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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BANK OF AMERICA, NA, FKA Countrywide Home Loans Servicing, LP, successor by merger to BAC Home Loans Servicing, LP; FEDERAL NATIONAL MORTGAGE ASSOCIATION, Plaintiffs-Counter-Defendants-Appellees, v. SANTA BARBARA HOMEOWNERS ASSOCIATION; ABSOLUTE COLLECTION SERVICES, LLC, Defendants, and SFR INVESTMENTS POOL 1, LLC, Defendant-Counter-Claimant-Cross-Claimant-Appellant, v. KATY L. LEE, individually, and Trustee or her successors in trust, under the Klee	No. 19-16922 D.C. No. 2:16-cv-02768-MMD-DJA MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Living Trust, dated August 10, 2006,

Cross-Claim-Defendant.

Appeal from the United States District Court
for the District of Nevada
Miranda M. Du, Chief District Judge, Presiding

Submitted November 16, 2022[**]
San Jose, California

Before: SCHROEDER, GRABER, and FRIEDLAND, Circuit Judges.

Real property in Nevada was sold at a homeowners' association foreclosure sale. Plaintiff Federal National Mortgage Association ("Fannie Mae") was in conservatorship and owned the deed of trust at the time. Fannie Mae's servicer, Plaintiff Bank of America ("BOA"), served as the deed of trust's record beneficiary. Plaintiffs sought quiet title against the purchaser of the property, Defendant SFR Investments Pool 1, LLC ("SFR"). SFR counterclaimed, contending that it acquired title free and clear of all preexisting lien interests. The district court held that 12 U.S.C. § 4617(j)(3) precludes extinguishment of lien interests through foreclosure without the consent of the Federal Housing Finance Agency ("FHFA"). FHFA did not consent. Accordingly, the court entered summary judgment in favor of Plaintiffs. SFR timely appeals. We affirm.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

1. The first issue, which we review de novo, Feldman v. Allstate Ins. Co., 322 F.3d 660, 665 (9th Cir. 2003), concerns the timeliness of BOA's claim. The foreclosure sale occurred on January 15, 2013, and BOA filed its complaint on December 2, 2016, more than three years later. SFR contends that a three-year statute of limitations for tort claims applies, so that BOA's claim is untimely. We decided this very issue in M & T Bank v. SFR Investments Pool 1, LLC, 963 F.3d 854 (9th Cir. 2020), after the briefing in the present case was complete. We held that 12 U.S.C. § 4617(b)(12)(A)(i) governs and that it provides a six-year statute of limitations. Id. at 856. Although the district court relied on a different ground, it correctly entered judgment in BOA's favor.

2. In addition, SFR argues that the district court abused its discretion in denying Rule 56(d) relief. See Midbrook Flowerbulbs Holland B.V. v. Holland Am. Bulb Farms, Inc., 874 F.3d 604, 612 (9th Cir. 2017) (stating standard of review). SFR asserts that additional discovery is needed to determine Fannie Mae's interest. The district court permissibly ruled that additional discovery was unnecessary and duplicative, because the record clearly establishes Fannie Mae's property interest and FHFA's lack of consent to extinguish Fannie Mae's deed of

trust. See Daisy Tr. v. Wells Fargo Bank, 445 P.3d 846, 850 (Nev. 2019); Berezovsky v. Moniz, 869 F.3d 923, 933 (9th Cir. 2017).

SFR's Motion to Certify a Question of Law to the Nevada Supreme Court, Docket No. 36, is denied.

AFFIRMED.