

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 VERN ELMER, an individual,)
4)
5 Plaintiff,)
6 vs.)

Case No.: 2:14-cv-01999-GMN-NJK

ORDER

7 JP MORGAN CHASE BANK NATIONAL)
8 ASSOCIATION, a National Association;)
9 MORTGAGE ELECTRONIC)
10 REGISTRATION SYSTEMS, INC., a Foreign)
11 Corporation; MTC FINANCIAL, INC., a)
12 Foreign Corporation; FEDERAL HOME)
13 LOAN MORTGAGE CORPORATION, a)
14 Foreign Corporation; SCOTT B. DAVIS,)
15 an individual; KAREN L. DAVIS, an)
16 individual; DOES I through X; and ROE)
17 CORPORATIONS I through X, inclusive,)
18 Defendants,)

19 FEDERAL HOUSING FINANCE AGENCY,)
20 as Conservator of the Federal National)
21 Mortgage Corporation,)
22 Intervenor,)

23 JP MORGAN CHASE BANK NATIONAL)
24 ASSOCIATION, a National Association;)
25 MORTGAGE ELECTRONIC)
26 REGISTRATION SYSTEMS, INC., a Foreign)
27 Corporation; and FEDERAL HOME LOAN)
28 MORTGAGE CORPORATION, a)
29 Foreign Corporation,)
30 Counter-Plaintiffs,)

31 vs.)
32 VERN ELMER; and SUNRISE RIDGE)
33 MASTER HOMEOWNERS ASSOCIATION,)
34 Counter-Defendants.)
35)

1 Pending before the Court is the Motion for Summary Judgment (ECF No. 57) filed by
2 Defendant Federal Home Loan Mortgage Corporation (“Freddie Mac”) and Intervenor Federal
3 Housing Finance Agency (“FHFA”). Plaintiff/Counter-Defendant Vern Elmer (“Elmer”) filed
4 a Response (ECF No. 71), and Freddie Mac and FHFA filed a Reply (ECF No. 74).

5 **I. BACKGROUND**

6 The present action involves the interplay between Nevada Revised Statutes § 116.3116
7 and 12 U.S.C. § 4617 as it relates to the parties’ interests in real property located at 6359
8 Pronghorn Ridge Avenue, Las Vegas, NV, 89122 (the “Property”). On September 1, 2005,
9 Scott Davis and Karen Davis (the “Davises”) obtained a loan in the amount of \$248,000 from
10 The Mortgage House, Inc. (“Mortgage House”) that was secured by a Deed of Trust on the
11 Property. (Deed of Trust, ECF No. 71-2).¹ The Deed of Trust named Mortgage Electronic
12 Registration Systems, Inc. (“MERS”) as the beneficiary and T.D. Services Co. as the trustee.
13 (*Id.*). Freddie Mac purchased the Davis Loan on October 24, 2005 and has owned it ever since.
14 *See* (Exs. A–B to Am. Meyer Decl., ECF No. 91-1).

15 On September 6, 2008, FHFA’s Director placed Fannie Mae and Freddie Mac into
16 conservatorships pursuant to HERA. *See* (Pollard Decl. ¶ 2, ECF No. 57-1).

17 On December 29, 2011, Nevada Association Services, Inc. (“NAS”), as agent for
18 Sunrise Ridge Master Homeowners Association (the “HOA”), recorded a Notice of Delinquent
19 Assessment Lien against the Property for \$1,109.80. (Not. of Delinquent Assessment Lien,
20 ECF No. 71-2). Then on February 20, 2012, NAS recorded a Notice of Default and Election to
21 Sell, warning that the HOA would foreclose on its lien unless the assessment payments were
22 brought up to date. (Not. of Default and Election to Sell, ECF No. 71-2). On July 3, 2012,
23 NAS, as agent for the HOA, recorded a Notice of Foreclosure Sale, setting a foreclosure sale of
24 _____

25 ¹ The Court takes judicial notice of Exhibits 1–15 (ECF Nos. 71-1–71-2) of Elmer’s Response. *See Mack v. S. Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986). Each of these documents is publicly recorded in the Clark County Recorder’s office.

1 the Property on August 3, 2012. (Not. of Foreclosure Sale, ECF No. 71-2). Elmer subsequently
2 purchased the Property as the highest bidder at the November 16, 2012 foreclosure sale.
3 (Foreclosure Deed, ECF No. 71-2). At no time during the process did FHFA, as conservator of
4 Freddie Mac, consent to the HOA's foreclosure. *See* (Pollard Decl. ¶¶ 3–4, ECF No. 57-1).

