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## K&P Homes v. Christiana Trust, 133 Nev. Adv. Op. 51 (July 27, 2017)

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CONSTITUTIONAL LAW: JUDICIAL INTERPRETATION; SUPERPRIORITY LIENS

*Summary*

The Court determined that the *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.* decision, extinguishing first security interests, applies retroactively to all foreclosures occurring prior to the date of the decision and since NRS 116.3116's inception.

*Facts and Procedural History*

On May 31, 2013, appellant K&P Homes (K&P) purchased a property at a homeowners' association foreclosure sale. Respondent Christiana Trust (Christiana) held a first deed of trust on the sold property and subsequently filed a quiet title action against K&P in federal district court. Christiana filed a motion to dismiss K&P's counterclaims, arguing its trust survived the sale because it occurred before the Court's decision in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.* ("SFR").<sup>2</sup> K&P filed a counter-motion for summary judgment arguing that SFR applied retroactively.

The district court, relying on *Chevron Oil Co* three-factor test to determine whether a court's holding applies retroactively, granted Christiana's motion and denied K&P's counter-motion.<sup>3</sup> K&P filed a motion to certify the question presented to Nevada Supreme Court.

*Discussion*

Christiana argued that *SFR* cannot apply retroactively because of the *Chevron Oil* factors: (1) this court established a new principle of law, (2) a retroactive application would not further the purposes of NRS 116.3116, and (3) a retroactive application would produce inequitable results.<sup>4</sup> However, K&P argues that *Chevron Oil* is inapposite and that the Court should apply *Nevada Yellow Cab*.<sup>5</sup> The Court agreed with K&P.

Accordingly, *Nevada Yellow Cab* provides that "recent [United States] Supreme Court jurisprudence has strongly disapproved of the *Chevron Oil* factors when considering federal civil law."<sup>6</sup> The retroactive rule application of a federal law after case deciding it so prevails over any *Chevron Oil* claims.<sup>7</sup> In that regard, retroactive application the federal law is consistent with "declaring what the law already is."<sup>8</sup> Here, *SFR* concluded that NRS 116. 3116 established "a true priority lien such that its foreclosure extinguishes a first deed of trust on the property."<sup>9</sup> Moreover,

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<sup>1</sup> By Yolanda Carapia.

<sup>2</sup> 130 Nev., Adv. Op. 75, 334 P.3d 408, 419 (2014).

<sup>3</sup> *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971).

<sup>4</sup> *Id.* at 106-07.

<sup>5</sup> *Nevada Yellow Cab Corp. v. Eighth Jud. Dist. Ct.*, 132 Nev., Adv. Op. 77, 383 P.3d 246 (2016).

<sup>6</sup> *Id.* 132 Nev., Adv. Op. 77, 383 P.3d at 249-50.

<sup>7</sup> *K&P Homes v. Christiana Trust*, 133 Nev. Adv. Op. 51, 3 (July 27, 2017).

<sup>8</sup> *Id.* (quoting *Nevada Yellow Cab* 132 Nev., Adv. Op. 77, 383 P.3d at 250-51) (emphasis in the original).

<sup>9</sup> *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev., Adv. Op. 75, 334 P.3d 408, 419 (2014).

*SFR* did not create new law or overrule precedent. It merely declared what NRS 116.3116 required since the statute's inception. The *Chevron Oil* factors do not apply and that the holding in *SFR* applies retroactively.

*Conclusion*

Therefore, Court's decision in *SFR*, extinguishing first security interests, applies retroactively to foreclosures occurring since NRS 116.3116's inception.