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Beazer Homes Holding Corporation v. District Court, 128 Nev. Adv. Op. 66 (Dec. 27, 2012)¹
CIVIL PROCEDURE - NRCP 23 CLASS ACTION REQUIREMENTS
PROPERTY – HOMEOWNERS’ ASSOCIATIONS

Summary

The Court considered the ability of a homeowners’ association (HOA) to litigate construction-defect claims on behalf of its members’ homes under NRS 116.3102(1)(d) without fulfilling NRCP 23 class action requirements.

Disposition/Outcome

HOAs may continue in construction-defect litigation in a representative capacity even if they do not meet NRCP 23 class action requirements. However, if the parties request it, district courts must evaluate whether HOAs fulfill NRCP 23 requirements to determine whether alternatives to class actions would be better suited for the litigation (i.e. joinder or consolidation). In doing so, courts must look at which HOA units have defects, whether an alternative method would sufficiently recognize similarities between claims and defenses, as well as provide notice, and address claim preclusion issues.

Facts/Procedural History

Petitioner and developer Beazer Homes Holding Corporation (Beazer Homes) constructed a housing development, the View of the Black Mountain Community. The development consists of duplex units; the two homes of each unit share walls, a roof, and foundation. The development is governed by the View of Black Mountain Homeowners’ Association (Black Mountain HOA). Each homeowner is individually responsible for maintenance and repair of each home. Black Mountain HOA is explicitly excluded from individual home maintenance or repair. However, Black Mountain HOA brought suit against Beazer Homes on behalf of its homeowners on the basis of construction-defect claims.

Black Mountain HOA subsequently filed a motion requesting the district court to determine that the claims met NRCP 23 class action requirements. Black Mountain HOA argued that a previous decision had determined homeowner associations had standing to bring suit on behalf of homeowners and could proceed if class action requirements were met because Black Mountain HOA was seeking to remedy defective construction solely of the homes’ shared elements, which it termed the “building envelope.”² Black Mountain HOA stated that it met the class action requirements even though the homeowners had individual ownership. Beazer Homes filed an opposition claiming NRCP 23 requirements were not met because of Black Mountain HOA’s failure to identify specific defect information, as well as the fact that multiple defects were at issue rather than a single “building envelope” defect.

The district court distinguished between this case and *First Light II* due to the defects being exterior rather than interior. The district court noted that NRS 116.3102(1)(d) allows

¹ By Jaimie Stiliz-Outlaw

² D.R. Horton v. Dist. Court (*First Light II*), 125 Nev. 449, 458, 215 P.3d 697, 703 (2009).

HOAs to litigate on behalf of their homeowners, and thus held that Black Mountain HOA was not required to meet NRCP 23 requirements. The district court allowed the case to continue without performing a class action analysis. Beazer Homes petitioned for a writ of mandamus or prohibition. In its writ petition, Beazer Homes argued that the Court's decision in *First Light II* requires a homeowners' association to meet NRCP 23 requirements before it may pursue its homeowners' construction-defect claims in a representative capacity.

Discussion

Justice Douglas wrote the unanimous opinion of the Court sitting en banc. Before addressing the primary issue, the Court noted that consideration of a petition for writ of mandamus is within the Court's discretion, but the petitioner has the burden of demonstrating such "extraordinary relief" is justified.³ The Court further noted that a writ will not be granted if the petitioner has a "plain, speedy and adequate remedy" available.⁴ The Court found that Beazer Homes did not have a plain, speedy, and adequate remedy available, and that judicial economy and the parties' interests dictated the Court consider Beazer Homes' petition.⁵ The Court then turned to the primary issue – the ability of HOAs to proceed with representative actions under NRS 116.3102(1)(d) and NRCP 23.⁶

Black Mountain HOA argued that NRS 116.3102(1)(d) allows HOAs to proceed with representative actions even if NRCP 23 requirements are not met. The Court agreed, noting that under the statute, HOAs may act on behalf of homeowners in litigation regarding the community as long as two or more unit owners are represented. The Court stated that failing to meet other requirements, such as NRCP 23 prerequisites, does not remove HOA standing to proceed under NRS 116.3102(1)(d).⁷ Rather, the Court held that failure to meet such prerequisites impacts how a case would proceed.

