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Jocelyn Murphy

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Recommended Citation

Murphy, Jocelyn, "SFR Invs. Pool 1, LLC v. Bank of N.Y. Mellon, 134 Nev. Adv. Op. 58 (Aug. 2, 2018) (en banc)" (2018). *Nevada Supreme Court Summaries*. 1184.

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SFR Invs. Pool 1, LLC v. Bank of N.Y. Mellon, 134 Nev. Adv. Op. 58 (Aug. 2, 2018) (en banc)¹

PROPERTY LAW: HOMEOWNER ASSOCIATIONS PROCEDURES FOR NOTICE

Summary

The Court determined that prior to its 2015 amendment, NRS § 116.31168, through its incorporation of NRS § 107.090, previously required homeowner associations to provide notices of default and sale to all persons and entities with a subordinate interest in the property, regardless of whether they had requested notice.

Background

In 2010, former homeowners received a notice of delinquent assessments, notice of default, and an election to sell from appellant Star Hill Homeowners Association, after being delinquent on their homeowners' association fees. In 2012, per NRS Chapter 116, Star Hill held a nonjudicial foreclosure sale and transferred the property to SBW Investment Inc. who subsequently transferred title to appellant SFR Investments Pool 1, LLC. In the deed, Star Hill affirmed that it had adhered to all statutory notice requirements.

Respondent, Bank of New York Mellon, brought suit against Star Hill and SFR in the federal district court of Nevada. The bank alleged that the foreclosure sale was void because it violated due process requirements under NRS Chapter 116 and as a result, the sale had not negated the Bank's deed of trust. Pursuant to the Nevada Rules of Appellate Procedure 5, the United States District Court for the District of Nevada filed a certified question order with the Supreme Court of Nevada seeking an answer as to whether NRS § 116.31168 before its 2015 amendment required homeowner's associations to provide notices of default and sale to all persons and entities who held a subordinate interest in the property.²

Discussion

Prior to its 2015 amendment, NRS § 116.31168 was ambiguous.³ Although the statute incorporated the foreclosure notice requirements of NRS § 107.090, it did not express whether it meant to incorporate NRS § 107.090's provisions in its entirety.⁴ Although NRS § 116.31168 originally only required homeowner associations seeking foreclosure to give notice to mortgage lenders who "opted-in" to receive such notice, NRS § 107.090 required notice to be given to all persons and entities whose interests were subordinate to the property and the homeowners' association lien.⁵ NRS § 116.31168 incorporated NRS § 107.090 without any language limiting its incorporation and thus intended to have all provisions of NRS § 107.090 incorporated.⁶

¹ By Jocelyn Murphy.

² NEV. R. APP. P 5; NEV. REV. STAT. § 116.31168 (1993).

³ NEV. REV. STAT. § 116.31168(1) (1993).

⁴ NEV. REV. STAT. § 107.090 (2009).

⁵ NEV. REV. STAT. § 116.31168 (1993); NEV. REV. STAT. § 107.090 (2009).

⁶ NEV. REV. STAT. § 116.31168 (1993).

In *Bourne Valley*, the Ninth Circuit held that incorporation of NRS § 107.090 would render NRS § 116.31168's opt-in provisions superfluous.⁷ However, total incorporation would not render the statute superfluous because NRS § 107.090 only requires notice to be given to parties of subordinate interests. NRS §116.31168's opt-in provision allows others who do not fall within this specific category to request notice although they are not entitled to it under due process. Additionally, use of the language "requests" for notices in NRS § 116.31168's title and subsections also does not limit NRS § 107.090's incorporation. The title does not negate the statutes past express mandatory notice requirements.

Conclusion

Prior to the 2015 amendment of NRS § 116.31168 through the statutes incorporation of NRS § 107.090, homeowner associations were required to provide notices of default and sale to all persons and entities with a subordinate interest in the property. The Court held that notice was required to be given even if a party had not previously requested notice be given.

⁷ *Bourne Valley Court Trust v. Wells Fargo Bank*, 832 F.3d 1154, 1159 (2016).