In its opinion in Branch Bank and Trust Company v. Windhaven & Tollway, LLC et al, 347 P.3d 1038 (Nev. 2015), the Nevada Supreme Court reversed the lower court and held that a creditor who non-judicially forecloses on real property in another state may sue in Nevada to recover a deficiency judgment, even though the foreclosure sale was conducted pursuant to the laws of the state where the property is located instead of pursuant to NRS 107.080. In the case before the court, Branch Banking and Trust foreclosed on real property in the State of Texas pursuant to that state’s nonjudicial foreclosure statutes. The sale yielded a lesser amount than owed on the note secured by the property, and the bank brought an action in Nevada for a deficiency judgment. The district court granted summary judgment in favor of the defendants, ruling that NRS 40.455(1) requires as a condition precedent that the sale be conducted pursuant to NFS 107.080. The bank appealed and the Nevada Supreme Court reversed.

The court’s decision was based on a close reading of the statutory language at issue. NRS 40.455(1) provides in pertinent part:

[U]pon application of the judgment creditor or the beneficiary of the deed of trust within 6 months after the date of the foreclosure sale or the trustee’s sale held pursuant to NRS 107.080, respectively, and after the required hearing, the court shall award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust if it appears from the sheriff’s return or the recital of consideration in the trustee’s deed that there is a deficiency of the proceeds of the sale and a balance remaining due to the judgment creditor or the beneficiary of the deed of trust, respectively. (emphasis added).

The court began its analysis with the observation that “statutory interpretation is a question of law, which this court reviews de novo. (citation omitted). In interpreting a statute, this court looks to the plain language of the statute and, if that language is clear, this court does not go beyond it. (citations omitted). Each section of a statute should be construed to be in harmony with the statute as a whole.” Further, the court noted that a statute does not modify common law unless an intent to do so is explicitly stated.

In addressing the question of whether NRS 40.455 precludes or allows deficiency judgments where foreclosure was through a nonjudicial foreclosure in another state, the court specifically analyzed the use of the word “respectively” in the statute. The court relied on accepted use of the word “respectively” to “pair words or phrases in the correct order.” Doing so, the court concluded that the use of the word “respectively” in NRS 40.455(1) paired “foreclosure sale” with “judgment creditor” and “trustee’s sale held pursuant to NRS 107.080” with “beneficiary of the deed of trust.” Using this construction, the court agreed with the bank that the term “foreclosure sale” in the statute refers only to judicial foreclosure.
In addition, the court concluded that, because NRS 40.455(1) contains no language limiting the right to a deficiency judgment following an out-of-state nonjudicial foreclosure sale held in another state. Looking to NRS 40.430, the court determined that the statutory scheme contemplates that a party may foreclose on out of state property nonjudicially and still bring an action in Nevada for a deficiency judgment. Further, the court noted that NRS 40.455(1) is a statute that derogates from the common law and thus must be construed narrowly in favor of allowing creditors to pursue deficiency judgments. Because the statute is designed to achieve fairness to all parties to a transaction secured by real property, the court held that interpreting NRS 40.455(1) to preclude deficiency judgments to creditors who nonjudically foreclose on out-of-state property pursuant to another state’s law would undermine the purpose of the statute.

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