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### Saticoy Bay LLC v. Nev. Ass'n Servs., 135 Nev. Adv. Op. 23 (Jul. 3, 2019)

Katrina Fadda

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CIVIL APPEAL: GENERAL - OTHER

**Summary**

The Court held that (1) under Nevada's HOA foreclosure redemption statute NRS 116.31166(3) a homeowner may use proceeds from the foreclosure sale to go towards redemption of the property; and (2) that sufficient compliance with the statute is enough to satisfy the statute's requirements.<sup>2</sup>

**Background**

In November 2015 Nevada Associations Services (“NAS”) conducted an HOA foreclosure sale on homeowner Markey's (“Markey”) property after he defaulted on HOA payments. Saticoy Bay was the highest bidder. With the sale proceeds NAS paid off the HOA lien and associated sales costs, then held the remaining proceeds in its trust account. Markey notified NAS of his intention to redeem the property within 60 days under NRS 116.31166(3).<sup>3</sup> NAS then notified Saticoy Bay of Markey's intent to redeem. Neither Markey nor NAS provided Saticoy Bay with a certified copy of the deed on the property as required under NRS 116.31166(3).<sup>4</sup> NAS directed the remaining sales proceeds towards the redemption amount; Markey made up the remaining redemption amount personally, and NAS sent a check to Saticoy Bay. Saticoy Bay believed Markey could not use the sale proceeds to redeem the property and thus rejected the check.

Saticoy Bay then sought a foreclosure deed for the property but NAS refused to issue it on the grounds Markey had successfully redeemed the property, thus the foreclosure sale was terminated. Subsequently, Saticoy Bay filed an action in the district court for quiet title, declaratory relief and specific performance. The district court granted summary judgment for Markey and Ditech (“the Mortgage Lender”).

Saticoy Bay appealed, arguing that Markey did not comply with the NRS redemption statute because (1) he could not use the proceeds of the sale for redemption of the property, and (2) he failed to produce a certified copy of the deed with his notice to redeem.

The application of the redemption amendment in NRS 216.31166(3)<sup>5</sup> is a matter of first appearance by the Court.

**Discussion**

*Markey complied with the HOA foreclosure redemption provision.*

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<sup>1</sup> By Katrina Fadda.

<sup>2</sup> NEV. REV. STAT. § 116.31166(3)(2015).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

The Court held Markey could use the sale proceeds towards redemption of the property according to the plain language of the statute. NAS complied with the plain language of the statute because after the foreclosure sale it first distributed the proceeds to pay off the HOA lien and costs of the sale, followed by the redemption amount. The statute did require NAS to distribute the sale proceeds to the mortgage lender Ditech before redemption, however the Court said Saticoy Bay does not have authority to make this argument because it only received an interest in the property after the sale, which does not give Saticoy Bay authorization to direct how the sale proceeds are distributed. Further, Ditech authorized NAS to use any sale proceeds to benefit Markey's redemption. Thus, Markey was entitled to use the excess sale proceeds to redeem the property.

*Markey substantially complied with the HOA foreclosure sale notice of redemption provision.*

NRS 116.31166(3)<sup>6</sup> requires a unit owner to provide notice of redemption to the person who conducted the HOA foreclosure sale and to the person who purchased the property. Further, the notice must be accompanied by a certified copy of the deed to the unit. The Court held that the statute requires only substantial compliance as this serves the intent of the statute: to put the purchaser in the same position as they would be on full performance. Because Saticoy Bay had actual knowledge of Markey's intent to redeem via an email from NAS, and it did not suffer any prejudice by the failure of Markey to provide a copy of the deed, Markey's substantial compliance was enough to satisfy the statute's requirement. The Court affirmed the summary judgment in favor of Markey and Ditech.

## **Conclusion**

Under NRS 116.31166(3)<sup>7</sup> a homeowner is entitled to use the proceeds from a HOA foreclosure sale towards the redemption amount if the distribution order requirements have been met. A purchaser does not have the authority to direct how proceeds are to be distributed because after receiving the certificate of sale they hold an interest in the property only.

Further, substantial compliance is enough to satisfy the NRS 116.31166(3)<sup>8</sup> notice requirement because this ensures the purpose of the statute is met.

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*