

UNITED STATES COURT OF FEDERAL CLAIMS

JOSHUA J. ANGEL,)	
)	
Plaintiff,)	No. 20-737C
)	(Senior Judge Margaret M. Sweeney)
v.)	
)	
THE UNITED STATES,)	
)	
Defendant.)	

Status Report, Motion to Lift Stay, and Dismiss Case

Pursuant to F.R.C.P.41(a)(1)(A)(i)

Pursuant to the Court’s September 18, 2020 Order, ECF No. 11 (the “MTD Briefing Suspension Order”); the Court’s October 24, 2020 Order, ECF No. 15; the Court’s July 27, 2021 Order, ECF No. 26, and the Court’s March 24, 2022 Order, ECF No. 32 (hereinafter collectively the “JSR Extension Orders”) plaintiff submits this status report, Motion to Lift Stay, and Dismiss Case Pursuant to F.R.C.P. 41(a)(1)(A)(i).

On August 19, 2020, Defendant filed a motion to dismiss (“MTD”) the case complaint (“Complaint”) for *inter alia*, lack of subject matter jurisdiction premised upon Tucker Act statute of limitations. On September 17, 2020, Plaintiff filed for MTD continuance to permit discovery. On September 18, 2020, the Court stayed all further consideration of the Defendant MTD “until further order of the Court.” (ECF No. 11). Thereafter, the Court granted Defendant unopposed motion for an enlargement of time until October 30, 2020, to file a response to Plaintiff’s motion for MTD continuance. (ECF No. 13). On October 27, 2020, the Court on Defendant’s unopposed motion of the same date, directed a further extension of its MTD Briefing Suspension Order, until 30 days after SCOTUS renders its decision in *Mnuchin v.*

Collins, and *Collins v. Mnuchin*, No. 19-422 (collectively “*Collins*”) (ECF No. 15). To date, neither ECF No. 13, ECF No. 15, nor any other order in the case since rendered, altered, or otherwise modified the Court’s MTD Briefing Suspension Order (ECF No. 11).

Collins

The parties’ rationale for tying a suspension of briefing on Plaintiff’s motion for a continuance to permit discovery (ECF No. 10), until a SCOTUS decision in *Collins* is rendered, was cogently set forth by Plaintiff in motion language as follows:

“In resolving the statutory and constitutional challenges raised in *Collins*, the Supreme Court is virtually certain to decide one or more issues that may impact this Court’s resolution of Plaintiff’s motion for a continuation and/or Defendant’s motion to dismiss. In fact, a key issue to be resolved in *Collins* is whether the FHFA is constitutionally structured and if not, whether FHFA lacked the authority to enter into the Third Amendment in the first place.

“In the Complaint here, Plaintiff does not contest the legality of the Third Amendment, but Plaintiff has asserted, *inter alia*, that the GSE Junior Preferred Shares are covered by a federal government Implicit Guaranty of timely payment of declared dividends, which is contractually binding by reason of, among other things, the use of the Implicit Guaranty in marketing the Junior Preferred Shares. *See generally*, Complaint (ECF #1). Defendant disputes this. However, as pointed out by the Court-Appointed Amicus Curiae in *Collins* the Implicit Guaranty is one of the reasons why the FHFA is structured correctly.”

In the nearly eight months to a day period, between the MTD Stay Order issuance, and SCOTUS’ June 22, 2021 *Collins* decision, Plaintiff provided Defendant with extensive materials for case FRD 408 settlement discussion. The discussion, in short time blend with *Collins*’ decision government position affirmance, melded into a four-cornered fully agreed case “Stipulation and Agreement of Settlement” (hereinafter the “*Collins* Settlement Agreement”) for Court filing in attachment to the JSR scheduled for thirty (30) days after *Collins*’ decision. (ECF No. 15).

