

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUSSELL HAWLEY,
Appellant,

vs.

CHARLES E. KAUFMAN, III,
Respondent.

No. 46634

RESTROOM FACILITIES, LTD.,
Appellant/Cross-Respondent,

vs.

CHARLES E. KAUFMAN, III,
Respondent/Cross-Appellant.

No. 46705

CHARLES E. KAUFMAN, III,
Appellant,

vs.

HLK, LLC; RUSSELL HAWLEY; AND
PENNY MELLO,
Respondents.

No. 46706

FILED

JAN 24 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART, AND
REMANDING WITH INSTRUCTIONS

These are consolidated appeals from district court judgments in actions involving a deed of trust and a business dispute. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

The parties are familiar with the facts of this case; thus, we recount them only as necessary to explain our decision.

Standard of review

This court reviews issues of law de novo and issues of fact for substantial evidence in the record.¹ When a statute's language is clear, this court interprets the Legislature's intent from the statute's plain

¹Keife v. Logan, 119 Nev. 372, 374, 75 P.3d 357, 359 (2003).

meaning.² This court reviews the application of a statute of limitations de novo.³

The district court properly granted summary judgment after concluding that NRS 106.240 terminated Hawley's deed of trust

We first consider whether the district court properly granted summary judgment after concluding that NRS 106.240 terminated Hawley's deed of trust. We conclude that summary judgment was proper.

We "review[] a district court's grant of summary judgment de novo."⁴ Summary judgment is appropriate where "no 'genuine issue as to any material fact [remains] and . . . the moving party is entitled to a judgment as a matter of law."⁵

NRS 106.240 states:

The lien heretofore or hereafter created of any mortgage or deed of trust upon any real property, appearing of record, and not otherwise satisfied and discharged of record, shall at the expiration of 10 years after the debt secured by the mortgage or deed of trust according to the terms thereof or any recorded written extension thereof become wholly due, terminate, and it shall be conclusively presumed that the debt has been regularly satisfied and the lien discharged.

²McKay v. Bd. of Supervisors, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986).

³See Day v. Zubel, 112 Nev. 972, 977, 922 P.2d 536, 539 (1996) (stating that determining the date upon which the statute of limitations begins to run is a question of law if the facts are uncontroverted).

⁴Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

⁵Id. (quoting NRCP 56(c)) (first alteration in original).

In Pro-Max Corp. v. Feenstra, this court stated that NRS 106.240 was unambiguous and clear on its face.⁶ By its plain meaning it “creates a conclusive presumption that a lien on real property is extinguished ten years after the debt becomes due.”⁷

In this case, the note, with its extensions, came due on March 5, 1992. Hawley initiated foreclosure proceedings in October 2002. NRS 106.240 applies because more than 10 years passed between the note’s due date and the initiation of foreclosure proceedings. Thus, there is a conclusive presumption that Hawley’s deed of trust on Kaufman’s home was satisfied and the lien discharged. Accordingly, we conclude that the district court properly determined NRS 106.240 terminated Hawley’s deed of trust.

The statute of limitations does not bar Kaufman’s equitable offsets

We next consider whether the district court properly determined that NRS 11.190(2)(c), the four-year statute of limitations for contract actions, did not bar Kaufman’s equitable offsets. We conclude that the district court erred when it allowed Kaufman to offset his unpaid salary and expenses against RFL’s judgment because statute of limitations concerns outweigh equitable considerations in this case.

In Nevada State Bank v. Jamison Partnership, Nevada State Bank (Bank) lent \$1 million to the Jamison Family Partnership and Golden Spike Corp. (collectively the borrowers).⁸ The borrowers

⁶117 Nev. 90, 95, 16 P.3d 1074, 1077 (2001).

⁷Id. at 94, 16 P.3d at 1077.

⁸106 Nev. 792, 794, 801 P.2d 1377, 1379 (1990).

subsequently defaulted on the loan, and Golden Spike Corp. filed for bankruptcy.⁹ During Golden Spike's Chapter 11 reorganization, the parties modified the terms of the loan.¹⁰ However, a few years later the borrowers defaulted again, and the Golden Spike Casino was sold in a trustee's sale on November 12, 1985, for \$400,000.¹¹ The borrowers sued Bank and claimed that the trustee's sale was not commercially reasonable and that Bank had breached their stipulated agreement.¹² Under the applicable statute of limitations, Bank's opportunity to assert a deficiency judgment expired on February 12, 1986.¹³ However, on March 5, 1986, Bank answered and counterclaimed for a deficiency judgment.¹⁴ The district court allowed Bank to assert its deficiency judgment claim as an affirmative defense of recoupment even though it asserted its counterclaim 23 days after the statute of limitations deadline.¹⁵ On appeal, this court affirmed and concluded that the district court did not err because of prevailing equitable considerations.¹⁶ In reaching this conclusion, this court explained that one of the chief goals of statutes of

⁹Id. at 795, 801 P.2d at 1379.

