

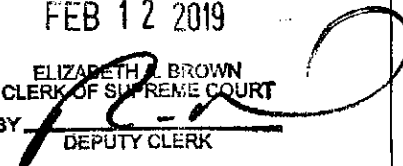
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TERRY CURTIS SAVAGE,  
Appellant,  
vs.  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY; MTC FINANCIAL, D/B/A  
TRUSTEE CORPS; BANK OF  
AMERICA, N.A.; AND  
ADMINISTRATOR, FORECLOSURE  
MEDIATION PROGRAM  
Respondents.<sup>1</sup>

No. 72672-COA

**FILED**

FEB 12 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Terry Curtis Savage appeals from a district court order denying a petition for judicial review in a foreclosure mediation matter. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

After the deed of trust securing his home loan was assigned to respondent Deutsche Bank National Trust Company, Savage defaulted on the loan and elected to participate in Nevada's Foreclosure Mediation Program (FMP). Attorney Edmund Joseph Gorman appeared at the mediation and, to establish his authority to negotiate for Deutsche Bank, he produced documents showing that Deutsche Bank appointed a master servicer, Impac Funding Corporation, which appointed a subservicer, respondent Bank of America, N.A. (BOA), which retained a law firm, Malcolm & Cisneros (M&S), which authorized him to appear on its behalf. While the mediation ended unsuccessfully, the mediator found that Gorman

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<sup>1</sup>We direct the clerk of the court to amend the caption for this case to conform to the caption on this order.

19-06044

established his authority to negotiate for Deutsche Bank, as required by NRS 107.086(5)<sup>2</sup> (providing that a representative who appears at the mediation must have authority to negotiate for the beneficiary) and FMR 13(7)(d)<sup>3</sup> (requiring a representative who appears at the mediation to produce the agreement that authorizes it to negotiate for the beneficiary). And because the mediator found that Gorman complied with the FMP's remaining requirements, the FMP administrator recommended that a foreclosure certificate issue.

Savage petitioned for judicial review, arguing that Gorman did not produce sufficient documentation to establish his authority to negotiate for Deutsche Bank. Deutsche Bank and BOA (sometimes referred to collectively as respondents) disagreed, and after two evidentiary hearings, the district court denied Savage's petition, finding that Gorman established his authority to negotiate for Deutsche Bank. This appeal followed.

On appeal, Savage asserts that Deutsche Bank did not authorize Impac to negotiate for it and that such authority therefore could not have been passed through the succeeding links in the chain-of-authority described above to Gorman. Respondents disagree, and their position is supported by the limited power of attorney appointing Impac as Deutsche Bank's master servicer, which Gorman produced at the mediation.

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<sup>2</sup>Although NRS 107.086 was amended effective June 12, 2017, 2017 Nev. Stat., ch. 571, § 2, at 4091-96, we apply the version of that statute that went into effect on June 10, 2015, since it was the version that was in effect at the time of the underlying mediation.

<sup>3</sup>The FMRs became effective on June 30, 2009, and have been amended and renumbered numerous times since. For clarity, the citations in the text are to the FMRs that went into effect on January 13, 2016, and were the FMRs in effect at the time the underlying mediation occurred.

Indeed, because the limited power of attorney expressly authorized Impac to “enforce[ ]” and “preserv[e]” Deutsche Bank’s interest in the deed of trust through “non-judicial foreclosure” and a non-exhaustive list of actions in furtherance thereof, it implicitly authorized Impac to satisfy any prerequisites to non-judicial foreclosure, which, in Nevada, included procuring a foreclosure certificate by participating in the FMP. *See Am. First Fed. Credit Union v. Soro*, 131 Nev. 737, 739, 359 P.3d 105, 106 (2015) (enforcing a contract based on its clear and unambiguous language); *see also* NRS 107.086(1), (2)(d) (providing that, where owner-occupied residential property is involved, non-judicial foreclosure cannot proceed unless the beneficiary participates in the FMP and obtains a foreclosure certificate). And since a foreclosure certificate cannot issue unless a representative who appears for the beneficiary establishes his authority to negotiate for the beneficiary, *see* NRS 107.086(6); FMR 13(7)(d); *Holt v. Reg’l Tr. Servs. Corp.*, 127 Nev. 886, 893, 266 P.3d 602, 607 (2011) (recognizing that noncompliance with the FMP’s requirements precludes issuance of a foreclosure certificate), we conclude that the district court did not err insofar as it determined that the limited power of attorney authorized Impac to negotiate for Deutsche Bank. *See Soro*, 131 Nev. at 739, 359 P.3d at 106 (providing that contract interpretation presents a question of law that, absent factual disputes, is reviewed de novo).

