

No. 03-169

IN THE SUPREME COURT OF THE STATE OF MONTANA

2003 MT 202N

TALGO-LRC., LLC, a Delaware limited liability company,

Plaintiff and Respondent,

v.

LIVINGSTON REBUILD CENTER, INC., a Montana corporation;
USA NORTHWEST, INC., a Montana corporation, ADVANCED
POOL & SPA; and all other persons unknown claiming or who might
claim any right, title, estate or interest in or lien or encumbrance
upon the real and personal property described in the Complaint for
Foreclosure adverse to Plaintiff's ownership or any cloud upon
Plaintiff's title thereto, whether such claim or possible claim be
present or contingent,

Defendants and Appellants.

APPEAL FROM: District Court of the Sixth Judicial District,
In and for the County of Park, Cause No. DV-02-33
The Honorable Wm. Nels Swandal, Judge presiding.

COUNSEL OF RECORD:

For Appellants:

Kenneth Tolliver and Bobbi M. Frazer, Wright, Tolliver, Guthals, P.C.,
Billings, Montana

For Respondent:

William Lamdin, III, and Kevin P. Heaney, Crowley, Haughey, Hanson,
Toole & Dietrich, P.L.L.P., Billings, Montana

Submitted on Briefs: July 30, 2003

Decided: August 12, 2003

Filed:

Clerk

Justice Jim Regnier delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court 1996 Internal Operating Rules, the following decision shall not be cited as precedent but shall be filed as a public document with the Clerk of the Supreme Court and shall be reported by case title, Supreme Court cause number, and result to the State Reporter Publishing Company and to West Group in the quarterly table of noncitable cases issued by this Court.

¶2 Respondent Talgo-LRC, Inc., instituted this action in the Sixth Judicial District Court, Park County, against the Appellants, Livingston Rebuild Center, Inc., and USA Northwest, Inc., to foreclose a mortgage granted by Livingston Rebuild Center to Talgo-LRC. In response, the Appellants filed multiple counterclaims against Talgo-LRC. Talgo-LRC filed a motion to compel arbitration of the counterclaims, which the District Court granted. Further, the District Court granted Talgo-LRC's motion for summary judgment with respect to the foreclosure action. The Appellants appeal from the District Court's order compelling arbitration and order of summary judgment.

¶3 The dispositive issue on appeal is whether the court's findings of fact are supported by substantial evidence and are, therefore, not clearly erroneous and whether the court's conclusions of law are correct. *Ray v. Nansel*, 2002 MT 191, ¶¶ 19-20, 311 Mont. 135, ¶¶ 19-20, 53 P.3d 870, ¶¶ 19-20.

¶4 We have determined to decide this case pursuant to our Order dated February 11, 2003, amending Section 1.3 of our 1996 Internal Operating Rules and providing for memorandum opinions.

¶5 On the face of the briefs and the record on appeal it is manifest that the appeal is without merit as the issues are clearly controlled by settled Montana law, which the District Court correctly interpreted, and because there is clearly sufficient evidence to support the court's findings of fact. Therefore,

¶6 We affirm the judgment of the District Court.

/S/ JIM REGNIER

We Concur:

/S/ JOHN WARNER
/S/ PATRICIA COTTER
/S/ W. WILLIAM LEAPHART
/S/ JIM RICE