

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3  
4 Capital One, N.A.,

5 Plaintiff

6 v.

7 Aurora Estates Owners Association, et al.,

8 Defendants

2:16-cv-02325-JAD-GWF

**Order Denying Capital One's  
Motion to Lift Stay**

[ECF No. 18]

9  
10 A few months ago, I stayed this case pending the Ninth Circuit's consideration of a  
11 petition for en banc review of the panel decision in *Bourne Valley Court Trust v. Wells Fargo*  
12 *Bank*, which held that Chapter 116's nonjudicial foreclosure scheme "facially violated mortgage  
13 lenders' constitutional due process rights" before it was amended in 2015.<sup>1</sup> Although the Ninth  
14 Circuit denied en banc review, the Nevada Supreme Court held on January 26, 2017, in *Saticoy*  
15 *Bay v. Wells Fargo* that "the Due Process Clauses of the United States and Nevada Constitutions  
16 are not implicated in an HOA's nonjudicial foreclosure of a superpriority lien."<sup>2</sup> The Nevada  
17 Supreme Court "acknowledge[d]" the Ninth Circuit's *Bourne Valley* holding but "decline[d] to  
18 follow its holding."<sup>3</sup> The losing parties in both *Bourne Valley* and *Saticoy Bay* have indicated  
19 their intent to file petitions for certiorari in the United States Supreme Court.<sup>4</sup> Because *Bourne*  
20 *Valley* and *Saticoy Bay* offer starkly conflicting views on the central question in the instant case,

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22 <sup>1</sup> *Bourne Valley Ct. Trust v. Wells Fargo Bank*, 2016 WL 4254983, at \*5 (9th Cir. Aug. 12,  
23 2016).

24 <sup>2</sup> *Saticoy Bay v. Wells Fargo*, 133 Nev. Adv. Op. 5 (Jan. 26, 2017).

25 <sup>3</sup> *Id.* at 7–8, n.5.

26 <sup>4</sup> The Nevada Supreme Court has stayed issuance of the remittitur until June 21, 2017, to allow  
27 time to seek certiorari. *Saticoy Bay*, Nev. S. Ct. Case No. 68630, Doc. 17-04543 (Feb. 8, 2017).  
28 The United States Supreme Court has extended the deadline for the *Bourne Valley* cert petition to  
April 3, 2017. Case No. 16A753 (Feb 24, 2017).

1 the constitutionality of potentially thousands of Nevada’s non-judicial foreclosure sales may  
2 ultimately be decided by the United States Supreme Court.<sup>5</sup>

3 Noting that the Ninth Circuit denied en banc reconsideration in *Bourne Valley*, Capital  
4 One now moves to lift the stay in this case to allow it to file a motion to dismiss.<sup>6</sup> The Aurora  
5 Estates Owners Association opposes the motion and asks me to extend the stay in light of the cert  
6 petitions.<sup>7</sup> To save the parties from the need or inclination to invest resources briefing the effect  
7 of the *Bourne Valley* and *Saticoy Bay* opinions before the United States Supreme Court has ruled  
8 on those petitions, I deny the HOA’s motion to lift the stay and extend the stay in this case until  
9 the Supreme Court’s consideration of *Bourne Valley* and *Saticoy Bay* is completed.

### 10 Discussion

11 A district court has the inherent power to stay cases to control its docket and promote the  
12 efficient use of judicial resources.<sup>8</sup> When determining whether a stay is appropriate pending the  
13 resolution of another case—often called a “*Landis* stay”—the district court must weigh: (1) the  
14 possible damage that may result from a stay, (2) any “hardship or inequity” that a party may  
15 suffer if required to go forward, (3) “and the orderly course of justice measured in terms of the  
16 simplifying or complicating of issues, proof, and questions of law” that a stay will engender.<sup>9</sup>  
17 After weighing these considerations, I find that a *Landis* stay remains appropriate here. I address  
18 these considerations in reverse order.

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21 <sup>5</sup> See S.C.R. 10(a) (suggesting that a conflict between a circuit court and “a state court of last  
22 resort” on “an important federal question” can be a basis for granting review on a writ of  
23 certiorari).

24 <sup>6</sup> ECF No. 18. I find this motion suitable for disposition without oral argument. Nev. L.R. 78-1.

25 <sup>7</sup> ECF No. 19.

26 <sup>8</sup> *Landis v. North American Co.*, 299 U.S. 248, 254–55 (1936); *Dependable Highway Exp., Inc.*  
27 *v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007).

28 <sup>9</sup> *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005).

1 **A. A stay will promote the orderly course of justice.**

2 At the center of this case is an HOA-foreclosure sale under NRS Chapter 116 and the  
3 competing arguments that the foreclosure sale either extinguished the bank’s security interest or  
4 had no legal effect because the statutory scheme violates due process. The United States  
5 Supreme Court’s consideration of petitions for certiorari in *Bourne Valley* and *Saticoy Bay* have  
6 the potential to be dispositive of this case or at least of discrete issues that it presents. As the  
7 jurisprudence in this area of unique Nevada law continues to evolve, the parties in the scores of  
8 foreclosure-challenge actions pending in this courthouse file new motions or move to supplement  
9 the ones that they already have pending, often resulting in docket-clogging entries and an  
10 impossible-to-follow chain of briefs in which arguments are abandoned and replaced.  
11 Continuing to stay this case pending the Supreme Court’s disposition of the petitions for  
12 certiorari in *Bourne Valley* and *Saticoy Bay* will permit the parties to evaluate—and me to  
13 consider—the viability of the claims under the most complete precedent. This will simplify and  
14 streamline the proceedings and promote the efficient use of the parties’ and the court’s resources.

15 **B. Hardship and inequity**

16 All parties face the prospect of hardship if I resolve the claims or issues in this case  
17 before the petitions for certiorari have been decided. Denying this motion to lift stay at this time  
18 and effectively extending this stay will prevent unnecessary briefing and the expenditures of  
19 time, attorney’s fees, and resources that could be wasted—or at least prematurely spent—should  
20 the Supreme Court take up these cases.

21 **C. Damage from a stay**

22 The only potential damage that may result from a stay is that the parties will have to wait  
23 longer for resolution of this case and any motions that they have filed or intend to file in the  
24 future. But a delay would also result from any rebriefing or supplemental briefing that may be  
25 necessitated if the Supreme Court grants certiorari and resolves this circuit-state split. So it is not  
26 clear to me that a stay pending the Supreme Court’s disposition of the petitions for certiorari will  
27 ultimately lengthen the life of this case. I thus find that any possible damage that the extension  
28 of this stay may cause the parties is minimal.

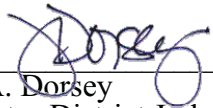
1 **D. The length of the stay is reasonable.**

2 Finally, I note that the stay extension in this case pending the disposition of the petitions  
3 for certiorari in *Bourne Valley* and *Saticoy Bay* is expected to be reasonably short. The petition  
4 in *Bourne Valley* is due April 3, 2017, and the petition in *Saticoy Bay* is due April 25, 2017.  
5 Because the length of this stay extension is directly tied to the petition proceedings in those  
6 cases, it is reasonably brief, and it is not indefinite.

7 **Conclusion**

8 IT IS THEREFORE ORDERED that **the motion to lift stay [ECF No. 18] is DENIED**  
9 **without prejudice to the filing of a new motion after the Supreme Court rules on the**  
10 ***Bourne Valley* and *Saticoy Bay* petitions for certiorari review.**

11 DATED: February 28, 2017

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14 Jennifer A. Dorsey  
15 United States District Judge  
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