

IN THE SUPREME COURT OF OHIO

REBEKAH R. RADATZ,)	
Individually and on behalf of)	CASE NO. 14-1126
all others similarly situated)	
)	On Appeal from the Cuyahoga
)	County Court of Appeals,
Plaintiff/Appellee,)	Eighth Appellate District
)	Case No. CA-13-100205
v.)	
)	
FEDERAL NATIONAL)	
MORTGAGE ASSOCIATION)	Cuyahoga County Court of
)	Common Pleas
)	Case No. CV-03-507616
Defendant/Appellant.)	

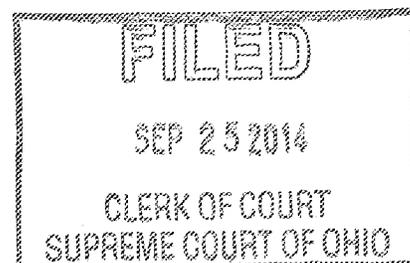
**DEFENDANT-APPELLANT FEDERAL NATIONAL MORTGAGE ASSOCIATION'S
SECOND NOTICE OF SUPPLEMENTAL AUTHORITY**

Richard S. Gurbst (0017672)
richard.gurbst@squirepb.com
 SQUIRE PATTON BOGGS (US) LLP
 4900 Key Tower
 127 Public Square
 Cleveland, OH 44114-1304
 (216) 479-8500
 (216) 479-8780 – Facsimile

Of Counsel:
 Jeffrey Kilduff
jkilduff@omm.com
 O'MELVENY & MYERS LLP
 1625 Eye Street, N.W.
 Washington, D.C. 20006-4001
 (202) 383-5300
 (202) 383-5414 – Facsimile

J. Philip Calabrese (0072709)
pcalabrese@porterwright.com
 PORTER WRIGHT MORRIS & ARTHUR LLP
 950 Main Avenue, Suite 500
 Cleveland, OH 44113
 (216) 443-9000
 (216) 443-9011 – Facsimile

*Attorneys for Defendant-Appellant
 Federal National Mortgage Association*



Brian Ruschel (0046631)
Bruschel@aol.com
925 Euclid Avenue, Suite 660
Cleveland, Ohio 44115-1405
(216) 621-3370
(216) 621-3371 – Facsimile

Patrick J. Perotti (0005481)
pperotti@dworkenlaw.com
James S. Timmerberg (0067499)
jtimmerberg@dworkenlaw.com
DWORKIN & BERNSTEIN CO., L.P.A.
60 South Park Place,
Painesville, Ohio 44077
(440) 352-3391
(440) 352-3469 – Facsimile

Attorneys for Plaintiff-Appellee
Rebekah Radatz

Ann Marie Sferra (0030855)
asferra@bricker.com
Sommer L. Sheely (0076071)
ssheely@bricker.com
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215
(614) 227-2394
(614) 227-2390 – Facsimile

Stephen E. Hart (PHV-5418-2014)
Stephen.hart@fhfa.gov
Deputy General Counsel
Federal Housing Finance Agency
Constitution Center
400 Seventh Street, S.W.
Washington, D.C. 20024
(202) 649-3800
(202) 649-3053 – Facsimile

Attorneys for Amicus Curiae
Federal Housing Finance Agency

Jeffrey M. McGaffick (0034681)
jmcgaffick@hotmail.com
571 East 185th Street
Cleveland, Ohio 44119
(219) 481-4495

Attorney for Amicus Curiae
First Priority Title Agency

SECOND NOTICE OF SUPPLEMENTAL AUTHORITY

In the Eighth District's decision on appeal, the appellate court relied on *Higgins v. BAC Home Loans Servicing, LP*, E.D. Ky. No. 12-cv-183-KCC, 2014 U.S. Dist. LEXIS 43278 (Mar. 31, 2014). See 2014-Ohio-2179, at ¶ 18, Appx. Page 15; see also ¶¶ 8, 12–13 & 15–17, Appx. Pages 7, 11 & 13–14.

Pursuant to Rule 7.04(2) of the Rules of Practice of the Ohio Supreme Court, Defendant-Appellant Federal National Mortgage Association (“Fannie Mae”) notifies the Supreme Court of the order of the United States Court of Appeals for the Sixth Circuit on September 24, 2014 granting interlocutory appeal in *Higgins v. BAC Home Loans Servicing, LP*, E.D. Ky. No. 12-cv-183-KCC, 2014 U.S. Dist. LEXIS 43278 (Mar. 31, 2014) (addressing whether damages under a Kentucky statute constitute a fine or penalty under 12 U.S.C. 4617). Plaintiff-Appellee relies on *Higgins* to oppose discretionary review at pages 2–3, 5, 6, 12, and 13–14, and the case is also addressed in Fannie Mae's jurisdictional memorandum at pages 13–14. For the convenience of the Supreme Court, a copy of the Sixth Circuit's order is attached as Exhibit A.

