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Southern Highlands v. San Florentine, 132 Nev. Adv. Op. 3 (Jan. 14, 2016)

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PROPERTY LAW: HOA Liens, Equal Priority

Summary

Under the plain language of NRS 116.3116(4), “equal priority” is given to multiple HOA liens on the same property when those liens secure unpaid HOA charges and dues. When one lienholder of equal priority forecloses, all other liens are terminated. Nonetheless, all equal priority lienholders share in the foreclosure profit by either being paid in full when able to do so or, if sale profit is inadequate, through a pro-rata share of the proceeds. Thus, because the Foothills and Southern Highlands have equal priority liens, Foothills’ foreclosure terminated Southern Highlands lien, however Southern Highlands is entitled its allotment of the sale proceeds.

Background

In this matter, the disputed property belonged to two homeowners’ associations: appellant Southern Highlands and non-party The Foothills at Southern Highlands Homeowners Association (“Foothills”). Foothills foreclosed on the subject property for unpaid association dues and respondent San Florentine Avenue Trust (San Florentine) purchased it for \$45,100. This resulted in approximately \$35,000 in excess finances over the amount of Foothills’ lien.

Pre-dating Foothills’ foreclosure sale, Southern Highlands recorded a lien against the property for the unpaid homeowner’s association dues. The lien was never paid and eventually Southern Highlands set its own foreclosure sale date.

San Florentine, who purchased the property from Foothills foreclosure sale, sought to preliminarily enjoin Southern Highlands’ sale. San Florentine argued NRS 116.3116(4) (2013) provided equal priority to multiple HOA liens, meaning that Foothills’ foreclosure sale terminated Southern Highlands’ lien. Furthermore, San Florentine argued Southern Highlands is required to satisfy its lien from the foreclosure sale proceeds. The district court granted a preliminary injunction and Southern Highlands now appeals.

Discussion

Under the plain language of NRS 116.3116(4), liens have “equal priority” if the lienholders are “associations” and the liens secure “assessments” on the property.² An “association” includes homeowners associations and NRS Chapter 116 regularly uses the term “assessment” to describe fees imposed by HOAs, including homeowners dues.³ Thus, because Foothills and Southern Highlands were “associations”, with liens for unpaid “assessments” (dues), that were attached to the same property, both parties had “equal priority” liens.

¹ By Kristen D. Matteoni.

² NEV. REV. STAT. § 116.3116(4) (2013).

³ See NEV. REV. STAT. § 116.3102 (2013); NEV. REV. STAT. § 116.3115 (2013); NEV. REV. STAT. § 116.3116 (2013).

Additionally, Foothills' foreclosure sale had an effect on Southern Highlands' equal priority lien. The Nevada Supreme Court, finding no settled principle "clarifying how equal priority liens interact during a foreclosure", looked to California. In California, when an equal priority lienholder engages in a foreclosure, the others liens are terminated but are entitled to profits from the foreclosure sale.⁴ If the profits from the sale are inadequate to pay the entire lien, funds are dispensed on a pro-rata basis.⁵ Nevada holds accordingly because this approach: (1) is not inconsistent for NRS Chapter 116; (2) better fits the definition of "equal priority"; and (3) avoids situations in which more than one equal priority lienholder tries to foreclose on the same property at different times.

Therefore, Foothills' foreclosure sale extinguished Southern Highlands' lien and thus, Southern Highlands cannot hold a foreclosure sale. However, Southern Highlands is allowed to seek payment from the foreclosure sale for the amount of its lien on the date of the sale. If the foreclosure profits are insufficient to satisfy the lien, Foothills and Southern Highlands must divide that profit loss pro-rata.

Conclusion

Under NRS 116.3116(4) (2013), "equal priority" is given to multiple HOA liens on the same property when those liens secure unpaid HOA charges and dues. When one lienholder of equal priority forecloses, all other liens are terminated. Nonetheless, all equal priority lienholders share in the foreclosure proceeds. If the foreclosure sale proceeds are insufficient to satisfy the lien, all equal priority lienholders must share the loss pro-rata.

⁴ 5 Miller & Starr, *Cal. Real Estate* § 11:130 (3d ed. 2009); see *Santa Clara Land Title Co. v. Notvack & Ass'ns., Inc.*, 277 Cal. Rptr. 497, 500-01 (Ct. App. 1991).

⁵ Miller & Starr, *supra* note 4; see *Idaco Lumber Co. v. Nw. Say. & Loan Ass'n*, 71 Cal. Rptr. 422, 424-29 (Ct. App. 1968).