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Bank of Nevada, a Nevada banking corporation*

Electronically Filed
Sep 25 2014 09:16 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

DISTRICT COURT
CLARK COUNTY, NEVADA

BANK OF NEVADA, a Nevada banking
corporation,

Plaintiff,

vs.

MURRAY PETERSEN, an individual,

Defendant.

Case No.: A-13-680012-C

Dept. No.: I

CASE APPEAL STATEMENT

1. **APPELLANT FILING THIS CASE APPEAL STATEMENT:**
Plaintiff, BANK OF NEVADA, a Nevada banking corporation.
2. **JUDGE ISSUING THE JUDGMENT OR ORDER APPEALED FROM:**
Judge Ken Cory.
3. **ALL PARTIES TO THE PROCEEDINGS IN THE DISTRICT COURT:**
Plaintiff: BANK OF NEVADA
Defendant: MURRAY PETERSEN
4. **ALL PARTIES TO THE APPEAL:**
(Same as #3, above)
Appellant: BANK OF NEVADA
Respondent: MURRAY PETERSEN

5. **NAME OF COUNSEL AND WHOM THEY REPRESENT:**

Counsel for Appellant:

Michael Stein, Esq.
Bradley Austin, Esq.
SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
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Counsel for Respondent:

Richard McKnight, Esq.
The McKnight Law Firm, PLLC
528 S. Casino center Blvd., #335
Las Vegas, NV 89101

Respondent was represented in the district court by the above listed attorneys, and Appellant has reason to believe that he will also be represented by those attorneys on appeal.

6. **WHETHER APPELLANT WAS REPRESENTED BY APPOINTED OR RETAINED COUNSEL IN THE DISTRICT COURT:**

Appellant was represented by retained counsel in the Eighth Judicial District Court action.

7. **RETAINED COUNSEL ON APPEAL:**

Appellant is represented by retained counsel, the law firm of Snell & Wilmer L.L.P., on appeal:

Michael Stein, Esq.
Bradley Austin, Esq.
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3883 Howard Hughes Parkway, Suite 1100
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8. **WHETHER APPELLANT WAS GRANTED LEAVE TO PROCEED IN FORMA PAUPERIS, AND THE DATE OF ENTRY OF THE DISTRICT COURT ORDER GRANTING SUCH LEAVE:**

Appellant has not moved for leave to file an appeal in forma pauperis.

9. **INDICATE THE DATE THE PROCEEDINGS COMMENCED IN THE DISTRICT COURT:**

The Complaint in this matter (A-12-660649-C) was filed with the Eighth Judicial District Court on April 12, 2013.

10. **BRIEF DESCRIPTION OF THE NATURE OF THE ACTION AND RESULT:**

This is a breach of guaranty action in which Appellant Bank of Nevada sought a judgment against Respondent Petersen under NRS 40.495. Bank of Nevada loaned Red Card, LLC ("Red Card") over \$2.5 million dollars to repay a loan previously made by Bank of Nevada to Red Card.

Mr. Petersen personally guaranteed Red Card's repayment of the debt. Red Card defaulted on the loan, which was secured by certain real property. The fair market value of the property was less than the amount of Red Card's indebtedness to Plaintiff. Accordingly, Plaintiff now seeks a judgment against Petersen. The loan was evidenced by two separate promissory notes - Note A in the principal amount of \$1,444,898 and Note B in the principal amount of \$1,092,591. Red Card executed two Deeds of Trust, which were recorded in the Clark County Recorder's office. Both deeds of trust encumbered the land commonly known as 8490 Westcliff Dr., Las Vegas, Nevada 89145 (the "*Property*").

Red Card and Petersen, as Guarantor, failed to make the monthly payments due under Note A and Note B constituting an Event of Default. The Property was sold via trustee's sale with Bank of Nevada purchasing the Property. Bank of Nevada and Petersen subsequently stipulated that for the purposes of a deficiency calculation, the fair market value of the Property, as of the commencement date of the action, was \$1,900,000.

In ruling on Bank of Nevada's Motion for Summary Judgment and Mr. Petersen's Countermotion for Summary Judgment, the District Court found that NRS 40.455(1) applies in guarantor deficiency actions and that Bank of Nevada did not file an application within six months of the trustee's sale under NRS 40.455(1). Based on these findings, the District Court granted Mr. Petersen's Countermotion for Summary Judgment.

Bank of Nevada filed a Rule 59(e) Motion to Alter or Amend Judgment, arguing that (1) because there were two promissory notes, NRS 40.455 did not apply to Bank of Nevada in its capacity as a junior lienholder; (2) by waiving the one action rule, Mr. Petersen waived the right to invoke NRS 40.455; and (3) the District Court misinterpreted the word "application" in its ruling. At the invitation of the Court, Bank of Nevada filed a Supplemental Brief Regarding *Lavi*

1 *v. Eighth Judicial District Court*, arguing that *Lavi* does not control the outcome of the instant
2 case because *Lavi* dealt solely with the application of NRS 40.455 to first deed of trust holders
3 suing guarantors in deficiency actions, whereas Bank of Nevada was also suing in its capacity as
4 a junior lienholder. The District Court ultimately denied Bank of Nevada's Rule 59(e) Motion to
5 Alter or Amend Judgment. This appeal challenges (1) the District Court's Order Denying
6 Plaintiffs Motion for Summary Judgment and Order Granting Defendant's Countermotion for
7 Summary Judgment, entered on May 8, 2014; (2) the District Court's Findings of Fact and
8 Conclusions of Law, entered on May 8, 2014; (3) and the District Court's Order Denying
9 Plaintiff's Rule 59(e) Motion to Alter or Amend Judgment, entered on September 17, 2014.

10 **11. PREVIOUS APPEAL OR WRIT PROCEEDING:**

11 The case has not previously been the subject of an appeal or writ proceedings in the
12 Supreme Court.

13 **12. CHILD CUSTODY:**

14 This appeal does not involve child custody or visitation.

15 **13. POSSIBILITY OF SETTLEMENT:**

16 Appellant Bank of Nevada believes there is a possibility of settlement. The Nevada
17 Supreme Court's decision on this case creates an all or nothing scenario for each party.

18 Dated: September 24, 2014.

SNELL & WILMER L.L.P.

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20 By: 

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23 3883 Howard Hughes Parkway, Suite 1100
24 Las Vegas, NV 89169


25 *Attorneys for Plaintiff/Appellant*
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CERTIFICATE OF SERVICE

As an employee of Snell & Wilmer L.L.P., I certify that I served a copy of the foregoing
CASE APPEAL STATEMENT on September ~~27~~ 2014, via United States Postal Service,
postage prepaid, to the following:

Richard McKnight, Esq.
The McKnight Law Firm, PLLC
528 S. Casino Center Blvd., #335
Las Vegas, NV 89101

Attorney for Defendant Murray Petersen


An employee of Snell & Wilmer L.L.P.

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