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Summary of Webb v. Shull, 128 Nev. Adv. Op. 8

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Nevada Law Journal

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Recommended Citation

Sendall, Brandon, "Summary of Webb v. Shull, 128 Nev. Adv. Op. 8" (2012). *Nevada Supreme Court Summaries*. 190.

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Webb v. Shull, 128 Nev. Adv. Op. 8 (Mar. 1, 2012)¹
PROPERTY – NONDISCLOSURE OF DEFECTS
REMEDIES - TREBLE DAMAGES

Summary

The Court considered an appeal from a district court order awarding treble damages for nondisclosure of known property defects, and a cross-appeal of a district court order refusing to find alter ego liability.

Disposition/Outcome

The Court affirmed the district court award of treble damages because under NRS 113.150, treble damages are remedial, not punitive. However, since the district court failed to articulate its reason for the alter ego decision, the Court vacated the decision and remanded the case for further proceedings.

Factual and Procedural History

Appellant/cross-respondent Scott Webb (“Webb”) purchased a home from respondent/cross-appellant Celebrate Properties, LLC (“Celebrate”). Celebrate was co-managed by respondent Harry Shull (“Shull”). At the time of purchase, Webb was unaware that the house had been sold once before.

The previous owner of the house discovered soil-related construction defects. Pursuant to a settlement, Celebrate agreed to repurchase the house from the original owner. However, Celebrate could not obtain financing, so Shull bought the house in his own name, and then sold the house to Celebrate for one dollar. Neither Shull nor Celebrate remedied the soil defects or disclosed them to Webb prior to purchase.

Upon discovering the soil defects, Webb sued for failure to disclose known defects, seeking treble damages pursuant to NRS 113.150(4). Webb also alleged that Shull was the alter ego of Celebrate. The district court awarded treble damages for failure to disclose the soil defects, but concluded that Shull was not the alter ego of Celebrate. Therefore, the district court rendered judgment against Celebrate only. Webb appealed the alter ego decision. Celebrate cross-appealed the award of treble damages on the grounds that the district court did not find it engaged in grossly negligent, reckless, or intentional misconduct.

Discussion

Treble Damages

The Court first considered Celebrate’s argument that due to the punitive nature of treble damages, the district court was required to find some level of mental culpability. NRS 113.150(4), which allows for treble damages for failure to disclose known defects of residential

¹ By Brandon Sendall.

property, does not expressly or impliedly require a finding of willfulness or mental culpability before awarding treble damages. Thus, the Court declined to declare that treble damages are per se punitive. Instead, the Court noted that cases have placed treble damages “on different points along the spectrum between purely compensatory and strictly punitive awards.”² Therefore, rather than establishing a rigid rule, the Court declared that whether treble damages are punitive or compensatory depends on statutory intent.

The Court next looked to NRS 113.150(4) to determine whether the Legislature intended treble damages under the statute to serve a punitive or compensatory function. The Legislature designed NRS 113.150 to create a private right of action to ensure adequate compensation for a victim of nondisclosure in the sale of a residence. Therefore, the statute is more concerned with ensuring adequate compensation rather than penalizing the defendant. Additionally, treble damages under NRS 113.150 are concerned with the “prohibitive conduct of the seller rather than his state of mind.” Based on this analysis, the Court determined that treble damages under NRS 113.150(4) are remedial, not punitive. Therefore, the Court affirmed the district court’s refusal to imply an element of mental culpability into the statute.

Alter Ego

NRS 78.747 provides that a director, stockholder or officer is not liable for a corporation’s debt unless: (1) the corporation is influenced and governed by the individual, (2) the corporation and the individual are inseparable from each other through unity of interest and ownership, and (3) adherence to the corporate fiction of a separate entity would sanction fraud or promote a manifest injustice.⁴ A district court determination is upheld regarding alter ego liability if substantial evidence exists to support the decision.⁵

Although there were several facts available relating to alter ego,⁶ the district court concluded, without explanation, that Webb failed to prove his alter ego case. Because the district court failed to articulate its reason for the alter ego decision, the Court was unable to determine whether the district court abused its discretion. Therefore, the Court vacated the alter ego decision and remanded the case to district court to make findings and conclusions as to whether Shull was the alter ego of Celebrate.

Conclusion

The district court was not required to find mental culpability before awarding treble damages because treble damages are remedial in nature under NRS 113.150(4). However, the district court’s failure to articulate its rationale prevented the Court from determining whether it

² PacifiCare Health Systems, Inc. v. Book, 538 U.S. 401, 405 (2003).

⁴ NEV. REV. STAT. § 78.747.

⁵ Lorenz v. Beltio, Ltd., 114 Nev. 795, 807, 963 P.2d 488, 496 (1998).

⁶ These facts included Shull’s managerial status; that Shull purchased the home in his own name and then sold it to Celebrate for one dollar, with Shull’s name remaining on the mortgage; that Shull was a party to at least 70 single-transaction LLCs, which were created to handle only a single transaction; that Celebrate’s financial statements showed numerous loan transactions between Shull’s many different business entities; and that Celebrate was out of business.

abused its discretion. Consequently, the Court vacated the district court's alter ego decision and remanded for further proceedings.