

IN THE SUPREME COURT OF THE STATE OF NEVADA

DON GARTH COLE,
Appellant,
vs.
CIT GROUP/CONSUMER FINANCE,
INC., AND FORECLOSURELINK, INC.,
Respondents.

No. 53561

FILED

DEC 09 2010

ORDER OF AFFIRMANCE

THOMAS K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

This is a proper person appeal from a district court summary judgment in a foreclosure action. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

When appellant Don Garth Cole defaulted on his two loans from respondent CIT Group/Consumer Finance, Inc., the putative trustee of the deeds of trust corresponding to the loans, respondent Foreclosurelink, Inc., initiated foreclosure proceedings with respect to Cole's property. In response, Cole instituted a district court action for wrongful foreclosure and seeking declaratory and injunctive relief. CIT Group and Foreclosurelink moved for judgment on the pleadings, which the district court construed as a motion for summary judgment, since it considered matters outside of the pleadings. See NRCP 12(c). The district court granted summary judgment to CIT Group and Foreclosurelink. This appeal followed.

This court reviews a district court's summary judgment de novo. See Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment was appropriate if the pleadings and other evidence on file, viewed in a light most favorable to Cole, demonstrated that CIT Group and Foreclosurelink were entitled to judgment as a matter of law and that no genuine issue of material fact remains in dispute. Id.

Before turning to Cole's specific appellate arguments, a viable wrongful foreclosure claim requires that Cole demonstrate that he had not breached his obligations under the notes when the foreclosure proceedings were instituted. See Collins v. Union Fed. Savings & Loan, 99 Nev. 284, 304, 662 P.2d 610, 623 (1981). But Cole has failed to make any such showing. Consequently, he is not entitled to the declaratory or injunctive relief that he seeks based on the wrongful foreclosure claim.¹ Thus, CIT Group and Foreclosurelink were entitled to judgment as a matter of law. See Wood, 121 Nev. at 729, 121 P.3d at 1029.

Nevertheless, with respect to Cole's specific arguments on appeal, Cole primarily argues that the district erred when it granted summary judgment to CIT Group and Foreclosurelink because they failed to provide him with the original loan documents at his request, as he asserts the Truth in Lending Act, 15 U.S.C. § 1641(f)(2) (2006), NRS 104.3308, and NRS 104.3309 require. But Cole's reliance on those statutes is misplaced, as they do not require a deed of trust beneficiary, such as CIT Group, or trustee, such as Foreclosurelink, to provide a borrower with the original note before initiating foreclosure proceedings. Cf. NRS 107.080 (providing the requirements for nonjudicial foreclosure proceedings)

Cole also appears to challenge Foreclosurelink's authority to institute foreclosure proceedings, arguing that it was not authorized to do so because of irregularities in the document substituting Foreclosurelink

¹In his district court complaint, Cole asserted causes of action for declaratory and injunctive relief, but those are remedies and not causes of action, which would have been available only if Cole established and proved his only claim, wrongful foreclosure.

as the trustee of the deed of trust pursuant to which it instituted foreclosure proceedings. Additionally, Cole appears to challenge the sufficiency of the method by which he was notified that CIT Group and Foreclosurelink were foreclosing on his home. Those arguments are unpersuasive, however, as the record demonstrates that CIT Group and Foreclosurelink substantially complied with the provisions of NRS 107.080 pertaining to foreclosure proceedings, including its notice requirements. See NRS 107.080(5)(a) (requiring substantial compliance with NRS 107.080's provisions).

Having reviewed the appeal statement, response, and record in this matter, we conclude that the district court did not err when it granted summary judgment to CIT Group and Foreclosurelink. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Linda Marie Bell, District Judge
Don Garth Cole
Pite Duncan LLP
Eighth District Court Clerk

²Having considered all of the issues raised by Cole, we conclude that his other contentions lack merit and thus do not warrant reversal of the district court's judgment.