

SUPREME COURT OF NEVADA

Branch Banking and Trust Company v. Windhaven & Tollway, LLC

2015 NV 20 · No. Nos. 59638 and 60527 · Decided April 30, 2015

SUMMARY

The Supreme Court of Nevada held that NRS 40.455(1) does not bar a deficiency judgment in Nevada following a nonjudicial foreclosure of out-of-state property conducted under the other state's law rather than NRS 107.080. The court reversed summary judgment for the borrowers and guarantors and remanded for further proceedings, also reversing the related award of attorney fees and costs. Three justices dissented, concluding that the statute required compliance with NRS 107.080 for a deficiency judgment following a trustee's sale.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Hardesty, C.J.; Parraguirre, J.; Douglas, J.; Pickering, J.; Gibbons, J.; Cherry, J.; Saitta, J.
JURISDICTION	Nevada
DECIDED	April 30, 2015
DOCKET	Nos. 59638 and 60527
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Consolidated appeals from a district court summary judgment in a deficiency action and from a post-judgment order awarding attorney fees and costs.
STANDARD OF REVIEW	De novo review of statutory interpretation and an order granting summary judgment.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Branch Banking and Trust Company v. Windhaven & Tollway, LLC, Stanley H. Wasserkrug, Susan S. Wasserkrug, Stanley Howard Wasserkrug and Susan Schwartz Wasserkrug, as trustees of the Wasserkrug Family Trust dated November 13, 2003, Keith K. Lyon, Keith K. Lyon, as trustee of the Keith K. Lyon Living Trust, dated October 29, 2003, Stacy M. Rush, Adrienne J. Rush, Stacy M. Rush and Adrienne J. Rush, as trustees of the Stacy and Adrienne Rush

TOPICS

statutory interpretation

legislative intent

foreclosure

real estate

remedies

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QUESTIONS PRESENTED

1. Whether NRS 40.455(1) bars a Nevada deficiency judgment after a nonjudicial foreclosure sale of out-of-state property conducted under the other state's law rather than pursuant to NRS 107.080.
2. Whether the district court properly granted summary judgment to Windhaven and the guarantors based on that interpretation of NRS 40.455(1).
3. Whether the district court's award of attorney fees and costs could stand after reversal of the summary judgment.

HOLDINGS

1. NRS 40.455(1) does not require an out-of-state trustee's sale to comply with NRS 107.080 and does not preclude a Nevada deficiency judgment when the nonjudicial foreclosure sale was conducted pursuant to another state's laws.
2. The district court's post-judgment award of attorney fees and costs was premature and must be reversed.

KEY QUOTATIONS

“NRS 40.455(1) does not require an out-of-state trustee's sale to comply with NRS 107.080, nor does it preclude a deficiency judgment in Nevada when a nonjudicial foreclosure sale is conducted pursuant to the laws of another state” (6)

“However, we disagree that the statute limits deficiency judgments to judicial foreclosures and trustee's sales held in accordance with NRS 107.080.” (8-9)

“Accordingly, we reverse the district court's judgment in favor of Windhaven and the Guarantors and remand this matter for further proceedings consistent with this opinion.” (10)

FACTUAL BACKGROUND

Windhaven borrowed nearly \$17 million from Branch Banking's predecessor, secured by real property in Texas, and the remaining respondents guaranteed the debt. After default, Branch Banking conducted a nonjudicial foreclosure sale of the Texas property under Texas law for \$14,080,000, while approximately \$16,675,218.61 remained due. Branch Banking then pursued a Nevada deficiency judgment against Windhaven and the guarantors, but the district court concluded that NRS 40.455(1) barred the action because the sale did not comply with NRS 107.080.

PROCEDURAL HISTORY

Branch Banking sought a deficiency judgment under Nevada law after conducting a nonjudicial foreclosure sale of Texas property under Texas law. The district court granted summary judgment to Windhaven and the guarantors, concluding that the Texas sale did not comply with NRS 107.080 and therefore could not support a Nevada deficiency judgment; it also awarded the respondents attorney fees and costs. The Nevada Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings consistent with the opinion, including consideration of Branch Banking's deficiency claims. The award of attorney fees and costs is also reversed.

CASES CITED

- Kay v. Nunez, 122 Nev. 1100, 146 P.3d 801 (2006)
- Great Basin Water Network v. State Eng'r, 126 Nev. 187, 234 P.3d 912 (2010)
- Smith v. Kisorin USA, Inc., 127 Nev. Adv. Op. No. 37, 254 P.3d 636 (2011)
- Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026 (2005)
- U.S. Bank National Ass'n v. Palmilla Development Co., 131 Nev. Adv. Op. No. 9, 343 P.3d 603 (2015)
- In re Parental Rights as to S.M.M.D., 128 Nev. Adv. Op. No. 2, 272 P.3d 126 (2012)
- Key Bank of Alaska v. Donnels, 106 Nev. 49, 787 P.2d 382 (1990)
- First Interstate Bank of Nev. v. Shields, 102 Nev. 616, 730 P.2d 429 (1986)
- Ferdie Sievers & Lake Tahoe Land Co. v. Diversified Mortg. Investors, 95 Nev. 811, 603 P.2d 270 (1979)
- Yates v. United States, 574 U.S. 528, 135 S. Ct. 1074 (2015)

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