

IN THE SUPREME COURT OF THE STATE OF NEVADA

LN MANAGEMENT LLC SERIES 5105
PORTRAITS PLACE,

Appellant,

v.

GREEN TREE LOAN SERVICING, LLC,

Respondent.

Electronically Filed
Aug 12 2016 10:19 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Case No. 69477

RESPONDENT'S APPENDIX

APPEAL

from the Eighth Judicial District Court, Clark County

THE HONORABLE DOUGLAS E. SMITH
District Court Case No. A-13-679816-C

RESPONDENT'S APPENDIX

COLT B. DODRILL, ESQ.

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APPENDIX INDEX

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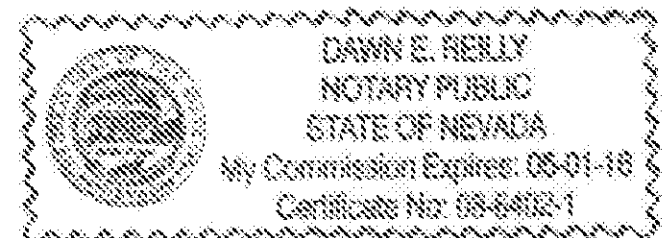
Attorney or Party without Attorney: COLT B. DODRILL, ESQ. NBN 9000 WOLFE & WYMAN LLP 980 KELLY JOHNSON DR., STE. 140 LAS VEGAS, NV 89119 Telephone No: 702-476-0100 FAX No: 702-476-0101				For Court Use Only	
Attorney for: Plaintiff, IN INTERVENOR				Ref. No. or File No.:	
Invert name of Court, and Judicial District and Branch Court: EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY, NEVADA					
Plaintiff: LN MANAGEMENT LLC SERIES 5105 PORTRAITS PLACE Defendant: WILLIAM WEBSTER					
AFFIDAVIT OF SERVICE		Hearing Date:	Time:	Dept/Div:	Case Number: A-13-679816-C

- At the time of service I was at least 18 years of age and not a party to this action.
- I served copies of the SUMMONS, COMPLAINT IN INTERVENTION
- Party served: LN MANAGEMENT LLC SERIES 5105 PORTRAITS PLACE, AS TRUSTEE FOR 5105 PORTRAITS PL. TRUST
 - Person served: DAVID WINTER, PRINCIPAL/pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is of the resident agent as shown on the current certificate of designation filed with the Secretary of State.
- Address where the party was served: c/o MR. INCORPORATION, INC.
REGISTERED AGENT
364 TERRACE VIEW DRIVE
STATELINE, NV 89449
- I served the party:
 - by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Thu., Apr. 30, 2015 (2) at: 1:30PM
- Person Who Served Papers:
 - TONI L. RUCKMAN (R-052005)
 - FIRST LEGAL INVESTIGATIONS
NEVADA PIPS LICENSE 1452
704 S. 6TH STREET
LAS VEGAS, NV 89101
(702) 671-4002

Fee for Service:

I Declare under penalty of perjury under the laws of the State of NEVADA that the foregoing is true and correct.

May 15 (Date) Toni L. Ruckman (Signature)



8. STATE OF NEVADA, COUNTY OF Clark
 Subscribed and sworn to (or affirmed) before me on this May 15 day of May 15 by TONI L. RUCKMAN (R-052005)
 proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Fri, May. 01, 2015

AFFIDAVIT OF SERVICE

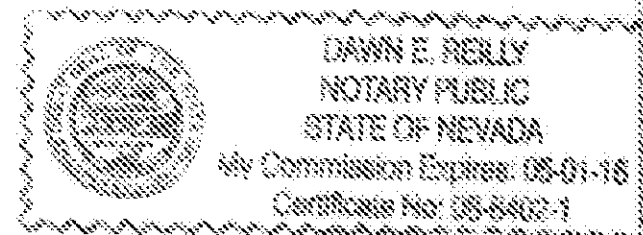
(Notary Signature)

8756106 notary.698491

RA000001

Attorney or Party without Attorney: COLT B. DODRILL, ESQ. NBN 9000 WOLFE & WYMAN LLP 980 KELLY JOHNSON DR., STE. 140 LAS VEGAS, NV 89119 Telephone No: 702-476-0100 FAX No: 702-476-0101				For Court Use Only	
Attorney for: Plaintiff, IN INTERVENOR				Ref. No. or File No.:	
Insert name of Court, and Judicial District and Branch Court: EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY, NEVADA					
Plaintiff: LN MANAGEMENT LLC SERIES 5105 PORTRAITS PLACE Defendant: WILLIAM WEBSTER					
AFFIDAVIT OF SERVICE		Hearing Date:	Time:	Dept/Div:	Case Number: A-13-679816-C

