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Berberich v. Bank of America, 136 Nev. Ad. Op (Mar. 26, 2020)

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Summary

The Supreme Court of Nevada considered whether a quiet title action from a foreclosure sale was barred by NRS 11.080 because Berberich was in possession of the property for five years before commencing the action. The Court held that the limitations period outlined in NRS 11.080 will not run against an owner who is in undisputed possession of the land.

Background

Fernandez borrowed money from Bank of America to purchase a home, but stopped paying the HOA assessments. A notice of default was recorded in November 2010 which later resulted in a foreclosure sale. Berberich purchased the property in August 2011. Six and a half years later, Berberich filed a quiet title action, seeking a judicial declaration that the HOA foreclosure extinguished the deed of trust and an injunction prohibiting the defendants from attempting to foreclose on the deed of trust.

Bank of America moved to dismiss, claiming that the complaint was untimely under NRS 11.080. They argued that this limitation period began when Berberich purchased the property, and was thereby time-barred. Berberich argued that this statute did not bar his quiet title action because it did not apply to a party in possession of real property.

The district court granted Bank of America's motion to dismiss. Berberich appealed.

Discussion

Previously, NRS 11.080 provides a five-year statute of limitations that governs quiet title actions.² The issue in front of this Court is when that limitations period would be triggered based on the interpretation of NRS 11.080.

The first thing to consider is the plain meaning of the statute. After analyzing the plain language of the statute, the Court clarified that the limitations period provided by NRS 11.080 only begins to run when the plaintiff has been deprived of ownership or possession of the property. This does not include a plaintiff seeking to quiet title while still seized or possessed of the property.

The Court therefore concluded that the district court did not consider a crucial inquiry: the fact that the statute of limitations ran from the time Berberich's ownership or possession of the property was disputed.

Conclusion

NRS 11.080 generally will not bar a property owner who is in possession of the property from bringing forth a claim for quiet title. However, the limitations period will begin to run once the owner has notice of disturbed possession. The district court's dismissal is reversed and remanded.

¹ By Mia Mallette.

² *Las Vegas Dev. Grp., LLC v. Blaha*, 134 Nev. 252, 257, 416 P.3d 233, 237 (2018); *Gray Eagle*, 133 Nev. At 27, 388 P.3d at 232; see also *Kerr v. Church*, 74 Nev. 264, 272-73, 329 P.2d 277, 281 (1958).