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### Cranesbill Tr. v. Wells Fargo Bank, 136 Nev. Adv. Op. 8 (March 5, 2020)

Brittney Lehtinen

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CIVIL APPEAL: HOA LIENS, PARTIAL PAYMENTS, SUPERPRIORITY

**Summary**

The Court determined that homeowners may cure defaults as to superpriority portions of HOA liens much like first deed of trust holders; however, failure to explicitly or implicitly direct allocation of payments by either debtors or creditors requires court intervention to decide what is “just and equitable.”

**Background**

*I.*

This dispute arose when the former owner of 9352 Cranesbill Court (the Property) fell behind on her payments to the homeowner’s association (HOA) for community assessments. The HOA initiated foreclosure proceedings which involved recording a delinquent assessment lien, a notice of default, and a notice of foreclosure sale. The superpriority portion of the lien totaled \$534. After receiving the notice of delinquency, the homeowner made partial payments to the HOA in the amount of \$798.50. Although the homeowner did not specify how she wanted the HOA to apply the payments—to the superpriority or subpriority portions of the lien—if all of the homeowner’s payments were applied to the superpriority, the sale to the holder of the first deed of trust would have been rendered void. Despite the homeowner’s partial payments, she owed \$3,932.58 at the time of the foreclosure sale. The Property was purchased for \$4,900 and deeded to Teal Petals St. Trust.

Litigation contesting whether the sale extinguished the first deed of trust began between the holder of the first deed of trust, Wells Fargo Bank, N.A., and Teal Petals and its assignors. The case appeared before the district court on cross-motions for summary judgment. The district court held because the homeowner’s payments exceeded the default superpriority lien amount, the foreclosure did not extinguish the first deed of trust. As a result, the buyer’s assignee’s argument that only the first deed of trust holder could cure the superpriority lien default was rejected and summary judgment was granted to Wells Fargo and denied to Teal Petals.

**Discussion**

*II.*

Teal Petals, Appellant(s), asserted the homeowner’s payments could not cure the default on the superpriority because it was in default when the foreclosure sale occurred and that sale extinguished Wells Fargo’s first deed of trust. Teal Petals alternatively argued that even if the homeowner’s payments could cure the superpriority default, it was not cured in this case because there was no evidence the homeowner or the HOA allocated the payments to the superpriority. Wells Fargo contended the district court correctly determined the homeowner and the first deed of trust holder could cure the superpriority lien default.

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<sup>1</sup> By Brittney Lehtinen.

The Supreme Court of Nevada reviews grants or denials of summary judgment de novo and determines summary judgment is appropriate if the pleadings viewed in the light most favorable to the nonmoving party demonstrate that no genuine issues of material fact remain in dispute.<sup>2</sup>

#### *II.A.*

The district court determined NRS Chapter 116 does not limit who can cure the default on a superpriority lien and that it was possible for the homeowner's payments to cure the default in this case. The Appellants argued the district court erred because NRS 116.3116(2), the superpriority lien statute, requires first deed of trust holder to cure such defaults.

Appellants relied on reports from the Joint Editorial Board for Uniform Real Property Acts to argue only the first deed of trust holder could cure the superpriority default; however, they failed to provide binding legal authority or statutory language requiring the first deed of trust holder to do so. Moreover, the Appellants did not provide binding legal authority prohibiting homeowners from curing such liens. The Court noted that homeowners are in fact incentivized to cure superpriority defaults to preserve the deed of trust. Relying on NRS Chapter 116, the Court declined to find statutory support for Appellants' arguments and found that both the first deed of trust holder and homeowner have the option to pay off superpriority lien defaults. Thus, the Court affirmed the district court holding that the homeowner could cure the default.

#### *II.B.*

Appellants further argued that if homeowners can cure superpriority defaults, the homeowner in this case did not do so because her payments were less than the full delinquent lien amount. Appellants also argued no evidence was produced to show the HOA applied the homeowner's payments to the superpriority. Wells Fargo argued the payments cured the superpriority default because the amount of the payments exceeded the superpriority portion.

The Court relied on *Able Electric, Inc. v. Kaufman*, which addresses rules that courts follow when deciding how to allocate partial payments. *Able Electric* states generally that debtors have the right to make and direct an appropriation of partial payments, but when the debtor does not direct the application of payments, the creditor may make the determination.<sup>3</sup> If neither creditor nor debtor makes a specific application of payment, it becomes a matter for the court to decide using basic principles of justice and equity to reach a fair result.<sup>4</sup> When applying the *Able Electric* rule, this court has determined that "equity and justice" is best served through a disposition most favorable to the creditor at the time of appropriation.<sup>5</sup>

Resolving this issue may vary depending on how the district court classifies the unpaid HOA assessments and other costs the homeowner was required to pay—whether they were on a running account and thus a single debt or multiple accounts. If the district court considers them to be multiple accounts where neither debtor nor creditor exercised the power to direct application of payment, the payment is to be applied to debts the creditor would have applied it to with regard to

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<sup>2</sup> *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

<sup>3</sup> 104 Nev. 29, 30–32, 752 P.2d 218, 220.

<sup>4</sup> *Id.* at 32, 752 P.2d at 220.

<sup>5</sup> *Id.* at 33, 752 P.2d at 220.

the interest of third persons, the debtor, and the creditor.<sup>6</sup> Generally, in that case, the payments are allocated to debts to third persons.<sup>7</sup>

### *II.C.*

The Court briefly discussed the parties' failing arguments deciding 1) even if Teal Petals qualifies as a bona fide purchaser for value, such status does not override the void sale resulting from a foreclosure sale proceeding despite a cured default and 2) Wells Fargo cannot argue the sale should be set aside as commercially unreasonable because the district court did not include that determination in its order and this court does not address issues the district court did not directly resolve.<sup>8</sup>

### **Conclusion**

### *III.*

The Supreme Court of Nevada affirmed the district court's legal determination that both homeowners and first deed of trust holders can cure superpriority lien defaults; however, the case was vacated and remanded for the parties to brief and for the district court to determine the proper allocation of the homeowner's partial payments.

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<sup>6</sup> Restatement (Second) of Contracts § 260(1) (2019).

<sup>7</sup> *Id.* at § 260(2)(a).

<sup>8</sup> *Yellow Cab of Reno, Inc. v. Second Judicial Dist. Court*, 127 Nev. 583, 592 n.6, 262 P.3d 699, 704 n.6 (2011).