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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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NATIONSTAR MORTGAGE LLC and
FEDERAL NATIONAL MORTGAGE
ASSOCIATION, a government sponsored
enterprise,

Plaintiffs,

v.

HIGHLAND RANCH HOMEOWNERS
ASSOCIATION and AIRMOTIVE
INVESTMENTS, LLC,

Defendants.

Case No. 3:17-cv-00287-LRH-VPC

ORDER

Two motions come before the court: defendant Airmotive Investments, LLC’s motion to dismiss and defendant Highland Ranch Homeowners’ Association’s motion for partial summary judgment. ECF Nos. 13, 30. Plaintiffs Nationstar Mortgage LLC and Federal National Mortgage Association (“Fannie Mae”) opposed both motions. ECF Nos. 15, 31. A reply was filed in response to both oppositions. ECF Nos. 16, 32.

After considering the parties’ arguments, the court grants Airmotive’s motion to dismiss in part. The court will stay this action until the resolution of the parallel state-court action rather than dismiss it. As a result, the court denies Highland Ranch’s motion for partial summary judgment as moot.

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1 **I. FACTUAL BACKGROUND**

2 Aaron Williams and Angela Bailey-Williams obtained a loan to purchase a property
3 located at 6245 Choctaw Court, Sun Valley, Nevada 89433. ECF No. 31 at Ex. 1. The two
4 executed a deed of trust to secure the repayment of the loan, which was recorded in Washoe
5 County, Nevada. Id. Williams later transferred his interest in the property to Bailey-Williams via
6 a grant, bargain, and sale deed. ECF No. 31 at Ex. 2.

7 Fannie Mae allegedly acquired the loan in 2005, taking ownership of the deed of trust and
8 the related promissory note. ECF No. 1, ¶ 27. Nationstar became the servicer of the loan by way
9 of assignment. Id., ¶¶ 28–31. Between 2011 and 2013, Highland Ranch foreclosed on the
10 property as a result of delinquent homeowners’ association assessments. Id., ¶¶ 40–44. The
11 foreclosure deed identified TBD, LLC (a non-party) as the purchaser of the property at the
12 foreclosure sale. Id., ¶ 44. TBD deeded the property to TBR I LLC (a non-party), which then
13 quitclaimed the property to Airmotive. Id., ¶¶ 44–46.

14 Nationstar and Fannie Mae sued Highland Ranch and Airmotive in federal court on
15 May 4, 2017. ECF No. 1. 1. The plaintiffs alleged eight causes of action: (1) declaratory relief
16 under 12 U.S.C. § 4617(j)(3); (2) quiet title under 12 U.S.C. § 4617(j)(3); (3) declaratory relief
17 under Amendments Five and Fourteen to the U.S. Constitution; (4) quiet title under Amendments
18 Five and Fourteen to the U.S. Constitution; (5) declaratory judgment under 28 U.S.C. § 2201,
19 N.R.S. § 40.010, and N.R.S. 30.040; (6) breach of N.R.S. § 116.1113; (7) wrongful foreclosure;
20 and (8) injunctive relief.¹

21 But Airmotive sued Bailey-Williams, Nationstar, and Fannie Mae in state court one week
22 earlier. ECF No. 13, Ex. 1. In the state action, Airmotive asserted a quiet-title and declaratory-
23 relief claim against the state-court defendants. Id. Airmotive also asserted a misrepresentation
24 claim against Nationstar. Id.

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28 ¹ The plaintiffs asserted claims one, two, four, and eight against Airmotive only. ECF No. 1. The plaintiffs asserted
claims six and seven against Highland Ranch only. Id. The plaintiffs asserted claims three and five against both
Airmotive and Highland Ranch. Id.

1 **II. DISCUSSION**

2 The court first considers Airmotive’s motion to dismiss. Because the motion to dismiss
3 results in a stay of this matter, the court denies Highland Ranch’s motion for partial summary
4 judgment as moot.

5 **A. Motion to Dismiss**

6 The parties dispute whether the Colorado River doctrine applies to this matter.² See ECF
7 Nos. 13, 15, 16. “Generally ‘the pendency of an action in state court is no bar to proceedings
8 concerning the same matter in the [f]ederal court having jurisdiction....’” *Seneca Ins. Co., Inc. v.*
9 *Strange Land, Inc.*, 862 F.3d 835, 841 (9th Cir. 2017) (quoting *Colo. River Water Conservation*
10 *Dist. v. United States*, 424 U.S. 800, 817 (1976)). “Abstention from the exercise of federal
11 jurisdiction is the exception, not the rule.” *Colo. River*, 424 U.S. at 813. Accordingly, a strong
12 presumption against abstention generally governs. *Seneca Ins. Co.*, 862 F.3d at 842. But still,
13 “[i]n exceptional circumstances, a federal court may decline to exercise its ‘virtually unflagging
14 obligation’ to exercise federal jurisdiction, in deference to pending, parallel state proceedings.”
15 *Montanore Minerals Corp. v. Bakie*, 867 F.3d 1160, 1165 (9th Cir. 2017), as amended on denial
16 *of reh’g and reh’g en banc* (Oct. 18, 2017) (quoting *Colo. River*, 424 U.S. at 817). If exceptional
17 circumstances exist, the Ninth Circuit “generally require[s] a stay rather than a dismissal[,]”
18 which “ensures the federal forum will remain open if for some unexpected reason the state forum
19 turns out to be inadequate.” *Id.* (quoting *Attwood v. Mendocino Coast Dist. Hosp.*, 886 F.2d 241,
20 243 (9th Cir. 1989)) (internal quotation marks and punctuation marks omitted).

