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LV Debt Collect v. Bank of N.Y. Mellon, 139 Nev. Adv. Op. 25 (Aug. 24, 2023)

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LV Debt Collect v. Bank of N.Y. Mellon, 139 Nev. Adv. Op. 25 (Aug. 24, 2023)[1]

SECURED DEBTS ARE NOT WHOLLY DUE AFTER A NOTICE OF DEFAULT

Summary

The Nevada Supreme Court affirmed the district court's grant of summary judgment in a quiet title action disputing the ownership of real property. The Court held that, for the purposes of NRS 106.240, a Notice of Default is not sufficient to make a secured debt wholly due for the following reasons: (1) the plain language of the statute requires an interpretation of whether a debt is wholly due according to the original terms and any extensions, (2) state law requires a waiting period after a Notice of Default has been recorded before the debt can be accelerated, and accelerations of a debt must be clear and unequivocal, and (3) policy reasons behind the statute do not support its application to Notices of Default.

Background

In 2004, a nonparty purchaser secured a loan to buy the property at issue. The property was financed by a promissory note, which was secured by a deed of trust. Respondent, Bank of New York Mellon ("BNYM"), is currently the beneficiary of the deed of trust. In the promissory note and deed of trust, the nonparty purchaser promised to pay the loan in full by 2034. In 2008, the nonparty purchaser defaulted on the loan and BNYM recorded a Notice of Default. Around the same time, the owner defaulted on her homeowners' association (HOA) payments. This entitled the HOA to foreclose on its lien and obtain the property via credit bid in 2011 because BNYM had not foreclosed on the property. In 2013, LV Debt Collect, the appellant, gained title to the property through both a deed from the HOA and a deed from the nonparty owner.

In 2016, LV Debt Collect filed a quiet title action seeking a declaratory judgment that BNYM's deed of trust was void, and that LV Debt Collect had an unencumbered interest in the property. In 2020, the parties both filed for summary judgment. Before the motions were resolved, the district court allowed LV Debt Collect to amend the original complaint to include a claim for relief under NRS 106.240—a statute designed to let mortgages expire naturally ten years after they are wholly due. LV Debt Collect argued that BNYM's Notice of Default in 2008 made the debt wholly due at the time, which would have rendered BNYM's deed of trust extinguished ten years later in 2018. The district court granted summary judgment in favor of BNYM and denied LV Debt Collect's argument in finding that the Notice of Default did not make the loan wholly due. LV Debt Collect appealed the judgment.

Discussion

The district court did not err in granting BNYM's motion for summary judgment

The primary issue before the Court was whether recording a Notice of Default makes a debt wholly due for the purposes of NRS 106.240. To grant summary judgment, there must be no genuine issues of material fact, and the movant must be entitled to judgment as a matter of law.[2] The parties alleged no genuine issues of material fact.

LV Debt Collect has an interest in the property

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[2] Williams v. United Parcel Servs., 129 Nev. 386, 391, 302 P.3d 1144, 1147 (2013).

Before addressing the statute and the issue as a matter of law, the Court resolved a minor error in the lower court. The district court found that LV Debt Collect had no interest in the property. The Court held that LV Debt Collect did have an interest in the property because the company received a deed from the nonparty owner, which created an interest in the property. The Court held that this interest was sufficient for LV Debt Collect to have standing to file an action for quiet title.[3]

Debts do not become wholly due after a Notice of Default for purposes of NRS 106.240

Under NRS 106.240, recorded liens created by mortgages and deeds of trust shall terminate ten years after the debt became "wholly due."[4] Appellants argued that NRS 106.240 extinguished BNYM's deed of trust in 2018 because BNYM recorded a Notice of Default in 2008. Appellees argued that, under the plain language of the statute, a debt can only become "wholly due" when the debt is due according to either (1) the original terms or (2) a recorded extension of the original document.[5] Thus, BNYM argued that a Notice of Default cannot make a debt wholly due under the statute. In this case, the deed of trust held by BNYM did not make the debt wholly due until 2034, and there were no recorded extensions of the deed. Therefore, under plain language, the Court reasoned the debt was not wholly due in 2008, nor extinguished in 2018, because the Notice of Default was not an original term nor included in a recorded extension. Furthermore, the plain language of the statute does not list a Notice of Default as a document that makes a debt "wholly due."[6]

The Court continued that even if BNYM had made the debt wholly due at the time of the Notice of Default, state law would not allow it. Though the deed of trust contained a clause allowing BNYM to accelerate the debt under certain conditions—and met those conditions with the Notice of Default—the clause did not comply with NRS 107.080(2)-(3). This statute requires that borrowers are allowed 35 days to cure a default before the acceleration of a loan.[7] However, the deed of trust gave only 30 days for the borrower to cure the default. This discrepancy warranted the Court's conclusion that even if BNYM intended to make the debt wholly due, it was not. Also, due to the ambiguous language of the acceleration clause in the deed of trust, the Court reasoned that the Notice of Default could not have accelerated the loan because "the Notice of Default was not so clear and equivocal," which is a required standard for acceleration.[8]

Finally, in an analysis of the purpose of the relevant statute and underlying policy, the Court affirmed the holding. NRS 106.240 is considered Nevada's "ancient-mortgage" statute and its purpose is to allow buyers to ignore mortgages more than ten years old.[9] The Court opined that the spirit of the statute does not align with the race to secure title that would result from LV Debt Collect's interpretation of the language. Furthermore, if the Nevada Legislature intended to eliminate the cure-period required by NRS 107.080 or allow a Notice of Default to render a loan wholly due, then the legislature would have amended these statutes during recent reform.[10]

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[3] *See* Doe v. Bryan, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986).
[4] NEV. REV. STAT. § 106.240 (1965).
[5] *Id.*
[6] *Id.*
[7] NEV. REV. STAT. § 107.080(2)-(3) (2023).
[8] Clayton v. Gardner, 107 Nev. 468, 470, 813 P.2d 997, 999 (1991).
[9] Nancy Saint-Paul, *Clearing Land Titles* § 6:5 (3d ed. 2022).
[10] Thomas v. Nev. Yellow Cab Corp., 130 Nev. 484, 488, 327 P.3d 518, 521 (2014).

Conclusion

For several reasons, the Court found that the loan was not wholly due following the Notice of Default. First, the plain language of the statute is clear that a debt is wholly due according to the original text and recorded alterations only. The 2008 Notice of Default was not part of the original agreement nor an extension. Second, the debt could not have been accelerated because state law requires a cure-period after a Notice of Default has been recorded. Additionally, the intention to accelerate the debt must be clear and unequivocal. Here, the deed of trust only required an insufficient cure-period and the terms of acceleration were ambiguous. Finally, the intent of the statute supports BNYM's interpretation that the law exists to nullify old mortgages, not to prolong litigation or complicate property records. Accordingly, the Court held that the BNYM's deed of trust has not been extinguished as a result of the Notice of Default, and affirmed the district court's grant of summary judgment.