

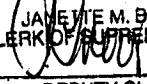
IN THE SUPREME COURT OF THE STATE OF NEVADA

MALYND A SALAMONE,
Appellant,
vs.
ROBERT A. OTTO, AN INDIVIDUAL,
Respondent.

No. 48225

FILED

NOV 14 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order awarding damages in a real property action. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant Malynda Salamone defaulted on a loan secured by a deed of trust held by Washington Mutual Home Loans ("WAMU"). Respondent Robert A. Otto subsequently purchased the property secured by the deed at the trustee's sale of the property. When Otto then attempted to evict Salamone from the property, she filed a district court complaint against WAMU, the trustee, and Otto, seeking declaratory relief to void the allegedly defective sale. Otto counterclaimed, requesting, among other things, unjust enrichment damages to require Salamone to pay the mortgage, taxes, insurance and other maintenance costs for continuing to reside in the home.

The district court granted summary judgment to WAMU, the trustee, and Otto as to liability, reserving Otto's damages claims for

resolution after further proceedings.¹ During the pending litigation, the court allowed Salamone to remain on the property, so long as she made periodic payments into a blocked, interest-bearing bank account, which she did.

Ultimately, Salamone was removed from the property, and the district court found that she had been improperly in possession of the property for a total of 1,176 calendar days. Consequently, the court awarded Otto \$91,232.89, consisting of \$77,875 for the property's rental value and \$13,357.89 in reimbursements for real property taxes Otto had paid for the tax years between 2002 to 2006, plus statutory interest. Additionally, the court awarded Otto \$3,393.73 from foreclosure surplus funds as reimbursement for delinquent real property taxes paid by him at the time of the foreclosure sale.

Salamone has appealed the district court's order awarding Otto damages, contending that it provides double recovery to Otto, because he already was fully compensated by a substantial increase in the property's value. Salamone also contends that the district court essentially (and improperly) awarded Otto a deficiency judgment under NRS 40.459, which limits any deficiency judgment resulting from a foreclosure to no more than the difference between fair market value of the property and the amount owed, plus interest. Salamone does not challenge the award to Otto for property taxes paid by him.

¹Salamone does not appeal the summary judgment.

The standard of review on appeal is whether the district court abused its discretion in calculating the award of damages.²

Having reviewed the parties' briefs and joint appendix, we conclude that Salamone's arguments are without merit. First, Salamone is apparently seeking to benefit from the increase in the property's fair market value during a time when she did not own the property, in order to offset the rental damages awarded to Otto for her improper possession of the property after he purchased it. But Otto did not doubly recover, as he was entitled, as the rightful owner of the property, to all the benefits of ownership, including the opportunity to rent the property and to benefit from any increase in the property's value.

Second, the deficiency judgment provisions of NRS Chapter 40 are not applicable to this case, as Otto was not the judgment creditor or the beneficiary of the deed of trust in the foreclosure action against Salamone, and as the foreclosure proceedings did not result in any deficiency.³

We conclude, therefore, that the district court properly awarded Otto the property's fair rental value for the time that Salamone

²Asphalt Prods. v. All Star Ready Mix, 111 Nev. 799, 802, 898 P.2d 699, 701 (1995) (citing Flamingo Realty v. Midwest Development, 110 Nev. 984, 987, 879 P.2d 69, 71 (1994)).

³See NRS 40.455(1) (providing that the "judgment creditor or the beneficiary of the deed of trust" may apply within six months after the foreclosure or trustee's sale for a deficiency judgment); NRS 40.459.

remained in possession of the property after Otto's purchase.⁴
Accordingly, we affirm the district court's order.

It is so ORDERED.

Maupin, C.J.
Maupin

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Michelle Leavitt, District Judge
Joshua M. Landish
S. Craig Stone
Eighth District Court Clerk

⁴See Asphalt Prods., 111 Nev. at 802, 898 P.2d at 701 (stating that under a quantum meruit or unjust enrichment theory of recovery, the proper measure of damages is the reasonable value of the services, and quoting Flamingo Realty, 110 Nev. at 987, 879 P.2d at 71); cf. Sanguinetti v. Strecker, 94 Nev. 200, 210, 577 P.2d 404, 411 (1978) (considering the loss of potential rent during the defendant's occupation of the property as part of the compensatory damages to be paid in a fraud action); Mark S. Dennison, Landlord's Recovery of Damages for the Tenant's Wrongful Holding Over of Leased Premises, 68 Am. Jur. Proof of Facts 3d 1, §23 (2007) (discussing cases that have charged a holdover tenant with the property's fair rental value).