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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

THE BANK OF NEW YORK MELLON fka
THE BANK OF NEW YORK, AS
SUCCESSOR TRUSTEE TO JPMORGAN
CHASE BANK, N.A., AS TRUSTEE ON
BEHALF OF THE CERTIFICATEHOLDERS
OF THE CWHEQ INC., CWHEQ
REVOLVING HOME EQUITY LOAN
TRUST, SERIES 2006-H,

Case No. 2:17-cv-01830-MMD-CWH

ORDER

Plaintiff,

v.

RED ROCK COUNTRY CLUB
HOMEOWNERS ASSOCIATION; and SFR
INVESTMENTS POOL 1, LLC,

Defendants.

I. SUMMARY

Plaintiff asserts claims against Defendants Red Rock Country Club Homeowners Association (“HOA”) and SFR Investment Pool 1, LCC (“SFR”) arising from the HOA’s foreclosure on property (“the Property”) encumbered by a senior deed of trust held by Plaintiff. (ECF No. 1.) Plaintiff subsequently filed a motion to stay (ECF No. 25) because of a state action involving the same Property (“State Action”). SFR opposes a stay and moves for dismissal. (ECF Nos. 27, 28.) The Court has reviewed the briefs relating to the parties’ motions. For the reasons discussed herein, SFR’s motion to dismiss (ECF No. 28) is granted and Plaintiff’s motion to stay (ECF No. 25) is denied as moot.

1 **II. RELEVANT BACKGROUND**

2 The Complaint alleges the usual claims common to these HOA foreclosure
3 cases—quiet title/declaratory judgment and injunctive relief against Defendants, and
4 wrongful foreclosure and breach of NRS § 116.1113 against the HOA. (ECF No. 1 at 6-
5 12.) The relief requested includes an order declaring the foreclosure sale void ab initio
6 and enjoining SFR from transferring or encumbering the Property. (*Id.* at 12-13.) Plaintiff
7 asserts that the foreclosure sale on the Property occurred on August 1, 2013. (*Id.* at 2.)

8 On August 6, 2013, a few days after the foreclosure sale, the owners of the
9 Property at the time of the sale filed the State Action against SFR, the HOA and others.
10 (ECF No. 25 at 2; ECF No. 28 at 2.) SFR answered and asserted counterclaims for quiet
11 title. (ECF No. 28 at 2.) Plaintiff intervened in the State Action in August 2014. (*Id.*) The
12 State Action was later stayed pending the parties’ completion of mediation and the court
13 statistically closed the State Action on January 25, 2017. (ECF No. 25 at 2.)

14 About six months later, on July 5, 2017, Plaintiff initiated this action because,
15 according to Plaintiff, of “SFR’s unwillingness to move the state court action forward.”¹
16 (ECF No. 25 at 2.) Yet, on January 10, 2018, Plaintiff filed a motion in the State Action to
17 dismiss or alternatively to reopen the case. (*Id.* at 3.) The state court denied Plaintiff’s
18 motion to dismiss, but reopened the case. (*Id.*) On August 21, 2018, Plaintiff filed a motion
19 to dismiss in the State Action. (ECF No. 34.)

20 **III. DISCUSSION**

21 SFR argues that the Court should dismiss rather than stay this action because of
22 the prior exclusive jurisdiction doctrine and because Plaintiff elected to intervene in the
23 State Action in 2014. (ECF No. 28 at 4-5.) The Court agrees.

24 “The prior exclusive jurisdiction doctrine holds that when one court is
25 exercising *in rem* jurisdiction over a *res*, a second court will not

26 _____
27 ¹ Of course, Plaintiff could have filed a motion to reopen the State Action in July 2017
28 when the State Action had only been statistically closed for about six months, as it later
did in January 2018.

1 assume *in rem* jurisdiction over the same *res*.” *Chapman v. Deutsche Bank Nat’l Trust*
2 *Co.*, 651 F.3d 1039, 1043 (9th Cir. 2011) (citation and internal quotation marks
3 omitted). In *Chapman v. Deutsche Bank Nat’l Trust Co.*, 302 P.3d 1103 (Nev. 2013), the
4 Nevada Supreme Court held that quiet title proceedings are *in rem* or quasi *in rem* in
5 nature. Accordingly, the Court cannot assume *in rem* jurisdiction.

6 Plaintiff insists that exceptional circumstances here warrant a stay rather than
7 dismissal in part because its quiet title claim is an *in rem* proceeding. (ECF No. 25 at 5.)
8 However, the State Action also involves a quiet title claim. Moreover, Plaintiff elected to
9 intervene and apparently participated in the prerequisite mediation in connection with the
10 State Action. Yet, instead of moving to reopen the State Action when SFR purportedly
11 refused to move that action forward, Plaintiff filed this action. Plaintiff then waited seven
12 more months to move to reopen or dismiss the State Action. Under these circumstances,
13 the Court declines to stay the action.

14 **IV. CONCLUSION**

15 The Court notes that the parties made several arguments and cited to several
16 cases not discussed above. The Court has reviewed these arguments and cases and
17 determines that they do not warrant discussion as they do not affect the outcome of the
18 motions before the Court.

19 It is therefore ordered that SFR’s motion to dismiss (ECF No. 28) is granted.

20 It is further ordered that Plaintiff’s motion to stay (ECF No. 25) is denied as moot.

21 The Clerk is directed to enter judgment in accordance with this order and close this
22 case.

23 DATED THIS 29th day of August 2018.



24
25 MIRANDA M. DU
26 UNITED STATES DISTRICT JUDGE
27
28