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Shadow Wood Homeowners Association, Inc.; and Gogo Way Trust v. New York Community Bancorp, Inc. (January 28, 2016)

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Shadow Wood Homeowners Association, Inc.; and Gogo Way Trust
v.
New York Community Bancorp, Inc. (January 28, 2016)[1]

PROPERTY: NEVADA SUPREME COURT

Summary

The Court reviewed an appeal from a district court order granting summary judgment to a bank that had lost a condominium in an HOA lien foreclosure sale. The Court held that despite statutory provisions, which seem prohibit overturning an HOA lien foreclosure sale if required recitals are present in the HOA's trustee deed, there remains a common law power to overturn such foreclosure sales. The Court reaffirmed the principle that, where appropriate, Nevada courts may "grant equitable relief from a defective HOA lien foreclosure sale"—but only when there has been both 1) an inadequate price paid, and 2) fraud or oppression. The Court also vacated the lower court's ruling and remanded as to both the HOA lien amount and the issues of the parties' conduct, the buyer's status, and the equities at stake.

Background

A condo owner owed a balance of $140,000 on the property, in addition to 9 months of the $168 per month community common expenses. The latter payment was due to the HOA, Shadow Wood. New York Community Bank (NYCB) foreclosed on the condo's first deed of trust, and acquired the property via credit bill—without either paying back any of the back payments owed or beginning to pay the ongoing, monthly HOA expenses.

When Shadow Wood mailed NYCB with a notice of the debt accrued, NYCB did not respond. Shadow Wood thus recorded a notice of default (NOD) and election to sell. Upon receipt of the NOD, NYCB asked for a detailed statement, so that it might pay the debt. Shadow Wood did not respond until NYCB contacted the HOA's management, which answered with conflicting accounting statements.

Shadow Wood then recorded a notice of sale (NOS) and planned the foreclosure lien sale. The notice stated that "even if the amount [was] in dispute," the owner might lose the home. NYCB then sent a check for the amount that, it believed, was not in dispute. Shadow Wood rejected and returned the check with additional contradictory accounting statements.

The lien foreclosure sale went forward. NYCB did not attend or try to stop it. The buyer, Gogo Way, bought the condo for $11k in cash and received a trustee's deed from Shadow Wood.

NYCB sued the HOA and the buyer, seeking declaratory relief and quiet title. It claimed that the sale was not carried out in good faith, and that the sale price was unreasonable. On summary judgment, a district court order set aside the trustee's deed, holding 1) that Shadow Wood was only entitled to nine months of HOA expenses, 2) that its rejection of NYCB's check

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was "unreasonable and oppressive," and 3) Gogo Way was not a "bona fide purchaser." Both the HOA and the buyer (together, "Appellants") appealed.

Discussion

When considering the validity of this lien foreclosure sale, the Court illuminated the seemingly contradictory status of completed HOA lien foreclosure sales: 1) the status designated by the statutory construction of NRS 116.31164 and .31166, and 2) the status designated by a line of Nevada precedent cumulating in *Long v. Towne*. 98 Nev. 11, 639 P.2d 528 (1982).

NRS Chapter 116, a codification of the 1982 Uniform Common Interest Ownership Act (UCIOA), governs HOA liens.[2] The two subsections at issue require that the trustee's deed contain certain recitals. One of these recitals states that "[s]uch a deed containing those recitals is conclusive against the unit's former owner."[3] Appellants argued that this statute means that a foreclosure sale cannot be overturned if the deed contains these recitals—which Shadow Wood's trustee's deed did.

However, this statute's drafters did not intend to undo the equitable power of courts that existed at the time of the adoption of NRS Chapter 116. Cases such as *Long* indicate that the statutory recitals do not, in fact, entirely bar the setting aside of an HOA nonjudicial foreclosure. The *Long* precedent leaves an exception, allowing the setting aside of such a foreclosure "upon a showing of grossly inadequate price plus 'fraud, unfairness, or oppression.'"[4] Using *Long*, and several other Nevada cases reaching back to the 1850s, the Court stressed that Nevada courts have the "power to grant equitable relief from a defective foreclosure sale when appropriate," in spite of the recital language of NRS 116.31166. Thus, "[a] plaintiff not in possession may seek to quiet title" under NRS 40.010, all the while relying on this equitable, common law power of the courts to undo an inequitable foreclosure sale.[5] Indeed, "there is practically no difference in the nature of the action under [Nevada's] statute and as it exists independent of statute."[6]

In the case of this HOA lien foreclosure loan, the question is, what controls: 1) the HOA's interpretation that Chapter 116's recitals render a foreclosure sale immune from being overturned, or 2) Nevada courts' power to overturn such a sale based on equity? The Court acknowledged that the HOA's trustee's deed did contain the recitals the statute requires—which NYCB did not dispute. However, it is not the lack of Chapter 116 recitals of which NYCB accused Appellants. Rather, NYCB sought the equitable relief justified by the type of oppressive foreclosure discussed in *Long*.

While NYCB did have a valid argument that the courts have a right to affirm or overturn a foreclosure sale, the Court was not convinced that NYCB made an argument that the sale price was inadequate as a matter of law, that there was fraud or oppression involved, or that Gogo

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[2] *See* NEV. REV. STAT. § 116.31162-.31168 (2013); SFR Invs. Pool 1, 130 Nev. Adv. Op. 75, 334 P.3d at 411-12 (2014).
[3] NEV. REV. STAT. § 116.31166(1)-(2) (2013).
[4] Long v. Towne, 98 Nev. 11, 13, 639 P.2d 528, 530 (1982).
[5] Low v. Staples, 2 Nev. 209, 211-13 (1866).
[6] Clay v. Scheeline Banking & Trust Co., 40 Nev. 9, 16-17, 159 P. 1081, 1082 (1916).

Way was an inadequate buyer. Each of these three things affects the propriety of an equitable remedy. The Court entertained several possibilities given the facts on record: that the sale price was not too low; that Appellants provided NYCB with inadequate—perhaps even intentionally misleading—accounting statements and undersold the house; that Gogo Way might be harmed as an innocent third party should any remedy result. However, these facts were still in dispute, and thus, summary judgment was not appropriate.

The case was remanded so the district court might determine the reasonableness of sale price and of the actions of both the HOA and NYCB, as well as the potential harm to Gogo Way as a third party—and whether any of these factors justify an equitable overturn of the foreclosure sale.

Conclusion

In considering whether to overturn an HOA lien foreclosure sale, a court should consider that it does have an equitable, common law power to overturn an oppressive or fraudulent sale that resulted in an inadequate sale price. However, this power can only be used if both the inadequacy of the price and the fraud or oppression are facts proven on the record.