

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS L. CORNWELL, A NEVADA
RESIDENT,

Appellant,

vs.

NEIL E. SCHULTZ, A NEVADA
RESIDENT, A/K/A THE NEIL E.
SCHULTZ TRUST DATED JANUARY
29, 2016,

Respondent.

No. 82106

FILED

JAN 08 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER REGARDING PRO BONO COUNSEL

This is a pro se appeal from a district court order in a quiet title action. Having considered the documents transmitted by the district court, this court has determined that the appointment of pro bono counsel to represent appellant would assist this court in reviewing this appeal. By this order, the court expresses no opinion as to the merits of this appeal.

Pro bono counsel is an attorney who provides legal services without charge for the benefit of the public good. The appointment of pro bono counsel provides attorneys with an opportunity to volunteer legal services in furtherance of their professional responsibility and, at the same time, allows financially eligible litigants access to quality legal representation without cost. Counsel will be appointed for purposes of this appeal only and will participate in oral argument. Currently, the Pro Bono Committee of the Appellate Litigation Section of the State Bar of Nevada (Pro Bono Committee), in conjunction with the Legal Aid Center of Southern Nevada, has developed a pro bono appellate program to assist the public and this court. This case is hereby referred to the program established by

the Pro Bono Committee to evaluate whether appellant can benefit from the program.

Accordingly, the clerk of this court shall transmit a copy of this order and the attached district court order and case summary to the Legal Aid Center of Southern Nevada for financial eligibility screening. If appellant qualifies and does not object to pro bono counsel, the Legal Aid Center in cooperation with the Pro Bono Committee shall locate a volunteer attorney from the program to represent appellant. Once an attorney is located, the attorney shall file a notice of appearance in this court within 60 days from the date of this order. Briefing and oral argument will be scheduled thereafter. Alternatively, if appellant is not financially eligible or objects to pro bono representation, or if a volunteer attorney cannot be located, the Legal Aid Center of Southern Nevada shall notify this court in writing within 60 days from the date of this order. In such case, oral argument will not be held. The briefing schedule in this appeal is suspended pending further order of this court.

It is so ORDERED.

1. J. J. J., C.J.

cc: Thomas L. Cornwell
John Bartlett, Attorney at Law
Legal Aid Center of Southern Nevada, Barbara E. Buckley,
Executive Director
Anne R. Traum, Coordinator, Appellate Litigation Section,
Pro Bono Committee, State Bar of Nevada
Kelly Dove

Docket No. 82106
Cornwell v. Schultz

Appellant had title to a parcel of land and lived there in a mobile home titled to a third party. Respondent obtained title to the parcel of land after he foreclosed on a deed of trust securing a promissory note he purchased. Respondent then filed a quiet title action against appellant. Appellant asserted that the promissory note was not in default. He also asserted that he was not provided with the statutory notices required when foreclosing on owner-occupied housing; these notices were required, appellant argued, because the mobile home was converted to real property. The district court determined that appellant failed to provide evidence that the balance of the promissory note was paid down. The court also concluded that the mobile home was never converted from personal property to real property and appellant was not entitled to the statutory notices for foreclosing on owner-occupied housing.

REC'D & FILED

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CLERK
BY: [Signature]
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

NEIL E. SCHULTZ, a Nevada resident, aka
The Neil E. Schultz Trust dated January 29,
2016,

Plaintiff,

vs.

THOMAS L. CORNWELL, a Nevada
resident, DOES 1 through 5, inclusive.,

Defendant.

Case No.: 18 RP 00018 1B

Dept. 2

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND JUDGMENT

In this action plaintiff Neil Schultz is seeking a judgment quieting title to a parcel of land located at 2355 Columbia Way, Carson City, Nevada (herein referred to as the Columbia Way parcel). Mr. Schultz obtained record title to Columbia Way parcel as the successful bidder at a foreclosure sale held on August 23, 2018. Defendant Thomas L. Cornwell, who previously held title to this parcel pursuant to a quitclaim deed, challenged the validity of the foreclosure sale. The trial of this matter was held on August 5, 2020, at which time testimony and documents were submitted into the record. The Court ordered the parties to file written closing arguments, the last of which was filed on October 20, 2020. The Court having reviewed the evidence in the record and the arguments of the parties makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Mr. Schultz became the record title holder of the Columbia Way parcel by virtue of a Trustee's Deed recorded in the Carson City Recorder's Office on September 26, 2018 after Mr.

