

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC BOCKS; AND COLLEEN BOCKS,
Appellants,
vs.
WELLS FARGO BANK, N.A.; AND
HSBC BANK USA, NATIONAL
ASSOCIATION AS TRUSTEE FOR
WELLS FARGO ASSET-SECURITIES
CORPORATION,
Respondents.

No. 60281

FILED

DEC 17 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malm
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.

In an appeal from a district court order granting or denying judicial review in an FMP matter, 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, a deed of trust beneficiary must: (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 person. NRS 107.086(4) and (5) (2011); *Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. ___, ___, 255 P.3d 1275, 1278-79 (2011).

Appellants first contend that respondent Wells Fargo Bank, N.A., the loan servicer for respondent HSBC Bank USA, National Association, mediated in bad faith by refusing to disclose the amount HSBC paid to acquire ownership of appellants' loan. Nothing in the FMP

statute or rules requires disclosure of this information, and the district court did not clearly err in finding a lack of bad faith in this regard. *Edelstein*, 128 Nev. at ___, 286 P.3d at 260 (indicating that, absent clear error, a district court's factual determinations will not be disturbed).

Appellants next contend that the assignment produced by respondents was "void" because it did not recite the amount of consideration that HSBC paid for the assignment. According to appellants, this failure to recite the consideration paid violates NRS 111.210. We disagree. NRS 111.210, part of Nevada's statute of frauds, applies to "contract[s] . . . for the sale of . . . an[] interest in lands." NRS 111.210(1). A written assignment of a deed of trust, however, is not a contract, but is an instrument that sets forth the chain of title. A written assignment is therefore akin to a receipt, providing a written record of who is entitled to foreclose on secured property as a means of satisfying a borrower's obligation under a promissory note. *Cf. Einhorn v. BAC Home Loans Servicing, LP*, 128 Nev. ___, ___, 290 P.3d 249, 254 (2012) (indicating that an assignment's purpose is to complete the chain of title of the person seeking to enforce the note and to proceed with foreclosure). Thus, while a signed writing is required to transfer the beneficial interest in a deed of trust, *see* NRS 111.205, this writing does not need to recite consideration to accomplish its purpose. *See Leyva*, 127 Nev. at ___, 255 P.3d at 1279 (discussing the applicability of NRS 111.205 without reference to NRS 111.210). Accordingly, the district court properly determined that the deed of trust assignment produced by respondents was not "void" for failure to comply with NRS 111.210(1). *Edelstein*, 128 Nev. at ___, 286 P.3d at 260.

To the extent that appellants intend to raise additional arguments, *cf.* NRAP 28(a)(8) (requiring an opening brief to contain a heading and a summary for each argument being made), these additional arguments are either beyond the scope of the FMP or were raised for the first time in appellants' reply brief. *Francis v. Wynn Las Vegas, LLC*, 127 Nev. ___, ___ n.7, 262 P.3d 705, 715 n.7 (2011) ("[A]rguments raised for the first time in [a] reply brief need not be considered."). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Pickering, C.J.
Pickering

Hardesty, J.
Hardesty

Cherry, J.
Cherry

cc: Hon. Patrick Flanagan, District Judge
Mark L. Mausert
Tiffany & Bosco, P. A.
Washoe District Court Clerk