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## SFR Inv.'s Pool 1, LLC v. U.S. Bank Nat'l Ass'n, 135 Nev. Adv. Op. 45 (Sept. 26, 2019)

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PROPERTY: RETROACTIVE ANNULMENT OF AUTOMATIC BANKRUPTCY STAY

**Summary**

When a court grants retroactive annulment for an automatic bankruptcy stay on a property, a sale of the property during the stay will not be set aside, unless it can be shown that fraud, oppression, or unfairness occurred during the sales process.

**Background**

This case is regarding a property in a Nevada neighborhood governed by a homeowners' association ("HOA"). The previous homeowner of the property obtained a loan from Wells Fargo for \$331,500, and defaulted on the loan, leading to Wells Fargo recording a notice of default and election to sell under the deed of trust in 2010. Wells Fargo assigned the beneficial interest in the deed of trust to U.S. Bank. The previous homeowner then filed for Chapter 11 bankruptcy protection in California, resulting in an automatic stay on actions regarding the property. With this knowledge and seeking to foreclose upon the property, U.S. Bank filed a motion for relief from the automatic stay, and the bankruptcy court granted the request.

Just prior to the bankruptcy court granting U.S. Bank relief from the bankruptcy automatic stay, an agent of the HOA—Nevada Association Services ("NAS")—recorded a notice of delinquent assessment lien, in July 2012. NAS then recorded a default and election to sell the property, under the HOA lien. NAS did not request relief from the bankruptcy court for the automatic stay on the property and held a foreclosure sale on March 1, 2013. U.S. Bank did not attend the foreclosure sale or attempt to stop the sale, and appellant SFR Investments Pool 1, LLC ("SFR") purchased the property for \$14,000.

U.S. Bank then filed a notice of trustee's sale a week later and NV West Servicing, LLC then purchased the property at a foreclosure sale held by U.S. Bank.

On March 22, 2013, SFR filed a complaint against U.S. Bank to quiet title and for injunctive relief, with U.S. Bank then asserting a counterclaim seeking to quiet title against SFR and declaratory relief. U.S. Bank also brought a third-party complaint against the HOA and their agent, NAS.

In January 2017, the parties moved for summary judgment. SFR argued U.S. Bank's deed of trust was extinguished by the HOA/NAS foreclosure sale and that the trustee's deed to SFR proved that the sale was conducted in compliance with NRS Chapter 116, vesting title in SFR. U.S. Bank argued that the HOA/NAS foreclosure sale was void because it violated the bankruptcy stay, or that it was alternatively voidable because the sale was commercially unreasonable. U.S. Bank claimed they received notice of the sale by the HOA/NAS five days after the sale, while SFR countered that notice was provided to U.S. Bank through the servicer for the loan, Wells Fargo. Additionally, U.S. Bank argued it had no reason to believe that the HOA/NAS could foreclose on the HOA lien without first addressing the automatic stay in bankruptcy court. SFR asserted that they filed a motion in bankruptcy court for retroactive annulment of the automatic stay, while the district court considered the summary judgment motions.

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<sup>1</sup> By Brittani Tanenbaum.

The bankruptcy court then issued a retroactive annulment for the bankruptcy stay, on May 15, 2017, and stated that actions taken by SFR to enforce remedies regarding the property did not “constitute a violation of the stay.” Furthermore, the bankruptcy court extended the relief to any actions by the HOA/NAS for foreclosure on the property.

The district court then ordered supplemental briefing regarding the impact of the bankruptcy court’s retroactive annulment on equitable relief. U.S. Bank argued the retroactive annulment of the automatic stay did not mean the sale was fair, because the HOA/NAS violated the stay, while U.S. bank sought relief from the stay before holding its own foreclosure proceedings. U.S. Bank also argued the property sale price was grossly inadequate and that higher bidders were dissuaded from offering a commercially reasonable price, based on knowledge that the sale could be declared void because the automatic stay was violated. SFR argued that it did not know about the bankruptcy stay at the time of the HOA/NAS sale and that U.S. Bank had no evidence that the stay was a consideration for SFR or any other potential bidders. SFR additionally argued there was no violation of the stay because it was retroactively annulled.

Summary judgment was granted to U.S. Bank by the district court. Although the automatic stay was retroactively annulled, the district court determined the sale of the property should be set aside on equitable grounds. The district court determined the sale price was inadequate and that the HOA/NAS foreclosure sale, performed when there was an automatic stay on the property, “constituted evidence of fraud, oppression, or unfairness related to the sale.” The district court also found it was reasonable for U.S. Bank to expect the HOA/NAS to seek relief from the automatic stay before foreclosure proceedings and that U.S. Bank could not foresee a retroactive annulment would be granted in the future. The district court did not make any findings regarding the impact of the stay on the sale price.

After the district court set aside the HOA/NAS foreclosure sale, SFR and the HOA appealed.

## **Discussion**

The Court reviewed the district court’s decision to grant summary judgment to U.S. Bank *de novo*.

This Court previously found that the sale of a property during a bankruptcy automatic stay was invalid.<sup>2</sup> However, the retroactive annulment of the stay, “ratif[ies] retroactively any violation of the automatic stay which would otherwise be void.”<sup>3</sup> The Court therefore determined the HOA/NAS sale was now valid, because SFR obtained the retroactive annulment. The Court stated the district court properly recognized the validity of the HOA/NAS foreclosure sale, given the retroactive annulment, but outlined that the district court set aside the foreclosure sale on equitable grounds.

SFR argued the district court’s consideration of the bankruptcy stay, after the retroactive annulment, was improper. Furthermore, SFR argued that the district court erred because the sale price of the property was not inadequate, and U.S. Bank did not provide evidence that the sale was unfair or that the sale price was the result of unfairness.

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<sup>2</sup> LN Mgmt. LLC Series 5105 Portraits Place v. Green Tree Loan Servicing LLC, 133 Nev. 394, 395, 399 P.3d 359, 359 (2017).

<sup>3</sup> In re Schwartz, 954 F.2d 569, 573 (9th Cir. 1992).

While a foreclosure sale may be set aside if a price is grossly inadequate and the sale was impacted by some irregularity, the sale will only be set aside if the low price is due to “fraud, oppression, or unfairness in the sales process.”<sup>4</sup>

### **Conclusion**

The Court concluded that it was proper for the district court to consider the automatic bankruptcy stay in the balancing of equities, but that U.S. Bank did not provide any evidence that the stay constituted unfairness in the sale of this property. The Court concluded that U.S. Bank failed to meet its burden of proof to show that no genuine issue of material fact remained, therefore, summary judgment for U.S. Bank was not proper. Furthermore, the Court concluded that summary judgment for SFR was appropriate because the sale of the property was “properly, lawfully, and fairly carried out.” Additionally, there was nothing in the record to explain why U.S. Bank did not attend the sale of the property or otherwise protect the interest U.S. Bank had in the property; and U.S. Bank failed to show how the automatic stay affected the sale price of the property.

Accordingly, the Court reversed the district court’s decision of summary judgment to U.S. Bank and remanded the case, with instructions for the district court to grant summary judgment in favor of SFR.

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<sup>4</sup> Golden v. Tomiyasu, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963).