

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

THE BANK OF NEW YORK MELLON,

Case No. 2:15-CV-1914 JCM (PAL)

Plaintiff(s),

ORDER

v.

SIERRA RANCH HOMEOWNERS
ASSOCIATION, et al.,

Defendant(s).

Presently before the court is defendant Sierra Ranch Homeowners Association's ("Sierra Ranch") motion to dismiss. (ECF No. 10). Also before the court is defendant SFR Investments Pool 1 LLC's ("SFR") motion to dismiss (ECF No. 22).

Plaintiff Bank of New York Mellon's ("BNYM") complaint seeks to invalidate Sierra Ranch's foreclosure sale of a property, which purportedly extinguished BNYM's beneficial interest in a \$262,750 mortgage loan. BNYM's complaint alleges, amongst other things, that Nevada Revised Statute 116.3116 is unconstitutional. (ECF No. 1 at 7).

A party who files a pleading, written motion, or other paper drawing into question the constitutionality of a state statute must promptly "file a notice of constitutional question stating the question and identifying the paper that raises it, if . . . the parties do not include the state, one of its agencies, or one of its officers or employees in an official capacity" FED. R. CIV. P. 5.1(a)(1)(B). Additionally, FRCP 5.1 requires the court to "certify to the appropriate attorney general that a statute has been questioned" under 28 U.S.C. § 2403. FED. R. CIV. P. 5.1(b). Section 2403 states that the court "shall permit the [s]tate to intervene for presentation of evidence, if

1 evidence is otherwise admissible in the case, and for argument on the question of
2 constitutionality.” 28 U.S.C. § 2403(b).

3 In light of the foregoing rule and statute, the court will deny plaintiff and defendants’
4 motions without prejudice to allow: (1) BNYM to file a notice of constitutional question, (2) the
5 court to comply, and (3) the attorney general to intervene. The parties may renew their motions
6 after the attorney general has been afforded time to respond.

7 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant defendant
8 Sierra Ranch Homeowners Association’s motion to dismiss (ECF No. 10) be, and the same hereby
9 is, DENIED without prejudice.

10 IT IS FURTHER ORDERED that defendant SFR Investments Pool 1 LLC’s motion to
11 dismiss (ECF No. 22) be, and the same hereby is, DENIED without prejudice.

12 IT IS FURTHER ORDERED that plaintiff Bank of New York Mellon shall promptly file
13 a notice of constitutional question, pursuant to Federal Rule of Civil Procedure 5.1(a)(1)(B).

14 IT IS FURTHER ORDERED that this court certifies to the Nevada attorney general that it
15 may rule on the constitutionality of the state statute at issue in this case, NRS 116.3116. The
16 attorney general shall have thirty (30) days within which to intervene on behalf of the state of
17 Nevada for presentation of argument on the question of the constitutionality of the statute.

18 IT IS FURTHER ORDERED that the clerk of court shall send a copy of this order by
19 certified mail to the Nevada attorney general.

20 DATED July 25, 2016.

21 
22 _____
23 UNITED STATES DISTRICT JUDGE
24
25
26
27
28