¹⁰Id.

¹¹Id. at 795, 801 P.2d at 1380.

¹²Id. at 796, 801 P.2d at 1380.

¹³Id.

¹⁴Id.

¹⁵Id. at 797, 801 P.2d at 1381.

¹⁶Id. at 798-99, 801 P.2d at 1382.

limitations is to promote security and stability.¹⁷ This court further explained that “it is questionable whether stale claims and lost evidence represent the paramount concern addressed by a three-month statute of limitation.”¹⁸

We conclude that Nevada State Bank is distinguishable from this case for two reasons. First, stale claims, lost evidence, and promoting repose are greater concerns in this case. In Nevada State Bank, stale claims and lost evidence were not paramount concerns because only a three-month statute of limitations was involved. Conversely here, stale claims and lost evidence are much greater concerns because a four-year statute of limitations is involved, and Kaufman sought unpaid salary from 1991 through 2002, which is almost a 10-year time span. Second, tardiness is a much greater concern in this case. In Nevada State Bank, Bank filed its counterclaim for a deficiency judgment approximately four months after sale of the Golden Spike Casino and only 23 days past the statutory deadline. Conversely here, Kaufman counterclaimed in 2003 and sought unpaid salary dating back to 1991, which was approximately eight years past the 1999 statutory deadline of NRS 11.190(2)(c).

We conclude that statute of limitation concerns such as stale claims, lost evidence, and promoting repose outweighed equitable considerations in this case. Accordingly, we conclude that the district court improperly permitted Kaufman’s affirmative defense of equitable

¹⁷Id. at 798, 801 P.2d at 1381.

¹⁸Id. at 798, 801 P.2d at 1382.

recoupment and should not have allowed him to offset his allegedly unpaid salary and expenses arising before 1999 against RFL's judgment.

A constructive trust may not be imposed against a member's interest in a limited liability corporation

We lastly consider whether the district court abused its discretion when it placed Kaufman's ownership interest in HLK into a constructive trust for the benefit of RFL. We conclude that the district court abused its discretion because a charging order is RFL's exclusive remedy under NRS 86.401.

NRS 86.401 states, in pertinent part:

1. On application to a court of competent jurisdiction by a judgment creditor of a member, the court may charge the member's interest with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the member's interest.

2. This section:

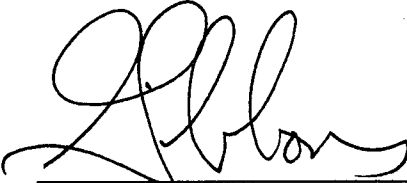
(a) Provides the exclusive remedy by which a judgment creditor of a member or an assignee of a member may satisfy a judgment out of the member's interest of the judgment debtor.

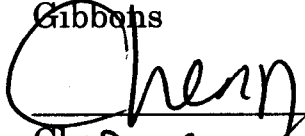
NRS 86.401 is "the exclusive remedy" for a judgment creditor against a judgment debtor's interest in a partnership or limited liability corporation. Thus, the district court improperly placed Kaufman's interest in HLK into a constructive trust because RFL's only available remedy was to seek a charging order. The district court also erred when it granted RFL all of Kaufman's interest in HLK, including his managerial and economic interests, because NRS 86.401 only permits RFL to obtain the rights of an assignee of Kaufman's interest, which is limited only to Kaufman's economic interests.

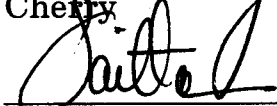
CONCLUSION

We conclude that the statute of limitations extinguished Hawley's deed of trust because more than 10 years had passed and he did not show any bad faith conduct to toll the statute under Pro-Max Corp. v. Feenstra. Thus, we affirm that portion of the district court's judgment determining that the deed of trust was terminated. We further conclude that the district court erred when it concluded that the statute of limitations did not apply to Kaufman's affirmative defense of an equitable offset. Thus, we reverse that portion of the judgment pertaining to the offset and remand with instructions to the district court to recalculate the amount that Kaufman is entitled to deduct from his debt to RFL. We lastly conclude that the district court abused its discretion when it placed Kaufman's interest in a limited liability company into a constructive trust because NRS 86.401 prohibits that remedy. Thus, we reverse that portion of the district court's judgment imposing a constructive trust.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

cc: Hon. Brent T. Adams, District Judge
Patrick O. King, Settlement Judge
Jack I. McAuliffe, Chtd.
Molof & Vohl
Jack I. McAuliffe, Chtd.
Jack I. McAuliffe, Chtd.
Molof & Vohl
Molof & Vohl
Washoe District Court Clerk