

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

9-10-2009

Summary of Dobron v. Bunch, 125 Nev. Adv. Op. No. 36

Kathleen Wilde
Nevada Law Journal

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the [Contracts Commons](#)

Recommended Citation

Wilde, Kathleen, "Summary of Dobron v. Bunch, 125 Nev. Adv. Op. No. 36" (2009). *Nevada Supreme Court Summaries*. 361.

<https://scholars.law.unlv.edu/nvscs/361>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

Dobron v. Bunch, 125 Nev. Adv. Op. No. 36 (Sept 10, 2009)¹

CONTRACT LAW – GUARANTY AGREEMENTS

Summary

An appeal from an Eighth Judicial District Court award of attorney fees stemming from a guaranty agreement.

Disposition/Outcome

District Court’s award reversed because a lender is not entitled to attorney fees for actions unrelated to the collection or compromise of loans.

Factual and Procedural History

Del Bunch Jr. (“Bunch”) loaned money to companies owned by Thomas Dobron (“Dobron”). As part of the loan agreements, Dobron signed a guaranty note in which he promised to personally repay the loans if the companies failed to do so. Dobron also agreed to pay Bunch’s attorneys’ fees and costs incurred “in collecting or compromising any such indebtedness.”

Shortly thereafter, the Dobron companies filed a usury action in California against Bunch, claiming the interest rate of the loans was usurious and illegal. After removal to Nevada and a series of appeals, Bunch successfully defended the charges.

About a year later, Bunch filed suit in Nevada against Dobron in an effort to recover the fees and costs accumulated by defending the usury law suit. The district court found for Bunches and Dobron appealed to the Nevada Supreme Court. On appeal, the Court held that attorneys’ fees were potentially recoverable if the district court specifically found that the particular guaranty agreement between Dobron and Bunch provided for attorneys’ fees. Because this issue was not decided previously, the Court remanded the case back to the district court. The district court then held that Bunch was entitled to attorneys’ fees because the defense of the usury action directly affected Bunch’s ability to collect on the loans and fell within the terms of the guaranty agreement. Dobron appealed once again to the Nevada Supreme Court.

Discussion

Standard of Review

The Nevada Supreme Court reviews contract interpretation de novo.² Prior to this opinion, the Court strictly construed the obligation of guarantors unless the surety was compensated.³ In rejecting this “unclear, mechanical approach,” the Court went on to adopt general contract interpretation methods in cases involving guaranty agreements. Consistent with ordinary contract interpretation, the Court will not construe a provision for attorneys’ fees beyond the express terms of an agreement.

¹ By Kathleen Wilde

² *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005).

³ *Zuni Constr. Co. v. Great Am. Ins. Co.*, 86 Nev. 364, 367, 468 P.2d 980, 982 (1970).

Terms of the contract before the Court

The Court held that defending a charge of usury does not fall within the meaning of “collect[ing] or compromis[ing] loans.” Although usury laws may potentially reduce the amount of interest collected on a loan, the Court reasoned that this type of reasoning unacceptably strained the plain language of the contract between Dobron and Bunch.

Authority supporting the Court’s rationale

In a similar precedent case, the Nevada Supreme Court held that a real property owner is not liable for attorney fees that a real estate agent accrues defending an action for indemnity.⁴ Because the indemnity related to declaratory relief, instead of the underlying contract for the real estate listing, the Court held that the fees were not recoverable.⁵

After comparing *Campbell* and the case at bar, the Court cited with approval other jurisdictions decisions that narrowly construed attorneys’ fees.⁶ Lastly, the Court discussed in detail the Illinois case, *Zimmerman v. First Production Credit Association*.⁷ There, the issue was whether a declaratory relief action to invalidate a note is sufficiently related to loan collection.⁸ In its holding, the Illinois Appellate Court held that the validity of the note may indeed affect the ability of a lender to collect, but potential impact is not enough to show an affirmative link to collection of the debt.⁹ By applying *Zimmerman’s* rationale to the Dobron contract, the Court held that the potential impact of the usury action on the lender’s ability to collect was not enough to receive attorney’s fees pursuant to the contract.

Lack of involvement by Dobron

The Court lastly held that Dobron personally did not stand to benefit and potentially could have been harmed by the usury proceedings made by the companies. Because Dobron was liable for payment of the loans only in the event of default, it would be wrong to argue his obligation to pay for the attorney’s fees.

Concurring Opinion (Pickering, J.)

Justice Pickering wrote separately to emphasize that recovery of attorneys’ fees depends on the particular contract clause involved. Although she did agree with the outcome in this particular case, the Justice noted that Nevada law allows one sided attorney’s fees¹⁰ and that a party may agree to charges and fees as they choose within a contract.¹¹

⁴ See *Campbell v. Nocilla*, 101 Nev. 9, 692 P.2d 491 (1985).

⁵ *Id.* at 10-12, 692 P.2d at 492-93.

⁶ In re LCO Enters., Inc., 180 B.R. 567, 570-71 (B.A.P. 9th Cir. 1995) (holding that fees incurred defending bankruptcy are not recoverable under a lease agreement); In re Wetzler, 192 B.R. 109, 119-20 (Bankr. D. Md. 1996) (reasoning that fees caused by settlement agreements differ from actions to enforce a guaranty agreement and are unrecoverable).

⁷ *Zimmerman v. First Prod. Credit Ass’n*, 412 N.E.2d 216 (Ill. App. Ct. 1980).

⁸ *Id.* at 217.

⁹ *Id.*

¹⁰ NEV. REV. STAT. § 18.010(4) (West, Westlaw through 2007 Sess. and 2008 Spec. Sess.).

¹¹ *Id.* § 99.050 (“[P]arties may agree for the payment of any rate of interest on money due or to become due on any contract, for the compounding of interest if they choose, and for any other charges or fees”).

Conclusion

Because the Court limits attorney's fees to those specifically agreed to in a contract, a guarantor is not liable for fees incurred for reasons other than collecting or compromising the loan. Accordingly, the Court concluded that because the usury action did not constitute a recovery action by the Bunches, Dobron was not liable for the Bunches' attorney's fees in defending the usury action. Therefore, the Court reversed the judgment of the district court.