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TRP Fund VI, LLC v. PHH Mortgage Corp., 138 Nev. Op. 21 (Mar. 31, 2022)

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Civil Procedure: Requirements for Requesting Stay or Injunctive Relief Pending Appeal

Summary

Even if a district court has already denied a movant's preliminary injunction, the movant must still seek stay or injunctive relief pending appeal in the district court. The movant can only waive this requirement by demonstrating that asking the district court for relief first is truly impracticable.

Background

Appellant TRP Fund IV, LLC, sought a preliminary injunction to enjoin respondents PHH Mortgage Corporation and Federal National Mortgage Association from foreclosing under the first position deed of trust on its property. TRP filed an emergency motion for stay and/or injunction seeking relief before a foreclosure sale. An NRAP 27(e) certificate, which must accompany emergency motions, was not attached to the stay motion but was attached to a simultaneously filed motion to exceed the page limit. Respondents timely filed a response to the stay motion arguing that because TRP Fund failed to include the NRAP 27(e) certificate with the emergency motion, TRP Fund did not attempt to comply with the NRAP 27(e) requirement to notify respondents of its intent to seek emergency relief before it filed the stay motion.

Discussion

When relief is needed within fourteen days to avoid harm to parties, NRAP 27 requires the movant to take certain enumerated steps to ensure both the parties and the court are notified of the emergency and the information needed to process the motion is available. NRAP 27(e)(1) requires the movant before filing the motion to "make every practicable effort to notify the clerk of the Supreme Court, opposing counsel, and any opposing parties." When the movant is seeking a stay or injunction, they must first move for such relief in the district court per NRAP 8(a)(1).

The Court held that TRP Fund's NRAP 27(e) certificate failed to meet the stated requirements because it was not attached to the emergency stay motion, and TRP Fund did not explain its statement nor attempt to notify respondents of the emergency prior to filing. Additionally, TRP Fund did not first seek relief in the district court and failed to demonstrate that doing so was impracticable.

TRP Fund claimed that seeking a stay in district court was unwarranted because the district court denied a preliminary injunction. "While considerations in determining whether to grant a preliminary injunction overlap with those in determining whether to grant a stay or injunction pending appeal, they are not the same."² "[I]n determining whether to grant a stay or injunction pending appeal, the district court may also take into consideration the purposes of the requested

¹ By Valarie Kuschel.

² *Compare Excellence Cmty. Mgmt., LLC v. Gilmore*, 131 Nev. 347, 350-51, 351 P.3d 720, 722 (2015), with NRCF 62(c), and NRAP 8(c).

stay or injunction, the novelty or unsettledness of a legal issue, or any other issues of security or harm.”

Here, the district court denied a preliminary injunction based on its review of the merits but did not weight other factors that may weigh in favor of a stay or injunction pending appeal. Therefore, unless movants can demonstrate that first seeking relief from the district court is truly impracticable, they are required to seek stay and injunctive relief pending appeal in the district court.

Conclusion

In conclusion, TRP Fund’s failure to show asking for relief in district court was truly impracticable bars relief, and the Supreme Court denied the emergency motion for stay or injunction.