SUPREME COURT OF NEVADA

In re Bryce L. Montierth and Maile L. Montierth, Debtors

In re Montierth, 2015 NV 55 (2015) · No. 62745 · Decided July 30, 2015

SUMMARY

The Supreme Court of Nevada answered certified questions concerning the effect of separating a promissory note from a deed of trust at foreclosure. The court held that reunification is not required when the deed-of-trust beneficiary acts as agent for the note holder, and that the note remained secured in the bankruptcy proceeding. The court also held that, under Nevada law, recording an assignment by the beneficiary-agent at the note holder's direction is a ministerial act.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Hardesty, C.J.; Douglas, J.; Cherry, J.; Saitta, J.; Gibbons, J.
JURISDICTION	Nevada
DECIDED	July 30, 2015
DOCKET	62745
DISPOSITION	other
PROCEDURAL POSTURE	The United States Bankruptcy Court for the District of Nevada certified two questions of Nevada law concerning the effect of separating a promissory note from a deed of trust and the legal character of recording an assignment of a deed of trust.
STANDARD OF REVIEW	De novo review of certified questions of state law.
PRECEDENTIAL VALUE	Published Nevada Supreme Court opinion; precedential.
PARTIES	Bryce L. Montierth, Maile L. Montierth v. Deutsche Bank National Trust Company, as Trustee of the IndyMac INDX Mortgage Loan Trust 2005-AR31, Mortgage Pass-Through Certificates, Series 2005-AR31

TOPICS

mortgages · foreclosure · automatic stay · bankruptcy · appellate jurisdiction

PRACTICE AREAS

bankruptcy real estate mortgages foreclosure appellate procedure

QUESTIONS PRESENTED

1. Whether a note holder's failure to hold the deed of trust in its own name at the time of foreclosure renders the debt unsecured or prevents foreclosure when the deed-of-trust beneficiary acts as the note holder's agent.
2. Whether, under Nevada law, recording an assignment of a beneficial interest in a deed of trust by the beneficiary-agent at the direction of the note holder is a ministerial act.

HOLDINGS

1. Reunification of the promissory note and deed of trust is not required to foreclose when the beneficiary of the deed of trust is the note holder's authorized agent. The separation does not render either instrument void or make the debt unsecured.
2. Under Nevada law, recording an assignment of a beneficial interest in a deed of trust by an agent at the direction of the note holder is a ministerial act because the agent is contractually obligated to perform and has no discretion to refuse.

KEY QUOTATIONS

> *"We conclude that reunification of the note and the deed of trust is not required to foreclose because the beneficiary of the deed of trust is authorized to foreclose on behalf of the note holder as its agent."* (2)

> *"We also conclude that, as a matter of law, the recording of an assignment of a deed of trust is a ministerial act; however, we decline to determine the effect of that ministerial act on the application of the stay statute as this is a question involving federal law."* (2)

> *"Reunification of the note and the deed of trust is not necessary to foreclose because the beneficiary is an agent for the principal note holder."* (12)

FACTUAL BACKGROUND

Bryce and Maile Montierth executed a $170,400 promissory note in favor of 1st National Lending Services, secured by a deed of trust naming MERS as nominee for the lender and its successors and assigns. The note was later transferred to Deutsche Bank, while MERS remained the recorded beneficiary of the deed of trust. After the Montierths defaulted and filed for bankruptcy, Deutsche Bank sought relief from the automatic stay and claimed secured-creditor status; MERS assigned its interest in the deed of trust to Deutsche Bank after the bankruptcy filing, although the assignment was recorded later.

PROCEDURAL HISTORY

The Montierths executed a promissory note secured by a deed of trust naming MERS as nominee for the lender and its successors and assigns. After Deutsche Bank acquired the note, the Montierths defaulted, foreclosure proceedings and mediation attempts occurred, and the Montierths filed for bankruptcy. Deutsche Bank sought relief from the automatic stay and asserted secured-creditor status, which the Montierths contested. Before ruling, the bankruptcy court certified questions to the Nevada Supreme Court under NRAP 5.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand was ordered. The certified questions were answered in part, with the second question reframed and answered only as to its state-law effect.

CASES CITED

- Edelstein v. Bank of New York Mellon, 128 Nev., Adv. Op. 48, 286 P.3d 249 (2012)
- In re Madrid, 725 F.2d 1197 (9th Cir. 1984)
- In re Ehring, 900 F.2d 184 (9th Cir. 1990)
- In re Phillips, 491 B.R. 255 (Bankr. D. Nev. 2013)
- In re Martinez, 444 B.R. 192 (Bankr. D. Kan. 2011)
- In re Corley, 447 B.R. 375 (Bankr. S.D. Ga. 2011)
- Volvo Cars of North America, Inc. v. Ricci, 122 Nev. 746, 137 P.3d 1161 (2006)
- Chapman v. Deutsche Bank National Trust Co., 129 Nev., Adv. Op. 34, 302 P.3d 1103 (2013)
- Reinkemeyer v. Safeco Insurance Co. of America, 117 Nev. 44, 16 P.3d 1069 (2001)
- In re Pettit, 217 F.3d 1072 (9th Cir. 2000)
- In re Soares, 107 F.3d 969 (1st Cir. 1997)
- In re Rugroden, 481 B.R. 69 (Bankr. N.D. Cal. 2012)
- Rexnord Holdings, Inc. v. Bidermann, 21 F.3d 522 (2d Cir. 1994)
- In re Bower, 462 B.R. 347 (Bankr. D. Mass. 2012)
- Nunez v. City of North Las Vegas, 116 Nev. 535, 1 P.3d 959 (2000)