

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID PHILIP,
Appellant,
vs.
EMC MORTGAGE CORPORATION,
Respondent.

No. 56054

FILED

DEC 14 2012

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

ORDER AFFIRMING IN PART,
REVERSING IN PART AND REMANDING

This is a proper person appeal from a district court judgment on the pleadings, certified as final under NRCP 54(b), in a real property action. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Appellant filed a complaint in the district court against respondent EMC Mortgage Corporation and other defendants, alleging multiple causes of action concerning foreclosure on a deed of trust. EMC moved for judgment on the pleadings. The district court granted the motion and dismissed the claims against EMC and certified the judgment as final under NRCP 54(b). An order granting judgment on the pleadings under NRCP 12(c) is appropriate only when material facts are not in dispute and the movant is entitled to judgment as a matter of law. Bonicamp v. Vazquez, 120 Nev. 377, 379, 91 P.3d 584, 585 (2004).

After review of the parties' arguments and record, we conclude that the district court properly entered judgment in favor of EMC on appellant's causes of action for breach of the covenant of good faith and fair dealing, negligence, and rescission as to EMC, as appellant expressly abandoned those claims. Further, the causes of action for fraud and breach of contract deal with the origination of the loan, and EMC was not

a party to the loan origination. Likewise, EMC, as a mere servicer, never claimed title to the property, and was not a proper party to the quiet title claim. Accordingly, we affirm the judgment of the district court on those causes of action.

Appellant also challenges the district court's judgment on his claim for wrongful foreclosure.¹ Appellant contends that no entity has demonstrated authority to foreclose on the deed of trust encumbering appellant's title to his home. We agree.

Here, the promissory note was executed in favor of the lender The Mortgage Depot, Inc., which was endorsed to the order of Green Point Mortgage Funding, Inc. The deed of trust named Mortgage Electronic Registration Systems, Inc. (MERS), as nominee of the lender and lender's successors and assigns, as beneficiary. No assignment of the deed of trust appears in the record.

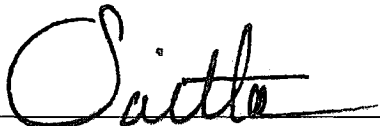
Recently, this court concluded that the use of MERS as a deed-trust beneficiary constitutes an agreement to independently transfer the note and deed of trust. Edelstein v. Bank of New York Mellon, 128 Nev. ___, 286 P.3d 249 (2012). Edelstein, however, specifically held that severing the instruments is not fatal to the note or the deed of trust, and that both could be reunified to allow nonjudicial foreclosure. Id. at ___, 286 P.3d at 260, 262.


¹EMC contends that the cause of action for wrongful foreclosure was not a properly stated claim for relief because no foreclosure had occurred. Although appellant styled his cause of action as wrongful foreclosure, his complaint appropriately set forth a request for injunctive relief that seeks to enjoin a pending foreclosure based on an alleged violation of NRS 107.080. NRCF 8(a).

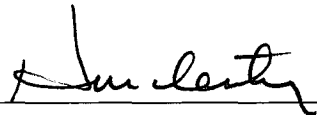
Here, no assignment from MERS to Green Point appears in the record. As such, based on the record before the district court, EMC had not demonstrated that it was authorized to conduct foreclosure proceedings on behalf of Green Point or MERS, as there is nothing in the record demonstrating that the note and deed of trust have been reunified. Id. at ___, ___, 286 P.3d at 260, 262. Thus, the motion for judgment on the pleadings should not have been granted. Because, however, the severance is not fatal, and the use of MERS does not destroy the security created by the deed of trust, we reject appellant's argument that he is entitled to clear title on the property. Id. at ___, 286 P.3d at 260.

Finally, as the district court judgment did not resolve all issues of title between appellant and all defendants, and the cause of action for wrongful foreclosure was improperly dismissed, we conclude that the lis pendens should not have been expunged. Accordingly, we reverse the judgment of the district court dismissing the complaint as to wrongful foreclosure and the order expunging the lis pendens and remand this matter to the district court for further proceedings consistent with this order.

It is so ORDERED.²


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

²Having reviewed the remainder of appellant's arguments, we conclude they lack merit and thus do not warrant reversal.

cc: Jessie Elizabeth Walsh, District Judge
David Philip
Smith Larsen & Wixom
Eighth District Court Clerk