

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

OHFUJI INVESTMENTS, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,

Appellant,

vs.

CITIBANK, N.A., AS SUCCESSOR
TRUSTEE TO US BANK, NATIONAL
ASSOCIATION AS TRUSTEE UNDER
THE POOLING AND SERVICING
AGREEMENT, DATED AS OF JULY 1,
2007 MASTR ADJUSTABLE RATE
MORTGAGES TRUST 2007-HF2
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2007-HF2,
C/O OCWEN LOAN SERVICING, LLC;
AND WESTERN PROGRESSIVE-
NEVADA, INC.,
Respondents.

No. 75611-COA

FILED

DEC 12 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Ohfuji Investments, LLC, appeals from a district court order dismissing its complaint in a real property action. Eighth Judicial District Court, Clark County; Adriana Escobar, Judge.

The original owners of the subject property defaulted on their home loans and filed for bankruptcy. The bankruptcy proceeding resulted in the sale of the property, subject to all existing liens and encumbrances, to non-party Fuji Investment, LLC. Fuji later executed a grant, bargain, and sale deed to transfer the property to Ohfuji. Meanwhile, respondents Citibank, N.A., and Western Progressive Nevada, Inc., initiated the nonjudicial foreclosure process to foreclose on the deed of trust securing the loan on the property. And Ohfuji responded by commencing the underlying

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proceeding, which involved claims against respondents for violation of NRS 107.080, declaratory relief, and unjust enrichment.

Respondents moved to dismiss Ohfuji's claims under NRCP 12(b)(5),¹ asserting among other things, that Ohfuji lacked standing to present its claims because it did not have an interest in the property. In particular, respondents observed that, pursuant to the bankruptcy court order authorizing the sale to Fuji (referred to herein as the sale order), the sale was automatically void unless the sale order, the bankruptcy trustee's deed of sale, and the declaration of value were recorded within 14 days of their delivery to Fuji. And because the sale order was never recorded, respondents argued that the sale to Fuji was void, such that Fuji could not have transferred an interest in the property to Ohfuji. Moreover, respondents argued that because they had yet to foreclose, Ohfuji's claim for unjust enrichment was not ripe. Ohfuji disagreed and further argued that the district court lacked jurisdiction to resolve the matter because the bankruptcy court expressly retained jurisdiction in the sale order to "interpret, implement, and enforce" the order and to "resolve any disputes, controversies, or claims arising [thereunder]." Without addressing Ohfuji's argument concerning the bankruptcy court's jurisdiction, the district court

¹On December 31, 2018, the Nevada Supreme Court amended the Nevada Rules of Civil Procedure, effective March 1, 2019. *See In re Creating a Comm. to Update & Revise the Nev. Rules of Civil Procedure*, ADKT 0522 (Order Amending the Rules of Civil Procedure, the Rule of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, December 31, 2018). While those amendments do not affect the disposition of this appeal, for clarity, we note that the citations in this text are to the current version of the NRCP.

agreed with respondents and granted their motion for the reasons set forth therein.² This appeal followed.

Based on the jurisdiction-retention clause in the sale order, Ohfuji argues on appeal that, before the district court addressed standing, it should have stayed the underlying proceeding to permit the bankruptcy court to evaluate whether the sale to Fuji was void given Fuji's alleged failure to comply with the sale order's recording requirements. Respondents counter that, because standing is a prerequisite to subject matter jurisdiction, the district court could resolve any issues necessary to determine Ohfuji's standing to present its claims. Initially, respondents are correct that standing is a prerequisite to subject matter jurisdiction, *see Associated Builders & Contractors, Inc. v. S.F. Airports Comm'n*, 981 P.2d 499, 504 (Cal. 1999) (reasoning that standing is jurisdictional), and that the district court had jurisdiction to evaluate Ohfuji's standing. *Cf. Taylor v. Hubbell*, 188 F.2d 106, 109 (9th Cir.) (1951) ("It is axiomatic that [e]very court of general jurisdiction has power to determine whether the conditions essential to its exercise exist." (internal quotation marks omitted)). But

²If respondents were simply arguing that Ohfuji failed to state a claim, then the district court should have converted their motion to one for relief under NRCP 56, as the court's order indicates that it considered matters outside of the pleadings. *See* NRCP 12(b) (providing that, if "matters outside the pleading are presented to and not excluded by the [district] court," a motion to dismiss pursuant to NRCP 12(b)(5) "shall be treated as one for summary judgment and disposed of as provided in Rule 56"). But while respondents indicated that they were seeking relief under NRCP 12(b)(5), their arguments were directed at the court's subject matter jurisdiction and therefore fell under NRCP 12(b)(1), such that the district court was not required to convert their motion. NRCP 12(d) (permitting the district court to consider matters outside the pleadings in evaluating requests for relief under NRCP 12(b)(1)).

with respect to Ohfuji's standing, the question of whether the sale to Fuji was valid under the bankruptcy court's sale order is a threshold issue since it is determinative of whether Ohfuji had an interest in the property that would be injured if respondents foreclosed. *See Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016) (explaining that standing is primarily a question of whether the plaintiff has a sufficient interest in the litigation, which is generally established by showing that the plaintiff suffered a personal injury).

As discussed above, respondents essentially argue that the district court could resolve that threshold issue based on its jurisdiction to determine standing, irrespective of any jurisdictional conflict with the bankruptcy court to the extent Ohfuji's standing turned on the validity of the sale based on the bankruptcy court's sale order. But respondents have not cited any legal authority to support that proposition, and we therefore decline to address it. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider issues that are not supported by cogent argument). Respondents also vaguely assert that, because the sale to Fuji was automatically void under the sale order if the recording requirements were not satisfied, the district court could proceed directly to resolving the standing issue. But the record reflects a potential factual dispute with respect to whether the sale order was delivered to Fuji and whether Fuji was required to comply with the order's recording requirements as a result. And because respondents do not address whether the district court or the bankruptcy court should have resolved that factual dispute given the sale order's jurisdiction-retention clause, they have waived any challenge to Ohfuji's assertion that, before ruling on the question of Ohfuji's standing,

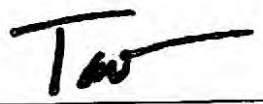
the district court should have stayed the underlying proceeding so that the bankruptcy court could assess the validity of the sale to Fuji. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived).

Aside from the standing issue, the parties further dispute the propriety of the district court's alternate holding that Ohfuji's unjust enrichment claim was unripe. But because the bankruptcy court's resolution of the question of whether the sale to Fuji was void may render Ohfuji's unjust enrichment claim moot, we conclude that the district court's resolution of the ripeness issue was premature.

Accordingly, we reverse the dismissal of Ohfuji's claims and remand this matter so that the district court may afford the parties an opportunity to seek a determination from the bankruptcy court with respect to the validity of the sale to Fuji.³

It is so ORDERED.⁴


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

³Given our disposition of this appeal, we need not address the parties' remaining arguments.

⁴Nothing in this order precludes respondents from seeking dismissal of Ohfuji's claims for any of the reasons set forth in their underlying motion to dismiss after the parties have had an opportunity to seek a determination from the bankruptcy court regarding the validity of the sale to Fuji.

cc: Hon. Adriana Escobar, District Judge
Janet Trost, Settlement Judge
Law Offices of Mont E. Tanner
Wright, Finlay & Zak, LLP/Las Vegas
Eighth District Court Clerk