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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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BANK OF AMERICA N.A., SUCCESSOR  
BY MERGER TO BAC HOME LOANS  
SERVICING, LP FKA COUNTRYWIDE  
HOME LOANS SERVICING, LP,

Plaintiff,

v.

ALIANTE MASTER ASSOCIATION;  
SATICOY BAY LLC SERIES 3237  
PERCHING BIRD; and NEVADA  
ASSOCIATION SERVICES, INC.,

Defendants.

Case No. 2:16-cv-00962-MMD-CWH

ORDER

(Def.'s Motion to Stay – ECF No. 36)

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 Saticoy Bay LLC Series 3237 Perching Bird's ("Saticoy Bay") Motion to Stay. (ECF No. 36.) Plaintiff Bank of America, N.A. ("BANA") has opposed (ECF No. 39), and Saticoy Bay has replied (ECF Nos. 40, 41).

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

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

9       The Court finds that significant judicial resources will be saved if the Court refrains  
10 from issuing a decision in this case until the Nevada Supreme Court determines whether  
11 NRS § 116.31168 incorporates the notice provisions of NRS § 107.090. (ECF No. 36 at  
12 2 (citing Nev. S. Ct. Case No. 72931).) NRS §§ 116.31168 and 107.090 prescribe two  
13 fundamentally different notice mechanisms. The first requires lenders to affirmatively  
14 request notice of foreclosure sales from HOAs. The second requires HOAs to notify  
15 lenders as a matter of course, regardless of whether a request was made.

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

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

1 arise in this case: did the HOA provide notice to the lender consistent with NRS §  
2 107.090? As the law stands currently, it is irrelevant whether the HOA provided notice to  
3 the lender—foreclosure sales conducted pursuant to Chapter 116 could not have satisfied  
4 the lenders’ constitutional due process rights. *See, e.g., U.S. Bank, N.A. v. Emerald Ridge*  
5 *Landscape Maint. Ass’n*, No. 2:15-cv-00117-MMD-PAL, 2017 WL 4386967, at \*3 (D. Nev.  
6 Sept. 29, 2017). But if NRS § 116.31168 incorporated NRS § 107.090, then some  
7 foreclosure sales may have satisfied constitutional due process requirements (i.e., those  
8 in which HOAs gave lenders notice consistent with NRS § 107.090). In the instant action,  
9 there appears to be a factual dispute as to whether actual notice was provided by the  
10 HOA to Plaintiff consistent with the requirements of NRS § 107.090. (See ECF No. 1 at ¶  
11 24-25 (indicating that, prior to foreclosure, Plaintiff remitted payment to the HOA in an  
12 attempt to tender the super-priority amount); see also ECF No. 1-1.)

13 Plaintiff contends that the Nevada Supreme Court’s decision is immaterial because  
14 even if NRS § 107.090 is incorporated, it is constitutionally deficient. (ECF No. 39 at 4.)  
15 Plaintiff goes on to state that NRS § 107.090 does not require HOAs to inform mortgagees  
16 what steps to take to protect their interests, such as how much to pay to prevent a super-  
17 priority sale, rendering the notice of little value to lenders seeking to tender. (*Id.*) While  
18 the constitutionality of NRS § 107.090 is a serious issue that the parties will no doubt  
19 dispute if the Nevada Supreme Court holds that NRS § 107.090 is incorporated, that issue  
20 is not presently before this Court. *See Clinton v. Jones*, 520 U.S. 681, 690 (1997) (“[W]e  
21 have often stressed the importance of avoiding the premature adjudication of  
22 constitutional questions.”).

23 In addition, Plaintiff insists that a stay will be prejudicial because it suffers  
24 economic harm as long as Saticoy Bay claims to hold clear title: “While Saticoy Bay  
25 continues to collect rent, BANA is required to pay taxes and insurance charges on its  
26 defaulting borrower’s behalf.” (ECF No. 39 at 6.) However, any damage to Plaintiff from  
27 a stay will be outweighed by the fees that all parties will surely incur from continued  
28 litigation—a decision in the proceedings before the Nevada Supreme Court could moot a

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

4 It is therefore ordered that Defendant's Motion to Stay (ECF No. 36) is granted.  
5 This action is temporarily stayed until resolution of the certified question in Nev. S. Ct.  
6 Case No. 72931. The stay will be lifted upon such resolution. The parties must file a status  
7 report within five (5) days from such resolution. The pending motion (ECF No. 32) is  
8 denied without prejudice and may be refiled within thirty (30) days from the Nevada  
9 Supreme Court's decision on the certified question.

10 DATED THIS 22<sup>nd</sup> day of December 2017.

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13 MIRANDA M. DU  
14 UNITED STATES DISTRICT JUDGE  
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