

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARRINGTON HOLDINGS, LLC,

Appellant,

vs.

R VENTURES VIII, LLC, a Nevada
series limited liability company of the
container R VENTURES, LLC under
NRS § 86.296;

Respondent.

Case No.: 71437

District Court:

A-13-684151-C

Electronically Filed
Jun 30 2017 02:07 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

From the Eighth Judicial District Court

The Honorable Elissa Cadish

RESPONDENT R VENTURES VIII, LLC'S ANSWERING BRIEF

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NRAP 26.1 Disclosure Statement

The undersigned counsel of record certifies the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made so the Justices of this Court may evaluate possible disqualification or recusal.

The following have an interest in the outcome of this case or are related to entities interested in the case:

- R Ventures VIII, LLC, a series of R Ventures, LLC;
- R Ventures, LLC, a Nevada limited liability company;
- Villamartin De Don Sancho Trust Dated January 1, 2013; and,
- CJLD, LLC, a Nevada limited liability company.

There are no other known interested parties.

Cooper Coons, Ltd. has represented R Ventures VIII, LLC in this matter since its inception.

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Introduction

This appeal arises out of a motion for attorney's fees filed after R Ventures VIII, LLC was granted summary judgment in a quiet title action. R Ventures VIII, LLC purchased the property at issue at an HOA foreclosure sale pursuant to NRS 116.3116. Ultimately, R Ventures VIII, LLC prevailed on their claims. R Ventures VIII, LLC's motion for attorney's fees and costs was granted in its entirety. This appeal followed with Carrington Mortgage alleging the lower court erred because NRS 116.3116(8) does not mandate attorney's fees for the prevailing party.

Summary of the Argument

By granting R Ventures VIII, LLC's Motion for Attorney's Fees, the district court correctly interpreted and applied Nevada law. The district court concluded a quiet title judgment obtained by a third-party purchaser based on a homeowner's association foreclosure sale is a judgment or decree in any action brought under NRS 116.3116.

First, the plain language of NRS 116.3116(8) mandates an award of costs and reasonable attorney's fees.

Next, the diction supports the proposition a quiet title action based on a homeowner's association foreclosure sale must be considered an action brought under NRS 116.3116. When the plain and unambiguous language of NRS

116.3116(8) is given effect, the only reasonable interpretation that can be reached is that a quiet title action brought by a third-party purchaser based on NRS 116.3116 must be considered “any action brought under this section.”

Finally, when a third-party purchaser brings a contested quiet title action under NRS 116.3116 and succeeds in obtaining an order quieting title in favor of the third-party purchaser, that party must be considered a prevailing party.

Standard of Review

The construction of a statute is a question of law, which we review de novo. *MGM Mirage v. Nevada Ins. Guar. Ass’n*, 125 Nev. 223, 227, 209 P.3d 766, 768 (2009).

Argument

I. Applicable Rules of Statutory Interpretation.

“This court has established that when it is presented with an issue of statutory interpretation, it should give effect to the statute’s plain meaning.” *MGM Mirage v. Nevada Ins. Guar. Ass’n*, 125 Nev. 223, 228, 209 P.3d 766, 769 (2009). “Thus, when a statute is facially clear, [this Court] will generally not go beyond its language in determining the Legislature’s intent.” *Pub. Employees’ Benefits Program v. Las Vegas Metro. Police Dep’t*, 124 Nev. 138, 147, 179 P.3d 542, 548 (2008).

Here, the statutory language is clear and unambiguous. 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.”

II. Must Mandates Award of Attorney’s Fees.

The word “must” has a plain meaning requiring some action or prerequisite. *Mutual v. Thomasson*, 317 P.3d 831, 130 Nev. Adv. Op. 4 (Nev., 2014). In that case, the Court interpreted the statutory language for NRS 233B.130(2) which stated in pertinent part, “[p]etitions for judicial review must:...” *Id.* at 834. The Court found this word choice mandatory. *Id.* In contrast, words such as “may” are permissive. *Nevada Com’n on Ethics v. JMA/Lucchesi*, 866 P.2d 297, 302 110 Nev. 1 (1994).

Here, the statute at issue uses well settled mandatory language. Assuming the other statutory prerequisites are met, NRS 116.3116 (8) requires an award of attorney’s fees.

III. A Claim for Quiet Title Based on NRS 116.3116 is “any action.”

NRS 116.3116 provides the foundation for Plaintiff’s quiet title action, without which, Plaintiff would not have a tenable claim. NRS 116.3116 creates the HOA super priority lien. The remainder of NRS 116.3116 *et seq.* lays out the procedure for foreclosing a super priority lien.

Turning to statutory construction, the specific language of the statute is broad. The use of the phrase “in any action” evidences an intent to encompass all actions relating to this section. Consequently, the court should take an expansive meaning to give full effect to the intent of the legislature and protect the incentive structure of the statute.

IV. Successfully Obtaining a Judgment Quieting Title Constitutes a Prevailing Party.

A prevailing party, for attorney fee purposes, is a party that succeeds on any significant issue in litigation which achieves some of the benefits sought in bringing suit. *Sack v. Tomlin*, 110 Nev. 204, 214-15, 871 P.2d 298, 305 (1994). In that case, one party sought 99% of the proceeds of a sale of real property and the other party sought 50%. The lower court had awarded a division of the proceeds, 82% for the first party and 12% for the second party. *Id.* The Nevada Supreme Court found the party originally seeking 99% of the value and ultimately obtaining 82% is a prevailing party. *Id.*

Here, R Ventures VIII, LLC brought a quiet title suit to declare a subordinate interest, the deed of trust, eliminated by the HOA foreclosure sale. Similar to *Sack v. Tomlin*, R Ventures VIII, LLC was seeking the total value of the property. However, instead of merely recouping a portion of the relief requested, R Ventures VIII, LLC obtained the complete value of the property. By achieving this

goal, R Ventures VIII, LLC achieved the ultimate result desired and should be considered prevailing party.

Conclusion

For the foregoing reasons, this Court should affirm the district court's award of attorney's fees.

Dated June 30, 2017.

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CERTIFICATE OF COMPLAINT


I hereby certify the **RESPONDENT R VENTURES VIII, LLC'S**
ANSWERING BRIEF complies with the typeface and type style requirements of
NRAP 32(a)(4)-(6), because this brief has been prepared in a proportionally spaced
typeface using a Microsoft Word processing program in type 14-point Times New
Roman type style. I further certify this brief complies with the page or type-volume
limitations of NRAP 32(a)(7) because it contains approximately 1,623 words.

Finally, I hereby certify I have read the **RESPONDENT R VENTURES VIII, LLC'S ANSWERING BRIEF**, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated June 30, 2017.

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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interest in, this action. On June 30, 2017, I caused to be served a true and correct copy of the foregoing

RESPONDENT R VENTURES VIII, LLC'S ANSWERING BRIEF upon the following by the method indicated.

_____ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.

 X **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

_____ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below:

/s/ Kim Hexamer

An Employee of COOPER COONS, LTD.