

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUSANNAH J. SURGEONER,
Appellant,
vs.
CREDIT SUISSE FIRST BOSTON;
FLOREZ CONSULTING D/B/A
MERIDIAS CAPITAL; AMERICA'S
SERVICING COMPANY/WELLS FARGO
HOME MORTGAGE; QUALITY LOAN
SERVICING CORP.; U.S. BANK
NATIONAL ASSOCIATION, AS
TRUSTEE FOR CREDIT SUISSE FIRST
BOSTON MORTGAGE BACKED
SECURITY ADJUSTABLE RATE
MORTGAGE TRUST 2005-2; AND
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS (MERS),
Respondents.

No. 57699

FILED

MAY 16 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Angers*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying a petition for judicial review in a Foreclosure Mediation Program (FMP) matter. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Following an unsuccessful FMP mediation, appellant filed a petition for judicial review in district court. Appellant contended that respondents did not establish that they were entitled to enforce the note, to foreclose, or to mediate. The district court denied the petition without

an evidentiary hearing and ordered that a foreclosure certificate be issued. This appeal followed.

This court reviews a district court's factual determinations deferentially, Ogawa v. Ogawa, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009) (explaining that a "district court's factual findings . . . are given deference and will be upheld if not clearly erroneous and if supported by substantial evidence"), and its legal determinations de novo. Clark County v. Sun State Properties, 119 Nev. 329, 334, 72 P.3d 954, 957 (2003). Absent factual or legal error, the choice of sanction in an FMP judicial review proceeding is committed to the sound discretion of the district court. Pasillas v. HSBC Bank USA, 127 Nev. ___, ___, 255 P.3d 1281, 1287 (2011).

To obtain a foreclosure certificate, a deed of trust beneficiary must strictly comply with four requirements: (1) attend the mediation; (2) participate in good faith; (3) bring the required documents; and (4) if attending through a representative, have a person present with authority to modify the loan or access to such a person. NRS 107.086(4) and (5); Leyva v. National Default Servicing Corp., 127 Nev. ___, ___, 255 P.3d 1275, 1279 (2011) (concluding that strict compliance with these requirements is necessary).

After review of the appellate record and considering the parties' arguments, we conclude that the district court did not abuse its discretion in ordering a foreclosure certificate to issue. First, the deed of trust named Mortgage Electronic Registration Systems, Inc. (MERS), the "nominee for Lender and Lender's successors and assigns," as "the beneficiary of this Security Instrument" and recites that, "Borrower

understands and agrees that,” as such, MERS has “the right to foreclose and sell the Property.” Both the note and the deed of trust named “Florez Consulting, Inc. dba Meridas Capital” as the lender. While appellant points to several unsigned form endorsements-in-blank to argue that, at the time of the notice of default and election to sell, the note had been transferred but the deed of trust not assigned, the unsigned endorsements were ineffective for any purpose, and thus, raise no question warranting an evidentiary hearing as to who holds the note. NRS 104.3204 (stating that “[e]ndorsement means a signature . . . made on an instrument for the purpose of negotiating the instrument”).

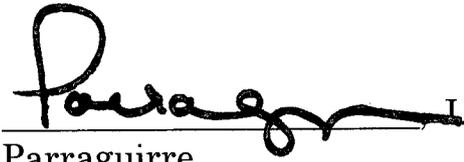
Nor does the post-notice of default/pre-mediation assignment from MERS, as nominee for respondent Florez Consulting, Inc., to respondent U.S. Bank affect the notice of default and election to sell. See Leyva, 127 Nev. at ___, 255 P.3d at 1281; see also Restatement (Third) of Prop.: Mortgages § 5.4 (1997). According to the sworn certificate provided for the mediation, at the time of mediation, U.S. Bank had physical possession of the note, could demonstrate valid transfer based on the assignment from MERS, and had received an assignment of the deed of trust, U.S. Bank possessed authority to mediate. NRS 104.3203; Leyva, 127 Nev. at ___, 255 P.3d at 1280-81. An attorney for Wells Fargo Home Mortgage, as servicer for U.S. Bank, qualifies as a representative for purposes of satisfying the attendance requirements at mediation. NRS 107.086(4).

For these reasons, we reject appellant's assignments of error and we

ORDER the judgment of the district court AFFIRMED.¹

 _____, J.
Pickering

 _____, J.
Gibbons

 _____
Parraguirre

cc: Hon. Robert W. Lane, District Judge
Susannah J. Surgeoner
Romeo Cerutti
Sharon Horstkamp
McCarthy & Holthus, LLP/Las Vegas
Peter Schancupp
Nye County Clerk

¹Because we affirm on these bases, we decline to address the other arguments raised by respondents. We have considered appellant's remaining arguments and conclude that they present no basis for reversal.

To the extent that appellant submitted documents that are not part of the record, those documents were not considered in resolving this appeal. Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 476, 635 P.2d 276, 277 (1981).