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Facklam v. HSBC Bank USA, 126 Nev. Adv. Op. 65 (September 14, 2017)

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PROPERTY: NONJUDICIAL FORECLOSURES

Summary

The Court held that NRS 11.190(1)(b)'s statute of limitations does not apply to nonjudicial foreclosures because it is not a judicial action.

Background

Appellant Amy Facklam entered a home loan agreement by signing a promissory note secured by a deed of trust on the property. Facklam defaulted on her mortgage in 2009 and the prior mortgage servicer issued a notice of default and later rescinded the default notice. HSBC became the beneficiary of the promissory note and deed of trust on Facklam's home in 2013. By 2016, Facklam had defaulted again. HSBC recorded a notice of default and election to sell the property. The notice stated that HSBC would sell the property "without any court action" if Facklam failed to pay the whole debt.

Facklam commenced this action to quiet title and extinguish HSBC's interest in the property. Facklam claimed HSBC was barred from foreclosing on her property because the six-year statute-of-limitation period began in 2009 with the initial notice of default and had expired in 2015. Facklam moved for summary judgment but the district court dismissed her complaint because of the prior servicer's 2011 rescission.

Discussion

Standard of Review

A motion to dismiss is appropriate only if no facts could entitle the plaintiff to relief.² Summary judgment is appropriate only if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.³

Statutes of limitations apply only to judicial actions and a nonjudicial foreclosure is not a judicial action.

NRS 11.190(1)(b) states that actions other than those for the recovery of real property may be commenced within six years for "an action upon a contract, obligation or liability founded upon an instrument in writing."⁴ When a grantor defaults on the debt under a promissory note, the beneficiary of the deed of trust can select the judicial process for foreclosure or the "nonjudicial" foreclosure-by trustee's sale under NRS Chapter 107.⁵ Lenders are not barred from foreclosing on a mortgaged property just because the statute of limitations for contractual remedies on a promissory note has passed.⁶

¹ By Ellsie Lucero.

² *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

³ *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

⁴ NEV. REV. STAT. § 11.190(1)(b) (2015).

⁵ *Edelstein v. Bank of New York Mellon*, 128 Nev. 505, 513, 286 P.3d 249, 254 (2012).

⁶ *Henry v. Confidence Gold & Silver Mining Co.*, 1 Nev. 619, 621 (1865); *see also El Ranco, Inc. v. New York Meat & Provision Co.*, 88 Nev. 111, 115–16, 493 P.2d 1318, 1321 (1972).

HSBC chose to exercise its right to a nonjudicial foreclosure which is neither a civil or criminal judicial proceeding. Because NRS 11.190(1)(b) bars judicial actions only, the statute is inapplicable to nonjudicial foreclosures. Further, NRS 11.190(1)(b) does not override long-standing precedent that a lender may recover on a deed of trust even after the statute of limitations has passed.

Conclusion

The Court affirmed the district court's order denying Facklam's motion for summary judgment and granting HSBC's motion to dismiss.