1 Schultz foreclosed on a deed of trust securing a promissory note he had previously purchased.
2 The Trustee's Deed was admitted into evidence as Exhibit 21A.

3 Mr. Schultz directed Automatic Funds Transfer Services, dba Allied Trustee Services, the
4 company that conducted the foreclosure sale, to convey title to the Columbia Way parcel to the
5 Neil E. Schultz Trust dated January 29, 2016. This trust is Mr. Schultz's revocable inter vivos
6 trust, so Mr. Schultz is the real party in interest.

7 The recitals in the Trustee's Deed accurately describe the transactions that took place
8 from the date Karen Lynn Clarke, the person who executed the promissory note purchased by
9 Mr. Schultz, purchased the Columbia Way parcel until the date the foreclosure sale took place.
10 To summarize, on or about May 2, 2003, Karen Lynn Clarke executed a promissory note in the
11 principal sum of \$32,000.00 in favor of George Soetje. This note was admitted into evidence as
12 Exhibit 4. Under the terms of this note, the loan was scheduled to be paid in monthly
13 installments of \$306.82 for five years, although the payments were set based on a 17 year
14 amortization. This note was secured by a deed of trust executed by Ms. Clarke and recorded on
15 May 8, 2003. The deed of trust was admitted into evidence as Exhibit 5. The promissory note
16 was modified by Ms. Clarke and Mr. Soetje on a couple of subsequent occasions, as described in
17 the Trustee's Deed. These written modifications were admitted into evidence as Exhibits 7 and
18 8. Mr. Cornwell admitted these facts in his Counterclaim and in his testimony at trial.

19 In May 2010 there was a final modification of the promissory note. The terms of this
20 modification and an amortization table of payments was admitted into evidence as Exhibit 10.
21 At the time of this modification, the principal balance due was \$37,651.45, and monthly
22 payments were set at \$410.00 for 175 months. Mr. Cornwell admitted his familiarity with
23 Exhibit 10 and of this final modification at trial.

24 As per the recitals in the Trustee's Deed, and in testimony at trial, Mr. Schultz asserted
25 that on or about June 5, 2010 Ms. Clarke defaulted on the promissory note. While Mr. Cornwell
26 refused to admit the payments on the note were in default, his only evidence that payments were
27 made after June 5, 2010 is a written list of purported payments he attached to his Counterclaim.
28 During discovery Mr. Cornwell was asked to produce proof of any of these purported payments,

1 which he failed to do. Mr. Cornwell did not provide any evidence of these purported payments
2 at trial either. In the absence of such proof the Court finds the promissory note, as modified in
3 May 2010, was in default when Ms. Clarke failed to make her June 5, 2010 payment, and no
4 additional payments were made on the promissory note.

5 Ms. Clarke conveyed title to the Columbia Way parcel to Mr. Cornwell by Quitclaim
6 Deed dated February 9, 2017. This deed was entered into evidence as Exhibit 11.

7 Under the express terms of the deed of trust executed by Ms. Clarke:

8 IN THE EVENT THE HEREIN DESCRIBED PROPERTY, OR ANY PORTION
9 THEREOF, OR ANY INTEREST THEREIN, IS SOLD, AGREED TO BE SOLD,
10 CONVEYED OR ALIENATED, BY THE TRUSTOR, OR BY THE OPERATION OF
11 LAW OR OTHERWISE, ALL OBLIGATIONS SECURED BY THIS INSTRUMENT,
12 IRRESPECTIVE OF THE MATURITY DATES EXPRESSED THEREIN, AT THE
13 OPTION OF THE HOLDER THEREOF AND WITHOUT DEMAND OR NOTICE
14 SHALL IMMEDIATELY BECOME DUE AND PAYABLE.

