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Miami, FL
June 6, 2016

MULTIDISTRICT LITIGATION PANEL RULES IN FAVOR OF PLAINTIFFS, DENYING FHFA'S REQUEST TO CENTRALIZE CASES

Last week we witnessed further progress with respect to our investments in Fannie Mae and Freddie Mac.

The United States Judicial Panel on Multidistrict Litigation denied the government's attempt to consolidate individual lawsuits from around the country. Cases brought in Delaware, Kentucky, Illinois, and Iowa will now proceed in their respective districts.

The Court of Federal Claims continues to shine a bright light on the defendants' misdeeds by unsealing dozens of incriminating government documents, and the Court is now focused on the remaining stash of 12,000 documents that the government has refused to turn over and that we believe will further prove our claims.

Our Congress is waking up to the disingenuous behavior of the current Administration toward Fannie Mae and Freddie Mac and its negative effects on all constituents. On June 1, 32 Congressional Democrats sent a letter to Federal Housing Finance Agency ("FHFA") Director Mel Watt and Treasury Secretary Jacob Lew expressing their "concerns about your agencies' policy of requiring Freddie Mac and Fannie Mae to operate without adequate capital," and emphasizing that the Housing and Economic Recovery Act of 2008 ("HERA") "includes a number of provisions expressing Congress' intent that the GSEs be operated in a safe and sound manner … The fact that the GSEs are currently in conservatorship, and that Congress has not enacted further legislation post-HERA, does not justify an agreement between FHFA and the U.S. Treasury to ignore HERA's mandate."

The court of public opinion is beginning to understand Fannie Mae and Freddie Mac's outstanding performance during both good and bad economic times – when the companies are allowed to function without political interference.

It is outrageous that two profitable shareholder-owned companies remain captive in the longest government conservatorship in history, one in which the government has usurped over $250 billion from the conservatees and threatens to destroy what many believe is the most productive credit market in the world. You can't make this up.

In the coming weeks, we anticipate further legal developments in the D.C. Court of Appeals and U.S. District Court for the Eastern District of Kentucky, among others.

We also expect Fannie Mae and Freddie Mac to continue their progress in sensibly serving residential mortgage markets and homeowners.

The facts, law, and common sense dictate that we will win this fight.

The Order Denying Transfer and the Letter from Congressional Democrats can be found on the following pages.

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: FEDERAL HOUSING FINANCE AGENCY, ET AL., PREFERRED STOCK PURCHASE AGREEMENTS THIRD AMENDMENT LITIGATION

MDL No. 2713

ORDER DENYING TRANSFER

Before the Panel:[*] Defendant Federal Housing Finance Agency (FHFA)—conservator for Federal Home Loan Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)—moves under 28 U.S.C. § 1407 to centralize pretrial proceedings in this litigation in the District of District of Columbia. This litigation consists of four actions pending in four districts, as listed on Schedule A. Additionally, the Panel has been notified of four potentially related actions pending in three districts. Defendants, Jacob Lew, in his official capacity as Secretary of the Treasury, and the U.S. Department of the Treasury (the Treasury Department), support the motion. All responding plaintiffs oppose centralization. Plaintiffs in three actions alternatively suggest centralization in the Eastern District of Kentucky. These plaintiffs, and plaintiffs in the District of Delaware action also alternatively suggest exclusion of the District of Delaware action. A preferred stock investor in Fannie Mae and Freddie Mac, who has served a demand letter on the companies' boards, argues that his prospective claims are distinguishable from the actions before the Panel.

On the basis of the papers filed and hearing session held, we conclude that centralization is not necessary for the convenience of the parties and witnesses or to further the just and efficient conduct of the litigation. These actions arise from the agreement in August 2012 between FHFA and the Treasury Department to enter into the third amendment of their preferred stock purchase agreement. Specifically, most plaintiffs allege that the third amendment constituted a *de facto* nationalization of Fannie Mae and Freddie Mac that extinguished the private shareholders' economic interests in the companies by replacing a fixed quarterly dividend with a variable dividend equal to Fannie Mae's and Freddie Mac's quarterly earnings, if any, less a small and decreasing capital reserve.

