

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANGELA HEREDIA-BONNET,
Appellant,
vs.
FIRST AMERICAN LOANSTAR
TRUSTEE SERVICES, LLC, A
FOREIGN ENTITY AND MERS, A
FOREIGN ENTITY,
Respondents.

No. 56571

FILED

OCT 18 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying a petition for judicial review in a foreclosure mediation action and a post-judgment order denying an NRCP 60(b) motion for relief from the initial order. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Following an unsuccessful mediation conducted under Nevada's Foreclosure Mediation Program (the Program), appellant Angela Heredia-Bonnet (Bonnet) filed a petition for judicial review in district court. Among other things, Bonnet contended that respondent MERS' conduct was sanctionable because it failed to produce certain required documents at the mediation.¹ See NRS 107.086(4), (5). The district court denied Bonnet's petition and ordered that a foreclosure certificate be issued. As explained below, we reverse.

Standard of review

¹The record indicates that a non-party, Chase Home Financing, LLC, attended the mediation. Because MERS maintains that Chase attended the mediation on its behalf, Chase's conduct at the mediation is properly imputed to MERS for purposes of this appeal.

“[W]e . . . review a district court’s decision regarding the imposition of sanctions for a party’s participation in the Foreclosure Mediation Program under an abuse of discretion standard.” Pasillas v. HSBC Bank USA, 127 Nev. ___, ___, 255 P.3d 1281, 1286 (2011).

MERS failed to produce the required documents

To obtain a foreclosure certificate, a deed of trust beneficiary must strictly comply with four requirements: (1) attend the mediation, (2) participate in good faith, (3) bring the required documents, and (4) if attending through a representative, have a person present with authority to modify the loan or access to such a person. NRS 107.086(4), (5); Leyva v. National Default Servicing Corp., 127 Nev. ___, ___, 255 P.3d 1275, 1279 (2011) (concluding that strict compliance with the Program’s requirements is necessary).

NRS 107.086(4) states that the deed of trust beneficiary or its representative “shall bring to the mediation the original or a certified copy of the deed of trust, the mortgage note and each assignment of the deed of trust or mortgage note.” Moreover, the Foreclosure Mediation Rules (FMRs) require the beneficiary or its representative to conduct an appraisal of the homeowner’s home. FMR 11(3)(b).

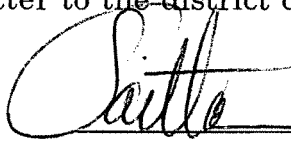
Here, the record demonstrates that MERS failed to produce the deed of trust and any assignments.² Moreover, it failed to conduct an appraisal of Bonnet’s home. Because MERS failed to strictly comply with

²We recognize that Bonnet’s original lender may still own her loan, in which case no assignments would exist. However, MERS’ inability to verify who currently owns Bonnet’s loan necessarily means that MERS was unable to confirm that no assignments needed to be produced.

the Program's requirements, the district court abused its discretion in ordering a foreclosure certificate to be issued. Leyva, 127 Nev. at ___, 255 P.3d at 1279; Pasillas, 127 Nev. at ___, 255 P.3d at 1286.

On remand, the district court must determine how MERS should be appropriately sanctioned. Pasillas, 127 Nev. at ___, 255 P.3d at 1286-87 (construing NRS 107.086(5) to mean that a violation of one of the four statutory requirements must be sanctioned and that the district court is to consider several factors in determining what sanctions are appropriate). Accordingly, we

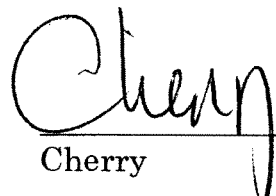
ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.³

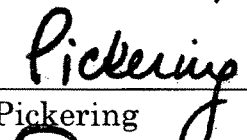

Saitta, C.J.

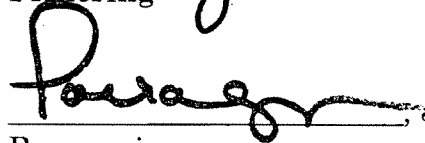

Douglas, J.


Gibbons, J.


Hardesty, J.


Cherry, J.


Pickering, J.