1. At the time of service I was at least 18 years of age and not a party to this action.
 2. I served copies of the SUMMONS; COMPLAINT IN INTERVENTION
 3. a. Party served: PORTRAITS AT PAINTED DESERT HOMEOWNERS ASSOCIATION
 b. Person served: EDWINA DALY, COMMUNITY MANAGER/pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is of the resident agent as shown on the current certificate of designation filed with the Secretary of State.
 4. Address where the party was served: c/o EUGENE BURGER MANAGEMENT CORPORATION OF NEVADA - LV, REGISTERED AGENT
 4576 N. RANCHO DR. #100
 LAS VEGAS, NV 89130
 5. I served the party:
 - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Wed., Apr. 29, 2015 (2) at: 4:12PM
 7. Person Who Served Papers:
 - a. DEANNE R. BELTRAN (R-067346)
 - b. FIRST LEGAL INVESTIGATIONS
 NEVADA PI/PS LICENSE #1452
 704 S. 6TH STREET
 LAS VEGAS, NV 89101
 - c. 702-671-4002
- Fee for Service:
 I Declare under penalty of perjury under the laws of the State of NEVADA that the foregoing is true and correct.
- 5/1/15 [Signature]
 (Date) (Signature)



8. STATE OF NEVADA, COUNTY OF Clark
 Subscribed and sworn to (or affirmed) before me on this 1 day of May 15 by DEANNE R. BELTRAN (R-0
 proved to me on the basis of satisfactory evidence to be the person who appeared before me.

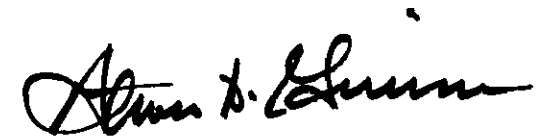
Thu, Apr. 30, 2015

AFFIDAVIT OF SERVICE

(Notary Signature)

8755938 .wolfe.698221

RA000002



CLERK OF THE COURT

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

LN MANAGEMENT LLC SERIES 5105
PORTRAITS PLACE,

Plaintiff,

vs.

WILLIAM WEBSTER,

Defendant.

CASE NO. A679816

DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE
TUESDAY, AUGUST 11, 2015

TRANSCRIPT OF PROCEEDINGS
GREEN TREE SERVICING LLC'S MOTION FOR SUMMARY JUDGMENT

APPEARANCES:

For the Plaintiff:

KERRY P. FAUGHNAN, ESQ.

For the Intervenor,
Green Tree Loan Servicing LLC:

YANXIONG LI, ESQ.

RECORDED BY: JILL JACOBY, COURT RECORDER

TRANSCRIBED BY: JUDY CHAPPELL, COURT RECORDER

1 TUESDAY, AUGUST 11, 2015 AT 7:59 A.M.

2
3 THE COURT: LN Management versus Webster. Hey.

4 MR. FAUGHNAN: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MR. FAUGHNAN: Kerry Faughnan on behalf of LN Management.

7 MR. LI: Good morning, Your Honor. Michael Li, behalf of Green Tree
8 Servicing LLC.

9 THE COURT: All right. Your Motion for Summary Judgment.

10 MR. LI: Yeah. Yes, Your Honor. This is Green Tree Servicing's Motion for
11 Summary Judgment based on violation of the bankruptcy stay that was filed by
12 Mr. and Mrs. Webster in the eastern district of Texas. And without having to detail
13 the brief or just resummarize everything, want to just emphasize a couple points
14 that was raised in the opposition.

15 With respect to standing, Your Honor, I think the fundamental
16 bankruptcy code principle is that the automatic stay is designed to protect two
17 different and complimentary interests. One is to protect the debtor's fresh start and
18 the other is to protect interest of the creditor with respect to the estate. So during
19 the time of the bankruptcy, the automatic stay acts as that kind of statutory
20 injunction, so to speak. So that any creditor that wants to take property out of the
21 estate, out of a bowl, so to speak, has to seek relief from the bankruptcy court
22 before they can do that. And none of that relief appears on the docket in the
23 bankruptcy case that's before Your Honor. Certainly not by the HOA or the trustee.
24 Relief isn't granted in kind or as to everyone. The only relief that does appear is
25 relief that's sought and successfully gained, obtained by EverBank.

