

IN THE SUPREME COURT OF THE STATE OF NEVADA

LANLIN ZHANG,
Appellant,


vs.

RECONTRUST COMPANY, N.A.;
COUNTRYWIDE HOME LOANS, INC.,
A NEW YORK CORPORATION;
NATIONAL TITLE COMPANY, A
NEVADA CORPORATION; AND
SILVER STATE FINANCIAL
SERVICES, INC., A NEVADA
CORPORATION,
Respondents.

No. 52326

FILED

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LANLIN ZHANG,
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RECONTRUST COMPANY, N.A.;
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SILVER STATE FINANCIAL
SERVICES, INC., A NEVADA
CORPORATION,
Respondents.

No. 52835

ORDER OF REVERSAL AND REMAND

These are consolidated appeals from a district court judgment in a real property action and a post-judgment order awarding costs. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Appellant Lanlin Zhang entered into a contract to purchase Frank Sorichetti's home in Las Vegas (the Property). When a dispute arose over the purchase agreement for the Property, Zhang filed suit against Sorichetti for breach of contract, breach of the covenant of good

faith and fair dealing, specific performance, and declaratory relief. In addition, Zhang recorded a lis pendens against the Property. The district court dismissed Zhang's complaint against Sorichetti and entered an order expunging Zhang's lis pendens against the property. The district court stayed the order of expungement to allow Zhang to seek writ relief in this court. In a published opinion, this court issued a writ of mandamus compelling the district court to reinstate Zhang's complaint and to vacate its order expunging Zhang's notice of lis pendens. See Zhang v. Dist. Ct., 120 Nev. 1037, 103 P.3d 20 (2004), abrogated by Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. ___, 181 P.3d 670 (2008).

Nine months later, while litigation involving Zhang's complaint was still ongoing, Sorichetti sought and obtained a refinance loan on the Property, subsequently defaulted on that loan, and foreclosure proceedings commenced. Prior to insuring the refinance loan to Sorichetti, respondent National Title Company performed a title search of recorded documents and found Zhang's lis pendens and an order entitled "Release of Lis Pendens." It is disputed as to who recorded the Release of Lis Pendens. National Title concluded that the lis pendens had been released. The new loan secured by a deed of trust was then issued to Sorichetti.

After being informed of the foreclosure proceedings scheduled for the Property, Zhang recorded a notice of fraudulent release of lis pendens. Furthermore, Zhang amended her complaint to assert claims against the respondents challenging the viability of the new beneficiary's deeds of trust and the priority that her lis pendens should be given in

relation to the deeds of trust. At the conclusion of a bench trial, the district court entered judgment in favor of the respondents.¹

On appeal, Zhang argues that the district court erred in: (1) concluding that Zhang's lis pendens should not be given priority over the deeds of trust and (2) failing to quiet title to the Property in Zhang's name.² We agree.³

Standard of review

"On appeal, this court will not disturb a district court's findings of fact if they are supported by substantial evidence. However, the district court's conclusions of law are reviewed de novo." Keife v. Logan, 119 Nev. 372, 374, 75 P.3d 357, 359 (2003).

Priority of Zhang's lis pendens

We have held that "[a] subsequent purchaser with notice, actual or constructive, of an interest in property superior to that which he is purchasing is not a purchaser in good faith, and is not entitled to the protection of the recording act." Huntington v. MILA, Inc., 119 Nev. 355,

¹The parties are familiar with the additional facts and we do not recount them further except as is necessary for our disposition.

²Zhang further argues that the district court erred in concluding that Zhang was not entitled to damages for negligence and slander of title. We have reviewed these arguments and have determined they are without merit and require no further discussion.

³Zhang also argues that the district court erred in awarding the respondents costs. Because we order the district court's judgment reversed, we vacate the district court's award of costs. We therefore remand to the district court to make a determination of whether attorney fees and costs are appropriate pending the outcome of the new trial.

357, 75 P.3d 354, 356 (2003) (citing Allison Steel Mfg. Co. v. Bentonite, Inc., 86 Nev. 494, 499, 471 P.2d 666, 669 (1970)).

