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Saticoy Bay v. Fed. Nat'l Mortg. Ass'n, 134 Nev. Adv. Op. 36 (May. 17, 2018) (en banc)¹

PROPERTY LAW: STANDING AND STATUTORY INTERPRETATION

Summary

The Court held that when the Federal Housing Finance Agency (FHFA) is acting as a conservator, absent their affirmative relinquishment, the Federal Foreclosure Bar cloaks property with Congressional protection.

Background

Don and Rieta Moreno obtained a home loan for \$174,950 from Countrywide Home Loans, Inc., that was secured by a deed of trust on a Las Vegas property. The deed was recorded and named Mortgage Electronic Registration Systems as the beneficiary and was subsequently assigned to Respondent Fannie Mae. Appellant Saticoy Bay purchased the property at a HOA foreclosure sale after the Morenos had failed to pay their HOA dues. Saticoy Bay filed suit against Mae to quiet title. Both Mae and Saticoy Bay moved for summary judgment. The district court granted Mae's countermotion for summary judgment and determined that 12 U.S.C. § 4617(j)(3) preempts NRS 116.3116, concluding the sale did not extinguish Mae's deed of trust without FHFA consent. Saticoy Bay appealed.

Discussion

Standard of Review

The Court reviewed issues of standing and whether a federal statute preempts state law de novo.² In addition, the Court reviewed the district court's grant of summary judgment de novo.³

Fannie Mae has standing to invoke the Federal Foreclosure Bar

Fannie Mae has standing to assert that the Federal Foreclosure Bar preempts NRS 116.3116.⁴ To have standing, the party seeking relief must have sufficient interest in litigation, to ensure the litigant will vigorously and effectively present his or her case against an adverse party.⁵ The court held that the servicer of a loan owned by a regulated entity may argue that the Federal Foreclose Bar preempts NRS 116.3116. The court applied the rationale that a regulated entity who property interest is at stake is entitled to assert that the Federal Foreclosure bar preempts a Nevada revised statute on its own behalf. Further, the plain meaning of the statute is clear and unambiguous.⁶ The plain language provides that when FHFA is acting as a conservator, it shall

¹ By Shady Sirsy.

² *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 368, 252 P.3d 206, 208 (2011); *Nanopierce Techs., Inc. v. Depository Tr. & Clearing Corp.*, 123 Nev. 362, 370, 168 P.3d 73, 79 (2007).

³ *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

⁴ NEV. REV. STAT. § 116.3116.

⁵ *Nationstar Mortg., LLC v. SFR Invs. Pool 1, LLC*, 133 Nev., Adv. Op. 34, 396 P.3d 754, 756 (2017).

⁶ *D.R. Horton, Inc. v. Eighth Judicial Din. Court*, 123 Nev. 468, 476, 168 P.3d 731, 737 (2007).

“immediately succeed to . . . the assets of the regulated entity.”⁷ Mae’s property interest effectively becomes the FHFA’s while the conservatorship exists, and the Federal Foreclosure Bar protects Mae’s deed of trust while Mae is under the conservatorship.

The Federal Foreclosure Bar preempts NRS 116.3116

NRS 116.3116 conflicts with Congress’s clear purpose of the Federal Foreclosure Bar to protect operations of Fannie Mae while under conservatorship. The preemption doctrine provides that federal law may preempt state law even when federal statutory language does not expressly say so.⁸ Preemption may be applied when federal law conflicts with state law. In assessing whether the Federal Foreclosure Bar implicitly preempts NRS 116.3116, the court determined that there was a direct conflict with Congress’s clear and manifest goal to protect Fannie Mae’s property interest while under the FHFA’s conservatorship from threats arising from state foreclosure law. Because the two statutes conflict, the Federal Foreclosure Bar implicitly preempts NRS 116.2116 to the extent a foreclosure sale extinguishes deed of trust.

The FHFA did not consent to the extinguishment of Fannie Mae’s property interest

By failing to act, the FHFA did not implicitly consent to the extinguishment of Fannie Mae’s property interest. The Federal Foreclosure Bar cloaks the FHFA’s “property with Congressional protection unless or until [the FHFA] affirmatively relinquishes it.”⁹ The Federal Foreclosure Bar does not require active resistance to disallow extinguishment of property interest.

Conclusion

The Federal Foreclosure Bar protects the deed of trust from extinguishment. Unless the FHFA relinquishes Congressionally protected property, Saticoy Bay’s interest in the property is subject to Fannie Mae’s deed of trust. The Court affirmed the district court’s grant of summary judgment.

⁷ 12 U.S.C. § 4617(b)(2)(A)(i) (2012).

⁸ Nanopierce Techs., Inc. v. Depository Tr. & Clearing Corp., 123 Nev. 362, 371, 168 P.3d 73, 79 (2007).

⁹ Berezovsky v. Moniz, 869 F.3d 923, 929 (9th Cir. 2017).