

SUPREME COURT OF NEVADA

Ferrell Street Trust v. U.S. Bank, N.A.

No. 83981, Order of Affirmance · No. No. 83981 · Decided October 11, 2022

SUMMARY

The Nevada Supreme Court affirmed dismissal of Ferrell Street Trust's quiet-title action against U.S. Bank, N.A. The court held that denying discovery concerning a possible earlier loan acceleration was within the district court's discretion because the request sought to undermine a prior judgment involving the same deed of trust and amounted to a fishing expedition.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Parraguirre, C.J.; Herndon, Sr.J.; Gibbons, Sr.J. (participating under general order of assignment)
JURISDICTION	Nevada
DECIDED	October 11, 2022
DOCKET	No. 83981
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a district court order granting respondent's NRCP 12(b) (5) motion to dismiss an action to quiet title.
STANDARD OF REVIEW	The dismissal order was reviewed de novo. The district court's refusal to allow discovery was reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Nevada Supreme Court order; precedential treatment is not otherwise specified in the opinion text.
PARTIES	Ferrell Street Trust v. U.S. Bank, N.A., a National Association

TOPICS

- quiet title
- title disputes
- motions to dismiss
- discovery dispute
- appellate procedure

PRACTICE AREAS

- real estate
- civil procedure
- appellate procedure
- trusts

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by dismissing the quiet-title complaint without allowing discovery into a potentially earlier loan acceleration.
2. Whether discovery into a decade-old communication between nonparties was permissible when the requested discovery sought to undermine the effect of a prior judgment concerning the same deed of trust.

HOLDINGS

1. The district court acted within its discretion in denying Ferrell Street Trust's request for discovery and dismissing the complaint.
2. The court reiterated that SFR Investments Pool 1 did not hold that a communication between a lender and homeowner before recording a notice of default could accelerate the loan.

KEY QUOTATIONS

“At some point, litigation must come to an end. That point has now been reached.” (at 2)

FACTUAL BACKGROUND

U.S. Bank's deed of trust encumbered property purchased by Ferrell Street Trust's predecessor at an HOA foreclosure sale because U.S. Bank had made a superpriority tender before the sale. The Nevada Supreme Court had previously affirmed summary judgment in U.S. Bank's favor concerning the same deed of trust. After U.S. Bank recorded a September 2020 notice of default stating that the former homeowners had been in default since March 2011, Ferrell Street Trust filed a quiet-title action asserting that the deed of trust was extinguished ten years after the alleged default. Ferrell Street Trust sought discovery into whether U.S. Bank's predecessors had previously communicated an acceleration of the loan to the former homeowners.

PROCEDURAL HISTORY

Ferrell Street Trust filed a 2021 quiet-title action alleging that U.S. Bank's deed of trust had been extinguished under NRS 106.240's ten-year limitations period. The district court granted U.S. Bank's motion to dismiss and denied Ferrell Street Trust's request to conduct discovery concerning whether an earlier communication had accelerated the loan. The Nevada Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Buzz Stew, LLC v. City of North Las Vegas, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008)
- Cogburn Street Trust v. U.S. Bank, N.A., No. 74516, 2019 WL 2339538 (Nev. May 31, 2019) (Order of Affirmance)
- Aviation Ventures, Inc. v. Joan Morris, Inc., 121 Nev. 113, 118, 110 P.3d 59, 62 (2005)
- Rivera v. NIBCO, Inc., 364 F.3d 1057, 1072 (9th Cir. 2004)

- Facebook, Inc. v. Pacific Northwest Software, Inc., 640 F.3d 1034, 1042 (9th Cir. 2011)
- SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 138 Nev., Adv. Op. 22, 507 P.3d 194 (2022)

OPINION

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF NEVADA FERRELL STREET TRUST, No. 83981 Appellant, vs. U.S. BANK, N.A., A NATIONAL REAL ESTATE ASSOCIATION, Respondent. ORDER OF AFFIRMANCE BY THE COURT: CLERK This is an appeal from a district court order granting a motion to dismiss in an action to quiet title. Eighth Judicial District Court, Jasmin D. Lilly-Spells, Judge.

Reviewing the order de novo, Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008), we affirm.' In 2019, this court affirmed a summary judgment in favor of respondent and against appellant's predecessor. See Cogburn St. Tr. v. U.S. Bank, N.A., No. 74516, 2019 WL 2339538 (Nev. May 31, 2019) (Order of Affirmance).

In doing so, we concluded that the subject property remained encumbered by respondent's deed of trust because respondent made a superpriority tender before appellant's predecessor purchased the property at an HOA foreclosure sale. Id. at *1-2.

After this court affirmed the summary judgment, respondent recorded a Notice of Default in September 2020, which indicated that the former homeowners had been in default on their loan payments since March 2011. This prompted appellant to file the underlying quiet title action in 2021, wherein appellant alleged that NRS 106.240's 10-year limitations period was triggered around March 2011 and that it had expired 10 years 'Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted. later, such that respondent's deed of trust no longer encumbered the property.

Respondent filed an NRCP 12(b)(5) motion to dismiss appellant's complaint, which the district court granted. In doing so, it rejected appellant's request to conduct discovery into whether respondent's predecessors had sent a communication to the former homeowners that accelerated their loan for purposes of making it "wholly due" under NRS 106.240. Appellant contends that the district court abused its discretion in dismissing its complaint without allowing appellant to conduct discovery.

See Aviation Ventures, Inc. v. Joan Morris, Inc., 121 Nev. 113, 118, 110 P.3d 59, 62 (2005) (reviewing a district court's refusal to allow discovery for an abuse of discretion). We disagree. Even assuming (1) acceleration of a loan makes the loan "wholly due" for purposes of triggering NRS 106.240's 10- year time frame, and (2) a communication between a lender and a homeowner before a Notice of Default is recorded could accelerate the loan, we still conclude that the district court was within its discretion to deny appellant's request to conduct discovery.² Namely, we agree

with respondent that appellant's attempt to unearth a decade-old communication that may or may not have occurred between nonparties to this litigation is simply an attempt to undermine the effect of our previous judgment pertaining to the same deed of trust.

See *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1072 (9th Cir. 2004) ("District courts need not condone the 2 Much of appellant's argument is premised on its belief that this second assumption was actually a holding in our recent decision in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 138 Nev., Adv. Op. 22, 507 P.3d 194 (2022).

We reiterate that we made no such holding. *Id.* at 197 ("Assuming Countrywide was legally permitted to accelerate the loan before it recorded the notice of default...." (emphasis added)). SUPREME COURT OF NEVADA (I)1 1947A 2 use of discovery to engage in fishing expeditions." (internal quotation marks and alterations omitted)).

As the United States Ninth Circuit Court of Appeals has put it, lajt some point, litigation rnust come to an end. That point has now been reached." *Facebook, Inc. u. Pac. Nw. Software, Inc.*, 640 F.3d 1034, 1042 (9th Cir. 2011).

Accordingly, we ORDER the judgment of the district court AFFIRMED.³ C.J. Parraguirre, Sr.J. Herndon cc: Hon. Jasmin D. Lilly-Spells, District Judge Persi J. Mishel, Settlement Judge Roger P. Croteau & Associates, Ltd. Wright, Finlay & Zak, LLP/Las Vegas Eighth District Court Clerk 3The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment.

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