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4
UNITED STATES DISTRICT COURT
5
DISTRICT OF NEVADA

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7 THE BANK OF NEW YORK MELLON,

Case No. 2:16-cv-01897-KJD-GWF

8 Plaintiff,

ORDER

9 v.

10 TRAMONTO VILLAGGIO HOMEOWNERS
11 ASSOCIATION et al.,

12 Defendants.

13 Presently before the Court is Plaintiff's Motion for Summary Judgment (#43). Defendant
14 Daisy Trust filed a response (#48) to which Plaintiff replied (#52). Also before the Court is
15 Defendant Daisy Trust's Motion for Summary Judgment (#45). Defendant Tramonto Villaggio
16 Homeowners Association also filed a Joinder to the Motion (#46). Plaintiff filed a response (#49)
17 to which Defendant Daisy Trust replied (#50).

18 **I. Background**

19 This case emerges from the non-judicial foreclosure sale on or about September 19, 2012
20 of the property located at 9576 Tratorria Street, Las Vegas, Nevada 89178 ("Property"). This
21 case shares a similar fact pattern with many cases currently pending before this Court, all having
22 to do with HOA foreclosure sales. The several motions presently pending before the Court center
23 in whole or in part around the question of what notice of default the foreclosing party was
24 required to provide Plaintiff prior to its foreclosure sale on the Property. After the Nevada
25 Supreme Court's decision in SFR Investments Pool 1 LLC v. U.S. Bank, the Ninth Circuit
26 decided Bourne Valley Court Trust v. Wells Fargo Bank, NA, 832 F.3d 1154, 1160 (9th Cir.
27 2016), holding NRS 115.3116(2)'s statutory notice scheme was facially unconstitutional. In light
28 of Bourne Valley, what notice an HOA must provide prior to foreclosing on a superpriority lien

1 remains uncertain.

2 **II. Analysis**

3 **A. Certified Question**

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

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

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

24 **B. Stay of the Case**

25 The pending motions in this case implicate the previously certified question regarding
26 what notice state law requires. To save the parties from the need to invest further resources into
27 the issues surrounding the notice requirement, the Court sua sponte stays all proceedings in this
28 case and denies all pending motions without prejudice.

1 A district court has the inherent power to stay cases to control its docket and promote the
2 efficient use of judicial resources. Landis v. North Am. Co., 299 U.S., 248, 254-55 (1936);
3 Dependable Highway Exp., Inc. v. Navigators Ins. Co., 498 F.3d 1059, 1066 (9th Cir. 200).
4 When determining whether a stay is appropriate pending the resolution of another case—often
5 called a “Landis stay”—the district court must weigh: (1) the possible damage that may result
6 from a stay; (2) any “hardship or inequity” that a party may suffer if required to go forward; and
7 (3) “the orderly course of justice measured in terms of the simplifying or complicating of issues,
8 proof, and question of law” that a stay will engender. Lockyer v. Mirant Corp., 398 F.3d 1098,
9 1110 (9th Cir. 2005). Weighing these considerations, the Court finds that a Landis stay is
10 appropriate.

11 1. Damage from a stay

12 The only potential damage that may result from a stay is that the parties will have
13 to wait longer for resolution of this case and any motions that they have filed or intend to file in
14 the future. But a delay would also result from any rebriefing or supplemental briefing that may
15 be necessitated pending the Nevada Supreme Court’s answer to the certified question. It is not
16 clear that a stay will ultimately lengthen the life of this case.

17 Additionally, a stay of this case pending resolution of the certified question is
18 expected to be reasonably short. This Court certified the question approximately nine months
19 ago, and briefing on the pending petition in Nevada’s Supreme Court is completed. Because the
20 length of this stay is directly tied to the petition proceedings in that case, it is reasonably brief,
21 and not indefinite. Thus, the Court finds only minimal possible damage that this stay may cause.

22 2. Hardship and inequity

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

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1 3. Orderly course of justice

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

12 Therefore, the Court orders this action stayed. Once the Nevada Supreme Court has
13 resolved the question certified in Bank of New York Mellon, any of the parties may move to lift
14 the stay.

15 **III. Conclusion**

16 Accordingly, IT IS HEREBY ORDERED that Plaintiff’s Motion for Summary Judgment
17 (#43) is **DENIED**.

18 IT IS FURTHER ORDERED that Defendants’ Motion for Summary Judgment (#45) is
19 **DENIED**.

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

21 Dated this 25th day of July, 2018.

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24 Kent J. Dawson
25 United States District Judge
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