

IN THE SUPREME COURT OF THE STATE OF NEVADA

CORLA R.J. JUGRAJ,  
Appellant,  
vs.  
LONG BEACH MORTGAGE  
COMPANY, A DELAWARE  
CORPORATION; TICOR TITLE  
INSURANCE COMPANY, A  
CALIFORNIA CORPORATION;  
CHICAGO TITLE COMPANY, A  
CALIFORNIA CORPORATION; AND  
ATI TITLE OF NEVADA, INC., A  
NEVADA CORPORATION,  
Respondents.

No. 37324

FILED

NOV 05 2003

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART AND DISMISSING IN PART

This is a proper person appeal<sup>1</sup> from (1) a December 20, 2000 district court order that granted respondents ATI Title of Nevada, Inc., Ticor Title Insurance Company and Chicago Title Company summary judgment and NRCP 54(b) certification, and confirmed Long Beach Mortgage Company's foreclosure sale of appellant's real property; and (2) a January 26, 2001 district court order that denied appellant's "Motion for Preliminary Injunctive Relief" and "Motion to Amend Judgment and for Reconsideration and Stay."

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<sup>1</sup>This appeal was initiated by counsel, who withdrew shortly after filing the notice of appeal. Thereafter, we determined that this matter could proceed as a proper person appeal.

As to the December 20 order, we conclude that the district court properly entered summary judgment in favor of the three title insurance companies. Summary judgment is available when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.<sup>2</sup> ATI issued Jugraj a standard owner's title insurance policy through Ticor, covering title defects and unmarketability. Jugraj argued that she was entitled to recover under the policy because the lack of an occupancy certificate rendered her title unmarketable. Without a certificate, municipal regulations barred the use and occupancy of Jugraj's home.<sup>3</sup> But the lack of a certificate did not render Jugraj's title unmarketable, because, instead of clouding Jugraj's title, it only triggered a legal public regulation of the use and occupancy of her property.<sup>4</sup>

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<sup>2</sup>NRCP 56(c).

<sup>3</sup>City of Henderson Municipal Code § 15.08.010 (adopting the 2000 International Building Code); International Code Council, Inc., 2000 International Building Code § 110.1 (stating that "no building or structure shall be used or occupied . . . until the building official has issued a certificate of occupancy").

<sup>4</sup>See 11 John L. McCormack, Thompson on Real Property § 93.03(a)(4), at 241 (David A. Thomas, ed., 1994) (stating that "[a] defect in the property which reduces its market value without creating a cloud on title will not render the title to the property unmarketable"); Voorheesville Rod & Gun Club v. E.W. Tompkins Co., 626 N.E.2d 917, 920 (N.Y. 1993) ("[M]arketability of title is concerned with impairments on title to a property, i.e., the right to unencumbered ownership and possession, not with legal public regulation of the use of the property."); e.g., Caira v. Bell Bay Properties, Inc., 533 N.Y.S.2d 550, 552 (App. Div. 1988) ("The failure  
*continued on next page . . .*

Further, Jugraj's policy expressly excluded from coverage any "loss or damage, costs, attorneys' fees or expenses which arise by reason of . . . [a]ny law, ordinance or governmental regulation . . . restricting, regulating, prohibiting or relating to . . . the occupancy, use, or enjoyment of the land."

Thus, Jugraj's claims against ATI and Ticor were subject to summary judgment. As to Chicago Title, summary judgment was properly entered because Chicago Title apparently issued no policy of title insurance to any of the parties in this case. We therefore affirm the summary judgment.

Insofar as the district court's December 20, 2000 order declared the foreclosure sale valid and was directed to Jugraj's first lawsuit against the Mortgage Company for injunctive relief from the foreclosure sale, the district court did not err, because the occupancy certificate's omission was not caused by the Mortgage Company and was not related to the promissory note, deed of trust, or the amount of

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*. . . continued*

on the part of the defendant to obtain certificates of occupancy did not render title to the property unmarketable."); cf. Land Resources Dev. v. Kaiser Aetna, 100 Nev. 29, 36, 676 P.2d 235, 239 (1984) (stating that, in many instances, the test for marketable title is whether there is a "reasonable probability that a reasonably meritorious claim exist[s] against the property").

indebtedness.<sup>5</sup> To the extent the district court's declaration was directed to Jugraj's second lawsuit against the Mortgage Company for breach of contract, fraud, bad faith and negligence, we dismiss that part of the appeal for lack of jurisdiction.<sup>6</sup>

Finally, regarding the district court's January 26, 2001 order, we conclude that this court lacks jurisdiction. Jugraj's "Motion for Preliminary Injunctive Relief" was merely a request that her eviction be "stayed." An order denying a stay motion is not appealable.<sup>7</sup> And even if the district court's order were to fall within our jurisdiction as an order

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<sup>5</sup>See 59 C.J.S. Mortgages § 531 (1998) ("The equities that may be imposed by a mortgagor as a defense to foreclosure must arise out of the transaction in which the note and the mortgage were given."); e.g., Federal Land Bank of Omaha v. Woods, 480 N.W.2d 61 (Iowa 1992) (rejecting the borrowers' defenses to the lender's collection action, where the borrowers claimed that the lender should have verified title marketability before lending, because the lender had nothing to do with the title defect); Federal Land Bank of Baltimore v. Fetner, 410 A.2d 344, 348 (Pa. Super. Ct. 1979) (rejecting, in lender's foreclosure action, the borrower's fraud counterclaim, which was based on an undisclosed easement over the mortgaged property, because "the deception was not perpetrated by the [lender]").


<sup>6</sup>See Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000) (clarifying that a final appealable judgment disposes of all the issues in the case, leaving nothing for the court's future consideration, except for certain post-judgment issues).

<sup>7</sup>Brunzell Constr. v. Harrah's Club, 81 Nev. 414, 404 P.2d 902 (1965).

denying injunctive relief,<sup>8</sup> we conclude that the district court did not err in denying the motion.<sup>9</sup> As to Jugraj's "Motion to Amend Judgment and for Reconsideration and Stay," she merely sought reconsideration of the district court's inclination to grant the title companies summary judgment. An order denying reconsideration is not appealable.<sup>10</sup> We therefore dismiss Jugraj's appeal from the district court's January 26, 2001 order.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Gibbons

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<sup>8</sup>See NRAP 3A(b)(2).

<sup>9</sup>Dangberg Holdings v. Douglas Co., 115 Nev. 129, 978 P.2d 311 (1999) (observing that the issuance of a preliminary injunction requires a showing of success on the merits).

<sup>10</sup>Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983).

cc: Hon. Lee A. Gates, District Judge  
Gerrard & Cox  
Raleigh, Hunt, McGarry & Drizin, P.C.  
Smith Larsen & Wixom  
Corla Jugraj  
Clark County Clerk