

SUMMARY STATEMENT

First Bank v. Land Title

Docket No. 46000

In an appeal arising out of Nez Perce County, First Bank of Lincoln (First Bank) challenges the district court's grant of summary judgment in favor of Land Title of Nez Perce County, Incorporated (Land Title). In 2011, First Bank loaned Donald Tuschoff (Tuschoff) \$440,000 to purchase the Hotel Lincoln in Lincoln, Montana. The loan was secured by a deed of trust against the hotel. As additional collateral, Tuschoff assigned First Bank his interest in a note and deed of trust on a bowling alley in Washington. Later, following a sale of the bowling alley, Land Title distributed the proceeds to Tuschoff and other prior purchasers rather than First Bank.

First Bank did not learn of the bowling alley sale until it completed its annual loan review of Tuschoff's hotel loan. Subsequently, Tuschoff defaulted on the hotel loan. First Bank held a non-judicial foreclosure sale of the hotel and placed a full credit bid of the approximately \$425,000 owed to it by Tuschoff. First Bank was able to later sell the hotel for only approximately \$190,000. First Bank then initiated several lawsuits against various parties in Washington, Montana, and Idaho, seeking to recover the "deficiency" between what it was owed and what it sold the hotel for. Relevant here is First Bank's suit against Land Title in Idaho. The district court, applying Montana law, granted summary judgment in favor of Land Title. The court determined that First Bank's full credit bid extinguished Tuschoff's debt, and once that debt was extinguished, the assignment of Tuschoff's interest in the bowling alley as collateral for that debt was also extinguished. First Bank timely appealed.

In a unanimous decision, the Idaho Supreme Court affirmed the district court. The Court held that Montana law prohibited First Bank from instigating a deficiency action against Tuschoff which meant that there were no damages associated with First Bank's negligence or breach-of-contract claim against Land Title. The Court went on to hold that, even if the Montana law was inapplicable, summary judgment was appropriate because First Bank did not have a colorable negligence claim because it only suffered economic loss. The Court declined to award attorney's fees to either party.