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Nationstar Mortg., LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon, 133 Nev. Adv. Op. 409 (Nov. 22, 2017)

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Nationstar Mortg., LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon, 133 Nev. Adv. Op. 409 (Nov. 22, 2017)[1]

PROPERTY LAW: HOMEOWNER'S ASSOCIATION FORECLOSURE SALES

Summary

The Court considered an appeal from a district court order granting summary judgment. In its holding, the Court concluded that it would not invalidate a foreclosure sale based on a low sales price alone. The commercial reasonableness standard established by Article 9 of the Uniform Commercial Code (U.C.C.) does not apply to Homeowner's Association (HOA) foreclosures because they involve real property sales. Rather, there must be a showing of "fraud, unfairness, or oppression" on behalf of the seller.[2]

Background

The property in dispute was in a neighborhood overseen by an HOA. The previous homeowner had obtained a loan to purchase the property and secured that loan via a deed of trust that was later assigned to Appellant Nationstar. When the previous homeowner became delinquent, the HOA agent entered a notice of default and a notice of sale, and then sold the property at a foreclosure sale to Saticoy Bay for $35,000. After the sale, Saticoy Bay sought a declaration to extinguish Nationstar's deed of trust so that Saticoy Bay would have an unencumbered title to the property.

In response, Nationstar argued that sales price for the property was commercially unreasonable as the appraisal value was listed at $335,000. Nationstar's relied on the Restatement (Third) of Property: Mortgages § 8.3 (1997).[3] Saticoy Bay rebutted with the contention that "commercial reasonableness" was not relevant in relation to HOA foreclosure sales. The parties went to court and ultimately Saticoy Bay won on summary judgment after the court concluded that Article 9 of the U.C.C. does not apply to HOA foreclosure sales.

Discussion

The first matter relevant to this case was whether the U.C.C. Article 9's portion on commercial reasonableness applies to an HOA's foreclosure sale of real property. The Court concluded it had no bearing on the matter because Nevada already has requirements that an HOA must follow when foreclosing on real property to secure its lien. In addition, there is nothing in the U.C.C. to indicate the drafters intended the commercial reasonableness standard to apply to real property foreclosure sales. The Court then established that no matter how grossly inadequate a price may be, it is not grounds to set aside a sale.[4] Finally, because Nationstar did not illustrate any form of fraud, unfairness, or oppression the Court upheld the district court's ruling of summary judgment.

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[1] By Connor Saphire.

[2] Shadow Wood Homeowners Ass'n, Inc. v. New York Community Bancorp, Inc., 132 Nev., Adv. Op. 5, 366 P.3d 1105 (2016).

[3] Restatement (Third) of Property: Mortgages § 8.3 (1997).

[4] Golden v. Tomiyasu, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963).

U.C.C. Article 9's commercial reasonableness standard is inapplicable in the context of an HOA foreclosure sale of real property

Article 9 of the U.C.C. lays out the general framework whereby a person may obtain money from a creditor in exchange for granting a security interest in personal property.[5] It also states how a creditor may repossess and dispose of personal property if a debtor has defaulted.[6] The Court has previously recognized (at least implicitly) two things: (1) the secured creditor has an affirmative obligation to obtain the highest sales price possible; and (2) if the sale is challenged, the secured creditor has the burden of establishing commercial reasonableness.[7] Nationstar contended, therefore, that the HOA had the burden of establishing that it took all the steps to obtain the highest sales price possible.

The Court disagreed with Nationstar's argument. In contrast to Article 9, NRS Chapter 116 already provides intricate requirements that an HOA must follow to foreclose on the real property securing its lien.[8] This statutory scheme infringes on an HOA's ability to increase the winning bid at sale and therefore makes Article 9's commercial reasonableness standard improper for HOA foreclosure sales of real property.

