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SFR Inves. Pool 1, LLC. v. U.S. Bank, N.A. 138 Nev. Adv. Op. 22 (April 7, 2022)

Anne-Greyson Long

SFR Inves. Pool 1, LLC. v. U.S. Bank, N.A. 138 Nev. Adv. Op. 22 (April 7, 2022)[1]

Notice of Default: NRS 106.240 10-year time frame

Summary

The specific question presented in this case is what effect a notice of rescission has on NRS 106.240's ten-year time frame when it is recorded after a notice of default. A notice of rescission rescinds a previous notice of default. The notice of rescission effectively cancelled the acceleration triggered by the notice of default such that the ten-year time period is reset.

Opinion

Thousands of Nevada homeowners defaulted on their loans following the financial crisis of the 2000s. Subsequently the lenders of these homes recorded notices of default which resulted in accelerated balances making the loan "wholly due" for purposes of NRS 106.240.[2] Roughly ten years after the notices of default were recorded and the loans have remained unpaid, disputes arose between property owners and lenders over whether NRS 106.240 eliminates the deeds of trust securing those loans such that the lenders no longer have any security interest in the properties. The Court here answers the question of what effect a notice of rescission has on NRS 106.240's time frame when it is recorded after a notice of default. The court previously answered this question in *Glass v. Select Portfolio Servicing, Inc*., reasoning that because a notice of rescission rescinds a previously recorded notice of default, the notice of rescission "effectively cancelled the acceleration" triggered by the notice of default, such that NRS 106.240s ten-year period was reset.[3] Consistent with *Glass*, this court again affirms the district court's judgment in this case. Here, the appellant seeks a rehearing, arguing that the court misapprehended material facts. The court disagreed and denied rehearing.

Facts and Procedural History

In 2005, Magnolia Gotera (nonparty) obtained a loan from Countrywide Home Loans (nonparty). Countrywide reserved the right to accelerate the unpaid balance should Gotera default on her loan. Gotera stopped making payments on the loan and homeowner's association (HOA) dues in 2007 resulting in Countrywide recording a notice of default.[4] Later the same year, Countrywide recorded a notice of rescission that stated that the notice of default was being rescinded. Gotera's loan was then assigned to U.S. Bank. In 2011, Countrywide's agent tendered

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[1] By Anne-Greyson Long.

[2] NEV. REV. STAT. 106.240.

[3] *See generally* Glass v. Select Portfolio Servicing, Inc. No. 78325, 2020 WL 3604042 at *1 (Nev. July 1, 2020) (Order of Affirmance).

[4] This notice explained that Countrywide "has declared and hereby does declare all sums secured [by the deed of trust] immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby."

the superpriority portion of the HOA's lien to the HOA agent, curing the superpriority default.[5] When the HOA's remaining balance was not paid, the HOA held a foreclosure sale in 2014. At the sale, appellant SFR Investments placed the winning bid of $59,000. After the sale, the HOA agent filed the underlying interpleader action, asking the district court how the proceeds should be disbursed. SFR and the bank filed answers asserting claims against each other for quiet title, and disputed whether SFR owned the property free of the bank's deed of trust. The district court held a bench trial in 2020, at which evidence was introduced showing that Countrywide had made a superpriority tender. At the close of the bank's case in chief, SFR filed a motion for judgment on partial pleadings under NRCP 52(c). SFR argued that it was entitled as a matter of law to a judgment that the bank's deed of trust no longer encumbered the property based on NRS 106.240. The district court denied SFR's NRCP 52(c) motion and granted judgment for the bank, on grounds that the superpriority tender preserved the deed of trust and that SFR owned the property subject to the deed of trust. The district court rejected SFR's arguments regarding NRS 106.240 on alternative grounds. The district court reasoned that NRS 106.240's ten-year time frame was tolled by virtue of the bank asserting its claim for quiet title. The district court found that the statute does not apply in cases like this one because SFR was not personally liable and not in a borrower/lender context.

Discussion

Under NRAP 40(C)(2)(B) the court will consider a petition for rehearing "[w]hen the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case."[6] SFR makes two arguments that this court misapprehended material facts in the record. One argument focuses on language in the notice of default, the other focuses on language in the notice of rescission. The court is not persuaded by either of SFR's arguments. The Court concluded in this case that the relied-upon language did not have the effect SFR proffers. Further, the Court concludes that the statement, "this rescission . . . shall be deemed to be only an election without prejudice not to cause a sale to be made pursuant to such [notice of default]" does not change the fact that the bank rescinded the notice of default. Nor is it self-evident from any of the remaining language that Countrywide was trying to rescind the document that accelerated the loan while also keeping the loan accelerated.

Conclusion

The Court denied the rehearing on the order affirming the district court's judgment in a quiet title action. At issue is what effect a notice of rescission has on NRS 106.240's ten-year time frame when it is recorded after a notice of default. The Court noted its previous unpublished opinion decision in *Glass v. Select Portfolio Servicing, Inc*. A notice of rescission rescinds a previous notice of default. The notice of rescission effectively canceled the acceleration triggered by the notice of default such that the ten-year period was reset. The appellant sought a rehearing

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[5] *See generally* Bank of Am., N.A. v. SFR Invs. Pool 1, LLC, 134 Nev. 604, 605, 612-13, 427 P.3d 113, 116, 121 (2018) (holding that tendering the superpriority portion of an HOA's lien cures the default as to that portion of the HOA's lien by operation of law and that an ensuing HOA foreclosure sale does not extinguish a first deed of trust).

[6] NRAP 40(C)(2)(B)

arguing that the district court misapprehended material facts. The Court disagreed and denied the rehearing.