5 On March 14, 2013, MERS assigned its beneficial interest in the Deed of Trust to
6 JPMorgan Chase Bank, N.A. (“Chase”) (Assignment of Deed of Trust, ECF No. 71-2).
7 Moreover, on May 03, 2013, Chase substituted MTC Financial Inc. dba Trustee Corps
8 (“Trustee Corps”) as the trustee of the Deed of Trust. (Substitution of Trustee, ECF No. 71-2).
9 Shortly thereafter, on August 16, 2013, Trustee Corps recorded a Notice of Breach and Default
10 and Election to Sell, indicating that the Davises had failed to perform obligations pursuant to
11 the Deed of Trust. (Not. of Breach and Default and Election to Sell, ECF No. 71-2). However,
12 on October 7, 2013, Trustee Corps recorded a Notice of Rescission. (Not. of Rescission, ECF
13 No. 71-2). On December 13, 2013, Trustee Corps recorded a Notice of Trustee's Sale, setting a
14 trustee sale of the Property on January 17, 2014. (Not. of Trustee's Sale, ECF No. 71-2).
15 Freddie Mac subsequently purchased the Property as the highest bidder at the January 17, 2014
16 trustee sale (Trustee's Deed Upon Sale, ECF No. 71-2), and Chase assigned its beneficial
17 interest in the Deed of Trust to Freddie Mac on March 10, 2014 (Assignment of Deed of Trust,
18 ECF No. 71-2).

19 Elmer initiated this action by filing the original complaint in state court on October 21,
20 2014, asserting, *inter alia*, a claim for quiet title against Freddie Mac, MERS, Chase, and MTC
21 Financial, Inc. (Compl. ¶¶ 61–69, ECF No. 1-1). MTC Financial, Inc. subsequently removed
22 the action to this Court on December 02, 2014. (Not. of Removal, ECF No. 1). On December
23 12, 2014, Freddie Mac filed its Answer, asserting counterclaims against Elmer. (Ans. to Compl.
24 & Counterclaims, ECF No. 14). On December 22, 2014, Freddie Mac filed its Amended
25 Answer, asserting counterclaims against Elmer and the HOA. (Am. Ans. To Compl. &

1 Counterclaims, ECF No. 16).

2 On January 16, 2015, this Court entered an Order granting FHFA's unopposed Motion
3 to Intervene. (Intervenor Order, ECF No. 36). Shortly thereafter, on February 11, 2015, Freddie
4 Mac and FHFA filed the pending Motion for Summary Judgment. (MSJ, ECF No. 57).

5 On June 18, 2015, the Court held a hearing on the pending Motion for Summary
6 Judgment, which was attended by the parties in this case as well as the parties in several related
7 cases² pending before this Court involving the same issue addressed in this action's summary
8 judgment motion. (Min. of Proceedings, ECF No. 89). After listening to the arguments
9 presented by all parties present at the hearing, the Court took the motion under submission.

10 **II. LEGAL STANDARD**

11 The Federal Rules of Civil Procedure provide for summary adjudication when the
12 pleadings, depositions, answers to interrogatories, and admissions on file, together with the
13 affidavits, if any, show that "there is no genuine dispute as to any material fact and the movant
14 is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Material facts are those that
15 may affect the outcome of the case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
16 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a reasonable
17 jury to return a verdict for the nonmoving party. *See id.* "Summary judgment is inappropriate if
18 reasonable jurors, drawing all inferences in favor of the nonmoving party, could return a verdict
19 in the nonmoving party's favor." *Diaz v. Eagle Produce Ltd. P'ship*, 521 F.3d 1201, 1207 (9th
20 Cir. 2008) (citing *United States v. Shumway*, 199 F.3d 1093, 1103–04 (9th Cir. 1999)). A
21 principal purpose of summary judgment is "to isolate and dispose of factually unsupported
22 claims." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).

23 In determining summary judgment, a court applies a burden-shifting analysis. "When
24

25 ² These related cases are: *Williston Investment Group, LLC v. JP Morgan Chase Bank NA*, No. 2:14-cv-2038-GMN-PAL; and *Skylights LLC vs. Fannie Mae*, No. 2:15-cv-0043-GMN-VCF.

