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Nevada Ass'n. Servs. v. Eighth Jud. Dist., 130 Nev. Adv. Op. 94 (Dec. 4, 2014)¹

THE VOLUNTARY PAYMENT DOCTRINE: AN AFFIRMATIVE DEFENSE

Summary

The voluntary payment doctrine provides an affirmative defense to a claim for the recovery of money that a plaintiff voluntarily paid. The duress/coercion exception to the voluntary payment doctrine requires the plaintiff show no reasonable alternative to payment existed. Additionally, the defense of property exception requires the plaintiff show an imminent risk of losing the property.

Background

Elsinore, LLC purchased a property located within Pecole Ranch planned community at a foreclosure auction. Before the sale, Pecole Ranch Community Association placed a lien on the property for unpaid community-association assessments. Elsinore requested an accounting statement of the outstanding assessments and stated it would not pay any assessments or fees not authorized by NRS 116.3116. G.L.J. Inc., an agent of Pecole Ranch, sent Elsinore a letter demanding payment of outstanding association dues. Elsinore paid the demand.

Nearly three years later, Elsinore filed a complaint against Pecole Ranch with the Nevada Real Estate Division on behalf of itself and a class of similarly situated property owners alleging Pecole Ranch made excessive lien demands in violation of NRS 116.3116. Subsequently, Pecole Ranch filed a district court action seeking declaratory relief. This district court certified the class and appointed class counsel. Pecole Ranch then filed a third-party complaint against petitioner Nevada Association Services (NAS), another agent of Pecole Ranch, seeking indemnification and contribution for any damages Elsinore and the class received from Pecole Ranch.

NAS filed a motion for summary judgment arguing that the voluntary payment doctrine bars Elsinore's and the class members' claims for damages. The district court denied the motion for summary judgment, concluding that the voluntary payment doctrine did not apply to Elsinore because Elsinore paid Pecole Ranch under duress and to save its property.

Discussion

The voluntary payment doctrine is an affirmative defense that "provides that one who makes a payment voluntarily cannot recover it on the ground that he was under no legal obligation to make the payment."² Once a defendant shows that a voluntary payment was made, the burden shifts to the plaintiff to demonstrate that an exception to the voluntary payment doctrine applies.³ The voluntary payment doctrine remains good law and is a valid affirmative defense in Nevada.

¹ By Michael Valiente.

² *Best Buy Stores v. Benderson-Wainberg Assocs.*, 668 F.3d 1019, 1030 (8th Cir. 2012) (internal quotations omitted).

³ See *Randazzo v. Harris Bank Palatine, N.A.*, 262 F.3d 663, 666 (7th Cir. 2001) (noting that "a plaintiff who voluntarily pays money in reply to an incorrect or illegal claim of right cannot recover that payment unless he can show fraud, coercion, or mistake of fact").

The coercion or duress exception applies when "(1) . . . one side involuntarily accepted the terms of another; (2) . . . circumstances permitted no other alternative; and (3) . . . circumstances were the result of coercive acts of the opposite party."⁴ Specifically, Business necessity constituting duress occurs when the payor has only a single "commercially reasonable course of action," despite the fact that the action involves a choice, in some limited sense.⁵

Additionally, payment in defense of property is an exception to the voluntary payment doctrine.⁶

Conclusion

Here, Elsinore failed to meet its burden to demonstrate that it lacked a reasonable alternative to paying the lien. Because Elsinore could have filed a complaint with the Nevada Real Estate Division *before* it paid the lien, Elsinore's decision to pay the lien was not made under duress because it had a reasonable alternative.

Additionally, Elsinore did not establish the defense of property exception because Elsinore failed to show it risked losing the property if it did not pay the lien. Though Pecole could have foreclosed on the unpaid lien eventually, there was no evidence that foreclosure proceedings were imminent.

⁴ *Emp'rs Ins. of Wausau v. United States*, 764 F.2d 1572, 1576 (Fed. Cir. 1985).

⁵ *Ross v. City of Geneva*, 357 N.E.2d 829, 836 (Ill. App. Ct. 1976).

⁶ *Cobb v. Osman*, 83 Nev. 415, 421, 433 P.2d 259, 263 (1967).