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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

In re:

GOLD STRIKE HEIGHTS
HOMEOWNERS ASSOCIATION,

Appellee.

No. 2:18-cv-00973-JAM

**ORDER AFFIRMING BANKRUPTCY
COURT'S JUDGMENT**

I. INTRODUCTION

Appellant Indian Village Estates, LLC ("Indian Village") filed a complaint in Calaveras County Superior Court against Gold Strike Heights Association, Gold Strike Heights Homeowners Association, and Community Assessment Recovery Services ("CARS"), alleging causes of action related to nonjudicial foreclosure in March 2015. Chapter 7 Trustee Gary Farrar ("Trustee") removed the case to the bankruptcy court following Gold Strike Heights Homeowners Association's filing of a Chapter 7 Bankruptcy Petition. The bankruptcy court found in favor of Trustee on all claims. Indian Village appeals the ruling to this Court. For the reasons set forth below, the judgment of the bankruptcy court is affirmed.¹

¹ This appeal was determined to be suitable for decision without

1 **II. BACKGROUND**

2 **A. Background Facts and Allegations in Indian Village's**
3 **Complaint**

4 In 2004, Indian Village, LLC purchased 31 of 49 lots in the
5 Gold Strike Heights Subdivision, a small residential subdivision
6 in Calaveras County owned by Westwind Development, Inc.
7 Appellant Appendix ("AA") 414, ECF No. 16. Indian Village placed
8 a manufactured home on one lot and left the other thirty
9 undeveloped. AA 6.

10 In 2002, prior to the sale of any lots, the principal of
11 Westwind Development, Frank Meagher, incorporated a homeowners
12 association ("HOA") as a non-profit mutual benefit corporation
13 for the subdivision. AA 100, 393. The HOA was named "Gold
14 Strike Heights Association" ("Gold Strike 2002"). AA 393.
15 Meagher was the sole board member of Gold Strike 2002 until Mark
16 Weiner ("Weiner"), principal of Indian Village, and Don Lee
17 ("Lee") were added to the board as a condition of Indian
18 Village's lot acquisition. AA 393, 414.

19 Around 2007, Weiner and Lee determined that Gold Strike 2002
20 had been suspended by the state for failing to file required
21 forms with the Secretary of State and failure to pay required
22 annual fees to the Franchise Tax Board. AA 414-16. Lee
23 incorporated a new HOA, "Gold Strike Heights Homeowners
24 Association" ("Gold Strike 2007"). AA 415. From that point
25 forward, Gold Strike 2007 was the operative HOA for the
26 subdivision. AA 417. Lee amended the subdivision's Covenants,

27 _____
28 oral argument. E.D. Cal. L.R. 230(g).

1 Conditions & Restrictions (CC&Rs) to reflect the change. AA 416.
2 The Amendment provided that "the new corporation formed in May of
3 2007 identified as the GOLD STRIKE HEIGHTS HOMEOWNERS ASSOCIATION
4 is the full successor in interest to the old corporation
5 identified as the GOLD STRIKE HEIGHTS ASSOCIATION formed in March
6 of 2002 by WESTWIND DEVELOPMENT, INC.," and amended Article 1,
7 Section 1.3, page 2 of the CC&Rs to define the "Association" as
8 "GOLD STRIKE HEIGHTS HOMEOWNERS ASSOCIATION" instead of "GOLD
9 STRIKE HEIGHTS ASSOCIATION." AA 144-45. The parties used the
10 names "Gold Strike Heights Association" and "Gold Strike Heights
11 Homeowners Association" interchangeably. AA 440.

12 For three years, Weiner controlled the HOA through his
13 majority ownership in the subdivision as the sole member of
14 Indian Village. AA 7. In 2010, however, HOA members elected a
15 board of directors comprised of only individuals who lived within
16 the subdivision, ousting Weiner and Lee. AA 7. Indian Village
17 sought to overturn the election through lawsuits, and residents
18 countered with their own suits against Indian Village, Weiner,
19 and Lee for violations of California elder abuse laws. AA 8.
20 The parties mediated their disputes in 2011 and came to an
21 agreement: local residents would be the only board members of the
22 HOA for three years in return for Indian Village receiving a
23 reduction in its monthly assessments. AA 450.

