

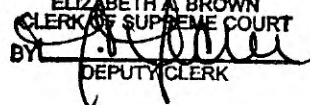
IN THE SUPREME COURT OF THE STATE OF NEVADA

ALAN H. SKILLIN, AN INDIVIDUAL;
AND DEBRA A. SKILLIN, AN
INDIVIDUAL,
Appellants,
vs.
1 OAK ADVISORY, LLC, SUCCESSOR
BY MERGER TO 1 OAK VENTURES,
LLC,
Respondent.

No. 84770

FILED

AUG 17 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Appeal from a district court order granting summary judgment.
Eighth Judicial District Court, Clark County; Nadia Krall, Judge.

Appellants Alan and Debra Skillin and Respondent 1 Oak Advisory, LLC dispute the existence of a loan. 1 Oak claims the Skillins obtained a loan in 2008 from 1 Oak's predecessor-in-interest in order to pay off a prior loan obtained in 2004. 1 Oak sued for declaratory relief to establish the existence and enforceability of the 2008 promissory note under NRS 104.3309, and the Skillins raised several counterclaims. The district court granted summary judgment in favor of 1 Oak.

The Skillins appeal, arguing that (1) in granting summary judgment, the district court made improper findings of fact and credibility determinations regarding the existence of the 2008 note, (2) the Skillins' prior admission of the loan in their bankruptcy filings should not estop them from denying the existence of the loan now, (3) 1 Oak is attempting to foreclose on the Skillins by circumventing the Nevada Foreclosure Mediation Program, (4) 1 Oak's claim is barred by the statute of limitations,

and (5) the district court erred in awarding 1 Oak monetary damages. The Skillins also reassert their counterclaims on appeal.

DISCUSSION

A district court order granting summary judgment is reviewed de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). “The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” NRCP 56(a). A dispute is genuine when “the evidence is such that a rational trier of fact could return a verdict for the nonmoving party.” *Wood*, 121 Nev. at 731, 121 P.3d at 1031.

The existence of the 2008 promissory note is not genuinely in dispute

The district court did not err in granting summary judgment because the 2008 promissory note’s existence was not genuinely in dispute. The only document that the Skillins introduced in the district court directly disputing the existence of the 2008 loan was an affidavit by Debra. In the affidavit, Debra denied originating a 2008 loan, stating: “[i]f we had taken out a 2008 loan, we surely would have declared it in our bankruptcy proceedings in hopes of having it discharged by the bankruptcy court.” This statement is directly contradicted by the Skillins’ bankruptcy filings, which report a second mortgage that originated in 2008. The Skillins filed a sworn declaration under penalty of perjury in the bankruptcy court. The district court based its summary judgment determination in part on this contradiction. By contrast, 1 Oak provided the district court numerous documents supporting the existence of a 2008 loan.

“Though . . . the summary judgment procedure is not available to test and resolve the credibility of opposing witnesses to a fact issue, . . . [summary judgment] may . . . be invoked to defeat a lie from the

mouth of a party against whom the judgment is sought, when that lie is claimed to be the source of a 'genuine' issue of fact for trial." *Aldabe v. Adams*, 81 Nev. 280, 285, 402 P.2d 34, 37 (1965) *overruled on other grounds* by *Siragusa v. Brown*, 114 Nev. 1384, 1392, 971 P.2d 801, 806 (1998) (internal citations omitted). This court has previously held a party cannot defeat a motion for summary judgment by contradicting itself in response to an already pending NRCP 56 motion. *Id.* at 284-85, 402 P.2d at 36-37 (refusing to credit a sworn statement made in opposition to summary judgment that was in direct conflict with an earlier statement of the same party).

In the same vein, a party may not defeat summary judgment by providing an affidavit at odds with a sworn declaration on the same subject used in a different court proceeding. "Our law does not promise a trial to one who views the sanctity of an oath so lightly, if preliminary procedures show her cause to be unworthy." *Id.* at 284, 402 P.2d at 37. Given the only evidence provided by the Skillins was Debra's affidavit contradicting the Skillins' prior sworn declaration to the bankruptcy court, the district court correctly found no genuine dispute of fact regarding the existence of the 2008 loan.

The Skillins' remaining arguments are without merit

We have considered the Skillins' remaining arguments and find them meritless. First, the Skillins argue the district court made additional improper findings of fact and credibility determinations. The Skillins fail to identify a "genuine dispute as to any material fact," NRCP 56(a), or credibility determination that the district court resolved. The Skillins cite to examples of the judge drawing inferences from the evidence including that the bank was trying to help the Skillins because their son worked

there, which is different from the judge making a credibility determination, *see City of Las Vegas v. Lawson*, 126 Nev. 567, 577, 245 P.3d 1175, 1182 (2010) (suggesting that a credibility determination is a choice made between conflicting evidence), and is not material in any event. The material finding here was that the Skillins represented a loan to the bankruptcy court and that the dispute the Skillins tried to generate by disavowing the same loan to the district court did not create a genuine dispute as to that loan. Any additional information in the order was not material to the outcome of the motion. We therefore reject this argument. *See* NRAP 28(a)(10).

The Skillins also argue they should not be estopped from disputing the existence of the 2008 note based on their prior representation before the bankruptcy court that the note existed. However, this argument fails because 1 Oak never argued the Skillins should be estopped from denying the existence of the note, and the district court did not find the Skillins were estopped from denying the existence of the note. Rather, the district court found the Skillins' denial insufficient to defeat summary judgment, as discussed above.

The Skillins argue 1 Oak improperly circumvented the Nevada Foreclosure Mediation Rules by attempting to foreclose on the property without the original note. This argument fails because 1 Oak initiated an action for declaratory relief under NRS 104.3309, not a foreclosure action.

Furthermore, the Skillins argue the statute of limitations bars 1 Oak from enforcing the 2004 debt. This argument refers to a prior loan from 2004 that appears to have been satisfied by the 2008 loan. 1 Oak clearly sought an order regarding a promissory note that existed in 2008, so this argument lacks merit.


Finally, the Skillins argue that the district court improperly awarded monetary damages. The district court did not award 1 Oak monetary damages. The order simply opines that the note is valid and enforceable. Consequently, we reject this argument.

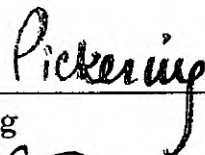
The district court properly granted summary judgment against the Skillins' counterclaims. The Skillins' counterclaim that 1 Oak attempted to foreclose on their property without a promissory note is meritless because 1 Oak did not file a foreclosure action here. The Skillins did not raise a counterclaim for adverse possession in the district court. The claim raised at the district court was a quiet title claim. As the appealed claim was not before the district court, we will not consider it on appeal. *See Old Aztec Mine, Inc., v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). The Skillins' counterclaim for slander of title based on 1 Oak's decision to file a complaint is not cogently argued. The Skillins fail to explain with relevant authority how a legally valid complaint gives rise to a slander of title claim. *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006). The Skillins' additional basis for its slander of title claim is meritless. That slander claim is not properly on appeal here because it refers to actions taken by 1 Oak after the district court granted summary judgment. Finally, the Skillins' counterclaim that 1 Oak violated the Fair Debt Collection Practices Act (FDCPA) fails because (1) the Skillins do not demonstrate that 1 Oak is subject to the FDCPA and (2) even assuming 1 Oak is subject to the FDCPA, the Skillins fail to show any deceptive or abusive practices by 1 Oak in the record. *See* 15 U.S.C. 1692a(6) (defining the term "debt collector" under the FDCPA). We


therefore determine the district court correctly granted summary judgment against the Skillins' counterclaims.

For the reasons stated above, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cadish


_____, J.
Pickering


_____, J.
Bell

cc: Hon. Nadia Krall, District Judge
Persi J. Mishel, Settlement Judge
Foley Law Center
Ghidotti Berger LLP/Las Vegas
Hutchison & Steffen, LLC/Las Vegas
Eighth Judicial District Court Clerk