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Summary of First Financial Bank, N.A. v. Lane, 130 Nev. Adv. Op. 96

Patrick Phippen
Nevada Law Journal

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Recommended Citation

Phippen, Patrick, "Summary of First Financial Bank, N.A. v. Lane, 130 Nev. Adv. Op. 96" (2014). *Nevada Supreme Court Summaries*. 838.

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CONTRACT LAW: DEFICIENCY JUDGMENTS

Summary

The Court determined that (1) the limitation in the second sentence of NRS 40.451 simply means a lender cannot recover in deficiency judgment actions for future advances secured but not paid at the time of default and (2) NRS 40.451 by itself does not contemplate successors in interest.

Background

Gordon and Carol Lane (“Lane”) took out a \$3 million loan secured by a piece of commercial real estate that was guaranteed by John C. Serpa (“Serpa”). After the Lanes defaulted, Serpa failed to guarantee. Before the original lender could foreclose, the Federal Deposit Insurance Corporation (“FDIC”) was appointed receiver and assigned the loan to First Financial Bank, N.A. (“FFB”) in exchange for \$2,256,879.90 (75% of the total amount then due). FFB foreclosed and brought a deficiency judgment and breach of guaranty action against the Lanes and Serpa. The district court entered judgment in favor of the Lanes and Serpa because the fair market value (“FMV”) of the property (\$2.3 million) exceeded the consideration FFB paid to acquire the lien.

Discussion

NRS 40.451 lists the categories of debt a creditor may seek in a deficiency judgment: principal balance, accrued interest, costs of sale, advances with respect to the property (i.e., expenses incurred by the lender to protect its security), and other amounts secured by the mortgage (i.e., future advances).² NRS 40.451 also states that “[s]uch amount constituting a lien is limited to the amount of the consideration paid by the lienholder.”³

Limitation in second sentence of NRS 40.451

The opening phrase “[s]uch amount” of the second sentence of NRS 40.451 suggests that it applies only to the last category of debt listed in the first sentence, i.e., to future advances.⁴ The Court explained that both the original version of the law and its current form have the effect of “ensuring that a lender could not recover in deficiency judgment for future advances”.

Legislative history supports this interpretation, as does the Nevada federal district court.⁵ The limitation was originally described as capping deficiency judgments to the amount actually

¹ By Patrick Phippen.

² NEV. REV. STAT. § 40.451 (2013).

³ *Id.*

⁴ *Id.*

⁵ See *Interim Capital LLC v. Herr Law Group, Ltd.*, 2:09-CV-01606-KJD-LRL, 2011 WL 7047602, at *7 (D. Nev. 2011) (“The words ‘such amount’ refers back to ‘all other amounts’ noted in the last category, and not the indebtedness as a whole.”).

due and owing.⁶ When the law was updated, proponents of the bill explained that courts can award deficiency judgments after foreclosure if “the sale is less than the amount that the borrower owes the lender.”⁷

Successors-in-interest

The Lanes and Serpa argued that NRS 40.459(1)(c) may limit deficiency action judgments in favor of successors-in-interest to the consideration paid by a third-party purchaser for assignment of secured debt.⁸ However, successors-in-interest are not addressed at all in NRS 40.451 either directly or indirectly.⁹ Moreover, it is “well established” that an assignee “stands in the shoes” of the assignor and succeeds to all legal rights the assignor had before the assignment.¹⁰ The Court explained that the passage of NRS 459(1)(c) is evidence that NRS 40.451’s limitation “does not contemplate consideration exchanged between an assignor and an assignee” because otherwise NRS 459(1)(c) would be moot.¹¹ Furthermore, there is no mention of successors-in-interest anywhere in the legislative history of NRS 40.451.¹²

Conclusion

NRS 40.451 does not set an assignor-assignee, consideration-based limit on FFB’s recovery against the Lanes and Serpa. Since FFB’s recovery is not limited to the amount it paid when acquiring the loan and guarantees, the Court reversed the ruling of the district court and ordered the district court to consider how much, if any, deficiency was owed following the foreclosure sale.

⁶ Edward Hale, Hearing on A.B. 493 Before the Assembly Comm. on Judiciary, 55th Nev. Leg. (Mar. 13, 1969).

⁷ Hearing on A.B. 273 Before the Assembly Comm. on Commerce & Labor, 76th Nev. Leg. (Mar. 23, 2011).

⁸ See NEV. REV. STAT. § 40.459(1)(c) (2013) (discussing the “amount of the consideration paid for that right”).

⁹ See NEV. REV. STAT. § 40.451 (2013).

¹⁰ Interim Capital, *supra* note 5, at *6.

¹¹ See NEV. REV. STAT. §§ 40.451, 40.459(1)(c) (2013).

¹² See, e.g., Hearing on A.B. 273, *supra* note 7.