

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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LVDG SERIES 125, established under LVDG
LLC, a Nevada series limited-liability
company,

Plaintiff,

v.

HAROLD M. WELLES; VALERIE M.
WELLES; WELLS FARGO BANK, N.A.;
and MTC FINANCIAL INC. d/b/a TRUSTEE
CORPS, INC.,

Defendants.

Case No. 3:13-cv-0503-LRH-WGC

ORDER

Before the court is defendant MTC Financial Inc.'s ("MTC Financial") motion to dismiss plaintiff LVDG Series 125's ("LVDG") first amended complaint (ECF No. 63). ECF No. 64. LVDG filed an opposition (ECF No. 68) to which MTC Financial replied (ECF No. 69).

I. Facts and Procedural Background

This is a declaratory relief action arising out of a non-judicial foreclosure. In May 1999, defendants Harold M. Welles and Valerie M. Welles ("the Welles") purchased real property in Reno, Nevada. On November 6, 2006, the Welles executed a deed of trust in favor of defendant Wells Fargo Bank, N.A. ("Wells Fargo"). At the time the deed of trust was executed, the underlying property was subject to monthly homeowner's association ("HOA") dues.

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1 In 2009, the Welles fell behind on their HOA dues. Subsequently, on January 12, 2010, a
2 notice of delinquent assessment for HOA dues was recorded on the property. On June 29, 2010,
3 a notice of default and election to sell under the HOA lien was recorded. Eventually, on or about
4 August 15, 2013, LVDG purchased the property at an HOA foreclosure sale. On the same date of
5 the HOA foreclosure sale, Wells Fargo and MTC Financial Inc. ("MTC") recorded a separate
6 Notice of Trustee's Sale, scheduling a foreclosure sale on the first deed of trust.

7 Subsequently, on August 23, 2013, LVDG filed a complaint to quiet title against
8 defendants alleging that its purchase of the property at the HOA sale extinguished all other liens,
9 including Wells Fargo's first deed of trust. ECF No. 1, Exhibit A. In response, Wells Fargo filed
10 a motion to dismiss (ECF No. 4) which was granted by the court (ECF No. 32). LVDG appealed
11 that order to the Ninth Circuit. ECF No. 42. While the appeal was pending, the Nevada Supreme
12 Court issued a decision in SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 334 P.3d 408 (Nev.
13 2014). In SFR Investments, the court held that an HOA has a true super-priority lien on a
14 property for nine months of unpaid assessments, and foreclosure on this lien extinguishes all
15 other interests in a property. 334 P.3d at 415-416. After the Nevada Supreme Court's decision in
16 SFR Investments, the Ninth Circuit reversed this court's order granting Wells Fargo's motion to
17 dismiss and remanded the action back to this court.

18 On November 1, 2013, after it filed its motion to dismiss, Wells Fargo conducted its own
19 foreclosure sale on the property under the first deed of trust. Federal Home Loan Mortgage
20 Corporation ("Freddie Mac") purportedly purchased the property at the bank foreclosure sale. In
21 response, LVDG filed a motion to amend its complaint (ECF No. 59) in order to name Freddie
22 Mac as a defendant and allege various new claims related to Wells Fargo's foreclosure sale
23 which was granted by the court (ECF No. 61). On July 21, 2016, LVDG filed its first amended
24 complaint alleging six causes of action: (1) declaratory relief; (2) unjust enrichment; (3) slander
25 of title; (4) conversion; (5) wrongful foreclosure; and (6) rescission. ECF No. 63. Thereafter,
26 defendant MTC Financial filed the present motion to dismiss. ECF No. 64.

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1 **II. Discussion**

2 In its motion, MTC Financial seeks dismissal from the amended complaint on the basis
3 that the parties entered into a previously approved stipulation of non-monetary status. See
4 ECF No. 64. During the course of this litigation, on October 29, 2013, plaintiff LVDG – through
5 its former counsel - and defendant MTC Financial entered into a stipulation governing MTC
6 Financial’s liability in this litigation. ECF No. 27. In that stipulation, MTC Financial agreed to
7 “be bound by whatever final order or final judgment the Court issues regarding the subject Deed
8 of Trust.” Id. Further, the parties stipulated that MTC Financial “shall neither be liable for any
9 monetary awards as and for damages, attorney’s fees or costs” nor “be required to pay any
10 bonds.” Id. Finally, the parties stipulated that MTC Financial “shall not be required to participate
11 further in this action, with the exception of responding to discovery.” Id. The court approved the
12 parties’ stipulation on November 4, 2013. ECF No. 28.

13 Now, in its first amended complaint, LVDG asserts and alleges new claims against MTC
14 Financial based on Wells Fargo’s foreclosure sale on the first deed of trust. Further, LVDG seeks
15 monetary damages and other remedies precluded by the parties’ approved stipulation. LVDG
16 contends that the first amended complaint is not precluded by the original stipulation because the
17 newly alleged claims post-date the stipulation. The court disagrees. The stipulation is not limited
18 to any specific claim or cause of action. Instead, the stipulation governs MTC Financial’s
19 liability and responsibilities for the entirety of the litigation. See ECF No. 28. That order is still
20 valid and binding as the stipulation has not been vacated by the court and neither party has
21 sought such relief in this action. Though LVDG’s new counsel is dissatisfied with the actions of
22 prior counsel, that dissatisfaction does not mean the approved stipulation is any less binding on
23 the parties. Therefore, the court finds that the parties’ stipulation precludes any actions against
24 defendant MTC Financial for monetary relief and shall grant MTC Financial’s motion
25 accordingly.

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1 IT IS THEREFORE ORDERED that defendant's motion to dismiss (ECF No. 64) is
2 GRANTED in accordance with this order. Defendant MTC Financial Inc. shall be DISMISSED
3 as a defendant in this action as to any monetary or other relief sought by plaintiff. However,
4 defendant MTC Financial Inc. shall continue to participate in this action as specified in the
5 approved stipulation between the parties (ECF No. 28).

6 IT IS SO ORDERED.

7 DATED this 23rd day of February, 2017.



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9 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE