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Summary of *Jacinto v. PennyMac Corp.*, 129 Nev. Adv. Op. 32

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Jacinto v. PennyMac Corp., 129 Nev. Adv. Op. 32 (May 2, 2013)¹

Foreclosure Mediation Program: Standing & Sanctions

Summary

Appeal from a district court order granting a petition for judicial review in a Foreclosure Mediation Program (FMP) matter. The Court addressed the issue of whether a homeowner whose petition for judicial review in a FMP matter was granted, but whose request for a judicially imposed loan modification was denied, is an aggrieved party with standing to appeal the amount and nature of sanctions.

Disposition/Outcome

The Court held that when a court grants a homeowner petition for judicial review in a FMP matter, the homeowner does have standing to appeal and challenge the amount and nature of sanctions, if the type or amount of sanctions imposed adversely and substantially affects the homeowner to the extent that the homeowner is aggrieved as contemplated under NRAP 3A(a). Here, the Appellant had standing to appeal, but there was no basis for reversing judgment because the district court exercised sound discretion in imposing sanctions.

Facts and Procedural History

Appellant Miguel Jacinto attended a first Foreclosure Mediation Program (FMP) mediation with Citimortgage. The parties were seeking an agreement for a Home Affordable Modification Program (HAMP) loan modification based on Jacinto's prequalification. Citimortgage denied Jacinto the HAMP modification. Jacinto then filed a petition for judicial review and sought sanctions against Citimortgage for failing to mediate in good faith. The district court ordered a second mediation without imposing any additional sanctions.

Respondent PennyMac Corp. subsequently obtained beneficial interest in the deed of trust and promissory note through an assignment executed in its favor and recorded. Now the beneficiary of the deed of trust, PennyMac attended the second mediation. The mediator at the second mediation determined that PennyMac failed to bring the promissory note, deed of trust, and a Broker's Price Opinion to the mediation, and failed to send a person with authority to mediate.

Jacinto then filed a second petition for judicial review, requesting monetary sanctions, attorney fees, and a judicially imposed loan modification. The district court granted the petition, and further imposed monetary sanctions against PennyMac in the amount of attorney fees for Jacinto. The district court declined to impose a loan modification or additional monetary sanctions, to which Jacinto appealed.

¹ By Michael Esposito

Discussion

Justice Douglas wrote the opinion of the Court, joined by Justices Gibbons and Saitta.

Standing

Here, the analysis begins with a question of standing, determining if Jacinto is in fact an aggrieved party to a final, appealable judgment or order.² A party is aggrieved when a judgment causes “substantial grievance,” such as the denial of some personal or property right.³ Here, Jacinto was aggrieved because the district court failed to modify his loan or to impose monetary sanctions beyond attorney’s fees, and the failure to do so affected his property rights granted under the Foreclosure Mediation Program.⁴ Further, Jacinto was aggrieved by the district court’s decision to decline monetary sanctions.⁵ Thus, Jacinto has standing to appeal.

Sanctions

A deed of trust beneficiary seeking an FMP certificate must attend the mediation, participate in good faith, bring the required documents, and ensure that the attending representative has the authority to modify the loan or has access to someone at all times who can.⁶ If the district court finds noncompliance, the minimum sanction is that an FMP certificate must not issue.⁷ However, the Nevada Supreme Court has provided a nonexhaustive list of factors to consider when weighing appropriate sanctions for violation of FMP requirements, including “whether the violations were intentional, the amount of prejudice to the nonviolating party, and the violating party’s willingness to mitigate any harm by continuing meaningful negotiation.”⁸ On appeal, the Court examines the factual and legal determinations under an abuse of discretion standard.⁹ Here, the district court’s determinations followed the *Pasillas* factors analysis, the sanctions were above the minimum, and thus the findings and conclusions were found to be sufficient and within its discretion.

Conclusion

The Court held that Jacinto had standing to appeal the district court’s ruling, but there was no basis for reversing the judgment of the district court. The Court affirmed the district court’s decision.

² NRAP 3A(a)-(b). *See also Valley Bank v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994).

³ *Webb ex rel. Webb v. Clark Cnty. Sch. Dist.*, 125 Nev. 611, 617, 218 P.3d 1239, 1244 (2009).

⁴ NEV. REV. STAT. § 107.086(5) (expressly creating a right to seek a judicially imposed home loan modification).

⁵ *Webb*, 125 Nev. At 617, 218 P.3d at 1244..

⁶ NEV. REV. STAT. § 107.086(4)-(5); *Leyva v. Nat’l Default Servicing Corp.*, 127 Nev. ___, ___, 255 P.3d 1275, 1279.(2011).

⁷ *Holt v. Reg’l Tr. Servs. Corp.*, 127 Nev. ___, ___, 266 P.3d 602, 607 (2011).

⁸ *Pasillas v. HSBC Bank USA*, 127 Nev. ___, ___, 255 P.3d 1281, 1287 (2011).

⁹ *Id.* at 1286-87.