

NEVADA SUPREME COURT

DANIEL LAKES,

Appellant,

v.

U.S. BANK TRUST, Trustee for LSF9
Master Participation Trust,

Respondent.

Electronically Filed
May 26 2021 05:56 p.m.
Docket No. 79324
Elizabeth A. Brown
Clerk of Supreme Court

DANIEL LAKES' SUPPLEMENTAL OPENING BRIEF

Doreen Spears Hartwell, Esq.
Nev. State Bar No. 7525
Laura J. Thalacker, Esq.
Nevada State Bar No. 5525
Hartwell Thalacker, Ltd.
11920 Southern Highlands Pkwy, #201
Las Vegas, Nevada 89141
Phone: 702-850-1076; Fax: 702-508-9551

*Attorneys for Appellant Daniel Lakes
in Conjunction with the Legal Aid Center of Southern Nevada*

NEVADA SUPREME COURT

DANIEL LAKES

Appellant,

v.

U.S. BANK TRUST, Trustee for LSF9
Master Participation Trust,

Respondent.

Docket No. 79324

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that there are no persons and/or entities as described in NRAP 26.1(a) that must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Law firms: The following law firms have appeared in the district court on behalf of Appellant Daniel Lakes:

Southern Nevada Senior Law Program
Legal Aid Center of Southern Nevada
Hartwell Thalacker, LTD.

/s/Doreen Spears Hartwell
Doreen Spears Hartwell, Esq.
Nev. State Bar No. 7525
Laura J. Thalacker, Esq.
Nevada State Bar No. 5525
Hartwell Thalacker, Ltd.
11920 Southern Highlands Pkwy, #201
Las Vegas, Nevada 89141

*Attorneys for Respondent Daniel Lakes
in Conjunction with the Legal Aid Center of Southern
Nevada*

TABLE OF CONTENTS

QUESTION PRESENTED	1
SUMMARY OF ARGUMENTS.....	1
FACTS	2
ARGUMENT	3
I. Failure to Consider the Enforceability of U.S. Bank’s Security Interest Against Mr. Lakes Pursuant to N.R.S. §111.325 Was Reversible Error.	3
II. The District Court Ignored the Equities Which Weighed in Favor of Lakes When Failing to Apply N.R.S. §111.325.....	4
CONCLUSION.....	5

TABLE OF AUTHORITIES

STATE CASES

Shadow Wood HOA v. N.Y. Cmty. Bancorp.,
132 Nev. Adv. Op. 5, 366 P.3d 1105, 1115 (2016).....5

STATUTES

N.R.S. § 111.315 3, 4

N.R.S. § 111.3253, 4, 5

QUESTION PRESENTED

Whether the Court of Appeals properly reversed the district court for failing to consider whether Appellant Daniel Lakes was a subsequent bona fide purchaser of the Subject Property making Respondent U.S. Bank Trust's unrecorded assignment of its first deed of trust unenforceable against Lakes.

SUMMARY OF ARGUMENT

The district court erred as a matter of law when granting summary judgment in favor of U.S. Bank Trust based on the concept that the Freddie Mac deed of trust was not extinguished by the HOA sale. Despite arguing the difference between Freddie Mac enforcing its unextinguished deed of trust against a subsequent buyer without knowledge from U.S. Bank Trust's attempt to enforce its unrecorded assignment of Freddie Mac's interest against a subsequent bona fide purchaser without actual, constructive or inquiry notice of U.S. Bank Trust's assignment, the district court found that N.R.S. §111.325 did not apply.

The district court's failure to consider whether Mr. Lakes was a subsequent bona fide purchaser based on the express language of N.R.S. §111.325 was reversible error.

///

///

///

FACTS

Daniel Lakes brought a quiet title action relating to the real property located at 548 Primrose Hill Ave., Las Vegas, NV, 89138 (the “Property”) which he purchased on January 20, 2016, without actual or constructive knowledge of U.S. Bank Trust’s alleged security interest in same. [JA0001, JA0428 and JA0402-06.]

Mr. Lakes learned of the Property from his son who saw a for sale by owner advertisement on Zillow listing the Property for \$115,000. [JA0427.] The Property was originally purchased in 2007 by Roger Cedillo. [JA0175-185.] Countrywide sold the loan secured by a deed of trust to Freddie Mac in May 2007. [JA0188.] At some point, Mr. Cedillo abandoned the Property and Liberty at Huntington Homeowners’ Association (the “HOA”) conducted a foreclosure sale on August 25, 2015. [JA0383-86.] Parcelnomics purchased the Property at the HOA foreclosure sale. [JA0383-86.] Parcelnomics transferred title to the Property to one of its subsidiaries, Investment Deals, who then sold the property to Noune Graeff on October 23, 2015. [JA0396-400.] Mr. Lakes performed his due diligence at the Clark County Recorder’s Office in January 2016 searching for liens and encumbrances on the Subject Property before purchasing it for \$112,000. [JA0427-28.]