On or about July 20, 2021, Defendant, intent upon maximizing its *Collins*' decision advantage, in defense employment regarding approximately eleven (11) *Angel v. United States* related actions, *sub judice* on interlocutory appeal from the Court of Federal Claims ("CFC") to the Federal Circuit (the eleven hereinafter collectively "Fairholme"), requested Defendant agreement for;

A. MTD Briefing Suspension Order (ECF No. 15) extension from thirty (30) days after *Collins* decision, to within to thirty (30) days after Fairholme decision becomes final and non-appealable; and

B. Deferred attachment of the Collins Settlement Agreement from July 23, 2021 JSR attachment to Fairholme JSR agreed attachment, Fairholme decision serving a JSR trigger event for Collins Settlement Agreement in attachmen, rather than as an event of substantive import.

The above agreement being in full parties understanding for Collins Settlement Agreement JSR mandated attachment irrespective of any Fairholme substantive holding, and in further understanding need to amend the Collins Settlement Agreement to adjust for the Collins Settlement Agreement deferred Court filing.¹

Plaintiff Joshua J. Angel Position:

Collins Settlement Agreement Deferred Filing Adjustment

Without substantive change, the Collins Settlement Agreement filing deferment *per se*, required mechanical non-substantive Collins Settlement Agreement amendment as follows:

¹ MTD Briefing Suspension Order extending JSR attached filing, from thirty (30) days after *Collins*, to within thirty (30) days of Fairholme. (ECF No. 26).

1. Collins Footnote 1, Page 1

“Although this Settlement Agreement (upon Court approval) purposefully confers certain substantial and valuable benefits to all present holders of junior preferred shares in Federal National Mortgage Association (“*Fannie Mae*”) and/or the Federal Home Loan Mortgage Corporation (“*Freddie Mac*”) (collectively, the “*GSEs*”), the Settlement Agreement is made solely between Joshua J. Angel, on his own behalf, and Defendant.”

Fairholme Footnote 1, Page 1

“This Settlement Agreement does not require Court approval. However, because it purposefully confers certain substantial and valuable benefits to all present holders of junior preferred shares in Federal National Mortgage Association (“*Fannie Mae*”) and/or the Federal Home Loan Mortgage Corporation (“*Freddie Mac*”) (collectively, the “*GSEs*”), and although the Settlement Agreement is made solely between Joshua J. Angel, on his own behalf, and Defendant on its behalf, the Parties to attach the Settlement Agreement as an Exhibit to the Joint Status Report rather than in a separate Court filing.”

2. Collins Page 12, paragraphs 1 and 2

“1. Except as otherwise provided in numbered paragraph 2 of this Settlement Agreement, the effective date of Settlement Agreement (“*Effective Date*”), shall be the date on which the Court enters the Settlement Approval Order approving the Settlement Agreement *in its entirety*, as written and executed by the Parties as of the date hereof.

“2. The Parties agree that if the Court issues an Order approving anything other than the Settlement Agreement in its entirety, as written and executed by the Parties as of the date hereof, the Effective Date of the Settlement Agreement shall be the date on which the Parties, at their sole discretion and under no obligation to do so, enter into a written modification or amendment to the Settlement Agreement signed by the Parties or their respective successors.”

Fairholme Page 14/15. Paragraphs 1 and 2

“1. Except as otherwise provided in numbered paragraph 2 of this Settlement Agreement, the effective date of Settlement Agreement (“*Effective Date*”), shall be the date on which the Parties file this fully executed Settlement Agreement, as an attachment to the Joint Status Report.

“2. The terms and conditions of this Settlement Agreement are to remain confidential between the Parties and shall not be disclosed to anyone or any entity until filed in Court by the Parties as an Exhibit to the Joint Status Report.”

Fairholme

In January 2022, the Collins Settlement Agreement (hereinafter for narrative clarity the “Settlement Agreement”) amended to comport with its delayed JSR courtesy attachment filing as set forth above, and as otherwise mechanically required, was rendered ready for filing.

Fairholme having been decided on February 22, 2022, required per the July 27, 2021 Extension Order (ECF No. 26), JSR filing by March 24, 2022.

On or about eight days prior to the JSR mandated “within thirty days of Fairholme decision” issuance (i.e., March 24, 2022), the Defendant, attendant to an internal shifting in its lead counsel, evinced an intention to revisit, (a) the stayed Defendant MTD, and (b) Defendant continued Settlement Agreement fealty.

