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Summary of Goodrich & Pennington Mortgage Fund, Inc. v. J.R. Woolard, Inc., 120 Nev. Adv. Op. 85

Angela Morrison
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Goodrich & Pennington Mortgage Fund, Inc. v. J.R. Woolard, Inc., 120 Nev. Adv. Op. 85, 101 P.3d 792 (2004)[1]

TORTS – AWARD OF DAMAGES – PROXIMATE CAUSE

Summary

In a bench trial, the district court awarded appellant Goodrich & Pennington Mortgage Fund, Inc. ("Goodrich & Pennington") damages arising from a negligent appraisal executed by J.R. Woolard, Inc. ("Woolard"). Goodrich & Pennington appealed, alleging that the district court failed to take into account all of the damages caused by the negligent appraisal.

Disposition/Outcome

Affirmed. The district court used the correct standard of damages to determine the award and Woolard's negligent appraisal did not proximately cause the borrowers to default on the mortgage, thus, Goodrich & Pennington could not recover those damages from Woolard.

Factual and Procedural History

Thelma Wilson and John Brown borrowed $210,000 from Goodrich & Pennington to purchase a residential home. Goodrich & Pennington funded the amount of the loan because Woolard appraised the property at $280,000. The report, however, was defective and failed to mention "construction deficiencies and that the residence was substantially incomplete."[2] Wilson and Brown defaulted on the loan after only two payments and subsequently filed for Chapter 13 bankruptcy. The bankruptcy court dismissed Wilson and Brown's case and Goodrich & Pennington bought the home for $200,000. When Goodrich & Pennington took possession of the property, it discovered the misrepresentations in Woolard's appraisal report. After listing the property for $210,990, Goodrich & Pennington sold the property for $190,000 of which it received $171,733.89 in net proceeds.[3]

As a result, Goodrich & Pennington brought suit in district court against Woolard for "professional negligence, breach of statutory duty to disclose material facts, and negligent misrepresentation."[4] A bench trial followed in which the district court found that Goodrich & Pennington were not aware of the defective condition of the home, the report misrepresented the condition of the home, and Goodrich & Pennington relied on the defective report in making the loan. Although Goodrich & Pennington claimed their entire loss and fees of $108,852.02, "the court limited its proximate cause finding to the

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[1] Summarized by Angela Morrison
[2] Goodrich & Pennington Mortgage Fund, Inc. v. J.R. Woolard, Inc., 120 Nev. Adv. Op. 85, 101 P.3d 792, 793 (2004).
[3] *Id.* at 793-94.
[4] *Id.* at 794.

impaired value of the security for the loan."[5] Specifically, the court stated that Goodrich & Pennington assumed the risk of the borrowers defaulting and Woolard did not proximately cause the borrowers to default. Thus, it awarded Goodrich & Pennington only $37,027.31, which represented the loan balance upon default minus the net sales proceeds. Goodrich & Pennington appealed, arguing that the award was insufficient.[6]

Discussion

The Nevada Supreme Court considered two main issues in the appeal. First, the court looked at whether the district court applied the correct formula for computing damages for negligent misrepresentation. Second, the court determined whether the negligent misrepresentation proximately caused the foreclosure. The court held that the district court applied the correct formula for damages arising from negligent misrepresentation and that the district court properly limited the amount of damages proximately caused by Woolard's defective appraisal.

Goodrich & Pennington argued that the district court should have adopted a "benefit-of-the bargain" formula for damages.[7] Because it is a punitive measure designed to punish defendants who engage in fraud and this case involved negligent misrepresentation, the court declined to adopt the "benefit-of-the-bargain" formula for damages.[8] Instead, the court upheld the district court's use of the out-of-pocket formula in negligent misrepresentation cases. The out-of-pocket formula includes: (1) "the difference between the value of what the plaintiff received in the induced transaction and the value given for it, and (2) pecuniary loss sustained in consequence of the plaintiff's reliance upon the false representation."[9] Accordingly, the Nevada Supreme Court declined to overturn the district court's formulation of damages.

Additionally, Goodrich & Pennington maintained that it would "never have funded the loan had it known the true condition of the property," and so the district court should have awarded "all damages associated with the loan, including lost interest."[10] Woolard countered that the out-of-pocket damages awarded by the district court fully compensated Goodrich & Pennington for any losses proximately caused by Woolard's defective appraisal.[11] The Nevada Supreme Court defines proximate cause as "any cause which in natural [foreseeable] and continuous sequence, unbroken by any efficient intervening cause, produces the injury complained of and without which the result would not have occurred."[12] The court acknowledged that had the district court found that Goodrich & Pennington based its funding of the loan solely upon the appraisal report and that the "condition of the property rendered default on the loan inevitable," then the district court could have found that Woolard proximately caused the full amount of

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[5] *Id.* at 794.
[6] *Id.*
[7] *Id.* at 796. The court defined "benefit-of-the-bargain" damages as "the value of what [the plaintiff] would have received had the representations been true, less what he actually received." *Id.* (citing Collins v. Burns, 103 Nev. 394, 398, 741 P.2d 819, 822 (1987)).
[8] *Id.*
[9] *Id.* (footnotes omitted).
[10] *Id.* at 795.
[11] *Id.*
[12] *Id.* at 797 (citing Taylor v. Silva, 96 Nev. 738, 741, 615 P.2d 970, 971 (1980)).

damages Goodrich & Pennington was seeking and awarded that amount under the out-of-pocket formula.[13]

The Nevada Supreme Court pointed out, however, that both parties agreed the loan was high-risk as shown by the over twelve percent interest on the loan.[14] From this, the district court could have decided that Goodrich & Pennington relied on the appraisal to "preserve the value in the collateral, not to account for the possibility of default and foreclosure."[15] Therefore, the Nevada Supreme Court held that the district court did not err when it determined that Woolard's appraisal was for the purpose of preserving Goodrich & Pennington's position in the collateral and not the proximate cause of the damages from the foreclosure.[16] Accordingly, the Nevada Supreme Court affirmed the decision below.

Conclusion

This decision both clarifies what formula Nevada courts should apply to determine damages in negligent misrepresentation suits and what type of evidence litigants need to present to demonstrate proximate cause. Plaintiffs who wish to have the court apply the "benefit-of –the-bargain" formula, should bring fraudulent misrepresentation suits rather than negligent. Additionally, Plaintiffs who desire to recover more extensive damages should use this decision to better marshal their evidence concerning proximate causation. For instance, had Goodrich & Pennington offered evidence at trial that the only reason they funded the loan was because of Woolard's appraisal report, they likely would have been more successful in proving more extensive proximate causation and recovered more in damages. Overall, this case provides further guidance to parties engaged in professional misrepresentation litigation.

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[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*