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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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9 THE BANK OF NEW YORK MELLON,

10 Plaintiff,

Case No. 2:16-cv-01303-KJD-NJK

11 v.

ORDER12 HILLCREST AT SUMMIT HILLS
13 HOMEOWNERS ASSOCIATION et al.,

14 Defendants.

15 Presently before the Court is Plaintiff's Motion for Summary Judgment (#45). Defendant
16 Edward Kielty Trust filed a response (#59) to which Plaintiff replied (#63). Also before the Court is
17 Defendant Edward Kielty Trust's Motion for Summary Judgment (#46). Plaintiff filed a response
18 (#58) to which Defendant Edward Kielty Trust replied (#62). Also before the Court is Defendant
19 Hillcrest at Summit Hills Homeowners Association's Motion to Dismiss Amended Complaint (#71).
20 Plaintiff filed a response (#74) to which Defendant Hillcrest at Summit Hills Homeowners
21 Association replied (#76). Also before the Court is Defendant Hillcrest at Summit Hills Homeowners
22 Association's Motion to Dismiss Amended Complaint (#73). Plaintiff filed a response (#75) to
23 which Defendant Hillcrest at Summit Hills Homeowners Association replied (#77).

24 **I. Background**

25 This case emerges from Summit Hills Homeowners Association's May 2013 non-judicial
26 foreclosure sale of the property located at 2216 Calm Sea Avenue, Las Vegas, Nevada 89106 ("the

1 Property”). All motions presently before the Court center in whole or in part around the question of
2 what notice of default Summit Hills Homeowners Association was required to provide Plaintiff prior
3 to its foreclosure sale on the Property.

4 **II. Analysis**

5 A. Certified Question

6 On April 21, 2017, in Bank of New York Mellon v. Star Hills Homeowners Association, this
7 Court certified the following question to the Nevada Supreme Court: “Whether NRS §
8 116.31168(1)’s incorporation of NRS § 107.090 requires homeowners associations to provide
9 notices of default to banks even when a bank does not request notice?” Bank of New York Mellon v.
10 Star Hill Homeowners Assoc., 2017 WL 1439671, at *5 (D. Nev. April 21, 2017).

11 In granting certification, the Court reasoned the following: In Bourne Valley, the Ninth
12 Circuit definitively answered the question that the statute’s “opt-in” framework was unconstitutional.
13 Bourne Valley Court Trust v. Wells Fargo Bank, NA, 832 F.3d 1154, 1160 (2016). However, that
14 leaves this Court with the unresolved question of what notice must be provided. “It is solely within
15 the province of the state courts to authoritatively construe state legislation.” Cal. Teachers Ass’n v.
16 State Bd. of Educ., 271 F.3d 1141, 1146 (9th Cir. 2001). As such, state law questions of first
17 impression like this one should be resolved by the state’s highest court. See Huddleston v. Dwyer,
18 322 U.S. 232, 237 (1944). Allowing the Nevada Supreme Court to answer this question before
19 considering any other motions will provide this Court the necessary guidance as to how to handle the
20 issue of notice and actual notice in light of Bourne Valley.

21 In Bank of New York Mellon, the Court did not and could not rely upon any controlling state
22 law as to the requirements of notice. This Court faces the same predicament here. An answer to the
23 above already certified question will provide much needed clarity, and may be dispositive of many of
24 the issues currently before the Court in this case.

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2. Hardship and inequity

Both parties equally face hardship or inequity if the Court resolves the claims or issues before the certified question has been resolved. And in the interim both parties stand to benefit from a stay, regardless of the outcome of the question. A stay will prevent any additional, unnecessary briefing and premature expenditures of time, attorney’s fees, and resources.

3. Orderly course of justice

At the center of this case is the question of what notice is now required under NRS Chapter 116 in light of the Ninth Circuit decision Bourne Valley. The jurisprudence in this area of unique Nevada law continues to evolve, causing parties in the scores of foreclosure-challenge actions to file new motions or supplement the ones that they already have pending, resulting in “docket-clogging entries and an impossible-to-follow chain of briefs in which arguments are abandoned and replaced.” Nationstar Mortg., LLC v. Springs at Spanish Trail Assoc., 2017 WL 752775, at *2 (D. Nev. Feb. 27, 2017). Staying this case pending the Nevada Supreme Court’s disposition of the certified question in Bank of New York Mellon will permit the parties to evaluate, and the Court to consider, viability of the claims under the most complete precedent. This will simplify and streamline the proceedings and promote the efficient use of the parties’ and the Court’s resources.

Therefore, the Court orders this action stayed. Once the Nevada Supreme Court has resolved the question certified in Bank of New York Mellon, either party may move to lift the stay.

III. Conclusion

Accordingly, IT IS HEREBY ORDERED that Plaintiff’s Motion for Summary Judgment (#45) is **DENIED as moot**;

IT IS FURTHER ORDERED that Defendant Edward Kielty Trust’s Motion for Summary Judgment (#46) is **DENIED as moot**;

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IT IS FURTHER ORDERED that Defendant Hillcrest at Summit Hills Homeowners Association's Motion to Dismiss Amended Complaint (#73) is **DENIED as moot**;

IT IS FURTHER ORDERED that Defendant Hillcrest at Summit Hills Homeowners Association's Motion to Dismiss Amended Complaint (#75) is **DENIED as moot**;

IT IS FURTHER ORDERED that all pending motions are **DENIED without prejudice**;

IT IS FURTHER ORDERED that this action is **STAYED**.

DATED this 24th day of January, 2018.



Kent J. Dawson
United States District Judge