

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL ASHLEY,
Appellant,
vs.
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS; FIDELITY
NATIONAL TITLE INSURANCE CO.;
AND UNITED HOMES EXCHANGE 1
LLC,
Respondents.

No. 57254

FILED

DEC 14 2012

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court summary judgment in a wrongful foreclosure action. Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.

In his district court complaint, appellant alleged causes of action for quiet title, fraud, and intentional or negligent infliction of emotional distress. Appellant alleged that the trustee's sale was fraudulently commenced, the trustee's deed upon sale should be voided, title should be quieted in his favor, and he should be awarded damages for emotional distress that resulted from the wrongful foreclosure. All three causes of action were essentially one claim for wrongful foreclosure. Respondent United Homes Exchange 1, LLC, filed a motion to intervene, which was granted, and a motion to dismiss or for summary judgment.¹

¹Appellant contends that he amended his complaint as a matter of right before any answer was filed to include United Homes as a defendant. He contends that his amended complaint was not acted on, and depriving him of the opportunity to be heard. As the amendment merely added United Homes as a party, and as United Homes' motion to intervene was

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The district court granted summary judgment in favor of respondents, and this appeal followed.

This court reviews summary judgment de novo. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is appropriate if the pleadings and other evidence on file, viewed in the light most favorable to the nonmoving party, demonstrates that no genuine issue of material fact remains in dispute and that the moving party is entitled to judgment as a matter of law. Id. To withstand summary judgment, the nonmoving party cannot rely solely on general allegations and conclusions set forth in the pleadings, but must instead present specific facts demonstrating the existence of a genuine factual issue supporting his or her claims. NRCP 56(e); see also Wood, 121 Nev. at 730-31, 121 P.3d at 1030-31.

On appeal, appellant contends that Mortgage Electronic Registration Systems, Inc. (MERS), is not a valid beneficiary and lacked authority to transfer the deed of trust and the promissory note or to appoint a trustee for the deed of trust. We disagree.

The deed of trust designated MERS,² solely as nominee for the lender and lender's assigns, as beneficiary. The deed of trust designated Ticor Title as trustee. On June 30, 2009, Fidelity National Title Insurance

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granted, we discern no prejudice to appellant based on the procedural vehicle by which United Homes became a party.

²Appellant was not an original party to the deed of trust or promissory note, but received his interest in the property by way of quitclaim deed.


Company, acting as agent for the beneficiary, recorded a notice of default. On September 1, 2009, MERS substituted Fidelity as trustee, which was recorded on October 1, 2009. Fidelity recorded a notice of trustee's sale on that same day. MERS subsequently assigned the deed of trust, along with the money due and all rights, to U.S. Bank National Association, effective November 9, 2009. On January 28, 2010, the trustee's sale was held, and United Homes purchased the property. Fidelity executed a trustee's deed upon sale in favor of United Homes, and recorded the deed on March 3, 2010.


This court has determined that MERS is a valid beneficiary of the deed of trust, following the approach set forth in the Restatement (Third) of Property: Mortgages § 5.4 (1997). Edelstein v. Bank of New York Mellon, 128 Nev. ___, 286 P.3d 249 (2012). MERS, in its capacity as the beneficiary of the deed of trust, was capable of assigning its own interest in the deed of trust and to appoint a substitute trustee. Id. at ___, 286 P.3d at 260. Further, in its capacity as nominee for the lender and lender's successors and assigns, MERS had authority to transfer the note on behalf of its principal. Id. at ___, 286 P.3d at 260-61. Although the note is not in the record, and thus, there is no evidence whether the note was properly negotiated, this court has held that evidence of transfer is sufficient to prove holder status of the note. Leyva v. National Default Servicing Corp., 127 Nev. ___, ___, 255 P.3d 1275, 1281 (2011); see NRS 104.3203(2). A MERS assignment is effective for purposes of

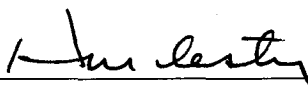
demonstrating transfer of the deed of trust and note.³ Edelstein, 128 Nev. at ___, 286 P.3d at 260-61.

Here, because the beneficial interest in the deed of trust and note were both held by U.S. Bank before the trustee's sale, and the trustee's sale was conducted by the duly appointed substitute trustee, we see no defect in the trustee's sale that would warrant voiding United Homes' title. See NRS 107.080(5). Based on the documents presented to the district court, we conclude that respondents met their burden, and that appellant failed to establish a genuine issue of material fact sufficient to withstand summary judgment. Because we conclude that summary judgment was properly granted, we also conclude that the lis pendens was property expunged. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


Saitta, J.


Pickering, J.


Hardesty, J.

³No other entity claimed to be the holder of the note, and thus there are no conflicting transfers that would call into question U.S. Bank's status as both the assignee of the beneficiary of the deed of trust and the holder of the note based on the MERS assignment.

⁴We have considered the remainder of appellant's arguments and conclude they lack merit and thus do not warrant reversal.

cc: Hon. Jennifer P. Togliatti, District Judge
Paul Ashley
Cooper Castle Law Firm, LLC
Eighth District Court Clerk