Savage next disputes whether Impac passed its authority to negotiate for Deutsche Bank to BOA, arguing that Impac expressly prohibited BOA from “incur[ring] or agree[ing] to any liability or obligation” for Deutsche Bank. But the limited power of attorney appointing BOA as Impac’s subservicer, which Gorman produced at the mediation, does not support Savage’s argument. Indeed, the limited power of attorney expressly

confers the full extent of Impac's authority to pursue non-judicial foreclosure, which, as discussed above, included the implicit authority to negotiate for Deutsche Bank. We recognize that the limited power of attorney further provides that, as relevant here, [n]othing contained herein shall be construed to grant [BOA] the power to [undertake certain actions, including] incur[ring] or agree[ing] to any liability or obligation [for Deutsche Bank] *except*, in each case, as provided herein." But we cannot agree with Savage that this clause sets forth a categorical prohibition against BOA incurring liabilities or obligations on or for Deutsche Bank.

In particular, although the clause initially states a general prohibition against BOA incurring liabilities or obligations for Deutsche Bank, it concludes with an emphatic exemption from the general prohibition for actions that are expressly authorized elsewhere in the limited power of attorney. Thus, given that Impac expressly conferred its authority to pursue non-judicial foreclosure for Deutsche Bank to BOA and because that authority included the power to negotiate loan modifications as discussed above, we discern no error insofar as the district court determined that the limited power of attorney at issue here passed Impac's authority to negotiate for Deutsche Bank to BOA. *See Soro*, 131 Nev. at 739, 359 P.3d at 106.

Lastly, Savage and BOA disagree as to whether Gorman demonstrated that BOA passed its authority to negotiate for Deutsche Bank to M&S. The authorization form that Gorman produced at the mediation reflects that, when BOA retained M&S, it made the following single sentence grant of authority: "[p]ursuant to [NRS] 107.086(5) the law firm of [M&S] is hereby authorized as required by [NRS] 107.086(11)(c) to act on behalf of the beneficiary of the deed of trust." Insofar as the form cites NRS

107.086(5), it seems to pass BOA's authority to negotiate for Deutsche Bank to M&S, as NRS 107.086(5) provides that, when a representative appears for the beneficiary, the representative must have authority to negotiate. And the form's title—"Nevada Foreclosure Mediation Authorization Form"—only reinforces this interpretation. *See Int'l Multifoods Corp. v. Commercial Union Ins. Co.*, 309 F.3d 76, 85 (2d Cir. 2002) (recognizing that headings are relevant to contract interpretation).


But the form also cites NRS 107.086(11)(c), which requires the supreme court to adopt rules to carry out the FMP, including rules "[r]equiring each party to a mediation to provide such information as the mediator determines necessary." And based on that citation, Savage argues that the form only permitted M&S to provide information required by the mediator while BOA contends that, because the form cited both NRS 107.086(5) and (11)(c), it authorized M&S to negotiate for Deutsche Bank and to provide information requested by the mediator. Initially, insofar as Savage and BOA agree that the form's cite to NRS 107.086(11)(c) somehow imbued M&S with the authority to provide information requested by the mediator notwithstanding that subsection's express language regarding the supreme court's rulemaking authority, we need not dwell on the reasonableness of that interpretation, *see Shelton v. Shelton*, 119 Nev. 492, 497, 78 P.3d 507, 510 (2003) (expressing the supreme court's preference for fair and reasonable contractual interpretations), since none of the parties to this matter dispute that interpretation. Thus, the only question before this court is whether the form's cite to NRS 107.086(11)(c) somehow limits the plain language in the remainder of the form, which, as discussed above, seems to authorize M&S to negotiate for Deutsche Bank. And because nothing in NRS 107.086(11)(c)'s exposition of the supreme court's

rulemaking authority or the reference to this provision in the form can be read to limit that authorization, we conclude the district court did not err insofar as it determined that the form passed BOA's authority to negotiate for Deutsche Bank to M&S. *Soro*, 131 Nev. at 739, 359 P.3d at 106.

As Savage does not dispute that M&S passed its authority to negotiate for Deutsche Bank to Gorman, we conclude that the district court did not abuse its discretion in denying his petition. *See Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. 470, 480, 255 P.3d 1275, 1281 (2011) (reviewing the denial of a petition for judicial review in an FMP matter for an abuse of discretion). Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>4</sup>

  
\_\_\_\_\_, A.C.J.  
Douglas

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Elliott A. Sattler, District Judge  
Terry Curtis Savage  
Akerman LLP/Las Vegas  
Malcolm Cisneros\Irvine  
Wright, Finlay & Zak, LLP/Las Vegas  
Washoe District Court Clerk

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<sup>4</sup>We have considered the parties' remaining arguments, but they either do not present a basis for relief or need not be addressed given our disposition of this appeal. And because Savage does not challenge the district court's interlocutory orders dismissing respondents the Administrative Office of the Courts and MTC Financial, we necessarily do not disturb them.