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### Nationstar Mortg. v. SFR Invs. Pool 1, 133 Nev. Adv. Op. 34 (June 22, 2017)

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## PROPERTY RIGHTS AND TRANSACTIONS: STANDING, SUPREMACY CLAUSE

### **Summary**

The Court held that a servicer of a loan that is owned by a regulated entity does have standing to raise claims on behalf of the Federal Housing Finance Agency. If a party argues that federal law preempts state law when a case is properly before the court, then the court has authority to determine that issue.

### **Background**

SFR bought a property through foreclosure proceedings. After the original purchaser of the home filed suit against SFR, SFR filed a third-party complaint against Nationstar. This was a quiet title claim. The original purchaser's suit was dismissed for other reasons. The remaining parties both moved for summary judgment. SFR argued that Nationstar's security interest was extinguished by the foreclosure sale. Nationstar argued that its interest still exists because Freddie Mac purchased the loan that was taken out by the original purchaser, Freddie Mac was under conservatorship by the FHFA, and the Federal Foreclosure Bar prohibits the property sale without FHFA's consent. Nationstar also argued that the Federal Foreclosure Bar preempts NRS 116.3116.<sup>2</sup> The district court granted SFR's summary judgment motion. It held that there was a factual dispute as to whether Freddie Mac or the FHFA had an interest in the deed, but Nationstar lacked standing to bring any claims on FHFA's behalf. The district court did not decide whether the Federal Foreclosure Bar preempts NRS 116.3116.<sup>3</sup>

### **Discussion**

The FHFA may contract with private entities to service a loan or use an entity's present relationships to service a loan.<sup>4</sup> Thus, the FHFA can authorize a loan servicer to administer the loan.<sup>5</sup> In other words, the FHFA could have delegated Nationstar to preserve Freddie Mac's property from foreclosure. This would allow Nationstar to bring claims on behalf of FHFA and its interest in the property.

The district court may address supremacy clause issues once a case is properly before the court.<sup>6</sup> Neither party disputes that SFR's quiet title claim is properly before the court. Private parties can also argue that federal law preempts state law.<sup>7</sup> Thus, Nationstar can argue that the Federal Foreclosure Bar preempts NRS 116.3116.<sup>8</sup>

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<sup>1</sup> By Elise Conlin.

<sup>2</sup> NEV. REV. STAT. § 116.3116 (2015).

<sup>3</sup> *Id.*

<sup>4</sup> 12 U.S.C. § 4617(b)(2)(D) (2012).

<sup>5</sup> 12 C.F.R. § 1237.3(a)(8) (2013).

<sup>6</sup> *Armstrong v. Exceptional Child Center, Inc.*, 135 S. Ct. 1378, 1384 (2015).

<sup>7</sup> *See, e.g., Munoz v. Branch Banking & Trust Co., Inc.*, 131 Nev. Adv. Op. 23, 348 P.3d 689, 690 (2015).

<sup>8</sup> NEV. REV. STAT. § 116.3116.

## **Conclusion**

The Court held that Nationstar could have standing to assert claims on behalf of FHFA or Freddie Mac if those two entities had an interest in the deed. Thus, the Court reversed and remanded the case for the district court to resolve that factual dispute. The Court also remanded for the district court to decide whether the Federal Foreclosure Bar preempts NRS 116.3116 if the court decides that Nationstar has standing.<sup>9</sup>

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<sup>9</sup> *Id.*