The Court revisited the *First Light II* decision and found that HOA class actions regarding individual homeowner construction-defect claims, while permitted under NRS 116.3102(1)(d), are subject to the same treatment as individual homeowner class actions.⁸ Therefore, district courts must perform in-depth NRCP 23 class action analyses to evaluate whether the class actions can be continued.⁹

³ See *Smith v. Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991); *Pan v. Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

⁴ *Millen v. Dist. Court*, 122 Nev. 1245, 1250-51, 148 P.3d 694, 698 (2006); see also NEV. REV. STAT. 34.170 (2007); NEV. REV. STAT. 34.330 (2007).

⁵ *Williams v. Dist. Ct.*, 127 Nev. __, __, 262 P.3d 360, 365 (2011).

⁶ There was a further argument presented by Black Mountain HOA regarding the constitutionality of Beazer Homes' interpretation of *First Light II*. However, the Court did not reach this argument since the interpretation was found to be incorrect.

⁷ *State v. Connery*, 99 Nev. 343, 345, 661 P.2d 1298, 1300 (1983).

⁸ *First Light II*, 125 Nev. at 459, 215 P.3d at 704.

⁹ The Court stated this decision was mainly due to difficulties in handling large construction-defect cases and the appropriateness of continuing such cases as class actions. See *id.* at 458, 215 P.3d at 703; *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 856, 124 P.3d 530, 543 (2005); see also Restatement (Third) of Prop.: Servitudes § 6.11 cmt. a (2000).

Based on the *First Light II* decision, Beazer Homes argued that a HOA must meet NRCP 23 class action requirements before it can proceed in a representative capacity regarding homeowners' construction-defect claims. The Court disagreed and clarified the *First Light II* decision, stating that even if a HOA does not precisely meet NRCP 23 requirements, it is not automatically precluded from continuing a representative action. However, the Court noted that conducting an NRCP 23 analysis is still essential in order to create an effective plan for case management.

The Court stated that an NRCP 23 analysis does not determine whether an action may proceed, but rather how an action should proceed (whether as a class action, joinder action, consolidated actions, etc.). For example, regarding the numerosity requirement, the Court indicated that as long as at least two unit owners are represented a HOA class action may continue,¹⁰ but determining the full extent of unit owners involved will regulate proceeding as a class action or joinder action. Assessing the commonality and predominance requirements would also help district courts organize litigation proceedings. Furthermore, examining typicality and adequacy would impact notice to HOA members as well as management of claim preclusion issues.¹¹

The Court concluded that if a HOA meets all NRCP 23 requirements, it may continue litigation as a class action. If the HOA does not meet all the requirements, the district court has to find an alternative for the action to continue. In doing so, the district court shall analyze an document its finding to show that the alternative method to proceed will adequately identify factual and legal similarities between claims and defenses, provide notice to members represented by the homeowners' association, and confront how claim preclusion issues will be addressed. In this, the district court can then fashion an appropriate alternative case management plan to efficiently and effectively resolve the case. Nevertheless, the district court will retain control over the action and have the flexibility to make appropriate orders.

Because NRS 116.3102(1)(d) does not preclude the obligation to evaluate HOA class actions under NRCP 23 requirements, the Court agreed with Beazer Homes' argument that the district court acted arbitrarily and capriciously by refusing to perform a full NRCP 23 class action analysis.

Conclusion

The Court granted Beazer Homes' petition for writ of mandamus in part by directing the district court to analyze NRCP 23 class action requirements regarding this case. The Court denied Beazer Homes' petition for a writ of prohibition, and also denied Beazer Homes' request to instruct the district court to deny Black Mountain HOA's motion to proceed.

¹⁰ See NEV. REV. STAT. 116.3102(1)(d) (2007).

¹¹ See *Salton City Etc. v. M. Penn Phillips Co.*, 141 Cal. Rptr. 895, 899 (Ct. App. 1977).