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Property Plus Inv.'s, LLC v. Mortg. Elec. Registration Sys., Inc., 133 Nev. Adv. Op. 62 (Sept. 14, 2017)

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PROPERTY: SUPERPRIORITY LIENS; BANKRUPTCY

Summary

The Court determined that: (1) under NRS 116.3116 (The HOA Lien Statute), an HOA's assertion and subsequent rescission of a superpriority lien does not preclude the HOA from asserting new, separate superpriority liens based on unpaid assessments accruing after the rescission of the previous superpriority lien; and (2) superpriority liens survive Chapter 7 bankruptcy discharge.

Facts and Procedural History

On April 27, 2007, Megan Sullivan purchased property that was subject to High Noon at Arlington Ranch Homeowners Association (High Noon) restrictions. Sullivan financed the property with a loan from Bank of America (BOA), repayment of which was secured by a deed of trust. On April 7, 2014, BOA assigned the deed to the Christiana Trust (Christiana), the respondent in this matter, and to Mortgage Electronic Registration Systems, Inc.

On April 8, 2010, High Noon recorded a notice of lien for unpaid assessments (the 2010 lien). High Noon subsequently recorded a default for its loan. On September 23, 2010, BOA sent High Noon a check, intended to satisfy the superpriority portions of the 2010 lien, which High Noon rejected. Sullivan subsequently entered a payment agreement with High Noon who released Sullivan from the 2010 lien.

On July 20, 2012, High Noon recorded a new notice of lien (the 2012 lien) and recorded a default in October 2012. In December 2012, Sullivan filed for Chapter 7 bankruptcy. On July 17, 2013, appellant Property Plus Investments (Property Plus) purchased the property at a homeowners' association foreclosure sale and subsequently brought this quiet title action. Respondent Christiana Trust (Christiana) argued that High Noon's sale did not extinguish the deed of trust and filed a motion for summary judgment. The district court granted Christiana's motion for summary judgment. Property Plus then appealed to the Nevada Supreme Court.

Discussion

The district court erred insofar as it concluded that High Noon was limited to only one superpriority lien per parcel of property.

Christiana argued High Noon's assertion of superpriority on an HOA lien on the property in 2010 precluded them from asserting any subsequent superpriority liens on that same property. HOA liens contain both superpriority and subpriority portions. The superpriority portion is prior to the first deed of trust and is limited to the last nine months of unpaid HOA dues and maintenance and nuisance-abatement charges. The Court recognized that one purpose of Nevada's HOA lien statute is to allow HOAs to collect unpaid dues so that other residents are not adversely affected.²

¹ By Margaret Higgins.

² JPMorgan Chase Bank, N.A. v. SFR Investments Pool 1, LLC, 200 F. Supp. 3d 1141, 1168 (2016).

Under *JPMorgan Chase Bank, N.A. v. SFR Investments Pool 1, LLC*³ and NRS 116.3116⁴, the Court concluded that “when an HOA rescinds a superpriority lien on a property, the HOA may subsequently assert a separate superpriority lien on the same property based on monthly HOA dues” if those dues accrued after the release of the previous superpriority lien. Here, it was immaterial whether BOA had satisfied the superpriority portion of the 2010 lien because the property was foreclosed on a separate 2012 lien. Still, there was a genuine issue of material fact as to whether the 2012 lien included unpaid assessments from the 2010 lien. So, the court remanded the case to develop the record.

The district court erred in holding that High Noon could not lawfully foreclose on a lien that contained costs and fees that were discharged by Sullivan’s bankruptcy.

Christiana argued that foreclosure was unlawful because the 2012 lien listed fees that were discharged by Sullivan’s bankruptcy. The Court relied on *Johnson v. Home State Bank*⁵ and the U.S.C.⁶ which provides that while bankruptcy discharge extinguishes the personal liability of the debtor, actions may still be taken against the debtor’s property.⁷ The Court held that, although filing bankruptcy discharged Sullivan’s personal liability on the 2012 lien, the lien itself survived and could be lawfully foreclosed on.

Conclusion

The HOA Lien Statute did not preclude High Noon from asserting multiple superpriority liens on the same piece of property. Additionally, the Chapter 7 bankruptcy only extinguished Sullivan’s personal liability on the 2012 lien—not the underlying lien itself. The Court reversed the district court’s grant of summary judgment and remanded the case to determine whether the 2012 lien included assessments accrued from the 2010 lien.

³ *Id.*

⁴ NEV. REV. STAT. § 116.3116.

⁵ *Id.*

⁶ 11 U.S.C. §§ 523(a)(16), 524(a)(1) (2012).

⁷ *Johnson v. Home State Bank*, 501 U.S. 78, 78, 111 S.Ct. 2150, 2151 (1991).