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McDonald v. D.P. Alexander & Las Vegas Boulevard LLC, 121 Nev. Adv. Op. 79, 23 P.3d 748 (2005)¹

REAL PROPERTY—BANKRUPTCY

SUMMARY

The Nevada Supreme Court affirmed the district court's holding that the purposes behind the exceptions to the one-action rule found in NRS 40.430 are to allow a sold-out junior lienholder recovery in certain situations. In particular, where the property has been automatically stayed pursuant to the bankruptcy code, the creditor is exempted from the one-action rule. Additionally, NRS 40.430(4)(j) allows a junior lienholder that is sold-out to proceed personally against the debtor instead of making futile attempts against the property. The exceptions are limited by the fact that the junior lienholder cannot have purchased the property.

DISPOSITION/OUTCOME

The Nevada Supreme Court affirmed the district court's holding that NRS 40.430 (4)(m) exempted a junior-lienor from the one-action rule when the deed of trust was voided by the bankruptcy court as a preferential transfer.

FACTUAL AND PROCEDURAL HISTORY

John McDonald was the sole owner of JWM Investments. JWM Investments signed a promissory note in favor of D.P. Alexander. When JWM Investments had defaulted on the note, McDonald signed a personal guaranty in favor of D.P. Alexander. JWM Investments later filed for Chapter 11 bankruptcy. The trustee voided the deed of trust as a preferential transfer and later sold the property to another party. D.P. Alexander then became an unsecured junior lienholder (since there were mechanic's liens). It then sought a judgment against McDonald to recover on the personal guaranty. The district court granted summary judgment in favor of D.P. Alexander, finding that NRS 40.430(4)(m) exempted D.P. Alexander from Nevada's one-action rule. The district court also awarded D.P. Alexander the full amount of the debt plus prejudgment interest. McDonald appealed the decision.

DISCUSSION

Nevada's one-action rule, as dictated by NRS 40.430(1), provides that a judgment due to the plaintiff must be satisfied by the court's decision to sell the real property. Thus, a creditor in Nevada must seek a judicial foreclosure before seeking a personal judgment. The one-action rule also applies to guarantors or sureties.

However, in 1989 the Legislature amended the statute since it did not intend for some actions by creditors to fall under the one-action rule. In amending the statute, the

¹ By Anna Arroyo

Legislature created exceptions to the one-action rule—two of which apply to the case at hand.

First, NRS 40.430(4)(i) provides an exception to a surety or guaranty agreement if the secured property has been automatically stayed pursuant to the bankruptcy code. Thus, when enforcement of a lien is stayed, the creditor can proceed against the guarantor if he or she has notice of the default. Furthermore, this statutory language is clear and unambiguous. This statute is directly applicable since the secured property was voided by the bankruptcy trustee. Thus, the lienholder can proceed against the guarantor, McDonald.

McDonald, however, contends that this exception cannot apply to him since he has waived his right to receive a notice of default, and therefore, it can only apply were he to receive notice by mail. However, if the guarantor waived the right to receive notice, he has also waived the right to receive notice with respect to the exception in NRS 40.430(4)(i).

NRS 40.430(4)(j) also applies to this case. It provides an exception to the one-action rule where the property has been sold to satisfy the debt of a senior lien. Thus, a junior lienholder is allowed to proceed against the debtor instead of attempting fruitlessly to proceed against the property when it has already been sold. In the present case, D.P. Alexander is a junior-lienholder since there are mechanic's liens and the property has already been sold by the bankruptcy trustee. Thus, D.P. Alexander is exempt from the one-action rule as a junior and sold-out lienholder.

However, a junior lienholder who purchases the property is not exempted from the one-action rule.

CONCLUSION

The Nevada Supreme Court affirmed the district court's holding that the purposes behind the exceptions to the one-action rule found in NRS 40.430 are to allow a sold-out junior lienholder recovery in certain situations. In particular, where the property has been automatically stayed pursuant to the bankruptcy code, the creditor is exempted from the one-action rule. Additionally, NRS 40.430(4)(j) allows a junior lienholder that is sold-out to proceed personally against the debtor instead of making futile attempts against the property. The exceptions are limited by the fact that the junior lienholder cannot have purchased the property.