


2-1-2018

## SFR Inv.'s Pool 1, LLC v. First Horizon Home Loans, 134 Nev. Adv. Op. 4 (Feb. 1, 2018)

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### Recommended Citation

McLeod, Brendan, "SFR Inv.'s Pool 1, LLC v. First Horizon Home Loans, 134 Nev. Adv. Op. 4 (Feb. 1, 2018)" (2018). *Nevada Supreme Court Summaries*. 1130.

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## PROPERTY LAW: SUPERPRIORITY LIEN

### **Summary**

The Court determined that, under provisions of NRS 116.31162, when an HOA records a notice of a foreclosure sale, any subsequent buyer who purchases the property is subject to that notice that a foreclosure may be imminent.

### **Background**

This case involves the conflict between two separate entities foreclosing on the same property. The property in question in this matter was purchased for approximately \$140,000 in a planned development governed by Silver Springs Homeowner's Association. First Horizon Home Loans financed the property and executed a deed of trust. Subsequently, the homeowner became delinquent on the mortgage payments and the HOA dues. Silver Springs recorded a record of default and election to sell. Six months later, First Horizon also recorded a record of default and election to sell. Shortly after, Silver Springs record a notice of foreclosure sale and First Horizon recorded its own notice of foreclosure sale two days later.

First Horizon held its foreclosure sale first and bought the property on a credit bid. Silver Springs held its foreclosure sale with respect to its superpriority HOA lien one day before First Horizon recorded its deed. SFR Investments Pool 1, LLC, purchased the property for \$7,000 and recorded its deed.

SFR filed suit against First Horizon for quiet title. Both parties moved for summary judgment. The district court granted First Horizon's motion, determining that Silver Springs had failed to provide First Horizon with notice as required by NRS 116.31162 and 116.311635. The district court also held that Silver Springs failed to comply with its covenants, conditions and restrictions' (CC&Rs) clause that required the HOA to provide an owner with 30 days' written notice prior to any foreclosure. SFR appealed.

### **Discussion**

The Court reviews grants of summary judgment de novo and finds summary judgment appropriate when the evidence, viewed in a light most favorable to the nonmoving party, demonstrates no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.<sup>2</sup> The NRS provides, as determined by the Court in *SFR Investments Pool 1, LLC v. U.S. Bank*, that a superpriority lien on nine months of unpaid HOA dues extinguishes a first deed of trust on a property.<sup>3</sup>

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<sup>1</sup> By Brendan McLeod.

<sup>2</sup> *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

<sup>3</sup> *SFR Investments Pool 1, LLC v. U.S. Bank*, 130 Nev. 742, 743, 334 P.3d 408,409 (2014) (discussing the provisions of NEV. REV. STAT. § 116.3116 (2015)).

*The HOA foreclosure sale did not violate the notice provisions of NRS Chapter 116*

Under NRS 116.31162 an HOA must first send a homeowner a notice of delinquent assessment by registered mail and record a notice of default and election to sell.<sup>4</sup> The HOA is further required to publish notice of the time and place of the sale in a newspaper of record, post the notice of sale in a public place, and serve notice on the owner or successor in interest.<sup>5</sup> This case is similar to *Shadow Wood v. New York Community Bancorp*<sup>6</sup>, where the Court determined that a superpriority lien eliminated a subpriority lien and that a bank took the property subject to the superpriority portion of the lien. Therefore, a subsequent foreclosure sale by the HOA to a third-party could be valid.

The present case differs from *Shadow Wood*, however, because no new notices were provided after First Horizon acquired the property. Recording statutes provide interested parties, including subsequent purchasers and mortgagees with notice.<sup>7</sup> The Court concluded that a foreclosing party did not need to restart the foreclosure process each time the subject property transferred ownership. Requiring this could incentivize transferring property to avoid a foreclosure sale.

*Silver Springs' foreclosure sale did not violate the HOA CC&Rs*

Silver Springs' CC&Rs required the HOA to give a member no less than thirty days written notice prior to a foreclosure. A Silver Springs representative testified that the HOA would not usually pursue a foreclosure if it was aware that the bank had recently foreclosed. However, the Court distinguished that the district court failed to note that the Silver Springs' foreclosure was held one day before First Horizon recorded its deed. "When First Horizon purchased the property, it stepped into the shoes of the prior owner."<sup>8</sup> Therefore, Silver Springs was not required to restart the process.

*Silver Springs' foreclosure sale was not void as commercially unreasonable*

First Horizon argued that the Court should invalidate Silver Springs' foreclosure sale because it was commercially unreasonable. The Court had previously held in *Nationstar Mort. LLC v. Saticoy Bay* that a commercially unreasonable price without some element of fraud, unfairness, or oppression is not enough to set aside a foreclosure sale.<sup>9</sup> First Horizon argued that the purchase price of \$7,000 was grossly inadequate and that it had not received adequate notice. The Court disagreed, determining that First Horizon had actual and constructive notice, and that it had failed to provide sufficient evidence of fraud, unfairness, or oppression.

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<sup>4</sup> NEV. REV. STAT. §§ 116.31162(1)(a)-(b) (2015).

<sup>5</sup> NEV. REV. STAT. § 116.311635(1).

<sup>6</sup> *Shadow Wood Homeowners Ass'n, Inc. v. N.Y. Cmty. Bancorp*, 132 Nev., Adv. Op. 5, 366 P.3d 1105 (2016).

<sup>7</sup> NEV. REV. STAT. § 111.320.

<sup>8</sup> *SFR Inv.'s Pool I, LLC v. First Horizon Home Loans*, 134 Nev. Adv. Op. 4 (Feb. 1, 2018).

<sup>9</sup> *Nationstar Mort. LLC v. Saticoy Bay LLC Series Shadow Canyon*, 133 Nev., Adv. Op. 91, 405 P.3d 641, 647-49 (2017).

## **Conclusion**

The Court concluded there was no basis to invalidate the HOA foreclosure sale and reversed the district court's summary judgment. Further, the Court directed the district court to enter summary judgment for quiet title in favor of SFR, and remanded for further proceedings consistent with its opinion.