The Court supported its holding by pointing to the Uniform Common Interest Ownership Act (UCIOA), which NRS Chapter 116 is modeled after.[9] The UCIOA recognizes that there are three different types of common-interest communities and in one of those, the owner's interest in his or her property is characterized as a "*personal property*" interest.[10] These types of common interest communities are: (1) a condominium or planned community," (2) "a cooperative whose unit owners' interest in the units are real estate," and (3) "a cooperative whose unit owners' interests in the units are personal property."[11] A state adopting UCIOA provisions is prompted by the UCIOA to choose and insert the following methods of sale for the three common interest community types:

> (1) In a condominium or planned community, the association's lien must be foreclosed in like manner as a mortgage on real estate [or by power of sale under appropriate state statute];
> (2) In a cooperative whose unit owners' interests in the units are real estate . . . , the association's lien must be foreclosed in like manner as a mortgage on real estate [or by power of sale under the appropriate state statute] [or by power of sale under subsection (k)]; or

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[5] NEV. REV. STAT. §§ 104.9109(1); U.C.C. § 9-109(a) (Am. Law Inst. & Unif. Law Comm'n (2009)); *see generally* William H,. Lawrence, William H. Henning & R. Wilson Freyermuth, Understanding Secured Transactions §§ 1.01-1.03 (4th ed. 2007) (providing an overview of Article 9's purpose and scope).

[6] *See* NEV. REV. STAT. §§ 104.9601.9628; U.C.C. §§ 9-601 to 9-628.

[7] *See* Dennison v. Allen Grp. Leasing Corp., 110 Nev. 181, 186, 871 P.2d 288, 291 (1994); Savage Constr., Inc. v. Challenge-Cook Bros., Inc., 102 Nev. 34, 37, 714 P.2d 573, 575 (1986); Levers v. Rio King Land & Inv. Co., 93 Nev. 95, 98, 560 P.2d 917, 920 (1977); *accord* Chittenden Tr. Co. v. Maryanski, 415 A.2d 206, 209 (Vt. 1980) ("[T]he majority rule appears to be that the secured party has the burden of pleading and proving that any given disposition of collateral was commercially reasonable . . . ").

[8] *See* SFR Invs. Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408, 416 (2014).

[9] *SFR Invs.*, 130 Nev., Adv. Op. 75, 334 P.3d at 408.

[10] *See* 1982 UCIOA § 3-116(j) (emphasis added).

[11] *Id*.

> (3) In a cooperative whose unit owners interests in the units are personal property . . . , the association's lien must be foreclosed in like manner as a security interest under.[12]

Had the UCIOA drafters intended for Article's commercial reasonableness standard to apply to real property foreclosures and to personal property foreclosures, it is likely that they would have included such language in subsections (j)(1) and (2) of the Act.[13]

A low sales price, in and of itself, does not warrant invalidating an HOA foreclosure sale

In previous cases, the Court established the held that "demonstrating that an association sold a property at its foreclosure sale for an inadequate price is not enough to set aside that sale; there must also be a showing of fraud, unfairness, or oppression."[14]

Nationstar contended that the Court had previously adopted the Restatement's suggestion that a sale for less than 20 percent of the property's fair market value may "[g]enerally" be invalidated by a court.[15] However, simply because this assertion was previously cited in a case does not mean the Court implicitly adopted it. In fact, this adoption would be inconsistent with the Court's previous holding in *Golden v. Tamiyasu*, where it held that the "inadequacy of price, however gross, is not in itself a sufficient ground for setting aside a trustee's sale" without "proof of some element of fraud, unfairness, or oppression."[16]

Price is not completely irrelevant. It is not sufficient by itself to invalidate a foreclosure sale, but when accompanied by irregularities in the sales process that demonstrate fraud, unfairness, or oppression, it should be considered.[17]

Nationstar's identified irregularities do not show that the HOA foreclosure sale was affected by fraud, unfairness, or oppression

Nationstar pointed to three irregularities in the process of the foreclosure sale that indicated fraud, unfairness, or oppression: (1) the HOA's lien included fines in addition to monthly assessments even though NRS 116.31162(5) prohibits an HOA from foreclosing on a lien comprised of fines; (2) the notice of sale listed the unpaid lien amount as of the day the notice of sale was generated even though NRS 116.311635(3)(a) requires the notice of sale to list what the unpaid lien amount will be on the date of the to-be-held sale; and (3) the person who signed the notice of default was not the person who the HOA's president designated to sign the notice, which violated NRS 116.31162(2). The Court addressed these arguments individually.

