

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHOIR, LTD., A LIMITED LIABILITY
CORPORATION,
Appellant,
vs.
NHU THI TRAN,
Respondent.

No. 43812

FILED

JUL 12 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a district court order directing a verdict in respondent Nhu Thi Tran's favor in a fraudulent conveyance and quiet title action at the conclusion of a bench trial after appellant Choir, Ltd., failed to present any witnesses.¹ Eighth Judicial District Court, Clark County; David Wall, Judge. The district court invalidated, under the Uniform Fraudulent Transfers Act (UFTA), senior deeds of trust encumbering four parcels of real property purchased by Tran at an Internal Revenue Service auction. Since the parties are familiar with the facts of this case, we do not recite them here.

Tran's amended complaint is not barred by the statute of limitations


Tran purchased the real property in question at a tax sale on May 22, 1996. She filed her initial complaint in this action on June 24, 1997. The deeds of trust in question were initially recorded July 24, 1985. The beneficial interests of these deeds of trust were assigned to Choir on December 9, 1996.

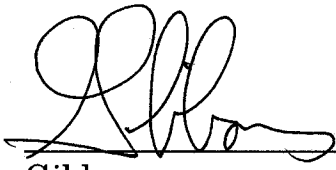
¹Since NRCP 50(a) provides that a directed verdict can be entered only in a jury trial, we treat the order of the district court as a final judgment under NRCP 52 and NRCP 54.

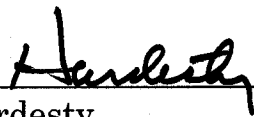
In this appeal, Choir alleges that Tran's complaint is barred by the limitation period set forth in NRS 112.230.² Choir raised this issue in district court in its opposition to Tran's motion to amend her complaint. However, the court granted Tran's motion to amend. Subsequently, in answering the amended complaint, Choir failed to assert the statute of limitations as an affirmative defense. Therefore, even if the statute of limitations could apply to bar Tran's complaint, Choir waived the issue by failing to plead it as an affirmative defense.³ Although the statute of limitations issue can be tried by consent even if not raised as a defense, the record does not support Choir's argument that this issue was tried by consent.⁴

We further conclude that Choir's other arguments are without merit. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

²NRS 112.230 provides that a claim of fraudulent transfer under NRS 112.180(a) is barred unless brought within four years of the date of the transfer or within one year of the date the fraudulent conveyance reasonably could have been discovered by the claimant.

³NRCP 8(c); Second Baptist Ch. v. First Nat'l Bank, 89 Nev. 217, 220, 510 P.2d 630, 632 (1973).

⁴Because Choir did not raise the issue of Tran's standing as a creditor under the UFTA before the district court, we need not address it in this appeal. Wolff v. Wolff, 112 Nev. 1355, 1363-64, 929 P.2d 916, 921 (1996).

cc: Hon. David Wall, District Judge
Lansford W. Levitt, Settlement Judge
Amesbury & Schutt
Kerr & Associates
Clark County Clerk