IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHEYENNE VALLEY INVESTORS, LLC, AN ARIZONA LIMITED LIABILITY COMPANY; AND JAMES R. RIGGS, AN INDIVIDUAL,
Appellants,
vs.
MB REO-NV LAND, LLC, A DELAWARE LIMITED LIABILITY COMPANY,
Respondent.

No. 68508

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment in a deficiency action. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Appellants Cheyenne Valley Investors, LLC, and James R. Riggs (collectively, Cheyenne Valley) obtained a construction loan from a now-defunct bank secured by a deed of trust on the construction site. A later amendment to the loan lowered the total amount of the loan from over $17 million to just over $9 million.[1] Due to the loaning bank's failure, the Federal Deposit Insurance Corporation (FDIC) was appointed as a

[1]Due to the nature of the loan, not all the proceeds were distributed at once and the reduction of the total loan to just over $9 million equaled the amount of money that had already been distributed to Cheyenne Valley.

receiver and obtained all rights to Cheyenne Valley's loan. The FDIC later assigned all of its rights in the loan to another bank. Thereafter, Cheyenne Valley defaulted on the loan and the bank ultimately purchased the property at the trustee's sale. After purchasing the property, the bank transferred its rights to respondent MB REO-NV Land, LLC (MB). MB then sought a deficiency judgment because the bid amount did not cover Cheyenne Valley's total loan obligation. The district court granted summary judgment, awarding MB a deficiency judgment for the difference between the fair market value of the property and the total amount of indebtedness, and this appeal followed.

Cheyenne Valley's first argument on appeal is that NRS 40.459(1)(c) (2011)[2] limits the amount of the deficiency judgment MB can obtain. While we agree that NRS 40.459(1)(c) (2011) limits the amount of a deficiency judgment under certain circumstances, that statute did not become effective until after the March 9, 2011, trustee's sale in this case. *See* 2011 Nev. Stat., ch. 311, § 7, at 1748 (providing that the 2011 amendments to NRS 40.459 became effective on June 10, 2011). And, the Nevada Supreme Court has already determined that, "[i]n Nevada, the sale of the secured property is the event that vests the right to deficiency," such that NRS 40.459(1)(c) (2011) does not apply "to deficiencies arising from sales that took place before that provision was enacted." *Sandpointe Apartments, LLC. v. Eighth Judicial Dist. Court*, 129 Nev. ___, ___, 313

[2]This statute was later amended in 2015. *See* 2015 Nev. Stat., ch. 149, § 1, at 581-82.

P.3d 849, 856 (2013). Thus, NRS 40.459(1)(c) does not limit the deficiency judgment in this action, and we affirm the district court on that issue.[3] *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (providing that a grant of summary judgment is reviewed de novo on appeal and affirmance is only proper if the pleadings and all evidence demonstrate that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law).

Cheyenne Valley next argues that the district court erred in granting summary judgment against its affirmative defense of recoupment.[4] Specifically, Cheyenne Valley asserts that when it agreed in writing to reduce the total loan amount from over $17 million to just over $9 million, there was an oral agreement with the original bank that it

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[3]The district court found that NRS 40.459(1)(c) (2011) did not apply because the right to a deficiency vested when the initial bank assigned its rights in Cheyenne Valley's loan to the FDIC. Although this is incorrect under *Sandpointe*, 129 Nev. at ___, 313 P.3d at 856, we may still affirm because the district court came to the correct result, albeit for the wrong reason. *See Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) ("This court will affirm a district court's order if the district court reached the correct result, even if for the wrong reason."). Additionally, based on our conclusion herein, we need not determine whether, under the facts presented by this appeal, NRS 40.459(1)(c) (2011) is preempted by federal law as discussed in *Munoz v. Branch Banking & Trust Co., Inc.*, 131 Nev. ___, 348 P.3d 689 (2015).

