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SECURITY TRANSACTIONS: GUARANTOR'S
WAIVER OF CCP 580b: *VALINDA*
BUILDERS v. BISSNER
(CAL. 1964)

*Valinda Builders v. Bissner*¹ is part of a continuing series of California decisions reaffirming the protection of purchase money mortgagors against deficiency judgments. This case specifically held that a guarantor of a note and deed of trust is protected against deficiency judgments under Code of Civil Procedure Section 580b, if the guarantor is, in fact, primarily responsible for the debt, and the primary obligor is a mere instrumentality of the guarantor; and if, in a contract for sale of real property, a vendee gives a note and deed of trust to the vendor to secure part of the purchase price, and also waives his protection against deficiency judgments provided by Code of Civil Procedure Section 580b, such waiver is against public policy and ineffective.²

In 1954 Valinda sold to defendants Bissner and Lownes 17.68 acres of land at \$4500 per acre. Defendants formed a corporation called Trend Homes, Inc. in which defendants and their wives were the only stockholders. The corporation executed a note and trust deed in favor of Valinda to cover \$67,775 of the purchase price, and Bissner and Lownes agreed to guarantee the corporation's payment. Defendants further agreed to waive their protection against deficiency judgments, as provided in Code of Civil Procedure Section 580b. Trend Homes then borrowed funds to finance the construction of houses on the land, and Valinda's trust deed was subordinated to the security of the construction lenders. The proceeds obtained from the sale of the 53 houses constructed were used to pay off the higher priority construction loans, and only \$6,801.98 was paid to Valinda, representing interest on the note and trust deed. Valinda then brought suit against both Bissner and

¹ *Valinda Builders, Inc. v. Bissner*, 230 A.C.A. 112, 40 Cal. Rptr. 735 (1964).

² CAL. CODE CIV. PROC. § 580b now reads: "No deficiency judgment shall lie in any event after any sale of real property for failure of the purchaser to complete his contract of sale, or under a deed of trust, or mortgage, given to the vendor to secure payment of the balance of the purchase price of real property, or under a deed of trust, or mortgage, on a dwelling for not more than four families given to a lender to secure repayment of a loan which was in fact used to pay all or part of the purchase price of such dwelling occupied, entirely or in part, by the purchaser. Where both a chattel mortgage and a deed of trust or mortgage have been given to secure payment of the balance of the combined purchase price of both real and personal property, no deficiency judgment would lie under the deed of trust or mortgage on real property."

Lownes on the basis of their guaranty. In deciding for the plaintiff the trial court found

. . . that the Plaintiff and the individual defendants undertook and agreed that the benefits of Section 580b of the California Code of Civil Procedure would not accrue to the Defendant herein and that said individual defendants would not be privileged to defend any claim on said guaranty by Plaintiff upon the basis of said Section 580b of the Code.³

On appeal the defendants contended that they were really the primary obligors of the note and trust deed, and that the plaintiff vendor could not look beyond the security for satisfaction of his claim under Section 580b. The District Court of Appeal agreed with these contentions and further stated that the defendants' waiver of their protection under 580b was ineffective to preclude them from asserting it. In so doing, the lower court's decision that the defendants, as guarantors, could waive their protection under 580b, was reversed.

In support of its position that the defendants were not guarantors of the note and trust deed, the court cited two similar cases in which the purchasers of real property were afforded the protection of Section 580b. In *Riddle v. Lushing*⁴ the vendee conducted business through a partnership but was nevertheless considered a principal to the transaction. In *In re Wilton-Maxfield Management Company*⁵ the purchaser of real property was declared primarily responsible for the payment of the purchase price even though he literally guaranteed payment by a dummy company. The court declared Bissner and Lownes primary obligors by stating "It is thus settled beyond question that one who contracts to buy land does not alter his identity and relation as purchaser by a purported guaranty of performance of his own obligation to pay the purchase price."⁶

The court invalidated the defendants' waiver of the protection of Section 580b by citing several cases which held that "Section 580b . . . was enacted in the interests of the general public."⁷ It then cited Civil Code Section 3513 which provides that "a law established for a public reason cannot be contravened by a private agreement."⁸

³ Valinda Builders, Inc. v. Bissner, 230 A.C.A. 112, 40 Cal. Rptr. 735 (1964).

⁴ Riddle v. Lushing, 203 Cal. App. 2d 831, 21 Cal. Rptr. 202 (1962).

⁵ *In re Wilton-Maxfield Management Co.*, 117 F.2d 913 (1941).

⁶ Valinda Builders, Inc. v. Bissner, 230 A.C.A. 112, 40 Cal. Rptr. 735 (1964).

