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Summary of Munoz v. Branch Banking & Trust Co., 131 Nev. Adv. Op. No. 23 (Apr. 30, 2015)

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Munoz v. Branch Banking & Trust Co., 131 Nev. Adv. Op. No. 23 (Apr. 30, 2015)[1]
SECURITIES: DEFICIENCY JUDGMENTS

Summary

NRS 40.459(1)(c)'s limitation on the amount of deficiency judgment that a successor can recover conflicts with the federal Financial Institutions Reform, Recovery and Enforcement Act's ("FIRREA") purpose of facilitating the transfer of assets of failed banks to other institutions. Because NRS 40.459(1)(c) limits the value a successor can recover on a deficiency judgment, its application to assets transferred by the Federal Deposit Insurance Corporation ("FDIC") frustrates FIRREA's purpose. Therefore, NRS 40.459(1)(c) is preempted by FIRREA to the extent that NRS 40.459(1)(c) limits deficiency judgment that may be obtained from loans transferred by the FDIC.

Background

In 2007, appellants borrowed money from Colonial Bank and granted Colonial Bank a security interest in their real property. In 2009 the FDIC placed Colonial Bank into receivership and assigned appellants loan to respondent Branch Banking and Trust ("BB&T"). In 2011, NRS 40.459(1)(c), which implements certain limitation on the amount of a deficiency judgment that can be recovered by an assignee creditor, became effective.[2] In 2012, appellants defaulted on their loan, and BB&T instituted an action for judicial foreclosure of the secured property which appellants did not oppose. The property was sold for less that the value of the outstanding loan at a sheriff's sale in 2013. BB&T then filed a motion seeking a deficiency judgment against appellant for the remaining balance of the loan. Reasoning that NRS 40.459(1)(c) did not apply retroactively to appellant's loan, which was originated and assigned before the statute's effective date, the district court awarded a deficiency judgment to BB&T for the full amount sought. The district court did not address whether NRS 40.459(1)(c)'s present application was preempted by federal law.

Discussion

"State laws that conflict with a federal law are without effect."[3] One situation in which a federal law can preempt a state law is where the state law "frustrates the purpose of national legislation, or impairs the efficiencies of [the] agencies of the federal government to discharge the duties for the performance of which they were created."[4]

Specifically, "Congress enacted FIRREA to enable the federal government to respond swiftly and effectively to the declining financial condition of the nation's banks and savings institutions."[5] "Under FIRREA, when the FDIC becomes the receiver of a failed financial institution, it immediately becomes the receiver of all that institutions assets, including

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[1] By Michael S. Valiente.
[2] 2011 NEV. STAT., ch. 311 §§ 5, 7, at 1743, 1748 (2011).
[3] Altria Grp. v. Good, 555 U.S. 70, 76 (2008).
[4] McClellan v. Chipman, 164 U.S. 347, 357 (1986).
[5] Schettler v. RalRon Capital Corp., 128 Nev. Adv. Op. No. 20, 275 (2012).

promissory notes that are in default."[6] When acting as receiver, "the FDIC's essential duty is to convert all the institution's assets into cash to cover the insured depositors."[7]

To assist the FDIC is carrying out this duty, federal law provides special status to the FDIC's assignees to maintain the value of the assets they receive from the FDIC.[8] Thus, if a state statute limits the market for assets transferred by the FDIC, it conflicts with FIRREA because it "would have a deleterious effect on the FDIC's ability to protect the assets of failed banks."[9]

NRS 40.459(1)(c) limits the amount an assignee creditor may recover on a deficiency judgment to the amount that it paid to acquire the interest in the secured debt less the amount of the secured property's actual value. Since the statue limits a successor creditor's recover to no more than it paid for the loan, NRS 40.459(1)(c) prevents a creditor from realizing a profit on its purchase of a debt from an assignor creditor. Therefore, NRS 40.459(1)(c)'s application to failed banks' assets held by the FDIC would limit the private market for such assets by making it more difficult for the FDIC to dispose of these assets. Thus, assets transferred by the FDIC would frustrate the purpose of FIRREA and directly conflict with this federal statutory scheme. Consequently, NRS 40.459(1)(c) is preempted by FIRREA as to assets transferred by the FDIC and is without effect in this case.

Conclusion

Although the district court found NRS 40.459(1)(c) does not apply to BB&T's application for a deficiency judgment for a different reason than the one stated above, it reached the correct result in concluding that NRS 40.459(1)(c) did not shield appellants from deficiency judgment liability. Since the Supreme Court will affirm the order of the district court if it reached the correct result, albeit for different reasons,[10] the Supreme Court upheld the district court's judgment.

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[6] James J. Boteler, *Protecting the American Taxpayers: Assigning the FDIC's Six Year Statute of Limitations to Third Party Purchasers,* 24 Tex. Tech L. Rev. 1169, 1172 (1993) (citation omitted).

[7] *Id.*

[8] *See* FDIC v. Bledsoe, 989 F.2d 805, 809–11 (5th Cir. 1993).

[9] FDIC v. Newhart, 892 F.2d 47, 50 (8th Cir. 1989).

[10] Rosenstein v. Steele, 103 Nev. 571, 575 (1987).