

SUPREME COURT OF NEBRASKA

McGill Restoration, Inc. v. Lion Place Condominium Association

313 Neb. 658 (2023) · No. Nos. S-21-934, S-22-137 · Decided March 3, 2023

SUMMARY

The Nebraska Supreme Court held that a judgment creditor could not use a writ of execution to levy against a condominium unit owned by a person who was not the judgment debtor. Although Nebraska law created a judgment lien against condominium units under Neb. Rev. Stat. § 76-875(a), the statute did not authorize execution against those units absent an ownership interest by the judgment debtor or a fraudulent transfer. The court reversed and remanded in case No. S-21-934, and vacated the later writ and dismissed the appeal in case No. S-22-137 because the district court lacked jurisdiction during the pendency of the first appeal.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Papik, J.; Heavican, C.J.; Cassel, J.; Stacy, J.; Funke, J.; Freudenberg, J.; Marroquin, District Judge
JURISDICTION	Nebraska
DECIDED	March 3, 2023
DOCKET	Nos. S-21-934, S-22-137
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Henery appealed two district court orders overruling his motions to quash writs of execution directed against condominium units. The appeals were consolidated.
STANDARD OF REVIEW	The court independently reviews questions of law decided by a lower court. Statutory interpretation presents a question of law.
PRECEDENTIAL VALUE	published opinion; precedential
PARTIES	Michael L. Henery v. McGill Restoration, Inc., Lion Place Condominium Association

TOPICS

- civil procedure
- appellate jurisdiction
- subject matter jurisdiction
- statutory interpretation
- remedies

PRACTICE AREAS

civil procedure

appellate procedure

judgment enforcement

real estate

condominium law

QUESTIONS PRESENTED

1. Whether a court may order execution against a condominium unit owned by a person other than the judgment debtor when the judgment creditor has a statutory lien against the unit.
2. Whether the district court retained subject matter jurisdiction to issue a second writ of execution concerning the same property and matter after Henery perfected an appeal from the order overruling his first motion to quash.
3. Whether the Nebraska Supreme Court could vacate the second writ of execution and dismiss the second appeal when the district court's proceedings were conducted without subject matter jurisdiction.

HOLDINGS

1. Except for circumstances not present here, Nebraska law does not authorize a court to order a sheriff to levy a writ of execution on property in which the judgment debtor does not hold an interest. A judgment lien against a condominium unit under Neb. Rev. Stat. § 76-875(a) does not itself authorize execution against that unit.
2. After Henery perfected his first appeal, the district court was divested of subject matter jurisdiction over subsequent proceedings concerning the same matter between the same parties, including McGill's request for a second writ of execution against Unit 201.
3. Because the district court lacked subject matter jurisdiction over the proceedings concerning the second writ of execution, those proceedings and the writ were void. The Nebraska Supreme Court could vacate the void writ and dismiss the second appeal because the void order could not confer appellate jurisdiction.

KEY QUOTATIONS

“While § 76-875(a) certainly provides that a judgment against a condominium association will result in a lien against each of its units, our decision in Fox, supra, makes clear that the fact that a statutory lien attaches to property does not mean that the judgment creditor is entitled to execute against that property.” (664)

“A court action taken without subject matter jurisdiction is void. And a void order is a nullity which cannot constitute a judgment or final order that confers jurisdiction on an appellate court.” (666)

“The district court lacked authority to order the sheriff to levy execution on Unit 201.” (667)

FACTUAL BACKGROUND

McGill performed repair work for Lion Place Condominium Association, and after a payment dispute obtained a \$25,000 judgment plus prejudgment interest against the Association. To collect the judgment, McGill obtained writs of execution directing the sheriff to levy against condominium units, including Unit 201, which was owned by Association member Michael L. Henery rather than by the Association. Henery moved to quash the writs, arguing that execution could not reach property in which the judgment debtor had no ownership interest.

PROCEDURAL HISTORY

McGill obtained a \$25,000 breach of contract judgment plus prejudgment interest against Lion Place Condominium Association, and the judgment was affirmed on appeal. McGill then obtained writs of execution directing the sheriff to levy against condominium units, including Unit 201 owned by Henery, an Association member. The district court overruled Henery's motions to quash both writs. The Nebraska Supreme Court reversed and remanded the first appeal with directions to sustain the motion to quash, and vacated the second writ and dismissed the second appeal.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

In case No. S-21-934, sustain Henery's motion to quash the first writ of execution. The second writ of execution is vacated, and case No. S-22-137 is dismissed for lack of jurisdiction.

CASES CITED

- McGill Restoration v. Lion Place Condo. Assn., 309 Neb. 202, 959 N.W.2d 251 (2021)
- Lassalle v. State, 307 Neb. 221, 948 N.W.2d 725 (2020)
- State v. Godek, 312 Neb. 1004, 981 N.W.2d 810 (2022)
- Western Ethanol Co. v. Midwest Renewable Energy, 305 Neb. 1, 938 N.W.2d 329 (2020)
- Fox v. Whitbeck, 286 Neb. 134, 835 N.W.2d 638 (2013)
- In re Guardianship of Eliza W., 304 Neb. 995, 938 N.W.2d 307 (2020)
- Parks v. Hy-Vee, 307 Neb. 927, 951 N.W.2d 504 (2020)
- Keef v. State, 262 Neb. 622, 634 N.W.2d 751 (2001)
- McLaughlin v. Hellbusch, 251 Neb. 389, 557 N.W.2d 657 (1997)
- Kula v. Kula, 180 Neb. 893, 146 N.W.2d 384 (1966)
- Kricsfeld v. Kricsfeld, 8 Neb. App. 1, 588 N.W.2d 210 (1999)
- In re Interest of Trey H., 281 Neb. 760, 798 N.W.2d 607 (2011)

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