1 And so with respect to LN Management's interest, with respect to the
2 HOA that actually did proceed with the foreclosure, notwithstanding the bankruptcy
3 case, that act of recording the notices and the remaining the balance of the
4 foreclosure acts are in direct violation of the bankruptcy stay because it happened
5 during the bankruptcy case, as the chronology shows.

6 With respect to jurisdiction, Your Honor, the stay originally was a
7 product of judicial doctrine. And in 1989 when the bankruptcy act was first
8 in – when the bankruptcy act first became enacted, so to speak, the bankruptcy
9 court became created, that was transferred into the old Chapter 10. And it was
10 meant to consolidate everything and make sure that we have uniform law with
11 respect to how when you have a bankruptcy, claims and liability are determined
12 and everything's administered in an orderly fashion.

13 And so bankruptcy power really derives from Title 28. And if you look
14 at Title 28 under Section 1334, it says that, it says pretty clearly that original and
15 exclusive jurisdiction over all cases but original and nonexclusive jurisdiction as to
16 proceedings in a case.

17 Your Honor, proceedings in the context of a bankruptcy case are, for
18 instance, motion practice, motions for relief from automatic stay, motions for
19 annulment, things of that nature, which are instituted as a matter of bankruptcy
20 Rule 9014. Another example would be Part VII adversary proceedings which are
21 essentially independent lawsuits within the bankruptcy case. While the bankruptcy
22 has jurisdiction over the entire case to administer the assets, disputes, issues that
23 arise within the bankruptcy case may be heard, if the bankruptcy court allows
24 during the time that the bankruptcy is ongoing by other tribunals. And so there's no
25 issue with this Court really going in and interpreting and applying the automatic

1 stay, especially now that the bankruptcy case has already closed.

2 And with – I think LN Management makes an interesting point on
3 abandonment. It's true that when an asset is abandoned or when an asset is
4 exempt and there has been a discharge, the asset falls out of the estate. Once the
5 asset is out of the estate, it's no longer subject to protection of the automatic stay.
6 However, surrender is an entirely different concept. When the – when the debtor
7 files for bankruptcy, under 11 U.S.C. 521(a)(2), the debtor has an obligation to
8 declare whether or not he or she, this is in the context of consumer bankruptcy, has
9 to surrender secured assets to the creditors. In this case, secured creditors such
10 as Green Tree's predecessors or such as HOA. And so that itself does not take the
11 asset out of the estate. There is no abandonment, there is no order and are
12 pursuant to 11 U.S.C. 554 which is the provision that governs abandonment.
13 Abandonment is typically exercised by the bankruptcy trustee.

14 And so, with that said, unless Your Honor has any other questions, I'll
15 reserve the rest of my time for the reply. Thank you.

16 THE COURT: Sure.

17 MR. FAUGHNAN: Your Honor, I just have a few issues. First and foremost,
18 given that the bankruptcy was in the 5th Circuit, 5th Circuit law would apply in this
19 case. With that said, as we've argued in our brief or in our opposition, the
20 5th Circuit makes it void, not void – or excuse, makes it voidable, not void. There's
21 no automatic voiding of the sale. As to standing, bankruptcy code section 362 very
22 clearly gives standing to the debtor and the trustee of the bankruptcy. They're the
23 only two parties that have standing to bring a violation issue. The – in this case,
24 Greentree doesn't even have standing to bring this issue. We've outlined that
25 along with cites to 5th Circuit cases.

1 They cite to the 9th Circuit which again doesn't apply here because it's
2 a 5th Circuit bankruptcy. They did not address that all the acts that took place were
3 outside of the stay. As we've pointed out, the case commenced, the parties
4 indicated that they were going to be surrendering the Portraits Place property within
5 30 days of the commencement of the case. The case commenced on
6 June 3rd, 2011, 30 days later is July – July 3rd. And the notice of default was
7 recorded by the HOA on August 8th, 2011, clearly outside the stay. They didn't
8 commence any – they didn't notice the trustee sale until September, or excuse me,
9 until November 19th. On September 12th, the property was clearly abandoned out
10 of the estate and the Nevada HOA still unknowing of the Texas bank was clear to
11 record the sale which they did on November 19th. The sale took place on January
12 the 23rd.

13 They don't address the issue of the two-year statute of limitations to
14 bring this action. They're barred from bringing this action in and of itself by the fact
15 that they brought it after the two years expired which would have been January 23rd
16 of 2015.

17 All those things, you know, Your Honor, we've laid out pretty clearly in
18 our briefs why this motion should be denied. Unless Your Honor has any additional
19 questions, I think it's clear that the motion should be denied.

