SUPREME COURT OF COLORADO

Columbus Investments v. Lewis

48 P.3d 1222 (Colo. 2002) · No. No. 01SC340 · Decided June 17, 2002

SUMMARY

The Colorado Supreme Court held that the original holders of a promissory note and deed of trust assigned all interests entitling them to notice of a pending tax deed when they recorded an assignment conveying all right, title, and interest to a bank as collateral. Because the county treasurer properly relied on the recorded interests and notified the bank rather than the original holders, the court reversed the court of appeals and remanded for summary judgment in favor of Columbus Investments.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Hobbs
JURISDICTION	Colorado
DECIDED	June 17, 2002
DOCKET	No. 01SC340
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Colorado granted certiorari to review the court of appeals' decision invalidating a tax deed because the county treasurer had not given notice to the original holders of a promissory note and deed of trust.
STANDARD OF REVIEW	Summary judgment is reviewed de novo.
PRECEDENTIAL VALUE	Published Colorado Supreme Court en banc opinion; precedential.
PARTIES	Columbus Investments v. Richard G. Lewis, Patricia A. Lewis

TOPICS

tax liens · tax collection · deeds · quiet title · statutory interpretation

PRACTICE AREAS

real estate · tax · secured transactions

QUESTIONS PRESENTED

1. Whether the McClellands retained an interest in the real property requiring notice under Colorado Revised Statutes section 39-11-128(1)(a) after assigning all of their right, title, and interest in the note and deed of trust to Norwest as collateral.
2. Whether the county treasurer properly relied on the recorded interests identified in the title search when issuing notice of the pending tax deed.
3. Whether the tax deed was void because the McClellands did not receive notice.

HOLDINGS

1. The McClellands assigned to Norwest all of the interest that would have entitled them to notice under section 39-11-128(1)(a); the fact that the assignment also served as collateral did not preserve their notice interest.
2. The county treasurer properly relied on the interests of record at the time of her inquiry and was not required to investigate whether the comprehensive assignment was merely a security arrangement.
3. The tax deed was not void for failure to notify the McClellands, and Columbus Investments was entitled to summary judgment.

KEY QUOTATIONS

> *"However, while the assignment may have been made as security, it was complete. The McClellands assigned all of their legal and equitable interest in the property to Norwest."* (48 P.3d at 1228)

> *"Because the agreement included the comprehensive assignment, Norwest obtained the right of the McClellands, the original holders of the deed of trust, to the treasurer's notice under section 39-11-128(1)(a)."* (48 P.3d at 1229)

FACTUAL BACKGROUND

The Lewises purchased a Fruita, Colorado, parcel with funds borrowed from Glenn and Karen McClelland and secured by a recorded deed of trust. The McClellands later assigned the note and deed of trust to Norwest Bank as collateral for a loan, expressly assigning all of their right, title, and interest, and Norwest recorded the assignment. After the Lewises failed to pay property taxes, Mesa County sold the tax lien to Columbus Investments; the county treasurer relied on a title report identifying Norwest, but not the McClellands, as a record interest holder and issued Columbus a tax deed.

PROCEDURAL HISTORY

The Lewises filed a quiet title action challenging the treasurer's tax deed to Columbus Investments. On cross-motions for summary judgment, the trial court held the original note and deed-of-trust holders retained a right to notice and declared the tax deed void. The court of appeals affirmed, with one judge dissenting. The Colorado Supreme Court reversed and remanded with instructions to enter summary judgment for Columbus Investments.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the judgment of the Colorado Court of Appeals and remand with instructions to enter summary judgment for Columbus Investments.

CASES CITED

- Lewis v. Columbus Investments, 36 P.3d 75 (Colo. App. 2001)
- Aspen Wilderness Workshop, Inc. v. Colo. Water Conservation Bd., 901 P.2d 1251, 1256 (Colo. 1995)
- Winter Park Devil's Thumb Inv. Co. v. BMS Partnership, 926 P.2d 1253, 1255 (Colo. 1996)
- Morris v. Cheney, 81 Colo. 393, 395, 255 P. 987, 988 (1927)
- Notch Mountain Corp. v. Elliott, 898 P.2d 550, 555 (Colo. 1995)
- Stetler v. Winegar, 75 Colo. 500, 502-03, 226 P. 858, 859 (1924)
- Jackson County Fed. Sav. & Loan Ass'n v. Maduff Mortgage Corp., 608 F. Supp. 588, 593 (D. Colo. 1985)
- In re May, 756 P.2d 362, 369 (Colo. 1988)
- Cache Nat'l Bank v. Lusher, 882 P.2d 952, 957 (Colo. 1994)
- Nelson & White, Real Estate Finance Law, 429, 440, 443 (4th ed. 2001)
- Nichols v. Cadle Co., 139 F.3d 59, 62 (1st Cir. 1998)
- Prairie Props., L.L.C. v. McNeill, 996 S.W.2d 635, 639-40 (Mo. App. 1999)
- Barclay Receivables Co. v. Mountain Majesty, Ltd., 903 P.2d 37, 39 (Colo. App. 1995)
- Swofford v. Colorado National Bank, 628 P.2d 184 (Colo. App. 1981)
- Telluride Resort & Spa, L.P. v. Colo. Dep't of Revenue, 40 P.3d 1260, 1264-66 (Colo. 2002)