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### Summary of Leven v. Frey, 123 Nev. Adv. Op. No. 40

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## ***Leven v. Frey*, 123 Nev. Adv. Op. No. 40 (Oct. 11, 2007)<sup>1</sup>**

### **CIVIL PROCEDURE – JUDGMENT RENEWAL**

#### **Summary**

This appeal clarifies the procedure and standard for judgment renewal, under NRS 17.214. The Nevada Supreme Court held that an individual must show timely filing of an affidavit, timely recording of the affidavit (if the judgment to be renewed was recorded), and timely service of the affidavit. Furthermore, the statutory language requires strict compliance.

#### **Disposition/Outcome**

The Court reversed the district court's order denying appellant's motion to declare void the expired judgment, and remanded the matter to the district court to grant the appellant's motion.

#### **Factual and Procedural History**

After appellant, Robert Leven (hereinafter "Leven"), sued his condominium owner's association and others, the district court entered a judgment against Leven. The judgment was filed, on October 25, 1996, and recorded, on October 28, 1996, awarding attorney fees and costs to respondents, Cy Yehros and Herbert Frey (collectively "Frey").

Because the judgment was due to expire, on October 25, 2002,<sup>2</sup> Frey filed his affidavit of renewal, on October 18, 2002. However, Frey served and recorded the affidavit well beyond the three-day statutory requirement.<sup>3</sup>

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<sup>1</sup> By William Miller

<sup>2</sup> NEV. REV. STAT. § 11.190(1)(a) (2005) (providing that an action upon a judgment or renewal must be brought within six years).

<sup>3</sup> NEV. REV. STAT. § 17.214 (2005) provides:

1. A judgment creditor or his successor in interest may renew a judgment which has not been paid by:
  - (a) Filing an affidavit with the clerk of the court where the judgment is entered and docketed, within 90 days before the date the judgment expires by limitation...
  - (b) If the judgment is recorded, recording the affidavit of renewal in the office of the county recorder in which the original judgment is filed within 3 days after the affidavit of renewal is filed pursuant to paragraph (a).
2. The filing of the affidavit renews the judgment to the extent of the amount shown due in the affidavit.
3. The judgment creditor or his successor in interest shall notify the judgment debtor of the renewal of the judgment by sending a copy of the affidavit of renewal by certified mail, return receipt requested, to him at his last known address within 3 days after filing the affidavit.

The district court rejected Leven's argument that Frey failed to strictly comply with NRS 17.214, and declined to declare the expired judgment void. Frey argued that the delay was caused by his secretary's vacation, constituting excusable neglect, and that he had substantially complied with the statute. The district court concluded that the delay in recordation and service did not result in any prejudice to Leven, and ruled that Frey had successfully renewed the judgment. Leven has appealed the ruling.

## **Discussion**

### **I. Requirements for Judgment removal under NRS 17.214**

The Court found all three requirements of NRS 17.214, concerning filing, recording, and serving the affidavit, clear and unambiguous.<sup>4</sup> First, under NRS 17.214(1)(a), the affidavit of renewal must be filed with the court clerk within ninety days before the judgment expires. Second, under NRS 17.214(1)(b), if the judgment to be renewed is recorded, the affidavit of renewal must be recorded in the county recorder's office within three days after the affidavit of renewal is filed. Third, NRS 17.214(3) requires that the affidavit of renewal be served on the judgment debtor within three days of filing, giving notice to the debtor.<sup>5</sup>

In contrast, the Court did not consider NRS 17.214(2)'s language plain and unambiguous on its face, to wit, "The filing of the affidavit renews the judgment to the extent of the amount shown due in the affidavit."<sup>6</sup> One interpretation of this language is that the affidavit's filing alone renews the judgment. Another reasonable interpretation is the filing of the affidavit establishes only the judgment amount a creditor can collect from a debtor after the judgment is renewed. Because of these multiple interpretations, the Court was required to examine the legislative history and rules of statutory interpretation to understand its true meaning.<sup>7</sup>

### **II. Legislative History and Statutory Construction**

The Court found both the statute's legislative history and statutory construction supported a finding that the affidavit's filing alone does not renew a previously recorded judgment, and found recordation necessary as well. NRS 17.214 was enacted in 1985 and amended in 1995.<sup>8</sup> The 1995 amendment added the recording requirement. The legislative history of NRS 17.214(2) indicates that the statute was intended to establish a method for judgment renewal, allowing judgment creditors to collect payments after the original judgment had already expired. Even though the language of NRS 17.214(2) was not changed at the time of the amendment, the amendment adding the recording requirement illustrates that the affidavit's filing does not alone renew a previously recorded judgment.

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<sup>4</sup> *Int'l Game Tech. v. Second Jud. Dist. Ct. of Nev.*, 122 Nev. 132, 152 (Nev. 2006) (a court will apply a statute's plain language when its meaning is clear).

