IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KRISTAL GLASS,
Appellant,
vs.
SELECT PORTFOLIO SERVICING, INC., AS SERVICING AGENT FOR U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE ON BEHALF OF THE HOLDERS OF THE HARBORVIEW MORTGAGE LOAN TRUST 2006-1 MORTGAGE LOAN PASS-THROUGH CERTIFICATES, SERIES 2006-1.,
Respondent.

No. 68816

ORDER OF REVERSAL

This is an appeal from a district court judgment in a real property action. Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.

In ruling on appellant Kristal Glass' challenge to respondent Select Portfolio Servicing, Inc.'s (Select) standing to judicially foreclose on Glass' property in the action below, the district court determined that Select had demonstrated a proper chain of title of the mortgage note and, thus, had standing to foreclose on the subject property. In this appeal from that decision, Glass again asserts that Select failed to demonstrate an assignment of the mortgage note from the original lender to the trust for which Select is the servicer, such that Select failed to demonstrate standing to enforce the note and foreclose on Glass' property.

Because Select concedes that it does not have the mortgage note endorsed in its favor in its possession, Select must have otherwise demonstrated that the right to enforce the note was properly transferred

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to it pursuant to the Uniform Commercial Code, codified in Chapter 104 of the Nevada Revised Statutes. *See Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. 470, 477, 255 P.3d 1275, 1279-80 (2011) (providing that that any transfer of the right to enforce a mortgage note must be done pursuant to Article 3 of the Uniform Commercial Code—Negotiable Instruments). NRS 104.3309(1)(a)(1) provides, as is pertinent here, that a party can prove its right to enforce a lost note by showing that it "[w]as entitled to enforce the [note] when loss of possession occurred."

Below, Select presented witness testimony and a copy of a pooling and servicing agreement (PSA) that it claimed transferred the loan on Glass' property into the trust that Select services to demonstrate it was entitled to enforce the note. As to the PSA, Glass contends that it does not show a transfer from the originating lender to a party to the PSA. We agree. Select's witness testified that the PSA demonstrated a transfer of Glass' mortgage note from the originating lender to the seller identified in the PSA, but our review of the record on appeal, and specifically the cites referenced in the witness' testimony and in Select's answering brief, demonstrates that these materials fail to prove any such transfer. Indeed, while the PSA mentions that the originating lender sold some loans to the seller in the PSA under a different agreement that was not put into evidence, there was no evidence presented which demonstrated that the mortgage on Glass' property was part of that transfer.[1] *See U.S. Bank Nat'l Ass'n v. Ibanez*, 941 N.E.2d 40, 52 (Mass. 2011) (concluding that a party failed to prove it had the right to foreclose when it did not produce

[1]Other mentions of the originating lender in the PSA are limited to its role as a servicer or originator of the mortgage loans transferred by the PSA.

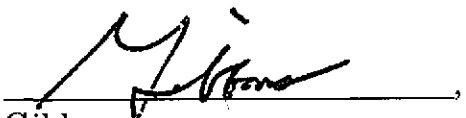
any evidence demonstrating that the original lender transferred the rights to enforce the mortgage note to the entity that purportedly transferred those rights to the party seeking to foreclose); *Pasillas v. HSBC Bank USA*, 127 Nev. 462, 467 n.9, 255 P.3d 1281, 1285 n.9 (2011) (citing *Ibanez* with approval). And because Select's witness' testimony was based on his review of the PSA, neither the PSA nor the testimony support a finding that Select, more probably than not, had the right to enforce the note and foreclose on the property. *See* NRS 104.3309(2) (providing that "[a] person seeking enforcement of [a note] under [NRS 104.3309(1)] must prove the terms of the instrument and his or her right to enforce the instrument"); NRS 104.3103(1)(i) (defining "prove" as meeting the burden of establishing a fact); NRS 104.1201(2)(h) (defining "burden of establishing" as meaning that a party must persuade the trier of fact that a "fact is more probable than its nonexistence"); *see also Ibanez*, 941 N.E.2d at 52. On this evidence, the district court erred in determining that Select had demonstrated standing to enforce the note and foreclose on the loan. *See Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 368, 252 P.3d 206, 208 (2011) ("Standing is a question of law reviewed de novo.").

Accordingly, because Select failed to prove it had standing to judicially foreclose on Glass' property, we reverse the judgment in Select's favor. We do not, however, remand the case as there is nothing left for the district court's consideration—the totality of the evidence Select presented at trial[2] failed to demonstrate that it had standing to foreclose, which is a purely legal issue that this court can resolve without any additional

[2]The parties stipulated that the hearing on standing constituted a one-day bench trial that would result in a dispositive decision on the merits of the case.

factfinding by the district court. *See id.*; *see also N.H. Right to Life Political Action Comm. v. Gardner*, 99 F.3d 8, 18 (1st Cir. 1996) ("Where the merits comprise a purely legal issue, reviewable de novo on appeal and susceptible of determination without additional factfinding, a remand ordinarily will serve no useful purpose."); *Jensen v. Jensen*, 104 Nev. 95, 99, 753 P.2d 342, 345 (1988) (reversing without remanding when an issue required no adjustment of the district court's judgment).

It is so ORDERED.[3]



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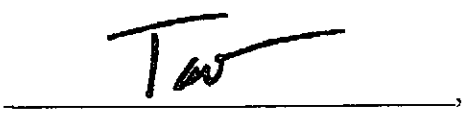
Gibbons



_____, J.
Tao

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Silver

cc: Hon. Joanna Kishner, District Judge
John Walter Boyer, Settlement Judge
Kern Law, Ltd.
Wright, Finlay & Zak, LLP/Las Vegas
Eighth District Court Clerk

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[3]In light of this court's final disposition of this matter, the Nevada Supreme Court's June 23, 2016, stay of the challenged district court order necessarily no longer remains in effect. Any requests for relief regarding the bond on which this stay was conditioned should be directed to the district court.