

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES MEJIA AND CHONA MEJIA,  
Appellants,  
vs.  
WACHOVIA MORTGAGE,  
Respondent.

No. 53416

**FILED**

SEP 28 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER AFFIRMING IN PART,  
REVERSING IN PART AND REMANDING

This is a proper person appeal from a district court order granting respondent's motion to dismiss a contract action. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.


Appellants filed suit against respondent, alleging, among other things, that respondent had failed to properly apply mortgage payments and had wrongfully placed appellants in foreclosure proceedings. As an initial matter, the district court did not abuse its discretion by setting aside the entry of default because respondent moved to set aside the default only two weeks after it was entered and submitted evidence that the failure to file a timely answer was due to appellants' agreement to allow respondent additional time to answer. See Schulman v. Bonberg-Whitney Elec., Inc., 98 Nev. 226, 228, 645 P.2d 434, 435 (1982) (holding that the district court's decision to set aside a default is reviewed for an abuse of discretion and explaining that promptly moving to set aside a default and the absence of intent to delay the proceedings are factors that weigh in favor of finding good cause to set aside a default).


As to the dismissal, the motion to dismiss was filed in the district court after the court granted dismissal, and no signed copy of the motion to dismiss is included in the record on appeal. Thus, the district court erred by dismissing the complaint without giving appellants notice and an opportunity to be heard. See Buzz Stew, LLC v. City of N. Las

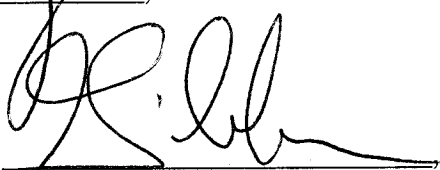
Vegas, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (explaining that this court rigorously reviews a dismissal under NRCP 12(b)(5)); see also Browning v. Dixon, 114 Nev. 213, 217, 954 P.2d 741, 743 (1998) (explaining that the fundamental requirements of due process are notice and an opportunity to be heard).<sup>1</sup>

Accordingly, we affirm the district court's decision to set aside the entry of default, but we reverse the order of dismissal and remand this matter to the district court for proceedings consistent with this order.<sup>2</sup>

It is so ORDERED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

<sup>1</sup>Without addressing the merits of the complaint, we note that it was not entirely clear under what law appellants were proceeding. In particular, while appellants appeared to raise state law claims, they did not identify on what state laws they were relying. Accordingly, it is not necessarily clear that their claims were preempted by federal law. Moreover, it appears that appellants may have intended to raise claims under the Truth in Lending Act, 15 U.S.C. § 1601-1667f (2006) (Truth in Lending Act is the name of Title I of the Consumer Credit Protection Act), which the district court did not address in the dismissal.

<sup>2</sup>Appellants also argue that respondent's California counsel was improperly permitted to represent respondent in this case. The record shows that respondent was represented by Nevada counsel throughout the case, and respondent's California counsel merely submitted an affidavit with regard to interactions he had with appellants. Thus, there is no merit to this contention. We do not address appellants' arguments with regard to the motion for recusal as that motion has not yet been addressed by the district court in the first place.

cc: Hon. Robert H. Perry, District Judge  
Chona Mejia  
James Mejia  
Laxalt & Nomura, Ltd./Reno  
Washoe District Court Clerk