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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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THE BANK OF NEW YORK MELLON FKA  
THE BANK OF NEW YORK AS TRUSTEE  
FOR THE CERTIFICATEHOLDERS OF  
THE CWABS, INC. ASSET-BACKED  
CERTIFICATES, SERIES 2005-11,

Case No. 2:17-cv-00776-MMD-NJK

ORDER

Plaintiff,

v.

VEGAS PROPERTY SERVICES, INC.;  
SHADOW SPRINGS COMMUNITY  
ASSOCIATION; and DOES 1 THROUGH  
10, INCLUSIVE,

Defendants.

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. Currently there is a federal-state split in the interpretation and effect of the notice provisions found at the pre-2015 version of NRS Chapter 116. However, a question regarding the applicable notice provisions was recently certified to the Nevada Supreme Court, asking whether the notice provisions found at NRS § 107.090 were incorporated by reference into the pre-2015 version of NRS § 116.31168. Defendant Shadow Springs Community Association (“Shadow Springs”) contends that Plaintiff Bank of New York Mellon (“BNYM”) received actual notice of the foreclosure sale at issue in this case. (ECF No. 50 at 19 (arguing that “BNYM had actual notice of the foreclosure”).)

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1 Accordingly, this Court *sua sponte* stays this action in its entirety until the Nevada  
2 Supreme Court resolves the certified question.

3 A district court has discretionary power to stay proceedings in its own court. *Landis*  
4 *v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936). “A trial court may, with propriety, find it is  
5 efficient for its own docket and the fairest course for the parties to enter a stay of an action  
6 before it, pending resolution of independent proceedings which bear upon the case.”  
7 *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979). In deciding  
8 whether to grant a stay, courts should consider “the possible damage which may result  
9 from the granting of a stay, the hardship or inequity which a party may suffer in being  
10 required to go forward, and the orderly course of justice measured in terms of the  
11 simplifying or complicating of issues, proof, and questions of law which could be expected  
12 to result from a stay.” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005) (quoting  
13 *Landis*, 299 U.S. at 268). Courts should also consider “the judicial resources that would  
14 be saved by avoiding duplicative litigation.” *Pate v. DePuy Orthopaedics, Inc.*, No. 2:12-  
15 cv-01168-MMD-CWH, 2012 WL 3532780, at \*2 (D. Nev. Aug. 14, 2012) (quoting *Rivers*  
16 *v. Walt Disney Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal. 1997)).

17 The Court finds that significant judicial resources will be saved if the Court refrains  
18 from issuing a decision in this case until the Nevada Supreme Court determines whether  
19 NRS § 116.31168 incorporates the notice provisions of NRS § 107.090 in Nev. S. Ct. Case  
20 No. 72931. NRS §§ 116.31168 and 107.090 prescribe two fundamentally different notice  
21 mechanisms. The first requires lenders to affirmatively request notice of foreclosure sales  
22 from HOAs. The second requires HOAs to notify lenders as a matter of course, regardless  
23 of whether a request was made.

24 The Ninth Circuit recently held the first mechanism facially unconstitutional because  
25 it impermissibly shifts the burden to lenders in violation of their procedural due process  
26 rights. *Bourne Valley Court Tr. v. Wells Fargo Bank, N.A.*, 832 F.3d 1154, 1156 (9th Cir.  
27 2016), *cert. denied*, 137 S. Ct. 2296 (2017). NRS § 107.090 seems to ameliorate this  
28 burden-shifting problem by requiring the HOAs to provide notice to lenders absent any

1 request from lenders for notice; however, the Ninth Circuit has held that NRS § 107.090  
2 is not incorporated in NRS § 116.31168. *Id.* at 1159. If it were, the Ninth Circuit reasoned,  
3 the opt-in notice scheme would be superfluous. *Id.*

4 The question of whether NRS § 116.31168 incorporates NRS § 107.090 is now  
5 pending before the Nevada Supreme Court in Case No. 72931. Moreover, that court has  
6 hinted it will answer the question in the affirmative. *See Nationstar Mortg., LLC v. Saticoy*  
7 *Bay LLC Series 227 Shadow Canyon*, 405 P.3d 641, 648 n.11 (Nev. 2017). If the Nevada  
8 Supreme Court holds that NRS § 107.090 is incorporated, then a factual question would  
9 arise in this case: did the HOA provide notice to the lender consistent with NRS § 107.090?  
10 As the law stands currently, it is irrelevant whether the HOA provided notice to the lender—  
11 foreclosure sales conducted pursuant to Chapter 116 could not have satisfied the lenders’  
12 constitutional due process rights. *See, e.g., U.S. Bank, N.A. v. Emerald Ridge Landscape*  
13 *Maint. Ass’n*, No. 2:15-cv-00117-MMD-PAL, 2017 WL 4386967, at \*3 (D. Nev. Sept. 29,  
14 2017). But if NRS § 116.31168 incorporated NRS § 107.090, then some foreclosure sales  
15 may have satisfied constitutional due process requirements (i.e., those in which HOAs  
16 gave lenders notice consistent with NRS § 107.090). Shadow Springs contends that it  
17 provided such notice in this case. (ECF No. 50 at 19.)

18 The parties may be concerned that a stay will be prejudicial to them. However, any  
19 damage to the parties from a stay will be outweighed by the fees that all parties will surely  
20 incur from continued litigation—a decision in the proceedings before the Nevada Supreme  
21 Court could moot a decision by this Court. Until there is finality on the issue of whether  
22 NRS § 116.31168 incorporates NRS § 107.090, a stay will benefit the parties and conserve  
23 judicial resources.

24 It is therefore ordered that this action is temporarily stayed until resolution of the  
25 certified question in Nev. S. Ct. Case No. 72931. The stay will be lifted upon such  
26 resolution. The parties must file a status report within five days from such resolution.

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It is further ordered that all pending motions (ECF Nos. 44, 63) are denied without prejudice and may be refiled within thirty (30) days from the date the stay in this case is lifted.

DATED THIS 26<sup>th</sup> day of July 2018.

  
MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE