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Adam Pond

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Saticoy Bay, LLC v. Peccole Ranch Cmty. Ass’n, 137 Nev. Adv. Op. 52 (Sept. 23, 2021)¹
“INTERPRETATION” OF CC&Rs: WHEN PRETRIAL MEDIATION IS NECESSARY

Summary

The Nevada Supreme Court interpreted the breadth of NRS 38.310 and its applicability to complaints requiring “the interpretation, application or enforcement of any covenants, conditions or restrictions [CC&Rs] applicable to residential property or any bylaws, rules or regulations adopted by an association.”² The Court considered their decision in *Hamm v. Arrowcreek Homeowners’ Association* and determined that in order to activate the pretrial mediation requirement of NRS 38.310 a complaint must unambiguously *require* a magistrate to interpret, apply, or enforce the CC&Rs meaning when resolving the merits of the case.³ While embracing *Hamm*, the Court simultaneously overturned their past holding in *McKnight Family, LLP v. Adept Management Services, Inc.*, which expanded the influence and usage of NRS 38.310 while it was in effect.⁴

Facts and Procedural History

Bank of America, N.A. (BANA) was assigned the deed of trust to the property at issue. After a period of time, the homeowner of this property became delinquent on assessment fees owed to Peccole Ranch Community Association (“HOA”) and was served a notice of default in December 2011. Immediately after the homeowner was served this default notice, BANA tendered the amount of the required superpriority lien in order to preserve the continuing interest in the property and its deed of trust.⁵ However, the HOA rejected this offer and moved forward with an auction of the property. It was at this time that Saticoy Bay purchased the defaulted property; however, no indication was made that the property had a competing interest.

BANA ultimately filed a quiet title complaint in federal district court in 2016 where it determined that their deed of trust survived the foreclosure auction, leaving Saticoy Bay with nothing. Saticoy sued the HOA and alleged breach of the duty of good faith, conspiracy, among other claims. Respondents moved to have the court dismiss the suit for noncompliance with NRS 38.310. The district court deemed Saticoy Bay noncompliant by failing to mediate prior to filing a court action, and this timely appeal followed.

¹ Written by Adam Pond

² NEV. REV. STAT. § 38.310(1)(a) (1995).

³ 124 Nev. 290, 296, 183 P.3d 895, 901 (2008).

⁴ 129 Nev. 610, 615, 310 P.3d 555, 558 (2013).

⁵ See NEV. REV. STAT. § 116.3116 (2020).

Discussion

The district court's order was a final, appealable judgment

Respondents first contend that the Court lacks jurisdiction to hear the appeal, as it was dismissed without prejudice. However, the Court agreed with the Eleventh Circuit's decision that such a dismissal without prejudice has "the practical effect... to deny the plaintiffs judicial relief" until they have sought out all applicable administrative remedies."⁶ Nonetheless, the Court held that such a dismissal – when paired with noncompliance with NRS 38.310 – constitutes an appealable final order.

Determining NRS 38.310's scope on limitation of filing civil actions

The Court focused on two core questions: (1) exactly how connected must a claim be to the CC&Rs of a residential property in order to trigger NRS 38.310's requirements? (2) should the courts dismiss an entire suit if a claim merely *relates* to the CC&Rs, or only those claims barred by statute?

In regards to the first question, the Court analyzed their decision in *Hamm* and clarified that only those cases that strictly *require* interpretation, application, or enforcement of CC&Rs in resolving the merits of a claim fall within the purview of NRS 38.310. In that case, the plaintiffs explicitly asked the Court to interpret the CC&Rs in order to see if they were liable for fees to be paid on vacant lots.⁷ Since such a request requires the court to determine the meaning of the CC&R at issue, plaintiffs must first submit their claim to mediation before launching a civil action through the courts.⁸

Importantly, the Court revisited the decision made in *McKnight*, where they originally interpreted NRS 38.310 more broadly. In that case, the court determined that the multiple claims brought by the plaintiff were barred under the statute because they "required the district court to interpret *regulations* and *statutes* that contained conditions and restrictions applicable to residential property."⁹ The Court held that *McKnight* incorrectly extended the scope of NRS 38.310; the language "covenants, conditions, or restrictions" was improperly understood to mean *all* conditions and restrictions on property, no matter where they're derived from. "Covenants, conditions, or restrictions" is a term of art. For the purposes of NRS 38.310, the phrase applies to those rules contained in an HOA's recorded declaration or deed.¹⁰

NRS 38.310's principal function is to prevent Nevada courts from inserting themselves into CC&R disputes before such disagreements have had the chance to be resolved through

⁶ Peterson v. BMI Refractories, 132 F.3d 1405, 1411 (11th Cir. 1992).