Plaintiffs opposing centralization argue that there are not sufficient common disputed facts to warrant centralization, and that discovery will be minimal. Defendants have not persuasively refuted these arguments. We have held that, "where only a minimal number of actions are involved, the proponent of centralization bears a heavier burden to demonstrate that centralization is appropriate." *In re: Lifewatch, Inc., Tel. Consumer Prot. At (TCPA) Litig.*, __ F. Supp. 3d __, 2015

[*] Judge Marjorie O. Rendell, Judge Lewis A. Kaplan, and Judge Catherine D. Perry took no part in the decision of this matter.

WL 6080848, at *1 (J.P.M.L. Oct. 13, 2015). Defendants have not met that burden here, where just four actions are pending involving primarily common legal, rather than factual, issues. While FHFA has notified the Panel of four potentially-related actions, these actions differ in significant ways from the actions on the motion. Two actions do not name FHFA or the Treasury Department as defendants, but rather are brought against the auditors of Fannie Mae and Freddie Mac. The other two actions are "books and records" actions, which plaintiffs argue are expedited proceedings that will be slowed down by the pace of centralized proceedings. Were there a stronger case for centralization here—a larger number of cases or a great deal of overlapping discovery—these differences in a small number of potential tag-along actions might be less significant. But as it stands, they lend weight to the conclusion that centralization is not appropriate.

Defendants' arguments supporting centralization focus largely on the threshold jurisdictional issues that will be present in all actions. In each action, defendants will argue that the Housing Economic Recovery Act of 2008 bars judicial review of the third amendment, and that plaintiffs lack standing because FHFA has succeeded to "all rights, titles, powers, and privileges" of shareholders. *See* 12 U.S.C. §§ 4617(f), 4617(b)(2)(a)(i), (f). But these are common legal, rather than factual, questions, and we have held that "[m]erely to avoid two federal courts having to decide the same issue is, by itself, usually not sufficient to justify Section 1407 centralization." *In re: Medi–Cal Reimbursement Rate Reduction Litig.*, 652 F. Supp. 2d 1378, 1378 (J.P.M.L.2009). We also have held though that litigation involving common legal questions is appropriate for centralization when it will eliminate duplicative discovery and prevent inconsistent pretrial rulings, including with respect to identification of an underlying administrative record. *See In re: Polar Bear Endangered Species Act Listing and § 4(d) Rule Litig.*, 588 F. Supp. 2d 1376, 1377 (J.P.M.L. 2008). That is not the case here. Whether these actions will share disputes regarding the sufficiency of the administrative record is purely hypothetical. Moreover, several plaintiffs already have been provided with relevant discovery in a similar action pending in the Court of Federal Claims, making further discovery in these actions potentially unnecessary.

IT IS THEREFORE ORDERED that the motion for centralization of these actions is denied.

PANEL ON MULTIDISTRICT LITIGATION

Sarah Vance

Sarah S. Vance
Chair

Charles R. Breyer
Ellen Segal Huvelle
R. David Proctor

IN RE: FEDERAL HOUSING FINANCE AGENCY, ET AL., PREFERRED STOCK PURCHASE AGREEMENTS THIRD AMENDMENT LITIGATION MDL No. 2713

SCHEDULE A

District of Delaware

JACOBS, ET AL. v. FEDERAL HOUSING FINANCE AGENCY, ET AL., C.A. No. 1:15-00708

Northern District of Illinois

ROBERTS, ET AL. v. FEDERAL HOUSING FINANCE AGENCY, ET AL., C.A. No. 1:16-02107

Northern District of Iowa

SAXTON, ET AL. v. FEDERAL HOUSING FINANCE AGENCY, ET AL., C.A. No. 1:15-00047

Eastern District of Kentucky

ROBINSON v. FEDERAL HOUSING FINANCE AGENCY, ET AL., C.A. No. 7:15-00109

Congress of the United States
Washington, DC 20515

June 1, 2016

Hon. Mel Watt, Director
Federal Housing Finance Agency
Constitution Center
400 7th Street, SW
Washington, D.C. 20024

Hon. Jack Lew, Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Director Watt, Secretary Lew:

We take this opportunity to express our concerns with your agencies' policy of requiring Freddie Mac and Fannie Mae ("the GSEs") to operate without adequate capital. We appreciated Director Watt's recent remarks at the Bipartisan Policy Center focusing on the very serious risks to the GSEs' operations, and by extension to the overall housing finance market, if they are required to completely eliminate their capital buffers. We hope that these concerns will lead you to reassess this course of action.

