

IN THE SUPREME COURT OF THE STATE OF NEVADA

KATHY HOUSDEN,
Appellant,
vs.
WELLS FARGO BANK, N.A.; LSI TITLE
COMPANY; TICOR TITLE OF
NEVADA, INC., A NEVADA
CORPORATION; AND STANLEY
SILVA,
Respondents.

No. 59421

FILED

DEC 18 2013

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

ORDER OF AFFIRMANCE

This is an appeal from a district court's grant of a motion to dismiss. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

Appellant Kathy Housden purchased a home and executed a deed of trust for \$300,000 to World Savings Bank, FSB. Golden West Savings Association Service Co. (Golden West) was listed as the trustee. World Savings Bank, FSB, later changed its name to Wachovia Mortgage, FSB, and then converted to a national bank by the name of Wells Fargo Bank Southwest, N.A., thus merging into Respondent Wells Fargo Bank, N.A. (Wells Fargo).

Housden defaulted on her loan, and Wells Fargo foreclosed. Respondent Ticor Title employed Respondent Stanley Silva. Silva signed and recorded the notice of default and election to sell, acting as Respondent LSI Title Company's (LSI) agent in doing so. LSI was National Default Servicing Corporation's (NDSC) agent. And, NDSC was

Wells Fargo's agent. Housden sued Wells Fargo, Golden West, NDSC, LSI, Ticor Title, and Silva for various state law claims.¹

All of the defendants besides Wells Fargo and Golden West moved for the district court to dismiss the claims for failure to state a claim. The district court granted those defendants' motion to dismiss. Wells Fargo and Golden West also moved for the district court to dismiss Housden's claims against them as preempted by the Home Owners' Loan Act (HOLA), 12 U.S.C. §§ 1461-70 (2006). The district court granted that motion, finding Housden's claims against Wells Fargo and Golden West were preempted by HOLA. The district court also denied Housden's motion for reconsideration.

This court reviews orders granting motions to dismiss for failure to state a claim de novo. *State ex rel. Johnson v. Reliant Energy, Inc.*, 128 Nev. ___, ___, 289 P.3d 1186, 1189 (2012). Likewise, we review a preemption determination de novo. *Id.* We uphold dismissal where the plaintiff can prove no set of facts that would entitle her to relief. *Id.*

Here, Housden has failed to show that the district court erred in dismissing her claims. First, Housden has failed to appeal her claims against any defendant except Wells Fargo. On appeal, Housden named Wells Fargo, LSI, Ticor Title, and Silva as respondents.² In her opening

¹Specifically, she asserted violations of NRS 107.080 (wrongful foreclosure), fraud in the inducement, unjust enrichment, breach of the covenant of good faith and fair dealing/interference with contractual relations, slander of title, and abuse of process.

²Housden also listed Golden West as a respondent. But, it is unclear whether Housden is appealing the dismissal of her claims against Golden West since Golden West is not included in the captions in this appeal and

continued on next page . . .

brief³, Housden identified the issues on appeal as whether the district court erroneously dismissed her claims and whether HOLA preempts her claims. However, Housden's legal arguments in her brief are based only upon her assertion that HOLA does not preempt her claims. She did not address liability as to Ticor Title, Silva, and LSI. Housden also did not include the district court's order dismissing the claims against Ticor Title, Silva, and LSI in her appendix. Finally, Housden stated in her docketing statement that the issue on appeal was whether HOLA preempted her claims. Thus, Housden has failed to appeal the dismissal of her claims against Respondents Ticor Title, Silva, and LSI. *See Guar. Nat'l Ins. Co. v. Potter*, 112 Nev. 199, 205 n.3, 912 P.2d 267, 272 n.3 (1996) (holding that if a party fails to include an issue in the briefings, then the party abandons the appeal of that issue). As a result, this court will consider only Housden's claims against Wells Fargo.

Below, Wells Fargo argued that HOLA preempted Housden's claims against it. The district court agreed and dismissed the claims against Wells Fargo on this basis. Housden's opening brief in this appeal provides insufficient legal and factual support to show HOLA does not preempt her claims against Wells Fargo. Thus, Housden has not provided this court with grounds to hold that the district court erred in dismissing

... continued


Housden did not address Golden West in her opening brief. In any event, as this order holds, Housden has failed to show that HOLA does not preempt her claims, and thus the district court did not err in dismissing her claims against Golden West.

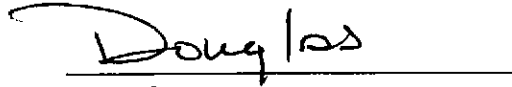
³Housden did not file a reply brief.

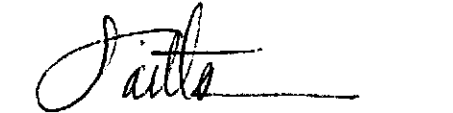
her claim. This court therefore holds the district court's dismissal of Housden's claims against Wells Fargo was not error.

Accordingly, we

ORDER the district court's judgment AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Second Judicial District Court Dept. 8
David Wasick, Settlement Judge
Parr Law Offices
McCarthy & Holthus, LLP/Las Vegas
Fidelity National Law Group
David J. Merrill, P.C.
Washoe District Court Clerk