

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

JUDITH A. SISTI,

Plaintiff,

v.

FEDERAL HOUSING FINANCE AGENCY,
FEDERAL HOME LOAN MORTGAGE
CORPORATION, AND NATIONSTAR
MORTGAGE, LLC

Defendants.

Case No.: 1:17-cv-00005-JJM-LDA

STIPULATION AND JOINT MOTION FOR ENTRY OF FINAL JUDGMENT

The parties have reached a partial settlement and wish to bring this action to a final, appealable judgment, but continue to dispute whether Defendants Federal Home Loan Mortgage Corporation (“Freddie Mac”) and the Federal Housing Finance Agency in its capacity as Conservator of Freddie Mac (“FHFA”) are governmental actors for purposes of Plaintiff’s constitutional claims. Plaintiff Judith Sisti contends both Freddie Mac and FHFA are government actors, and that they jointly with private Defendant Nationstar Mortgage, LLC, violated her due process rights; Freddie Mac and FHFA contend that based on the allegations in the pleadings, they are not government actors as a matter of law.

To facilitate efficient resolution of the case and presentation of the government-actor issue to the Court of Appeals, the parties jointly stipulate to the entry of a final, appealable judgment in Plaintiff’s favor, and respectfully move that the Court order its entry. Defendants expressly reserve their right to appeal the judgment and all rulings and orders it encompasses, including specifically the Court’s ruling that Defendants were not entitled as a matter of law to judgment on the pleadings on the government-actor issue. Plaintiff understands that Defendants, though stipulating to the entry of a final judgment, have reserved their right to appeal the

1 judgment, that Defendants intend to appeal the judgment, and that Defendants expect to argue on
2 appeal that the Court erred in its ruling on the motion for judgment on the pleadings. Plaintiff
3 reserves all rights. The parties agree and stipulate that the issue of whether Freddie Mac or
4 FHFA is a government actor for purposes of constitutional claims has not been fully litigated in
5 this action. The parties' stipulations herein are limited solely to this case and are not intended to
6 bind them as to any position they might take in any other setting, including but not limited to
7 other litigation in any court.

8 Plaintiff commenced this action on January 6, 2017 (ECF No. 1), and amended her
9 complaint in April 2017 (ECF No. 12). Plaintiff seeks to quiet title, alleging violation of the Due
10 Process Clause of the Fifth Amendment to the U.S. Constitution, violation of Rhode Island
11 General Laws § 34-27-4(b), breach of contract, and breach of covenant of good faith all in
12 connection with a non-judicial foreclosure. Nationstar answered the amended complaint in
13 August 2017 (ECF No. 18); Freddie Mac and FHFA filed their answer in September 2017 (ECF
14 No. 20).

15 Freddie Mac and FHFA moved for judgment on the pleadings in December 2017,
16 contending that they are not government actors for purposes of constitutional claims as a matter
17 of law based on the facts alleged in the pleadings, and that Plaintiff's due process claim therefore
18 fails. (ECF Nos. 27-28). In August 2018, after briefing and argument, the Court denied
19 Defendants' motion, thereby preserving Plaintiff's due process claim. Order (ECF No. 39) at 14,
20 19. All parties jointly stipulate to the dismissal with prejudice of Plaintiff's additional claims
21 and Defendants' counterclaims, if any, asserted in this action.

22 In the interest of obtaining a final, appealable judgment, and without admitting any of
23 Plaintiff's allegations beyond those already admitted by way of Defendants' respective Answers,
24 Defendants are, for purposes of this action only, not contesting the remaining elements of
25 Plaintiff's due process claim, which the Court has not yet ruled upon. The parties agree for
26 purposes of obtaining a final, appealable judgment that Plaintiff's damages are liquidated in the
27 amount of \$60,000 (the "Liquidated Damages Amount"), comprising (1) \$30,000 that is not
28 contingent on any further proceedings in this action, including the outcome of any appeal (the

1 “Fixed Amount”), (2) an additional \$5,000 that is contingent upon Plaintiff vacating the property
2 as described below and in a separate letter agreement (the “Incentive Amount”), and (3) a further
3 additional \$25,000 (the “Contingent Amount”) that is contingent on the ultimate resolution of the
4 case, as described below. Plaintiff withdraws its requests for any additional amount and for any
5 other or further relief in connection with the claims asserted in this action.

6 By agreeing to and requesting entry of judgment, Defendants are not waiving any rights
7 to appeal the issues ruled upon by this Court; to the contrary, Defendants have preserved for
8 purposes of appeal the issues contested before this Court, including whether, based on the
9 allegations in the pleadings for purposes of constitutional claims, Defendants are non-
10 governmental actors as a matter of law. In that regard, Defendants reserve their right to appeal
11 the judgment, intend to appeal the judgment, and expect to argue on appeal that the Court erred
12 in its ruling on the motion for judgment on the pleadings. Plaintiff agrees that Defendants have
13 properly and adequately preserved for appeal both that issue and such other issues as have been
14 ruled upon by this Court.

15 As to the Fixed Amount, all parties agree and stipulate that Defendants will pay Plaintiff
16 the Fixed Amount, or \$30,000, as soon as reasonably possible following the entry of judgment,
17 provided that the judgment entered is consistent with this stipulation, and in any event before
18 Defendants file a Notice of Appeal.

19 As to the Incentive Amount, the parties agree and stipulate that Defendants will pay
20 Plaintiff the Incentive Amount, or \$5,000, within 28 days of the date Plaintiff vacates the
21 property, but only if both (1) Plaintiff vacates the premises on or before a date specified in an
22 agreement between Plaintiff and Defendants dated ~~August 30~~ ^{September} 30, 2020 (the “Agreement”), and (2)
23 Plaintiff leaves the property in broom-clean condition compliant with the terms of the
24 Agreement.

