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Deutsche Bank Tr. Co. Ams. v. SFR Invs. Pool 1, LLC, 140 Nev. Adv. Op. 43 (Jun. 27, 2024)¹

THE HOA MAY NOT ALLOCATE PAYMENT IN A WAY THAT RESULTS IN A FORFEITURE OF THE FIRST DEED OF TRUST HOLDER'S INTEREST AND DEPRIVES THE HOMEOWNER OF SECURITY IN THE HOME.

Summary

The Supreme Court of Nevada considered whether a homeowner's partial payments failed to satisfy the superpriority lien, meaning that the subsequent HOA foreclosure extinguished the first deed of trust. The Court examined the parameters set forth in *Cranesbill*² which provided for allocation of a defaulting homeowner's partial payments to an HOA superpriority lien. Court's applying *Cranesbill* must: (1) look for direction of the homeowner allocating payment at the time payment was made, (2) then, if the homeowner fails to provide direction, a court must determine if the HOA allocated the payment prior to the dispute over the allocation, and (3) if the allocation by neither homeowner nor the HOA resolves the question, the court considers principles of justice and equity which presume that the superpriority lien is paid first, unless the court has a compelling reason to conclude otherwise. Here, after the Court's analysis of *Cranesbill*, the Court held that absent express direction of the homeowner to the contrary, the HOA may not apply a payment in a way that jeopardizes the first deed of trust holder's interest and deprives the homeowner of the security on the homeowner's mortgage.

The Supreme Court of Nevada disagreed with the district court's conclusion that the homeowner's partial payments failed to satisfy the superpriority lien, meaning that the subsequent HOA foreclosure extinguished the first deed of trust. Therefore, the Court reversed the lower judgment and remanded for entry of judgment for Deutsche Bank.

Background

In 2006, Anthony Swaggerty missed several monthly HOA dues payments on his home. By March 2007, the HOA's foreclosure agent and trustee Nevada Association Services ("NAS") filed a notice of lien, the superpriority portion of the HOA's lien was \$523. In June 2008, Swaggerty declared Chapter 13 bankruptcy and set up a payment plan to pay off his debts. The next month, he paid \$91 directly to the HOA, but the plan ultimately failed.

In May 2009, Swaggerty sent a request for a payment plan through NAS to settle the HOA debt. He also made a \$500 payment. NAS charged \$150 to set up the payment plan which Swaggerty agreed to at the time. Of the \$500, NAS kept \$125, sent \$125 to a title company, sent \$125 to a posting company, and forwarded \$125 to the HOA. In NAS's responses to the payment plan request, it stated that the payments would first cover current monthly HOA dues. Additionally, it had the ability to apply his payments to "assessments, penalties, if any, fines, if any, late fees, interest collection costs and other charges." Swaggerty never signed this plan; but, the following month he sent another \$500 to NAS to which NAS allocated the payment in the same manner.

In May 2011, Swaggerty, NAS, and the HOA entered into a new payment agreement where Swaggerty agreed to make monthly payments to the HOA, with current dues paid first and the rest going to NAS to pay collection costs. The HOA agreed to waive some of the fees and refrain from foreclosing if Swaggerty complied—which he did for the next two years. During that time, \$220 was applied to the delinquent HOA dues, and the parties agreed that this would apply

¹ By Toree Robinson.

² 9352 *Cranesbill Trust v. Wells Fargo Bank, N.A.*, 136 Nev. 76, 76, (2020).

to the superpriority portion of the HOA's lien. In July 2013, the HOA pursued foreclosure despite Swaggerty's compliance. NAS declined to move forward with the foreclosure and was substituted with A&K to foreclose the property. The respondent SFR Investments Pool 1, LLC, purchased the property at the foreclosure sale.

The appellant, Deutsche Bank Trust Company Americas, the holder of the first deed of trust on the property, brought a quiet title action against SFR and the HOA. Initially, the district court granted summary judgment in favor of Deutsche Bank. SFR appealed and the district court's judgment was vacated and remanded to consider the analysis in *Cranesbill* thus ruling in favor of SFR. Deutsche Bank appealed.

Discussion

We review the case de novo

The Court found it difficult to determine whether the district court resolved this matter on summary judgment or as a bench trial; however, in the Court's view, it was summary judgment. Therefore, it should be reviewed de novo. At oral argument, the parties had agreed that no material facts were in dispute when considering the *Cranesbill* analysis. Even under a more deferential standard of review following a bench trial, the Court would still conclude that the district court erred in ruling for SFR and would reverse.

Cranesbill provides a test for courts to allocate partial payments to HOA liens

Under NRS 116.3116(3)(b), up to nine months of unpaid HOA dues constitutes a superpriority lien on a property, taking priority over other interests, including the first deed of trust, while any other HOA debt remains junior.³ When an HOA forecloses on the superpriority lien, the foreclosure extinguishes all junior liens, including the first deed of trust.⁴ The Court used *Cranesbill*, examining partial payments by homeowners to the HOA and its effect on superpriority liens. *Cranesbill* considered a homeowner who made sufficient payments to the superpriority portion of the HOA lien but did not satisfy the whole amount of her HOA arrears,⁵ holding that "[p]roper allocation of partial payments" requires analysis of the intent of the parties and "the competing equities involved."⁶

Moreover, *Cranesbill* stressed that a debtor must have the right to decide what part of the debt a payment satisfies.⁷ If the debtor fails to allocate payment when payment is made, the reviewing court should consider any allocation by the creditor prior to the disagreement about the allocation.⁸ Absent clear allocation, the court must look to "the basic principles of justice and equity so that a fair result can be achieved."⁹

The HOA may not allocate payments to cause forfeitures for nonpayment on debt

Under *Cranesbill*, an HOA's right to allocate payment is not unlimited. Creditors may not selectively apply payments in a way that causes forfeiture for nonpayment on part of the

³ NEV. REV. STAT. 116.3116(3)(b).