Respectfully submitted,

J. Philip Calabrese by *L.B. Hughes*
Richard S. Gurbst (0017672) *(0070997)*
richard.gurbst@squiresanders.com *per tel. authority*
SQUIRE PATTON BOGGS (US) LLP
4900 Key Tower 127 Public Square Cleveland, OH
44114-1304
(216) 479-8500
(216) 479-8780 – Facsimile

J. Philip Calabrese (0072709)
pcalabrese@porterwright.com
PORTER WRIGHT MORRIS & ARTHUR LLP
950 Main Avenue, Suite 500
Cleveland, OH 44113

(216) 443-9000
(216) 443-9011 – Facsimile

Of Counsel:

Jeffrey Kilduff

jkilduff@omm.com

O'MELVENY & MYERS LLP

1625 Eye Street, N.W.

Washington, D.C. 20006-4001

(202) 383-5300

(202) 383-5414 – Facsimile

Attorneys for Defendant-Appellant

Federal National Mortgage Association

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Defendant-Appellant's Second Notice of Supplemental Authority was served via Regular United States Mail this 25th day of September 2014, with courtesy copies by electronic mail, on:

Brian Ruschel
925 Euclid Avenue, Suite 660
Cleveland, Ohio 44115-1405

Jeffrey M. McGaffick
571 East 185th Street
Cleveland, Ohio 44119

and

*Attorney for Amicus Curiae
First Priority Title Agency*

Patrick J. Perotti
Dworkin & Bernstein Co., L.P.A.
60 South Park Place,
Painesville, Ohio 44077

*Attorneys for Plaintiff-Appellee
Rebekah Radatz*

Ann Marie Sferra
Sommer L. Sheely
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215

and

Stephen E. Hart
Deputy General Counsel
Federal Housing Finance Agency
Constitution Center
400 Seventh Street, S.W.
Washington, D.C. 20024

*Attorneys for Amicus Curiae
Federal Housing Finance Agency*

J. Philip Calabrese by L.B. Hughes
One of the Attorneys for Defendant-Appellant (0070997)
Federal National Mortgage Association
per tel. auth.

EXHIBIT A

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: September 24, 2014

Mr. Howard N. Cayne
Mr. David T. Faughn
Mr. Jonathan William Garlough
Mr. Michael A. F. Johnson
Mr. John D. Kermod
Ms. Jill L. Nicholson
Mr. Dirk C. Phillips
Mr. Carroll M. Redford III
Ms. Asim Varma
Ms. Elizabeth C. Woodford

Re: Case No. 14-506, *In re: Fed Hous Fin Agcy, et al v. n*
Originating Case No. : 5:12-cv-00183

Dear Counsel:

The Court issued the enclosed (Order/Opinion) today in this case.

Sincerely yours,

s/Amy E. Gigliotti
Case Manager
Direct Dial No. 513-564-7012

Enclosure

No mandate to issue

No. 14-0506

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In re: FEDERAL NATIONAL MORTGAGE)	
ASSOCIATION; FEDERAL HOUSING)	
FINANCE AGENCY,)	<u>O R D E R</u>
)	
Petitioners.)	

Before: DAUGHTREY and KETHLEDGE, Circuit Judges; ECONOMUS, District Judge.*

The petitioners are two of the defendants in this putative class action alleging that they violated Kentucky law by failing to record assignments of mortgages with the county clerk. On March 31, 2014, the district court denied their motion seeking dismissal of the claims against them under 12 U.S.C. § 4617(j)(4), which provides that Petitioner Federal Housing Finance Agency cannot be held liable “for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any . . . recording or filing fees when due.” The district court certified its order for an interlocutory appeal under 28 U.S.C. § 1292(b), and the petitioners timely petition for permission to appeal.

“This court in its discretion may permit an appeal to be taken from an order certified for interlocutory appeal if (1) the order involves a controlling question of law, (2) a substantial ground for difference of opinion exists regarding the correctness of the decision, and (3) an immediate appeal may materially advance the ultimate termination of the litigation.” *In re City of Memphis*, 293 F.3d 345, 350 (6th Cir. 2002) (citing § 1292(b)); *see also Negron v. United*

* The Honorable Peter C. Economus, Senior United States District Judge for the Northern District of Ohio, sitting by designation.

No. 14-0506

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States, 553 F.3d 1013, 1015 (6th Cir. 2009); *In re Baker & Getty Fin. Servs., Inc.*, 954 F.2d 1169, 1172 (6th Cir. 1992). This district court's ruling involves a controlling question of law. Because the question is difficult and of first impression, there is a substantial ground for a difference of opinion. See *In re Miedzianowski*, 735 F.3d 383, 384 (6th Cir. 2013) (order). Furthermore, an immediate appeal may materially advance the ultimate termination of this litigation.

Accordingly, the petition to appeal is **GRANTED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk