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Agstar Financial v. Gordon Paving Co, Inc Appellant's Brief Dckt. 43747

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IN THE SUPREME COURT OF THE STATE OF IDAHO

Supreme Court Docket no. 43747

AGSTAR FINANCIAL SERVICES, ACA

Respondent/Plaintiff

v.

GORDON PAVING, COMPANY, INC., NORTHWEST SAND & GRAVEL, INC.,
BLACKROCK LAND HOLDINGS, LLC, BRANDON HANSEN, BRIAN HANSEN, CAROL
HANSEN GPC NEVADA TRUST, CANYON EQUIPMENT AND TRUCK SERVICE, INC.,
AND DOE ENTITIES OWNED BY BRIAN HANSEN AND CRAIG HANSEN

Appellants/Defendants

APPELLANTS' BRIEF

Appeal from the District Court of the Fifth Judicial District in and for Twin Falls County

Case No. CV-2015-2062

The Honorable Randy J. Stoker, District Judge, Presiding

Attorneys for Appellants/Defendants:

Gordon Paving, Company, Inc., Northwest Sand &
Gravel, Inc., Blackrock Land Holdings, LLC,
Brandon Hansen, Brian Hansen, Carol Hansen
GPC Nevada Trust, Canyon Equipment and Truck
Service, Inc., and Doe Entities Owned by Brian
Hansen and Craig Hansen:

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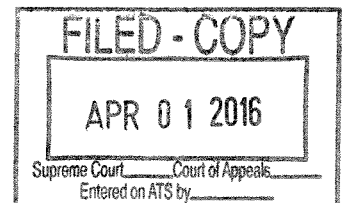


TABLE OF CONTENTS

I. STATEMENT OF THE CASE 1

 A. Nature of the Case 1

 B. Facts 1

 C. Procedural History..... 1

II. ISSUES PRESENTED ON APPEAL..... 3

III. ARGUMENT..... 3

 A. Idaho Code § 6-108 Protects Personal Guarantors..... 3

 B. The Respondents are not Entitled to Attorney Fees Because the Appellants have a
 Meritorious Defense..... 5

 C. The District Court Erred by Entering its Amended Final Judgment..... 5

IV. ATTORNEY FEES ON APPEAL..... 6

V. CONCLUSION..... 6

TABLE OF CASES AND AUTHORITIES

Cases

First Interstate Bank of Arizona, N.A. v. Tatum and Bell Ctr. Associates, 821 P.2d 1384, 1387
(Ariz. App. 1st Div. 1991) 5

First Interstate Bank of Nevada v. Shields, 730 P.2d 429, 431 (Nev. 1986)..... 5

First Security Bank of Idaho v. Gaige, 115 Idaho 172, (1988)..... 3

Sur. Life Ins. Co. v. Smith, 892 P.2d 1, 3 (Utah 1995)..... 5

Statutes

Idaho Code § 45-1512..... 3, 4

Idaho Code § 6-108..... 3, 4, 5, 6

Rules

Idaho Appellate Rule 40(a)..... 6

Idaho Appellate Rule 41 6

I. STATEMENT OF THE CASE

A. Nature of the Case

This case deals with the application of Idaho Code §6-108 and whether or not its protections apply to personal guarantors as well as mortgage debtors.

B. Facts

Gordon Paving Company, Inc., Northwest Sand & Gravel, Inc., and Blackrock Land Holdings (collectively, “Gordon Paving”) operated a business in Twin Falls, Idaho, which mined and sold sand and gravel as part of a paving and sealcoating operation.

AgStar Financial Services, ACA (“AgStar”) is a lending institution headquartered in Minnesota.

In December 2007 Gordon Paving borrowed \$9 million from AgStar and Brian Hansen, Brandon Hansen, the Carol Hansen GPC Nevada Trust, and the Craig Hansen GPC Nevada Trust (collectively, “Hansens”) entered specific guaranty agreements guaranteeing that loan obligation. (R. at 22-42.) Then in April 2008, Gordon Paving borrowed an additional \$1 million from AgStar and the Hansens entered into additional specific guaranty agreements for that loan. (R. at 43-56.) Gordon Paving secured repayment of the loans primarily by mortgaging its interest in a commercial real estate property and five gravel pits. (*Id.*) In 2012 Gordon Paving had defaulted on both loans. (R. at 117.)

C. Procedural History

On June 19, 2013, the district court entered a Judgment and Decree of Foreclosure against Gordon Paving in Twin Falls County Case CV-2012-2731. AgStar sold the real property

at Sheriff's Auction for \$7.2 million and thereafter sought a deficiency judgment against Gordon Paving. The district court denied AgStar's motion for entry of a deficiency judgment.

On June 1, 2015, AgStar filed its complaint in the current case against Gordon Paving, the Hansens, Canyon Equipment and Truck Service, Inc., and Doe Entities owned by Brian, Brandon, and Craig Hansen. AgStar asserted a claim of breach of personal guaranty against Brian Hansen, Brandon Hansen, and the two Nevada Trusts. AgStar also asserted other claims against some or all of the other entities named for breach of contract, breach of covenant of good faith and fair dealing, negligence, conversion, and unjust enrichment/restitution/quasi contract, imposition of constructive trust. (R. at 7-20.)

On June 26, 2015, ROBINSON & TRIBE filed a Notice of Appearance on behalf of all defendants. (R. at 57.) On June 30, 2015, AgStar filed its Notice of Intent to Take Default. (R. at 59.) On July 8, 2015, AgStar filed its Application for Entry of Default. (R. at 62.) On July 9, 2015, the district court entered its Order for Default against the all defendants. (R. at 75.) On July 15, 2015, the defendants filed their Motion to Set Aside Default and a Motion to Dismiss based on *res judicata*. (See R. 77-83.)

On October 19, 2015, the district court held a hearing on the defendants' motions. The result of the hearing was the district denied the motion to set aside default. The district court denied the motion with respect to the Hansens because it held they failed to show a meritorious defense with regard to the breach of personal guaranties, even though the Hansens showed good cause for setting aside the default. (Tr., p. 32, Ll. 16-25; p. 33, Ll. 1-15; p. 34, Ll. 1-6.) The

district court dismissed all other claims with prejudice. (Tr., p. 34, Ll. 7-21; and R. at 128-29)

II. ISSUES PRESENTED ON APPEAL

1. Whether the court erred when it denied the Appellants' motion to set aside default because the court did not find a meritorious defense as to the guarantors, holding that the anti-deficiency statute found in Idaho Code § 6-108 did not protect personal guarantors from actions to enforce the guarantee?

2. Did the court error in awarding attorney's fees and costs to AgStar as the prevailing party.

3. Did the court error when it entered its Amended Final Judgment.

III. ARGUMENT

A. Idaho Code § 6-108 Protects Personal Guarantors

The district court held that this Court's ruling in *First Security Bank of Idaho v. Gaige*, 115 Idaho 172, (1988), that anti-deficiency statute found in I.C. § 45-1512 does not protect guarantors from separate actions to enforce debt, was persuasive case law for it to hold that I.C. § 6-108 also offered no protection to guarantors. Hansens disagree. *Gaige* only addressed § 45-1512 and not § 6-108. These are two different anti-deficiency statutes and the courts should construe their implications differently. The relevant code sections read as follows:

No court in the state of Idaho shall have jurisdiction to enter a deficiency judgment in any case involving a foreclosure of a mortgage on real property in any amount greater than the difference between the mortgage indebtedness, as determined by the decree, plus costs of foreclosure and sale, and the reasonable value of the mortgaged property, to be determined by the court in the decree upon the taking of evidence of such value.

Idaho Code § 6-108.

At any time within 3 months after any sale under a deed of trust, as hereinbefore provided, a money judgment may be sought for the balance due upon the obligation for which such deed of trust was given as security, and in such action the plaintiff shall set forth in his complaint the entire amount of indebtedness which was secured by such deed of trust and the amount for which the same was sold and the fair market value at the date of sale, together with interest from such date of sale, costs of sale and attorney's fees. Before rendering judgment the court shall find the fair market value of the real property sold at the time of sale. The court may not render judgment for more than the amount by which the entire amount of indebtedness due at the time of sale exceeds the fair market value at that time, with interest from date of sale, but in no event may the judgment exceed the difference between the amount for which such property was sold and the entire amount of the indebtedness secured by the deed of trust.