21 Federal courts balance eight factors when determining whether to stay or dismiss a matter
22 under the Colorado River doctrine:

- 23 (1) which court first assumed jurisdiction over any property at stake; (2) the
24 inconvenience of the federal forum; (3) the desire to avoid piecemeal litigation;
25 (4) the order in which the forums obtained jurisdiction; (5) whether federal law or
26 state law provides the rule of decision on the merits; (6) whether the state court
proceedings can adequately protect the rights of the federal litigants; (7) the desire
to avoid forum shopping; and (8) whether the state court proceedings will resolve
all issues before the federal court.

27
28 ² The parties also dispute whether the first-to-file rule applies rather than the Colorado River doctrine. ECF Nos. 13,
15, 16. The court does not consider the parties’ arguments in regards to the first-to-file rule.

1 Id. at 1166 (citing *R.R. St. & Co. Inc. v. Transp. Ins. Co.*, 656 F.3d 966, 978 – 79 (9th Cir.
2 2011)). The first factor applies when both a state court and a federal court exercise jurisdiction
3 over the same property. Id. The factor “addresses the concern ‘that the parallel proceedings will
4 result in inconsistent dispositions of [such property].’” Id. (quoting *Seneca Ins. Co.*, 862 F.3d at
5 842). The first factor is dispositive; it requires a district court to stay a federal action when the
6 proceeding is in rem or quasi in rem. Id. at 1166–67.

7 The first factor of the Colorado River doctrine requires the court to stay this in rem
8 proceeding. In this action, Nationstar and Fannie Mae assert multiple quiet title claims. Likewise,
9 in the state-court action, the state-court plaintiffs assert a quiet-title claim. In Nevada, a quiet-
10 title claim is an in rem proceeding. *Chapman v. Deutsche Bank Nat’l Tr. Co.*, 302 P.3d 1103,
11 1106 (Nev. 2013). Accordingly, under the first factor of the Colorado River doctrine—which is
12 dispositive—the court must stay the quiet-title claims subsequently brought in this action. The
13 court must also stay the remaining claims because the claims involve the same questions as the
14 quiet-title claims. See *40235 Washington St. Corp. v. Lusardi*, 976 F.3d 587, 589 (9th Cir. 1992)
15 (per curiam) (requiring the court to stay a declaratory-relief claim because it “involve[d] the
16 same question” as the in rem claim and could be resolved in state court); see also *Montanore*
17 *Minerals Corp.*, 867 F.3d at 1171 (quoting *Lusardi* when stating that courts “avoid engaging in
18 different analyses for related claims in a single action, because such an approach ‘would
19 increase, not decrease, the likelihood of piecemeal adjudication or duplicative litigation,’
20 undermining the Colorado River doctrine.”). The court therefore stays—rather than dismisses—
21 this action in accordance with the Ninth Circuit’s preference to leave the federal forum open
22 until the state forum proves to be adequate.

23 The court stays this matter without considering the remaining factors under the Colorado
24 River doctrine. The court does so despite recognizing that the remaining factors strongly favor
25 the exercise of federal jurisdiction—especially given the contrary and conflicting opinions by the
26 state and the Ninth Circuit regarding the constitutionality of the state statute at issue. See *Bourne*
27 *Valley Court Tr. v. Wells Fargo Bank, NA*, 832 F.3d 1154 (9th Cir. 2016), cert denied, 137 S. Ct.
28 2296 (2017) (holding the state statute unconstitutional under the Due Process Clause); but see

1 Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortg., a Div. of Wells Fargo
2 Bank, N.A., 388 P.3d 970 (Nev. 2017) (holding the state statute does not implicate the Due
3 Process Clause). However, Ninth Circuit precedent makes clear that the first factor under the
4 Colorado River doctrine is dispositive, which binds the court in its decision to stay this matter.
5 The court therefore stays the matter without analyzing the remaining factors under the Colorado
6 River doctrine.

7 **III. CONCLUSION**

8 IT IS THEREFORE ORDERED that defendant Airmotive Investments, LLC's motion to
9 dismiss (ECF No. 13) is **GRANTED in part**. The court will stay this matter rather than dismiss
10 it.

11 IT IS FURTHER ORDERED that this matter is **STAYED** pending resolution of the
12 parallel state-court proceeding. The parties shall file a notice of resolution of the state-court
13 action and a motion to lift the stay with the court within fourteen days of such a resolution.

14 IT IS FURTHER ORDERED that defendant Highland Ranch Homeowners'
15 Association's motion for partial summary judgment (ECF No. 30) is **DENIED as moot**.

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17 IT IS SO ORDERED.

18 DATED this 29th day of November, 2017.

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21 LARRY R. HICKS
22 UNITED STATES DISTRICT JUDGE
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