IN THE SUPREME COURT OF THE STATE OF NEVADA

KATHLEEN L. RAY,
Appellant,
vs.
DEUTSCHE BANK NATIONAL TRUST; FIRST FRANKLIN LOAN SERVICES; AND CAL-WESTERN RECONVEYANCE CORPORATION,
Respondents.

No. 54626

FILED

FEB 15 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order granting an NRCP 12(b)(5) motion to dismiss an action asserting breach of contract and related claims. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Appellant Kathleen Ray obtained two mortgages from respondent First Franklin Loan Services. The mortgages were secured by two deeds of trust on her property, which were subsequently assigned to respondent Deutsche Bank National Trust. After Ray defaulted on both mortgages, the trustee on the deeds of trust, respondent Cal-Western Reconveyance Corporation, filed notices of default and elections to sell, and then a notice of trustee's sale, with respect to Ray's property.

In response, Ray sent respondents letters disputing her default and essentially requesting that they demonstrate entitlement to foreclose on her property by, among other things, producing the original loan documents. When respondents did not respond to her requests, Ray instituted a district court action against them, including causes of action for breach of the covenant of good faith and fair dealing, breach of contract, breach of fiduciary duty, and fraud, primarily based on their failure to provide her with the original loan documents. Ray mailed the

summons and complaint to respondents, and when they did not respond within the 20-day time period set forth in NRCP 12(a)(1), she filed a motion for a default judgment. Respondents ultimately filed a motion to dismiss Ray's complaint under NRCP 12(b)(5) for failure to state a claim. The district court granted the motion and dismissed the action. This appeal followed.

The district court's order granting respondents' motion to dismiss under NRCP 12(b)(5) "'is subject to a rigorous standard of review on appeal.'" See Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (quoting Seput v. Lacayo, 122 Nev. 499, 501, 134 P.3d 733, 734 (2006)). Accordingly, this court will treat all factual allegations in Ray's complaint as true and draw all inferences in her favor. Id. at 228, 181 P.3d at 672. Ray's complaint was properly dismissed only if it appears beyond a doubt that she could prove no set of facts that would entitle her to relief. Id. "We review the district court's legal conclusions de novo." Id.

On appeal, Ray contends that the district court erred when it granted respondents' motion to dismiss. She argues mainly that, to proceed with foreclosure, respondents were required to demonstrate that they held the original note, which they failed to do. Although Ray does not cite to any specific legal authority to support that argument, it appears that she is basing it on NRS 104.3501(2)(b) and the federal Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692g(b) (2006). Additionally, Ray contends that the district court erred when it did not grant her motion for a default judgment.

Having considered Ray's civil proper person appeal statement, First Franklin and Deutsche Bank's response, Cal-Western's joinder thereto, and the record, we conclude that the district court did not err

when it granted respondents' motion to dismiss. The nonjudicial foreclosure in this case predates the 2011 amendments to NRS Chapter 107 and does not grow out of Nevada's foreclosure mediation program (FMP). No authority indicates that NRS 104.3501(2)(b), dealing with the enforceability of negotiable instruments, applies to a nonjudicial foreclosure proceeding conducted outside the FMP and under the pre-2011 version of NRS Chapter 107, and Ray does not provide any. See Oraha v. Metrocities Mortgage, LLC, 2012 WL 70834 (D. Ariz., January 10, 2012); Diessner v. Mortgage Electronic Registration, 618 F. Supp. 2d 1184, 1187 (D. Ariz. 2009) (recognizing that district courts "'have routinely held that [the] "show me the note" argument lacks merit'" (quoting Mansour v. Cal-Western Reconveyance Corp., 618 F. Supp. 2d 1178, 1181 (D. Ariz. 2009))); Hafiz v. Greenpoint Mortg. Funding, Inc., 652 F. Supp. 2d 1039 (N.D. Cal. 2009) (stating that, in California, which has a statute analogous to NRS 104.3501(2)(b), a deed of trust trustee need not produce the original note to initiate nonjudicial foreclosure proceedings). Second, the FDCPA likewise does not apply to these foreclosure proceedings. See Diessner, 618 F. Supp. 2d at 1188-89 (concluding that nonjudicial foreclosure proceedings do not fall within the FDCPA's scope); Hulse v. Ocwen Federal Bank, FSB, 195 F. Supp. 2d 1188, 1204 (D. Or. 2002) ("Foreclosing on a trust deed is distinct from the collection of the obligation to pay money. The FDCPA is intended to curtail objectionable acts occurring in the process of collecting funds from a debtor.").

We also reject Ray's argument that, because respondents did not respond to her complaint within NRCP 12(a)(1)'s 20-day time period, the district court erred when it did not grant her motion for a default judgment. Ray failed to properly serve her summons and complaint; as a result, the 20-day time period never commenced. It appears that Ray

mailed her summons and complaint to respondents, but as foreign corporations, she was required to personally serve respondents' respective designated Nevada agents. See NRCP 4(d)(2). Therefore, the district court did not err when it refused to enter a default judgment.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[1]

Pickering, J.
Pickering

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Valerie Adair, District Judge
Kathleen L. Ray
Brooks Bauer LLP
Wolfe & Wyman LLP
Eighth District Court Clerk

[1]Having considered all of the issues raised by Ray, we conclude that her other contentions lack merit and thus do not warrant reversal of the district court's judgment.

In light of this order, we deny as moot First Franklin and Deutsche Bank's July 26, 2010, motion for clarification.