Parraguirre, J.

³In light of the above disposition, Bonnet's motion for summary remand is denied as moot. Likewise, Bonnet's appeal from the district court order denying her motion for NRCP 60(b) relief is dismissed as moot. See Estate of LoMastro v. American Family Ins., 124 Nev. 1060, 1079 n.55, 195 P.3d 339, 352 n.55 (2008).

cc: Hon. Patrick Flanagan, District Judge
Law Offices of Roderic A. Carucci
Wright, Finlay & Zak, LLP
Smith Larsen & Wixom
Washoe District Court Clerk

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IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICK MALLOY AND ORLENE
MALLOY,
Appellants,
vs.
WELLS FARGO BANK,
Respondent.

No. 56589

FILED

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BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying a petition for judicial review in a foreclosure mediation action. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Following an unsuccessful mediation conducted under Nevada's Foreclosure Mediation Program (the Program), appellants Patrick and Orlene Malloy filed a petition for judicial review in district court. The Malloys contended that respondent Wells Fargo Bank's conduct was sanctionable because it failed to produce certain required documents at the mediation. See NRS 107.086(4), (5). The district court denied the Malloys' petition and ordered that a foreclosure certificate be issued. As explained below, we reverse.

Standard of review

"[W]e . . . review a district court's decision regarding the imposition of sanctions for a party's participation in the Foreclosure Mediation Program under an abuse of discretion standard." Pasillas v. HSBC Bank USA, 127 Nev. ___, ___, 255 P.3d 1281, 1286 (2011).

Wells Fargo failed to produce the required documents

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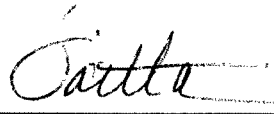
participate in good faith, (3) bring the required documents, and (4) if attending through a representative, have a person present with authority to modify the loan or access to such a person. NRS 107.086(4), (5); Leyva v. National Default Servicing Corp., 127 Nev. ___, ___, 255 P.3d 1275, 1279 (2011) (concluding that strict compliance with the Program's requirements is necessary).

NRS 107.086(4) states that the deed of trust beneficiary or its representative "shall bring to the mediation the original or a certified copy of the deed of trust, the mortgage note and each assignment of the deed of trust or mortgage note." Moreover, the Foreclosure Mediation Rules (FMRs) require the beneficiary or its representative to provide the homeowner with an appraisal of the homeowner's home prior to the mediation. FMR 11(1), (3)(b).

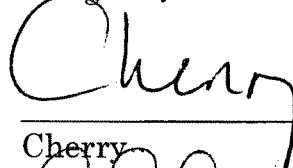
Here, the record on appeal demonstrates that Wells Fargo failed to produce a certified copy of the mortgage note and that it failed to provide the Malloys with an appraisal prior to the mediation. Because Wells Fargo failed to strictly comply with the Program's requirements, the district court abused its discretion in ordering a foreclosure certificate to be issued. Leyva, 127 Nev. at ___, 255 P.3d at 1279; Pasillas, 127 Nev. at ___, 255 P.3d at 1286.

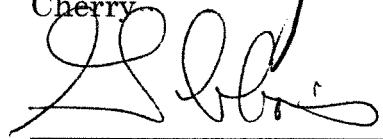
On remand, the district court must determine how Wells Fargo should be appropriately sanctioned. Pasillas, 127 Nev. at ___, 255 P.3d at 1286-87 (construing NRS 107.086(5) to mean that a violation of one of the four statutory requirements must be sanctioned and that the district court is to consider several factors in determining what sanctions are appropriate). Accordingly, we

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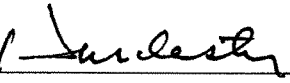

_____, C.J.
Saitta

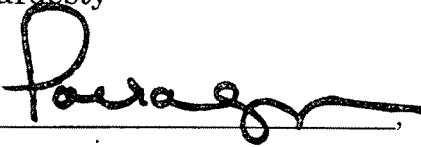

_____, J.
Douglas


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Patrick Flanagan, District Judge
Mark L. Mausert
McCarthy & Holthus, LLP/Las Vegas
Washoe District Court Clerk

