

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARL D. TOWNSEND A/K/A CARL D.
TOWNSEND, JR.; AND NAOMI
TOWNSEND,
Appellants,
vs.
WELLS FARGO BANK, N.A.,
Respondent.

No. 60341

FILED

NOV 14 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a stipulated judgment in a deficiency action. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

Appellants contend that the district court improperly denied their motion to dismiss respondent's complaint.¹ Specifically, appellants argue that respondent is barred by the one-action rule, *see* NRS 40.430(1), from asserting a claim for a deficiency judgment. We disagree, and we therefore affirm the district court's denial of appellant's motion to dismiss.

"The one action rule requires a creditor to proceed first against the security . . ." *Keever v. Nicholas Beers Co.*, 96 Nev. 509, 513, 611 P.2d 1079, 1082 (1980). This is exactly what respondent did in this case when


¹We reject respondent's contention that this appeal should be dismissed. *See Consol. Generator-Nev., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (recognizing that an interlocutory order may be challenged in the context of an appeal from a final judgment); 4 Am. Jur. 2d *Appellate Review* § 165 (2007) ("Although a party ordinarily may not appeal a consent judgment, if the party gave consent merely to facilitate an appeal following an adverse determination of a critical issue, the party will not lose his or her right to be heard on appeal.").

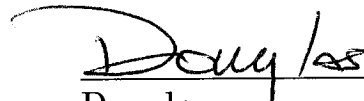
it agreed to let appellants sell their home in order to satisfy a portion of their debt. Nonetheless, because releasing a deed of trust in order to facilitate a short sale is not among NRS 40.430(6)'s list of exempted acts, appellants contend that such an act was indeed an "action" for purposes of the one-action rule. We reject this proffered application of NRS 40.430 because it renders other statutory provisions meaningless and produces an absurd result. *See S. Nev. Homebuilders Ass'n v. Clark Cnty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (recognizing that this court avoids such statutory interpretations). In particular, the Legislature has expressly restricted the circumstances under which a creditor may pursue a deficiency judgment following a short sale. *See* NRS 40.458(1) (requiring, among other things, the short sale agreement to contain certain information). Thus, if the Legislature believed that releasing a security interest in order to facilitate a short sale constituted an "action" for purposes of the one-action rule, it would not have needed to further restrict a creditor's ability to pursue a deficiency judgment following a short sale.


Moreover, the Legislature has expressly declared that selling secured property at a nonjudicial foreclosure sale does not constitute an "action" for purposes of the one-action rule, *see* NRS 40.430(6)(e), meaning that respondent could have nonjudicially foreclosed on appellants' property and then sought a deficiency judgment. It would be absurd to conclude that the Legislature intended to permit deficiency judgments following nonjudicial foreclosure sales but not to permit them following short sales. Instead, we conclude that the act of releasing a security interest in order to facilitate a short sale is an act that the Legislature

intended to fall within NRS 40.430(6)(e)'s nonjudicial foreclosure sale exemption from the one-action rule.² Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. David B. Barker, District Judge
Robert F. Saint-Aubin, Settlement Judge
The Schwartz Law Firm, Inc.
Snell & Wilmer, LLP/Las Vegas
Eighth District Court Clerk

²This conclusion is further supported by the Legislature's choice to refer to a short sale as a "Sale in lieu of a foreclosure sale." See NRS 40.458(2)(b).