECF No. 68.) Plaintiff Nationstar Mortgage, LLC ("Nationstar") has opposed (ECF No. 70), and River Glider has replied (ECF No. 71).

A district court has discretionary power to stay proceedings in its own court. *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936). "A trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case." *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979). In deciding whether to grant a stay, courts should consider "the possible damage which may result from the granting of a stay, the hardship or inequity which a party may suffer in being required to go forward, and the orderly course of justice measured in terms of the

1 simplifying or complicating of issues, proof, and questions of law which could be expected
2 to result from a stay.” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005)
3 (quoting *Landis*, 299 U.S. at 268). Courts should also consider “the judicial resources that
4 would be saved by avoiding duplicative litigation.” *Pate v. DePuy Orthopaedics, Inc.*, No.
5 2:12-cv-01168-MMD-CWH, 2012 WL 3532780, at *2 (D. Nev. Aug. 14, 2012) (quoting
6 *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal. 1997)).

7 The Court finds that significant judicial resources will be saved if the Court refrains
8 from issuing a decision in this case until the Nevada Supreme Court determines whether
9 NRS § 116.31168 incorporates the notice provisions of NRS § 107.090. (ECF No. 68 at
10 2 (citing Nev. S. Ct. Case No. 72931).) NRS §§ 116.31168 and 107.090 prescribe two
11 fundamentally different notice mechanisms. The first requires lenders to affirmatively
12 request notice of foreclosure sales from HOAs. The second requires HOAs to notify
13 lenders as a matter of course, regardless of whether a request was made.

14 The Ninth Circuit recently held the first mechanism facially unconstitutional
15 because it impermissibly shifts the burden to lenders in violation of their procedural due
16 process rights. *Bourne Valley Court Tr. v. Wells Fargo Bank, N.A.*, 832 F.3d 1154, 1156
17 (9th Cir. 2016), *cert. denied*, 137 S. Ct. 2296 (2017). NRS § 107.090 seems to ameliorate
18 this burden-shifting problem by requiring the HOAs to provide notice to lenders absent
19 any request from lenders for notice; however, the Ninth Circuit has held that NRS §
20 107.090 is not incorporated in NRS § 116.31168. *Id.* at 1159. If it were, the Ninth Circuit
21 reasoned, the opt-in notice scheme would be superfluous. *Id.*

22 The question of whether NRS § 116.31168 incorporates NRS § 107.090 is now
23 pending before the Nevada Supreme Court in Case No. 72931. Moreover, that court has
24 hinted it will answer the question in the affirmative. *See Nationstar Mortg., LLC v. Saticoy*
25 *Bay LLC Series 227 Shadow Canyon*, 405 P.3d 641, 648 n.11 (Nev. 2017). If the Nevada
26 Supreme Court holds that NRS § 107.090 is incorporated, then a factual question would
27 arise in this case: did the HOA provide notice to the lender consistent with NRS §
28 107.090? As the law stands currently, it is irrelevant whether the HOA provided notice to

1 the lender—foreclosure sales conducted pursuant to Chapter 116 could not have satisfied
2 the lenders’ constitutional due process rights. *See, e.g., U.S. Bank, N.A. v. Emerald Ridge*
3 *Landscape Maint. Ass’n*, No. 2:15-cv-00117-MMD-PAL, 2017 WL 4386967, at *3 (D. Nev.
4 Sept. 29, 2017). But if NRS § 116.31168 incorporated NRS § 107.090, then some
5 foreclosure sales may have satisfied constitutional due process requirements (i.e., those
6 in which HOAs gave lenders notice consistent with NRS § 107.090). River Glider
7 contends that the HOA provided such notice in this case. (See ECF No. 65 at 9.)

8 Plaintiff contends that the Nevada Supreme Court’s decision is immaterial because
9 even if NRS § 107.090 is incorporated, it is constitutionally deficient. (ECF No. 70 at 4-5.)
10 Plaintiff goes on to state that NRS § 107.090 does not require HOAs to identify the amount
11 of the superpriority lien, rendering the notice of little value to lenders seeking to tender.
12 (*Id.*) While the constitutionality of NRS § 107.090 is a serious issue that the parties will no
13 doubt dispute if the Nevada Supreme Court holds that NRS § 107.090 is incorporated,
14 that issue is not presently before this Court. *See Clinton v. Jones*, 520 U.S. 681, 690
15 (1997) (“[W]e have often stressed the importance of avoiding the premature adjudication
16 of constitutional questions.”).

17 In addition, Plaintiff insists that a stay will be prejudicial because it suffers
18 economic harm as long as River Glider claims to hold clear title: “While River Glider
19 continues to collect rent, Nationstar is required to pay taxes and insurance charges on its
20 defaulting borrower’s behalf.” (ECF No. 70 at 6.) However, any damage to Plaintiff from
21 a stay will be outweighed by the fees that all parties will surely incur from continued
22 litigation—a decision in the proceedings before the Nevada Supreme Court could moot a
23 decision by this Court. Until there is finality on the issue of whether NRS § 116.31168

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1 incorporates NRS § 107.090, a stay will benefit the parties and conserve judicial
2 resources.¹

3 It is therefore ordered that Defendant's Motion to Stay (ECF No. 68) is granted.
4 This action is temporarily stayed until resolution of the certified question in Nev. S. Ct.
5 Case No. 72931. The stay will be lifted upon such resolution. The parties must file a status
6 report within five (5) days from such resolution. All pending motions (ECF Nos. 57, 62,
7 63) are denied without prejudice and may be refiled within thirty (30) days from the
8 Nevada Supreme Court's decision on the certified question.

9 DATED THIS 19th day of December 2017.

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12 MIRANDA M. DU
13 UNITED STATES DISTRICT JUDGE
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25 ¹Plaintiff makes several requests that amount to requests for temporary injunctive
26 relief. Plaintiff first requests that the Court prohibit River Glider "from selling, transferring
27 or encumbering the property" until this litigation is resolved. (ECF No. 70 at 6.) Plaintiff
28 further requests that the Court require River Glider to "deposit rental payments into the
[C]ourt registry for Nationstar's benefit . . . [and] pay taxes, insurance, and association
dues" until this litigation is resolved. (*Id.*) These constitute requests for temporary
injunctive relief that are not properly before the Court. Accordingly, the Court denies these
requests.