

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLINTON M. SIMPSON; AND RYAN
SIMPSON,
Appellants,
vs.
BAC HOME LOANS SERVICING, LP
F/K/A COUNTRYWIDE HOME LOANS
SERVICING, LP,
Respondent.

No. 57938

FILED

DEC 14 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in a foreclosure mediation program (FMP) matter. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

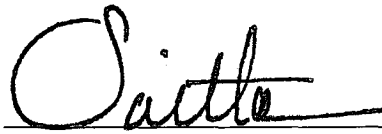
This court reviews a district court's factual determinations deferentially, Ogawa v. Ogawa, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009) (stating that a "district court's factual findings... are given deference and will be upheld if not clearly erroneous and if supported by substantial evidence"), and 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).

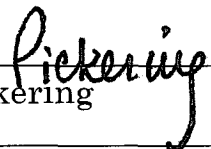
To obtain a foreclosure certificate, a deed of trust beneficiary must strictly comply with four requirements: (1) attend the mediation; (2) participate in good faith; (3) bring the required documents; and (4) if attending through a representative, have a person present with authority to modify the loan 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).

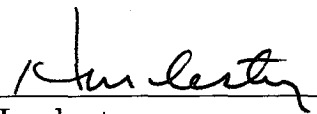
Having reviewed the briefs and appendix, we conclude that the district court did not abuse its discretion in ordering a foreclosure certificate to be issued. Appellants argue that respondent lacked authority to foreclose and to appear at the foreclosure mediation based on the fact that Mortgage Electronic Registration Systems, Inc. (MERS), was involved in the relevant transactions. We recently addressed and rejected such arguments regarding MERS in Edelstein v. Bank of New York Mellon, 128 Nev. ___, 286 P.3d 249 (2012). Therefore, appellants' challenge to the district court's order based on the involvement of MERS fails.

Appellants also assert that respondent acted in bad faith by refusing to disclose the amount paid to acquire its interest in the loan. As nothing in NRS 107.086 or the FMP rules requires this disclosure, the district court did not abuse its discretion in determining that respondent did not act in bad faith.¹ NRS 107.086(4) and (5); Pasillas, 127 Nev. at ___, 255 P.3d at 1287. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

¹Appellants raise a challenge to the validity of the assignment under NRS 111.210 based on the assignment's failure to specify the amount paid. Appellants did not raise this argument, however, until their reply brief; thus, we do not consider it. See Weaver v. State, Dep't of Motor Vehicles, 121 Nev. 494, 502, 117 P.3d 193, 198-99 (2005) (stating that this court need not consider issues raised for the first time in a reply brief).

cc: Hon. Patrick Flanagan, District Judge
Mark L. Mausert
Akerman Senterfitt/Las Vegas
Reisman Sorokac
Washoe District Court Clerk