⁴ Deutsche Bank Nat'l Tr. Co. v. Fid. Nat'l Title Ins. Co., 536 P.3d 915, 924, (2023).

⁵ *Cranesbill*, 136 Nev. at 76, 459 P.3d at 228.

⁶ *Id.* at 77, *Id.* at 229.

⁷ *Id.* at 80, *Id.* at 231.

⁸ *Id.*

⁹ *Id.*

debt.¹⁰ Similarly, the HOA may not selectively direct payment in a way that leaves the homeowner personally liable for mortgage debt without the collateral of the property. Further, in the absence of an express allocation by the debtor, the HOA may not direct payments in a way that preserves the HOA's superpriority lien at the detriment of the homeowner and the bank.

Applying Cranesbill to Swaggerty's payments shows that Swaggerty satisfied the superpriority lien

The Court considered whether Swaggerty's payments of \$91 (July 2008), \$500 (May 2009), and \$500 (July 2009) covered the \$303 remaining on the superpriority lien per Cranesbill. The district court used \$523 for the superpriority amount, and both parties agreed that Swaggerty paid at least \$220 towards the superpriority portion starting in May 2011. The Court concluded that these three payments satisfied the outstanding balance.

An analysis of Swaggerty's first payment shows that the entire payment applies to current monthly dues

Swaggerty's initial payment of \$91 to the HOA lacked specific direction, so the court cannot consider his intended direction of payment.¹¹ The HOA's allocations of the payment is also unclear from the record.¹² Therefore, the Court turned to equity principles to allocate this payment, which presume application of the payment to the superpriority lien first, absent a compelling reason.. Here, there is a compelling reason: Swaggerty had a bankruptcy plan which required him to make payments to the bankruptcy trustee to receive relief from his debts. Swaggerty sent an amount exactly equaling one month's current dues directly to the HOA, rather than to the bankruptcy trustee. Therefore, the Court concluded that the \$91 covered Swaggerty's current dues, and none applied to his superpriority lien.

An analysis of Swaggerty's second payment shows that \$150 must be allocated to setting up a payment plan, and the remaining \$350 applied to the superpriority lien

In May 2009, Swaggerty made a payment of \$500 to NAS—\$375 was retained for various fees and \$125 were sent to the HOA. No record shows how the HOA allocated that \$125. The Court found that the allocation made by the HOA and its agent prioritized the HOA's less secured debt and risked forfeiture of the others' interests through nonpayment. The creditor may not prioritize the less secured debt over the more secured bank debt, nor allocate payments that interfere with the homeowner's obligation to the first deed of trust holder.¹³ Here, the HOA risked forfeiture of the bank's and Swaggerty's interests in the home through nonpayment of the superpriority lien by diverting three-quarters of Swaggerty's payment to this less-secured portion of the debt first. Therefore, these allocations are invalid, and are not considered.

The Court concluded that \$150 of Swaggerty's payment satisfied the setup charge for the payment plan, and later turned to equity principles to allocate the remaining \$350; supporting the presumption that payments should be allocated to the superpriority lien first. The presumption is that, absent direction to the contrary, a homeowner prefers to avoid the loss of security to satisfy the homeowner's obligations to the first deed of the trust holder.¹⁴ Additionally, the homeowner generally has an obligation by agreement with the first deed of trust holder to protect the first

¹⁰ See 28 Richard A. Lord, *Williston on Contracts* § 72:10 (4th ed. 2020).

¹¹ *Id.* at 80, *Id.* at 231.

¹² *Id.*

¹³ Lord, *supra* note 10.

¹⁴ *Cranesbill*, 136 Nev. at 81, 459 P.3d at 231 n.3.

deed of trust.¹⁵ Further, the long-standing principle of paying the oldest debt first generally supports applying payments to the superpriority portion of an HOA lien—the superpriority portion typically is considered the oldest debt.¹⁶ With all these considerations, the Court held that \$350 of the payment should have been allocated to the superpriority lien based on the equity principles.

The May 2009 payment and the stipulated payments satisfy the superpriority lien

The Court found that when the \$350 from the May 2009 payment is added to the agreed upon \$220 from later payments, the amount exceeds the outstanding \$523 superpriority lien; therefore, the July 2009 does not need to be considered. Because the Court found that Swaggerty's partial payments satisfied the superpriority lien, the HOA's foreclosure on the remaining junior lien did not extinguish Deutsche Bank's deed of trust.¹⁷ The respondent, SFR, contented that it should be protected as a bona fide purchaser for value under NRS 111.180(1), but the Court rejected their argument. Subsequently, the Court concluded that SFR took the property subject to Deutsche Bank's first deed of trust.

Conclusion

Under *Cranesbill*, Swaggerty's partial payments to the HOA satisfied the HOA's superpriority lien; therefore, the foreclosure did not extinguish Deutsche Bank's first deed of trust. SFR took possession of the property subject to the deed of trust. The judgment of the district court is reversed and remanded for entry of judgment for Deutsche Bank.

¹⁵ *Id.* at 81 n.4, *Id.* at 231 n. 4.

¹⁶ *See Foster v. Marshman*, 96 Nev. 475, 479, 611 P.2d 197, 200 (1980).

¹⁷ *See SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 748, 334 P.3d 408, 412–13 (2014).