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Saticoy Bay LLC v. JPMorgan Chase Bank, 133 Nev. Adv. Op. 3 (Jan. 26, 2017)

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CIVIL PROCEDURE: COMPLAINT IN INTERVENTION

Summary

The Court held that under NRCP 41(e) a complaint in intervention is a part of an original action, and thus, the district court's dismissal of appellant's complaint was mandatory. However, the district court abused its discretion in dismissing the complaint with prejudice because the district court mischaracterized NRS 116.3116(6) as a statute of limitations when it only limits the amount of actionable unpaid HOA assessments. Finally, the Court found that appellant's subsequent action would not be barred by statute of limitations.

Background:

This matter involves the dismissal of an action contesting the ownership of three separate Las Vegas properties: Lot 21, Lot 22, and Lot 26 (the Property). In 2013, appellant Saticoy Bay LLC Series 2021 Gray Eagle Way (Saticoy) allegedly obtained titles to Lots 21 and 26 through homeowner association foreclosure deeds and through a quitclaim deed for Lot 22 on December 3, 2013. In 2012, the beneficial interest of a deed of trust recorded against the Property was assigned to respondent JPMorgan Chase Bank (JPMorgan).

In 2009, the Canyon Gate Master Association's (CGMA) took steps to foreclose on the property, but their actions were delayed by legal challenges from then owner Susan Hannaford. However, in 2013, CGMA again took steps to initiate foreclosure on the property. On May 23, 2013, Saticoy appeared at the foreclosure sale and purchased Lots 21 and 26, and in October, 2013 purportedly purchased Lot 22 directly from CGMA. In August 2013, Saticoy filed a complaint in intervention to Hannaford's pending action seeking injunctive relief, quiet title, declaratory relief, and issuance of a writ of restitution. JPMorgan filed an answer to Saticoy's complaint in intervention. In 2015, the District court dismissed Saticoy's complaint with prejudice finding that (1) Saticoy had not "taken affirmative steps to adequately prosecute the case," (2) Saticoy's excuse was an inadequate excuse for delay, (3) Saticoy's case lacked merit, and (4) NRS 116.3116(6)'s three-year limitation period for foreclosing an HOA lien had run.

Discussion

NRCP 41(e) states that: "any action heretofore or hereafter commenced shall be dismissed by the court in which the same shall have been commenced ... unless such action is brought to trial within 5 years after the plaintiff has filed the action."² The Court has previously explained that "an action includes the original claim and any crossclaims, counterclaims, and third-party claims."³ Thus, the question to be decided was whether complaints in intervention filed in the original action fall into the above framework. NRCP 24 governs complaints in intervention and permits parties "intervene in an *action*,"⁴ and such parties in intervention have been treated

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² NEV. R. CIV. P. 41(e)

³ *United Ass'n of Journeymen & Apprentices of the Plumbing & Pipe Fitting Indus. v. Manson*, 105 Nev. 816, 820, 783 P.2d 955, 957-58 (1989).

⁴ NEV. R. CIV. P 24(a)-(b) (emphasis added).

under NRCP 24 as intervenors in the original action both in Nevada,⁵ and in other jurisdictions.⁶ Thus, the Court concludes that complaints in intervention are part of the original action for purposes of mandatory dismissal under NRCP41(e), and since Saticoy failed to timely prosecute its claims in intervention, dismissal was mandatory.

The district court's dismissal of Saticoy's complaint in intervention with prejudice, however, was an abuse of discretion

“A district court has broad, but not unbridled, discretion in determining whether dismissal under NRCP 41(e) should be with or without prejudice.”⁷ To determine if there was an abuse of discretion, the Court looked to the district court's application of the *Monroe* elements which include the following: “the underlying conduct of the parties, whether the plaintiff offers adequate excuse for the delay, whether the plaintiff's case lacks merit, and whether any subsequent action following dismissal would not be barred by the applicable statute of limitations.”⁸

Conduct of the parties and adequacy of excuse for delay

The Court disagreed with the district court finding that Saticoy had not taken adequate steps to prosecute its claims and offered no adequate excuse for delay. The Court has found that “[b]ecause the law favors trial on the merits, ... dismissal with prejudice may not be warranted where ... delay is justified by the circumstances of the case.”⁹ To consider whether dismissal with prejudice is appropriate, the Court considers “the conduct and good faith belief of the parties.”¹⁰ The Court found that and delay was justified in this case because Saticoy promptly filed its complaint in August 2013 after acquiring interest in Lots 21 and 26 July 2013.

