

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

THE BANK OF NEW YORK MELLON FKA)
THE BANK OF NEW YORK, AS TRUSTEE)
FOR THE CERTIFICATEHOLDERS OF THE)
CWABS, INC. ASSET-BACKED)
CERTIFICATES, SERIES 2004-7,)

Case No.: 2:16-cv-00847-GMN-CWH

ORDER

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC;)
MONTAGNE MARRON COMMUNITY)
ASSOCIATION; ALESSI & KOENIG, LLC,)

Defendants.

SFR INVESTMENTS POOL 1, LLC, a)
Nevada limited liability company,)

Counter/Cross Claimant.

vs.

THE BANK OF NEW YORK FKA THE)
BANK OF NEW YORK AS TRUSTEE FOR)
THE CERTIFICATEHOLDERS OF THE)
CWABS, INC., ASSET-BACKED)
CERTIFICATES, SERIES 2004-7; and JOHN)
EDWARD BOSTAPH, JR., an individual,)

Counter/Cross Defendants.)

Lenders and investors have been at odds over the legal effect of a homeowners’ association’s (“HOA”) nonjudicial foreclosure of a superpriority lien on a lender’s first trust deed pursuant to Nevada Revised Statutes § 116.3116. See Freedom Mortg. Corp. v. Las Vegas Dev. Grp., LLC, 106 F. Supp. 3d 1174, 1180 (D. Nev. 2015). The Nevada Supreme Court

1 seemed to have settled the debate in *SFR Invs. Pool 1, LLC v. U.S. Bank*, 334 P.3d 408, 419
2 (Nev. 2014), holding that “NRS 116.3116(2) gives an HOA a true superpriority lien, proper
3 foreclosure of which will extinguish a first deed of trust.” *SFR*, 334 P.3d at 419.

4 However, on August 12, 2016, two members of a Ninth Circuit panel held in *Bourne*
5 *Valley Court Trust v. Wells Fargo Bank* that Chapter 116’s nonjudicial foreclosure scheme
6 “facially violated mortgage lenders’ constitutional due process rights” before it was amended in
7 2015. *Bourne Valley Ct. Trust v. Wells Fargo Bank*, 2016 WL 4254983, at *5 (9th Cir. Aug. 12,
8 2016). As a result, Bourne Valley is likely dispositive of this and the hundreds of other
9 foreclosure cases pending in both state and federal court. To save the parties from the need to
10 invest resources briefing the effect of the Bourne Valley opinion before the finality of that
11 opinion has been determined, the Court **STAYS** all proceedings in this case pending exhaustion
12 of all appeals of Bourne Valley.

13 **I. LEGAL STANDARD**

14 “[T]he power to stay proceedings is incidental to the power inherent in every court to
15 control the disposition of the causes of action on its docket with economy of time and effort for
16 itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). “A trial
17 court may, with propriety, find it is efficient for its own docket and the fairest course for the
18 parties to enter a stay of an action before it, pending resolution of independent proceedings
19 which bear upon the case.” *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir.
20 1979). In deciding whether to grant a stay, a court may weigh the following: (1) the possible
21 damage which may result from the granting of a stay; (2) the hardship or inequity which a party
22 may suffer in being required to go forward; (3) the orderly course of justice measured in terms
23 of the simplifying or complicating of issues, proof, and questions of law which could be
24 expected to result from a stay. *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962).
25 However, “[o]nly in rare circumstances will a litigant in one case be compelled to stand aside

1 while a litigant in another settles the rule of law that will define the rights of both.” Landis, 299
2 U.S. at 255. A district court’s decision to grant or deny a Landis stay is a matter of discretion.
3 See Dependable Highway Exp., Inc. v. Navigators Ins. Co., 498 F.3d 1059, 1066 (9th Cir.
4 2007).

5 **II. DISCUSSION**

6 At the center of this case are the HOA-foreclosure sale conducted pursuant to Nevada
7 Revised Statutes § 116.3116 and the competing arguments that the foreclosure sale either
8 extinguished the bank’s security interest under the SFR holding or had no legal effect because
9 the statutory scheme violates due process. Because the Ninth Circuit in Bourne Valley held that
10 the scheme was facially unconstitutional, see Bourne Valley, 2016 WL 4254983, at *5, the
11 Bourne Valley opinion and any modification of that opinion have the potential to be dispositive
12 of this case. Under this circumstance, the Landis factors weigh strongly in favor of staying this
13 action pending final resolution of the Bourne Valley decision. Indeed, the possible prejudice to
14 the parties is minimal as the only potential harm is that the parties may wait longer for
15 resolution of this case if it is stayed. However, if this case is not stayed, a delay would also
16 result from any motions for reconsideration that may be necessitated if the current decision in
17 the Bourne Valley case does not stand. Accordingly, a stay is not likely to appreciably lengthen
18 the life of this case. Further, in the absence of a stay, judicial resources may be unnecessarily
19 expended to resolve issues which may ultimately be decided by higher courts to which this
20 Court is bound to adhere. Because the Bourne Valley decision is squarely on point, the orderly
21 course of justice likewise weighs in favor of a stay. Accordingly, the Court finds that staying
22 this action pending final resolution of Bourne Valley would be efficient for the Court’s own
23 docket and the fairest course for the parties. See Leyva, 593 F.2d at 863.

1 **III. CONCLUSION**

2 **IT IS THEREFORE ORDERED** that this case is administratively **STAYED** pending
3 exhaustion of all appeals of Bourne Valley Court Trust v. Wells Fargo Bank, No. 15-15233 (9th
4 Cir. Aug. 12, 2016). Once exhaustion occurs, any party may move to lift the stay. Until that
5 time, all proceedings in this action are stayed.

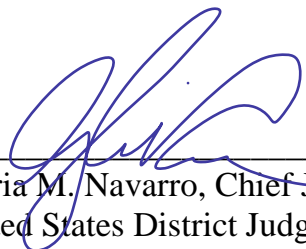
6 **IT IS FURTHER ORDERED** that all pending motions are **DENIED** without prejudice
7 with leave to refile within twenty-one days after the stay is lifted.

8 **IT IS FURTHER ORDERED** SFR Investments Pool 1, LLC, shall care for, preserve,
9 and maintain the Property.

10 **IT IS FURTHER ORDERED** that, beginning on April 25, 2017, the parties must file a
11 joint status report updating the Court on the status of this case every one-hundred and eighty
12 days. Along with the joint status report, SFR Investments Pool 1, LLC, shall submit a
13 statement affirming that all expenses necessary to maintain the property, including but not
14 limited to, timely and full payment of all homeowners association assessments, property taxes,
15 and property insurance premiums due and owing or past due at any time during the effective
16 period of this Stay are current and up to date.

17 **IT IS FURTHER ORDERED** that this Order does not prevent the parties from
18 continuing to engage in settlement conference negotiations with the assistance of the Magistrate
19 Judge.

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21 **DATED** this 25 day of October, 2016.

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24 _____
25 Gloria M. Navarro, Chief Judge
United States District Judge