IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JULIAN RIOS,
Appellant,
vs.
DITECH FINANCIAL LLC F/K/A GREEN TREE SERVICING, LLC, A FOREIGN LIMITED LIAIBILITY COMPANY,
Respondent.

No. 70344

FILED

APR 06 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Julian Rios appeals from a district court summary judgment in a real property action. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Appellant Julian Rios purchased real property at a foreclosure sale held by a homeowners' association (the HOA). Thereafter, the HOA filed an interpleader action to determine who was entitled to the excess proceeds from the sale, naming, as relevant here, respondent Ditech Financial LLC as a defendant. Ditech then filed a third-party complaint against Rios, asserting that the foreclosure sale was invalid because the HOA's Notice of Delinquent Assessment Lien was improperly mailed and recorded while the homeowner was in bankruptcy in violation of the automatic stay. Ultimately, the district court granted Ditech summary judgment, finding that the Notice of Delinquent Assessment Lien was void and, thus, that the subsequent foreclosure sale was invalid. This appeal followed.

As an initial matter, Rios contends that Ditech lacked standing under Ninth Circuit bankruptcy law to assert a violation of the automatic stay as a basis for invalidating an HOA foreclosure sale. We decline to consider this argument, however, as Ditech clearly had standing under Nevada law to argue that the HOA sale was invalid as a means of protecting its deed of trust, *see Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986); *Szilagyi v. Testa*, 99 Nev. 834, 838, 673 P.2d 495, 498 (1983), and Rios has not explained why this court or the district court would be bound by Ninth Circuit bankruptcy law, rather than Nevada law, in determining whether Ditech has standing in a state court quiet title action.[1]

Rios next contends that there is a genuine issue of fact with regard to whether the bankruptcy court ratified the improper Notice of Delinquent Assessment Lien, thus validating the foreclosure sale. In this regard, Rios contends that the bankruptcy court could have ratified the notice by retroactively annulling the automatic stay. But it is undisputed that neither Rios nor the HOA actually took any steps to request such action from the bankruptcy court, and nothing in the record suggests that the bankruptcy court retroactively annulled the stay or otherwise ratified the improper notice. Thus, Rios has not demonstrated the existence of a genuine issue of fact in this regard.

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[1]In light of our decision on this basis, we need not consider Ditech's alternate argument that the Ninth Circuit decision primarily relied on by Rios does not demonstrate that Ditech lacked standing under current Ninth Circuit law.

Rios also argues that, despite the failure to record a valid Notice of Delinquent Assessment Lien, there was a genuine issue of material fact with regard to whether the foreclosure sale was valid insofar as the notice of default and election to sell and the notice of trustee's sale were not recorded until after the bankruptcy stay was lifted and because the foreclosure sale itself did not take place until after the stay was lifted. But the district court concluded that, under NRS 116.31162(1), mailing and recording the Notice of Delinquent Assessment Lien were prerequisites for conducting a valid foreclosure sale, and Rios has not argued or provided any authority to show that the foreclosure sale could still be valid in the absence of a valid Notice of Delinquent Assessment Lien. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that this court need not consider claims that are not cogently argued or supported by authority). Thus, as the HOA did not mail or record a valid Notice of Delinquent Assessment Lien, we conclude that the district court correctly determined that the ensuing foreclosure sale was invalid.

Finally, Rios contends that there was a factual question with regard to whether he was a bona fide purchaser. In support of this argument, Rios cites a California case, *Shorr v. Kind*, 2 Cal. Rptr. 2d 192 (App. Ct. 1991), for the proposition that a bona fide purchaser may be entitled to certain protections when they purchase property without notice of a bankruptcy stay. The quoted language from *Shorr*, however, states only that bankruptcy laws and state laws afford protections to bona fide purchasers that may limit the application of the rule that actions performed in violation of an automatic bankruptcy stay are generally void.

See id. at 195. *Shorr* does not specify what such protections are or how they function, and Rios cites no other authority and makes no argument regarding what types of protections are afforded to a bona fide purchaser or how any such protections apply to this case.

Moreover, although he asserts that he is a bona fide purchaser because he did not know about the bankruptcy case or the automatic stay, Rios cites no law to support his position that this alone renders him a bona fide purchaser for the purpose of receiving any protections to which a bona fide purchaser may be entitled. In light of his failure to support his position with cogent arguments or citations to authority, we decline to consider this point further.[2] *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

Thus, having considered the parties' arguments and the record on appeal, we conclude that Rios has not demonstrated that the district court erred by granting summary judgment in favor of Ditech. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (reviewing

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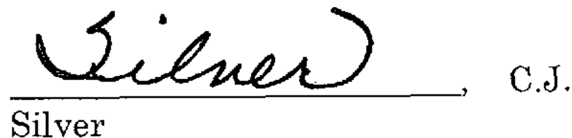
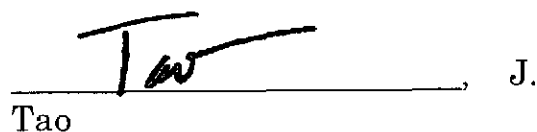
[2]In light of the conclusion that the foreclosure sale was invalid based on the failure to properly mail and record a valid Notice of Delinquent Assessment Lien, we need not address Rios' argument that the sale was commercially reasonable. Nevertheless, we note that his argument in that regard was also deficient insofar as he cited a single case without providing any cogent argument as to how that case rendered the summary judgment improper. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38; *see also* NRAP 28(e)(2) ("Parties shall not incorporate by reference briefs or memoranda of law submitted to the district court or refer the Supreme Court or Court of Appeals to such briefs or memoranda for the arguments on the merits of the appeal.").

de novo a district court's decision to grant summary judgment and recognizing that summary judgment is proper when the movant is entitled to judgment as a matter of law). Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_______________, C.J.
Silver



_______________, J.
Tao

_______________, J.
Gibbons

cc: Hon. Elissa F. Cadish, District Judge
Janet Trost, Settlement Judge
Joseph Y. Hong
Brooks Hubley LLP
Eighth District Court Clerk