///

///

///

On November 12, 2015, US Bank Trust purchased Freddie Mac's first deed of trust on the Subject Property. [JA0408, JA0413.] Ocwen completed the transfer on December 6, 2015. [JA0408, JA0413]. Meanwhile, Mr. Lakes performed his due diligence at the Clark County Recorder's Office in January 2016 searching for all liens and encumbrances on the Subject Property before purchasing it for \$112,000. [JA0427-28.] Then, on May 17, 2016, US Bank's loan servicing company Caliber Homes, used an attorney in fact to execute the Assignment of Deed on behalf of Ocwen. [JA0369-370] U.S. Bank then waited another ten days before recording the Assignment on May 27, 2016. [JA0369-370, JA0187-91.]

In July 2016, U.S. Bank Trust sent a Notice of Default and Intent to Sell addressed to Mr. Lakes stating that over \$213,000 was past due and owing on the original promissory note to Mr. Cedillo that was secured by the Property. [JA0477-79.]

ARGUMENT

I. Failure to Consider the Enforceability of U.S. Bank's Security Interest Against Mr. Lakes Pursuant to N.R.S. §111.325 Was Reversible Error.

U.S. Bank Trust does not dispute *its obligation* to record its assignment from Ocwen under N.R.S. §111.315, which was the crux of Lakes' argument. Nev. Rev. Stat. §111.315 states:

///

///

Every conveyance of real property, and every instrument of writing setting forth an agreement to convey any real property, or whereby any real property may be affected, proved acknowledged and certified in the manner prescribed in this chapter ... shall be recorded...

As noted by the Court of Appeals, issue before the Court was whether U.S. Bank's *unrecorded* purchase of Ocwen's security interest was enforceable *against* Mr. Lakes, a downstream subsequent bona fide purchaser without notice of *U.S. Bank's* interest. *See* Court of Appeals Decision, Case No. 79324-COA, filed 12/30/20, at p. 8.

Nevada Rev. Stat. § 111.325 states:

Every conveyance of real property within this State hereafter made, which shall not be recorded as provided in this chapter, shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, of the same real property, or any portion thereof, where his or her own conveyance shall be first duly recorded.

The plain language of the statute makes U.S. Bank Trust's unrecorded assignment void against Mr. Lakes to the extent that he is a subsequent bona fide purchaser in good faith and for valuable consideration. The district court's refusal to consider Mr. Lakes' status as a bona fide purchaser was reversible error.

II. The District Court Ignored the Equities Which Weighed in Favor of Lakes When Failing to Apply N.R.S. §111.325.

The only way for Mr. Lakes to have known of U.S. Bank Trust's security interest was for U.S. Bank to have complied with its statutory recording obligation.

Mr. Lakes is the type of individual that N.R.S. §111.325 is meant to protect. When sitting in equity, courts must consider the entirety of the circumstances that bear upon the equities, including the status and actions of all parties involved, and including whether an innocent party may be harmed by granting the desired relief. *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1115 (2016).

Nothing in the Clark County Recorder's records indicates that the HOA foreclosure sale did not wipeout the Ocwen (Freddie Mac) first deed. Lakes would not have paid \$112,000 for the Subject Property subject to a \$213,000 lien, when the property was listed for \$115,000. Clearly, had U.S. Bank complied with its recording obligations under N.R.S. §111.315, Mr. Lakes would not have purchased the Property. Lakes is the innocent party in this case and the protections of N.R.S. §111.325 should apply.

Conclusion

The district court committed reversible error when failing to consider Mr. Lakes' status as a bona fide purchaser pursuant to N.R.S. §111.325. Mr. Lakes

///

///

requests that this the Court of Appeals ruling be affirmed and this matter remanded to the district court for such determination.

HARTWELL THALACKER, LTD

/s/Doreen Spears Hartwell

Doreen Spears Hartwell, NSB # 7525
Laura J. Thalacker, NSB # 5522
11920 Southern Highlands Pkwy, Suite 201
Las Vegas, Nevada 89141

Attorneys for Appellant Daniel Lakes

Certificate of Compliance

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Word 2016 in 14 point font Times New Roman.

2. I further certify that this brief complies with the type volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 1434 words; and I certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose.

3. I further certify that 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 that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 26th day of May 2021.

/s/Doreen Spears Hartwell
Doreen Spears Hartwell
Nevada State Bar No. 7525
Hartwell Thalacker, Ltd
11920 Southern Highland Pkwy,
Suite 201
Las Vegas, Nevada 89141
Telephone: 702-850-1076

CERTIFICATE OF SERVICE

I certify that on the 26th day of May 2021, I served a copy of Daniel Lakes' Supplement to Opening Brief upon counsel of record via e-Flex electronic service to the following:

- By personally serving it upon him/her; or
- By mailing it by first class mail with sufficient postage prepaid to the following address(es); or
- By email to the following email addresses:

tasca@ballardspahr.com
sakaij@ballardspahr.com
Joel E. Tasca, Esq.
Joseph P. Sakai, Esq.
Ballard Spahr
1980 Festival Plaza Dr. #900
Las Vegas, NV 89135
U.S. Bank Trust,
Trustee for LSF9 Master Participation Trust

/s/Doreen Spears Hartwell
An Employee of Hartwell Thalacker, Ltd