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Summary of Schleining v. Cap One, Inc., 130 Nev. Adv. Op. 36

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CONTRACT LAW: DEFICIENCY JUDGMENT

Summary

The Court determined two issues: 1) whether NRS 40.453 invalidates a guarantor's contractual waiver of the statutory right to be mailed a notice of default and 2) whether NRS 107.095 requires strict or substantial compliance by lenders giving notice of default, and if substantial compliance is sufficient, whether there was substantial compliance in this case.

Disposition

The Legislature intended NRS 40.453 to invalidate a guarantor's purported contractual waiver of the statutory right to be mailed a notice of default provided in NRS 107.095. Substantial compliance can satisfy NRS 107.095's notice of default requirement, and, here, the district court did not abuse its discretion in concluding that the lender substantially complied with NRS 107.095's notice requirement. Thus, the judgment of the district court was affirmed.

Factual and Procedural History

In May 2007, Decal Nevada, Inc., an entity solely owned by John Schleining, obtained a loan from respondent lenders, Cap One, to help pay the purchase price of an undeveloped parcel of real property. Schleining signed a personal guaranty of the loan, which included a waiver of his right to receive notice of any default of the loan. After Decal defaulted, Cap One declined to extend the loan and refused to release Schleining from her personal guaranty. One month later, Cap One recorded a notice of default and election to sell. Cap One then mailed a copy of the notice of default to Decal at various addresses, including Decal's office in St. Helens, Oregon—an office Decal shared with Schleining. However, Cap One did not mail a separate copy of the notice of default to Schleining as guarantor, as set forth in NRS 107.095. Additionally, Cap One mailed a notice of trustee's sale to Decal, again at Schleining's shared St. Helens, Oregon, address though a notice was not mailed to Schleining, personally. A trustee's sale was held at which Cap One was the only bidder on the property, purchasing it for \$100,000.

Cap One then filed a complaint seeking a deficiency judgment against Schleining as guarantor. The district court ruled that Schleining's contractual waiver of notice was invalid pursuant to NRS 40.453. The district court further ruled that, because Schleining had actual notice of the default and foreclosure sale and was not prejudiced by the lack of formal notice, Cap One had substantially complied with NRS 107.095. Thus, the district court awarded a deficiency judgment against Schleining in favor of Cap One.

¹ By Laura Guidry.

Discussion

Pursuant to NRS 40.453, Schleining could not waive the right to be mailed the notice of default

Though not codified in the same subchapter NRS 107.095 (providing borrowers and guarantors a right to notice of default) and NRS 40.453 (disallowing contractual waivers of certain statutory rights) relate to the same subject matter and were enacted as part of the same bill. Accordingly, the Court determined that NRS 107.095 falls within the scope of NRS 40.453's prohibited waivers. The district court properly invalidated Schleining's waiver of his right to be mailed the notice of default.

The district court did not abuse its discretion in determining that Cap One substantially complied with the notice requirement in NRS 107.095

Given that the Legislature intended for a substantial compliance standard to apply with regard to Cap One's duty to provide notice to *borrower* Decal under NRS 107.080, there is no reason why the Legislature would intend for a strict-compliance standard to apply when providing the same notice directly to *guarantor* Schleining under NRS 107.095. The purpose of NRS 107.095 is simply to notify the guarantor that the loan is in default and that the lender has elected to foreclose on the secured property. Substantial compliance is sufficient where actual notice occurs and there is no prejudice to the party entitled to notice.² The Court found Schleining had actual knowledge of the default and the pending foreclosure sale despite the lack of statutory notice. Additionally, Schleining was not prejudiced by the lack of statutory notice. Therefore, the Court affirmed the judgment of the district court.

Conclusion

The district court did not abuse its discretion when it determined Schleining's actual notice of the default and foreclosure sale, coupled with the lack of prejudice, satisfied the purpose of NRS 107.095. The judgment of the district court was affirmed.

² Las Vegas Plywood & Lumber, Inc. v. D & D Enters., 98 Nev. 378, 380, 649 P.2d 1367, 1368 (1982).