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Summary of D.R. Horton, Inc. v. Dist. Ct., 125 Nev. Adv. Op. No. 35

Paul C. Williams
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D.R. Horton, Inc. v. Dist. Ct., 125 Nev. Adv. Op. No. 35 (Sept. 3, 2008)¹

Property Law - Constructional Defect - Class Action

Summary

Developer's (D.R. Horton) petition for a writ of mandamus or writ of prohibition against the Eighth Judicial District Court's denial of the Developer's partial motion for summary judgment.

Disposition/Outcome

The Court denied the petition. The Court held that (1) a homeowners' association has standing to assert claims of construction defect in a representative capacity on behalf of individual units of a common-interest community and (2) a nonmember developer has standing to challenge whether a homeowners' association can properly assert claims of construction defect in a representative capacity on behalf of individual units of a common-interest community.

Factual and Procedural History

First Light Homeowners Association (First Light HOA) filed a complaint against developer D.R. Horton on behalf of itself and the individual unit owners of First Light, a common interest community located in Clark County, Nevada. The complaint alleges both the common areas of the community and the individual units of First Light have constructional defects.

D.R. Horton filed a motion for partial summary judgment contending that First Light HOA lacked standing to assert claims of construction defect related to the individual units. First Light HOA argued that D.R. Horton lacked standing to challenge First Light HOA's ability to represent owners of the individual units. First Light HOA also contended NRS 116.3102(1)(d) allows a homeowners' association to file complaints of construction defect on behalf of individual units because they are part of the common-interest community.

The district court denied D.R. Horton's motion for partial summary judgment. The district court held NRS 116.3102(1)(d) allows homeowners' associations to file complaints of construction defect on behalf of individual units of a common-interest community.

Discussion

D.R. Horton's petition challenged the district court's interpretation of NRS 116.3102(1)(d) concerning the ability of a homeowners' association to file complaints of construction defect on behalf of individual units of a common-interest community.² First Light

¹ By Paul C. Williams

² NEV. REV. STAT. § 116.3102(1) (2007) states in relevant part: "[T]he association may do any or all of the following: (d) Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more units' owners on *matters affecting the common-interest community*." (emphasis added).

HOA contended that a developer lacks standing to challenge a homeowners' association ability to raise claims on behalf of its members per NRS 116.31088(3) and section 6.11 of the Restatement (Third) of Property.

Nonmember developer's standing to challenge

The Nevada Supreme Court held that neither NRS 116.31088(3) nor section 6.11 of the Restatement (Third) of Property prevented a nonmember developer from challenging whether a homeowners' association may properly assert construction defect claims on behalf of its members. NRS 116.31088(3) provides "[n]o person other than a unit's owner may request dismissal of a civil action commenced by the association on the ground that the association failed to comply with any provision of this section." The Court reasoned that NRS 116.31088(3) only barred nonmembers from challenging the adequacy of the procedure used by the homeowners' association to determine whether or not to commence a civil action.

The Court also found section 6.11 of the Restatement (Third) of Property only prevents a nonmember from challenging internal procedures of the homeowners' association used to determine whether to initiate a civil action.

Homeowners' association standing to assert construction defect complaints

The crux of the decision in this case is the Court's exploration of the meaning of a "common-interest community" and whether or not it includes individual units. The Court found that NRS 116.3102(1) is ambiguous "because the statute is susceptible to two reasonable interpretations - either a 'common-interest community' includes individual units, or it does not."

The Court looked to NRS 116.021, which defines a common-interest community as "real estate with respect to which a person, by virtue of his ownership of unit, is obligated to pay for real estate other than that unit."³ D.R. Horton contended that the language "other than that unit" excludes units from the definition of "common-interest community." However, the Court found that a "unit" is defined as "a physical portion of the common-interest community,"⁴ strongly suggests a unit is a part of the common-interest community. The Court also looked to the definition of common elements as "all portions of the common-interest community other than the units,"⁵ which implies individual units are part of common-interest community.

Taking into account the definition of "unit" and "common elements" the Court rejected D.R. Horton's argument holding NRS 116.021 simply expands the definition to require an owner to pay for realty of the common-interest community other than *that* unit that he or she owns. The Court held individual units are part and parcel of the "common-interest community." Accordingly, the Court concluded that NRS 116.3102(1)(d) grants standing to a homeowners' association to assert claims of construction defect in a representative capacity on behalf of individual units.

³ *Id.* § 116.021.

⁴ *Id.* § 116.093.

⁵ *Id.* § 116.017(1).

Subject to principles of construction defect class actions

Because a homeowners' association acts in a very similar capacity to a plaintiff in a class action lawsuit,⁶ the Court held an action brought by a homeowners' association on behalf of individual units is subject to NRCP 23⁷ and construction defect class action principals and concerns as discussed in *Shuette*.⁸ Thus, the Court concluded that where a homeowners' association brings suit on behalf of its members, a developer may challenge whether the associations' claims are subject to class certification.

The Court noted that construction defect cases generally involve multiple properties with unique types of construction damage, often making class action an inappropriate vehicle.⁹ However, in some cases, such as where common defects predominate over individual claims, a class action may promote efficiency.¹⁰ But, the Court emphasized that a shared experience alone does not satisfy NRCP 23. Instead, the Court concluded that, in determining whether the homeowners' association may bring the action on behalf of the individual owners, trial courts must determine, among other issues, (1) which units have experienced constructional defects, (2) the types of alleged defects, (3) the various theories of liability, and (4) the damages necessary to compensate owners.

Conclusion

NRS 116.3102(1)(d) provides standing to a homeowners' association to assert claims of construction defect in a representative capacity on behalf of individual units of a common-interest community. And, although a developer may not challenge the internal procedures used by the association before filing an action, the developer does have standing to challenge whether it is proper for a homeowners' association to assert claims in a representative capacity on behalf of individual homeowners.

In line with their analysis, the Court directed the district court to review the claims asserted by First Light HOA to determine whether the claims conform with NRCP 23 and class action principles, and thus, whether First Light HOA may file suit in a representative capacity for constructional defect claims within individual units. Accordingly, the Court denied the petition.

⁶ See RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES § 6.11 cmt. a (2000).

⁷ NEV. R. CIV. P. 23 governs class action lawsuits in Nevada. A court must consider whether the claims and theories of liability meet the requirements of numerosity, commonality, typicality, and adequacy.

⁸ See *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 124 P.3d 530 (2005). In *Shuette*, the Nevada Supreme Court held that courts must consider whether "common questions of law or fact predominate over individual questions" in construction defect class action in addition to the requirements of NRCP 23. *Id.* at 846, 124 P.3d at 537.

⁹ See *Id.* at 854, 124 P.3d at 542 (Noting that due to the fundamental tenet of property law that land is unique, "as a practical matter, single-family residence constructional defect cases will rarely be appropriate for class action treatment").

¹⁰ *Id.* at 857, 124 P.3d at 544.