NEBRASKA SUPREME COURT

American Exchange Bank v. Topp

321 Neb. 409 (2026) · No. S-25-290 · Decided May 15, 2026

SUMMARY

The Nebraska Supreme Court held that Nebraska's antideficiency statute, Neb. Rev. Stat. § 76-1013, applied to guaranty obligations secured by trust deeds. It further held that a contractual waiver of the statute's deficiency limitations was unenforceable as contrary to public policy when the lender exercised the trustee's power of sale and sought a deficiency judgment. The court concluded that assessed values and prior appraisals created a genuine issue of material fact regarding the properties' fair market values, reversed summary judgment, and remanded for further proceedings.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Bergevin, J.; Funke, C.J.; Cassel, J.; Stacy, J.; Papik, J.; Freudenberg, J.; Vaughn, J.
JURISDICTION	Nebraska Supreme Court
DECIDED	May 15, 2026
DOCKET	S-25-290
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a district court order granting the appellee's motion for summary judgment in a deficiency-judgment action arising from trustee sales of real property securing guaranties.
STANDARD OF REVIEW	Summary judgment is reviewed de novo, viewing the record in the light most favorable to the nonmoving party and drawing all reasonable inferences in that party's favor. Statutory interpretation, contract construction, and whether a contract violates public policy are questions of law reviewed independently.
PRECEDENTIAL VALUE	Published opinion; precedential Nebraska Supreme Court decision.
PARTIES	Luke G. Topp, Ria N. Topp v. American Exchange Bank

TOPICS

appellate procedure · standard of review · statutory interpretation · contracts · real estate

PRACTICE AREAS

real estate · contracts · commercial litigation · remedies · appellate procedure

QUESTIONS PRESENTED

1. Whether Nebraska's antideficiency statute, Neb. Rev. Stat. § 76-1013, applies to guarantors whose obligations are secured by trust deeds.
2. Whether a contractual waiver of the fair-market-value limitation on deficiency judgments is enforceable when the creditor exercises a trust deed's power of sale and seeks a deficiency judgment.
3. Whether the assessed values and prior appraisals created a genuine issue of material fact regarding the properties' fair market value at the time of the trustee sales.

HOLDINGS

1. Neb. Rev. Stat. § 76-1013 applies to a guarantor's obligation when the guarantor's trust deed secures that obligation and the creditor seeks a deficiency judgment after exercising the trust deed's power of sale.
2. A waiver of the limitation on deficiency judgments in § 76-1013 is unenforceable when a trust deed secures the obligation, the creditor exercises the power of sale, and the creditor seeks a deficiency judgment.
3. The evidence of assessed values and prior appraisals created a genuine issue of material fact regarding the properties' fair market values at the time of the trustee sales, making summary judgment improper.

KEY QUOTATIONS

> *"Section 76-1013 plainly applies to "obligations for which the trust deed was given as security." Thus, § 76-1013 applies to the guaranties executed by the Topps for which AEB seeks a deficiency judgment."* (417-18)

> *"Allowing a beneficiary to proceed with a trustee sale and simultaneously avoid the limitations of the antideficiency statute is a violation of the Legislature's public policy."* (420)

> *"We hold that a waiver of the limitation on deficiency judgments in § 76-1013 is unenforceable when a trust deed is given to secure an obligation, the power of sale is exercised, and a deficiency judgment is sought."* (420)

> *"Because a fact finder could reasonably infer that the fair market values of the properties at the time of the trustee sales were greater than AEB's asserted values, a factual issue remains, and summary judgment was improperly granted."* (423-24)

FACTUAL BACKGROUND

Topp's Mechanical, Inc. executed four promissory notes with American Exchange Bank, and Luke and Ria Topp executed unconditional guaranties. The Topps also conveyed three real properties under trust deeds securing both the business's notes and the Topps' obligations. After defaults, the Bank conducted trustee sales and purchased the properties for $310,000, while evidence included prior appraisals totaling $1,278,000, assessed values totaling $1,253,071, and the Bank's asserted fair market value totaling $1,113,000. The Bank then sought a deficiency judgment, and the Topps argued that Nebraska's antideficiency statute required credit for the properties' fair market value and that a genuine factual dispute existed regarding that value.

PROCEDURAL HISTORY

American Exchange Bank sued Luke and Ria Topp for a deficiency judgment under guaranties securing loans to their business. The district court granted the Bank summary judgment, concluding that the guaranties waived any defense based on the Bank's failure to obtain the collateral's fair market value, and denied reconsideration or a new trial. The Topps timely appealed, and the Nebraska Supreme Court moved the appeal to its docket on its own motion.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

The district court must conduct further proceedings, including determining the fair market value of the trust properties at the time of the trustee sales and applying the limitations of § 76-1013 to any deficiency judgment.

CASES CITED

- U.S. Specialty Ins. Co. v. D S Avionics, 320 Neb. 287, 26 N.W.3d 761 (2025)
- Boone River, LLC v. Miles, 318 Neb. 760, 18 N.W.3d 802 (2025)
- State ex rel. Douglas Cty. Sch. Dist. No. 66 v. Ewing, 319 Neb. 663, 24 N.W.3d 861 (2025)
- Bruce Lavalleur, P.C. v. Guarantee Group, 314 Neb. 698, 992 N.W.2d 736 (2023)
- Blair Co. v. American Savings Co., 184 Neb. 557, 169 N.W.2d 292 (1969)
- First Nat. Bank of Omaha v. Davey, 285 Neb. 835, 830 N.W.2d 63 (2013)
- Pantano v. Maryland Plaza Partnership, 244 Neb. 499, 507 N.W.2d 484 (1993)
- Mutual of Omaha Bank v. Murante, 285 Neb. 747, 829 N.W.2d 676 (2013)
- New Light Co. v. Wells Fargo Alarm Servs., 247 Neb. 57, 525 N.W.2d 25 (1994)
- Green Plains Trade Group v. Archer Daniels Midland Co., 320 Neb. 882, 31 N.W.3d 577 (2026)
- Wilke v. Woodhouse Ford, 278 Neb. 800, 774 N.W.2d 370 (2009)
- CSA 13-101 Loop, LLC v. Loop 101, LLC, 236 Ariz. 410, 341 P.3d 452 (2014)
- Founders Bank and Trust Co. v. Upsher, 830 P.2d 1355 (Okla. 1992)
- Brunsoman v. Scarlett, 465 N.W.2d 162 (N.D. 1991)
- Barnaby v. Boardman, 313 N.C. 565, 330 S.E.2d 600 (1985)
- Freedland v. Greco, 45 Cal. 2d 462, 289 P.2d 463 (1955)
- Stretch v. Murphy, 166 Or. 439, 112 P.2d 1018 (1941)
- First Nat. Bank of York v. Critel, 251 Neb. 128, 555 N.W.2d 773 (1996)
- Lienemann v. City of Omaha, 191 Neb. 442, 215 N.W.2d 893 (1974)
- Holman v. Papio-Missouri River Nat. Resources Dist., 246 Neb. 787, 523 N.W.2d 510 (1994)

- Estate of Block v. Estate of Becker, 313 Neb. 818, 986 N.W.2d 726 (2023)
- Sinu v. Concordia University, 313 Neb. 218, 983 N.W.2d 511 (2022)
- LaSalle Bank Nat. Ass'n v. Sleutel, 289 F.3d 837 (5th Cir. 2002)
- Moayedi v. Interstate 35/Chisam Road, L.P., 438 S.W.3d 1 (Tex. 2014)

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