In the United States Court of Federal Claims

No. 18-281C (Filed: February 20, 2020)

ORDER

The parties have completed briefing on the omnibus motion to dismiss filed in the above-captioned case and eleven other cases concerning the government's treatment of Fannie Mae and Freddie Mac. After briefing was completed, the court issued an opinion in one of those cases—Fairholme Funds, Inc. v. United States, 13-465C. The court, in the interest of conserving party and judicial resources, then stayed consideration of defendant's motion in this case pending a determination of further proceedings in Fairholme. The parties in Fairholme recently indicated that they will be moving for certification of an interlocutory appeal.

On February 19, 2020, plaintiffs in the instant case requested that the court lift the stay and issue an opinion on defendant's motion to dismiss as it pertains to their claims. Plaintiffs are worried that they will need to wait on the sideline while the relevant legal issues are decided in the appellate courts during an interlocutory appeal from the decision in <u>Fairholme</u>. This is not an unfair concern given the significant overlap between the complaint here and in <u>Fairholme</u> (even though it seems likely that the appellate courts would grant plaintiffs permission to participate in any Fairholme appeal by filing amicus briefs).¹

As the record currently stands, the court is unlikely to issue a ruling on defendant's motion to dismiss in this case prior to the initiation of any interlocutory appeal in <u>Fairholme</u>. Given plaintiffs' interest in advancing their own appeal before an appellate decision in <u>Fairholme</u> is reached and the similarities between the two complaints, the parties stipulating to the effects of this court's motion-to-dismiss ruling in <u>Fairholme</u> on plaintiffs' similar claims would facilitate a

¹ The court notes that the instant complaint and the <u>Fairholme</u> complaint share significant commonalities in terms of allegations and claims. Indeed, defendant moved to dismiss both complaints with the same motion, and the plaintiffs in this case and the related cases collaborated in a joint oral argument.

more expeditious ruling from the court in this case.² For example, without waiving any appellate rights, the parties could jointly stipulate that the court grant defendant's motion to dismiss with respect to count X for the reasons set forth in the <u>Fairholme</u> opinion and deny the motion with respect to count Y for the reasons stated in the <u>Fairholme</u> opinion. Thus, the court requests that the parties file a joint status report **by no later than Tuesday, February 25, 2020,** in which they state whether they would be willing to provide (or at least discuss with each other) such stipulations. If the parties are willing to consider such stipulations, they should either include the stipulations in their status report or propose a prompt deadline for filing another joint status report in which they will make their stipulations.³

IT IS SO ORDERED.

s/ Margaret M. Sweeney
MARGARET M. SWEENEY
Chief Judge

This process is especially apt here given that the court considered plaintiffs' arguments when addressing similar issues in <u>Fairholme</u>. <u>Fairholme Funds</u>, <u>Inc. v. United States</u>, 146 Fed. Cl. 17, 38 (2019) ("[T]he court infers that the plaintiffs in [<u>Fairholme</u>] have adopted the favorable arguments made by the plaintiffs in the related cases to the extent such arguments are relevant.").

³ When proposing a deadline (if any), the parties should be cognizant of the fact that briefing on whether to certify an interlocutory appeal in <u>Fairholme</u> is scheduled to finish by March 4, 2020, and the court intends to rule promptly on any such motions in that case.