

A Busy Period For the Nevada Supreme Court

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Business professionals often complain that the lack of case law in Nevada creates a climate of uncertainty for business decision-making. The Nevada Supreme Court has been working to change that and, in recent months, the Court was particularly productive, issuing numerous published opinions that affect Nevada's businesses and the real estate market. Following are a few brief highlights.

Real Estate

The fall-out from the 2008 housing bubble burst continues to play out in Nevada's courts. Four noteworthy cases regarding security interests and foreclosures were recently decided by the Supreme Court. *Hefetz v. Beavor* dealt with a waiver of the one-action rule found in NRS 40.430. The statute generally requires a creditor seeking to recover the debt secured by real property to proceed first against the security prior to seeking recovery from the debtor personally. With limited exceptions set forth by statute, a guarantor, surety or debtor can waive the one-action rule. The *Hefetz* case held that to avoid waiver, a party must timely assert the one-action rule as an affirmative defense in the party's responsive pleadings.

The Court was also active in the area of homeowner association law, particularly with regard to what is referred to as the "superpriority lien" found in NRS 116.3116. This "superpriority" gives a homeowner association's (HOA) lien on real property for unpaid

dues priority over other security interests. In 2014, the Court decided the SFR Investments case, which concluded that an HOA's foreclosure of its lien extinguished the first deed of trust on the property. In other words, the HOA could end up owning property worth hundreds of thousands of dollars by simply trying to recover a few hundred dollars in assessments.

Recently issued decisions expand on the SFR Investments case. In *Renfroe v. Lakeview Loan Serv., LLC*, the Court held that the HOA superpriority lien is not preempted by the Federal Housing Administration insurance program. Even a federally insured loan secured by real property can be knocked out by the HOA lien. *K&P Homes v. Christiana Trust* held that the SFR Investments decision is retroactive and applies to all foreclosures conducted since NRS 116.3116's inception. *LN Mgmt. LLC Series 5105 Portraits Place v. Green Tree Loan Servicing* held that an HOA foreclosure on a house in Nevada after the homeowners commenced bankruptcy proceedings in Texas violated the automatic stay and invalidated the sale, even though the HOA received no notice of the bankruptcy filing.

Business Entities/Taxation

The Court was also active in other areas that affect businesses. *Gardner v. Henderson Water Park, LLC* held that a member of a limited liability company cannot be personally responsible for the LLC's liabilities solely by virtue of being a member. This case highlights one of the reasons that Nevada is considered to have a business-friendly climate: its highest court will recognize the protections afforded by the corporate structure.

Also, the Court affirmed a use tax levied on a business for minerals mined outside of Nevada but used in the state. In *Southern California, Edison v. Dept. of Tax.*, the Court held that NRS 372.270 does not unconstitutionally favor companies that mine minerals within the state's borders (and that are exempted from use tax). The Court also concluded that the taxpayer was not owed a credit equal to the transaction privilege tax (TPT) levied by another state where the TPT is not a sales tax within the meaning of NAC 372.055.

As these decisions indicate, the Court has been busy building its jurisprudence in a number of areas of law that affect the Nevada business climate. With this level of productivity, we can anticipate greater certainty in the law going forward.

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