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Oella Ridge Tr. v. Silver State Schs. Credit Union, A Nev. Corp.

Courtney Sinagra

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Oella Ridge Tr. v. Silver State Schs. Credit Union, A Nev. Corp.,
137 Nev. Adv. Op. 80 (Dec. 23, 2021)¹

Motion to Dismiss — Declaratory Relief Action Challenging Attorney Fees

Summary:

The Nevada Supreme Court considered whether attorney fees imposed under a deed of trust must comport with the Nevada Rules of Civil Procedure's (NRCP) timely filing requirements.² Here, the Court found that because the obligation to pay reasonable attorney fees arose from a deed of trust rather than a judgment or court order the NRCP rules were inapplicable and normal rules of contract interpretation governed. Because the obligation was clearly and expressly stated and because the contract applied to Appellant, payment of the fees was properly requested.

Facts & Procedural History:

Appellant, Oella Ridge Trust (Oella Ridge), purchased a property at an HOA's foreclosure sale and thereafter moved to quiet title. Respondent, Silver State Schools Credit Union (Silver State) opposed the attempt to quiet title by proffering their first position deed of trust to the property. On appeal, the Nevada Supreme Court concluded that the HOA foreclosure sale did not extinguish Silver State's deed of trust or priority status.³ On remand, the district court entered judgment in Silver State's favor, finding that Oella Ridge owns the property subject to Silver State's first position deed of trust.

Oella Ridge subsequently requested Silver State's note payoff amount. Silver State responded with a payoff amount that included the principal balance of approximately \$138,000 as well as \$96,000 of attorney fees Silver State had accumulated during the previous action. Oella Ridge filed a complaint for declaratory relief arguing the attorney fees were unreasonable and that Silver State had waived the right to attorney fees by failing to timely seek fees during the previous litigation. The district court granted summary judgment to Silver State citing the deed of trust's terms and finding the requested attorney fees reasonable. The district court then dismissed Oella Ridges complaint with prejudice.

Oella Ridge appealed, arguing Silver State waived its right to seek attorney fees by failing to timely file a motion for those fees following the quiet title action as required by NRCP 54(d)(2).⁴

¹ By Courtney Sinagra

² NRCP 54(d)(2).

³ See *Silver State Sch. Cred. Union v. Oella Ridge Tr.*, No. 76382, 2019 WL 3061742 (Nev. July 11, 2019) (Order of Reversal and Remand).

⁴ Oella Ridge also raised arguments under NRS 18.010 and NRS 18.110 but because the arguments were not raised previously, the court declined to consider them here.

Discussion

The Nevada Supreme Court treated the district court's dismissal as summary judgment.⁵ Therefore, they reviewed the decision *de novo* to determine whether a genuine issue of material fact existed and whether the moving party was entitled to judgment as a matter of law.⁶ Because there were no factual disputes, and contract interpretation is a question of law, the Court proceeded to interpret the deed of trust's provisions according to its clear and plain language.⁷

The Court explained that Section 9 of the deed of trust stated that Silver State had the right to "do and pay for whatever is reasonable or appropriate" to protect their interest in the property, including "paying reasonable attorneys' fees." The contract further stated, "any amount disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument."

The Court concluded that Section 9 clearly applied to Oella Ridge because when Oella Ridge purchased the property it took title subject to the deed of trust and pursuant to the promissory note, neither of which were extinguished by the HOA foreclosure sale. The Court pointed to similar court decisions that also concluded a lender may use a deed of trust to secure attorney costs incurred in protection the lender's interests, even where, as here, a nonborrower sought to pay off the loan.⁸ The Court highlighted that Oella Ridge did not contest being bound by Section 9 nor did Oella Ridge offer an alternative contractual interpretation.

Oella Ridge's lone argument was that Silver State had waived its right to attorney fees under NRCP 54(d)(2). The Court found this argument unpersuasive because Oella Ridge's obligation to pay did not arise from a judgment or from an order on a motion where NRCP 54(d)(2) applied. Instead, the obligation directly arose from the deed of trust's Section 9. Further, briefings and other documents demonstrated the requested attorney fees were reasonable. Therefore, the Court held NRCP 54(d)(2) to be inapplicable.

Conclusion

Because NRCP 54(d)(2) was inapplicable, the Court affirmed the lower court's decision that Silver State properly added the attorney fees to the indebtedness secured by the deed of trust. The Court then dismissed Oella Ridge's request for declaratory relief.

⁵ *Schneider v. Cont'l Assurance Co.*, 110 Nev. 1270, 1271, 855 P.2d 572, 573 (1994) (explaining that where the district court considers more than the pleadings in granting a motion to dismiss, this court will treat the dismissal as a grant of summary judgment).

⁶ *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (addressing the standard of review for summary judgments).

⁷ "[W]e construe a contract that is clear on its face from the written language, and it should be enforced as written." *Masto v. Second Judicial Dist. Court*, 125 Nev. 37, 44, 199 P.3d 828, 832 (2009).

⁸ *Hart v. Clear Recon Corp.*, 237 Cal. Rptr. 3d 907, 911 (Ct. App. 2018); *Richardson v. Wells Fargo Bank, N.A.*, 740 F.3d 1035, 1038-39 (5th Cir. 2014).