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### Summary of Building Energetix Corp. v. EHE, LP, 129 Nev. Adv. Op. 6

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PROPERTY – FORECLOSURE

**Summary**

Appeal from a district court order granting a deficiency judgment after a nonjudicial foreclosure sale and subsequent reconveyance of property.

**Disposition**

The Court affirmed the decision of the District Court, holding that a property may be sold by nonjudicial foreclosure after the issue of a delinquent-tax certificate and prior to the final disposition of the property. The property's acquirer can pay delinquent taxes and other amounts due to redeem or obtain reconveyance of the property from the treasurer.

**Factual and Procedural History**

Appellant Building Energetix Corporation (BE) executed a promissory note, secured by a deed of trust on property in Lyon County and guaranteed by Gary Hill, to respondents or their assignors (collectively, EHE). BE failed to pay the annual property taxes, and a delinquent-tax certificate was issued in June 2007. The certificate authorized the Lyon County treasurer to hold the property in trust for the State and County for the two-year statutory redemption period.

BE also failed to make payments on the EHE note. Consequently, on June 10, 2008, EHE through its trustee, recorded a notice of default and election to sell. A nonjudicial foreclosure sale followed on October 10, 2008, at which time EHE purchased the property by credit bid, receiving a trustee's deed in return.

The county continued to hold the property in trust under NRS 361.585(2) until EHE paid the back taxes, interest, and penalties due, which occurred in March 2010. On April 19, 2010, the county issued a reconveyance deed to EHE.

EHE brought an action against BE and Hill for the deficiency. The district court awarded EHE a deficiency judgment against BE, who now appeals. The parties do not dispute the district court's findings but only whether EHE was entitled to a deficiency judgment.

**Discussion**

Justice Pickering wrote the opinion for the three-justice panel. BE urged reversal of the deficiency judgment on the grounds that a delinquent-tax certificate prevented EHE from validly foreclosing on the property and that, without a valid foreclosure sale, EHE cannot recover a deficiency.

BE maintained that once a delinquent-tax certificate issues under NRS 361.570, the subject property must be redeemed before a valid foreclosure sale can occur. Further, BE argued that because the property was redeemed by a reconveyance deed, EHE must not have validly

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<sup>1</sup> By Brittany Llewellyn

acquired the property by credit bid.<sup>2</sup> Finally, since EHE acquired the property by reconveyance rather than trustee's deed, BE argued that EHE cannot recover a deficiency judgment under NRS 40.455.

BE's argument proceeded from the premise that, once a delinquent-tax certificate issues under NRS 361.570, the county becomes the owner of the property. This means the tax certificate must be extinguished before title can transfer, whether by foreclosure sale or otherwise. On the contrary, the issuance of a delinquent-tax certificate is only a first step in the tax collection process. If property taxes become delinquent a tax certificate shall issue, "authoriz[ing] the county treasurer, as trustee for the State and county, to hold [the] property described in the certificate for the period of 2 years . . . unless sooner redeemed."<sup>3</sup> Assuming the two years pass with no redemption, the next step is issuance of a tax deed of the property, again to the county treasurer "in trust for the use and benefit of the State and county . . ."<sup>4</sup> But even then, the Legislature gives "owners and others holding interests in property conveyed to the county treasurer following the two-year redemption period an additional opportunity to protect their interests."<sup>5</sup> Until the county gives notice of sale or otherwise finally disposes of the property, "any person specified in subsection 4 [of NRS 361.585] is entitled to have the property reconveyed upon payment to the county treasurer" of the delinquent taxes, plus penalties, interest, and costs.<sup>6</sup>

Analyzing the statutes at issue, the Court found that, although a treasurer may hold a property in trust, it does not thereby become the "owner" of the property, such that BE's ownership could not be extinguished by nonjudicial foreclosure sale in 2008. On the contrary, NRS 361.570 and NRS 361.585 both repeatedly refer to "the owner" as the title holder of record, not the county, and contemplate successorship despite the existence of the tax certificate or deed.<sup>7</sup> NRS 361.570 and NRS 361.585 both recognize that the "owner" remains the title holder of record until the right to redeem or obtain reconveyance has expired. BE's argument that the 2007 delinquent-tax certificate prevented a valid foreclosure sale from occurring in 2008 does not comport with the plain language of Chapter 361; its object "is not the acquisition of the property, but rather the collection of taxes."<sup>8</sup>

BE next argued that a party cannot both purchase property at a nonjudicial foreclosure sale and later redeem it from the county by paying the back taxes due. Again, the applicable statutes contemplate this exact scenario. A nonjudicial foreclosure sale does not give the debtor the right to redeem the property from the purchaser. NRS 107.080(5)'s language "without . . . right of redemption" actually addresses potential rights of a debtor, ensuring that purchasers at nonjudicial foreclosure sales receive the "title of the grantor," unencumbered by a judicial-foreclosure debtor's "right of redemption." Nothing in the statute suggests that the beneficiary of

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<sup>2</sup> In BE's view, EHE could not have redeemed the property by reconveyance deed in 2010 if it validly acquired the property by credit bid at the 2008 foreclosure sale, because under NRS 107.080(5), title acquired via nonjudicial foreclosure sale is "without . . . right of redemption." NEV. REV. STAT. § 107.080(5) (2007).

<sup>3</sup> NEV. REV. STAT. § 361.570(1) (2007).

<sup>4</sup> NEV. REV. STAT. § 361.585(1) (2007).

<sup>5</sup> *Casazza v. A-Allstate Abstract Co.*, 721 P.2d 386, 389 (Nev. 1986).

<sup>6</sup> NEV. REV. STAT. § 361.585(3) (2007). Such persons include: "the owner; the beneficiary under a note and deed of trust; the mortgagee under a mortgage; the creditor under a judgment; the person holding a contract to purchase the property before its conveyance to the county treasurer; or the successor in interest of any person specified in this subsection." *Id.* at (4).

<sup>7</sup> *See* § 361.570, § 361.585.

<sup>8</sup> *Little v. United States*, 704 F.2d 1100, 1105–06 n.5 (9th Cir. 1983) (applying an analogous California tax collection statute).

a deed of trust who takes title by credit bid at a nonjudicial foreclosure sale does not do so subject to whatever property tax liens may exist, which it thereafter may payoff, whether by redemption, reconveyance, or otherwise.

### **Conclusion**

The reconveyance deed to EHE was valid and did not undermine the legitimacy of the trustee's deed. Since EHE was the legitimate grantee of both deeds, BE's final argument that a party who acquires title by means of reconveyance deed cannot maintain a suit for a deficiency under NRS 40.455 fails.