15 The same language appears in the promissory note.

16 On or about March 26, 2018 Mr. Soetje sold his beneficial interest in the Clarke
17 promissory note to plaintiff Neil Schultz. This sale is evidenced by Exhibits 26 and 27, admitted
18 into evidence, as well as the testimony of Mr. Schultz. On March 30, 2018 the beneficial interest
19 of Mr. Soetje in Ms. Clarke's promissory note and deed of trust was assigned to Mr. Schultz.
20 Exhibit 21A. Mr. Schultz testified that Mr. Soetje made him aware of the fact that the
21 promissory note executed by Ms. Clarke had been in default since June 2010.

22 After plaintiff Schultz obtained the assignment of the Clarke note and deed of trust from
23 Mr. Soetje, he retained Automatic Funds Transfer Services, dba Allied Trustee Services to
24 commence foreclosure proceedings against the Columbia Way parcel under the deed of trust.
25 Defendant Cornwell was duly served with the Notice of Default and Election to Sell, and later
26 with the Notice of Sale. These documents are in evidence as Exhibits 15 and 20A.

27 At the foreclosure sale on August 23, 2018, Mr. Schultz made the highest bid for the
28 property, and so received the Trustee's Deed to the property. Exhibit 21A.

1 Mr. Cornwell resides in a mobile home on the Columbia Way parcel. According to the
2 Manufactured Housing Division of the Department of Business and Industry, title to the mobile
3 home remains in the name of Clarence Childers. Exhibit 19.

4 LEGAL ANALYSIS

5 Defendant Thomas Cornwell challenged the validity of the foreclosure process and sale
6 on two grounds. First, in his Counterclaim he alleged that payments were made on the
7 promissory note after it was modified in May 2010, between May 4, 2011 and May 17, 2016
8 were never credited to the principal balance due on the note. As a result Cornwell alleged, the
9 amount due on the promissory note quoted to him by Allied Foreclosure Services during the
10 foreclosure process was overstated.

11 Mr. Cornwell's claim that payments made on the promissory note had not been credited
12 to the principal balance due as of the date the foreclosure commenced fails because he did not
13 provide proof of these payments either in response to plaintiff's discovery requests to produce
14 such proof, or at trial, despite ample time to produce this proof. Absent any evidence that the
15 amount of the principal balance set forth in Exhibit 10 should have been reduced through
16 payments made after May 2010, Mr. Cornwell was provided an accurate accounting of the
17 amount owed when he inquired during the foreclosure sale process.

18 In addition, by the express terms of the promissory note and the deed of trust executed by
19 Ms. Clarke, a sale or transfer of title to the Columbia Way parcel caused the entire balance owed
20 on the note to become due and payable. Mr. Cornwell's challenge to the foreclosure sale on the
21 ground that he was not provided with an accurate statement of the amount owed is without merit.

22 Mr. Cornwell's second ground for challenging the foreclosure sale is his claim that at the
23 time the Notice of Default and Election to Sell was served and recorded at the commencement of
24 the foreclosure process, he was not provided with the legally required notices and information
25 required to be given to homeowners whose property is being foreclosed, as set forth in NRS
26 107.0805, NRS 107.086 and NRS 107.0865. Mr. Cornwell's argument rests on the fact that he
27 resides in the mobile home situated on the Columbia Way parcel and that it was converted to real
28 property.

1 Mr. Cornwell is of the opinion that the mobile home was converted to real property by
2 virtue of an Affidavit of Conversion of Manufactured Home/Mobile Home to Real Property
3 executed by Clarence Childers, a former owner of the land at 2355 Columbia Way on October 4,
4 2001 and recorded on October 24, 2001. See Exhibit 2A. As it happens, however, the execution
5 and recording of this Affidavit was but the first step in the process of converting a mobile home
6 from personal property to a permanent fixture of the real property on which it sits.

7 NRS 361.244 describes the process by which a mobile home may be converted to real
8 property. First, NRS 361.244(1) states that a mobile home is eligible to become real property if
9 it becomes permanently affixed to the land which is owned by the owner of the mobile home.
10 As noted in the record, Mr. Childers owned the mobile home and the land on which it was
11 situated on October 4, 2001, the date he executed the Affidavit. However, he sold the property
12 to MaryLynn Cavender on or about October 22, 2001 as evidenced by the Grant, Bargain and
13 Sale deed of that date, recorded on October 23, 2001. See Exhibit 1. The Affidavit was then
14 recorded by Mr. Childers on October 24, 2001, the day after he transferred title to the real
15 property out of his name. Accordingly, Mr. Childers no longer owned the land before the
16 process for conversion described in NRS 361.244(2) began.