24 The next year, Indian Village refused to continue paying its
25 discounted monthly assessments because it disapproved of the
26 HOA's management. AA 450. In March 2013, CARS, on behalf the
27 HOA, recorded a Notice of Delinquent Assessment against each of
28 Indian Village's 31 lots in the name of Gold Strike 2002. AA 21-

1 24. CARS held a nonjudicial foreclosure sale in September 2014,
2 in which the HOA bid its claims for delinquent assessments
3 against each lot, again in the name of Gold Strike 2002. AA 28-
4 33. CARS recorded the 31 Trustee's Deeds Upon Sale with the
5 Calaveras County Recorder's Office. AA 32-33. The recorded
6 deeds state that the lots were conveyed to Gold Strike 2007. Id.

7 In March 2015, Indian Village and Lee filed lawsuits in
8 Calaveras County Superior Court related to the foreclosure. AA
9 3-18. Indian Village's Complaint alleged causes of action
10 related to the nonjudicial foreclosure, including: (1) for
11 declaratory relief; (2) to set aside the trustee's sale; (3) to
12 cancel trustee's deeds; (4) for wrongful foreclosure; (5) for
13 quiet title; and (6) for slander of title. Id. In August of
14 that year, Gold Strike 2007 filed a Chapter 7 Bankruptcy
15 Petition. AA 162. The Trustee removed both state court cases to
16 the bankruptcy court. AA 393.

17 In Lee's case, the bankruptcy court granted the Trustee's
18 motion for judgment on the pleadings, which the Ninth Circuit
19 Bankruptcy Appellate Court affirmed. See In re Gold Strike
20 Heights Homeowners Ass'n, No. AP 15-09062-E, 2018 WL 3405473
21 (B.A.P. 9th Cir. July 12, 2018). In Indian Village's case,
22 following two motions for summary judgment and trial, the
23 bankruptcy court found in favor of Trustee and quieted title to
24 the 31 lots in favor of Gold Strike 2007 and its successor
25 bankruptcy estate. AA 454-62. The matter before this Court
26 concerns Indian Village's appeal of that ruling.

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1 **III. JURISDICTION AND STANDARD OF REVIEW**

2 The Court hears this appeal pursuant to 28 U.S.C. § 158(a).
3 District courts and circuit courts share the same role in the
4 bankruptcy appellate process. Gladstone v. U.S. Bancorp, 811
5 F.3d 1133, 1138 (9th Cir. 2016) (citing Microsoft Corp. v. DAK
6 Indus., Inc. (In re DAK Indus., Inc.), 66 F.3d 1091, 1094 (9th
7 Cir. 1995)). Both review the bankruptcy court decision directly,
8 evaluating whether the findings of fact contain clear error and
9 assessing the conclusions of law de novo. Id.

10 **IV. DISCUSSION**

11 **A. The Bankruptcy Court’s Factual Determinations Were Not**
12 **Clearly Erroneous**

13 *“What’s in a name? That which we call a rose by any other name*
14 *would smell as sweet.”*

15 –WILLIAM SHAKESPEARE, ROMEO AND JULIET act 2, sc. 2.

16 While this HOA dispute bears little resemblance to a
17 Shakespearean tragedy, both feuds boil down to a name.
18 Specifically, Indian Village challenges the nonjudicial
19 foreclosure of its lots, arguing that use of an incorrect HOA
20 name on foreclosure notices rendered the foreclosure invalid.

21 Indian Village argues that the bankruptcy court committed
22 error by evaluating the credibility of witnesses, stating that
23 credibility determinations were not relevant. Appellant Br., ECF
24 No. 6, pp. 39-41. The Court disagrees. The bankruptcy court
25 evaluated the credibility, knowledge, and intent of the parties
26 because so much of the case was “factually driven.” AA 395. The
27 bankruptcy court’s credibility determinations were essential to
28 determining who the parties understood was foreclosing on the

1 property, whether Indian Village received sufficient notice of
2 foreclosure, and whether Indian Village suffered any prejudice on
3 account of the missing word in the HOA's name. Indian Village
4 has not pointed to any specific examples of factual error, other
5 than its disagreement that credibility was an issue in the case.
6 See Appellant Br. at 39-41.

