

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDRZEJ MICHNIAK, AN  
INDIVIDUAL,  
Appellant,  
vs.  
ARGENT MORTGAGE COMPANY,  
LLC; OLD REPUBLIC DEFAULT  
MANAGEMENT SERVICES; AND  
WELLS FARGO BANK, N.A.,  
Respondents.

No. 56334

**FILED**

DEC 14 2012

TAGIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Angela*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting an NRCP 12(b)(5) motion to dismiss a complaint in a wrongful foreclosure case. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Appellant obtained a home loan in 2004 from respondent Argent Mortgage Company. Subsequently, appellant defaulted on the loan, and the property was sold at a trustee's sale under NRS 107.080. Appellant filed a complaint in district court alleging unfair lending practices under NRS Chapter 598D, breach of the covenant of good faith, unjust enrichment, breach of fiduciary duty, negligent and intentional misrepresentation, wrongful foreclosure, and quiet title. The complaint sought damages, and injunctive and declaratory relief. Argent Mortgage filed a motion to dismiss the complaint, which respondent Old Republic Default Management Services joined. Respondent Wells Fargo Bank, N.A., filed a separate motion to dismiss or alternative motion for summary judgment. The district court granted both motions to dismiss and entered a final order dismissing the complaint. This appeal followed.

A district court's order granting a motion to dismiss under NRCPC 12(b)(5) "is subject to a rigorous standard of review on appeal." 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 appellant's complaint as true and draw all inferences in appellant's favor. Id. at 228, 181 P.3d at 672. Appellant's complaint was properly dismissed only if it appears beyond a doubt that appellant could prove no set of facts that would entitle him to relief. Id. This court reviews a district court's legal conclusions de novo. Id.

Appellant specifically limits his appeal to the issues involving NRS 107.080(2) and (4). As to appellant's claims relating to the foreclosure and trustee's sale, those claims were time-barred. The trustee's sale occurred on May 28, 2009, and the complaint was not filed until October 29, 2009. NRS 107.080(5)(b) sets a 90-day window for challenging trustee's sales. Appellant contends that a quiet title action is not governed by NRS 107.080(5), which he argues is limited to minor errors of form or execution, and not violations of specific statutory requirements. Thus, appellant argues, he is entitled to seek quiet title under NRS 40.010 under the statute of limitations set forth by NRS 11.190. We disagree.


The plain language of NRS 107.080(5) states that a trustee's sale vests title without equity or right of redemption. The sale must be declared void if the trustee failed to substantially comply with the nonjudicial foreclosure statutes, an action is commenced within 90 days after the date of the sale, and a notice of lis pendens is recorded within 30 days from the commencement of the action. NRS 107.080(5). Under the

plain language of the statute, unless a timely challenge is filed, the trustee's sale conclusively vests title in the purchaser. Id.

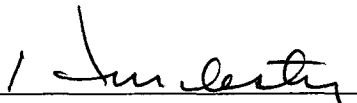
Here, appellant's only basis for asserting quiet title was through a challenge to the foreclosure sale. The title set forth in the trustee's deed upon sale was conclusive and beyond challenge once the time period set forth in NRS 107.080 had lapsed. The trustee's deed upon sale conclusively vested title in the purchaser, and as a matter of law appellant's claim for quiet title based on wrongful foreclosure fails. Because the publicly recorded documents conclusively demonstrated that appellant's claims were time-barred, there was no set of facts appellant could have proven that would have entitled him to relief, and the district court properly dismissed the complaint. Buzz Stew, 124 at 228, 181 P.3d at 672.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Hardesty

cc: Douglas W. Herndon, District Judge  
Stephen E. Haberfeld, Settlement Judge  
Chris Sullivan Law Firm  
Christopherson Law Offices  
Cooper Castle Law Firm, LLC  
Houser & Allison, APC  
Marquis Aurbach Coffing  
Poli & Ball, P.L.C.  
Eighth District Court Clerk