IN THE SUPREME COURT OF THE STATE OF NEVADA

OCWEN FEDERAL BANK,
Appellant,
vs.
RANDY DOROSHOW,
Respondent.

No. 45103

FILED

SEP 26 2006

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting summary judgment in favor of respondent, Randy Doroshow. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge. Because we ultimately conclude that Doroshow was not entitled to notice of the trustee's foreclosure sale held on January 16, 2003, we reverse the district court order granting summary judgment in favor of Doroshow, nullifying and setting aside this sale.

FACTS AND PROCEDURAL HISTORY

On August 8, 2001, debtor Michael Grandon executed and delivered a promissory note, secured by a deed of trust, secured by a piece of residential property in favor of the predecessor-in-interest of appellant Ocwen Federal Bank.[1] Shortly thereafter, Grandon ceased making his mortgage payments and Ocwen initiated foreclosure proceedings. Specifically, Ocwen recorded a notice of default and election to sell under the deed of trust on February 5, 2002, and served a copy of this notice certified mail, return receipt requested, on Grandon. Three months later, Ocwen served a notice of trustee's sale on Grandon by certified mail and

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

published this notice for three consecutive weeks. According to the notice of trustee's sale, the trustee's sale was scheduled for May 28, 2002.

In an effort to stop the foreclosure, Grandon filed for bankruptcy one week before the trustee's sale. Pursuant to 11 U.S.C. § 362, all actions against Grandon, including the trustee's sale were automatically stayed. During the pendency of the bankruptcy proceedings, the trustee's sale was orally postponed. The bankruptcy court subsequently dismissed Grandon's bankruptcy petition, and a foreclosure sale of the property took place on January 16, 2003, at which time Ocwen became the owner of the property.

After the bankruptcy petition was dismissed and approximately one month before the sale, respondent Randy Doroshow loaned $100,000 to Grandon secured by a second deed of trust on the property. Doroshow recorded this second deed of trust on December 13, 2002. Ocwen proceeded with the trustee's foreclosure sale, without notifying Doroshow of the sale, one month later on January 16, 2003. Doroshow subsequently filed a complaint against Ocwen, alleging that Ocwen failed to give her notice of the trustee's foreclosure sale, and thus wrongfully denied Doroshow of the opportunity to purchase the property at the trustee's foreclosure sale so as to secure her rights and interests under her deed of trust. Ultimately, the district court granted a motion for summary judgment filed by Doroshow. In this, the district court found that Ocwen failed to give the statutorily mandated notice of the trustee's foreclosure sale to Doroshow pursuant to NRS 107.080 et seq. The district court subsequently indicated that it was nullifying and setting aside the trustee's foreclosure sale due to Ocwen's failure to provide Doroshow notice. Ocwen now appeals.

DISCUSSION

On appeal, Ocwen argues that Doroshow was not entitled to notice of the trustee's sale, and therefore the district court erred in nullifying and setting aside the trustee's sale. We agree. While the district court based its ruling on NRS 107.080 et seq., the proper statutory framework is NRS 107.090 et seq. Pursuant to NRS 107.090(2),

> [a] person with an interest [in the real property] . . . desiring a copy of a notice of default or notice of sale under a deed of trust with power of sale upon real property may at any time after recordation of the deed of trust record . . . an acknowledged request for a copy of the notice of default or of sale. . . .

The record indicates that Doroshow failed to record a request for special notice of the notice of default. Going further, a person with an interest in the subject property must record the request for notice prior to the recording of the notice of default and election to sell. As previously noted, Ocwen recorded the notice of default and election to sell well before Doroshow recorded the second deed of trust. We therefore conclude that Doroshow was not entitled to special notice of the trustee's sale, and thus the district court erred in nullifying and setting aside the trustee's sale.

While Ocwen was not required to provide Doroshow special notice, we also conclude that Doroshow had constructive notice of the trustee's sale as a matter of law. In this, we note that Ocwen recorded the notice of default and election to sell some ten months before Doroshow recorded the second deed of trust. Generally, recording a deed or other instrument imparts notice to subsequent purchasers and mortgagees.[2]

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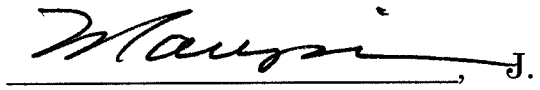
[2]In re Wilson's Estate, 56 Nev. 500, 502, 56 P.2d 1207, 1208 (1936).

Thus, the recorded notice of default and election to sell put Doroshow on constructive notice of the foreclosure sale.

CONCLUSION

Doroshow was not entitled to notice of the trustee's sale. Regardless, she had constructive notice of the trustee's sale. Therefore, we conclude that the district court erred in nullifying and setting aside this sale. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.



_____, J.
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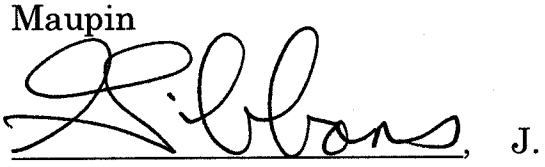

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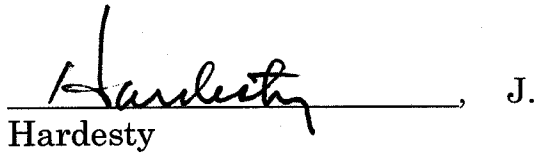

_____, J.
Hardesty

cc: Hon. Nancy M. Saitta, District Judge
William F. Buchanan, Settlement Judge
Wilde & Associates
Hong & Hong
Clark County Clerk