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[12] 1982 UCIOA § 3-116(j)(1)-(3).

[13] *See* Norman Singer & Shambie Singer, 2A Sutherland Statutory Construction § 47:23 (7th ed. 2016) ("[W]here a legislature includes particular language in one section of a statute but omits it in another section of the same act, it is generally presumed the legislature acts intentionally and purposely in the disparate inclusion or exclusion . . . .") quotation and alterations omitted)).

[14] *Shadow Wood Homeowners Ass'n, Inc.*, 366 P.3d at 1105.

[15] *Id*. at 1112.

[16] Golden v. Tomiyasu, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963).

[17] *Id*.

Foreclosure of a lien that includes fines does not invalidate the sale

Nationstar's interpretation of NRS 116.31162(5) is incorrect. This statute authorizes an HOA's lien, and provides that an HOA has a lien for fines and monthly assessments and that those fines and monthly assessments automatically become part of the HOA's lien as soon as they become due. Under Nationstar's construction, an HOA could not foreclose on a homeowner if it had imposed a fine. However, there is no indication that the Legislature intended the result that Nationstar proposed. It is apparent that the Legislature's intended to prohibit an HOA from foreclosing on a lien that was comprised *soley* of fines because the Legislature did not consider NRS 116.3116(1) when it enacted NRS 116.31162(5),.[18]

Nationstar also suggested that there was unfairness in the sale because all the foreclosure proceeds were distributed to the HOA instead of the HOA's superpriority lien amount. However, Satico Bay correctly pointed out that NRS 116.31166(2) absolved it of any responsibility to ensure that the sale proceeds are properly distributed.

The notice of sale's failure to list the unpaid lien amount on the date of the sale does not amount to fraud, unfairness, or oppression

Nationstar's second argument centered around NRS 116.311635(3)(a), which states that the notice of sale "must include [t]he amount necessary to satisfy the lien as of the date of the proposed sale." In this case, the notice of sale listed the unpaid lien amount as of the date the notice was generated not as of the date of the future sale. Even though the HOA's notice of sale did amount to a violation of the statute, it did not amount to fraud, unfairness, or oppression.

The person who signed the notice of default was authorized by the HOA to do so

Nationstar's last argument was based upon NRS 116.31162(2), which states that the notice of default "must be signed by the person designated in the declaration or by the association for that purpose or, if no one is designated, by the president of the association." Specifically, Nationstar argued that the HOA violated this statute because its notice of default was signed by an employee of the HOA's agent and there is no evidence showing that the HOA's declaration or the HOA's president specifically designated this employee as the person who could sign this notice of default.

The reason this argument is faulted is because a person may be designated to sign the notice in three ways, one of which is by the association. So, "the association" can designate a person to sign even if the declaration or president do not sign the notice.

Conclusion

The Court affirmed the district court's grant of summary judgment. It held that even though the $35,000 sales price of the foreclosed property was below its appraised value, such a low sales price does not invalidate a foreclosure sale as a matter of law. Instead, there must be a demonstration of fraud, unfairness, or oppression, which in this case, Nationstar failed to show.

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[18] *See* Barney v. Mount Rose Heating & Air Conditioning, 192 P.3d 730, 734 (2008) ("Statutes are to be read in the context of the act and the subject matter as a whole . . . ."); Banegas v. State Indus. Ins. Sys., 19 P.3d 245, 249 (2001) ("The intent of the Legislature may be discerned by reviewing the statute or the chapter as a whole.").