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Brief for thje United States as Appelle

1601 McCarthy Blvd. v. GMAC, 2004 CA Sup. Ct. Briefs LEXIS 13
CASE NO. CGC 30425848
Superior Court of California, County of San Francisco
December 13, 2004

Issues Presented

I. Whether De Morais knowingly and voluntarily waived his right to appeal the restitution order in his written plea agreement.

II. Whether the district court erred when it rejected De Morais's claim that Bank of America was not entitled to restitution because it was complicit in his fraud, where De Morais has identified no evidence that he conspired with Bank of America.

III. Whether the district court plainly erred when it ordered De Morais to pay $ 161,149 in restitution to Bank of America, where there was no dispute that xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

Issues Presented

In January 2001, 1601 McCarthy entered into a written loan agreement with Wells Fargo to borrow $ 8,800,000. The loan is evidenced by a promissory note (the "Promissory Note") dated January 23, 2001. The obligations under the Promissory Note are secured by a deed of trust (the "Deed of Trust") on the Real Property. The loan is essentially "non-recourse." Thus, the lender must look solely to the collateral for the loan, which consists of the Real Property and the rents derived therefrom, in the event of a default. 1Link to the text of the note

When 1601 McCarthy applied for the loan, it produced financial statements indicating that the [*3] value of its sole asset, the Real Property, 2Link to the text of the note was $ 12,648,799.25, and that approximately 85% of 1601 McCarthy's monthly revenues came from a single tenant named Sage, Inc. ("Sage"). Wells Fargo obtained its own appraisal, which indicated that the "as is" value of the Real Property was $ 13,200,000.

The loan was subsequently securitized and sold into a large pool of mortgages. In July 2001 Wells Fargo assigned the loan to LaSalle Bank National Association, as Trustee for Bear Steams Commercial Mortgage Securities Mortgage Securities, Inc., Commercial Mortgage Pass-Through Certificates, Series [*4] 2001-TOP 2 ("LaSalle Bank"). Wells Fargo became the master servicer of the loan

5 Similar Arguments

In This Document 2

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Shared legal issues from this argument

Appeal Waiver | Restitution Order | plea agreement

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