IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL GRANDON, Appellant, vs. OCWEN FEDERAL BANK, Respondent.	No. 41760
MICHAEL GRANDON, Appellant, vs. OCWEN FEDERAL BANK, Respondent.	No. 44674

FILED

SEP 26 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

These are consolidated appeals from district court orders granting a motion for summary judgment in favor of respondent Ocwen Federal Bank, and exonerating a bond in favor of Ocwen in a real property case. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

FACTS AND PROCEDURAL HISTORY

Appellant Michael Grandon, executed and delivered an adjustable rate note, secured by a deed of trust on a piece of residential property in favor of Ocwen's predecessor-in-interest.[1] Shortly thereafter, Grandon ceased making his mortgage payments and Ocwen subsequently initiated foreclosure proceedings. Specifically, Ocwen recorded and served Grandon by certified mail with a notice of default and election to sell and a subsequent notice of trustee's sale as required by NRS 107.080 et seq. The trustee's sale was scheduled for May 28, 2002. In an effort to stop the

[1]Because the parties know the facts well, we recite them here only as necessary to our disposition.

foreclosure, Grandon filed a chapter 13 bankruptcy petition one week before the trustee's sale. Under 11 U.S.C. § 362, all actions against Grandon were automatically stayed. Grandon attended the May 28 trustee's sale and heard the auctioneer orally postpone the sale until June 25, 2002, due to the automatic stay. The auctioneer continued to orally postpone the trustee's sale in 30-day increments until Grandon's bankruptcy petition was dismissed. After Grandon's bankruptcy petition was dismissed, a trustee's sale took place on January 16, 2003, and Ocwen made a full credit bid and became the owner of the property through a trustee's deed.

DISCUSSION

Summary judgment

In the first of these two appeals, Grandon argues that the district court erred in granting summary judgment in favor of Ocwen because issues of material fact remain as to whether Ocwen provided notice of the January 16, 2003, trustee's sale pursuant to NRS 107.080 et seq. Grandon concedes that Ocwen complied with the statutory notice requirements for the original trustee's sale date of May 28, 2002. "Ordinarily, where, in the first instance, notice of sale has been given by publication and posting as required by statute, postponements may lawfully be made by oral public proclamation only."[2] The record indicates that at the May 28, 2002, crying of the sale, the auctioneer orally postponed the trustee's sale due to the automatic stay for 30 days, and continued to postpone the sale every 30 days thereafter while Grandon's bankruptcy petition remained pending. Since Ocwen complied with the

[2]McLaughlin v. M. B. & L. Assn., 57 Nev. 181, 189, 60 P.2d 272, 275 (1936).

notice requirements set forth in NRS 107.080 et seq. for the original sale date of May 28, 2002, and properly continued the sale by oral proclamation, we conclude that the district court did not err in granting summary judgment in favor of Ocwen. Ocwen was not required to provide Grandon any additional notice of the January 16, 2003, sale.

Grandon additionally argues that an adequate protection order (APO) from the bankruptcy court constitutes a binding agreement in which Ocwen agreed to forebear foreclosing on the property upon dismissal of Grandon's bankruptcy petition. We disagree. We note that the APO does not contain any language indicating that Ocwen agreed to forebear foreclosing on the property. Further, this dismissal of the debtor's bankruptcy petition reinstates the proceedings pending before the debtor filed for bankruptcy.[3] Thus, once Grandon's bankruptcy petition was dismissed, Grandon lost the protection of the automatic stay, and Ocwen could proceed with the trustee's foreclosure sale due to Grandon's failure to pay pre-petition arrearages.

Grandon also contends that a subsequent order in a different case somehow "nullifies" the orders in this action. Specifically, in a subsequent dispute between Ocwen and a second deed of trust holder, Randy Doroshow, a district court nullified and set aside the January 16, 2003, trustee's sale due to Ocwen's failure to provide Doroshow notice of the sale. Grandon contends that this order setting aside the trustee's sale also "nullifies" the orders in this action. We disagree. First, the subsequent ruling does not affect the foreclosure as between Grandon and Ocwen. Second, we have reversed the district court order setting aside the trustee's sale, which is the subject of the appeal in Docket No. 45103.

---

[3]11 U.S.C. 349(b).

Exoneration of bond

In his second appeal, Grandon contends that the district court erred when it forfeited the bond in favor of Ocwen to the extent of the reasonable rental value of the property and attorney fees, exonerating the balance in favor of Grandon. We discern no error in forfeiting the bond in part and exonerating the bond in part for the reasonable rental value of the property, as Grandon unlawfully detained the property following the valid trustee's sale. We also conclude that the district court did not abuse its discretion in granting attorney fees pursuant to NRS 18.010(2)(b), as Grandon maintained this suit without reasonable grounds.[4] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Maupin

_____, J.
Gibbons

_____, J.
Hardesty

[4]Ocwen actually sought attorney fees pursuant to a provision in the deed of trust authorizing Ocwen to charge Grandon for any reasonable attorney fees Ocwen incurred in protecting its interest in the property. Since Ocwen made a full credit bid on the property, this satisfied the promissory note and deed of trust in full. Therefore, the district court properly awarded Ocwen attorney fees pursuant to NRS 18.010(2)(b), rather than pursuant to the attorney fees provision in the promissory note and deed of trust.

cc: Hon. David Wall, District Judge
Hon. Jessie Elizabeth Walsh, District Judge
Michael Grandon
Wilde & Associates
Clark County Clerk