

NEBRASKA SUPREME COURT

First Nat. Bank North Platte v. Cardenas

299 Neb. 497 (2018) · No. No. S-17-360 · Decided March 30, 2018

SUMMARY

The Nebraska Supreme Court affirmed a jury verdict awarding First National Bank North Platte a deficiency judgment against Jose and Christina Cardenas and their limited liability company following trustee sales of secured real property. The court held that the borrowers’ failure to move for a new trial precluded appellate review of excessive damages, although the sufficiency of the evidence remained reviewable. The court also upheld the refusal to give requested jury instructions concerning farm mediation, the right to cure defaults, and foreclosure sale bidding requirements.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Cassel, J.; Heavican, C.J.; Miller-Lerman, J.; Stacy, J.; Funke, J.
JURISDICTION	Nebraska
DECIDED	March 30, 2018
DOCKET	No. S-17-360
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a consolidated deficiency action following the bank's nonjudicial trustee sales of real property securing the borrowers' loans. After a jury returned a verdict for the bank, the borrowers appealed, challenging the sufficiency of the evidence, the damages, and the refusal to give requested jury instructions.
STANDARD OF REVIEW	A jury verdict will be set aside for insufficient evidence only if clearly wrong; the evidence is viewed most favorably to the successful party, with evidential conflicts resolved and reasonable inferences drawn in that party's favor. The correctness of a jury instruction is a question of law reviewed independently. Appellate review of inadequate or excessive damages following a jury trial requires a motion for new trial under Neb. Rev. Stat. § 25-1912.01(2) (Reissue 2016).
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Jose A. Cardenas, Christina Cardenas, Joya de Andalucia Farms, LLC v. First National Bank North Platte

TOPICS

jury instructions

foreclosure

damages

appellate procedure

standard of review

PRACTICE AREAS

appellate procedure

civil procedure

real estate finance

nonjudicial foreclosure

jury instructions

deficiency judgments

QUESTIONS PRESENTED

1. Whether the borrowers could obtain appellate review of their claim that the jury awarded excessive damages when they failed to file a motion for new trial.
2. Whether sufficient evidence supported the jury's deficiency verdict.
3. Whether the trial court erred by refusing to instruct the jury on the bank's alleged duty under the Farm Mediation Act to provide notice of mediation.
4. Whether the trial court erred by refusing to instruct the jury that the borrowers had a right to cure defaults under the Nebraska Trust Deeds Act.
5. Whether the trial court erred by refusing to give the borrowers' proposed instruction concerning the bank's alleged failure to bid fair market value at the trustee's sales.

HOLDINGS

1. When an action has been tried before a jury, a motion for new trial is a prerequisite to appellate review of inadequate or excessive damages; because the borrowers did not file one, their excessive-damages claim was not properly before the court.
2. The evidence was sufficient to support the jury's \$171,162.66 deficiency verdict for the bank.
3. The trial court properly refused to instruct the jury on the alleged failure to provide notice of mediation because the instruction was not warranted by the evidence.
4. The trial court properly refused the requested right-to-cure instructions because they were not correct statements of law and were not supported by the evidence.
5. The trial court properly refused the borrowers' proposed instruction stating that a below-market trustee-sale bid absolutely barred a deficiency judgment.

KEY QUOTATIONS

“When an action has been tried before a jury a motion for a new trial shall not be a prerequisite to obtaining appellate review of the sufficiency of the evidence, but a motion for a new trial shall be a prerequisite to obtaining appellate review of the issue of inadequate or excessive damages.” (503)

“A tender of payment is more than being “willing and able” to pay. It is “an offer to perform, coupled with the present ability of immediate performance, which, were it not for the refusal of cooperation by the party to whom tender is made, would immediately satisfy the condition or obligation for which the tender is made.”” (512)

“Because a general verdict does not specify the basis for an award, Nebraska law presumes that the winning party prevailed on all issues presented to the jury.” (516)

FACTUAL BACKGROUND

The Cardenases obtained multiple loans from First National Bank North Platte secured by their Nebraska real property through deeds of trust. After the borrowers moved to Kentucky, failed to make payments, and were unable to sell the property, the bank sent notices of default and sold the house tract and the barn and pasture tracts at trustee's sales. The bank then sought a deficiency judgment, and the jury awarded \$171,162.66 after considering the indebtedness, sale proceeds, and property value.

PROCEDURAL HISTORY

First National Bank North Platte filed two deficiency actions in the Lincoln County District Court after conducting trustee's sales of the borrowers' property; the actions were consolidated and tried to a jury. The jury awarded the bank \$171,162.66, and the district court entered judgment on the verdict. The borrowers did not file a motion for new trial but timely appealed.

DISPOSITION

affirmed

CASES CITED

- ACI Worldwide Corp. v. Baldwin Hackett & Meeks, 296 Neb. 818, 896 N.W.2d 156 (2017)
- Pierce v. Landmark Mgmt. Group, 293 Neb. 890, 880 N.W.2d 885 (2016)
- In re Estate of Clinger, 292 Neb. 237, 872 N.W.2d 37 (2015)
- Armstrong v. Clarkson College, 297 Neb. 595, 901 N.W.2d 1 (2017)
- First Nat. Bank of Omaha v. Davey, 285 Neb. 835, 830 N.W.2d 63 (2013)
- 24th & Dodge Ltd. Part. v. Acceptance Ins. Co., 269 Neb. 31, 690 N.W.2d 769 (2005)
- Gilroy v. Ryberg, 266 Neb. 617, 667 N.W.2d 544 (2003)
- Graff v. Burnett, 226 Neb. 710, 414 N.W.2d 271 (1987)
- Robinson v. Houston, 298 Neb. 746, 905 N.W.2d 636 (2018)
- Kozal v. Nebraska Liquor Control Comm., 297 Neb. 938, 902 N.W.2d 147 (2017)
- Heckman v. Burlington Northern Santa Fe Ry. Co., 286 Neb. 453, 837 N.W.2d 532 (2013)