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### Wells Fargo, N.A. v. Radecki, 134 Nev. Adv. Op. 74 (Sep. 13, 2018) (en banc)

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## PROPERTY LAW: FORECLOSURE SALES

### **Summary**

The Court determined that: (1) Wells Fargo failed to present evidence of unfairness or irregularity that would invalidate the foreclosure sale; (2) pursuant to NRS 112.170(2), a regularly conducted, noncollusive foreclosure sale under NRS Chapter 116 is exempt under the Uniform Fraudulent Transfer Act (UFTA); and (3) inaccuracies in a foreclosure deed are not sufficient to invalidate a foreclosure sale that complied with NRS Chapter 116.

### **Background**

In 2006, a homeowner obtained a loan for \$196,000 to purchase property located in North Las Vegas. In exchange for the loan the property was encumbered with a Deed of Trust (DOT). The DOT was assigned to Wells Fargo. The property was located within a planned community that had a Homeowners Association (HOA). The Covenants, Conditions, and Restrictions (CC&Rs) required homeowners within the community to pay monthly assessments to the HOA and allowed the HOA to place a lien against the property for unpaid assessments.

By 2012, the homeowner had defaulted on both the mortgage held by Wells Fargo and the HOA assessments. Wells Fargo filed for judicial foreclosure on the property and obtained a default judgment against the homeowner and the HOA. Under the default settlement, Wells Fargo's DOT was "superior to all right, title, interest, lien, equity or estate of the Defendants with the exception of any super priority lien rights held by any Defendant pursuant to NRS 116.3116." Following the judgment secured by Wells Fargo, the HOA conducted a foreclosure sale pursuant to NRS 116.3116<sup>2</sup> and sold the property to Tim Radecki for \$4,000. At the time of the foreclosure sale, the tax value of the property was \$56,197. Radecki then moved to intervene in Wells Fargo's foreclosure case.

The district court held a bench trial and rejected Wells Fargo's arguments that the foreclosure sale conducted by the HOA should be invalidated. The district court found that pursuant to *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*,<sup>3</sup> the DOT held by Wells Fargo was extinguished. And held in favor of Radecki. Wells Fargo appealed the judgement. Wells Fargo offered three arguments: (1) the actions of the HOA and the intent of Radecki indicate unfairness or irregularity in the foreclosure process and therefore the foreclosure is invalid; (2) the foreclosure constituted a fraudulent transfer under the UFTA; and (3) irregularities with the foreclosure deed should invalidate the foreclosure sale entirely.

### **Discussion**

*There was not unfairness or irregularity in the foreclosure process*

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<sup>1</sup> By Yilmaz Turkeri.

<sup>2</sup> NEV. REV. STAT. § 116.3116 (2017).

<sup>3</sup> 130 Nev. 742, 334 P.3d 408 (2014).

Wells Fargo argued the foreclosure sale should be invalidated because of the low sale price, set at \$4,000, and because the HOA conducted a foreclosure sale on the property after defaulting on the judicial foreclosure proceeding initiated by Wells Fargo. The Court found that the default judicial judgment obtained by Wells Fargo still gave superpriority rights to any of the Defendants under NRS 116.3116. This allowed the HOA to foreclose the superpriority lien it held on the property. In addition, the Court determined that the Bonafide Purchaser Doctrine (BFP Doctrine) was not applicable here because the HOA's foreclosure sale was valid.

*A properly conducted NRS Chapter 116 foreclosure sale is not a "fraudulent transfer"*

Wells Fargo argued that the HOA's foreclosure sale was fraudulent under the UFTA, which prevents a debtor from placing a property beyond the reach of creditors for the purpose of defrauding creditors.<sup>4</sup> The Court determined that NRS 112.170(2) applied to any "regularly conducted, noncollusive foreclosure sale."<sup>5</sup> The Court explained that the HOA foreclosure sale complied with the requirements of NRS Chapter 116 and was therefore "regularly conducted" and "noncollusive" and the price received of \$4,000 was reasonably equivalent value.<sup>6</sup>

*Alleged inaccuracies in a foreclosure deed do not invalidate the foreclosure sale*

Wells Fargo argued that because the foreclosure deed did not state a transfer in property ownership to Radecki, reversal of the foreclosure sale was warranted. The Court agreed with the district court's determination that any irregularities with a deed can be remedied and it is not necessary to reverse the foreclosure sale. As established by the district court and confirmed by the Court, the foreclosure sale met the requirements of NRS Chapter 116.

## **Conclusion**

The Court affirmed the district court's holding that the foreclosure sale should not be invalidated and was completed pursuant to the requirements of NRS Chapter 116. Furthermore, the Court affirmed that inaccuracies with a deed is not sufficient to reverse an otherwise valid foreclosure sale.

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<sup>4</sup> See *Herup v. First Boston Fin., LLC*, 123 Nev. 228, 232, 162 P.3d 870, 872 (2007).

<sup>5</sup> NEV. REV. STAT. § 112.170(2) (2017).

<sup>6</sup> See *BFP v. Resolution Tr. Corp.*, 511 U.S. 531, 545 (1994) ("'reasonably equivalent value,' for foreclosed property, is the price in fact received at the foreclosure sale, so long as all the requirements of the State's foreclosure law have been complied with.").