

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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BANK OF AMERICA, N.A., a successor by merger to BAC HOME LOANS SERVICING, LP fka COUNTRYWIDE HOME LOANS SERVICING, LP and FEDERAL NATIONAL MORTGAGE ASSOCIATION, *et al.*

Case No. 2:16-cv-02768-MMD-CWH
ORDER

Plaintiffs,

V.

SANTA BARBARA HOMEOWNERS
ASSOCIATION; SFR INVESTMENTS
POOL 1, LLC; and ABSOLUTE
COLLECTION SERVICES, LLC.,

Defendants.

SFR INVESTMENTS POOL 1, LLC.

Counter/Cross Claimant.

v.

BANK OF AMERICA, N.A., successor by merger to BAC HOME LOANS SERVICING, LP fka COUNTRYWIDE HOME LOANS SERVICING, LP; FEDERAL NATIONAL MORTGAGE ASSOCIATION; KATY L. LEE, and individual; and KATY L. LEE, TRUSTEE or her successor in trust, under the KLEE LIVING TRUST, dated August 10, 2006.

Counter/Cross Defendants.

This case arises out of a homeowner's association ("HOA") foreclosure sale and involves a constitutional due process challenge to Nevada Revised Statute Chapter 116's notice provisions. Before the Court is a Joint Motion to Stay ("Joint Motion") filed by Plaintiffs/Counter Defendants Bank of America, N.A. ("BANA") and Federal National

1 Mortgage Association (“Fannie Mae”), and Defendants SFR Investments Pool 1, LLC
2 (“SFR”) and Absolute Services, LLC (“ACS”) (collectively “Movants”) (ECF No. 43).
3 Defendant Santa Barbara Homeowner Association’s (“SB”) filed a response opposing the
4 Joint Motion (ECF No. 45) to which Movants filed a reply (ECF No. 46). Movants ask the
5 Court to stay all proceedings pending final resolution of the petitions for certiorari in
6 *Bourne Valley Court Trust v. Wells Fargo Bank, NA*, 832 F.3d 1154 (9th Cir. 2016), r’hng
7 denied (9th Cir. Nov. 4, 2016), and *Saticoy Bay LLC Series 350 Durango 104 v. Wells*
8 *Fargo Home Mortgage, a Div. of Wells Fargo Bank, N.A.*, 388 P.3d 970 (Nev. Jan. 26,
9 2017). For the stated reasons below, the Court agrees with Movants and finds that a
10 complete stay of the case, at least until the Supreme Court addresses the pending
11 certiorari petitions, is prudent.

12 In their opposition, SB contends that they will suffer additional attorney’s fees to
13 monitor the pending certiorari petitions, delay in the resolution of the ownership of the
14 property, and an inability to budget for future amounts and legal costs if the case is stayed.
15 (ECF No. 45 at 3.) Movants, however, argue that there will be minimal defense costs to
16 SB in monitoring the case and that, in the event this action is not stayed, the hardship to
17 Movants outweighs any harm to SB. (ECF No. 46 at 1-2.)

18 A district court has discretionary power to stay proceedings in its own court. *Landis*
19 *v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936); *see also Lockyer v. Mirant Corp.*, 398 F.3d
20 1098, 1109 (9th Cir. 2005). “A trial court may, with propriety, find it is efficient for its own
21 docket and the fairest course for the parties to enter a stay of an action before it, pending
22 resolution of independent proceedings which bear upon the case.” *Leyva v. Certified*
23 *Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979). “When considering a motion to
24 stay, the district court should consider three factors: (1) potential prejudice to the non-
25 moving party; (2) hardship and inequity to the moving party if the action is not stayed; and
26 (3) the judicial resources that would be saved by avoiding duplicative litigation if the cases
27 are in fact consolidated.” *Pate v. Depuy Orthopaedics, Inc.*, No. 2:12-cv-01168-MMD-
28 CWH, 2012 WL 3532780, at *2 (D. Nev. Aug. 14, 2012) (quoting *Rivers v. Walt Disney*

1 Co., 980 F. Supp. 1358, 1360 (C.D. Cal. 1997)) (internal quotation marks omitted). See
2 also *Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1067 (9th Cir.
3 2007).

4 These three factors weigh in favor of a temporary stay in this case, though the
5 duration of the stay may be extended depending on whether the Supreme Court will grant
6 Bourne Valley and Well Fargo's petitions for a writ of certiorari. SB insists that a stay will
7 create hardship because of the attorney's fees resulting from monitoring of this case and
8 the uncertainty of defending the action (ECF No. 45 at 5.) However, any damage to SB
9 from a stay will be outweighed by the fees that all parties will surely incur from continued
10 litigation because a decision by this Court could be rendered moot by a decision in the
11 certiorari proceedings before the Supreme Court. Until there is finality on the issue of
12 whether Nevada's superpriority lien statutes are constitutional, a stay will benefit the
13 parties and conserve judicial resources.

14 It is therefore ordered that Movants' Joint Motion to Stay (ECF No. 43) is granted.
15 This action is temporarily stayed until resolution of the certiorari proceedings before the
16 United States Supreme Court in *Bourne Valley* and/or *Saticoy Bay*. The parties must file
17 a status report within fifteen (15) days from such resolution. The pending Motion for Partial
18 Summary Judgment (ECF No. 23) is denied without prejudice and may be refiled within
19 thirty (30) days after the stay is lifted.

20 DATED THIS 28th day of April 2017.



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22 MIRANDA M. DU
23 UNITED STATES DISTRICT JUDGE
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