7 The bankruptcy court's findings of fact detailed how CARS,
8 on behalf of the HOA, initiated a nonjudicial foreclosure in the
9 name of Gold Strike 2002 after Indian Village withheld its
10 discounted assessments from Gold Strike 2007. AA 392-445. These
11 findings concluded that Indian Village knew that Gold Strike 2007
12 was the foreclosing entity. AA 416. Indian Village's principal,
13 Weiner, directed Lee, Indian Village's legal and business service
14 provider, to create Gold Strike 2007. AA 394. It was Lee and
15 Weiner that chose to create Gold Strike 2007 with a name that was
16 nearly identical to Gold Strike 2002. AA 408-09. The two HOAs'
17 names differ only by the addition of the word "Homeowners" in the
18 successor HOA. Id. As the bankruptcy court noted, parties
19 continuously referred to Gold Strike 2007 by Gold Strike 2002's
20 name, even though Gold Strike 2002 ceased any operations in 2007.
21 AA 440.

22 There was no confusion that Indian Village was obligated to
23 pay HOA fees, both as a condition of the lots' purchase, AA 120,
24 and as a condition of the 2011 settlement, AA 450. Similarly,
25 there was no confusion that by refusing to pay its HOA fees,
26 Indian Village owed money to Gold Strike 2007. AA 440. When
27 Indian Village received letters from CARS attempting to collect
28 on behalf of Gold Strike 2002, Indian Village knew to which

1 entity it owed money. AA 431. Both Lee and Weiner remained on
2 Gold Strike 2002's board and knew that Gold Strike 2002 ceased
3 operations in 2007. AA 435. As the bankruptcy court points out,
4 there was no genuine confusion about which HOA was conducting the
5 foreclosure. AA 408. Rather, Indian Village sought to take
6 advantage of a problem of its own creation: the similarity of
7 Gold Strike 2002's and Gold Strike 2007's names and the tendency
8 of individuals to continue using the former's name. See AA 418.

9 As an appellate court, this Court may not "disturb the
10 'quintessentially factual determination' of credibility 'in the
11 absence of clear error.'" In re Ashley, 903 F.2d 599, 606 (9th
12 Cir. 1990) (quoting United States v. Lummi Indian Tribe, 841 F.2d
13 317, 319 (9th Cir. 1988)). The Court finds that there is no
14 clear error in the bankruptcy court's credibility determination.
15 Similarly, the Court finds no clear error in the bankruptcy
16 court's factual determination that CARS was acting on behalf of
17 Gold Strike 2007 at all times and the reference to Gold Strike
18 2002 in documents was a typographical error. The Court affirms
19 the bankruptcy court's findings of fact.

20 **B. The Bankruptcy Court's Legal Determinations Were**
21 **Correct**

22 There is a presumption that a nonjudicial foreclosure sale
23 was conducted regularly and fairly. Melendrez v. D & I Inv.,
24 Inc., 26 Cal. Rptr. 3d 413, 430 (Ct. App. 2005). "This
25 presumption may only be rebutted by substantial evidence of
26 prejudicial procedural irregularity." Id. The party challenging
27 the trustee's sale bears the burden of proving such irregularity
28 to overcome the presumption of regularity. Id.

1 Indian Village relies on Yvanova v. New Century Mortg.
2 Corp., 365 P.3d 845 (Cal. 2016) for the proposition that any
3 defect in the foreclosure process voids the foreclosure. The
4 Court does not read Yvanova quite so broadly. The California
5 Supreme Court narrowly tailed its ruling in that case, holding
6 “only that a borrower who has suffered a nonjudicial foreclosure
7 does not lack standing to sue for wrongful foreclosure based on
8 an allegedly void assignment merely because he or she was in
9 default on the loan and was not a party to the challenged
10 assignment.” Yvanova, 365 P.3d at 848. The bankruptcy court
11 properly applied Yvanova in finding that Indian Village had
12 standing to challenge the foreclosure; however, Indian Village
13 failed to prevail on its foreclosure challenge at trial.

14 “To successfully challenge a foreclosure sale based on a
15 procedural irregularity, the plaintiff must show both that there
16 was a failure to comply with the procedural requirements for the
17 foreclosure sale and that the irregularity prejudiced the
18 plaintiff.” Citrus El Dorado, LLC v. Chicago Title Co., 244 Cal.
19 Rptr. 3d 372, 378 (Ct. App. 2019) (holding that mere technical
20 violations of the foreclosure process, which did not prejudice
21 the landowner, did not give rise to a wrongful foreclosure
22 claim). Minor, nonprejudicial defects that would not confuse a
23 reasonable person are not actionable. See, e.g., Gillies v.
24 JPMorgan Chase Bank, N.A., 213 Cal. Rptr. 3d 210, 215 (Ct. App.
25 2017) (rejecting a claim based on the misspelling of the
26 borrower’s name on the notices of the trustee’s sale).

