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**Anthony S. Noonan IRA, LLC v. U.S. Bank, 136 Nev. Adv. Op. 41  
(July 9, 2020)**

Michael McGrady

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## CIVIL APPEAL: SUPERPRIORITY AND HOA LIENS

### **Summary**

In an opinion drafted by Justice Silver, the Nevada Supreme Court considered whether a Homeowner's Association ("HOA") lien under NRS. § 116.3116 can include the entire amount of a yearly assessment as a superpriority debt.<sup>2</sup> The Court concluded that a yearly assessment that became due in the nine months preceding the HOA's notice of delinquent assessments is entitled to superpriority status in its entirety.

### **Background**

This case arose when homeowners did not pay their 2011 HOA fees. The HOA recorded a notice of lien for delinquent assessments in April 2011. Respondent U.S. Bank, beneficiary of the first deed of trust on the property, requested the superpriority amount and paid \$162 to the foreclosure agent in August 2011, representing nine out of the 12 months of assessments. The HOA continued with the foreclosure, and appellants purchased the property in 2014. Noonan filed a complaint against U.S. Bank seeking to quiet title. The district court granted U.S. Bank's summary judgment motion, concluding that Nevada law limited the superpriority portion of the HOA lien to nine months' worth of assessments. U.S. Bank paid this amount; therefore, the district court declared the foreclosure did not extinguish U.S. Bank's deed of trust and Noonan took the title subject to said trust.

### **Discussion**

NRS § 116.3116(2) splits a lien into two pieces, one of which is a superpriority that is prior to all security interests.<sup>3</sup> The statute finds that the expenses of the superpriority portion are those "which would have become due in the absence of acceleration during the 9 months immediately preceding an action to enforce the lien."<sup>4</sup> The Court finds the language in this statute to be plain and unambiguous, therefore it is appropriate to apply the statute's plain language.<sup>5</sup> As such, if the HOA imposes yearly, rather than monthly, assessments, it is only important that the HOA's assessment would have become due no more than nine months preceding the notice of delinquent assessments. In this scenario, the entire assessment amount can have superpriority status if it became due within the nine-month period.

The Court ruled that a yearly assessment is not considered an "acceleration," as described in the statute.<sup>6</sup> To accelerate the payment, the HOA must have either quickened or shortened the duration of the payment. Here, the fees were always due annually. Because U.S. Bank did not tender the entire yearly assessment amount, its tender did not cure the superpriority default.

### **Conclusion**

The Court found no other basis for the district court's summary judgment order in favor of U.S. Bank, therefore reversed and remanded for further proceedings consistent with this decision.

<sup>1</sup> By Michael McGrady.

<sup>2</sup> NEV. REV. STAT. § 116.3116 (2009).

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

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

<sup>5</sup> *Leven v. Fry*, 123 Nev. 399, 403, 168 P.3d 712, 715 (2007).

<sup>6</sup> NEV. REV. STAT. § 116.3116 (2009).