⁷ *Hamm*, 124 Nev. At 296.

⁸ *Id.*

⁹ McKnight Family, LLP v. Adept Mgmt. Servs., 129 Nev. 610, 615, 310 P.3d 555, 558 (2013).

¹⁰ See NEV. REV. STAT. § 116.2105; NEV. REV. STAT. § 116.3102(3); cf. Hawk v. PC Vill. Ass'n, Inc., 309 P.3d 918, 922 (Ariz. Ct. App. 2013) ("CC & Rs [sic] are contracts that create enforceable property rights and obligations that may run with the land.").

mediation. The Court held, therefore, that those disputes in which the facts surrounding the complaint merely *involve* the interpretation, application, or enforcement of CC&Rs – rather than require – do not relate to the CC&Rs for the purposes of NRS 38.310.

As for the second question, the Court held that a district court is only required to dismiss those claims that fail to comply with the statute; any remaining claims may be allowed to proceed to through the court unaffected.

The district court erred in dismissing Saticoy Bay's action

Given that the Court rejected the broad interpretation of NRS 38.310 used in *McKnight*, the Court declines to implicate the statute in the present action, as none of Saticoy Bay's claims required the district court to interpret, apply, or enforce the CC&Rs at issue.

Saticoy Bay first alleged a claim of misrepresentation on the part of the HOA for failing to disclose that BANA had attempted to tender the superpriority lien prior to the auction. The Court accepts that the sale occurred because the original homeowner failed to pay HOA fees, which are explicitly mentioned and required in the HOA's CC&Rs. However, this merely established that the claim's factual background involved the CC&Rs; nothing in the facts demanded that the Court interpret, apply, or enforce the terms of the CC&Rs. The basis of the misrepresentation claim hinges on an allegation of breached duty. Such a duty originates in common law, not the CC&Rs.

Saticoy Bay's second claim centered on the HOA's breach of the duty of good faith. Like the first claim, this too is based on an element of nondisclosure which would not require a magistrate to analyze the CC&Rs at issue. Respondents insist that *McKnight* supports the contention that this claim was properly dismissed under NRS 38.310, but the Court took issue with this assertion for two reasons: (1) the breach in *McKnight* challenged the authority of the CC&Rs (2) *McKnight* incorrectly stated that the breach-of-good-faith *itself* was a condition or restriction on residential property as described in NRS 38.310(1)(a).

Saticoy Bay's third claim alleged conspiracy, stating that the HOA and its trustee conspired to commit the wrongs outlined in the prior two claims. Just as the other claims do not require the Court to look at the CC&Rs to decide the merits of the case, this third claim is likewise unrelated to interpreting, applying, or enforcing any part of the CC&R. As such, the statute is inapplicable to this claim.

The last claim made by petitioners alleged that NRS Chapter 113 applied to HOA foreclosure sale disclosures. Just like the first three claims, the Court again failed to see any explicit connection between this particular claim and the language of NRS 38.310 which would trigger the mediation requirement.

Conclusion

The Nevada Supreme Court concluded that none of the claims alleged by Saticoy Bay fell under the umbrella of NRS 38.310. Because of this, the district court erred in dismissing the claim on those grounds. The Court noted that magistrates should make a determination into whether the merits of a particular case would necessitate interpreting, applying, or enforcing CC&Rs or association rules. If a complaint is duly dismissed under NRS 38.310 without prejudice, said complaint is eligible for appeal. In the present case, the Court reverses the district court's order and remands for consideration of other rationales for dismissal in respondents' motion.