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1 **1. CARS Complied with California's Procedural**
2 **Requirements**

3 The Davis-Stirling Common Interest Development Act, Cal.
4 Civ. Code § 4000 et seq., governs common interest developments in
5 California and provides statutory requirements for nonjudicial
6 foreclosures by HOAs. See also Cal. Civ. Code § 1350 et seq.
7 (repealed effective Jan. 1, 2014). In March 2013, Section 1367.1
8 listed six provisions that an HOA must include when notifying an
9 owner about delinquent assessments. Cal. Civ. Code
10 § 1367.1(a)(1)-(6). Review of the record shows that the Notice
11 of Delinquent Assessment, dated March 5, 2013, complied with
12 those requirements. ECF No. 6-4, pp. 3-6. Although Indian
13 Village relies on Diamond v. Superior Court, 159 Cal. Rptr. 3d
14 110 (Ct. App. 2013), Indian Village has not shown a violation of
15 the statutory requirements, as seen in the judicial foreclosure
16 in Diamond. See id. at 121-22 (mailing of notice of default 28
17 days after recording was insufficient compliance where the
18 statute required mailing within 10 days).

19 "Any sale by the trustee shall be conducted in accordance
20 with Sections 2924, 2924b, and 2924c applicable to the exercise
21 of powers of sale in mortgages and deeds of trust." Cal. Civ.
22 Code § 1367.1(g). Section 2924 requires that a notice of default
23 include all of the following:

- 24 (A) A statement identifying the mortgage or deed of
25 trust by stating the name or names of the trustor
26 or trustors and giving the book and page, or
27 instrument number, if applicable, where the
28 mortgage or deed of trust is recorded or a
 description of the mortgaged or trust property.
 (B) A statement that a breach of the obligation for
 which the mortgage or transfer in trust is security
 has occurred.

1 (C) A statement setting forth the nature of each
2 breach actually known to the beneficiary and of his
3 or her election to sell or cause to be sold the
4 property to satisfy that obligation and any other
5 obligation secured by the deed of trust or mortgage
6 that is in default.

7 (D) If the default is curable pursuant to Section
8 2924c, the statement specified in paragraph (1) of
9 subdivision (b) of Section 2924c.

10 Cal. Civ. Code § 2924(a)(1). Review of the record indicates that
11 the Notice of Default, dated October 22, 2013, satisfied all of
12 the requirements of California Civil Code Section 2924. ECF No.
13 6-1, pp. 25-27. While the statute required the name of the
14 trustor, CARS, it did not require the name of the beneficiary,
15 Gold Strike 2007. A typographical error in the name of the
16 beneficiary does not impact compliance with this section.

17 "A nonjudicial foreclosure by an association to collect upon
18 a debt for delinquent assessments shall be subject to a right of
19 redemption." Cal. Civ. Code § 5715(b). "In addition to the
20 requirements of Section 2924f, a notice of sale in connection
21 with an association's foreclosure of a separate interest in a
22 common interest development shall include a statement that the
23 property is being sold subject to the right of redemption" within
24 ninety (90) days. Id. California Civil Code Section 2924f
25 requires that the notice of sale "contain the name, street
26 address in this state, which may reflect an agent of the trustee,
27 and either a toll-free telephone number or telephone number in
28 this state of the trustee, and the name of the original trustor,"
and a statement that the property will be sold at public sale
unless the default is cured. Cal. Civ. Code § 2924f(b)(5),
(c)(3). All of this information was provided in the Notice of

1 Trustee's Sale and the Certificate of Foreclosure Sale, following
2 the September 30, 2014 public auction. ECF No. 6-1, pp. 28-31.

