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ELIZABETH A. BROWN
CLERK OF SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES J. LEE, AN INDIVIDUAL; AND KELLY LEE, AN INDIVIDUAL,
Appellants,
vs.
THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS CWABS, INC., ASSET-BACKED CERTIFICATES, SERIES 2004-13; AND CARRINGTON MORTGAGE SERVICES, LLC,
Respondents.

No. 89449

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

When the Lees refinanced their home in 2004, they executed a promissory note in favor of Sterling National Mortgage Company and secured repayment of the Note by executing a Deed of Trust, which conveyed an interest in the property to Sterling. The Deed of Trust identified Mortgage Electronic Registration Systems, Inc. ("MERS") as a nominee for Sterling and its beneficiary. That same year, Sterling allegedly transferred its interest in the Note to Countrywide Document Services by means of an allonge. At some point, the Note was also placed into a trust in a pool of approximately 7,400 mortgage loans to CWABS, INC. Asset-Backed Certificates, Series 2004-13, a subsidiary of Countrywide. Respondent Bank of New York Mellon (BoNYM) was engaged to serve as trustee of that trust. In 2010, MERS assigned its interest in the Deed of Trust to BoNYM.

Four years after refinancing their home, the Lees defaulted on their mortgage payments and filed for Chapter 13 bankruptcy in the U.S. Bankruptcy Court for the District of Nevada. Countrywide appeared as the secured creditor of the mortgage but failed to demonstrate Countrywide held the Note or the Deed of Trust. Ultimately, in 2008, the bankruptcy court dismissed the Lees' case for failing to complete their planned payments.

A year later, the Lees opened a second Chapter 13 bankruptcy case which was converted into a Chapter 7 action. That court discharged the Lees' personal obligation to pay the loan. A few months later, BoNYM began foreclosure proceedings on the property.

The Lees filed a third Chapter 13 bankruptcy action in 2011. In that case, BoNYM filed a proof of claim against the Lees. The claim included an allonge purporting to transfer BoNYM an interest; however, BoNYM was not specifically identified in the allonge. The allonge reflected a transfer of interest from Sterling to Countrywide in 2004 through a blank endorsement. The bankruptcy court questioned whether the allonge transferred any interest to BoNYM because the allonge was not attached to the Note as required for a valid endorsement under NRS 104.3204. The court found BoNYM lacked standing to file claims, but explicitly stated its decision was a "non-merits disposition."

A few months later, BoNYM produced a second allonge in an effort to cure the defect found in the first allonge. Before the bankruptcy court addressed the second allonge, BoNYM, as trustee for the pool of loans, moved to dismiss the bankruptcy action because the Lees failed to file a certificate of credit counseling. The court granted the motion and dismissed the case with prejudice.

The Lees initiated a fourth bankruptcy case, which lasted five years. In that case, BoNYM was listed as a disputed secured creditor and the Internal Revenue Service as a priority creditor. Along with the IRS, BoNYM filed another proof of claim with the first allonge. Eventually, the bankruptcy court dismissed the fourth case upon BoNYM's motion.

In 2021, BoNYM attempted to foreclose on the Lees' property again and the Lees filed the underlying complaint in the Eighth Judicial District Court seeking quiet title and related relief. The Lees also reopened their fourth bankruptcy action and filed an adversary complaint in the bankruptcy court seeking declaratory relief, claiming BoNYM lacks standing to foreclose. The state court proceedings were stayed pending resolution of the bankruptcy case.

The bankruptcy court found that the 2011 order was based on evidence available at the time. The court noted the second allonge, which was not reviewed in the 2011 bankruptcy action, was new evidence that demonstrated BoNYM's standing. As a result, the bankruptcy court dismissed the Lees' adversary complaint with prejudice.

In June 2024, with the matter back in the Eighth Judicial District Court, BoNYM filed a motion for summary judgment, and the Lees filed a countermotion for partial summary judgment. BoNYM presented the second allonge and a loan schedule identifying the Lees' Note. The district court granted summary judgment in favor of BoNYM, concluding BoNYM was the holder of the Note under *Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 286 P.3d 249 (2012), because BoNYM possessed the Note, even though the allonge was endorsed in blank. The court further found the 2011 order did not have a preclusive effect. The court also dissolved an injunction that precluded BoNYM from foreclosing and awarded the entire bond amount—$65,000—to BoNYM, along with attorney's fees related to the injunction. The Lees appeal these decisions based on issue preclusion, claim preclusion, and judicial estoppel. The Lees also challenge the district court's admission of BoNYM's evidence regarding the loan and loan schedule and the award of the entire bond to BoNYM. BoNYM contends that the Lees are precluded based on the decision of the court in the fourth bankruptcy action regarding the second allonge.

The Lees are barred by the bankruptcy court's finding that BoNYM had standing to seek foreclosure

BoNYM contends the Lees presented the same issue and claim preclusion arguments rejected by the court in the fourth bankruptcy action. Further, BoNYM argues, the bankruptcy court found that the 2011 order did not preclude BoNYM from proceeding under the second allonge.

