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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

JAMES RICHARD MCCARTY and  
VICTORIA L. MCCARTY,

Plaintiffs - Appellants,

v.

GCP MANAGEMENT, LLC, a Utah  
limited liability company; et al.,

Defendants - Appellees.

No. 11-15039

D.C. No. 1:10-cv-00133-JMS-  
KSC

MEMORANDUM\*

JAMES RICHARD MCCARTY and  
VICTORIA L. MCCARTY,

Plaintiffs - Appellants,

v.

GCP MANAGEMENT, LLC, a Utah  
limited liability company; et al.,

Defendants - Appellees.

No. 11-16592

D.C. No. 1:10-cv-00133-JMS-  
KSC

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Appeal from the United States District Court  
for the District of Hawaii  
J. Michael Seabright, District Judge, Presiding

Argued and Submitted October 15, 2012  
Honolulu, Hawaii

Before: REINHARDT, THOMAS, and PAEZ, Circuit Judges.

James and Victoria McCarty appeal the district court's order granting summary judgment in favor of GCP Management, LLC ("GCP") and Gateway Capital Partners, LLC, and its subsequent confirmation of the foreclosure sale of the mortgaged property to GCP. We have jurisdiction under 28 U.S.C. § 1291, and we affirm. Because the parties are familiar with the history of this case, we need not recount it here.

I

Contrary to the McCartys' claim, the defendants are not prohibited under Hawaii law from defending this action because neither entity holds a state certificate of authority to transact business in Hawaii. Hawaii law expressly permits a foreign limited liability company to defend an action instituted against it in a Hawaii court. Haw. Rev. Stat. § 428-1008(b). Moreover, because the provision of mortgage loans does not qualify as "transacting business" within the

meaning of Haw. Rev. Stat. § 428-1008, that provision does not bar GCP's counterclaim. Haw. Rev. Stat. § 428-1003.

## II

We have carefully reviewed the district court's grant of summary judgment *de novo*, see *Bamonte v. City of Mesa*, 598 F.3d 1217, 1220 (9th Cir. 2010), and affirm the judgment of the district court for the reasons set forth in the district court's well-reasoned summary judgment order dated November 17, 2010.

## III

We affirm the district court's order confirming the foreclosure sale of the mortgaged property to GCP. Under Hawaii law, we may reverse the district court judge's confirmation of a foreclosure sale only if "a clear abuse of the discretion vested in him is apparent." *City & Cnty. of Honolulu v. Int'l Air Serv. Co.*, 628 P.2d 192, 197-98 (Haw. 1981).

The district court did not abuse its discretion in confirming the foreclosure sale. See *Brent v. Staveris Dev. Corp.*, 741 P.2d 722, 726 (Haw. App. 1987) ("[T]he lower court's authority to confirm a judicial sale is a matter of equitable discretion"). Though GCP's bid of \$1.5 million was considerably less than the McCartys' outstanding debt on the foreclosed mortgage, as well as the property's

appraised value at the time the loan was made, the McCartys did not establish that the bid was “so grossly inadequate as to shock the conscience.” *Sugarman v. Kapu*, 85 P.3d 644, 652 (Haw. 2004) (quoting *Hoge v. Kane*, 670 P.2d 36, 40 (Haw. App. 1983)). The McCartys’ speculative assertion that a higher price could be obtained is not sufficient to warrant reversal. *Brent*, 741 P.2d at 726-27. The district court properly reviewed the evidence, including that furnished by the neutral foreclosure commissioner.

The district court also properly conducted a *de novo* review of those findings of the magistrate judge to which the McCartys filed objections. No hearing was required. 28 U.S.C. § 636(b)(1)(C); *United States v. Raddatz*, 447 U.S. 667, 674 (1980); *United States v. Remsing*, 874 F.2d 614, 617 (9th Cir. 1989). The record shows that the district court judge independently reviewed the evidence supporting the challenged findings of the magistrate judge, which sufficed to discharge his obligation under 28 U.S.C. § 636(b)(1)(C).

**AFFIRMED.**