Unable in short time to resolve the Defendant issues, the parties in March 24, 2022 JSR filing advised to Court that despite consultation and best efforts, of their inability to agree on appropriate next steps in the case, as the Parties in separate JSR position statements set forth their respective positions on how the case should proceed.

Joint Status Report March 24, 2022 – Plaintiff Stated Position

Settlement Agreement in firm attachment the March 24th JSR, Plaintiff set forth Plaintiff position with regard to voluntary case dismissal without further action pursuant to F.R.C.P. 41(a)(2) as follows:

“The settlement is a restoration of the status quo ante for Fannie Mae and Freddie Mac junior preferred shares beginning January 1, 2013 as if [Junior Preferred] share dividends were declared, or the shares and/or the government instead of directing the Companies’ boards not to declare junior preferred dividend had simply left the directors to perform preferred share declarations duties without contra direction. Of equal importance to the settlement provided to the January 14, 2021 purchase announced Treasury timeline to raise capital for the companies and establish a timeline for their emergence from conservatorship.

“The case Stipulation and Settlement Agreement attached hereto is made solely between Joshua J. Angel on his own behalf, and the United States and does not require Court approval to be effective. However, because the case Stipulation and Settlement Agreement purposely confers certain substantial and valuable benefits to all present and future holders of Fannie Mae and Freddie Mac junior preferred shares, the parties decided it best to attach it as an exhibit to this joint status report rather than in a separate filing attached to a stipulation and notice of voluntary dismissal pursuant to F.R.C.P. 41(a)(1)(A)(i).”

- And -

“In consideration of the releases provided herein, and in full settlement of the Settled Defendant Claims, Plaintiff shall, within two (2) business days after the Effective Date, request the voluntary dismissal of the Action, with prejudice, by Court order...”

Joint Status Report March 24, 2022 – Defendant Stated Position

Defendant in its JSR Defendant Stated Position portion reiterated its expressed intent of eight (8) days earlier to revisit its MTD, and the Settlement Agreement and proposed JSR extension from within 30 days of a Fairholme decision (ECF No. 26) to “...within thirty (30) days of the date the Federal Court’s decision in *Fairholme* becomes final and non-appealable [for] the parties [to] submit a joint status report proposing a schedule for further proceedings in this case.”

The Court, citing the Parties’ position variance, on March 24th JSR extend stay to thirty (30) days after Fairholme decision becomes final and non-appealable (ECF No. 32). The stay extension was specific to within thirty (30) days of Fairholme decision being final and non-appealable, and was otherwise non-inclusive of the Supreme Court Rule 13 extended 90-day period following a case decision rule for timely filing of *certiorari* petitions. A SCOTUS Rule 13 extension, while available, would of course require specific request, with attendant showing of need which is factually absent herein, except as set forth in Defendant United States’ position statement below.

Fairholme Final and Non-Appealable

In the interim between March 24, and the Fairholme decision becoming final and non-appealable by operation of the Plaintiff's having allowed more than forty-five (45) days to elapse from Fairholme February 22 decision date through April 9, 2022 without petition for *certiorari* being filed, Plaintiff revisited the Defendant MTD renewal intent with Defendant, and explained MTD renewal to be categorically moot by reason of (1) Defendant failure to date, to obtain the requisite order for relief from the MTD Briefing Suspension Order (ECF No. 11) *sine qua non* being in placement ,before any MTD renewals; (2) Defendant failure to date, to move for stay extension beyond *Fairholme* within thirty (30) days of decision being final and non-appealable (ECF No. 32); and (3) Settlement Agreement provision for case voluntary dismissal (i.e., no logical reason to seek dismissal of a case, agreed to be voluntarily dismissed) per stipulation for dismissal attached hereto.

In interim wait for Fairholme decision becoming final and non-appealable, Plaintiff proposed compromise for Settlement Agreement provision from Treasury to no avail. Leaving Treasury Settlement Agreement negation resolution for future Court direction by means of Court jurisdiction retention as provided in the dismissal order.

