IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARLTON GRAHAM; AND HYACINTH GRAHAM,
Appellants,
vs.
NATIONAL CITY MORTGAGE COMPANY D/B/A ACCUBANC MORTGAGE; CAL-WESTERN RECONVEYANCE COMPANY; AND PNC MORTGAGE, A DIVISION OF PNC BANK, N.A.,
Respondents.

No. 67883

FILED

DEC 29 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying judicial review in a foreclosure mediation matter. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Following an unsuccessful mediation conducted under Nevada's Foreclosure Mediation Program (FMP) with respondent PNC Mortgage, a Division of PNC Bank, N.A. (PNC Bank), appellants filed a petition for judicial review in the district court. After the petition was stayed due to appellants filing for bankruptcy, respondents succeeded in having the stay lifted, and the district court denied the petition. Appellants now appeal that decision.

When reviewing district court decisions on petitions for judicial review from the FMP, this court defers to the district court's factual determinations and reviews de novo the district court's legal determinations. *Edelstein v. Bank of N.Y. Mellon*, 128 Nev. ___, ___, 286 P.3d 249, 260 (2012). To obtain an FMP certificate, as pertinent here, a deed of trust beneficiary must participate in good faith; bring the required documents; and, if attending through a representative, have a person

present with authority to modify the loan or have access to such a person. NRS 107.086(5), (6); *Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. 470, 476, 255 P.3d 1275, 1279 (2011) (concluding that strict compliance with these requirements is a necessary predicate to obtaining a foreclosure certificate). On appeal, appellants assert that respondents failed to satisfy these requirements, and thus, should not have received an FMP certificate allowing the foreclosure to proceed.

Initially, we conclude that the district court did not err in finding that respondents produced all the required documentation. *See* NRS 107.086(5) (requiring the lender or its representative to produce the original or a certified copy of the deed of trust, the mortgage note, and all assignments of each document at an FMP mediation). In particular, respondents produced the original note and deed of trust reflecting that National City Mortgage Co.[1] was both the lender on the note and the beneficiary of the deed of trust. The note was then endorsed to National City Bank of Pennsylvania, which then endorsed the note in blank. Because the note was endorsed in blank, the bearer, in this case respondent PNC Bank, had the ability to enforce the note. *See* NRS 104.3205(2); *Edelstein*, 128 Nev. at ___, 286 P.3d at 261.

Similarly, the deed of trust was transferred first to National City Bank of Pennsylvania. And although appellants are correct that respondents did not produce an assignment from that bank to the bank that appeared at the mediation, PNC Bank, the record demonstrates that

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[1]Appellants also argue that an assignment was required to demonstrate that the note and deed of trust were properly transferred from Accubanc Mortgage to National City Mortgage. However, the deed of trust and note both list the lender and beneficiary as "National City Mortgage Co[.] dba Accubanc Mortgage." Thus, appellants' argument has no merit because these two entities are one in the same.

such an assignment was not needed, as PNC Bank became the beneficiary of the deed of trust through a chain of mergers.[2] First, National City Bank of Pennsylvania merged with and into National City Bank. National City Bank then merged with and into PNC Bank. As a result of this merger, PNC Bank obtained the rights in the deed of trust on appellant's property. *See* NRS 92A.250(1)(b) ("When a merger takes effect . . . [t]he title to all real estate and other property owned by each merging constituent entity is vested in the surviving entity without reversion or impairment."). Appellants' arguments that respondents did not produce the required documents therefore fail.

We also conclude that the district court properly found that respondents had the requisite authority to modify appellants' loan. *See* NRS 107.086(5). Appellants base this argument solely on a letter they received a year prior to the mediation, stating that respondents could not qualify them for a Home Affordable Modification Program (HAMP) modification because respondents' investors had not approved the use of such modifications.[3] The district court reviewed this evidence and concluded that it did not demonstrate that respondents lacked the requisite authority at the mediation, and we defer to that conclusion as it is not clearly erroneous. *See NOLM, LLC v. Cty. of Clark*, 120 Nev. 736, 739, 100 P.3d 658, 660-61 (2004) (providing that an appellate court will

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[2]The district court took judicial notice of the merger documents pursuant to NRS 47.130(2)(b) (providing that a court may take judicial notice of facts that are "[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned"), which appellants do not challenge on appeal.

[3]The letter did indicate that appellants may have qualified for a modification other than HAMP.

defer to the district court's findings of fact so long as they are not clearly erroneous or unsupported by substantial evidence).

Appellants next assert that respondents acted in bad faith for a multitude of reasons. The district court, however, concluded that respondents complied with the Foreclosure Mediation Rules and that the parties had reached an agreement to delay the foreclosure of appellants' property for two months, and thus, no bad faith occurred. We affirm this finding as respondents complied with the rules and the mediation ended in an agreement, albeit one appellants later denounced. Thus, we conclude that the district court did not abuse its discretion in finding respondents did not act in bad faith and declining to impose sanctions. *See Leyva*, 127 Nev. at 475, 255 P.3d at 1278 (reviewing a district court's decision of whether to impose sanctions for a party's participation in an FMP mediation for an abuse of discretion).[4]

Finally, appellants argue that the district court should not have heard the matter while appellants appealed the lifting of the bankruptcy stay in bankruptcy court. Appellants did not, however, allege that the bankruptcy court had issued a stay of the enforcement of the order lifting the bankruptcy stay pending the appeal or that they had even requested such a stay of enforcement, and thus, the district court properly heard the petition for judicial review. *See* Fed. R. Bankr. P. 8007(a)(1)(A), (e)(1)-(2) (setting forth the procedure for a party to a bankruptcy appeal to request relief from the order being appealed during the pendency of the

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[4]Appellants also raise an argument that respondents did not follow the two-month forbearance agreement. Because appellants did not raise this issue in the district court, however, they have waived it, and we decline to address it further. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (providing that issues not raised before the district court are waived on appeal).

appeal); *see also In re Highway Truck Drivers & Helpers Local Union #107*, 888 F.2d 293, 297-98 (3d Cir. 1989) (concluding that it is incumbent on a party appealing a bankruptcy court's order lifting the automatic stay to seek a stay of that order to prevent further actions from proceeding while the appeal is pending). We therefore find this argument to be without merit.

Accordingly, because we conclude that respondents complied with the FMP rules, we also conclude that the district court did not abuse its discretion in declining to impose sanctions and allowing a certificate of foreclosure to issue.[5] As such, we affirm the district court's denial of appellants' petition.

It is so ORDERED.[6]

_____, C.J.
Gibbons

_____, J.
Tao

cc: Hon. Kathleen E. Delaney, District Judge
Carlton Graham
Hyacinth Graham
Ballard Spahr, LLP
Eighth District Court Clerk

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[5]We have considered appellants' remaining arguments on appeal and conclude that they are either meritless or outside the scope of a petition for judicial review of an FMP mediation. *See Holt v. Reg'l Tr. Servs. Corp.*, 127 Nev. 886, 893, 266 P.3d 602, 606 (2011) (discussing the limited purposes of a petition for judicial review of a foreclosure mediation).

[6]The Honorable Abbi Silver, Judge, voluntarily recused herself from participation in the decision of this matter.