25 As to the Contingent Amount, the parties agree and stipulate that if Plaintiff prevails in
26 the ensuing First Circuit appeal (meaning that the judgment is finally affirmed as against Freddie
27 Mac, FHFA, or both), Defendants will pay Plaintiff 60% of the Contingent Amount, or \$15,000,
28 within 28 days of the issuance of the First Circuit’s mandate, and that the remaining 40% of the

1 Contingent Amount, or \$10,000, will be contingent upon the final outcome of the case, including
2 any proceeding in the U.S. Supreme Court. If Plaintiff ultimately prevails (as against Freddie
3 Mac, FHFA, or both), Defendants will pay Plaintiff the remaining \$10,000 within 28 days of the
4 judgment becoming final and no longer subject to further appeal, whether by passage of time,
5 denial or withdrawal of a petition for certiorari, or resolution on the merits by the Supreme
6 Court. If Defendants prevail (meaning that the judgment is reversed as to both Freddie Mac and
7 FHFA), Defendants will not be obliged to pay the remaining \$10,000. If Defendants do not take
8 an appeal to the First Circuit, or take an appeal but dismiss it voluntarily, or persuade the First
9 Circuit to stay the appeal without Plaintiff's consent, Defendants will pay Plaintiff the
10 Contingent Amount within 28 days of the deadline for noticing an appeal, or the date of the
11 appeal's dismissal, or the date a stay is entered over Plaintiff's objection, as applicable.

12 All parties understand and intend that in the event of any other outcome (including but
13 not limited to reversal or vacatur of the entire judgment by the First Circuit, or dismissal of the
14 appeal other than by Defendants voluntarily), Plaintiff will not be entitled to collect the
15 Contingent Amount, or any portion thereof, from Defendants.

16 Accordingly, all parties understand and intend that Plaintiff is continuing, and will
17 continue through the appeal, to actively pursue significant monetary relief in a definite and
18 concrete dispute in which Plaintiff and Defendants have adverse legal interests, and that all
19 parties therefore retain a significant financial stake in the case.

20 The parties do not understand or intend this stipulated judgment to constitute a
21 concession or acknowledgement by Defendants that they are government actors for
22 constitutional purposes. Neither do the parties understand or intend this stipulation to limit or
23 waive any arguments that are otherwise preserved by the record, which are not limited to this
24 stipulation and can include anything in the record in this Court.

25 Accordingly, the parties stipulate to and respectfully request entry of a final, appealable
26 judgment to Plaintiff Judith Sisti in the amount of \$60,000, comprising (as described more fully
27 above) a Fixed Amount of \$30,000, an Incentive Amount of \$5,000, and a Contingent Amount
28 of \$25,000, to which Plaintiff would become entitled only under the conditions specified above.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted,

Dated: 09/29/2020

JUDITH A. SISTI,
By Her Attorneys,

Judith A. Sisti
9/8/2020
/S/

Michael Zabelin, Bar No. 8485
RHODE ISLAND LEGAL SERVICES
56 Pine Street, Suite 400
Providence, RI 02903
(401) 274-2652, ext. 152
(401) 272-4280 (fax)
mzabelin@rils.org

FEDERAL HOUSING FINANCE AGENCY
AND FEDERAL HOME LOAN MORTGAGE
CORPORATION,
By Their Attorney,

[Signature]
/S/
Samuel C. Bodurtha, Bar No. 7075
HINSHAW & CULBERTSON LLP
321 South Main Street, Suite 301
Providence, RI 02903
(401) 751-0842
(401) 751-0072 (fax)
sbodurtha@hinshawlaw.com

FEDERAL HOUSING FINANCE
AGENCY
By Its Attorney,

Michael A. Johnson
/S/ Michael A.F. Johnson (*pro hac vice*) #7075
ARNOLD & PORTER KAYE SCHOLER
LLP
601 Massachusetts Ave., NW
Washington, DC 20001
(202) 942-5000
(202) 942-5999 (fax)
Michael.Johnson@apks.com

NATIONSTAR MORTGAGE, LLC
By Its Attorney,

Krystle G. Tadesse
/S/ Joseph A. Farside, Jr. #7075
Krystle G. Tadesse
LOCKE LORD LLP
2800 Financial Plaza
Providence, RI 02903
(401) 274-9200
(401) 276-6111 (fax)
joseph.farside@lockelord.com
krystle.tadesse@lockelord.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[PROPOSED] ENTRY OF FINAL JUDGMENT

Based upon the Court’s August 2018 ruling, and the parties’ Stipulation and Joint Motion for Entry of Final Judgment (the “Stipulation”), the Court directs the Clerk of the Court to enter judgment in Plaintiff’s favor. Plaintiff’s claims for violation of Rhode Island General Laws § 34-27-4 (b), breach of contract, breach of covenant of extreme good faith, and to quiet title are dismissed. Plaintiff is entitled to damages on her due process claim in the amount of \$60,000, comprising (1) a Fixed Amount of \$30,000 that is independent of any further proceedings in this case, (2) an Incentive Amount of \$5,000 to vacate the property under the conditions specified in the parties’ Stipulation, and (3) a Contingent Amount of \$25,000 based on the outcome and appeal of this judgment, to which Plaintiff would become entitled only under the conditions specified in the parties’ Stipulation. Each party shall bear its own costs and fees.

By agreeing to and requesting entry of judgment, Defendants are not waiving any rights to appeal the issues ruled on by this Court.

So Ordered this ____ day of _____, 2020

Hon. John J. McConnell, Jr.