

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD S. GALE,
Appellant,
vs.
SELECT PORTFOLIO SERVICING,
INC.; AND U.S. BANK NATIONAL
ASSOCIATION, AS TRUSTEE, IN
TRUST FOR REGISTERED HOLDERS
OF FIRST FRANKLIN MORTGAGE
LOAN TRUST, MORTGAGE LOAN
ASSET-BACKED CERTIFICATES,
SERIES 2007-FF1,
Respondents.

No. 72812

FILED

MAY 09 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Richard S. Gale appeals from a district court order denying a petition for judicial review of a foreclosure mediation decision. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

After defaulting on his home loan, Gale elected to mediate under Nevada's Foreclosure Mediation Program (FMP). The mediation ended unsuccessfully and the FMP administrator recommended that a foreclosure certificate issue.

Gale then petitioned for judicial review, arguing that respondents Select Portfolio Servicing, Inc., and U.S. Bank National Association, as trustee, in Trust for Registered Holders of First Franklin Mortgage Loan Trust, Mortgage Loan Asset-backed Certificates, Series 2007-FF1, did not have a complete chain of title that would establish their authority to foreclose, and that the foreclosure was time-barred by NRS 104.3118. The district court specifically found that respondents were in possession of the original promissory note, endorsed in blank, and that U.S.

Bank was the current beneficiary of the deed of trust securing the promissory note. The district court also concluded that longstanding Nevada case law held that a non-judicial foreclosure proceeding is not governed by the statute of limitations in NRS 104.3118. Therefore, the district court denied Gale's petition and directed the foreclosure certificate to issue. This appeal followed.

On appeal, Gale asserts that the chain of title for the deed of trust on his property is defective because it was assigned to LaSalle Bank Corporation, which was sold to Bank of America in 2007, and thereafter, LaSalle assigned the deed of trust to U.S. Bank. Gale argues that this assignment is somehow defective and, as such, respondents are unable to establish their authority to foreclose. We disagree, as the record establishes a complete chain of title leading to respondents and they possessed the original promissory note endorsed in blank, entitling them to enforce both the deed of trust and the promissory note. *See Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 514, 286 P.3d 249, 255 (2012) (“[T]o have standing to foreclose, the current beneficiary of the deed of trust and the current holder of the promissory note must be the same.”).


Gale next argues that more than six years has passed from his default on the original promissory note, and respondents cannot, therefore, foreclose upon his home. *See* NRS 104.3118(1) (“[A]n action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within 6 years after the due date or dates stated in the note or, if a due date is accelerated, within 6 years after the accelerated due date.”). But “if land is mortgaged to secure the payment of a promissory note . . . after an action at law on the note is barred by the statute of limitation[s], the [lienholder] may maintain his action of ejectment for the land

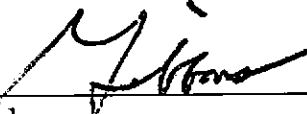
mortgaged.” *Henry v. Confidence Gold & Silver Mining Co.*, 1 Nev. 619, 622 (1865); see also *Facklam v. HSBC Bank USA*, 133 Nev. ___, ___, 401 P.3d 1068, 1071 (2017). More pointedly, the limitation periods to seek judicial action to enforce an obligation to pay does not bar respondents from seeking a non-judicial foreclosure. See *Facklam*, 133 Nev. at ___, 401 P.3d at 1071. To the extent that Gale argues that the district court did not adequately research or analyze relevant law on these issues, we find this argument unpersuasive as the district court requested additional briefing on this point and laid forth relevant legal precedents in its order. See *Leyva v. Nat’l Default Servicing Corp.*, 127 Nev. 470, 480, 255 P.3d 1275, 1281 (2011) (this court reviews a district court’s decision regarding a petition for judicial review in an FMP matter for an abuse of discretion).

Based on the foregoing, Gale has failed to establish that the district court abused its discretion in denying his petition and directing that a foreclosure certificate issue. See *id.* Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Kathleen E. Delaney, District Judge
Richard S. Gale
Smith Larsen & Wixom
Eighth District Court Clerk