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### Summary of Jones v. SunTrust Mortgage, Inc., 128 Nev. Adv. Op. 18

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*Nevada Law Journal*

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## FORECLOSURE MEDIATION – SETTLEMENT AGREEMENTS

### **Summary**

An appeal from a district court order denying judicial review in a foreclosure mediation matter.

### **Disposition/Outcome**

The Court affirmed the district court's order.

The Court found that the district court had not abused its discretion in allowing a Foreclosure Mediation Program (FMP) settlement to stand. The court found that a FMP agreement is enforceable under District Court Rule 16.1<sup>2</sup> if 1) the agreement is reached as a result of a FMP mediation; 2) the agreement is signed; and 3) the agreement otherwise comports with contract law principles.

### **Factual and Procedural History**

Appellants Michael W. Jones and Analisa A. Jones purchased a home in Sparks in 2006 with a loan from Home Mortgage Direct Lenders. Home Mortgage then assigned the note and deed to Appellees, SunTrust Mortgage, Inc. The Joneses later defaulted on the loan. After receiving a notice of foreclosure, the Joneses elected to participate in the FMP pursuant to NRS 107.086.<sup>3</sup>

At the mediation, SunTrust provided uncertified copies of the original trust, the original note, and Home Mortgage's endorsement of the note to SunTrust, as well as an uncertified valuation of the home. A lender is required by law to produce certified copies of these aforementioned documents at a FMP mediation. SunTrust also failed to submit copies of any assignments. Despite this shortcoming, the parties reached an agreement to resolve the pending

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<sup>1</sup> By Rami Hernandez.

<sup>2</sup> District Court Rule 16.1 states:

No agreement or stipulation between the parties in a cause or their attorneys, in respect to proceedings therein, will be regarded unless the same shall, by consent, be entered in the minutes in the form of an order, or unless the same shall be in writing subscribed by the party against whom the same shall be alleged, or by his attorney.

<sup>3</sup> The relevant part of the statute is Nev. Rev. Stat. § 107.086 (5). It states in part:

If the beneficiary of the deed of trust or the representative fails to attend the mediation, fails to participate in the mediation in good faith or does not bring to the mediation each document required by subsection 4 or does not have the authority or access to a person with the authority required by subsection 4, the mediator shall prepare and submit to the Mediation Administrator a petition and recommendation concerning the imposition of sanctions against the beneficiary of the deed of trust or the representative.

foreclosure by agreeing to a short sale of the Joneses' home, if accomplished within two months. Otherwise, SunTrust would proceed with the foreclosure.

In that time, SunTrust twice mailed a short-sale package to the Joneses, but they never returned these documents. Instead, they filed a petition for judicial review with the district court. In the petition, the Joneses claimed that SunTrust violated NRS 107.086 and the Foreclosure Mediation Rules (FMRs) by failing to provide the required documentation at the mediation and for mediating in bad faith.

The Joneses requested that the district court impose sanctions on SunTrust. After a hearing, the court denied the petition because the Joneses had entered into an enforceable short-sale agreement at the mediation and had therefore waived any claims under NRS 107.086 and the FMRs. The court then allowed SunTrust to seek a certificate from the FMP to proceed with the foreclosure of the Joneses' home based on the terms of the short-sale agreement. This appeal followed.

## **Discussion**

Justice Gibbons wrote the unanimous opinion of the Court sitting en banc. The Joneses argued that the short-sale agreement was unenforceable because it lacked consideration and SunTrust failed to comply with NRS 107.086 and FMRs. When the Court reviews whether the parties in a foreclosure mediation reached an enforceable settlement agreement, the Court defers to the district court's decision unless the district court's findings are "clearly erroneous or not based on substantial evidence."<sup>4</sup> Substantial evidence is that which "a reasonable mind might accept as adequate to support a conclusion."<sup>5</sup> Finally, the Court reviews a district court's decision to impose sanctions in a FMP case under an abuse of discretion standard.<sup>6</sup>

The Court stated that settlement agreements are contracts that must be supported by consideration.<sup>7</sup> Consideration is an exchange or a promise or performance, bargained for by the parties.<sup>8</sup> If the settlement agreement is reduced to writing, it is enforceable under DCR 16.<sup>9</sup>

The Court found the Joneses' agreement enforceable as it contained the written short-sale terms and was signed by all parties, including the Joneses and their attorney.

The Court also found that the short-sale agreement was supported by consideration. In exchange for the short-sale agreement, SunTrust agreed to suspend foreclosure proceedings for two months. If the Joneses did not accomplish the short sale in that period, SunTrust could proceed with the foreclosure.

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<sup>4</sup> *May v. Anderson*, 121 Nev. 668, 672-73, 119 P.3d 1254, 1257 (2005).

<sup>5</sup> *Whitemaine v. Aniskovich*, 124 Nev. 302, 308, 183 P.3d 137, 141 (2008).

<sup>6</sup> *Pasillas v. HSBC Bank USA*, 127 Nev. \_\_\_\_, \_\_\_\_, 255 P.3d 1281, 1286 (2011).

<sup>7</sup> *May*, 121 Nev. at 672, 691 P.2d 456 at 1257.

<sup>8</sup> *Pink v. Busch*, 100 Nev. 684, 688, 691 P.2d. 456 (459) (citing Restatement (Second) of Contracts § 71(1), (2) (1981)).

<sup>9</sup> *See Resnick v. Valente*, 97 Nev. 615, 616-617, 637 P.2d 1205, 1206 (1981).

As the terms of the agreement are enforceable, the Court found that the Joneses' claim that the foreclosure cannot proceed because of SunTrust's violations of NRS 107.096 and FMRs lacked merit. The district court, therefore, did not abuse its discretion when it refused to impose sanctions against SunTrust.

### **Conclusion**

A valid settlement agreement made by the parties in a FMP mediation constitutes a binding agreement, if the agreement is signed and comports with contract principles, regardless of whether the lender complied with the requirements of NRS 107.086 and/or the FMRs.