SUPREME COURT OF NEVADA

Einhorn v. BAC Home Loans Servicing, LP

128 Nev. 689 (2012) · Decided December 6, 2012

SUMMARY

The Nevada Supreme Court affirmed the denial of sanctions against BAC Home Loans Servicing, LP in a Nevada Foreclosure Mediation Program proceeding. Although BAC failed to bring one assignment document to mediation, the homeowner supplied an authenticated copy, completing the chain of transfers and establishing BAC's authority to enforce the note and foreclose. The court held that the statutory purpose of document production was satisfied and that the district court did not abuse its discretion in allowing the foreclosure mediation certificate to issue.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Pickering, J.; Gibbons, J.; Hardesty, J.
JURISDICTION	Nevada
DECIDED	December 6, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a district court order denying a homeowner's petition for judicial review and sanctions arising from mediation under Nevada's Foreclosure Mediation Program.
STANDARD OF REVIEW	Factual findings in the Foreclosure Mediation Program setting are reviewed for clear error and will be upheld if supported by substantial evidence. The district court's discretionary decision whether to impose sanctions under NRS 107.086(5) is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Nevada Supreme Court opinion; precedential.
PARTIES	Arthur Einhorn v. BAC Home Loans Servicing, LP

TOPICS

foreclosure · statutory interpretation · appellate procedure · evidence · remedies

PRACTICE AREAS

real estate · foreclosure · civil procedure · appellate procedure · evidence

QUESTIONS PRESENTED

1. Whether BAC strictly complied with NRS 107.086(4) when the homeowner, rather than BAC, supplied an authenticated assignment necessary to complete BAC's chain of title.
2. Whether the district court abused its discretion by denying sanctions and allowing an FMP certificate to issue despite BAC's failure to bring the missing assignment.
3. Whether the district court's findings that BAC provided a proper appraisal and participated in good faith were supported by substantial evidence.

HOLDINGS

1. Although NRS 107.086(4) requires strict compliance with its substantive document-production mandate, the statute does not require the beneficiary personally to bring every document when all required documents are present, authenticated, and accounted for. The homeowner's production of the missing assignment satisfied the statute's purposive requirements.
2. The district court did not abuse its discretion by denying sanctions and allowing the Foreclosure Mediation Program certificate to issue because the missing assignment was supplied by Einhorn, was authenticated, completed the chain of transfers, and its absence from BAC's production did not prejudice Einhorn or the mediation.
3. The district court's findings that BAC provided a proper appraisal and participated in good faith were supported by substantial evidence.

KEY QUOTATIONS

> *"In general, " 'time and manner' requirements are strictly construed, whereas substantial compliance may be sufficient for 'form and content' requirements."" * (at 696)

> *"But with all documents present, strict compliance with NRS 107.086(4)'s purposive requirements was achieved."* (at 697)

> *"To make the outcome turn on who brought the documents, the authenticity of which was adequately established under conventional rules of evidence, exalts literalism for no practical purpose."* (at 697)

FACTUAL BACKGROUND

BAC participated in a Nevada Foreclosure Mediation Program mediation concerning Einhorn's owner-occupied residence. BAC produced the note, deed of trust, lost-note certification, and an assignment transferring interests from Deutsche Bank to BAC, but omitted the earlier Countrywide/MERS-to-Deutsche Bank assignment. Einhorn obtained that missing assignment from the county recorder and supplied it at the mediation and later at the district-court hearing. The documents collectively showed BAC's chain of authority to enforce the note and foreclose, and the district court found that BAC acted in good faith and provided a proper appraisal.

PROCEDURAL HISTORY

Einhorn participated in the Foreclosure Mediation Program after electing mediation. After mediation did not produce a loan modification, he petitioned the district court for sanctions, alleging that BAC failed to comply with the program's document-production and good-faith requirements. The district court found no irregularity in BAC's submitted documents, found no bad faith, and ordered that a Letter of Certification issue absent a timely appeal. The Nevada Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Holt v. Regional Trustee Services Corp., 127 Nev. 886, 266 P.3d 602 (2011)
- Pasillas v. HSBC Bank USA, 127 Nev. 462, 255 P.3d 1281 (2011)
- Leyva v. National Default Servicing Corp., 127 Nev. 470, 255 P.3d 1275 (2011)
- Edelstein v. Bank of New York Mellon, 128 Nev. 505, 286 P.3d 249 (2012)
- Leven v. Frey, 123 Nev. 399, 168 P.3d 712 (2007)
- Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001)
- Fed. Home Loan Mtge. Corp. v. Schwartzwald, 957 N.E.2d 790 (Ohio Ct. App. 2011), reversed on other grounds by Fed. Home Loan Mtge. v. Schwartzwald, 979 N.E.2d 1214 (Ohio 2012)
- Buckwalter v. District Court, 126 Nev. 200, 234 P.3d 920 (2010)
- Schuck v. Signature Flight Support, 126 Nev. 434, 245 P.3d 542 (2010)
- Cervantes v. Countrywide Home Loans, Inc., 656 F.3d 1034 (9th Cir. 2011)
- In re Caddo Parish-Villas South, Ltd., 250 F.3d 300 (5th Cir. 2001)