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Pascua v. Bayview Loan Servicing, LLC, 135 Nev. Adv. Op. 4 (Feb. 7, 2019)

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STATUTORY INTERPRETATION: RIGHTS OF A SPECIAL ADMINISTRATOR

Summary

The Court determined that an individual who has been appointed special administrator of a decedent's estate is entitled to participate in the Foreclosure Mediation Program if the property is the special administrator's primary residence, and they retain an ownership interest through intestate succession laws.

Background

In 2010, Myrna Pascua passed away, and was survived by her husband Ricardo Pascua. During her marriage to Ricardo, Myrna purchased a home in her name only, which was also encumbered by a deed of trust. After Myrna's passing, Ricardo petitioned the probate court and was appointed as the special administrator of her estate.

In 2016, respondent Bayview Loan Servicing, LLC, began foreclosure proceedings on the house Myrna had purchased. As special administrator, Ricardo requested foreclosure mediation through Nevada's Foreclosure Mediation Program. However, during the mediation, the mediator concluded the property did not qualify for the mediation program because Ricardo was not the owner or grantor of the property, and his rights as special administrator did not authorize him to participate in the program. Ricardo subsequently filed a petition with the district court for judicial review, but the court denied his petition. This appeal followed.

Discussion

The Foreclosure Mediation Program applies to "owner-occupied residence[s], which is defined as "housing that is occupied by an owner at the owner's primary residence."² The purpose of this program is to provide homeowners with a timely and cost-effective mediation program that allows lender and homeowners to exchange information that may avoid foreclosures.

Additionally, a special administrator's duties are laid out in NRS 140.010. As special administrator, Ricardo is required to take "charge and management of the real property and enter upon and preserve it from damage, waste and injury."³ Based on the plain language of the statutes, it is clear that allowing the special administrator to participate in the Foreclosure Mediation Program is a preliminary step necessary to preserve the estate and prevent "damage, waste and injury," and naturally foreclosure is covered here.⁴ Additionally, even if the statute did not directly cover the issue, good public policy dictates that special administrator should be able to participate the mediation program to avoid the foreclosure of a residence occupied by the administrator as the spouse of the deceased owner.

¹ By Scott Cooper

² NEV. REV. STAT. § 107.086(1), (19)(d) (2017).

³ NEV. REV. STAT. § 140.040(1)(b) (2017).

⁴ *Id.*

Furthermore, in Nevada, property acquired during the marriage is presumed to be community property.⁵ Even though Myrna purchased the house in her name only, it was acquired during her marriage to Ricardo. In that case the burden falls on Bayview Loan to rebut the presumption towards the house being community property, which they have failed to do. Therefore, upon Myrna's death, Ricardo received, at least, an undivided one-half interest in the property. As a result, Ricardo was empowered to participate in the mediation program due to his ownership interest in the property.

Conclusion

The Court found that the appellant is entitled to participate in the Foreclosure Mediation because his status as special administrator authorizes him to participate in the mediation program to preserve Myrna's estate. Moreover, the Court clarified that the house in question was community property, therefore the appellant obtained an ownership interest in the property upon Myrna's death, and since the property served as his primary residence he qualifies as an owner-occupier under Nevada law. Therefore, the Court concluded that the district court erred by denying Ricardo's petition for judicial review.

⁵ Pryor v. Pryor, 734 P.2d 718, 719 (1987).