20 THE COURT: I do have some questions. First of all, jurisdiction. Even
21 though it was – the bankruptcy was brought in Texas, this lawsuit is brought here.
22 It's not, this is not – this is akin to another case I had. It was a death case, a
23 rollover in Mexico, and all the witnesses were up here, the truck was brought up
24 here, the tires were brought up here and all the witnesses, again, were here. And
25 because they brought the suit in Nevada, I'm not using Mexican law.

1 So I believe jurisdiction is because it was – the choice was to bring it in
2 Nevada, I'm going to use Nevada jurisdiction. And then in *Schwartz*, how do we
3 get by *Schwartz*? I mean *Schwartz* says it's void.

4 MR. FAUGHNAN: But, Your Honor, the bankruptcy itself was – was in,
5 they're asking for relief under –

6 THE COURT: I understand.

7 MR. FAUGHNAN: -- a bankruptcy case that's in Texas, therefore –

8 THE COURT: Understand. But the suit –

9 MR. FAUGHNAN: -- applying Tex –

10 THE COURT: -- the suit was brought here. And so I'm going to use
11 9th Circuit. Unless you have a case that says I should use 5th Circuit.

12 MR. FAUGHNAN: Well, Your Honor, I think –

13 THE COURT: You brought – you brought the suit here. I mean, they could
14 have brought the suit in, you could have brought the suit in Texas saying – and use
15 the 5th Circuit, but you didn't. You chose here. So I'm going to use 9th Circuit. I
16 don't know any of the –

17 MR. FAUGHNAN: But even with that, --

18 THE COURT: -- the Texas law.

19 MR. FAUGHNAN: -- Your Honor –

20 THE COURT: Huh?

21 MR. FAUGHNAN: Even with that, they don't have standing to bring. They
22 don't have standing to bring this.

23 THE COURT: It doesn't matter whether they had standing or not. Under
24 *Schwartz*, the sale is void, if it violated bankruptcy, period.

25 MR. FAUGHNAN: If –

1 MR. LI: And just to clarify a couple of other points, 549 has to do with
2 fraudulent transfer, postpetition fraudulent transfer. And 362 of the code is what
3 we're going under as to the automatic stay provision. And so with respect to, for
4 instance, the statute of limitations argument that there's no counterpart under 362
5 as to any kind of statute of limitation to bring a violation of bankruptcy stay.

6 MR. FAUGHNAN: Your Honor, if that's -- if that's the case, Your Honor, then
7 I would ask that you continue this to allow us to go to bankruptcy court to
8 retroactively annul the stay which we've done in other cases.

9 THE COURT: Well that should have been done if -- I mean --

10 MR. FAUGHNAN: Well we were under, operating under the assumption that
11 5th Circuit law applies. It that's the -- if Your Honor's going to apply --

12 THE COURT: Have you any -- any case that says I should go under
13 5th Circuit? I don't see any --

14 MR. FAUGHNAN: I could brief it, Your Honor. I have not briefed it.

15 THE COURT: If you want to brief it. Because I believe that 9th Circuit -- well,
16 I know that 9th Circuit, I have other cases where a bankruptcy statute was violated
17 and the 9th Circuit says void, period.

18 MR. FAUGHNAN: Then I --

19 THE COURT: So if you want to brief that issue, that's the issue that I have
20 right now is whether --

21 MR. FAUGHNAN: And I would ask also that you'll allow us to -- the ample
22 time to go back to the bankruptcy court and ask them to reopen the case and annul
23 the --

24 MR. LI: Your Honor, if I may interject, we did have -- this issue is pretty clear
25 on the existing briefing. And if there's --

1 THE COURT: Let me – let me look at the briefing again. If you want to file
2 something else, give me a week and I'll have an answer for you in a week.

3 MR. FAUGHNAN: Do you want us to rebrief it, Your Honor?

4 THE COURT: Yeah, if you want. If you want to file sometime. I'm going to
5 go back and read the briefing, as I sit here, on the standing issue --

6 MR. FAUGHNAN: Very good.

7 THE COURT: -- and which law to apply. All right?

8 MR. FAUGHNAN: Thank you , Your Honor.

9 MR. LI: Thank you, Your Honor.

10 THE COURT: Be back in one week.

11 MR. FAUGHNAN: You want us back here or?

12 THE COURT: Yeah.


13 THE CLERK: August 18th, at 8 a.m.

14

15 [Proceeding concluded at 8:12 a.m.]

16

17 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual
18 recording in the above-entitled case.

19 
20 Judy Chappell
21 Court Recorder

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CLERK OF THE COURT

1 RTRAN
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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 LN MANAGEMENT LLC SERIES
9 5105 PORTRAITS PLACE,

10 Plaintiff,

11 vs.