As noted in Director Watt's remarks, "Fannie Mae and Freddie Mac are currently unable to build capital under the provisions of the PSPAs." Fortunately, the Housing and Economic Recovery Act (HERA) of 2008 provides a solution to this problem by requiring the FHFA Director to ensure that the GSEs are adequately capitalized. HERA includes a number of provisions expressing Congress' intent that the GSEs be operated in a safe and sound manner. In fact, under HERA, the FHFA Director has an express duty to ensure that the GSEs maintain adequate capital. But, as further noted in Director Watt's remarks, "starting January 1, 2018, the Enterprises will have no capital buffer and no ability to weather quarterly losses, [including] a number of non-credit related factors that could lead to a loss and result in a draw from Treasury." The fact that the GSEs are currently in conservatorship, and that Congress has not enacted further legislation post-HERA, does not justify an agreement between FHFA and the U.S. Treasury to ignore HERA's mandate.

The lack of stability and strength engendered by eliminating the GSEs' capital buffer has particularly serious consequences for the residents of underserved markets across the country. The GSEs are the largest participants in the mortgage market today. Yet, they are unable to make the types of investments in affordable housing and underserved areas that they once did prior to conservatorship. While the GSEs are required to meet annual Affordable Housing Goals, which FHFA has consistently deemed feasible, both entities have failed to meet one or more goals in

the past several years, and their lending to minority homebuyers in particular is notably diminished. They can also no longer provide the leadership and expertise in addressing our affordable housing challenges they once did, a significant void that has not been filled by any other market participant. And even the investments they are authorized to make, most notably to the National Housing Trust Fund and Capital Magnet Fund, could be suspended under your policy that suspension occurs in the event that either GSE is forced to make a draw or it appears as though an investment would cause a draw. The GSEs are finally contributing to these important funding vehicles, including for extremely low income families, eight years after they were first authorized in HERA. We sincerely hope that they will not once again be put on hold as a result of capital concerns that your agencies have the power to correct.

Requiring two institutions that are so consequential to the housing market to be buffeted from quarter to quarter is unproductive and unnecessary. We look forward to your reassessment of this policy. Thank you for your consideration of this letter.

Sincerely,

Michael E. Capuano
MEMBER OF CONGRESS

Gwen Moore
MEMBER OF CONGRESS

Gregory W. Meeks
MEMBER OF CONGRESS

Dan Kildee
MEMBER OF CONGRESS

Rubén Hinojosa
MEMBER OF CONGRESS

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James P. McGovern
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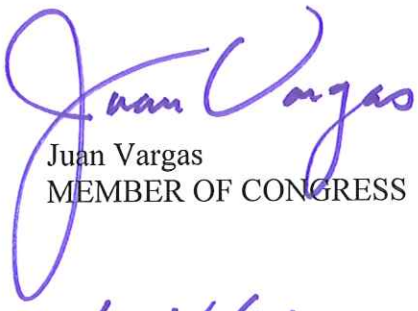
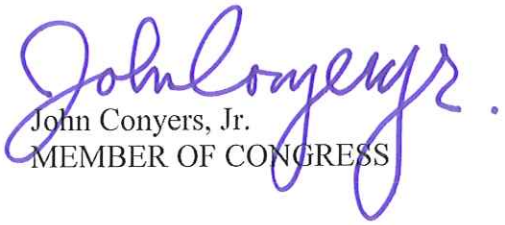
MEMBER OF CONGRESS



Juan Vargas
MEMBER OF CONGRESS



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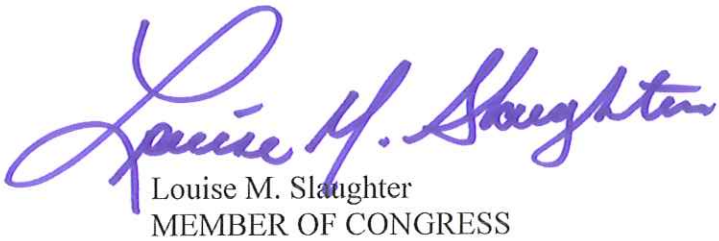

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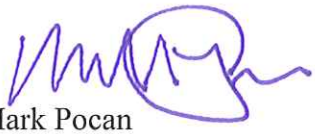

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