1 the party moving for summary judgment would bear the burden of proof at trial, it must come
2 forward with evidence which would entitle it to a directed verdict if the evidence went
3 uncontroverted at trial. In such a case, the moving party has the initial burden of establishing
4 the absence of a genuine issue of fact on each issue material to its case.” *C.A.R. Transp.*
5 *Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (citations omitted). In
6 contrast, when the nonmoving party bears the burden of proving the claim or defense, the
7 moving party can meet its burden in two ways: (1) by presenting evidence to negate an
8 essential element of the nonmoving party’s case; or (2) by demonstrating that the nonmoving
9 party failed to make a showing sufficient to establish an element essential to that party’s case
10 on which that party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–
11 24. If the moving party fails to meet its initial burden, summary judgment must be denied and
12 the court need not consider the nonmoving party’s evidence. *See Adickes v. S.H. Kress & Co.*,
13 398 U.S. 144, 159–60 (1970).

14 If the moving party satisfies its initial burden, the burden then shifts to the opposing
15 party to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v.*
16 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute,
17 the opposing party need not establish a material issue of fact conclusively in its favor. It is
18 sufficient that “the claimed factual dispute be shown to require a jury or judge to resolve the
19 parties’ differing versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors*
20 *Ass’n*, 809 F.2d 626, 631 (9th Cir. 1987). In other words, the nonmoving party cannot avoid
21 summary judgment by relying solely on conclusory allegations that are unsupported by factual
22 data. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, the opposition must go
23 beyond the assertions and allegations of the pleadings and set forth specific facts by producing
24 competent evidence that shows a genuine issue for trial. *See Celotex Corp.*, 477 U.S. at 324.

25 At summary judgment, a court’s function is not to weigh the evidence and determine the

1 truth but to determine whether there is a genuine issue for trial. *See Anderson*, 477 U.S. at 249.
2 The evidence of the nonmovant is “to be believed, and all justifiable inferences are to be drawn
3 in his favor.” *Id.* at 255. But if the evidence of the nonmoving party is merely colorable or is
4 not significantly probative, summary judgment may be granted. *See id.* at 249–50.

5 **III. DISCUSSION**

6 In the instant Motion for Summary Judgment, Freddie Mac and FHFA request that the
7 Court declare that “12 U.S.C. § 4617(j)(3) preempts any Nevada law that would permit a
8 foreclosure on a superpriority lien to extinguish a property interest of Freddie Mac while it is
9 under FHFA’s conservatorship,” “the HOA Sale did not extinguish Freddie Mac’s interest in
10 the Deed of Trust and thus did not convey the Property free and clear to Plaintiff,” and “Freddie
11 Mac’s interest in the Property is superior to the interest of Plaintiff.” (Mot. Summ. J. 13:21–
12 14:5, ECF No. 57).

13 The Court addressed the applicability of 12 U.S.C. § 4617(j)(3) in *Skylights LLC v.*
14 *Fannie Mae*, 2015 WL 3887061 (D. Nev. June 24, 2015). After addressing many different
15 arguments regarding the applicability of section 4617(j)(3), the Court held that the plain
16 language of section 4617(j)(3) prohibits property of FHFA from being subject to a foreclosure
17 without its consent. *Id.* at *10.

18 Here, Freddie Mac has held an interest in the Property since October 24, 2005. *See* (Exs.
19 A–B to Am. Meyer Decl., ECF No. 91-1). Accordingly, because FHFA held an interest in the
20 Deed of Trust as conservator for Freddie Mac prior to the HOA foreclosure, section 4617(j)(3)
21 prevents the HOA’s foreclosure on the Property from extinguishing the Deed of Trust.

22 **IV. CONCLUSION**

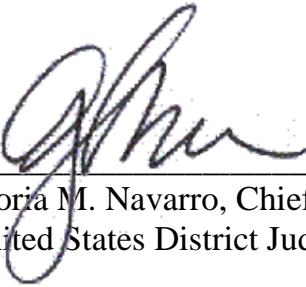
23 **IT IS HEREBY ORDERED** that Freddie Mac and FHFA’s Motion for Summary
24 Judgment (ECF No. 57) is **GRANTED**. The Court finds that 12 U.S.C. § 4617(j)(3) preempts
25 Nevada Revised Statutes § 116.3116 to the extent that a homeowner association’s foreclosure

1 of its super-priority lien cannot extinguish a property interest of Fannie Mae or Freddie Mac
2 while those entities are under FHFA's conservatorship. Accordingly, the HOA's foreclosure
3 sale of its super-priority interest on the Property did not extinguish Freddie Mac's interest in the
4 property secured by the Deed of Trust or convey the Property free and clear to Elmer.

5 **IT IS FURTHER ORDERED** that Freddie Mac, FHFA, the Davises, Chase, and
6 MERS are granted summary judgment on Elmer's claims for quiet title.

7 **DATED** this 13th day of July, 2015.

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Gloria M. Navarro, Chief Judge
United States District Judge