

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HUMBERTO CASTANEDA, AS AN
INDIVIDUAL; AND FRANCES
CASTANEDA, AS AN INDIVIDUAL,
Appellants,

vs.

MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., A
FOREIGN CORPORATION; US BANK
TRUST NATIONAL ASSOCIATION, AS
DELAWARE TRUSTEE; US BANK
NATIONAL ASSOCIATION, AS CO-
TRUSTEE FOR GOVERNMENT LOAN
SECURITIZATION TRUST 2011-FV1;
WELLS FARGO BANK, N.A.; AND
NATIONAL DEFAULT SERVICING
CORPORATION,
Respondents.

No. 71639

FILED

SEP 10 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Humberto and Frances Castaneda appeal from a district court order dismissing their complaint in a real estate action. Eighth Judicial District Court, Clark County; Rob Bare, Judge.

The appellants (hereinafter "Castaneda") purchased property with a loan secured by a deed of trust on the property. Respondent Mortgage Electronic Registration Systems, Inc. (MERS) held the deed of trust and first assigned it to respondent Wells Fargo Bank, N.A.; Wells Fargo later substituted respondent National Default Servicing Corporation (NDSC) as trustee under the deed of trust. Castaneda defaulted on the loan and NDSC recorded a Notice of Default and of Election to Sell in 2010. NDSC rescinded that notice in 2011. In 2013, NDSC filed another Notice of Default and Election to Sell. MERS then assigned a beneficial interest

to respondent U.S. Bank Trust National Association, not in its individual capacity, but solely as a trustee; Wells Fargo then assigned its beneficial interest in the deed of trust to US Bank. NDSC remained trustee on the deed of trust and recorded several Notices of Sale setting a foreclosure sale for the subject property pursuant to NRS Chapter 107. The foreclosure sale occurred and the trustee's deed was recorded January 25, 2016.

Then, on May 23, 2016, Castenada filed a complaint for declaratory and injunctive relief, as well as wrongful foreclosure and quiet title. Castenada's complaint alleged that the assignments of interest relating to the subject property were improper and the respondents could not maintain foreclosure proceedings. US Bank filed a motion to dismiss, or in the alternative, for summary judgment, arguing that Castenada missed the time period to file their action pursuant to NRS 107.080(5) or (6). The district court granted the motion to dismiss, and this appeal followed.

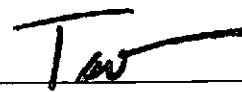
An order granting an NRCP 12(b)(5) motion to dismiss is reviewed de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). A decision to dismiss a complaint under NRCP 12(b)(5) is rigorously reviewed on appeal with all alleged facts in the complaint presumed true and all inferences drawn in favor of the complaint. *Id.* Dismissing a complaint is appropriate "only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief." *Id.* at 228, 181 P.3d at 672. All legal conclusions are reviewed de novo. *Id.*

On appeal, Castenada argues that the foreclosure sale was invalid because US Bank did not have the authority to foreclose as the assignments from MERS to Wells Fargo and US Bank were improper. But

in dismissing Castenada's complaint, the district court instead focused on the short period of limitations listed in NRS 107.080(5) and (6) pertaining to challenges to nonjudicial foreclosures. In making this determination, the district court did not have the benefit of the Nevada Supreme Court's recent decision in *Las Vegas Development Group, LLC v. Blaha*, 134 Nev. ___, 416 P.3d 233 (2018). There, the court determined that the statute of limitations contained in NRS 107.080 did not apply to all challenges to a nonjudicial foreclosure sale. For the 30 or 90 day statute of limitations to apply, the challenge to the nonjudicial foreclosure must be based upon a violation of NRS 107.080's procedural aspects. *See Blaha*, 134 Nev. at ___, 416 P.3d at 237. Accordingly, we reverse and remand this matter for the district court to consider whether Castenada's complaint is based in the procedural aspects of NRS 107.080.

It is so ORDERED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Rob Bare, District Judge
Robert F. Saint-Aubin, Settlement Judge
Brandon L. Phillips, Attorney At Law, PLLC
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Eighth District Court Clerk