United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
March 7, 2024
Lyle W. Cayce
Clerk

No. 23-20328
Summary Calendar

DAVID LEE DANIELS, III,

Plaintiff—Appellant,

versus

PENNYMAC LOAN SERVICES, L.L.C.; SWBC MORTGAGE CORPORATION; SAM SOROUR; ZLOS INVESTMENT TRUST; ROBERTS MARKEL WEINBERG BUTLER HAILEY, P.C., (RMWBH), *Company Number: 0800141265*,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:22-CV-199

Before DUNCAN, WILSON, and RAMIREZ, *Circuit Judges*.

PER CURIAM:[*]

David Lee Daniels, III appeals the grant of summary judgment in favor of each defendant on his claims related to the foreclosure of his residential

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

property in Spring, Texas, and the collection of delinquent homeowner association (HOA) dues.

We review a grant of summary judgment de novo and apply the same standards used by the district court. *See Hernandez v. Yellow Transp., Inc.*, 670 F.3d 644, 650 (5th Cir. 2012). "Summary judgment is proper if the pleadings and evidence show there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a).

Daniels does not identify any error in the district court's analysis that the assignment from SWBC Mortgage Corporation (SWBC) to PennyMac Loan Services, L.L.C. (PennyMac) was voidable. While pro se pleadings are entitled to liberal construction, *see Haines v. Kerner*, 404 U.S. 519, 520-21 (1972), even pro se litigants must brief arguments to preserve them. *See Yohey v. Collins*, 985 F.2d 222, 225 (5th Cir. 1993). By failing to identify any error in the district court's analysis, he has abandoned any such challenge on appeal. *See Brinkmann v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). He also abandons any challenge to the district court's determinations as to his right to recission and notice of the assignment by failing to raise them on appeal. *See Yohey*, 985 F.2d at 224-25. As for securitization, we have previously rejected Daniels's arguments regarding the failure to disclose the securitization of a mortgage. *See Martins v. BAC Home Loans Servicing, L.P.*, 722 F.3d 249, 255 (5th Cir. 2013). We agree with the district court that there was no genuine dispute of material fact as to Daniels's claims against SWBC and PennyMac. *See Hernandez*, 670 F.3d at 650.

As for his claims related to a forcible detainer action, Daniels does not challenge the determination that he was not entitled to notice from ZLOS Investment Trust (ZLOS) and that the summary judgment evidence

established proper service of notice of the foreclosure sale by PennyMac, as required by statute and the deed of trust. Daniels does not explain why he was entitled to notice from ZLOS or why PennyMac's notice was insufficient. By failing to identify any error in the district court's analysis, he has abandoned the issue. *See Yohey*, 985 F.2d at 224-25; *Brinkmann*, 813 F.2d at 748. We agree with the district court that there was no genuine dispute of material fact as to Daniels's claims against ZLOS or its counsel. *See Hernandez*, 670 F.3d at 650.

Nor has Daniels shown that summary judgment was improperly granted in favor of RMWBH and its counsel. The plain language of the Fair Debt Collection Practices Act (FDCPA) requires debt collectors to obtain prior consent from a consumer before engaging in prohibited conduct. *See* 15 U.S.C. § 1692c(a). Daniels does not challenge the district court's conclusion that he failed to provide summary judgment evidence showing that the defendants engaged in any conduct prohibited by § 1692c(a) and therefore abandons the issue. *See Yohey*, 985 F.2d at 224-25; *Brinkmann*, 813 F.2d at 748.

As for his claim regarding the demand letter, the district court properly placed the burden on Daniels to identify false representations in the demand letter to demonstrate that there was a genuine issue for trial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). Because Daniels has not identified any false representations in the demand letter, we agree with the district court that there was no genuine dispute of material fact as to this claim and that RMWBH and counsel were entitled to judgment as a matter of law. *See Hernandez*, 670 F.3d at 650.

Finally, the district court did not abuse its discretion in considering the summary judgment motions without allowing further discovery. *See MDK Sociedad De Responsabilidad Limitada v. Proplant Inc.*, 25 F.4th 360, 366

(5th Cir. 2022). Daniels failed to provide a plausible basis to believe that specified facts probably exist and explain how they would create a genuine issue of material fact. *See id.*; FED. R. CIV. P. 56(b).

The district court's judgment is AFFIRMED.