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MDL No. 13-0427

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IN RE NATIONSTAR MORTGAGE, LLC
TEXAS HOME EQUITY LOAN MODIFICATION LITIGATION

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On Review by The Multidistrict Litigation Panel

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Chief Justice Stone delivered the unanimous opinion of the MDL Panel.

Rule 13 authorizes this panel to transfer "related" cases from different trial courts to a single pretrial judge if the transfer will: (1) serve the convenience of the parties and witnesses; and (2) promote the just and efficient conduct of the litigation. TEX. R. JUD. ADMIN. 13.3. Seven home equity borrowers have asked this panel to transfer six lawsuits pending in five different counties against a single defendant, Nationstar Mortgage, LLC, to an MDL pretrial court. For the reasons stated below, we grant the motion.

BACKGROUND: HOME EQUITY LOANS AND THE TEXAS CONSTITUTION

Texas has a long history of carefully protecting family homesteads from foreclosure "by limiting the types of liens that can be placed upon homestead property." *LaSalle Bank Nat'l Ass'n v. White*, 246 S.W.3d 616, 618 (Tex. 2007). "Texas became the last state in the nation to permit home-equity loans when constitutional amendments voted on by referendum took effect in 1997." *Id*. These loans allow homeowners "to use the equity in their home as collateral to refinance the terms of prior debt and secure additional loans at rates more favorable than those for consumer loans." *Id*. "Although home-equity lending is now constitutionally permissible, article XIV, section 50(a)(6) of the Texas Constitution still places a number of limitations on such lending." *Id*.

The home equity borrowers in the six pending lawsuits were in default on their loans when Nationstar offered a loan modification that would prevent foreclosure. Nationstar used the same, short loan modification form in each transaction. The home equity borrowers have sued Nationstar contending that the loan modifications violated the limitations contained in article XIV, section 50(a)(6). Primarily, the lawsuits focus on allegations that the loan modifications: (1) exceeded the 80% loan-to-value ratio limitation contained in section 50(a)(6)(B); and (2) permitted interest-only payments or contained a balloon payment in violation of section 50(a)(6)(L)'s limitation on the scheduling of payments.

ARE THE CASES RELATED?

Under rule 13.2(f) cases are "related" if they involve "one or more common questions of fact." *See* TEX. R. JUD. ADMIN. 13.2(f). "While the rule requires common questions of fact, strict identity of issues and parties in the cases is not required and cases containing case-specific issues such as damages may still be transferred under Rule 13." *In re Delta Lloyds Ins. Co. of Houston*, 339 S.W.3d 384, 386 (Tex. M.D.L. Panel 2008).

"The claims in each of the [six] pending cases are based on [alleged] standard practices and procedures followed by" Nationstar in its business of modifying home equity loans. *In re Ocwen Loan Servicing, LLC Mortgage Servicing Litigation*, 286 S.W.3d 669, 672 (Tex. M.D.L. Panel 2007). The plaintiffs contend that Nationstar's standard policies and procedures were applied in each case to an identical loan modification form that each of the home equity borrowers was required to submit. Thus, the plaintiffs allege that Nationstar's "general business practice" and standard procedures used to modify home equity loans violate the Texas Constitution. *See In re State Farm Lloyds Hurricane Ike Litigation*, 392 S.W.3d 353, 354-55

(Tex. M.D.L. Panel 2012) (holding cases were related where plaintiffs alleged defendant had a "general business practice" of adjusting claims that unfairly tilted the process in its favor).

Nationstar responds that the cases are highly individualized because the terms of each of the loans being modified were different. This argument is similar to the argument made and rejected in *Ocwen Loan Servicing*, 286 S.W.3d at 672 (granting consolidation despite argument that servicing of each plaintiffs' mortgage loan was subject to "unique facts"). Although we continue to acknowledge that "every case is different," *In re Hurricane Rita Evacuation Bus Fire*, 216 S.W.3d 70, 72 (Tex. M.D.L. Panel 2006), discovery in these cases "will be aimed at disclosing the nature of [Nationstar's] common practices and procedures." *Ocwen Loan Servicing*, 286 S.W.3d at 672. Nationstar further responds that the plaintiffs' allegations "are not congruent with each other." However, "[a] rule 13 transfer of cases does not require that the cases be congruent or anything close to it." *In re Hurricane Rita Evacuation Bus Fire*, 216 S.W.3d at 72

Because the plaintiffs focus on Nationstar's standard practices and procedures, we hold that the six cases are related.

WOULD TRANSFER FURTHER CONVENIENCE AND EFFICIENCY?

"In deciding whether transfer to a pretrial court will further the general MDL goals of convenience, efficiency, and justice, our more specific inquiry is whether transfer would: (1) eliminate duplicative and repetitive discovery, (2) minimize conflicting demands on witnesses, (3) prevent inconsistent decisions on common issues, and (4) reduce unnecessary travel." *In re State Farm Lloyds Hurricane Ike Litigation*, 392 S.W.3d at 355-56. "A fifth objective of the MDL process is to allocate finite judicial resources intelligently by minimizing the occasions when different judges decide the same or similar issues again and again." *Id*. at 356. "When one

trial judge has decided an issue that is common to a set of related cases, the legal system cannot afford to let other trial judges spend time deciding the issue again." *Id*.

As previously noted, consolidation will eliminate the duplicative and repetitive discovery that would be promulgated with regard to Nationstar's general business practices in modifying home equity loans to Texas borrowers. Most of this discovery as to Nationstar's standard practices will likely involve only a few corporate representatives or employees of Nationstar. Rule 13's concern for the convenience of witnesses encompasses employee witnesses. *See In re Hurricane Rita Evacuation Bus Fire*, 216 S.W.3d at 72. Consolidation will also ensure that issues relating to the application of article XIV, section 50(a)(6) of the Texas Constitution are decided the same way by allowing the pretrial judge to make consistent rulings. *See Ocwen Loan Servicing*, 286 S.W.3d at 672-73 (noting "similar legal issues will arise as to whether [the] standard practices and procedures give rise to liability under the commonly alleged theories"). Finally, consolidating these cases is an intelligent allocation of finite judicial resources and will prevent different trial judges from having to decide the same issues. *In re State Farm Lloyds Hurricane Ike Litigation*, 392 S.W.3d at 355-56

CONCLUSION

Because the plaintiffs have shown that the six cases are related within the meaning of rule 13 and that transferring them to one pretrial court would serve the convenience of the parties and witnesses, the motion to transfer is granted. The pre-trial judge will be appointed by separate order.

PRESIDING JUDGE PEEPLES, CHIEF JUSTICE MCCLURE, AND JUSTICE BROWN, join. JUSTICE LANG-MIERS, not participating.

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CATHERINE STONE,
CHIEF JUSTICE

OPINION DELIVERED: AUGUST 16, 2013