3 Section 2924f goes on to state that "[i]f a legal
4 description or a county assessor's parcel number and either a
5 street address or another common designation of the property is
6 given, the validity of the notice and the validity of the sale
7 shall not be affected by the fact that the street address, other
8 common designation, name and address of the beneficiary, or the
9 directions obtained therefrom are erroneous or that the street
10 address, other common designation, name and address of the
11 beneficiary, or directions obtained therefrom are omitted." Cal.
12 Civ. Code § 2924f(b)(5). Accordingly, as the name of the
13 beneficiary need not be included, a typographical error in the
14 beneficiary's name has no impact on the notice's compliance with
15 statute.

16 **2. Indian Village Did Not Suffer Prejudice**

17 Even if the Court had found that CARS failed to comply with
18 California statutory requirements, Indian Village's failure to
19 show prejudice would doom its challenge to the foreclosure. See
20 Citrus El Dorado, 244 Cal. Rptr. 3d at 378. Much like in
21 Gillies, the typographical error here is not material such that a
22 reasonable person would be confused. 213 Cal. Rptr. 3d at 215
23 (dismissing claim based on a misspelling of the borrower's name
24 as "Dougles" instead of "Douglas" in the notice of default). The
25 HOA's name, which was not required to be listed on the notice of
26 default, contained a missing word. A reasonable person would not
27 have been confused as to who was seeking foreclosure, and indeed,
28 there was no genuine confusion on this issue. Indian Village has

1 failed to show prejudice.

2 **3. The Bankruptcy Court Properly Found for The Trustee**
3 **on All Claims**

4 The Court now reviews specifically the bankruptcy court's
5 adjudication of the six claims in Indian Village's Complaint.
6 Review of the evidence and applicable law illustrates that Gold
7 Strike 2007 had the right to foreclose and that CARS carried out
8 the foreclosure in compliance with state law. The typographical
9 error did not prejudice Indian Village.

10 On Indian Village's first claim, the bankruptcy court
11 properly granted declaratory judgment to Appellants because Gold
12 Strike 2007 had the right to foreclose and exercised that right,
13 consistent with state law. That right was not lost because there
14 was a typographical error in the notice of delinquent assessment,
15 notice of default, and notice of sale. AA 440-41, 455.

16 As to Indian Village's second and third claims to set aside
17 the Trustee's sale and cancel the Trustee's deed, the bankruptcy
18 court found that Indian Village failed to show that the
19 foreclosure sales were not conducted in compliance with state
20 law. AA 441-42, 455. The Court agrees that this determination
21 was correct, as the evidence has shown CARS complied with
22 California statutory provisions.

23 The Court also agrees that Indian Village's fourth claim for
24 wrongful foreclosure was correctly denied because CARS conducted
25 the nonjudicial foreclosure sales for the properties in
26 accordance with state law. AA 442, 455-56. This finding also
27 supports denying Indian Village's sixth claim for slander of
28 title. Id.

1 Finally, the Court affirms the bankruptcy court's judgment
2 as to Indian Village's fifth claim to quiet title. The
3 bankruptcy court heard evidence and then accurately described the
4 parties' legal interests in the property. AA 441, 455-62. It
5 found that Gold Strike 2007 was the rightful owner of the
6 property. Id. In declaring the rights of the parties, the
7 bankruptcy court resolved the dispute about the use of Gold
8 Strike 2002's name on certain documents, finding that this minor
9 defect did not impair Gold Strike 2007's title. Id.

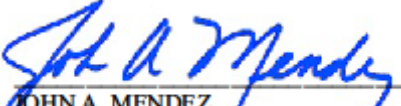
10 Indian Village's arguments about a break in the chain of
11 title are unpersuasive. The foreclosure did not violate the
12 chain of title because the foreclosing entity never changed—it
13 was always Gold Strike 2007. Gold Strike 2007 had the right to
14 foreclose after Indian Village intentionally violated the 2011
15 settlement by withholding its discounted assessments. Gold
16 Strike 2007 chose to exercise that right in seeking foreclosure.
17 Indian Village cannot rely on an immaterial typo to avoid the
18 consequences of its actions.

19 **V. CONCLUSION AND ORDER**

20 For the foregoing reasons, we determined that Appellant
21 failed to demonstrate that the foreclosure violated applicable
22 California law and was improper. Consequently, judgment was
23 properly granted to Appellees on all six of Appellant's claims.
24 Accordingly, the Court AFFIRMS the bankruptcy court's Judgment.

25 IT IS SO ORDERED.

26 Dated: April 30, 2019

27 
28 JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE