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LN Mgmt. LLC Series 5105 Portraits Place v.  
Green Tree Loan Servicing LLC, 133 Nev. Adv. Op.  
55 (Aug. 03, 2017)

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*Nevada Law Journal*

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Property: Foreclosure Sale in Bankruptcy; Conflict of Law

## **Summary**

If a homeowner that owns property in Nevada but declares bankruptcy in Texas and fails to list the Home Owners Association (HOA) as a creditor, the HOA cannot violate the automatic stay imposed by the bankruptcy and sell the property. If the property is sold in violation of the automatic stay, the sale is invalid. Under Ninth Circuit law, the sale is void *ab initio* while the Fifth Circuit holds that these types of sales are voidable, but can be approved by the bankruptcy court.

## **Background**

The property in dispute is in Nevada. The homeowners encumbered the property with a note and deed of trust assigned to Green Tree Loan Servicing LLC (the Respondent). The homeowners subsequently filed for bankruptcy in Texas, in which they listed the Nevada property, but failed to list the HOA as creditors on the property. No notice of the bankruptcy was given to the HOA. The property went into default, and in violation of the automatic stay from the bankruptcy proceedings. The HOA sold the property to LN Management LLC (the Appellant), and when they attempted to quiet title on the property, Green Tree Loan Servicing LLC filed a complaint and moved for summary judgment. There was a question of which law should apply (Ninth or Fifth Circuit). The District Court determined that Ninth Circuit law applied and the sale was void since the sale violated the automatic stay.

## **Discussion**

### *Standard of Review*

A district court's order granting summary judgment is proper if the evidence shows there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.<sup>2</sup> The decision is reviewed *de novo* by the Nevada Supreme Court.<sup>3</sup>

### *Notice of the Bankruptcy*

Appellants argued that since no notice of the bankruptcy was given to the HOA, the automatic stay was not in effect. However, the Court found that “[t]he automatic stay takes effect on the date the bankruptcy petition was filed, regardless of whether the creditor...has knowledge

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<sup>1</sup> By Wesley LeMay Jr.

<sup>2</sup> *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1026 (2005).

<sup>3</sup> *Id.*

of the bankruptcy.”<sup>4</sup> The automatic stay was effective even though the HOA had no notice or knowledge of the bankruptcy.<sup>5</sup>

### *Conflict of Law Issue*

Since the homeowners filed for bankruptcy in Texas and the property is in Nevada, there was a question of which law would apply. However, the result under both Fifth and Ninth Circuit law would have the same result: the sale by the HOA was in violation of the automatic stay, despite the lack of notice.

A sale in violation of an automatic stay is void *ab initio* in the Ninth Circuit.<sup>6</sup> In the Fifth Circuit, a violation of an automatic stay is voidable.<sup>7</sup> The reasoning for the latter is that the bankruptcy court has the power to lift a stay retroactively and “validate actions that would otherwise be void.”<sup>8</sup>

However, for the sale to become valid, the appellant would have had to seek redress with the Texas bankruptcy courts to retroactively lift the stay. Here, the appellant conceded that they did not seek any redress with the Texas bankruptcy court. Even though the district court granted the motion for summary judgment based on Ninth Circuit law, the sale would still be void under Fifth Circuit law, unless the appellant pursued recourse through the Texas bankruptcy court. Therefore, there was no conflict of law issue and the motion for summary judgment was properly granted.

### **Conclusion**

The Court affirmed the district court’s grant of summary judgment for the respondent, despite the reasoning that the sale was void *ab initio*. The violation of the automatic stay invalidated the HOA foreclosure sale, until the Appellant seeks redress through the appropriate Texas bankruptcy court.

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<sup>4</sup> 9B Am. Jur. 2d *Bankruptcy* §1698 (2016) (footnotes omitted).

<sup>5</sup> *Id.*

<sup>6</sup> In re Schwartz, 954 F.2d 569, 571 (9th Cir. 1992).

<sup>7</sup> In re Sikes v. Global Marine, Inc., 881 F.2d 176, 178 (5th Cir. 1989).

<sup>8</sup> In re Coho., Inc., 345 F.3d 338, 344 (5th Cir. 2003) (Footnote and internal quotation marks omitted).