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Summary of Gallegos v. Malco Enterprises of Nevada, 127 Nev. Adv. Op. No. 51

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Nevada Law Journal

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Recommended Citation

Bosworth, Chelsey, "Summary of Gallegos v. Malco Enterprises of Nevada, 127 Nev. Adv. Op. No. 51" (2011). *Nevada Supreme Court Summaries*. 235.

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Gallegos v. Malco Enterprises, 127 Nev. Adv. Op. No. 51 (Aug. 4, 2011)¹
PROPERTY – ASSIGNMENTS

Summary

An appeal from a district court's finding that a party cannot assign a judgment debtor's right of action to a judgment creditor in a proceeding supplementary to the execution of a judgment.

Disposition/Outcome

District court's opinion reversed and remanded for further proceedings because a judgment debtor's right of action is personal property that may be judicially assigned in a proceeding supplementary to the execution of a judgment.

Factual and Procedural History

David Gonzales injured Pedro Gallegos in a hit-and-run car accident. Gonzales was driving a car rented from Malco Enterprises of Nevada. Gonzales also purchased a supplemental renter's liability insurance policy issued by First American Property and Casualty Insurance Company and managed by Knight Management Insurance Services, LLC.

Gallegos sued Gonzales for his injuries and obtained a default judgment against Gonzales in the amount of \$400,000. However, Gallegos was unable to collect on the judgment. Gallegos requested judicial assignment of Gonzalez's unasserted claims relating to his insurance policy against the respondents. The district court granted Gallegos' request, and Gallegos later brought the assigned claims against the respondents in a separate action. In the later action, the district court determined that the previous district court's assignment order was invalid because a court cannot assign unasserted claims in a proceeding supplementary to the execution of a judgment.

Discussion

In an opinion written by Justice Parraguirre, the Court concluded that a court may assign a right of action in a proceeding supplementary to the execution of a judgment because rights of action held by a judgment debtor are personal property. The court examined NEV. REV. STAT. § 21.080(1) and NEV. REV. STAT. § 10.045. Based on the language of the statutes, the Court concluded that a right of action held by a judgment debtor constitutes personal property. Therefore, the Court concluded that such property maybe assigned in satisfaction of a judgment under NEV. REV. STAT. 21.320.

Additionally, the Court noted that their decision is consistent with case law in Nevada, California, and Federal cases applying Nevada law.

¹ By Chelsey Bosworth

Conclusion

Rights of action held by a judgment debtor are personal property subject to execution in satisfaction of a judgment, and therefore may be judicially assigned.