Idaho Code § 45-1512.

§45-1512 is inapplicable in this case and deals with deeds of trust and non-judicial foreclosures, where § 6-108 deals with judicial foreclosures on mortgages. Judicial foreclosures offer the debtors greater protections and require the lender to prove a default in court. The heightened level of protection for debtors in judicial foreclosure proceedings should instruct the Court to construe § 6-108 more favorably to obligors.

§ 6-108 limits the ability of a court to enter a deficiency judgment “in *any* case involving a foreclosure of a mortgage on real property.” (Emphasis added.) It does not say that the foreclosure has to be the basis for the case, only that the case involves a foreclosure of a mortgage on real property. Thus, even if the basis for the claim is a guarantee agreement § 6-108 applies, if the guarantee secures a debt on real property that the lender foreclosed on. Other states have likewise held that the key factor is not which contract the action is based on, but if the

action is to recover a balance on an obligation covered by the anti-deficiency statute. See *Sur. Life Ins. Co. v. Smith*, 892 P.2d 1, 3 (Utah 1995) and *First Interstate Bank of Arizona, N.A. v. Tatum and Bell Ctr. Associates*, 821 P.2d 1384, 1387 (Ariz. App. 1st Div. 1991). The current case involves a foreclosed property, and the amount of the judgment entered is the difference between the foreclosure sale price and the debt. This places the Hansens within the protections of § 6-108.

Additionally, not extending the protections afforded by § 6-108 to guarantors creates a windfall for lenders. Clearly, anti-deficiency statutes are designed to create a more equitable system for parties involved with a foreclosed property. It allows creditors a method to recover deficiencies while at the same time protecting obligors from the creditors reaping a payout at their expense. Thus, it means that this fairness would be circumvented by denying guarantors the protection provided by anti-deficiency statutes. *First Interstate Bank of Nevada v. Shields*, 730 P.2d 429, 431 (Nev. 1986).

B. The Respondents are not Entitled to Attorney Fees Because the Appellants have a Meritorious Defense

If the Court holds in Hansens' favor, then they will have a meritorious defense and the default judgment and claims against them should be dismissed. Accordingly, since these are the only claims remaining in this case, the defendants would have prevailed on each and every count against them. Thus, AgStar cannot be entitled to attorney fees because it is not the prevailing party.

C. The District Court Erred by Entering its Amended Final Judgment

Again, if the Court rules in the Hansens' favor, then there is no basis for the district court's entry of the Amended Final Judgment. With no basis for entry of the judgment, said entry was in error and the judgment should be vacated.

IV. ATTORNEY FEES ON APPEAL

Idaho Appellate Rule 40(a) provides that the Court should award the prevailing party on appeal its costs. If the Hansens are the prevailing parties on appeal, then they are entitled to their costs.


Idaho Appellate Rule 41 allows for an award of attorney fees on appeal. Hansens request an award of their attorney fees on appeal under I.C. § 12-120(3) as the prevailing party.

V. CONCLUSION

The Hansens presented a meritorious defense in this case that the protection offered by Idaho Code § 6-108 should extend to them as guarantors in this case. § 6-108 applies to any case involving foreclosed real property and does not require that the foreclosure be the basis for the cause of action. Additionally, extending the anti-deficiency protections to guarantors would be in alignment with their purpose of providing fairness in cases involving debts secured by real estate. Thus, this Court should grant the Hansens relief and extend the anti-deficiency protections of § 6-108 to guarantors.

DATED: March 30, 2016.

ROBINSON & TRIBE

By: 

Brent T. Robinson
W. Reed Cotten
Attorneys for Appellants/Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of March, 2016, I caused to be served two true and correct copies of the foregoing by the method indicated below and addressed to the following:

Bradley J. Dixon
GIVENS PURSLEY, LLP
P. O. Box 2720
Boise, Idaho 83701-2720

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- Special Handling _____



W. Reed Cotten

