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JP Morgan Chase Bank v. SFR Invs. Pool 1, 136 Nev. Adv. Op. 68 (Oct. 29, 2020)

Cecilia Diaz

JP Morgan Chase Bank v. SFR Invs. Pool 1, 136 Nev. Adv. Op. 68 (Oct. 29, 2020)[1]

FEDERAL FORECLOSURE BAR UNDER THE HOUSING AND ECONOMIC RECOVERY ACT (HERA) – STATUTE OF LIMITATIONS

Summary

This Court has previously held that the Federal Foreclosure Bar preempts NRS 116. 3116 and that a first deed of trust that secures a loan owned by the Federal Housing Finance Agency (FHFA) or by a federal entity under the FHFA conservatorship is not extinguished by a homeowner's association foreclosure sale.[2] However, this Court has not addressed what statute of limitations applies to an action brought to enforce the Federal Foreclosure Bar. The Housing and Economic Recovery Act (HERA) is the federal law that enacted the Federal Foreclosure Bar and sets out a statute of limitations depending on whether the action brought sounds in contract or tort. The underlying claims here sound in contract. HERA provides a six-year statute of limitations for claims sounding in contract, the servicer commenced the action within the six years of the foreclosure sale, the date the parties agree triggered the running of the statute of limitations. The district court's summary order is reversed. Since the loan servicer sufficiently owned the subject loan, the matter is remanded to the district court to enter judgment in favor of the servicer.

Facts and Procedural History

On March 1, 2013 SFR Investments Pool 1, LLC purchased the nonparty homeowner's property when the HOA held a foreclosure sale due to the homeowner's failure to pay their HOA assessments. On November 27, 2013, the appellant JPMorgan Chase Bank (Chase) filed a complaint looking for a declaration that the first deed of trust survived the sale for quiet title. Chase moved to amend its reply to rely on the Federal Foreclosure Bar on February 2, 2016. The district court granted the motion and an amended complaint was filed on March 9, 2016.

The parties moved for summary judgment. Chase offered proof that it was servicing a loan for Freddie Mac, which had been placed on FHFA conservatorship in 2008, and argued that the first deed of trust survived under the Federal Foreclosure Bar. The district court found that Chase sufficiently showed that Freddie Mac owned the loan when the foreclosure took place, but a three-year statute of limitations applied, and Chase had missed the deadlines because it was not until the amended complaint was filed that Chase mentioned the Federal Foreclosure Bar. The district court therefore entered summary judgment in favor of the SFR on the basis that the foreclosure sale extinguished the deed of trust. Chase appeals that decision, and FHFA filed an amicus brief in favor of Chase.

Discussion

The Federal Foreclosure Bar was enacted by HERA.[3] HERA specifically sets out a statute of limitations period based on whether an action involves a contract claim or a tort claim.[4] When

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[1] By Cecilia Diaz.

[2] Saticoy Bay LLC Series 9641 Christine View v. Fed. Nat'l Mortg. Ass'n (Christine View), 134 Nev. 270, 272–74, 417 P.3d 363, 366–68 (2018).

[3] *See* 12 U.S.C. § 4501 et seq. (HERA); Nationstar Mortg., LLC v. SFR Invs. Pool 1, LLC, 133 Nev. 247, 250–51, 396 P.3d 754, 757 (2017) (discussing HERA and the Federal Foreclosure Bar).

[4] 12 U.S.C. § 4617(b)(12).

the facts of a case are not in dispute, as they are here, the application of the statute of limitations is a questions of law that is reviewed de novo.[5]

HERA's statute of limitation applies even if the FHFA and the entities it regulates are not parties

First addressed is whether HERA applies a statute of limitations in this case. Claims brought under the FHFA are subject to HERA's statute of limitations.[6] Confronted with the argument that the provision did not apply to the action brought by Chase, the district court found HERA's limitations applied despite whether the FHFA brought action or was joined as a party. This Court agrees with the district court.

Chase, as a loan servicer, can raise the Federal Foreclosure Bar on the FHFA's behalf without joining the FHFA or the entity that owns the loan as party to this action.[7] Under HERA, the FHFA can authorize a loan servicer to act on its own behalf by contracting with the loan servicer or relying on the entity's contractual relationship with the loan servicer so that the authorized loan servicer has standing to protect the FHFA's interest.[8] Therefore, the statute of limitations would apply as if the FHFA brought an action itself when the contractually authorized loan servicer brings an action on behalf of the FHFA instead.[9] Irrespective of who joined as a party, the statute of limitations set out by HERA governs actions brought by a mortgage loan servicer to enforce the Federal Foreclosure Bar. Chase's action was brought in a timely manner under HERA's statute of limitations, and now the appropriate limitations period must be determined.

Chase's claims sound in contract, and therefore a six-year limitations period applies.

