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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

DEUTSCHE BANK NATIONAL TRUST
COMPANY,

Plaintiff,

v.

INDEPENDENCE II HOMEOWNERS'
ASSOCIATION, et al.,

Defendants.

Case No. 2:16-cv-00536-MMD-GWF

ORDER

SFR INVESTMENTS POOL 1, LLC,

Counter/Cross Claimant,

v.

DEUTSCHE BANK NATIONAL TRUST
COMPANY AS TRUSTEE FOR THE
CERTIFICATEHOLDRES OF IMPAC
SECURED ASSETS CORP, MORTGAGE
PASS-THROUGH CERTIFICATES,
SERIES 2007-01; and CAROLINA
OSPINA MEDINA,

Counter/Cross 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

1 were incorporated by reference into the pre-2015 version of NRS § 116.31168. Because
2 the parties in this action do not dispute that Deutsche Bank National Trust Company
3 (“Deutsche”) received actual notice of the HOA’s foreclosure sale (see ECF No. 87 at 27
4 (not disputing that it received actual notice but instead contending that actual notice is
5 irrelevant to the Court’s analysis)), this Court *sua sponte* stays this action in its entirety¹
6 until the Nevada Supreme Court resolves the certified question.

7 As a result, the Court denies the four pending motions: (1) SFR Investments Pool
8 1, LLC’s (“SFR”) Renewed Motion for Partial Summary Judgment Regarding a Pure Issue
9 of Law: Application of the Return Doctrine Post-*Bourne Valley* (“Return Doctrine MPSJ”)
10 (ECF No. 66);² (2) Deutsche’s Motion for Partial Summary Judgment (ECF No. 67); (3)
11 Independence II Homeowners Association’s Second Renewed Motion to Dismiss Claims
12 (ECF No. 78); and (4) SFR’s Countermotion for Relief under Fed. R. Civ. P. 56(d) (ECF
13 No. 79).

14 **II. RETURN DOCTRINE MPSJ (ECF No. 66)**

15 SFR moves for partial summary judgment requesting that this Court find that in the
16 wake of *Bourne Valley Court Tr. v. Wells Fargo Bank, N.A.*, 832 F.3d 1154, 1156 (9th Cir.
17 2016), *cert. denied*, 137 S. Ct. 2296 (2017), NRS Chapter 116’s notice scheme returns
18 to that of the 1991 version of the statute and thereby eliminates Plaintiffs’ 20th affirmative
19 defense as well as their other claims of unconstitutionality. (ECF No. 66 at 15.) This Court
20 has already addressed the issue of whether it should analyze the facts of a particular
21 case under the notice provisions of the 1991 version of NRS Chapter 116 and declined
22 to do so. See *U.S. Bank National Association v. Thunder Properties Inc.*, No 3:15-cv-
23 00328-MMD-WGC, 2017 WL 4102464, *3 (D. Nev. Sept. 14, 2017).

24 Therefore, the Court denies SFR’s Return Doctrine MPSJ on the merits.

25 _____
26 ¹Magistrate Judge Foley already stayed all proceedings in this case pending
27 resolution of the certified question. (ECF No. 85.)

28 ²The Court addresses and denies this motion on the merits, see discussion *infra*
Sec. II, while it denies without prejudice and with leave to re-file the other three motions
pending resolution of the certified question.

1 **III. STAY OF ENTIRE PROCEEDINGS**

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

16 The Court finds that significant judicial resources will be saved if the Court refrains
17 from issuing a decision in this case until the Nevada Supreme Court determines whether
18 NRS § 116.31168 incorporates the notice provisions of NRS § 107.090. *See SFR*
19 *Investments Pool 1, LLC v. Bank of New York Mellon*, Nev. S. Ct. Case No. 72931. NRS
20 §§ 116.31168 and 107.090 prescribe two fundamentally different notice mechanisms. The
21 first requires lenders to affirmatively request notice of foreclosure sales from HOAs. The
22 second requires HOAs to notify lenders as a matter of course, regardless of whether a
23 request was made.

24 The Ninth Circuit recently held the first mechanism to be facially unconstitutional
25 because it impermissibly shifts the burden to lenders in violation of their procedural due
26 process rights. *Bourne Valley Court Tr.*, 832 F.3d at 1156. NRS § 107.090 seems to
27 ameliorate this burden-shifting problem by requiring the HOAs to provide notice to lenders
28 absent any request from lenders for notice; however, the Ninth Circuit has held that NRS

1 § 107.090 is not incorporated in NRS § 116.31168. *Id.* at 1159. If it were, the Ninth Circuit
2 reasoned, the opt-in notice scheme would be superfluous. *Id.*

3 The question of whether NRS § 116.31168 incorporates NRS § 107.090 is now
4 pending before the Nevada Supreme Court in Case No. 72931. Moreover, that court has
5 hinted it will answer the question in the affirmative. *See Nationstar Mortg., LLC v. Saticoy*
6 *Bay LLC Series 227 Shadow Canyon*, 405 P.3d 641, 648 n.11 (Nev. 2017). If the Nevada
7 Supreme Court holds that NRS § 107.090 is incorporated, then a factual question would
8 arise in this case: did the HOA provide notice to the lender consistent with NRS §
9 107.090? As the law stands currently, it is irrelevant whether the HOA provided notice to
10 the lender—foreclosure sales conducted pursuant to Chapter 116 could not have satisfied
11 the lenders’ constitutional due process rights. *See, e.g., U.S. Bank, N.A. v. Emerald Ridge*
12 *Landscape Maint. Ass’n*, No. 2:15-cv-00117-MMD-PAL, 2017 WL 4386967, at *3 (D. Nev.
13 Sept. 29, 2017). But if NRS § 116.31168 incorporated NRS § 107.090, then some
14 foreclosure sales may have satisfied constitutional due process requirements (i.e., those
15 in which HOAs gave lenders notice consistent with NRS § 107.090). Because actual
16 notice occurred here, resolution of the certified question is relevant.

17 The Court therefore stays all proceedings in this case until resolution of the
18 certified question in Nev. S. Ct. Case No. 72931.

19 **IV. CONCLUSION**

20 The Court notes that the parties made several arguments and cited to several
21 cases not discussed above. The Court has reviewed these arguments and cases and
22 determines that they do not warrant discussion as they do not affect the outcome of the
23 motions.

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

27 It is further ordered that Deutsche’s Motion for Partial Summary Judgment,
28 Independence II Homeowners Association’s Second Renewed Motion to Dismiss Claims,

1 and SFR's Countermotion for Relief under Fed. R. Civ. P. 56(d) (ECF Nos. 67, 78, 79)
2 are denied without prejudice and may be refiled within thirty (30) days from the date the
3 stay in this case is lifted.

4 It is further ordered that SFR Investments Pool 1, LLC's Renewed Motion for
5 Partial Summary Judgment Regarding a Pure Issue of Law: Application of the Return
6 Doctrine Post-*Bourne Valley* (ECF No. 66) is denied.

7 DATED THIS 4th day of January 2018.



10 MIRANDA M. DU
11 UNITED STATES DISTRICT JUDGE

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