

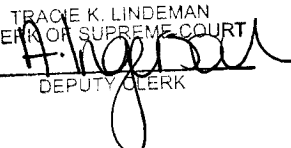
IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD F. BERGEN; AND ANGELA  
BERGEN,  
Appellants,  
vs.  
MORTGAGE LENDER SERVICES,  
INC.; MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.; AND  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY AS TRUSTEE OF THE LSF  
MRA PASS-THROUGH TRUST,  
Respondents.

No. 58557

FILED

JAN 17 2013

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing a wrongful foreclosure action. Eighth Judicial District Court, Clark County; Abbi Silver, Judge.

Appellants filed a complaint in the district court alleging causes of action for wrongful foreclosure, civil conspiracy, quiet title, and seeking declaratory and injunctive relief. Respondents filed a motion for judgment on the pleadings under NRCP 12(c), which the district court granted on claim preclusion grounds, based on the prior dismissal of appellants' previous similar complaint in another district court action. 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. Vasquez, 120 Nev. 377, 379, 91 P.3d 584, 585 (2004). An order granting a motion for judgment on the pleadings is subject to de novo review on appeal. See Gearhart v. Thorne, 768 F.2d 1072, 1073 (9th Cir. 198) (applying de novo review to an order granting an FRCP 12(c) motion).

Here, the district court granted respondents' motion for judgment on the pleadings based on claim preclusion, but the motion alternatively argued that the claims lacked merit and should be dismissed as a matter of law. Respondents attached to their motion copies of publicly recorded documents concerning the chain of title to the beneficial interest in the home loan and the deed of trust, which demonstrated that the deed of trust was properly assigned and that the trustee's sale was properly noticed.<sup>1</sup> See Edelstein v. Bank of New York Mellon, 128 Nev. \_\_\_, \_\_\_, 286 P.3d 249, 260 (2012) (holding that Mortgage Electronic Registration Systems, Inc., may validly assign deeds of trust and transfer promissory notes); Leyva v. National Default Servicing Corp., 127 Nev. \_\_\_, \_\_\_, 255 P.3d 1275, 1281 (2011) (holding that a party may demonstrate its status as holder of the note by showing a valid transfer of the note).

Having reviewed the record on appeal and considered the arguments of the parties, we conclude that judgment on the pleadings was appropriate as the publicly recorded documents conclusively demonstrated that the foreclosure was properly commenced. Thus, the claims for wrongful foreclosure and quiet title failed as a matter of law. As set forth in the complaint, appellants' remaining claim for civil conspiracy and

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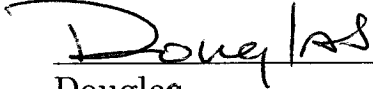
<sup>1</sup>NRCP 12(c) provides that if matters outside of the pleadings are considered, a motion for judgment on the pleadings shall be treated as a motion for summary judgment under NRCP 56. But, as with a motion under NRCP 12(b)(5), the district court may consider publicly recorded documents without converting the motion to one for summary judgment. Breliant v. Preferred Equities Corp., 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) (stating that a court may consider matters of public record in ruling on a motion to dismiss).

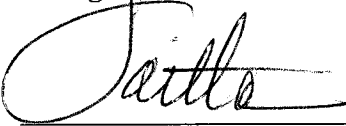
requests for declaratory and injunctive relief were predicated on the wrongfulness of the underlying foreclosure. Because the foreclosure was not wrongful, these derivative claims were properly dismissed on the pleadings as well.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

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

cc: Hon. Abbi Silver, District Judge  
Angela Bergen  
Richard F. Bergen  
Smith Larsen & Wixom  
Eighth District Court Clerk