NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 14 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MARK T. WANGSNESS, Plaintiff-Appellant, v. WELLS FARGO BANK, N.A., Defendant-Appellee.	No. 17-17445 D.C. No. 3:17-cv-00436-MMD-VPC MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Miranda M. Du, District Judge, Presiding

Argued and Submitted February 11, 2019
San Francisco, California

Before: SCHROEDER and RAWLINSON, Circuit Judges, and LASNIK,** District Judge.

Plaintiff-Appellant Mark Wangsness defaulted on his mortgage in 2008 and now appeals the district court's dismissal of his action challenging the conduct of

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Robert S. Lasnik, United States District Judge for the Western District of Washington, sitting by designation.

Defendant-Appellee Wells Fargo Bank during his unsuccessful loan modification efforts.

Wangsness first argues that the bank violated the Nevada Homeowner's Bill of Rights, Senate Bill 321, codified as Nevada Revised Statutes 107.400 to 107.560. The statute became effective on October 1, 2013, and would apply only prospectively in the absence of clear legislative intent that it apply retroactively. *See Public Employees' Benefits Program v. Las Vegas Metropolitan Police Dept.*, 124 Nev. 138, 154 (2008). The statute does not state that it is to apply retroactively and the legislative history indicates it was to apply only to notices of default recorded after that date. *See* S.B. 321, 2013 Leg., 77th Reg. Sess., § 30 (NV. 2013). The district court correctly ruled that the statute applies prospectively, not retroactively. Because the only notice of default in this case was recorded years before the effective date, the claim was properly dismissed.

Wangsness also contends the bank was negligent and violated a duty of care owed in the loan modification negotiations. He argues that California courts recognize a bank's duty of care in its role as a lender in modification applications, and that Nevada courts would follow California. The weight of California decisional law, however, is to the contrary, and holds lenders owe no duty of care to borrowers. *See Willemsen v. Mitrosilis*, 230 Cal.App.4th 622, 628 (Ct. App.

2014) (citing *Nymark v. Heart Fed. Sav. & Loan Ass'n*, 283 Cal.App.3rd 1089, 1096 (Ct. App. 1991)); *see also Das v. Bank of America, N.A.*, 186 Cal.App.4th 727, 740 (Ct. App. 2010). Moreover, Wangsness in state court litigated issues pertaining to the bank's conduct in Foreclosure Mediation proceedings and the issues raised here, including bad faith, were or could have been litigated in state court. *See Pasillas v. HSBC Bank USA*, 255 P.3d 1281, 1286 (Nev. 2011); *see also Daane v. Eighth Judicial Dist. Court of State ex rel. Cty. of Clark*, 261 P.3d 1086, 1087 (Nev. 2011). Thus, even if Nevada recognized a duty of care, the issues sought to be litigated in district court would be barred by preclusion principles. *See Kahn v. Morse & Mowbray*, 117 P.3d 227, 235 (Nev. 2005).

AFFIRMED.