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### Las Vegas Dev. Grp., LLC v. Blaha, 134 Nev. Adv. Op. 22 (May 3, 2018)

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## CIVIL: TIME LIMITS FOR NONJUDICIAL FORECLOSURE

### **Summary**

The Court considers whether the time limitations of NRS 107.080(5)-(6) (2010)<sup>2</sup> bars an action challenging an NRS Chapter 107 nonjudicial foreclosure where it is alleged that the deed of trust had been extinguished before the sale. This action challenges the authority to conduct the sale rather than the manner; thus, limitations do not apply.

### **Background**

A home was purchased in the Nevada Trails II Community (HOA). The former home owner—not a party in this case—received a loan from Bank of America, N.A. (BANA). By 2010, the home owner was delinquent on the loan and HOA fees. BANA and the HOA both initiated separate nonjudicial foreclosure sales. Las Vegas Development Group, LLC (LVDG) purchased the home from the HOA in a foreclosure sale pursuant to NRS Chapter 116 from HOA. Soon after a foreclosure sale by BANA pursuant to NRS Chapter 107, James Blaha purchased the home.

LVDG argued the HOA foreclosure sale extinguished the first deed of trust and therefore BANA lacked authority to conduct a nonjudicial foreclosure sale on the property.<sup>3</sup> Blaha moved for summary judgment, arguing primarily that LVDG's claims were barred by the NRS because LVDG failed to file the complaint within 90 or 120 days of the deed-of-trust foreclosure sale.<sup>4</sup> The Eighth Judicial District Court granted Blaha's motion for summary judgment. The Court affirmed in part, reversed in part, and remanded.

### **Discussion**

The Court reviewed district court summary judgment orders de novo. Summary judgment should only be granted when the pleadings and record establish that no genuine issue of material fact exists.<sup>5</sup> When interpreting a statute, the Court looks to the plain meaning of the words.<sup>6</sup> LVDG argues the plain language of NRS 107.080(5)–(6) presumes an individual conducting the sale has authority to do so, and because the HOA had already sold the home in a foreclosure sale, BANA lacked that authority. Blaha argues that the legislative intent of the statute was to ensure individuals could not overturn foreclosure sales indefinitely.

Subsection 5(a) of the statute states that a sale under "this section may be declared void" if the individual "authorized to make the sale does not substantially comply with the provisions of

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<sup>1</sup> By Emily Meibert.

<sup>2</sup> NRS 107.080 was amended after 2010. *See, e.g.*, 2011 Nev. Stat., ch. 81, § 9, at 332. However, action in this case occurred prior to the effective date of the amendments. Therefore, the case refers only to the 2010 statute in effect at the time of the notice.

<sup>3</sup> *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 334 P.3d 408 (2014).

<sup>4</sup> NEV. REV. STAT. §§ 107.080(5)–(6) (2017).

<sup>5</sup> *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005)

<sup>6</sup> *McGrath v. State, Dep't of Pub. Safety*, 123 Nev. 120, 123, 159 P.3d 239, 241 (2007); *see also*, *Allstate Ins. Co. v. Fackett*, 125 Nev. 132, 138, 206 P.3d 572, 576 (2009).

this section or any applicable provision of NRS 107.086 and 107.087.”<sup>7</sup> If notice is not properly given the sale it can render the sale void.

Although Blaha argues cases<sup>8</sup> and legislative history<sup>9</sup> have suggested the statute would apply to all nonjudicial foreclosure sales, the Court does not believe NRS 107.080 applies to *all* challenges to a nonjudicial foreclosure sale. Rather, the Court agrees with LVDG that there are instances where a court may set aside a nonjudicial foreclosure sale.<sup>10</sup> The Court concludes NRS 107.080(5) only applies to actions challenging the procedural aspects of a nonjudicial deed-of-trust foreclosure sale.

LVDG’s complaint sought to quiet title to the property and have BANA’s foreclosure declared void. LVDG is not challenging the procedural aspects of the foreclosure sale, but they are challenging the authority behind the sale. The authority behind a foreclosure is determined by “who holds superior title to a land parcel.”<sup>11</sup> Accordingly, this claim is governed by NRS 11.080;<sup>12</sup> thus, quiet title is appropriate.

This decision also aligns with the federal courts.<sup>13</sup> The Court declared that a “wrongful foreclosure claim is not based on a violation of [NRS] 107.080’s procedural aspects of foreclosure, and thus [NRS] 107.080(5)’s limitation period do not apply.”<sup>14</sup> There is no authority to conduct the foreclosure sale because “its security interest in the property had been extinguished.”<sup>15</sup> Similarly, here, LVDG is challenging the authority behind the sale, not the foreclosure procedure itself. Therefore, the Court agrees that NRS 107.080(5) does not govern LVDG’s action to quiet title.

## **Conclusion**

Because LVDG is challenging the authority behind the foreclosure sale rather than the procedure of the foreclosure, LVDG is not barred by the statute of limitation of NRS 107.080(5)–(6) (2010). Thus, the Court reverses the district court’s grant of summary judgment and remands for further proceedings.

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<sup>7</sup> Nev. Rev. Stat. § 107.086 (2010). NRS 107.087 (2010) provided the requirements for the notice of default and election to sell and the notice of sale for a residential foreclosure.

<sup>8</sup> Building Energetix Corp. v. EHE, LP, 129 Nev. 78, 85-86, 294 P.3d 1228, 1234 (2013).

<sup>9</sup> See Hearing on S.B. 217 Before the Senate Judiciary Comm., 74th Leg. (Nev., March 21, 2007); Hearing on S.B. 217 Before the Assembly Judiciary Comm, 74th Leg. (Nev., May 2, 2007); Hearing on S.B. 217 Before the Senate Judiciary Comm , 74th Leg. (Nev., March 21, 2007).

<sup>10</sup> See, e.g., Shadow Wood Homeowners Ass'n, Inc. v. N.Y. Cmty. Bancorp, Inc., 132 Nev., Adv. Op. 5, 366 P.3d 1105, 1112 (2016).

<sup>11</sup> See McKnight Family, LLP v. Adept Mgmt. Servs., Inc., 129 Nev. 610, 616, 310 P.3d 555, 559 (2013).

<sup>12</sup> There is a five-year statute of limitations for NRS 11.080. Additionally, the Court does not decide whether LVDG’s remaining causes of action are barred by this statutes of limitations. Rather, that all other claims are *not* governed by NRS 107.080(5)–(6).

<sup>13</sup> See Las Vegas Development Group, LLC v. Yfantis 73 F. Supp. 3d 1046, 1060–61 (D. Nev. 2016).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*