12 WILLIAM WEBSTER,

13 Defendant.
14

CASE NO. A679816

DEPT. VIII

15 BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE
16 TUESDAY, AUGUST 18, 2015

17 **TRANSCRIPT OF PROCEEDINGS**
18 **GREEN TREE SERVICING LLC'S**
19 **MOTION FOR SUMMARY JUDGMENT**

20 APPEARANCES:

21 For the Plaintiff:

KERRY P. FAUGHNAN, ESQ.

22 For the Defendant:

MATTHEW I. KNEPPER, ESQ.
YANXIONG LI, ESQ.

23
24
25 RECORDED BY: JILL JACOBY, COURT RECORDER

1 TUESDAY, AUGUST 18, 2015 AT 7:59 A.M.

2
3 THE COURT: LN Management v Webster.

4 MR. LI: Good morning, Your Honor, Michael Li here for Green Tree
5 Servicing, LLC.

6 MR. KNEPPER: And Matt Knepper for Bank of America.

7 MR. LI: And I haven't received any communication this morning from
8 Mr. Faughnan, so I really don't know if Mr. Faughnan will be attending or not.

9 THE COURT: Oh, well, we need --

10 MR. LI: Or we can wait, Your Honor.

11 THE COURT: Let's wait a minute till he gets -- see if he gets here.

12 MR. LI: Sure.

13 [Matter trailed at 8:00 a.m.]

14 [Matter recalled at 8:09 a.m.]

15 THE COURT: LN Management v Webster.

16 MR. LI: Good morning, again, Your Honor.

17 THE COURT: Hi.

18 MR. LI: Michael Li here for Green Tree Servicing LLC.

19 MR. KNEPPER: Matt Knepper for Bank of America.

20 MR. FAUGHNAN: Good morning, Your Honor, Kerry Faughnan with LN
21 Management.

22 THE COURT: My law clerk just said late last night we got --

23 MR. FAUGHNAN: A supp.

24 THE COURT: A supplemental. And I haven't seen it yet. In fact, I sent him
25 after it to see if he can get it off the computer.

1 MR. FAUGHNAN: Well, I think, Your Honor, I think it resolves this to the point
2 that you will have to deny their motion for summary judgment.

3 MR. LI: Your Honor, I'd have to disagree. The supplemental contains no
4 additional authority. The only two authorities I can recall that's cited in the
5 supplemental are the ones that are in the original opposition regarding 549 post
6 petition avoidance of the lien. And as we've argued before during the initial hearing,
7 that's really not at issue. We're talking about 362 as interpreted by *Schwartz*, and
8 that gives the creditor standing.

9 MR. FAUGHNAN: Actually, Your Honor, what we're talking about is the fact
10 that the bank has no standing to oppose whether the stay was violated or not. It's
11 very clearly -- even in the Ninth Circuit it's very clear that the only two people that
12 have standing to raise a stay violation are the debtor and the trustee neither of
13 which the bank is. Therefore, they don't even have standing to bring this motion.

14 MR. LI: Your Honor --

15 THE COURT: Yeah, but my reading of *Schwartz* is very clear. Whether they
16 have standing or not, in Nevada it's void. In the Ninth Circuit, it's void.

17 MR. FAUGHNAN: But someone standing has to raise that issue, Your Honor,
18 it's -- it's --

19 THE COURT: Yeah. Well, I'll look at --

20 MR. FAUGHNAN: -- and they can't.

21 THE COURT: I'll look at that.

22 MR. LI: Your Honor, Green Tree has standing because we're talking about
23 standing two prongs. We're talking about constitutional prudential standing. Green
24 Tree stands to lose its deed of trust if the actions by the HOA in violation of the
25 bankruptcy stay is held valid.

1 There's their constitutional prudential standing, statutory standing, Your
2 Honor. 362(a), any action to enforce the lien in violation of the automatic stay. As
3 interpreted by *Schwartz*, that action is void. And as Your Honor stated, that's Ninth
4 Circuit law. And so.

5 THE COURT: But do *you* have standing or is somebody else? I understand
6 that. I'm going to look at this, I just got the supplemental. I apologize.

7 I'll have something in writing to you this week.

8 MR. FAUGHNAN: Very good. Thank you, Your Honor.

9 MR. LI: Thank you, Your Honor.

10 [Proceeding concluded at 8:12 a.m.]

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21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual
22 recording in the above-entitled case.

23 
24 Jill Jacoby
25 Court Recorder