DIVISION ONE
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RUTH A. WILLINGHAM, CLERK
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

DAVOOD AFZALIAN, Plaintiff/Appellee, v. BURNING BUSH MINISTRIES, purportedly, a corporation sole; RONALD J. MCBRIDE, as purported "Overseer" of BURNING BUSH MINISTRIES, Defendants/Appellants.	)	1 CA-CV 10-0448 DEPARTMENT B **MEMORANDUM DECISION** Not for Publication – (Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court in Maricopa County

Cause No. CV2007-006584

The Honorable Joseph B. Heilman, Judge (Retired)

AFFIRMED

GRANT & VAUGHN, P.C. — Phoenix
By Kenneth B. Vaughn
Attorneys for Plaintiff/Appellee

Gove L. Allen — Mesa
Attorney for Defendants/Appellants

B A R K E R, Judge

¶1 Appellant Burning Bush Ministries ("Burning Bush") appeals the trial court's grant of summary judgment in favor of Appellee Davood Afzalian. For the following reasons, we affirm.

Facts and Procedural History

¶2 In 1988, Taylor received title to property located in Maricopa County ("the Property"). In 1995, Taylor attempted to convey the Property via quit-claim deed to her business entity MIROYAL, LLC ("MIROYAL"), of which Taylor and Gerry Ricke were the only members. Although the deed was acknowledged by a notary public and was recorded, Taylor never signed the deed. In 2000, MIROYAL purported to convey the Property via quit-claim deed to WRKPLACE Trust ("WRKPLACE"). Both Taylor and Ricke signed the deed as grantors in their capacities as members of MIROYAL. That deed was also recorded.

¶3 In 2002, the Internal Revenue Service ("IRS") recorded a notice of a federal tax lien against Taylor for unpaid taxes in the amount of $42,645.15. The notice stated that there was "a lien in favor of the United States on all property and rights to property belonging to [Taylor] for the amount of these taxes." This included a lien on Taylor's interest in the Property, which the IRS apparently believed Taylor still owned.[1]

[1] In 2003, the IRS recorded an additional notice of federal tax lien against Taylor in the amount of approximately $180,000 with an assessment date of March 2003.

In 2006, the IRS ultimately seized and sold the "right, title and interest of Sue Taylor" to the Property to Afzalian at a public auction. In 2007, Afzalian filed a suit seeking quiet title to the Property.

¶4 Shortly after Afzalian filed suit in 2007, the chain of title that began with Taylor and continued with MIROYAL and WRKPLACE continued further until reaching Burning Bush. Burning Bush contested Afzalian's quiet title action on the grounds that Burning Bush was the rightful owner of the Property. Burning Bush argued that at the time the IRS purported to attach Taylor's interest in the property in 2001, Taylor had no interest to attach because she had already conveyed the property to MIROYAL via the 1995 quit-claim deed. Thus, Burning Bush concluded Afzalian could not have purchased any ownership interest in the property from the IRS. The court disagreed with Burning Bush and granted summary judgment in favor of Afzalian. Burning Bush timely appealed, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(B) (2003).

Discussion

¶5 We review a grant of summary judgment de novo and view the facts in the light most favorable to the non-moving party. *Andrews v. Blake*, 205 Ariz. 236, 240, ¶ 12, 69 P.3d 7, 11 (2003). Summary judgment may be granted when there are no

genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Orme Sch. v. Reeves*, 166 Ariz. 301, 305, 802 P.2d 1000, 1004 (1990). A federal tax lien attaches to a taxpayer's interest in real property on the date of the assessment of the tax causing the lien, here 2001. 26 U.S.C. §§ 6321, 6322 (2000). Additionally, the IRS may only attach, seize, or sell the actual rights held by a taxpayer in a given property. 26 C.F.R. § 301.6335-1(c)(5)(iii); *see United States v. Gibbons*, 71 F.3d 1496, 1501 (10th Cir. 1995) (stating that an IRS lien places the IRS "into the taxpayer's shoes," whether or not that taxpayer has any rights to a particular property). Thus, the question in this case is whether Taylor conveyed away her rights to the Property prior to the IRS's November 2001 lien. If she did, then she had no rights to the Property for the IRS to attach, seize, and sell to Afzalian. If she did not, then her ownership rights were attached by the IRS and are now held by Afzalian.