<sup>5</sup> See *Browning v. Dixon*, 114 Nev. 213, 217 (1998) (noting that notice is required by due process).

<sup>6</sup> NEV. REV. STAT. § 17.214(2) (2005).

<sup>7</sup> See *Potter v. Potter*, 121 Nev. 613, 616 (Nev. 2005).

<sup>8</sup> 1985 Nev. Stat., ch. 223, § 2, at 699; 1995 Nev. Stat., ch. 475, § 21, at 1525.

Further, in evaluating the statute's construction, the Court considered the multiple legislative provisions as a whole,<sup>9</sup> and declined to interpret the statute in a manner that would produce absurd or unreasonable results.<sup>10</sup> The Court reasoned that interpreting the statute's language to allow an affidavit's filing alone sufficient to renew a judgment would frustrate the legislative intent behind the 1995 amendment, and would render the statute's recordation and service requirements meaningless. Therefore, the Court found recordation necessary to renew a judgment, in addition to the affidavit's filing.

### III. Strict versus Substantial Compliance

The parties presented opposing views on the standard of compliance under NRS 17.214. Leven argued that all the statute's provisions must be strictly complied with. Whereas, Frey contended that he substantially complied with the statute, and that substantial compliance is sufficient for judgment renewal, if the creditor demonstrates that the delayed recording and service amount to excusable neglect and cause no prejudice to the debtor.

To determine whether strict or substantial compliance is required, the Court examined the statute's provision, in addition to policy and equity considerations.<sup>11</sup> The Court observed that NRS 17.214 included no safety valve provision or built-in grace period, rendering a "substantial compliance" analysis inappropriate. Moreover, the Court reasoned that statutes which allow for a "reasonable time" are subject to interpretation for substantial compliance, while statutes which set time limits are generally not.<sup>12</sup> Additionally, the Court considered this interpretation as consistent with the general notion that "time and manner" statutory provisions are strictly construed, while "form and content" requirements may be sufficient if substantial compliance is shown.<sup>13</sup>

The Court declared that the three-day requirement accomplishes the recording requisite's main purpose of acquiring reliability of title searches for creditors and debtors,<sup>14</sup> in a reasonable manner. Since the Legislature did not provide deviations from this requirement, the Court reasoned a judgment creditor should strictly comply with the three-day requirement of the statute. Furthermore, the service of the renewal affidavit provides the debtor's due process rights. Therefore, the Court held that a judgment creditor must strictly comply with the three-day statutory requirement of NRS 17.214(3).

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<sup>9</sup> Int'l Game Tech., 122 Nev. 132, 152 (Nev. 2006).

<sup>10</sup> Harris Assocs. v. Clark County Sch. Dist., 119 Nev. 638, 642, (Nev. 2003).

<sup>11</sup> See 3 Norman J. Singer, *Statutes and Statutory Construction* § 57:19, at 58 (6th ed. 2001).

<sup>12</sup> See Azevedo v. Minister, 86 Nev. 576, 583-84 (Nev. 1970); Carrell v. Justice's Court of Reno Twp., 99 Nev. 402, 403-04 (Nev. 1983).

<sup>13</sup> See Daugherty v. Dearborn County, 827 N.E.2d 34, 36 (Ind. Ct. App. 2005); Schooler v. Iowa Dep't. of Transp., 576 N.W.2d 604, 607-08 (Iowa 1998); Kirkpatrick v. City of Glendale, 99 S.W.3d 57, 60 (Mo. Ct. App. 2003); Regency Invs. v. Inlander Ltd., 855 A.2d 75, 79 (Pa. Super. Ct. 2004); Am. Standard Homes Corp. v. Reinecke, 425 S.E.2d 515, 518 (Va. 1993); Marsh-McLennan Bldg., Inc. v. Clapp, 980 P.2d 311, 313 n.1 (Wash. Ct. App. 1999).

<sup>14</sup> See NEV. REV. STAT. § 17.150(2) (2005).

Here, Frey timely filed the affidavit of renewal; nonetheless, Frey failed to timely record and serve the affidavit, as required by NRS 17.214. Frey filed the affidavit, on October 18, 2002, the service occurred twelve days later, and the affidavit was not recorded until seventeen days later. Under NRS 17.214, Frey was required to record and serve the affidavit within three days. Thus, the Court held Frey did not strictly comply with NRS 17.214's recordation and service requirements, as required for a judgment creditor to renew a judgment.

### **Conclusion**

NRS 17.214 requires a judgment creditor to timely file, record, and serve an affidavit of renewal to successfully renew a judgment. Strict compliance with these elements is required. Because Frey did not timely serve and record his affidavit of renewal, he failed to successfully renew the judgment against Leven. Therefore, the Court reversed the district court's ruling and remanded the matter with instructions to grant Leven's original motion to declare the expired judgment void.