The Fairholme decision having become final and non-appealable on April 9, 2022, by reason of Plaintiff's failure to file a petition for *certiorari* within forty-five (45) days of the February 22, 2022 Fairholme decision, Plaintiff determined to file the Stipulation and Notice of Voluntary Dismissal as an attachment to this status report.

Plaintiff respectfully proposes that the March 24th JSR stay to thirty (30) days after the Fairholme Decision becomes final and non-appealable (ECF No. 32) be terminated forthwith, and the Stipulation and Notice of Voluntary Dismissal Pursuant to

FRCP 41(a)(1)(A)(i) be so ordered, with Court retention of jurisdiction over the Settlement Agreement, and any issue relating thereto, including but not limited to, specific performance, disaffirmance, implementation, enforcement, and declaratory judgment embodied therein.

Despite consultation and their best efforts, the parties have been unable to agree on the appropriate next steps in this case, and Defendant requested that Plaintiff so advise the Court as follows:

Defendant United States' Position:

We do not see things the same way. On the matter of the joint status report, none is due at this time. A JSR is due “within thirty (30) days after the Fairholme decision becomes final and non-appealable.” That occurs only after the deadline for the filing of a petition for a writ of *certiorari* to the Supreme Court has passed. Contrary to your draft and message below, Rule 13 of the Rules of the Supreme Court provides ninety (90) days after the date of judgment to file a *cert* petition. In this case, that time expires on May 23, 2022. Although it does not appear that Fairholme filed a petition for rehearing, doing so is not a prerequisite to filing a *cert* petition. *See* Practice Notes to Federal Circuit Rules 35, 40. Therefore, our JSR will be due no sooner than June 22, 2022.

More importantly, I must again be clear: there is no settlement in this case, and there is little likelihood that there will ever be one. We have not agreed to any settlement, nor have we agreed to any stipulation, nor any voluntary dismissal. We do not anticipate that we will agree to any settlement or stipulation, and have specifically and expressly rejected the proposed settlement agreement and stipulation that you filed with the Court and that you again propose in your message below and its attachment. We have no interest in further settlement discussion at

this time. As we have stated, we anticipate that when and if proceedings in this case resume, we will again seek dismissal.

A we have repeatedly explained, no joint status report is due at this time, nor is any appropriate. If you insist on filing anything at this time, please do so on your own behalf only – we will not join in any filing at this time. To be clear – we insist that you not caption or submit your filing as “joint.” We further insist that you remove any Department of Justice signature block from your filing – we do not agree to any joint status report, any stipulation of voluntary dismissal or any other stipulation, any settlement agreement, or any other joint action.

To again be clear: there is no settlement in this case. We have not agreed to any settlement, nor have we agreed to any stipulation, nor any voluntary dismissal. We do not anticipate that we will agree to any settlement or stipulation, and have specifically and expressly rejected the proposed settlement agreement and stipulation that you filed with the Court and that you again propose in your message below and its attachment. We have no interest in further settlement discussion at this time. Your continued representations otherwise are false and utterly without factual support, and we urge you to cease making such representations.

JOSHUA J. ANGEL PLLC



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April 14, 2022

UNITED STATES COURT OF FEDERAL CLAIMS

JOSHUA J. ANGEL,)	<u>STIPULATION AND NOTICE</u>
Plaintiff,)	<u>OF VOLUNTARY DISMISSAL</u>
)	<u>PURSUANT TO</u>
v.)	<u>F.R.C.P. 41(a)(1)(A)(i)</u>
)	
THE UNITED STATES,)	Case No. 1:20-CV-00737
Defendant.)	

STIPULATION AND NOTICE OF VOLUNTARY DISMISSAL
PURSUANT TO F.R.C.P. 41(a)(1)(A)(i)

Pursuant to F.R.C.P. 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, the Plaintiff, Joshua J. Angel and his counsel in the above captioned action, hereby stipulate and agree to the voluntary dismissal of this action with prejudice. Plaintiff hereby gives notice of the voluntary dismissal of this action with prejudice.

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April 14, 2022