This court reviews a district court's decision to grant summary judgment de novo. *Paulos v. FCH1, LLC*, 136 Nev. 18, 22, 456 P.3d 589, 593 (2020). Whether issue preclusion applies is a question of law that this court also reviews de novo. *Id.* at 23, 456 P.3d at 593. This court "appl[ies] federal law to determine the preclusive effect of a federal court decision in a nondiversity case." *Id.* Federal issue preclusion applies if: "(1) the issue necessarily decided at the previous proceeding is identical to the one which is sought to be relitigated; (2) the first proceeding ended with a final judgment on the merits; and (3) the party against whom [issue preclusion] is asserted was a party or in privity with a party at the first proceeding." *Id.* (quoting *Paulo v. Holder*, 669 F.3d 911, 917 (9th Cir. 2011)).

Issue preclusion

Issue preclusion defeats the Lees' appeal. The Lees and BoNYM are the same parties in the same position as in the 2011 bankruptcy case. Second, the issues from the fourth bankruptcy case are identical to the issues presented in this state proceeding. In the fourth bankruptcy case, both parties litigated BoNYM's ability to assert foreclosure, and BoNYM presented evidence it holds the Note under an endorsement in blank. The court granted BoNYM standing to seek foreclosure.

The fourth bankruptcy action was resolved on the merits. The court dismissed the case because it found BoNYM had standing to assert foreclosure under the endorsement in blank. While the court in the third bankruptcy action did not directly consider the endorsement in blank for BoNYM's standing purposes, the court in the fourth bankruptcy case did. Therefore, issue preclusion applies to the Lees' arguments and the district court appropriately granted summary judgment in favor of BoNYM.

Because issue preclusion applies, we need not address the Lees' arguments regarding issue preclusion, claim preclusion, or judicial estoppel, nor BoNYM's argument regarding claim preclusion.

The district court properly admitted evidence that demonstrated BoNYM could enforce the Lees' Note

In addition to preclusion and estoppel, the Lees argue BoNYM failed authenticate the loan schedule, the Pooling and Service Agreement (PSA), and second allonge and that the PSA and loan schedule were inadmissible. This court reviews "a district court's decision to admit or exclude evidence for an abuse of discretion, and we will not interfere . . . absent a showing of palpable abuse." *M.C. Multi-Fam. Dev., L.L.C. v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 193 P.3d 536 (2008).

Even assuming the Lees have standing to challenge the sufficiency of the documents, the Lees have failed to demonstrate the district court abused its discretion in admitting BoNYM's evidence. Here, in addition to other evidence, the district court relied on the Declaration of Terrence Morley in Support of Summary Judgment to authenticate

BoNYM's evidence. "The testimony of a witness is sufficient for authentication or identification if the witness has personal knowledge that a matter is what it is claimed to be." NRS 52.025. The Lees do not challenge the sufficiency of the declaration as a foundation for authentication. On appeal, a party seeking reversal must "cogently argue, and present relevant authority" to support any assertions. *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n. 38, 130 P.3d 1280, 1288 n. 38 (2006). Without such argument and authority, the Lees have not shown that the district court abused its discretion.

The district court properly awarded the entire preliminary injunction bond.

The Lees additionally assert the district court abused its discretion when it awarded BoNYM the entire $66,500.00 injunction bond without showing of actual damages as required under NRCP 65(c). The Lees argue they owed BoNYM at most $2,250.00, which represents the actual costs of reinitiating the foreclosure proceedings.

This court reviews a district court's preliminary injunction bond damages determination for an abuse of discretion. *Bowler v. Leonard*, 70 Nev. 370, 386, 269 P.2d 833, 841 (1954). "The expressed purpose of posting a security bond is to protect a party from damages incurred as a result of a wrongful injunction, not from damages existing before the injunction was issued." *Am. Bonding Co. v. Roggen Enters.*, 109 Nev. 588, 591, 854 P.2d 868, 870 (1993). Damages are calculated as an actual, natural, and proximate result of the wrongful injunction. *Id.* (citing *Brown v. Jones*, 5 Nev. 374 (1870)). When the injunction is dissolved, the liability of the losing party is limited to consequences of the injunction itself. *Id.* at 591, 854 P.2d at 871.

Here, BoNYM presented evidence of actual harm resulting from the preliminary injunction, including the loss of monthly payments, the loss of escrow payment, and the costs of restarting the foreclosure. The district court determined that BoNYM was entitled to average monthly payments of $1,750.00 from the time the injunction was ordered. That figure totals $59,500.00 over the relevant period. In addition, the court identified $19,885.52 in escrow-related costs and $2,250.00 associated with restarting the foreclosure process. The court also found that enjoining the foreclosure sale resulted in total damages of $81,835.52, which exceeded the amount of the injunction bond. Of note, the Lees do not challenge the district court's calculations or its methodology in arriving at these figures. And the record supports these figures. As a result, the district court did not abuse its discretion when it awarded BoNYM the entire bond. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Pickering, J.

Parraguirre, J.

Bell, J.

cc: Hon. Tierra Jones, Chief Judge
Charles K. Hauser, Settlement Judge
Thalgott Law, PLLC
Hanks Law Group
Wright, Finlay & Zak, LLP/Las Vegas
Eighth District Court Clerk