

IN THE SUPREME COURT OF THE STATE OF NEVADA

KK REAL ESTATE INVESTMENT
FUND, LLC, A NEVADA LIMITED
LIABILITY COMPANY,
Appellant,
vs.
CAPITAL ONE, N.A., SUCCESSOR BY
MERGER TO ING BANK, FSB, A
NATIONAL ASSOCIATION,
Respondent.

No. 64185

FILED

NOV 14 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting a motion to dismiss in a quiet title action. Eighth Judicial District Court, Clark County; Valorie J. Vega, Judge.

The district court granted Capital One's motion to dismiss, finding that KK Real Estate Investment Fund had failed to state a viable claim for relief because NRS 116.3116(2)'s superpriority provision does not extinguish a first security interest. This court's recent disposition in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. ___, 334 P.3d 408 (2014), decides that a common-interest community association's NRS 116.3116(2) superpriority lien has true priority over a first security interest, and the association may nonjudicially foreclose on that lien. The district court's decision thus was based on an erroneous interpretation of

the controlling law and did not reach the other issues colorably asserted. Accordingly, we

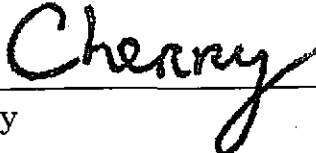
REVERSE the order granting the motion to dismiss AND REMAND this matter to the district court for further proceedings consistent with this order.¹


_____, J.
Hardesty


_____, J.
Douglas

CHERRY, J., concurring:

For the reasons stated in the *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. ___, 334 P.3d 408 (2014), dissent, I disagree that respondent lost its lien priority by virtue of the homeowners association's nonjudicial foreclosure sale. I recognize, however, that *SFR Investments* is now the controlling law and, thusly, concur in the disposition of this appeal.


_____, J.
Cherry

¹The injunction imposed by our October 30, 2013, order is vacated.

cc: Hon. Valorie J. Vega, District Judge
Alessi & Koenig, LLC
Ballard Spahr, LLP
Eighth District Court Clerk