17 The remaining steps outlined in NRS 361.244(2) to complete the conversion were never
18 completed. This includes sending the recorded Affidavit and all other documents relating to the
19 mobile home in its former condition as personal property to the Manufactured Housing Division
20 of the Department of Business and Industry, with a check, and thereafter a written verification
21 from the Division sent to the county assessor that the mobile home has been converted to real
22 property. NRS 361.244(1)(4). Accordingly, the mobile home has remained on the tax rolls of
23 Carson City as personal property, and in the records of the Manufactured Housing division of the
24 Dept of Business and Industry, since 2001 to date. Title to the mobile home has never been
25 transferred out of Mr. Childers' name. See Exhibit 19.

26 The legal effect of the mobile home remaining personal property and the title remaining
27 in the name of Clarence James Childers or Rose Joanne Childers, trustees of the Childers Family
28 Trust dated 1/24/1997, is that the deed of trust securing the promissory note executed by Karen

1 Lynn Clarke is not a deed of trust or trust agreement "which concerns owner-occupied housing."
2 The deed of trust executed by Karen Lynn Clarke does not list the mobile home as collateral for
3 the loan Ms. Clarke obtained from George Soetje. The deed of trust only served as a lien on the
4 parcel of land described in the deed of trust, not the mobile home.

5 Furthermore, Karen Lynn Clarke never held record title to the mobile home that sits on
6 the land. The mobile home is not described on any of the deeds to the parcel of land located at
7 2355 Columbia Way, Carson City, Nevada. As Ms. Clarke simply executed a quitclaim deed to
8 defendant Thomas Cornwell, he took whatever rights she had in the land subject to the deed of
9 trust in favor of Mr. Soetje. There is no evidence of any written contract or agreement by which
10 the mobile home owned by the Childers Family Trust was conveyed to anyone, which is why the
11 Manufactured Housing Division shows record title of the mobile home still resides with the
12 trustees of the Childers Family Trust.

13 As the promissory note and deed of trust executed by Ms. Clarke only pertains to the
14 parcel of land at 2355 Columbia Way, Carson City, this fact affects the type of notice Mr.
15 Cornwell was entitled to receive during the foreclosure process. It is true that Mr. Cornwell was
16 not provided with information pertaining to the right to seek a loan modification as described in
17 NRS 107.086 and NRS 107.0865, nor was he provided with the information listed in NRS
18 107.0805(3) pertaining to the precise amount in default, the principal amount of the obligation,
19 the amount of accrued interest and late charges, or a good faith estimate of the fees imposed in
20 connection with the power of sale. The reason Mr. Cornwell was not provided with this
21 information is because he was not legally entitled to that information.

22 The provisions of NRS 107.0805 by its terms only apply in the case of a residential
23 foreclosure. See NRS 107.0805(1). The foreclosure in this case was not a residential
24 foreclosure, it was a foreclosure of a parcel of land only. This is reflected in the Declaration of
25 Value recorded at the same time as the Trustee's Deed. Exhibit 21A. The mobile home on the
26 property was not part of the foreclosure proceeding. Furthermore, NRS 107.0805(3) states that
27 the specific information on the amount in default, the principal amount of the obligation, etc.,
28 need only be sent to the obligor or borrower of the obligation or debt secured by the deed of trust

1 being foreclosed. Mr. Cornwell was not an obligor of the promissory note executed by Ms.
2 Clarke, nor the borrower of the existing obligation.

