

# Western District To Decide Whether Fannie Mae and Freddie Mac Are Exempt from Paying Michigan's Real Estate Transfer Tax

Article By:

Kyle P. Konwinski

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Counties throughout the state of **Michigan** seek to hold **Fannie Mae** and **Freddie Mac** liable for failing to pay the **Michigan real estate transfer tax**. Two counties, Oakland County and Genesee County, who have sued the same institutions in the Eastern District of Michigan, filed *amicus curie* briefs in [Hertel, Jr. v. Bank of America NA, Case No. 1:11-cv-757 \(W.D. Mich\)](#), asking Judge Bell to abstain, allowing the Eastern District of Michigan to decide first whether Fannie Mae and Freddie Mac are exempt from paying the tax. Judge Bell denied the Counties' request.

Declining to apply the **Colorado River abstention doctrine**, Judge Bell first observed that abstention doctrines are extraordinary and narrow exceptions to the *duty* of a district court to adjudicate a controversy properly before it. Judge Bell explained that the *Colorado River* doctrine applies only where there is a parallel *state-court* proceeding. Since the Counties requested the Western District of Michigan to abstain for an action pending in *federal* court, the Eastern District of Michigan, the doctrine on its face did not apply.

Judge Bell also declined to apply the first-to-file rule. The first-to-file rule applies only when the parties and issues are nearly identical. According to Judge Bell, the Western District and Eastern District cases included different parties and different issues, such that the cases were not "nearly identical." Moreover, the first-to-file rule usually applies only where there has been a "race to the courthouse," which was not the case here. Even if the first-to-file rule applied, Judge Bell concluded that too much time has passed and too many motions have been filed in this case, such that it would be unfair to the parties for the court to abstain at this juncture.

Refusing to abstain, we anticipate that Judge Bell will decide whether Fannie Mae and Freddie Mac are exempt from paying Michigan's real estate transfer tax. Stay tuned for more updates on this interesting case.

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