[4]Recoupment is an affirmative defense where the defendant asserts a right to make a deduction from the plaintiff's damages based on the plaintiff failing to uphold its obligations under the same contract. *See Schettler v. RalRon Capital Corp.*, 128 Nev. 209, 222, 275 P.3d 933, 941 (2012).

would still lend out the $17 million, and that the reduction in loan value was merely to allow the original bank to be under federal lending limits. Cheyenne Valley further argues that all future assignees were bound by this oral agreement, such that by not distributing the remaining funds, MB breached the oral agreement. And, it was this breach that lead to Cheyenne Valley being unable to complete its construction project, and, thus, unable to repay the loan. Based on this argument, Cheyenne Valley sought to reduce MB's judgment by the amount of damages caused by not fully funding the loan. The district court concluded that this defense was barred under federal caselaw, and we agree.

The United States Supreme Court has held that when the FDIC takes over a bank's assets, it is "federal policy to protect [the FDIC] and the public funds which it administers against misrepresentations as to the securities or other assets in the portfolios of the banks which [the FDIC] insures or to which it makes loans." *D'Oench, Duhme & Co. v. Fed. Deposit Ins. Co.*, 315 U.S. 447, 457 (1942). In that case, a debtor asserted that he had a secret agreement with the bank that he did not have to repay his loan, and that, although this agreement was not evident to the FDIC when it took over the bank's assets, it still relieved the debtor from liability on the loan. *See id.* at 454-55; *see also Newton v. Uniwest Fin. Corp.*, 967 F.2d 340, 343 (9th Cir. 1992) (summarizing the facts of *D'Oench*). The Supreme Court concluded that because the debtor participated in the creation of the false note, the debtor "cannot be heard to assert that the federal policy to protect [the FDIC] against such fraudulent practices should not bar its defense to the note." *D'Oench*, 315 U.S. at 461; *see also Newton*, 967 F.2d at 343. Thus, Cheyenne Valley

could not use its purported oral agreement that the loan would be fully funded for the original amount as a defense against the FDIC's attempts to collect on the loan.

Here, however, it is not the FDIC that is attempting to collect on the loan, but rather, a later assignee. The United States Court of Appeals for the Ninth Circuit has directly addressed this issue and concluded that the *D'Oench* doctrine applies equally to banks that are the successors-in-interest to the FDIC. *Newton*, 967 F.2d at 347 (recognizing that if the *D'Oench* doctrine were not extended to banks that are the successors-in-interest to the FDIC, that would hamper the FDIC's ability to efficiently perform its services). Thus, the district court in this case properly concluded that the bar on Cheyenne Valley's recoupment defense applied equally to MB as it would if the FDIC was the party seeking the deficiency judgment based on the *Newton* holding, and we affirm that decision.[5] *See id.*; *see also Wood*, 121 Nev. at 729, 121 P.3d at 1029.

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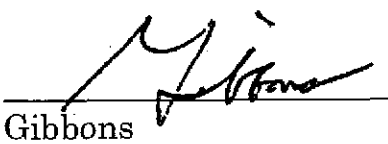
[5]Cheyenne Valley also argues that it presented evidence in the form of deposition testimony that proved the existence of the oral agreement, thus creating a genuine issue of material fact that precluded summary judgment. This argument is meritless, however, because the *D'Oench* doctrine "places the risk on borrowers if they do not get all of the terms of their agreements in writing." *In re NBW Comm. Paper Litig.*, 826 F. Supp. 1448, 1462 (D.C. Dist. 1992) (quoted with approval by *Brookside Assocs. v. Rifkin*, 49 F.3d 490, 495 (9th Cir. 1995)). Thus, Cheyenne Valley cannot avoid judgment as a matter of law simply because there is some evidence supporting the existence of an oral agreement. And, based on the federal cases discussed above, we need not address Cheyenne Valley's remaining arguments that it should have been allowed to present its recoupment defense.

Accordingly, because the district court did not err in determining that NRS 40.459(1)(c) (2011) did not apply to this case and that Cheyenne Valley was barred from bringing its recoupment affirmative defense, we

ORDER the judgment of the district court AFFIRMED.



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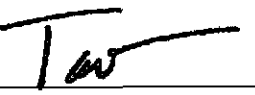
Gibbons



_____, J.
Tao

_____, J.
Silver

cc: Hon. William D. Kephart, District Judge
Salvatore C. Gugino, Settlement Judge
Glen J. Lerner & Associates
Greenberg Traurig, LLP/Las Vegas
Eighth District Court Clerk