

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH BERBERICH, AN
INDIVIDUAL,
Appellant,
vs.
CITIMORTGAGE, INC., A NATIONAL
ASSOCIATION,
Respondent.

No. 64871

FILED

DEC 16 2014

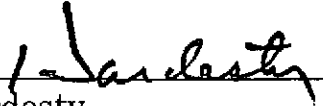
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

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; David B. Barker, Judge.

The district court granted respondent's motion to dismiss, finding that appellant had failed to state a viable claim for relief because "[t]here is no section in Chapter 116 that states an HOA foreclosure can extinguish a senior deed of trust." 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

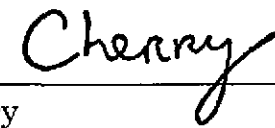
REVERSE the order granting the motion to dismiss AND REMAND this matter to the district court for further proceedings consistent with this order.


_____, 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 the holder of the first security interest 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

cc: Hon. David B. Barker, District Judge
Maier Gutierrez Ayon, PLLC
Akerman LLP/Las Vegas
Eighth District Court Clerk