A duty of inquiry arises 'when the circumstances are such that a purchaser is in possession of facts which would lead a reasonable man in his position to make an investigation that would advise him of the existence of prior unrecorded rights. He is said to have constructive notice of their existence whether he does or does not make the investigation. The authorities are unanimous in holding that he has notice of whatever the search would disclose.'

Id. (quoting Allison Steel Mfg. Co., 86 Nev. at 498, 471 P.2d at 668 (quoting 4 American Law of Property Section 17.11, at 565-66 (1952))).

This court was faced with a somewhat analogous issue in our recent decision in NC-DSH, Inc. v. Garner, 125 Nev. ___, 218 P.3d 853 (2009). In NC-DSH, an attorney negotiated a settlement for his clients in a wrongful death action against a hospital without his clients' knowledge. Id. at ___, 218 P.3d at 855. The attorney forged the necessary settlement papers and disappeared with the money. Id. When the clients became aware of the attorney's misconduct, they sought to have their right to sue the hospital reinstated by the district court. Id. The district court found that the clients did still have the right to sue, but with an offset of the settlement amount the hospital had paid to their attorney. Id.

In NC-DSH, we affirmed the decision of the district court for several reasons. Id. at ___, 218 P.3d at 862. We concluded that the district court had discretion to tailor the remedy as it did because all parties involved were defrauded by the attorney. NC-DSH, Inc. v. Garner, 125 Nev. ___, ___, 218 P.3d 853, 861 (2009). We further concluded that the district court was well within its discretion in finding the fraud intolerable and was justified in vacating the stipulated judgment. Id.

We conclude that the equity afforded Garner in NC-DSH should be extended to Zhang based upon the facts of this case. The burden to check the current status of the case and the lis pendens upon performing a title search is not unreasonable.⁴ There was a significant time delay between the entry of the order releasing the lis pendens and the recording of this order.⁵ Thus, we further conclude that the judgment of the district court must be reversed and we remand for the district court to enter judgment in favor of Zhang's lis pendens having priority over the respondents' deeds of trust.

Quieting title in Zhang's name

Zhang also contends that the district court erred in failing to quiet title to the Property in her name. We agree.

NRS 40.010 provides the statutory basis for an action against adverse claimants in real property and states "[a]n action may be brought by any person against another who claims an estate or interest in real

⁴We further note that certain search tools such as Blackstone, are commonly used by title companies to check and verify documents filed with the Eighth Judicial District Court Clerk's office. If a recorded judgment or exception to marketable title was discovered during the title search, a title company should conduct an investigation into whether it had been satisfied.

⁵We further note that the time gap between when the district court's order releasing Zhang's lis pendens and the time when the fraudulent release of lis pendens was recorded should have put the respondents on notice that there may be a problem with the release of lis pendens order. Specifically, the district court issued its order on June 2, 2004, and the order releasing Zhang's lis pendens was not recorded until more than a year later, on September 14, 2005.


property, adverse to him, for the purpose of determining such adverse claim.”


“In a quiet title action, the burden of proof rests with the plaintiff to prove good title in himself.” Breliant v. Preferred Equities Corp., 112 Nev. 663, 669, 918 P.2d 314, 318 (1996). “Moreover, there is a presumption in favor of the record titleholder.” Id.; cf. Biasi v. Leavitt, 101 Nev. 86, 89-90, 692 P.2d 1301, 1304 (1985) (stating that an adverse possession claimant has the burden of establishing a claim “by clear and competent proof in order to overcome the presumption that possession of the land is under the regular title”).


We conclude that the district court erred in failing to quiet title to the Property in Zhang’s name based on the district court’s error in determining the priority of the lis pendens. Since it was error for the district court to conclude that the deeds of trust had priority over the lis pendens, the district court’s determination that title could not be quieted in Zhang’s name because of the priority of the deeds of trust on the Property was also error. As such, we reverse the judgment of the district court failing to quiet title to the Property in Zhang’s name.

In light of the foregoing discussion, we

ORDER the judgment of the district court REVERSED and REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Chief Judge, Eighth Judicial District
Hon. J. Charles Thompson, Senior Judge
Hon. Timothy C. Williams, District Judge
Thomas J. Tanksley, Settlement Judge
Marquis & Aurbach
Kemp, Jones & Coulthard, LLP
Eighth District Court Clerk