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**Anthony S. Noonan Ira, LLC v. U.S. Bank Nat'l Ass'n EE, 137 Nev.
Adv. Op. 15 (Apr. 15, 2021)**

Brady Bathke

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SUPERPRIORITY LIENS

Summary

The Nevada Supreme Court considered whether the district court properly applied Nevada's "superpriority lien" statute. The Court held that the district court appropriately granted summary judgment for respondents because, under NRS 116.3116(2), respondents were not required to pay more than nine months of assessments to satisfy the superpriority portion of the HOA's lien.

Background

When a homeowner did not pay their 2011 HOA annual assessment fee of \$216, the HOA recorded a notice of lien for delinquent assessments. The predecessor of respondents paid \$162 to the foreclosure agent, representing nine out of twelve months of assessment fees. However, the HOA continued with the foreclosure sale and appellants purchased the property for \$50,100. Appellants then filed a complaint against respondents, seeking to quiet title to the property. The district court concluded that the tender of \$162 cured the superpriority default and the foreclosure sale did not extinguish respondents' first deed of trust. The court reasoned that the superpriority portion of an HOA's lien was limited to nine months' worth of assessments under Nevada law.

Discussion

Appellants argued that NRS 116.3116(2) gave the HOA's entire annual assessment superpriority status because that assessment became due in the nine months preceding the notice of delinquent assessment. Specifically, the appellants argued that there was no "acceleration" because the assessments were due in their entirety on an annual basis.

The Court rejected appellant's argument because it renders the phrase "in the absence of acceleration" meaningless.² Instead, the statute's use of "in the absence of acceleration" is focused on scenarios such as this one—where the HOA imposed an annual assessment, but a secured lender paid nine months' worth of assessments.

Conclusion

When an HOA imposes an annual assessment, the superpriority portion of the HOA's lien can be satisfied by paying nine months' worth of assessments, because there has been an "acceleration" under NRS 116.3116(2). The district court correctly applied Nevada's "superpriority lien" statute to determine that the HOA's foreclosure sale did not extinguish the first deed of trust and that appellants took title to the property subject to that deed of trust. The Court affirmed summary judgment in favor of respondents.

¹ By Brady Bathke.

² See *Leven v. Frey*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007).

Dissent

Justices Silver and Cadish dissented, concluding that the entire yearly assessment was subject to superpriority status. They stated that the parties relied on cases that are distinguishable from this one, specifically because those cases refer to assessments assessed monthly, not yearly. They reason that because the nine-month limitation in NRS 116.3116(2) speaks only to *which* assessments are subject to superpriority status, the yearly assessment at issue in this case was not an acceleration.