

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

Fall 9-6-2019

Daisy Trust v. Wells Fargo Bank, N.A., 135 Nev. Adv. Op.30 (Jul. 25, 2019)

Julia Armendariz

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the [Property Law and Real Estate Commons](#)

Recommended Citation

Armendariz, Julia, "Daisy Trust v. Wells Fargo Bank, N.A., 135 Nev. Adv. Op.30 (Jul. 25, 2019)" (2019).
Nevada Supreme Court Summaries. 1232.
<https://scholars.law.unlv.edu/nvscs/1232>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

PROPERTY LAW: FORECLOSURE BAR

Summary

The Court determined that (1) NRS § 106.210 and NRS § 111.325 do not require a beneficiary to be identified on the publicly recorded deed of trust to establish ownership interest in the subject loan and (2) a loan service agreement or an original promissory note is not required to be by the loan servicer to assert the Federal Foreclosure Bar on another's behalf so long as properly authenticated business records can establish the ownership interest and (3) The Federal Foreclosure Bar preempts NRS § 116.3116(2) and prevents an HOA foreclosure sale from extinguishing the first deed of trust.

Background

In 2007, Universal American Mortgage Company, (“Universal”) issued a loan to Donald and Cynthia Bloom to purchase a property governed by an HOA. The Blumes executed a deed of trust that elected Mortgage Electronic Registration Systems, Inc. (MERS) as the beneficiary. In 2007, Universal sold its interest to the Federal Home Loan Mortgage Corporation, (“Freddie Mac”). In 2011, Mortgage Electronic Registration Systems, Inc (“Mers”) assigned the beneficial interest in the deed to Wells Fargo.

In 2012, the HOA held a foreclosure proceeding under NRS Chapter 116. Daisy Trust purchased the subject property for \$10,500. After Daisy Trust instituted an action for Quiet Title, Wells Fargo revealed that Freddie Mac had owned the loan since 2007 and that Wells Fargo had been simply servicing the loan on his behalf. Wells Fargo moved for Summary Judgment with the issue being whether Freddie Mac owned the loan during the foreclosure sale. Wells Fargo produced declarations from Ms. Hatfield, a Wells Fargo employee and Mr. Meyer, a Freddie Mac employee declaring that Freddie Mac acquired the loan in November 2007. Wells Fargo also provided printouts from databases which reflected loan transfer history that supported its position that Freddie Mac owned the loan when the foreclosure sale took place.

Discussion

Daisy Trust argued that Wells Fargo was the publicly recorded deed of trust beneficiary and therefore Freddie Mac could not establish ownership interest. Daisy trust also argued that the documentation provided by Wells Fargo was insufficient to demonstrate Freddie Mac's ownership interest. The Court rejected these arguments and found that Freddie Mac did not need to be the beneficiary of record to establish its ownership interest and that Wells Fargo provided sufficient documentation to support to the ownership interest.

¹ By Julia Armendariz.

Freddie Mac did not need to be the beneficiary of record to establish its ownership interest

At the time Freddie Mac acquired the loan in 2007, NRS 106.210 provided that “any assignment of the beneficial interest under a deed of trust may be recorded.”² Thus, there was no requirement for Freddie Mac to record his interest. Regardless, the Court held that even if the current versions of NRS § 106.210 or NRS § 111.325 applied, they would not apply in this action. Consistent with the Court’s previous holdings, the Court found that the record deed of trust beneficiary (MERS and then Wells Fargo) was at all times in an agency relationship with Freddie Mac.³ Because of this agency relationship, the deed of trust did not have to be ‘assigned’ or ‘conveyed’ for Freddie Mac to own the loan. The Court held that the ownership interest did not implicate NRS § 106.210 nor NRS § 111.325. Therefore, Freddie Mac was not required to publicly record his ownership interest to establish his interest. Considering this finding, the Court declined to address whether the Federal Foreclosure Bar preempts Nevada’s recording statutes or whether Daisy Trust was protected as a bona fide purchaser.

Wells Fargo did not need to produce the loan servicing agreement or the original promissory note

Daisy Trust contends that even if Freddie Mac did not record its interest, Wells Fargo failed to introduce enough evidence of Freddie’s ownership interest. The Court found that the declaration by Mr. Meyer’s and Ms. Hatfield which confirms Wells Fargo’s status as ‘Freddie Mac’s Loan servicer’ in addition to Freddie Mac Single-Family Seller/Service Guide which recognizes Freddie Mac as being the note holder while its loan servicer remains the recorded deed of trust beneficiary was enough to show that Wells Fargo was Freddie Mac’s loan servicer.

Further, the Court rejected Daisy Trust’s argument that Ms. Hatfield and Mr. Meyer should have expressly attested that they inspected the original promissory note. NRS § 51.135 provides an exception to hearsay if a party attempts to admit business records, so long as the party satisfies the requirements of NRS § 51.135.⁴ The Court found that the evidence presented was not inadmissible simply because neither Ms. Hatfield nor Mr. Meyer personally entered the information into Wells Fargo databases. Accordingly, the Court found that the district court was within its discretion in determining that Wells Fargo and Freddie Mac’s database printouts were admissible

² NEV. REV. STAT. § 106.210(1)(1965).

³ *Edelstein v. Bank of New York Mellon*, 128 Nev. 505, 520-21, 286 P.3d 249, 259-60 (2012) (holding that a party can serve as the record deed of trust beneficiary on behalf of a lender and the lender’s successor); *In re Montierth*, 131 Nev. 543, 547-48, 354 P.3d 648, 650-51 (2015) (holding that a note remains fully secured by the deed of trust when the record deed of trust beneficiary is in an agency relationship with the note holder even if the promissory note and deed of trust is “split”).

⁴ NEV. REV. STAT. § 51.135 (1995).

under NRS § 51.135. While Daisy Trust argued they did not trust the declarations, Daisy Trust bore the burden to show the declarations or printouts were not trustworthy under NRS § 51.135.⁵

Conclusion

The Court affirmed the ruling of the district court that Freddie Mac did not need to be the beneficiary of record to establish its ownership interest and held that Wells Fargo did not need to produce the loan servicing agreement or the original promissory note.

The Court found that the Federal Foreclosure Bar prevented the sale from extinguishing the deed of trust in an HOA foreclosure sale. Thus, Daisy Trust took title to the property subject to the deed of trust.

⁵ *Id.*