SUPREME COURT OF UTAH

Taghipour v. Jerez, 2002 UT 74

52 P.3d 1252 (2002) · No. No. 20010450 · Decided July 30, 2002

SUMMARY

The Utah Supreme Court reviewed whether a loan agreement and trust deed executed by an LLC manager were valid and binding on the LLC despite an operating-agreement provision requiring member authorization for loans. The court held that Utah Code section 48-2b-127(2), which specifically addressed instruments involving the acquisition, mortgage, or disposition of LLC property, controlled over the more general manager-authority provision and made the documents binding. The court affirmed dismissal of the plaintiffs' claims against the lender.

CASE DETAILS

COURT	Supreme Court of Utah
WRITING FOR THE COURT	Justice Russon; Chief Justice Durham; Justice Howe; Justice Wilkins; District Judge Ben H. Hadfield
JURISDICTION	Utah
DECIDED	July 30, 2002
DOCKET	No. 20010450
DISPOSITION	affirmed
PROCEDURAL POSTURE	Certiorari review of the Utah Court of Appeals' decision affirming the trial court's dismissal of the plaintiffs' claims against Mount Olympus Financial.
STANDARD OF REVIEW	On certiorari, the Utah Supreme Court reviews the court of appeals' decision rather than the trial court's decision and reviews the court of appeals' decision for correctness. Statutory construction is reviewed for correctness as a question of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Namvar Taghipour, Danesh Rahemi, M.D., Jerez, Taghipour and Associates LLC v. Edgar C. Jerez, Mt. Olympus Financial, L.C., Dean Becker

TOPICS

statutory interpretation · limited liability companies · mortgages · foreclosure · writ of certiorari

PRACTICE AREAS

limited liability companies · real estate · commercial litigation · statutory interpretation · foreclosure

QUESTIONS PRESENTED

1. Whether Utah Code section 48-2b-127(2), rather than section 48-2b-125(2)(b), governed the validity of loan and trust-deed documents executed by an LLC manager.
2. Whether the loan documents were valid and binding on the LLC even though the operating agreement required member authorization for loans.
3. Whether Mount Olympus was liable for failing to conduct additional diligence regarding Jerez's authority to bind the LLC.

HOLDINGS

1. Section 48-2b-127(2) is the more specific statute and governs instruments and documents providing for the acquisition, mortgage, or disposition of LLC property, taking precedence over the more general manager-authority provision in section 48-2b-125(2)(b).
2. The loan agreement documents executed by Jerez as the LLC's designated manager were valid and binding on the LLC under section 48-2b-127(2), notwithstanding the operating agreement's member-authorization requirement.
3. Mount Olympus was not liable to the plaintiffs for Jerez's actions because it did all that was required under section 48-2b-127(2) by relying on Jerez's execution of the documents as the LLC's manager.

KEY QUOTATIONS

> *“Moreover, if we were to hold that section 48-2b-125(2)(b) is the more specific provision, we would essentially render section 48-2b-127(2) "superfluous and inoperative," Hall, 2001 UT 34, ¶ 15, 24 P.3d 958, because section 48-2b-127(2) would simply restate section 48-2b-125(2)(b) and would therefore be subsumed by section 48-2b-125(2)(b).”* (¶ 15)

> *“According to this section, the documents are binding if they are covered by the statute and if executed by a manager. There are no other requirements for such documents to be binding on a limited liability company.”* (¶ 17)

FACTUAL BACKGROUND

Taghipour, Rahemi, and Jerez formed a Utah limited liability company to purchase and develop real property, and the LLC's articles designated Jerez as its manager. Although the operating agreement required member authorization for LLC loans, Jerez independently borrowed $25,000 from Mount Olympus and executed a trust deed encumbering the LLC's property. Mount Olympus verified only that Jerez was the LLC's manager, Jerez absconded with the loan proceeds, and the LLC defaulted, resulting in foreclosure without notice to the other members.

PROCEDURAL HISTORY

The LLC members and the LLC sued Mount Olympus Financial and Jerez after Jerez, acting as the LLC's manager, executed a loan secured by the LLC's real property without the other members' knowledge. The trial court dismissed the claims against Mount Olympus under Utah Code section 48-2b-127(2). The Utah Court of Appeals affirmed, and the Utah Supreme Court granted certiorari and affirmed the court of appeals.

DISPOSITION

affirmed

CASES CITED

- Grand County v. Rogers, 2002 UT 25, ¶ 6, 44 P.3d 734
- Brookside Mobile Home Park, Ltd. v. Peebles, 2002 UT 48, ¶ 11, 48 P.3d 968
- State v. Lusk, 2001 UT 102, ¶¶ 11, 19, 37 P.3d 1103
- Jensen v. IHC Hosps., Inc., 944 P.2d 327, 331-32 (Utah 1997)
- Hall v. State Dep't of Corr., 2001 UT 34, ¶ 15, 24 P.3d 958
- Biddle v. Washington Terrace City, 1999 UT 110, ¶ 14, 993 P.2d 875
- De Baritault v. Salt Lake City Corp., 913 P.2d 743, 747 (Utah 1996)
- Capital Assets Fin. Servs. v. Maxwell, 2000 UT 9, ¶ 11, 994 P.2d 201
- First Sec. Bank, N.A. v. Banberry Crossing, 780 P.2d 1253, 1256 (Utah 1989)
- State ex rel. Div. of Forestry, Fire & State Lands v. Tooele County, 2002 UT 8, n. 2, 44 P.3d 680
- Airport Hilton Ventures v. State Tax Comm'n, 1999 UT 26, nn. 1-3, 976 P.2d 1197