

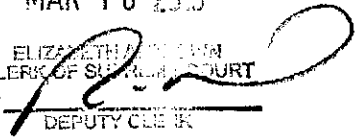
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

YUICHI MIYAYAMA, AN INDIVIDUAL,  
Appellant,  
vs.  
QUALITY LOAN SERVICE  
CORPORATION; AND NATIONSTAR  
MORTGAGE, LLC,  
Respondents.

No. 72951-COA

FILED

MAR 18 2019

ELIZABETH J. GILMAN  
CLERK OF SUPERIOR COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Yuichi Miyayama appeals from a district court order granting summary judgment in an action involving real property. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Miyayama purchased certain real property at a bankruptcy sale in 2014. That property was subject to a first deed of trust held by respondent Nationstar Mortgage, LLC; respondent Quality Loan Service Corporation was appointed trustee under the deed of trust. In 2016, respondents initiated a non-judicial foreclosure on the first deed of trust. Miyayama then filed the instant action to challenge the non-judicial foreclosure, asserting that respondents did not comply with the statutory notice requirements in NRS 107.080<sup>1</sup> and seeking declaratory relief as well as damages for unjust enrichment. Respondents filed a motion to dismiss,

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<sup>1</sup>Although NRS 107.080 was amended effective June 12, 2017, 2017 Nev. Stat., ch. 571, § 1.5 at 4085-91, we apply the version of the statute that was in effect in 2016 when the challenged foreclosure proceedings were commenced.

or, in the alternative, for summary judgment. The district court granted summary judgment to respondents and this appeal followed.

This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* General allegations and conclusory statements do not create genuine issues of fact. *Id.* at 731, 121 P.3d at 1030-31.

On appeal, Miyayama asserts that Nationstar failed to comply with the notice requirements of NRS 107.080 by not adequately providing the deficiency in performance or payment and by not serving the notice of default by certified mail, return receipt requested. Therefore, Nationstar would be enjoined from foreclosing on its first deed of trust. But the record supports the district court's findings that the notice of default was served by certified mail, return receipt requested, and that the notice provided sufficient information in compliance with NRS 107.080. These same district court findings also settle the declaratory relief claim; the notice properly identified the deficiency, was properly served, and Nationstar was entitled to move forward with the foreclosure. We therefore determine that the district court properly held that there were no genuine issues of material fact on these points. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029.

As for Miyayama's claim for unjust enrichment, the claim fails because Miyayama, not respondents, received the benefit of the payments she made to maintain and improve the property, as Miyayama had

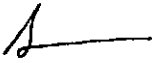
possession of the property at the time. *See Asphalt Products v. All Star Ready Mix*, 111 Nev. 799, 802, 898 P.2d 699, 701 (1995) (defining unjust enrichment). Moreover, the property was subject to a deed of trust which respondents are lawfully entitled to foreclose upon. *Cf. Las Vegas Dev. Grp. v. Yfantis*, 173 F.Supp.3d 1046, 1059 (D. Nev. March 24, 2016) (allowing an unjust enrichment claim resulting from a challenged HOA foreclosure because the purchaser made maintenance payments whilst possession and title of certain real property was in dispute). As such, respondents are entitled to judgment as a matter of law on the unjust enrichment claim. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

  
\_\_\_\_\_, J.  
Tao

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

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Ronald J. Israel, District Judge  
Law Offices of Mont E. Tanner  
McCarthy & Holthus, LLP/Las Vegas  
Eighth District Court Clerk

<sup>2</sup>To the extent that Miyayama makes further arguments on appeal, we have considered them and conclude that they lack merit.