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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

NATIONSTAR MORTGAGE, LLC,

Plaintiff,

v.

SFR INVESTMENTS POOL 1, LLC;
AUGUST BELFORD AND ELLINGWOOD
HOMEOWNERS ASSOCIATION; DOE
INDIVIDUALS I-X, inclusive, and ROE
CORPORATIONS I-X, inclusive,

Defendants.

Case No. 2:15-cv-01705-MMD-NJK

ORDER

(Def.'s Motion to Stay – ECF No. 98)

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 SFR Investments Pool 1, LLC's ("SFR") Motion to Stay. (ECF No. 98.) Plaintiff Nationstar Mortgage, LLC ("Nationstar") has opposed (ECF No. 100), and SFR has replied (ECF No. 101).

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

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

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

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

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

1 107.090? As the law stands currently, it is irrelevant whether the HOA provided notice to
2 the lender—foreclosure sales conducted pursuant to Chapter 116 could not have satisfied
3 the lenders’ constitutional due process rights. *See, e.g., U.S. Bank, N.A. v. Emerald Ridge*
4 *Landscape Maint. Ass’n*, No. 2:15-cv-00117-MMD-PAL, 2017 WL 4386967, at *3 (D. Nev.
5 Sept. 29, 2017). But if NRS § 116.31168 incorporated NRS § 107.090, then some
6 foreclosure sales may have satisfied constitutional due process requirements (i.e., those
7 in which HOAs gave lenders notice consistent with NRS § 107.090). SFR contends that
8 the HOA provided such notice in this case. (See ECF No. 85 at 5.)

9 Nationstar first opposes SFR’s motion on the ground that the Court can enter
10 judgment based on tender alone. (ECF No. 100 at 4.) However, the Court must disregard
11 the fact of tender if the statute under which the sale proceeded is facially unconstitutional,
12 as it is under *Bourne Valley*. *See, e.g., U.S. Bank, N.A. v. Emerald Ridge Landscape*
13 *Maint. Ass’n*, No. 2:15-cv-00117-MMD-PAL, 2017 WL 4386967, at *5 (D. Nev. Sept. 29,
14 2017). Accordingly, the Court cannot enter judgment based on tender alone.

15 Nationstar next opposes SFR’s motion on the ground that NRS Chapter 116 is
16 unconstitutional even if NRS § 107.090 is incorporated. (ECF No. 100 at 5.) While the
17 constitutionality of NRS § 107.090 is a serious issue that the parties will no doubt dispute
18 if the Nevada Supreme Court holds that NRS § 107.090 is incorporated, that issue is not
19 presently before this Court. *See Clinton v. Jones*, 520 U.S. 681, 690 (1997) (“[W]e have
20 often stressed the importance of avoiding the premature adjudication of constitutional
21 questions.”).

22 Nationstar further opposes SFR’s motion on the ground that Nationstar “continues
23 to be damaged by SFR’s assertion that it holds clear title.” (ECF No. 100 at 5.) Nationstar
24 contends that it “cannot proceed with foreclosure” and that it is “required to pay taxes and
25 insurance charges on its defaulting borrowers’ behalf to protect its interest” while “SFR
26 continues to collect rent.” (*Id.*) Nevertheless, any damage to Nationstar from a stay will
27 be outweighed by the fees that all parties will surely incur from continued litigation—the
28 Nevada Supreme Court’s decision could moot a decision by this Court. Until there is

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finality on the issue of whether NRS § 116.31168 incorporates NRS § 107.090, a stay will benefit the parties and conserve judicial resources.

It is therefore ordered that SFR's Motion to Stay (ECF No. 98) is granted. This action is temporarily stayed until resolution of the certified question in Nev. S. Ct. Case No. 72931. The stay will be lifted upon such resolution. The parties must file a status report within five (5) days from such resolution. All pending motions (ECF Nos. 84, 85, 86, 91) are denied without prejudice and may be refiled within thirty days from the Nevada Supreme Court's decision on the certified question.

DATED THIS 26th day of December 2017.



MIRANDA M. DU
UNITED STATES DISTRICT JUDGE