

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

JOSHUA J. ANGEL,)	
)	
Plaintiff,)	No. 22-867C
)	(Senior Judge Margaret M. Sweeney)
v.)	
)	
THE UNITED STATES,)	
)	
Defendant.)	

MOTION TO STAY PROCEEDINGS

Pursuant to Rule 7(b) of the Rules of the United States Court of Federal Claims, defendant, the United States, respectfully requests that the Court stay all proceedings in the above-captioned case until the decision of the United States Court of Appeals for the Federal Circuit in *Fairholme Funds, Inc. v. United States*, 26 F.4th 1274 (Fed. Cir. 2022), is final and unappealable. The complaint in this case is nearly identical to a complaint previously filed in this Court by plaintiff, Joshua J. Angel. *Angel v. United States*, Court of Federal Claims No. 20-737C. On August 4, 2022, after that case was stayed until the Federal Circuit’s decision in *Fairholme* became final and unappealable, Mr. Angel voluntarily dismissed his complaint. Four days later on August 8, 2022, Mr. Angel filed the nearly identical complaint in this case. We respectfully request that the Court reject Mr. Angel’s attempt to skirt the effect of its stay order in this manner. Instead, for the same reasons that the Court stayed proceedings in Mr. Angel’s prior case, the Court should stay proceedings in this case until the Supreme Court of the United States resolves the pending petition for a writ of certiorari and the Federal Circuit’s *Fairholme* decision becomes final and unappealable.

This case, like *Fairholme* and a host of other cases pending before this Court, is a shareholder suit arising out of the operation of the Federal National Mortgage Association

(Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises or GSEs), in conservatorship. Plaintiffs in *Fairholme* challenge a 2012 amendment (the Third Amendment) to stock purchase agreements between Treasury and the Federal Housing Finance Agency (FHFA), acting as the Enterprises' conservator, on various grounds. Mr. Angel's complaint in this case also contains allegations concerning the Third Amendment to the Treasury and FHFA agreements that are the subject of the *Fairholme* Federal Circuit decision. Although the complaint does not present claims identical to those presented in *Fairholme*, Mr. Angel challenges Government action pursuant to the terms of the Third Amendment under several different legal theories. In its opinion in *Fairholme*, a unanimous Federal Circuit panel issued binding guidance that is highly relevant to the issues in this case. When the Federal Circuit's decision in *Fairholme* becomes final and unappealable, the United States anticipates seeking dismissal of Mr. Angel's complaint based on the Federal Circuit's decision in *Fairholme*, among other reasons, including those previously explained in our motion to dismiss Mr. Angel's previous case. *Angel v. United States*, No. 20-737C, ECF No. 7.

On July 22, 2022, the *Fairholme* appellants filed a petition for a writ of certiorari, asking the Supreme Court to review the Federal Circuit's *Fairholme* decision. Pursuant to an extension, the United States' response to the petition is currently due on October 3, 2022. Therefore, the Federal Circuit's decision in *Fairholme* is not yet final and unappealable, nor will it be until the Supreme Court resolves the petition for a writ of certiorari and, in the event that the Supreme Court grants certiorari, the conclusion of any further proceedings.

Accordingly, to conserve judicial and party resources, the Court should stay this case until the Federal Circuit's decision in *Fairholme* becomes final and unappealable. Unless modified, the Federal Circuit's decision in *Fairholme* binds the Court in this case. Even in the

event of modification, any such change will significantly impact proceedings in this case. A stay also reduces the risk that rulings by this Court may require revision in light of final resolution of the *Fairholme* appeal.

Moreover, there are 11 other cases pending in this Court, including *Fairholme* itself, that are stayed until the decision in the *Fairholme* appeal becomes final and unappealable. *Fairholme Funds, Inc. v. United States*, No. 13-465C (Fed. Cl.); *Fisher v. United States*, No. 13-605C (Fed. Cl.) (lead case); *Shipmon v. United States*, No. 13-672C (Fed. Cl.) (consolidated under *Fisher*); *Reid v. United States*, No. 14-152C (Fed. Cl.); *Rafter v. United States*, No. 14-740C (Fed. Cl.); *638 Capital Partners, LP v. United States*, No. 18-711C (Fed. Cl.); *Patt v. United States*, No. 18-712C (Fed. Cl.); *Wazee St. Opportunities Fund IV LP v. United States*, No. 18-1124C (Fed. Cl.); *CRS Master Fund, L.P. v. United States*, No. 18-1155C (Fed. Cl.); *Perry Capital LLC v. United States*, No. 18-1226C (Fed. Cl.); *Quinn Opportunities Master LP. v. United States*, No. 18-1240C (Fed. Cl.). The United States can discern no benefit to moving forward with this case while 11 other similar cases continue to be stayed, with no filings, including status reports, due until after the decision in these appeals become final and unappealable. Instead, it serves the interests of the parties and the Court to continue to maintain these similar cases on a similar schedule.

If the Court grants this motion, the United States respectfully proposes that, within 30 days of the date the Federal Circuit's decision in *Fairholme* becomes final and unappealable, the parties submit a joint status report proposing a schedule for further proceedings in this case. If the Court denies this motion, the United States respectfully requests, in the alternative, that the Court grant a 60-day enlargement of time, to and including December 6, 2022, for the United States to respond to the complaint

Respectfully submitted,

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