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### Summary of Walters v. Dist. Ct., 127 Nev. Adv. Op. 66

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## PROPERTY – DEFICIENCY JUDGMENTS

### **Summary**

The Court reviewed a petition for a writ of mandamus or prohibition. The issue was whether a counterclaim, cross-claim, and written motion setting the grounds for the application and the relief sought satisfied the requirements of NRS Chapter 40 for seeking a deficiency judgment upon a breach of guaranty.

### **Disposition/Outcome**

The Court denied the writ because (1) CBN clearly asserted a claim that comported with NRS 40.459(2)<sup>2</sup>, CBN's summary judgment motion met the requirements for an application for a deficiency judgment, and (3) CBN was not seeking a double recovery.

### **Factual and Procedural History**

In February 2006, William T. Walters (“Walters”) helped an investment group procure a loan to purchase the Stallion Mountain Golf Course by entering into a separate guaranty with Community Bank of Nevada (“CBN”), in which he personally guaranteed the loan. In this guaranty, Walters expressly waived the requirements of NRS 40.430, “which provides that a creditor can pursue only one action to recover a debt secured by a mortgage or lien on real property.”<sup>3</sup>

In May 2008, Walters filed a complaint in the district court asserting causes of action for declaratory relief and breach of the implied covenant of good faith and fair dealing against CBN. Thereafter, the investors failed to make payments and CBN recorded a notice of breach and election to sell as evidence of its intent to foreclose in August 2008.

In September 2008, CBN filed its initial answer, counterclaim, cross-claim, and third-party complaint in response to Walters’s complaint, alleging that Walters “absolutely and unconditionally agree[d] to pay the indebtedness of the investors under the Loan.” In December 2008, CBN purchased the property with a credit bid of \$5 million.

In April 2009, CBN filed an answer, counterclaim, cross-claim, and third party complaint in response to Walters' second amended complaint. CBN asserted a breach of guaranty claim against Walters. CBN then filed a motion for summary judgment on its breach of guaranty action against Walters and sought the unpaid balance of the Loan.

In June 2009, Walters filed a motion for partial summary judgment on CBN's counterclaim for breach of guaranty, arguing that CBN failed to apply for a deficiency judgment within six months after the foreclosure pursuant to NRS 40.455(1), therefore, affording him protection under NRS 40.495. The district court denied the motion, concluding that CBN's counterclaim and motion for summary judgment met the requirements of an application for a deficiency ruling under NRS 40.455. The court also held that CBN was not seeking double recovery because it gave Walters credit for the sale price of the property.

In August 2009, the court granted in part CBN's motion for summary judgment, concluding that no genuine issues of material fact existed as to Walters' guaranty liability to CBN. However, the court concluded

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<sup>1</sup> By William Habdas.

<sup>2</sup> NEV. REV. STAT. § 40.459 (2007).

<sup>3</sup> McDonald v. D.P. Alexander, 121 Nev. 812, 814, 123 P.3d 748, 749 (2005); NEV. REV. STAT. § 40.430 (2007).

that factual issues remained as to the amount of Walters' liability; therefore, ordering a hearing to determine the fair market value of Stallion Mountain in order to ensure Walters received credit for the value of the property.

Walters petitioned the Court for a writ compelling the district court to vacate its partial summary judgment in favor of CBN, to vacate its decision denying Walters' motion for partial summary judgment, and to preclude CBN from recovering any amount from Walters under his guaranty.

## **Discussion**

Justice Douglas wrote for the unanimous Court, sitting en banc. The issue of first impression before the Court was whether or not a written motion can satisfy the application requirements under NRS Chapter 40 for seeking a deficiency judgment.

First, the Court held that CBN clearly asserted a claim that comported with NRS 40.459 by calculating the amount Walters owed by looking at the total indebtedness less the property's fair market value.

Next, in order to rule on Walters claim that CBN's motion for summary judgment does not meet the application requirements under the statute, the Court turned to statutory interpretation. "Statutory interpretation is a question of law that [the Court reviews] de novo, even in the context of a writ petition."<sup>5</sup> After examining NRS 40.455(1)<sup>6</sup>, the Court held that there is no requirement under the statute that an application be specially labeled as a deficiency judgment application. The Court looked to the Nevada Rules of Civil Procedure for guidance because NRS 40.455(1) does not specifically state how an application should be made.. NRCP 7(b)(1)<sup>7</sup> states that applications must be (1) made in writing, (2) state with particularity the grounds therefor, and (3) shall set forth the relief sought.

The Court held that CBN's motion for summary judgment fully meets the requirements of NRCP 7(b)(1) as an application because it was (1) made in writing, (2) set forth in particularity the grounds for the application, and (3) set forth the requested relief. CBN filed the counterclaim and cross-claim within the six-month window that the statute requires; therefore, the Court held that CBN complied with the deficiency application requirements under NRS Chapter 40.

Finally, the Court held that double recovery was not an issue in this case because CBN factored its bid on the property into the amount Walters owed under the guaranty. For the foregoing reasons, the Court denied Walters petition for a writ of mandamus or prohibition.

## **Conclusion**

A written motion can satisfy the application requirements under NRS Chapter 40 for seeking a deficiency judgment when the motion is made in writing, sets forth the grounds for the application, and sets forth the relief sought.

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<sup>5</sup> Int'l Game Tech. v. Dist. Ct., 124 Nev. 193, 198, 179 P.3d 556, 559 (2008).

<sup>6</sup> NEV. REV. STAT. § 40.455 (2007).

<sup>7</sup> NEV. R. CIV. P. 7(b)(1).