The district court misapplied NRS 116.3116(6) to the merits of Saticoy's claims

Under NRS 116.3116(6) proceedings to enforce a lien must be instituted “within 3 years after the full amount of the assessments become[] due.”¹¹ Parties did not dispute that CGMA had a valid lien for assessments against the property so the Court looked at whether that lien was extinguished by the three-year limitation period in NRS 116.3116(6). To resolve the issue the Court had to determine what action was sufficient to meet the requirement of instituting

⁵ See *Las Vegas Police Protective Ass'n Metro., Inc., v. Eighth Judicial Dist. Court*, 122 Nev. 230, 239, 130 P.3d 182, 189 (2006) (“Generally, an intervenor is afforded all the rights of a party to the action ... “ (internal quotation marks omitted));

⁶ See *e.g.*, *Schneider v. Dumbarton Developers, Inc.*, 767 F.2d 1007, 1017 (D.C. Cir.1985); *Conseco v. Wells Fargo Fin. Leasing, Inc.*, 204 F. Supp. 2d 1186, 1193 (S.D. Iowa 2002); *Taylor-West Weber Water Improvement Dist. v. Olds*, 224 P.3d 709, 712 (Utah 2009).

⁷ *Monroe v. Columbia Sunrise Hosp. & Med. Ctr.*, 123 Nev. 96, 103–03, 158 P.3d 1008, 1012 (2007).

⁸ *Id.* at 1012 (footnote omitted).

⁹ *Home Sav. Ass'n v. Aetna Cas. & Sur. Co.*, 109 Nev. 558, 563, 854 P.2d 851, 854 (1993).

¹⁰ *Id.*

¹¹ NEV. REV. STAT. ANN. § 116.3116(6); In 2015, the Legislature changed the required action an HOA must take under the three-year limitation period for foreclosing a lien for unpaid assessments. 2015 Nev. Stat., ch. 266, § 1, at 1335. Under the current statute, an HOA's lien is extinguished unless an HOA records a notice of default and election to sell or institutes judicial proceedings to enforce its lien within three years after the full amount of the assessments becomes due. NEV. REV. STAT. ANN. § 116.3116(10) (2015).

“proceedings to enforce the lien.”¹² Under NRS 116.31162(1), an HOA may foreclose its lien by sale only after it takes the following steps.¹³ First, the HOA must provide to the homeowner a “notice of delinquent assessment,”¹⁴ next, the HOA must record a notice of default and election to sell the unit to satisfy the lien.¹⁵ and finally, the HOA must give the homeowner a 90-day grace period following the recording of the notice of default and election to sell before it continues foreclosure proceedings.¹⁶ Therefore, no actions can be taken unless and until the HOA provides a notice of delinquent assessments pursuant to NRS 116.31162(1)(a).¹⁷ As such, a party has instituted “proceedings to enforce the lien” for purposes of NRS 116.3116(6) when it provides the notice of delinquent assessment. This assessment conforms to the Court’s past decision where it stated that “to initiate foreclosure under NRS 116.31162 through NRS 116.31168, a Nevada HOA must notify the owner of the delinquent assessments.”¹⁸

The Court found that the district court erred and treated NRS 116.3116(6) as a statute of limitations when it instead determines the expiration of past due assessments. NRS 116.3116(6) limits the amount of unpaid assessments upon which an HOA can foreclose to those that have become due within three years of the instituting proceedings to enforce the lien.¹⁹ Therefore, the district court incorrectly relied on NRS 116.3116(6) when it found Saticoy’s claim lacked merit.

Saticoy's subsequent action is not barred by the applicable statute of Limitations

Finally, the district court erred in concluding that Saticoy could not refile a subsequent action following dismissal, because the action would be a NRS 11.080 complaint for quiet title which contains a five-year statute of limitations.²⁰ Since Saticoy did not acquire interest in the Property until 2013, the statute of limitations for a quiet title action would not run until 2018.

Conclusion

The Court found that “Saticoy’s complaint in intervention was part of the original action for purposes of NRCP 41 (e), and thus dismissal of the complaint was mandatory.” However, the district court erred in dismissing the complaint with prejudice because “Saticoy took adequate steps to prosecute the action, delay was justified, and a subsequent action would not be barred by the statute of limitations.”

¹² We acknowledge that a determination must also be made as to when “the full amount of assessments becomes due” pursuant to NRS 116.3116(6). However, the district court did not explicitly find, and the record does not reflect, when the full amount of assessments became due in this case. Thus, we do not address that issue here.

¹³ NEV. REV. STAT. ANN. § 116.3116(1)

¹⁴ § 116.31162(1)(a).

¹⁵ § 116.31162(1)(b).

¹⁶ § 116.31162(1)(c).

¹⁷ § 116.31162(1)(a).

¹⁸ SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408, 411 (2014).

¹⁹ NEV. REV. STAT. ANN. § 116.3116(6)

²⁰ § 11.080.