

IN THE SUPREME COURT OF THE STATE OF NEVADA

MOBASHIR N. AHMAD,
Appellant,
vs.
DICKSON REALTY; FIRST AMERICAN
TITLE COMPANY OF NEVADA;
MARLYS BYRD; ROY BYRD; OPTION
ONE MORTGAGE COMPANY; REMAX
REALTY COMPANY; AND RICHARD G.
HILL,
Respondents.

No. 41233

FILED

JUL 21 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order entering a default judgment. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Appellant Mobashir Ahmad alleges the district court erred in entering a default judgment on counterclaims filed against him. In the context of his appeal, Ahmad also challenges the district court's dismissal of his claims for fraud, conspiracy, and illegal foreclosure. The parties are familiar with the facts, and we do not recount them except as necessary to our discussion.

An order granting a motion to dismiss under NRCP 12(b)(5) for failure to state a claim faces a rigorous standard of review on appeal.¹ "A complaint will not be dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiff could prove no set of facts which,

¹Blackjack Bonding v. Las Vegas Mun. Ct., 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000).

if accepted by the trier of fact, would entitle him or her to relief.”² Because appellant Mobashir Ahmad has failed to allege any set of facts entitling him to relief, we conclude that the district court properly dismissed his claims for conspiracy and fraud against respondents.³

Conspiracy

Ahmad alleges that the named respondents conspired to fraudulently foreclose on his property. An actionable civil conspiracy-to-defraud claim requires proof of a conspiracy agreement.⁴ A conspiracy agreement is defined as “a combination of two or more persons who, by some concerted action, intend to accomplish an unlawful objective for the purpose of harming another.”⁵

Because this court has already conclusively determined that the foreclosure was valid and legal, Ahmad’s claim for conspiracy was properly dismissed. In particular, Ahmad petitioned the district court for an injunction in early 2002 to stop the scheduled foreclosure sale of the property. The district court denied that petition, and, on appeal, we

²Simpson v. Mars Inc., 113 Nev. 188, 190, 929 P.2d 966, 967 (1997).

³Ahmad pled three causes of action in his second amended complaint. The third claim, alleging that respondents created “fraudulent indebtedness” in violation of the escrow document, is, for all intents and purposes, identical to his second claim alleging fraud.

⁴Jordan v. State Dep’t of Motor Vehicles, 121 Nev. __, __, 110 P.3d 30, 51 (2005).

⁵Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998).

affirmed, concluding that Ahmad was in default and that, as a result, foreclosure was appropriate.⁶

Under the law of the case doctrine, a prior decision by this court is controlling on subsequent appeals so long as the facts remain substantially the same.⁷ Therefore, even if Ahmad could prove that respondents acted in concord, he cannot show that they did so for an unlawful objective because we have already determined that the foreclosure was valid and the facts are substantially the same. As a result, the district court properly dismissed Ahmad's conspiracy claim pursuant to NRCP 12(b)(5).

Fraud

Ahmad advances two theories in support of his fraud claim against respondents. First, he alleges that respondents Marlys and Roy Byrd illegally added \$4,600 to the closing costs of the property in violation of the escrow agreement. Second, he alleges that respondent Option One falsely informed him that various mortgage payments were never received. With respect to Ahmad's fraud claims, we will treat the district court's order granting respondents' motion to dismiss as an order granting summary judgment because the district judge considered matters outside the pleadings.⁸ Summary judgment is appropriate when the pleadings and other facts on file demonstrate that no genuine issue of material fact

⁶Ahmad v. First American Title Co., Docket No. 39350 (Order of Affirmance, April 18, 2002).

⁷Geissel v. Galbraith, 105 Nev. 101, 103, 769 P.2d 1294, 1296 (1989).

⁸Coty v. Washoe County, 108 Nev. 757, 759, 839 P.2d 97, 98 (1992).

exists and that the moving party is entitled to judgment as a matter of law.⁹

A plaintiff alleging fraud is required to prove that he or she justifiably relied upon the misrepresentations of another and suffered damage as a result.¹⁰ Ahmad's first claim is unsupported by any such evidence in the record. When Ahmad decided to purchase the property in 1999, he borrowed \$4,600 from respondent Marlys Byrd to cover closing costs. Ahmad admits he signed a promissory note securing this loan. The evidence demonstrates that Ahmad knew he was required to pay the note; therefore, he cannot now argue in good faith that he was not aware of his responsibility to pay back those funds, even if the promissory note was not mentioned in the escrow agreement. Thus, there is simply no evidence to support the element of justifiable reliance.

Likewise, Ahmad's claim that respondent Option One caused the foreclosure by incorrectly informing him and the Byrds that he missed a payment fails to state a claim for fraud. The only reliance Ahmad has alleged is that the Byrds relied upon Option One's allegedly false statement that he did not submit his payment and, therefore, initiated foreclosure proceedings. To state a claim for fraud, however, Ahmad must show that the alleged misrepresentation played a material part in leading him to adopt his particular course of conduct, that is, that he personally

⁹American Federal Savings v. Washoe County, 106 Nev. 869, 871, 802 P.2d 1270, 1272 (1990).

¹⁰See Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110-11, 825 P.2d 588, 592 (1992).

relied upon the misrepresentation.¹¹ Ahmad has failed to do so; therefore, the district court's dismissal of his fraud claim was proper.

Validity of default judgment

The district court also entered default judgment in favor of Marlys Byrd for the outstanding amount owed on the \$4,600 promissory note. Although Ahmad indicated in his notice of appeal that he intended to challenge the default judgment, he has not raised this issue in his briefs before this court. Therefore, any argument regarding the validity of this judgment is waived.¹²

Conclusion

We conclude that Ahmad has failed to state a cognizable claim for relief against respondents in this matter. Given that he has been afforded several chances to correct the flaws in his pleadings and failed to

¹¹Blanchard v. Blanchard, 108 Nev. 908, 911, 839 P.2d 1320, 1322 (1992). (quoting Lubbe v Barba, 91 Nev. 596, 600, 540 P.2d 115, 118 (1975)).

¹²See Weaver v. State, Dep't of Motor Vehicles, 121 Nev. ___, ___, 117 P.3d 193, 198-99 (2005); accord Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

do so, dismissal with prejudice was appropriate.¹³ Accordingly, we
ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Brent T. Adams, District Judge
Mobashir N. Ahmad
Hale Lane Peek Dennison & Howard/Reno
Carl M. Hebert
Richard G. Hill
Lyle & Murphy
Mortimer Sourwine & Sloane, Ltd.
Rawlings Olson Cannon Gormley & Desruisseaux
Washoe District Court Clerk

¹³Because we conclude the district court properly dismissed Ahmad's claims, we do not reach the question whether dismissal was proper for failure to join an indispensable party.