

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, FKA
THE BANK OF NEW YORK as Trustee for
the CERTIFICATEHOLDERS CWALT, INC.
ALTERNATIVE LOAN TRUST 2005-J12
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-J12,

Case No. 2:16-cv-00383-MMD-NJK

ORDER

Plaintiff,

v.

IMAGINATION NORTH LANDSCAPE
MAINTENANCE ASSOCIATION; SFR
INVESTMENTS POOL 1, LLC; and ALESSI
& KOENIG, LLC,

Defendants.

I. SUMMARY

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. Currently there is a federal-state split in the interpretation and effect of the notice provisions found at the pre-2015 version of NRS Chapter 116. However, a question regarding the applicable notice provisions was recently certified to the Nevada Supreme Court, asking whether the notice provisions found at NRS § 107.090 were incorporated by reference into the pre-2015 version of NRS § 116.31168. SFR Investments Pool 1, LLC (“SFR”) contends that The Bank of New York Mellon (“BNYM”) received actual notice of the HOA’s foreclosure sale. (See ECF No. 97 at 6.) Accordingly, this Court *sua sponte* stays this action in its entirety until the Nevada Supreme Court resolves the certified question.

1 **II. SFR’S MOTION FOR PARTIAL SUMMARY JUDGMENT (ECF No. 86)**

2 Defendant SFR Investments Pool 1, LLC (“SFR”) argues that, in the wake of
3 *Bourne Valley*, NRS Chapter 116’s notice scheme returns to that of the 1991 version of
4 the statute and thereby eliminates any constitutional problems. (ECF No. 86 at 5.) This
5 Court has already addressed the issue of whether it should analyze the facts of a
6 particular case under the notice provisions of the 1991 version of NRS Chapter 116 and
7 declined to do so. See *U.S. Bank Nat’l Ass’n v. Thunder Props. Inc.*, No 3:15-cv-00328-
8 MMD-WGC, 2017 WL 4102464, *3 (D. Nev. Sept. 14, 2017). Accordingly, the Court
9 denies SFR’s Motion for Partial Summary Judgment.

10 **III. STAY OF ENTIRE PROCEEDINGS**

11 A district court has discretionary power to stay proceedings in its own court. *Landis*
12 *v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936). “A trial court may, with propriety, find it is
13 efficient for its own docket and the fairest course for the parties to enter a stay of an action
14 before it, pending resolution of independent proceedings which bear upon the case.”
15 *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979). In deciding
16 whether to grant a stay, courts should consider “the possible damage which may result
17 from the granting of a stay, the hardship or inequity which a party may suffer in being
18 required to go forward, and the orderly course of justice measured in terms of the
19 simplifying or complicating of issues, proof, and questions of law which could be expected
20 to result from a stay.” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005)
21 (quoting *Landis*, 299 U.S. at 268). Courts should also consider “the judicial resources that
22 would be saved by avoiding duplicative litigation.” *Pate v. DePuy Orthopaedics, Inc.*, No.
23 2:12-cv-01168-MMD-CWH, 2012 WL 3532780, at *2 (D. Nev. Aug. 14, 2012) (quoting
24 *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal. 1997)).

25 The Court finds that significant judicial resources will be saved if the Court refrains
26 from issuing a decision in this case until the Nevada Supreme Court determines whether
27 NRS § 116.31168 incorporates the notice provisions of NRS § 107.090 in Nev. S. Ct.
28 Case No. 72931. NRS §§ 116.31168 and 107.090 prescribe two fundamentally different

1 notice mechanisms. The first requires lenders to affirmatively request notice of
2 foreclosure sales from HOAs. The second requires HOAs to notify lenders as a matter of
3 course, regardless of whether a request was made.

4 The Ninth Circuit recently held the first mechanism facially unconstitutional
5 because it impermissibly shifts the burden to lenders in violation of their procedural due
6 process rights. *Bourne Valley Court Tr. v. Wells Fargo Bank, N.A.*, 832 F.3d 1154, 1156
7 (9th Cir. 2016), *cert. denied*, 137 S. Ct. 2296 (2017). NRS § 107.090 seems to ameliorate
8 this burden-shifting problem by requiring the HOAs to provide notice to lenders absent
9 any request from lenders for notice; however, the Ninth Circuit has held that NRS §
10 107.090 is not incorporated in NRS § 116.31168. *Id.* at 1159. If it were, the Ninth Circuit
11 reasoned, the opt-in notice scheme would be superfluous. *Id.*

12 The question of whether NRS § 116.31168 incorporates NRS § 107.090 is now
13 pending before the Nevada Supreme Court in Case No. 72931. Moreover, that court has
14 hinted it will answer the question in the affirmative. *See Nationstar Mortg., LLC v. Saticoy*
15 *Bay LLC Series 227 Shadow Canyon*, 405 P.3d 641, 648 n.11 (Nev. 2017). If the Nevada
16 Supreme Court holds that NRS § 107.090 is incorporated, then a factual question would
17 arise in this case: did the HOA provide notice to the lender consistent with NRS §
18 107.090? As the law stands currently, it is irrelevant whether the HOA provided notice to
19 the lender—foreclosure sales conducted pursuant to Chapter 116 could not have satisfied
20 the lenders’ constitutional due process rights. *See, e.g., U.S. Bank, N.A. v. Emerald Ridge*
21 *Landscape Maint. Ass’n*, No. 2:15-cv-00117-MMD-PAL, 2017 WL 4386967, at *3 (D. Nev.
22 Sept. 29, 2017). But if NRS § 116.31168 incorporated NRS § 107.090, then some
23 foreclosure sales may have satisfied constitutional due process requirements (i.e., those
24 in which HOAs gave lenders notice consistent with NRS § 107.090). SFR contends that
25 BNYM received such notice in this case. (*See* ECF No. 97 at 6.)

26 The parties may be concerned that a stay will prejudice them. However, any
27 damage to the parties from a stay will be outweighed by the fees that all parties will surely
28 incur from continued litigation—a decision in the proceedings before the Nevada

1 Supreme Court could moot a decision by this Court. Until there is finality on the issue of
2 whether NRS § 116.31168 incorporates NRS § 107.090, a stay will benefit the parties
3 and conserve judicial resources.

4 **IV. CONCLUSION**

5 It is therefore ordered that this action is temporarily stayed until resolution of the
6 certified question in Nev. S. Ct. Case No. 72931. The stay will be lifted upon such
7 resolution. The parties must file a status report within five (5) days from such resolution.

8 It is further ordered that SFR's Motion for Partial Summary Judgment (ECF No.
9 86) is denied.

10 It is further ordered that all remaining motions (ECF Nos. 83, 96, 97) are denied
11 without prejudice and may be refiled within thirty (30) days from the date the stay in this
12 case is lifted.

13 DATED THIS 5th day of January 2018.

14 
15 _____
16 MIRANDA M. DU
17 UNITED STATES DISTRICT JUDGE
18
19
20
21
22
23
24
25
26
27
28