3 The fact that the foreclosure at issue was only of the land, not the mobile home, also
4 made the provisions of NRS 107.086 and NRS 107.0865 inapplicable to Mr. Cornwell. The
5 deed of trust does not pertain to "owner occupied housing" even though Mr. Cornwell was living
6 in the mobile home on the property. Allied Foreclosure Services informed Mr. Cornwell that he
7 was not entitled to the additional notices set forth in NRS 107.086 and NRS 107.0865 because he
8 was not eligible for loan mediation when the mobile home he resided in was not part of the real
9 property being foreclosed. See Exhibit 18. Clearly, an additional reason why these provisions
10 are inapplicable to Mr. Cornwell is, again, he is neither the obligor under the promissory note
11 secured by the deed of trust, nor the borrower of the funds represented by the promissory note.
12 Mr. Cornwell has not basis in law to demand Mr. Soetje or Mr. Schultz to modify a loan he is
13 not the obligor of.

14 An examination of the Notice of Default and Election to Sell served on Mr. Cornwell
15 shows it meets the requirements of NRS 107.080. Compare Exhibit 15 with the language in
16 NRS 107.080(3). The Notice of Default describes the deficiency in performance or payment,
17 and contains a notice of intent to declare the entire unpaid balance due as required by NRS
18 107.080(3). In addition, Allied Foreclosure Services, the trustee of the deed of trust hired to
19 handle the foreclosure sale, sent Mr. Cornwell a letter with the Notice of Default, introduced into
20 evidence as Exhibit 14, explaining that the entire principal balance was due, together with any
21 fees, late charges and advances, and provided him with a telephone number to call to get the
22 specific amount due. Mr. Cornwell was also served with a written Affidavit of Authority to
23 Exercise the Power of Sale, which was recorded, and which contained the information required
24 by NRS 107.0805(1)(b), even though this was not technically required by NRS 107.080. This
25 document was admitted into evidence as part of Exhibit 14.

26 The documentation in the record shows Mr. Cornwell received the type of notice he was
27 entitled to receive under the provisions of NRS 107.080. Consequently, the foreclosure sale was
28 lawful and binding on Mr. Cornwell.

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CONCLUSIONS OF LAW

1. The promissory note dated May 2, 2003 executed by Karen Lynn Clarke payable to George Soetje was secured by a deed of trust on a parcel of land located at 2355 Columbia Way, Carson City, Nevada.

2. A mobile home was located on the parcel of land at the time the land was conveyed to Ms. Clarke that had not been legally converted to real property.

3. As the mobile home had not been legally converted to real property, it remained personal property. The mobile home was not included as collateral securing the promissory note.

4. Title to the mobile home was never formally conveyed to Ms. Clarke or her successor in interest, defendant Thomas Cornwell.

5. The loan made by George Soetje to Karen Lynn Clarke was not a loan that concerned owner occupied housing as that term is used in NRS 107.085, NRS 107.086 or NRS 107.0865 because the mobile home had not been converted to real property at the time the loan was made, and was not collateral securing payment of the loan.

6. As the loan made by George Soetje to Karen Lynn Clarke was not a loan that concerned owner occupied housing, defendant Cornwell was not entitled to the additional notices and remedies available to homeowners set forth in NRS 107.085, NRS 107.086 or NRS 107.0865.

7. The Notice of Default and Election to Sell and Notice of Sale served on defendant Cornwell met the notice requirements of NRS 107.080. The foreclosure process and foreclosure sale conducted by Allied Foreclosure Services was appropriate and met the requirements of the law.

8. Plaintiff Neil E. Schultz was the successful bidder at the foreclosure sale and was entitled to receive the Trustee's Deed to the Columbia Way parcel.

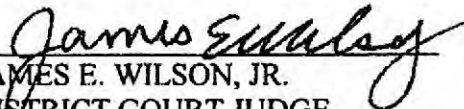
JUDGMENT

Based on the foregoing Findings of Fact and Conclusions of Law, the Court hereby enters judgment in favor of plaintiff Neil E. Schultz and declares that he is the lawful owner of

1 the land located at 2355 Columbia Way, Carson City, Nevada, and is entitled to full possession
2 and enjoyment of the premises to the exclusion of all others. The Court does not make a
3 determination as to who is the owner of the mobile home currently situated on the land, but title
4 is not merged with the title of the land at this time.

5 Plaintiff shall file and serve a Notice of Entry of Judgment on the Defendant within 7
6 days from the date this judgment is entered.

7
8 DATED: November⁵, 2020

9 
10 JAMES E. WILSON, JR.
11 DISTRICT COURT JUDGE

12 Submitted by:

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