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### Summary of Wood v. Germann, 130 Nev. Adv. Op. 58

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## REAL ESTATE LAW: LOAN ASSIGNMENT

### **Summary**

The Court determined one issue: (1) the legal effect of a loan assignment from a homeowner's original lender to a subsequent purchaser when that assignment violates the terms of the original lender and subsequent purchaser's Pooling and Servicing Agreement (PSA). More specifically, the court decided whether a loan assignment that is executed after the closing date renders the assignment void and ineffective to transfer ownership of the homeowner's loan.

### **Disposition**

A loan assignment executed after the Pool Servicing Agreement (PSA) closing date is not void, but voidable at the option of the parties to the PSA.

### **Factual and Procedural History**

In 2004, Appellant executed a promissory note and deed of trust in favor of IndyMac F.S.B, which appointed Mortgage Electronic Registration Systems, Inc. as the legal beneficiary of the deed of trust. IndyMac F.S.B. then contracted to sell this loan to Deutsche Bank National Trust Company, who would maintain ownership. The obligations of IndyMac F.S.B. and Deutsche Bank were recorded in a Pool Servicing Agreement, which required IndyMac F.S.B. to transfer all subject loans into the trust by a September 2004 closing date.

Appellant defaulted on his loan and attended mediation with IndyMac Mortgage Services, the representative of Deutsche Bank. At mediation, IndyMac Mortgage produced documentation showing that the deed of trust and promissory note were assigned to Deutsche Bank in January 2012. After mediation ended unsuccessfully, Appellant sought judicial review in district court, arguing that Deutsche Bank did not own the beneficial interest in his note and deed of trust because the assignment took place after September 2004.

### **Discussion**

Appellant maintains the argument that the assignment was void because it took place after September of 2004. While a minority of courts support the Appellants argument, the majority view is that the assignment is voidable at the option of the parties to the PSA.

Under the majority view, a PSA is recognized as a contract. Furthermore, under traditional contract law, a contracting party is capable of ratifying conduct done in violation of the contract's terms. Therefore, the assignment is not void, but merely voidable, because the trustee has the option of ratifying the conduct despite its untimeliness. Additionally, because the homeowner is neither a party to the contract nor a third party beneficiary, the homeowner lacks standing to challenge the validity of the assignment.

This reasoning is in line with Nevada law regarding who is entitled to enforce a contract. Therefore, the January 2012 assignment was not void, but merely voidable. Consequently,

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<sup>1</sup> By Ryan Becklean.

Deutsche Bank was entitled to enforce Appellant's note and to proceed with foreclosure. The district court properly denied Appellant's petition for judicial review because he lacked standing.

### **Conclusion**

As a loan assignment made in violation of the terms of a Pool Servicing Agreement is not void, but merely voidable, the homeowner lacked standing to contest the assignment's validity. The ruling of the district court is affirmed.