6-14-2018

Carrington Mortg. Holdings v. R Ventures, 134 Nev. Adv. Op. 46 (Jun. 14, 2018)

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PROPERTY LAW: STATUTORY INTERPRETATION

Summary

The Court determined that application of NRS § 116.3116(8) which states that "[a] judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party," refers only to actions brought by a homeowners' association to enforce its assessment lien and not a quiet title and declaratory judgment action by a third-party purchaser at such a sale.

Background

Appellant Carrington Mortgage Holdings, LLC, was assigned a deed of a trust to a Las Vegas property where the former owner failed to keep their payments to the Southern Terrace Homeowners Association. The homeowners' association then initiated nonjudicial foreclosure proceedings pursuant to NRS 116.3116, which resulted in the selling of the property to respondent R Ventures VIII, LLC. Respondent filed an action pursuant to NRS 30.010 and the parties stipulated to add appellant as a defendant. District court granted respondent's motion for summary judgment to quiet title, claiming NRS 116.3116 extinguished all junior liens.

District court granted respondent's request for costs and attorney fees pursuant to NRS 116.3116(8) because they were brought properly under NRS 116.3116 and are the types of claims contemplated by NRS 116.3116(8). Appeal followed.

Discussion

Appellant argues district court erred in granting costs and attorney fees to respondent because such an award is available only to parties who prevail in actions brought by homeowners' associations. Conversely, respondent argues NRS 116.3116(8) allows for awards for costs and attorney fees in any actions involving claims that relate to an NRS 116.3116 lien foreclosure. The court is quick to state NRS 116.3116(8) mandates awards of costs and attorney fees only in an "action brought under this section" by a homeowners' association to enforce its lien.

Reviewing de novo and recognizing "when the language of a statute is plain and unambiguous, such that it is capable of only one meaning, this court should not" the court does not look beyond the plain meaning of the statute.

The statute at issue, NRS 116.3116(8) states "[a] judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party." The Court highlights the use of the term "action" in referring to actions by a homeowners' association to enforce its lien, whether by judicial or nonjudicial foreclosure sale throughout NRS 116.3116. Therefore, concluding NRS 116.3116(8) "plainly and unambiguously granted to a prevailing party costs and attorney fees in an action initiated by the homeowners' association to enforce its lien.

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Additionally, the Court relied on a decision by the Vermont Supreme Court in *Will v. Mill Condominium Owners' Ass'n*, where the homeowners association foreclosed a property owner and the property owner then successfully challenged the validity of the foreclosure sale and requested costs and attorney fees. The owner's suit was not brought pursuant to the equivalent statute of Nevada's NRS 116.3116(8), Vermont's 27A Art. 3, § 3-116(g) and thus the owner was not entitled to attorney fees.

Conclusion

Appellant's action was not brought under NRS 116.3116 as it does not authorize appellant's quiet title action even if appellant relied on the statute to frame its quiet title complaint. Instead, appellant's action was brought pursuant to NRS 30.010 which does not require to receive awards for costs and attorney fees. Thus, the Court reversed the district court's order awarding respondent costs and attorney fees.