As a threshold matter, to determine the statute of limitation, HERA asks whether the action brought sounds in tort or contract regardless if the action does not readily fit into one of the two categories.[10] It is not disputed that a contract exists between SFR and Chase. Chase's complaint does not allege a breach of duty by SFR or any other party, and Chase seeks no damages based on injury to property or a person, as a claim in tort would normally allege.[11] The descriptions for claims sounding in either tort or contract do not fit the claims Chase brought forward in its complaint. This Court has determined that claims looking to enforce the Federal Foreclosure Bar sound in contract rather than tort.[12] Despite a lack of contract between Chase and SFR, Chase's quiet title claims are dependent on Freddie Mac's lien on the property, which results in an interest by contract.[13] The mortgage lien allows a loan servicer to declare that the Federal Foreclosure Bar prevents a foreclosure sale from extinguishing a deed of trust, because the purpose of a suit is to protect the mortgage contract that secures the deed of trust.[14] Federal law states that courts cede to the characterization that results in the longer limitations period.[15] HERA dictates a longer statute of limitations period for contract claims than tort claims.[16]

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[5] Holcomb Condo. Homeowners' Ass'n v. Stewart Venture, LLC, 129 Nev. 181, 186–87, 300 P.3d 124, 128 (2013).
[6] 12 U.S.C. § 4617(b)(12).
[7] Nationstar, 133 Nev. at 251, 396 P.3d at 758.
[8] *Id*. at 250, 396 P.3d at 757.
[9] M & T Bank v. SFR Invs. Pool 1, LLC, 963 F.3d 854, 857–58 (9th Cir. 2020).
[10] 12 U.S.C. § 4617(b)(12); M & T, 963 F.3d at 858.
[11] M & T, 963 F.3d at 858.
[12] Stanford Ranch, Inc. v. Md. Cas. Co., 89 F.3d 618, 625 (9th Cir. 1996).
[13] M & T, 963 F.3d at 858.
[14] FHFA v. LN Mgmt. LLC, Series 2937 Barboursville, 369 F. Supp. 3d 1101, 1110 (D. Nev. 2019).
[15] Wise v. Verizon Commc'ns Inc., 600 F.3d 1180, 1187 n.2 (9th Cir. 2010); *see also* M & T, 963 F.3d at 858.
[16] 12 U.S.C. § 4617(b)(12).

HERA states that if a claim sounds in contract the limitations period is either six years or the limitation applied by State law, whichever is longer.[17] Nevada law imposes a six-year statute of limitation on claims arising out contract.[18] From the foreclosure sale, Chase had six years to bring its claims.

Within the six-year limitations period, Chase brought a timely action seeking to protect the FHFA's interest by enforcing the Federal Foreclosure Bar irrespective of whether the filing date is that of the original complaint or the amended complaint. The district court erred by entering summary judgment in favor of SFR.[19]

Chase adequately proved Freddie Mac's ownership of the mortgage loan

SFR argues that even if Chase filed the action timely, this Court should affirm the summary judgment because Chase did not prove that Freddie Mac's interest in the mortgage loan by the first deed of trust. SFR moved to strike evidence in support of Freddie Mac's ownership of the loan, arguing that Chase improperly disclosed evidence after discovery ended. The district court granted SFR's motion to strike the evidence. On appeal SFR argue that in striking the evidence the district court lacked evidentiary support to affirm summary judgment in favor of Chase. Chase argued that the district court abused its discretion by granting the SFR's motion to strike. Chase further argues that even without the evidence provided after discovery ended, there is enough evidence presented to show Freddie Mac's ownership of the loan.

The district court did not abuse its discretion by granting SFR's motion to strike. Despite the claims Chase made that SFR knew it was relying on the Federal Foreclosure Bar before discovery ended, Chase failed to disclose the evidence to prove Freddie Mac's ownership of the loan until the close of discovery and did not attempt to reopen discovery. No justification for the latent disclosure was given, and the late disclosure of the evidence is not harmless.[20]

Chase is entitled to summary judgment if it can present evidence that it is entitled to judgment as a matter of law. The Court determined that Chase presented sufficient evidence. Chase presented a sworn declaration from a former employee to prove that Freddie Mac purchased the loan in 2006, still owned it, and that Chase serviced the loan on Freddie Mac's behalf since his purchase. The employee also authenticated Chase's business records. No evidence was presented to rebut Chase's evidence, Freddie Mac's ownership of the loan is sufficiently established.[21] SFR argument that the district court's factual findings on this point is insufficient such that a remand is necessary is unconvincing.

Conclusion

The underlying claims here sound in contract. HERA provides a six-year statute of limitations for claims sounding in contract, Chase commenced the action within the six years of the foreclosure sale, the date the parties agree triggered the running of the statute of limitations. The district court's summary order is reversed. Since Chase sufficiently owned the subject loan, the matter is remanded to the district court to enter judgment in favor of Chase.

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[17] 12 U.S.C. § 4617(b)(12)(i).
[18] NEV. REV. STAT. 11.190(1)(b) (2018).
[19] Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).
[20] Nev. R. Civ. P. 37(c)(1).
[21] Daisy Tr. v. Wells Fargo Bank, N.A., 135 Nev. 230, 234-36, 445 P.3d 846, 850-51 (2019); NEV. REV. STAT. 51. 135 (2018).