ZOKAITES PROPERTIES, LP V. LA MESA RACING, LLC

ZOKAITES PROPERTIES, LP,
Plaintiff-Appellant,
v.
LA MESA RACING, LLC,
Defendant-Appellee,
and
BALKIN ASSETS, INC.,
Defendant in Intervention.

No. 33,000

COURT OF APPEALS OF NEW MEXICO

December 3, 2013

APPEAL FROM THE DISTRICT COURT OF COLFAX COUNTY, John M. Paternoster, District Judge

COUNSEL

Armstrong & Armstrong, Julia Lacy Armstrong, Taos, NM, for Appellant

Sawtell, Wirth & Biedscheid, P.C., Bryan P. Biedscheid, Santa Fe, NM, for Appellee

JUDGES

MICHAEL E. VIGIL, Judge. WE CONCUR: JAMES J. WECHSLER, Judge, M. MONICA ZAMORA, Judge

AUTHOR: MICHAEL E. VIGIL

MEMORANDUM OPINION

VIGIL, Judge.

{1} Plaintiff, Zokaites Properties, LP, appeals from the district court's order releasing judgment lien and dismissing complaint in foreclosure of judgment lien without prejudice. [DS 3, RP 976] We issued a notice proposing to summarily affirm and Plaintiff filed a memorandum in opposition. We remain unpersuaded by Plaintiff's arguments and affirm.

{2} Plaintiff raised four issues in its docketing statement, and we proposed to affirm with respect to all four issues. Plaintiff contests only three issues in its memorandum in opposition. Plaintiff does not contest our proposed rejection of its argument that the district court erred in denying its oral motion to stay this case pending the outcome of its appeal in the Third Circuit Court of Appeals. [DS 9] We thus deem this issue abandoned. *See Taylor v. Van Winkle's IGA Farmer's Mkt.*, 1996-NMCA-111, ¶ 5, 122 N.M. 486, 927 P.2d 41 (recognizing that issues raised in a docketing statement, but not contested in a memorandum in opposition, are abandoned).

A. Full Faith and Credit

{3} Plaintiff continues to argue that the district court erred in concluding that a memorandum order from the Western District of Pennsylvania vacating the default judgment that Plaintiff obtained against Defendant in Pennsylvania state court is entitled to full faith and credit in New Mexico. [MIO 5] Plaintiff contends the Western District of Pennsylvania's memorandum order is not entitled to full faith and credit in New Mexico because it is treated as interlocutory in Pennsylvania. [MIO 6] Plaintiff states: "If the vacation of a default judgment is treated as interlocutory in the rendering state, then it can hardly be said that a forum of domestication is permitted to give it an effect—directly or indirectly—that it would not have at home." [MIO 6]

{4} Plaintiff does not cite any authority supporting its argument and we are aware of none. *See In re Adoption of Doe*, 1984-NMSC-024, ¶ 2, 100 N.M. 764, 676 P.2d 1329 ("We assume where arguments in briefs are unsupported by cited authority, counsel after diligent search, was unable to find any supporting authority. We therefore will not do this research for counsel."). Plaintiff appears to be concerned that if the Third Circuit reverses the decision of the Western District of Pennsylvania and reinstates Plaintiff's default judgment, then it will have to file a new complaint in New Mexico domesticating the default judgment at issue and will not have the benefit of the earlier filing date, rendering its lien worthless. [MIO 3] This argument is entirely speculative and does not indicate that the district court erred here. If Plaintiff's default judgment is ultimately reinstated, Plaintiff can certainly contest the priority of its lien in a later proceeding.

B. Equitable Estoppel

{5} Plaintiff continues to argue that the district court erred in failing to apply principles of equitable estoppel to the parties' out-of-court agreement to stay the proceedings. [MIO 6] In our notice, we proposed to affirm with respect to this issue because Plaintiff failed to cite any authority for the proposition that the district court was bound by the parties' informal agreement. Plaintiff now argues that it was the parties, not the district

court, who were bound by the agreement. [MIO 7] Plaintiff does not describe the alleged out-of-court agreement in sufficient detail for us to evaluate it, and it does not appear in the record. Moreover, Plaintiff fails to cite any authority supporting this new argument and we are aware of none. *See In re Adoption of Doe*, 1984-NMSC-024, ¶ 2.

C. Foreign Judgment Act

{6} Plaintiff continues to argue that the district court erred in strictly interpreting the Foreign Judgment Act, NMSA 1978, § 39-4A-2 (1989), because the result here is "obviously inequitable[.]" [MIO 7] The Foreign Judgment Act defines a "foreign judgment" as "any judgment, decree or order of a court of the United States or of any other court which is entitled to full faith and credit in this state." *Id.* The district court dismissed Plaintiff's complaint because it determined that the judgment at issue—a default judgment from Pennsylvania state court—was not entitled to full faith and credit in New Mexico because it had been declared void. [RP 976] We are not aware of any other way in which the district court could have interpreted this Act and perceive no error in its ruling. Plaintiff cites cases from Pennsylvania, Connecticut and New York, in support of its argument, but none of these cases involve a party attempting to domesticate a judgment that has been declared void. [MIO 9]

CONCLUSION

{7} For the reasons discussed above and in our previous notice, we affirm.

{8} IT IS SO ORDERED.

MICHAEL E. VIGIL, Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

M. MONICA ZAMORA, Judge