

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARILYN F. SHIPMAN,
Appellant,
vs.
WELLS FARGO BANK, NA,
Respondent.

No. 57950

FILED

FEB 24 2012

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

This is an appeal from a district court order granting a motion to dismiss in a real property action. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

Relevant facts

Appellant, Marilyn Shipman, alleges that she purchased a property in Reno from Shun Yuen Yan (Shun) in July 2002. At all relevant times, Shun lived in Hong Kong, China, and conducted business in Nevada through his attorney-in-fact, Joanne Yan (Joanne). Shun executed the special power of attorney on July 17, 2001, before an American consul. Shipman received a grant deed to the property from Shun on August 22, 2002, However, she did not record this deed until December 12, 2006.

On December 20, 2002, Shun issued a second deed to convey his interest in the property once again to Shipman. This time the deed correctly spelled Shipman's name. Shun recorded this deed on August 5, 2005. It is unclear why Shun recorded the deed instead of Shipman.

Meanwhile, on December 19, 2003, Shun refinanced the property with World Savings Bank, a predecessor in interest of respondent Wells Fargo Bank, NA. World Savings promptly recorded the deed on

December 30, 2003. There is no allegation that World Savings knew or should have known about the unrecorded deeds to Shipman.

Shipman filed a complaint in March 2009, seeking to quiet title in the property, and in response Wells Fargo filed a motion to dismiss pursuant to NRCP 12(b)(5). The district court granted the motion with prejudice because the facts as articulated in Shipman's complaint did not demonstrate a justiciable controversy as to who held title to the property. Shipman appealed. We agree with the district court's order and affirm.

Dismissal for failure to state a claim

The standard of review for dismissal for failure to state a claim is rigorous, as this court construes the pleading liberally, drawing every inference in favor of the nonmoving party. Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); Simpson v. Mars Inc., 113 Nev. 188, 190, 929 P.2d 966, 967 (1997). "All factual allegations of the complaint must be accepted as true." Simpson, 113 Nev. at 190, 929 P.2d at 967. "We review the district court's legal conclusions de novo." Buzz Stew, 124 Nev. at 228, 181 P.3d at 672.

Shipman argues that the district court erred by granting the motion to dismiss. Shipman does not dispute that Wells Fargo recorded its interest in the property first. However, she maintains that the special power of attorney authorizing Joanne to act on Shun's behalf was not properly acknowledged, and thus, the deed of trust World Savings received was invalid. Notably, Shipman first raised this argument in her opposition to Wells Fargo's motion to dismiss. In her complaint, Shipman

acknowledged that Shun “acted in the State of Nevada through a special Power of Attorney and by and through his Attorney-in-fact.”¹

Accepting the facts in Shipman’s complaint as true, it is undeniable that Wells Fargo has a superior interest in the property. In Nevada, conveyances of real property must be recorded in order to impart notice to third parties and subsequent purchasers or mortgagees. See NRS 111.315, NRS 111.320. When a party fails to timely record a conveyance, the conveyance is void as to any subsequent bona fide purchaser or mortgagee who lacks knowledge of the previous conveyance, where the purchaser or mortgagee records its conveyance first. NRS 111.325. Because Wells Fargo’s predecessor in interest recorded its deed three years before Shipman did, pursuant to NRS 111.325, Shipman’s conveyance is void. Thus, we agree with the district court that no justiciable controversy exists.

Dismissal with prejudice

“A motion for leave to amend is addressed to the sound discretion of the trial court and its action in denying the motion [will] not be held to be error unless that discretion has been abused.” Stephens v. Southern Nevada Music Co., 89 Nev. 104, 105, 507 P.2d 138, 139 (1973).

Shipman argues that the district court improperly dismissed her complaint with prejudice because NRCP 15 provides that leave to amend shall be freely given. Shipman continues that if she amends her complaint in order to allege that the power of attorney was not properly acknowledged then there will be a justiciable controversy in this matter.

¹Notably, Joanne used the same power of attorney to endorse the second deed to Shipman and the second mortgage to World Savings.

In Stephens, we held, “Rule 15(a) of the Nevada Rules of Civil Procedure clearly provides that leave to amend shall be freely given when justice so requires. This does not, however, mean that a trial judge may not, in a proper case, deny a motion to amend.” Id.

Here, the district court properly concluded that the problem with Shipman’s complaint was the undisputed facts of the case. NRS 162A.230(2) states “[a] power of attorney executed in this State before October 1, 2009, is valid if its execution complied with the law of this State as it existed at the time of execution.” Because Shun executed the special power of attorney in 2001, the relevant law in this matter is former NRS 111.450 (repealed 2009, see 2009 Nev. Stat., ch. 64, § 86, at 213). Pursuant to former NRS 111.450, powers of attorney containing the power to convey any real property must be acknowledged and recorded in the same manner as other instruments that convey or affect real property. Here, both of these requirements were satisfied because an American consul acknowledged Shun’s signature and the power of attorney was recorded with the Washoe County Recorder’s Office. So, even if Shipman alleged otherwise, the power-of-attorney document clearly conformed to Nevada law.

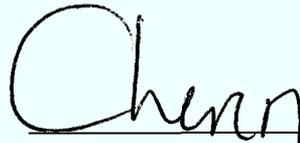
Although the district court mistakenly considered NRS 162A.220, the current statute regarding powers of attorney, this court will affirm a district court's order if the district court reached the correct result, even if for a different reason. Rosenstein v. Steele, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987).

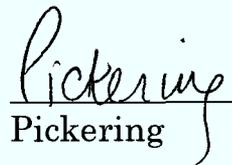
Moreover, Shipman essentially wants to change the affirmative allegations in her complaint that go to the heart of the case. Given that the power of attorney has been a matter of public record since

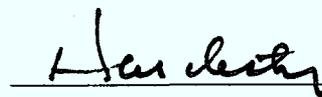
2001, we see no adequate reason justifying her sudden desire to change the operative facts and we conclude that the district court did not err in dismissing the complaint with prejudice.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Pickering


_____, J.
Hardesty

cc: Hon. Steven P. Elliott, District Judge
Patrick O. King, Settlement Judge
Walsh, Baker & Rosevear, P.C.
Pite Duncan, LLP
Washoe District Court Clerk