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Federal National Mortgage Ass'n v. Westland Liberty Village, LLC, 138 Nev. Adv. Op. 57 (Aug 11, 2022)¹

THE COURT MUST APPOINT A RECEIVER WHEN IT IS A MATTER OF RIGHT.

Summary

Federal National Mortgage Association v. Westland Liberty Village, LLC required the Nevada Supreme Court to clarify when a lender or its assignee is entitled to the appointment of a receiver after a borrower defaults on a real property loan agreement. In doing so, the Court interpreted two Nevada Statutes, NRS 32.260 and NRS 107A.260(1)(a)(1).² Together, these statutes provide when the appointment of a receiver is based on the discretion of the court or is a matter of right.

Here, The Nevada Supreme Court held that the borrower, Westland Liberty Village (Westland) defaulted on their loan agreement with National Mortgage Association (National Mortgage), and pursuant to NRS 32.260(2)(b) and NRS 107A.260(1)(a)(1)³, National Mortgage was entitled to appointment of a receiver. The Court reversed the case and remanded it back for further proceedings.

Background

After noticing a decrease in occupancy of apartment complexes owned by borrower Westland, National Mortgage sent an inspector to the property who discovered that the property was in need of significant repairs. National Mortgage requested that Westland make monthly payments into the repair and replacement escrow accounts for the property. Westland did not make such payments. National Mortgage sued Westland for a default under their loan agreements, seeking a receiver. Westland countersued, arguing that National Mortgage breached their contract and seeking a preliminary injunction. The District Court ruled in favor of Westland. The court found that there was no default, denied the appointment of a receiver, and granted a preliminary injunction in favor of Westland.

Appellants National Mortgage and its loan servicer, Grandbridge Real Estate Capital LLC (Grandbridge), appealed to the Nevada Supreme Court.

Discussion

The District Court erred in Finding Westland did not default

National Mortgage argues that Westland defaulted on the loan agreement by creating circumstances that constitute a default in their loan agreement, one of which being the failure to make payments to the repair and escrow account. Westland argues that a failure to make these additional payments did not constitute a monetary default, because it was up to date on its regular monthly payments.

¹ By D' Ahna Scott.

² NEV. REV. STAT. 32.260; NEV. REV. STAT. 107A.260(1)(a)(1).

³ NEV. REV. STAT. 32.260(2)(b); NEV. REV. STAT. 107A.260(1)(a)(1).

The Court turned to the plain language of the loan agreement to determine what constitutes a default.⁴ In the instant case, National Mortgage inspected the properties after noticing a decline in occupancy, obtained a PCA, discovered extensive damage to the properties, and required Westland to deposit money into an account to cover the repairs. All of these actions are permitted by the terms of the loan agreement. For that reason, Westland's failure to pay the default constituted a default under the loan agreement. And the District Court erred in disregarding the provisions of the loan agreement.

The District Court abused its discretion in failing to appoint a receiver

National Mortgage argues that the District Court erred in failing to appoint a receiver relying on their finding that Westland did not default. National Mortgage further asserts that it was entitled to a receiver because Westland agreed in the deed of trust to the appointment of a receiver under such circumstances and because the properties were subject to assignments of rents in the same deed of trust. Contrary, Westland argues that because the District Court held that the properties were not deteriorated, National Mortgage was not entitled to a receiver.

Under NRS 32.260, there is mandatory and discretionary appointment of receivers.⁵ The court has discretion to appoint a receiver when "a party with an apparent interest in the property shows that the property is subject to or at risk of waste, loss dissipation, or impairment."⁶ However, when a borrower agrees in writing to the appointment of a receiver on default, the court is required to appoint a receiver.⁷ Further, NRS 107A.260(1)(a)(1) provides another right to the appointment of a receiver.⁸ The statute provides that "the assignee of rents is entitled to the appointment of rents when the assignor has defaulted and agreed in a signed writing to appointing a receiver in the case of default."⁹

The Court held that the District Court abused its discretion in failing to appoint a receiver because it wrongly relied on its finding that Westland had not defaulted and it failed to perceive that National Mortgage was entitled to a receiver as a matter of right under NRS 32.260 and NRS 107A.260(1)(a)(1).¹⁰

Preliminary Injunction

The Court ruled that Westland's default entails that the preliminary injunction would not succeed on its merits, but continues to address the preliminary injunction because of several issues the Court found by the District Court. Orders for injunctions must be specific, stating the specific terms of the injunction, why they were granted, and what acts are required or

⁴ *Canfora v. Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 776, 121 P.3d 599, 603 (2005) (The court will interpret unambiguous contracts according to the plain language of the term of the agreement); *Squyres v. Zions First Nat'l Bank*, 95 Nev. 375,377, 594 P.2d 1150, 1152 (1979) (To determine what constitutes as a default, courts will look to the terms of the agreement).

⁵ NEV. REV. STAT. 32.260 (2017).

⁶ NEV. REV. STAT. 32.260 (1)(a)(1) (2017).

⁷ NEV. REV. STAT. 32.260(2) (2017).

⁸ NEV. REV. STAT. 107A.260(1)(a)(1) (2007).

⁹ *Id.*

¹⁰ NEV. REV. STAT. 32.260 (2017); NRS 107A.260(1)(a)(1) (2007).

restrained.¹¹ In the instant case, the District Court issued a preliminary injunction in favor of Westland that was extremely broad and beyond the scope of the relief sought by Westland. The court draws attention to paragraph 4 of the injunction which stops National Mortgage from “interfer[ing] with Westland’s enjoyment of the Properties”. The Court determined that there was no reason to suggest that National Mortgage would interfere with Westland’s enjoyment of the land. Further, the Court found that it, along with other orders in the injunction, failed to specify why they should be issued and failed to specify what was mandated. The Court Reversed the preliminary injunction.

Conclusion

The Nevada Supreme Court, for the first time interprets NRS 32.260 and NRS 107A.260(1)(a)(1). The Court held that the appointment of a receiver may come under the discretion of the court or as a matter of right, when the borrower has agreed to the appointment of a receiver at default,¹² or when the property was subject to the assignments of rents.¹³ When the appointment of a receiver is a matter of right, the court must appoint a receiver. Here, the Court held that Westland defaulted on its loan agreement with National Mortgage and found that National Mortgage was entitled to the appointment of a receiver as a matter of right. The Court reversed the District Court's grant of preliminary injunction and remanded the case back for further proceedings.

¹¹ NEV. R. CIV. P. 65(d)(1).

¹² NEV. REV. STAT. 32.260(2)(b) (2017).

¹³ NEV. REV. STAT. 107A(1)(a)(1) (2007).