¶6 Under clear Arizona law the 1995 quit-claim deed as it was recorded failed to convey Taylor's rights to the Property to MIROYAL. In Arizona, "[a] valid transfer of real property . . . is required to be by an instrument in writing, *signed*, acknowledged, and delivered." *Hardine v. Pioneer Nat'l Title Ins.*, 145 Ariz. 83, 84, 699 P.2d 1314, 1315 (App. 1985) (emphasis added) (citing A.R.S. § 33-401). Under A.R.S. § 33-

401(B), "Every deed or conveyance of real property must be signed by the grantor." This has been the law in Arizona since territorial days:

> This case presents a simple question of statutory construction. Paragraph 725, Rev. St. 1901, reads: "Every deed of conveyance of real estate must be signed by the grantor, and must be duly acknowledged before some officer authorized to take acknowledgments, and properly certified to by him for registration." . . . The provisions of paragraph 725, above cited, seem to us to permit of but one construction. *When it says that every deed and conveyance of real estate must be signed by the grantor and must be duly acknowledged before some officer authorized to take acknowledgments and properly certified to by him for registration, it is equivalent to saying that no deed, unless executed as therein provided will operate to effect a conveyance of real estate.*

Lewis v. Herrera, 10 Ariz. 74, 77, 85 P. 245, 246 (1906) (emphasis added).

¶7 Here, because Taylor did not sign the 1995 quit-claim deed, the conveyance of the Property to MIROYAL failed as a matter of law. Burning Bush has not directed us to any Arizona case where an unsigned deed has been validated on any judicial theory. Thus, we decline to address the variety of theories advanced by Burning Bush in the face of this clear Arizona law.[2]

[2] In the face of Arizona's long-standing statutory and judicial pronouncements on the need for a signature, we decline to address the authorities from other jurisdictions. We do not address the doctrine of reformation as it was not presented in

¶8 Additionally, we note that the legislature itself has provided a remedy in circumstances such as these. Pursuant to A.R.S. § 33-437, the legislature has provided:

> When an instrument in writing, intended as a conveyance of real property or some interest therein, fails wholly or in part to take effect as a conveyance by virtue of the provisions of this chapter, it is valid nevertheless and effectual as a contract upon which a conveyance may be enforced, as far as rules of law permit.

Thus, the statutory remedy for Burning Bush is to seek enforcement of its rights under contract law. *See Joy Enters., Inc. v. Reppel*, 112 Ariz. 42, 45-46, 537 P.2d 591, 594-95 (1975) (holding that lessee may utilize § 33-437 to estop the lessor from invalidating a lease). We do not speculate as to which parties may be involved with regard to such an action, but it is plain to us that Afzalian, the opposing party in this case, is not the entity against whom Burning Bush would have a remedy under contract law as the statute provides.

¶9 Burning Bush also contests the award of attorneys' fees. Specifically, Burning Bush contends that A.R.S. § 12-1103(B) is the exclusive ground for attorneys' fees in a quiet title action. We disagree. Here, the court awarded fees under

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the opening brief and is therefore waived. *See Anderson v. Country Life Ins. Co.*, 180 Ariz. 625, 636, 886 P.2d 1381, 1392 (App. 1994) (holding that arguments not presented until the reply brief may not be considered).

both A.R.S. § 12-1103(B) and § 12-349. Under A.R.S. § 12-349(A), the legislature set forth that "[e]xcept as otherwise provided by and not inconsistent with another statute, *in any civil action* commenced or appealed in a court of record in this state, the court shall assess reasonable attorney fees" if the grounds specified are met. (Emphasis added.) We see nothing inconsistent in permitting attorneys' fees under § 12-349 when the trial court concludes that the requirements of that statute are met simply because § 12-1103(B) was also a permissible basis. Burning Bush does not contest that there was insufficient evidence to support the award of fees under § 12-349, only that an award was inconsistent with § 12-1103(B). As we reject the asserted proposition, the award of fees stands.

¶10 Pursuant to A.R.S. § 12-349, we award attorneys' fees on appeal upon compliance with Arizona Rule of Civil Appellate Procedure 21.

Conclusion

¶11 For the foregoing reasons, we affirm and award costs and fees to Afzalian.

/s/
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DANIEL A. BARKER, Judge

CONCURRING:

/s/
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PETER B. SWANN, Presiding Judge

/s/
_____
PATRICIA K. NORRIS, Judge