

1 IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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4 PATRICIA ANTHONY and
5 WILLIAM ANTHONY

6 Appellant,

SUPREME COURT CASE NO. 79284-COA

Electronically Filed
Dec 28 2020 09:51 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

7
8 vs.

9 FEDERAL NATIONAL MORTGAGE
10 ASSOCIATION,

11 Respondent.
12 _____/

13 **ERRATA TO PETITION FOR REHEARING**

14 COME NOW APPELLANTS, PATRICIA ANTHONY and WILLIAM ANTHONY, by
15 and through their attorney, Michael Lehnern, Esq., and files with this court the following Errata
16 to the filed Petition for Rehearing. This Errata consists of a complete copy of Exhibit "1" to the
17 Petition for Rehearing which was filed with this court that incorporate the missing page 5 of the
18 Court's December 16, 2020 Order.
19

20 DATED this 28th Day of December, 2020.

21 **AFFIRMATION**
22 **Pursuant to NRS 239B.030**

23 The undersigned does hereby affirm that the preceding document filed in case herein
24 does not contain the social security number of any person.

25 /s/ Michael Lehnern, Esq.
26 Michael Lehnern, Esq.
27 Attorney for Appellants.
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/s/ Dolores Stigall
Dolores Stigall

Exhibit 1

Exhibit 1

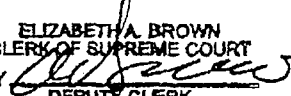
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PATRICIA ANTHONY; AND WILLIAM
ANTHONY,
Appellants,
vs.
FEDERAL NATIONAL MORTGAGE
ASSOCIATION,
Respondent.

No. 79284-COA

FILED

DEC 16 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Patricia and William Anthony appeal from a district court order on competing summary judgment motions, where the district court granted Fannie Mae's motion and denied the Anthonys' motion and counterclaims. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

Patricia and William Anthony (Anthonys) obtained a refinance loan on their property.¹ Their property consisted of a parcel of land with two manufactured homes. The two manufactured homes, a 1996 Fuqua and a 1997 Fuqua, were combined to create one large residence. The two manufactured homes were treated as one residence (referred to as the manufactured home) and included in the appraisal for the loan, but no personal property was included in the estimate of the final value. The appraisal specifically recognized that the residence was "permanently attached to the site."

The Anthonys defaulted on their loan, and the Federal National Mortgage Association (Fannie Mae) purchased the property at a non-judicial foreclosure sale in 2012. Yet, the Anthonys refused to vacate the property. Because the Anthonys would not leave, Fannie Mae brought an

¹We do not recount the facts except as necessary to our disposition.

unlawful detainer action against the Anthonys, which the court granted. Despite this, and two subsequent writs of restitution, the Anthonys returned to the property. Fannie Mae then sued the Anthonys for trespass and injunctive relief to prevent the Anthonys from re-entering the property and continuing to occupy the property. The Anthonys responded with counterclaims for violation of Article Nine of the Uniform Commercial Code (UCC), conversion, and abuse of process/excessive attachment. Both parties moved for summary judgment.

The district court granted summary judgment in favor of Fannie Mae and denied it for the Anthonys. The district court also denied all of the Anthonys' counterclaims, finding that each were time-barred and failed as a matter of law.

The Anthonys argue on appeal that the district court erred in granting Fannie Mae's motion for summary judgment and in finding Fannie Mae properly foreclosed on the 1996 manufactured home, and also erred in finding Fannie Mae did not convert that manufactured home to real property in 2015 when it reclassified it for tax purposes and, in doing so, violated Article Nine of the UCC.²

The Anthonys specifically argue that the 1996 Fuqua was personal property, and therefore, Fannie Mae did not obtain lawful possession of it at the foreclosure sale. They assert that when Fannie Mae converted it to real property for tax purposes, Fannie Mae either violated

²The Anthonys also argue that the district court erred by not allowing them to use the defense of recoupment. This argument is inapplicable because the district court did not award Fannie Mae any money.

Article Nine of the UCC by failing to give them notice³ and therefore owes them statutory damages under NRS 104.9625(3)(b)⁴, or, in the alternative, that Fannie Mae wrongfully converted it and owes them actual damages.⁵ Fannie Mae argues that the manufactured home was included in the property properly foreclosed upon when the Anthonys defaulted on the refinanced loan, and further that the Anthonys' counterclaims were time-barred. We agree with Fannie Mae and affirm the district court's order.

We review a district court 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, viewed in the light most favorable to the non-moving party, demonstrate that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Id.* "A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party." *Id.* at 731, 121 P.3d at 1031.

³The Anthonys argue that Fannie Mae "sold" the manufactured home in 2015 when it converted it to real property and that the UCC required Fannie Mae to give notice to the Anthonys about the "sale." However, we conclude Fannie Mae lawfully owned the manufactured home when it purchased it at the foreclosure sale in 2012 and therefore it was not a "sale" when Fannie Mae converted it to real property for tax purposes in 2015.

⁴The Anthonys cite to NRS 104.625(3)(b) in their motion for summary judgment and on appeal; however, that statute does not exist. We believe they are referring to NRS 104.9625(3)(b) and will review this matter pursuant to that statute.

⁵As we conclude Fannie Mae lawfully obtained the 1996 manufactured home at the foreclosure sale, the Anthonys are not entitled to statutory damages under the UCC, and subsequent to the foreclosure sale Fannie Mae owned the manufactured home, thus, it could not convert property it already owned.


There is overwhelming evidence that Fannie Mae properly foreclosed on the Anthonys' property, which included the manufactured home. The Anthonys' loan application listed the home, including the manufactured home, as collateral, the Anthonys had an extensive appraisal done on their home for the loan application, and the deed of trust issued at foreclosure listed the Anthonys' address, as well as all improvements to the land. Even if the manufactured home was not real property, it was an improvement and subject to the foreclosure sale. *See Flyge v. Flynn*, 63 Nev. 201, 230, 166 P.2d 539, 522 (1946) (holding that improvements include buildings on land).

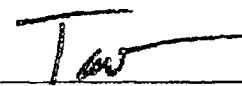
"Summary judgment is proper when a cause of action is barred by the statute of limitations." *Clark v. Robison*, 113 Nev. 949, 950-51, 944 P.2d 788, 789 (1997). Further, the statute of limitations for an "action upon a liability created by statute, other than a penalty or forfeiture," and for an "action for taking, detaining or injuring personal property," is three years. NRS 11.190(3)(a); NRS 11.190(3)(c).

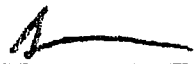
The statute of limitations bars the Anthonys' counterclaims. The foreclosure sale occurred in March of 2012, which is when the statute of limitations began to run. The Anthonys did not claim then that Fannie Mae did not lawfully own the manufactured home. Later that year in November of 2012, Fannie Mae instituted a successful unlawful detainer action to remove the Anthonys from the property—including both manufactured homes. The Anthonys did not claim then that Fannie Mae did not lawfully own the manufactured home. Fannie Mae successfully brought a writ of restitution in 2013 and again in 2016. The Anthonys did not claim then that Fannie Mae did not lawfully own the manufactured home. Needless to say, when the Anthonys filed their counterclaims in

2017, about five years after the foreclosure sale, the statute of limitations on their claims against Fannie Mae's ownership of the manufactured home had expired. See NRS 11.190(3)(a); NRS 11.190(3)(c). Accordingly, the district court did not err in finding the Anthonys' counterclaims were time barred. Accordingly, we

ORDER the entire judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Barry L. Breslow, District Judge
Michael C. Lehnert
Akerman LLP/Las Vegas
Washoe District Court Clerk