

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUNSET AND PECOS II, LLC, A
WASHINGTON LLC,
Appellant,
vs.
SUNSET AND PECOS EQUITY
INVESTORS, AN ARIZONA LLC;
JAMES R. RIGGS; AND KIMBERLY D.
RIGGS,
Respondents.

No. 58987

FILED

NOV 21 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *T. Malone*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting a motion to dismiss a deficiency judgment action. Eighth Judicial District Court, Clark County; Allan R. Earl, Judge.

Having considered the parties' arguments and the record on appeal, we conclude that the district court erred in dismissing, as untimely filed, the underlying deficiency judgment action. *See Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (providing that this court rigorously reviews orders dismissing an action, and as such, accepts all factual allegations in the complaint as true and draws all inferences in appellant's favor). In dismissing the underlying deficiency action, the district court relied on Arizona Revised Statute section 33-814(A), which provides that a deficiency judgment action must be filed "within ninety days after the date of sale of trust

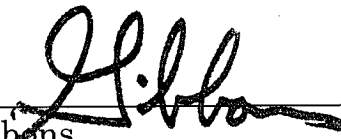
property under a trust deed pursuant to [Ariz. Rev. Stat. Ann.] § 33-807.” But while the parties agreed that Arizona law would govern the enforcement of the promissory note and guaranty, their agreements further provided that Nevada law would govern any matter relating to the creation, perfection, and enforcement of appellant’s rights and remedies against the real or personal property located in Nevada. And pursuant to these agreements, the trustee’s sale of the subject property took place in Nevada, and consequently, was conducted pursuant to Nevada law, not pursuant to Arizona Revised Statute section 33-807.

In *Key Bank of Alaska v. Donnels*, 106 Nev. 49, 53, 787 P.2d 382, 384-85 (1990), this court addressed a situation where the parties had agreed that Alaska law would govern any deficiency action, but the Alaska statute on which a party relied to bar that deficiency action applied only to foreclosure proceedings conducted in Alaska. Because the proceedings at issue there occurred in Nevada, rather than Alaska, the *Key Bank* court held that the Alaska statute was inapplicable and reversed the district court’s dismissal of the underlying deficiency action. *Id.*

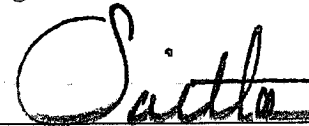
Thus, while the parties to this matter similarly agreed that Arizona law would govern the deficiency action, like the statute at issue in *Key Bank*, 106 Nev. at 53, 787 P.2d at 384-85, Arizona Revised Statute section 33-814(A) is inapplicable here because it only applies to foreclosures completed pursuant to Arizona Revised Statute section 33-807. Accordingly, the district court erred in concluding that Arizona Revised Statute section 33-814(A) rendered the deficiency judgment action untimely filed, *cf. Walters v. Dist. Ct.*, 127 Nev. ___, 263 P.3d 231, 234 (2011) (recognizing that Nevada law requires that an application for a

deficiency judgment be made within six months of the foreclosure sale), and we therefore,

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. Allan R. Earl, District Judge
William F. Buchanan, Settlement Judge
Sklar Williams LLP
Glen J. Lerner & Associates
Eighth District Court Clerk