

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTMOR INVESTMENTS, LLC A
SERIES OF MM HOLDINGS, LLC
A NEVADA LIMITED LIABILITY
COMPANY,

Appellant,

vs.

NYE COUNTY, A
GOVERNMENTAL ENTITY; AND
PAUL W. PRUDHONT, IN HIS
CAPACITY AS TREASURER FOR
NYE COUNTY,

Respondents.

CASE No. 82742

(Appeal from 5th Judicial District
Court Case No. CV 20-064)

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RESPONDENTS' ANSWERING BRIEF

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NYE COUNTY, A
GOVERNMENTAL ENTITY; AND
PAUL W. PRUDHONT, IN HIS
CAPACITY AS TREASURER FOR
NYE COUNTY

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STATUTES:

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I. ROUTING STATEMENT

This matter is presumptively retained by the Supreme Court pursuant to NRAP 17(a)(12) because the matter raises as a principal issue a question of statewide importance regarding whether the County Treasurer must pay excess proceeds from a tax sale to a person who did not make a claim within one year after the deed was recorded even though another person made a claim for excess proceeds within the one year.

II. STATEMENT OF ISSUES PRESENTED FOR REVIEW

Whether the district court erred in denying Appellant's Petition for Writ of Mandate by interpreting NRS 361.610 to require Appellant's claim for excess proceeds be made within one year after the deed from a tax sale was recorded.

III. STATEMENT OF THE CASE

In this case, parcels of real property in Nye County were sold at a tax sale. A.A. 017 – 045. There were excess proceeds from the tax sale of the parcels. A.A. 052 – 053. Quitclaim deeds on the tax sale properties were recorded on June 8, 2019. Appellant's Opening Brief, Page 5. Appellant had a one-third ownership share of seventeen (17) parcels that sold at the tax sale. A.A. 002. The other two tenants in common each made a claim for their excess proceeds within one year after the deeds were recorded. A.A. 055. In July 2020, more than one year after

the tax deeds were recorded, Appellant made its claim for one-third of the excess proceeds. A.A.056.

The other two tenants in common, each having made a claim within one year after the deed from the tax sale was recorded, were each issued a one-third payment of the excess proceeds. A.A. 0052-053. Appellant, not having made a timely claim for the excess proceeds, was not issued a one-third payment of the excess proceeds. A.A.003-004.

Appellant filed an Application for Writ of Mandamus asserting that NRS 361.610 only requires that one claim to excess proceeds be timely made. A.A. 006. Respondents, in their Reply to Petitioner's Application for Writ of Mandamus, asserted that Appellant's argument was not reasonable as NRS 361.610(7) mandates that the county treasurer shall approve or deny a claim within thirty (30) days after the period described in subsection 4 for filing a claim has expired. A.A. 062-063. Respondents argue that it is unreasonable to assert that a claim made by a person would not be for the person's interest. A.A. 062. It is reasonable to assert that NRS 361.610(5) requires the claim, or the proper portion of the claim be paid to the person, if the person listed in subsection 6 makes a claim in writing within one year after the deed is recorded.

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Arguments were heard by the district court on March 1, 2021 and the district court denied Appellant's Application. A.A. 076 – 078.

IV. STATEMENT OF FACTS

Respondents are satisfied with Appellant's Statement of Facts except for the statement "Respondents clearly determined that AU Golds and 6600 West Charleston and ARTMOR were each entitled to one-third and retained the one-third portion that clearly belonged to ARTMOR." Appellant's Opening Brief, page 9.

Respondents' counterstatement of fact is as follows: The Nye County Treasurer being satisfied that AU Golds and 6600 West Charleston were entitled to the proper portion of the claim, paid the proper portion of the claim to AU Golds and 6600 West Charleston. A.A. 052- 053.

V. SUMMARY OF THE ARGUMENT

The district court did not err in its interpretation of NRS 361.610 and is supported by substantial evidence. Here, Appellant failed to comply with the explicit time requirements set forth in NRS 361.610. The plain reading of NRS 361.610 requires a person to make a claim in writing for the excess proceeds within one year after the deed is recorded. Appellant failed to submit a written claim within the one year as set forth in NRS 361.610. A.A. 056.

Instead, Appellant argues that “any” claim by “any” person is sufficient compliance with NRS 361.610. However, Appellant ignores the requirements of NRS 361.610(5) wherein “... the county treasurer shall pay the claim or the proper portion of the claim over to the person if the county treasurer is satisfied that the person is entitled to it.”

Appellant’s argument is made in a vacuum, ignoring the reading of NRS 361.610 as a whole. When NRS 361.610 is read and interpreted as a whole, the district court’s interpretation thereof is not arbitrary and capricious.

VI. ARGUMENT

A. Standard of Review

Respondents are satisfied with Appellant’s Standard of Review except for the statements “As set forth below, the district court’s decision was not a proper interpretation of Nevada Law. Therefore, this Court should reverse the district court’s judgment.” Appellant’s Opening Brief, page 11.

B. The District Court’s Judgment was Based on Substantial Evidence and Reason

In this case, AU Golds and 6600 West Charleston each made a claim for the excess proceeds within one year after the deeds were recorded on June 8, 2019.

A.A. 052-053. In July 2020, more than one year after the tax deeds were

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recorded, Appellant went to Respondents to make a claim for one-third of the excess proceeds. A.A. 056.

The district court's interpretation of NRS 361.610 is reasonable. Specifically, NRS 361.610(4) states “. . . If no claim is made for the excess proceeds within 1 year after the deed given by the county treasurer is recorded, the county treasurer shall pay the money into the general fund of the county, and it must not thereafter be refunded to the former owner or his or her successors in interest.” Further, NRS 361.610(5) states, “If a person listed in subsection 6 makes a claim in writing for the excess proceeds within 1 year after the deed is recorded, the county treasurer shall pay the claim or the proper portion of the claim over to the person if the county treasurer is satisfied that the person is entitled to it.”

A reasonable interpretation of NRS 361.610(5) is that a person listed in subsection 6, is required to make a claim before the county treasurer pays the claim or the proper portion of the claim. The beginning language of NRS 361.610(5) stating, “If a person listed in subsection 6 makes a claim” requires that the person make a claim before the county treasurer must then be satisfied that the person making the claim is entitled to it. It is reasonable to interpret

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NRS 361.610(5) to then require the county treasurer to pay the claim or the proper portion of the claim, to the person who made the claim.

Therefore, the district court's judgment was based on substantial evidence and reason.

C. "A" Claim Does Not Mean "All" Claims

Appellant argues that "Once those proper portions are determined, the payments should be made to those persons entitled to receive them." Appellant's Opening Brief, page 15. Appellant's argument that so long as "a" claim is made by "any" person listed in NRS 361.610(6) then the county treasurer is to determine the priority of payments is not reasonable. This argument is not reasonable considering NRS 361.610(5) which states ". . . the county treasurer shall pay the claim or the proper portion of the claim over to the person if the county treasurer is satisfied that the person is entitled to it." Further, NRS 361.610(5) directs the county treasurer to pay the claim or the proper portion of the claim to "the" person only after "a" person listed in subsection 6 makes a claim. It is reasonable to interpret "the" person to be the person who makes the claim, rather than a person listed in NRS 361.610(6).

Thus, the district court's judgment is not arbitrary and capricious.

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D. Respondents determined the Proper Portion of the Claim

NRS 361.610(5) states, in part, “the county treasurer shall pay the claim or the proper portion of the claim . . .” Respondents’ issued one-third payments to AU Golds and 6600 West Charleston. A.A. 052-053. The properties in question that were sold at the tax sale were titled in the name of AU Golds, 6600 West Charleston, and Appellant, as tenants in common. A.A. 009-016. The proper portion was paid to AU Golds and 6600 West Charleston after the county treasurer was satisfied that AU Golds and 6600 West Charleston were entitled to it.

1. NRS 361.610(6) Sets Forth Order of Priority

A reasonable interpretation of NRS 361.610(5) is that a person listed in subsection 6, is required to make a claim before the county treasurer pays the claim or the proper portion of the claim. The beginning language of NRS 361.610(5) stating, “If a person listed in subsection 6 makes a claim”, requires that the person make a claim before the county treasurer must then be satisfied that the person making the claim is entitled to it. It is reasonable to interpret NRS 361.610(6) to then require the county treasurer to pay the claim or the proper portion of the claim, to the person who made the claim, in the order of priority as set forth in NRS 361.610(6).

2. The Order of Priority Sets Forth the Priority for Pay Out

It is reasonable to interpret NRS 361.610(6) to set forth the priority of pay out to the person or persons that the county treasurer is satisfied is entitled to it. In conjunction with NRS 361.610(5), that states “if” a person listed in subsection 6 makes a claim, then the county treasurer must be satisfied that “the” person is entitled to it. NRS 361.610(5) does not state if a person makes a claim, then the county treasurer shall pay the claim or the proper portion of the claim over to “a” person listed in subsection 6. Rather, NRS 361.610(5) states that the county treasurer shall pay the claim or the portion of the claim over to “the” person. It is reasonable to interpret “the” person as being the person who makes a claim.

Therefore, Respondents determined the proper portion of the claim as reasonably interpreted by the plain meaning of NRS 361.610 as read as a whole.

VII. CONCLUSION

Respondents respectfully requests that this Court affirm the district court’s decision.

RESPECTFULLY SUBMITTED this 25th day of October, 2021.

CHRIS ARABIA,
NYE COUNTY DISTRICT ATTORNEY

By: */s/ Marla Zlotek*
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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this answering brief complies with the formatting requirements of NRAP Rule 32(a)(4), the typeface requirement of NRAP Rule 32(a)(5) and the type style requirement of NRAP Rule 32(a)(6) because this answering brief has been prepared in proportionately spaced typeface using Microsoft Word/Office 365 in 14-point WordPerfect X6 in 14 point and Times New Roman.

2. I further certify that this answering brief complies with the page- or typed-volume limitations of NRAP Rule 32(a)(7) because excluding the parts of the answering brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 1682 words.

3. Finally, I hereby certify that I have read this answering brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this answering brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP Rule 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any of

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the transcript or appendix where the matter relied on is found. I understand that I may be subject to sanctions in the event that the accompanying answering brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 25th day of October, 2021.

Respectfully submitted by:

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NYE COUNTY

CERTIFICATE OF SERVICE

I certify that I electronically filed on October 25, 2021, the undersigned filed RESPONDENTS ANSWERING BRIEF with the Clerk of the Court for the Nevada Supreme Court by using the Court's electronic file and serve system. I further certify that all parties of record to this appeal are either registered with the Court's electronic filing system or have consented to electronic service and that electronic service shall be made upon and in accordance with the Court's Master Service List. I declare that I am employed in the office of the Nye County District Attorney, said District Attorney and Deputy District Attorney are members of the bar of this Court at whose discretion the service was made.

/s/ Kayla Ball

An employee of the Nye County District Attorney's Office