⁷ *Ibid.*

⁸ CAL. CIV. CODE § 3513, note: The court establishes its public policy argument by citing among others, such cases as Winkleman v. Sides, 31 Cal. App. 2d 387, 88 P.2d 147 (1939), prohibiting advance waiver of Cal. Code Civ. Proc. § 726; California Bank v. Stimson, 89 Cal. App. 2d 552, 201 P.2d 39 (1949), prohibiting waiver of

Valinda is significant in the context of legislative and judicial attitudes toward deficiency judgments because it reaffirms the courts' liberal construction of statutes limiting deficiency judgments to protect the interests of the judgment debtor.⁹ This is particularly interesting in view of the Legislature's 1963 amendments to Section 580b which appeared to limit the courts' broader interpretation of the statute prior to its amendment. Two well known authorities, Hetland¹⁰ and Riesenfeld,¹¹ have analyzed the legislative and judicial history of the California statutes limiting deficiency judgments. It is sufficient to note here by way of summary that the earliest statutory provision limiting deficiency judgments was Code of Civil Procedure Section 726, enacted in 1872, which allowed a creditor only one cause of action against his debtor.¹² In 1933 the legislature passed Sections 580a and 580b.¹³ Section 580a limited the amount of a deficiency judgment to the difference between the debt and the fair market value of the security, if the foreclosure was by sale of the security. Section 580b gave much greater protection by prohibiting deficiency judgments if the debtor was a purchase money mortgagor. Finally, Section 580d, enacted in 1940, prohibited deficiency judgments after a foreclosure by private sale.¹⁴

Section 580b has been amended three times since its original enactment in 1933.¹⁵ In 1935 it was re-enacted to extend its protection to debtors under contracts of sale, whereas it had previously applied only to purchase money mortgages and deeds of trust.¹⁶ It was similarly amended in 1949.¹⁷ There were, however, serious ambiguities in the statute which led to judicial construction. In some instances the courts were strict in their protection, with-

Cal. Code Civ. Proc. § 580; *Lucky Investments Inc. v. Adams*, 183 Cal. App. 2d 462, 7 Cal. Rptr. 57 (1960) stating, "Whatever the intent of the parties, Adams could not waive the protection of § 580b in advance." See also *Freedland v. Greco*, 45 Cal. 2d 462, 289 P.2d 463 (1955) which states: "In *Brown v. Jensen*, 41 Cal. 2d 193, we held: 'These provisions (Cal. Code Civ. Proc. §§ 580-580d, 726) indicate a considered course on the part of the Legislature to limit strictly the right to recover deficiency judgments, that is, to recover on the debt more than the value of the security.'" The court summarizes by deciding, "Plaintiff's (*Valinda's*) reliance upon the findings that the defendants waived all protection of § 580b must fail. The agreement, if made, was contrary to public policy, void and ineffectual for any purpose."

⁹ The California statutes limiting deficiency judgments are usually meant to include CAL. CODE CIV. PROC. §§ 580a, 580b, 580d, and 726.

¹⁰ HETLAND, *Deficiency Judgment Limitations in California—A New Judicial Approach*, 51 Calif. L. Rev. 1 (1963).

¹¹ RIESENFELD, *California Legislation Curbing Deficiency Judgments*, 48 Calif. L. Rev. 705 (1960).

¹² CAL. CODE CIV. PROC. § 726.

¹³ Cal. Stat. c. 642, § 4-5 (1933).

¹⁴ Cal. Stat. Ex. Sess. c. 29, § 2 (1940).

¹⁵ Cal. Stat. c. 642, § 5 (1933).

¹⁶ Cal. Stat. c. 650, § 5; c. 680, § 1 (1935).

¹⁷ Cal. Stat. c. 1599, § 1 (1949).

holding protection from an independent guarantor,¹⁸ and denying protection to a vendee whose debt was secured by land other than that for which the purchase money was loaned.¹⁹ In general, however, the courts have been quite liberal in their interpretation of the statute. For example: the section has been construed so that a third party lender and mortgagee, other than the vendor of the real estate, is considered to provide purchase money;²⁰ an assuming grantee of the original purchase money mortgagor has been protected,²¹ as well as the guarantor of a mortgage or trust deed, provided that he is primarily responsible for the debt;²² finally, a vendee has been prohibited from waiving his protection under 580b prior to default.²³

After many years of such judicial interpretation the legislature acted in 1963 to make the statute more explicit by limiting the debtor's protection to mortgages given "to the vendor . . . or under a deed of trust or mortgage on a dwelling for not more than four families given to a lender to secure repayment of a loan which was in fact used to pay all or part of the purchase price of such dwelling occupied, entirely or in part, by the purchaser."²⁴ Whether the courts will find in this 1963 amendment legislative intent, in the face of an expanding economy, to limit a debtor's previously broad protection will have to await future decisions. The *Valinda* decision appears to indicate no such trend, rather, it seems to point toward continued judicial protection of the purchase money mortgagor.

H. Kent Frewing

¹⁸ *Bank of America v. Hunter*, 8 Cal. 2d 592, 67 P.2d 99 (1937); *Security First National Bank v. Chapman*, 41 Cal. App. 2d 219, 106 P.2d 241 (1940).

¹⁹ *Roseleaf Corp. v. Chierighino*, 59 Cal. 2d 35, 378 P.2d 97, 27 Cal. Rptr. 873 (1963).

²⁰ *Brown v. Jensen*, 41 Cal. 2d 193, 259 P.2d 425 (1953). *Bargioni v. Hill*, 59 Cal. 2d 121, 378 P.2d 593, 28 Cal. Rptr. 321 (1963).

²¹ *Stockton Sav. & Loan v. Massanet*, 18 Cal. 2d 200, 114 P.2d 592 (1941).

²² *In re Wilton-Maxfield Management Co.*, 203 Cal. App. 2d 831, 21 Cal. Rptr. 902 (1962).

²³ *Freedland v. Greco*, 45 Cal. 2d 462, 289 P.2d 463 (1955); *Lucky Investments Inc. v. Adams* 183 Cal. App. 2d 462, 7 Cal. Rptr. 57 (1960).

²⁴ Cal. Stat. c. 2158, § 1 (1963).