JPMORGAN CHASE BANK, N.A. V. GALLOWAY

JPMORGAN CHASE BANK, N.A.,
Plaintiff-Appellee,
v.
ANN MARIE GALLOWAY a/k/a
ANN M. GALLOWAY,
Defendant-Appellant.

NO. A-1-CA-35405

COURT OF APPEALS OF NEW MEXICO

December 13, 2018

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY, Francis J. Mathew, District Judge

COUNSEL

Hinkle Shanor LLP, Nancy S. Cusack, Santa Fe, NM, Quilling, Selander, Lownds, Winslett & Moser, P.C., Marcie L. Schout, Dallas, TX, for Appellee

Ann Marie Galloway, Santa Fe, NM, Pro Se Appellant

JUDGES

STEPHEN G. FRENCH, Judge. WE CONCUR: M. MONICA ZAMORA, Judge, J. MILES HANISEE, Judge

AUTHOR: STEPHEN G. FRENCH

MEMORANDUM OPINION

FRENCH, Judge.

{1} The district court entered judgment in favor of Plaintiff JPMorgan Chase Bank, N.A. (Chase), permitting foreclosure against real property owned by Ann Marie

Galloway (Defendant) after she defaulted on the loan encumbering the property. In the judgment, the district court also granted Chase's motion to dismiss counterclaims asserted against it by Defendant in her amended answer to Chase's complaint initiating the foreclosure. Galloway moved for relief from the judgment pursuant to Rule 1-060 NMRA, arguing that Chase lacks standing to bring the foreclosure action. Galloway appeals from the district court's denial of this motion. We affirm.

BACKGROUND

{2} On May 24, 2007, Defendant obtained a $415,000 loan by executing a note (Note) made payable to Mortgage Strategies Group, LLC. The Note was secured by a mortgage (Mortgage) encumbering Defendant's real property in Santa Fe, New Mexico. Defendant defaulted on her loan payments beginning February 1, 2011. She received two letters notifying her of her default, the first from Chase Home Finance, LLC on March 5, 2011, and the second from Chase on August 15, 2011. In April 2011, Chase Home Finance, LLC merged with Chase, leaving Chase the surviving named entity.

{3} Two years later, on April 1, 2013, Chase filed a complaint for foreclosure. Chase attached to the complaint (1) a copy of the original Note; (2) two allonges that were affixed to the Note; (3) the Mortgage; (4) a loan modification agreement; and (5) an assignment of the Mortgage. In its complaint, Chase alleged that it was the holder in due course of the Note and the mortgagee of the Mortgage.

{4} On December 19, 2013, Chase moved for summary judgment. Defendant, proceeding pro se, responded by challenging Chase's standing to bring the foreclosure action because "the law in any mortgage foreclosure case requires a clear chain of title" and Chase did not "demonstrate an unbroken chain of properly recorded assignments of the Mortgage and a parallel unbroken chain of completed Note indorsements." Attached to her response are documents prepared by a company called "Certified Forensic Loan Auditors, LLC," which generally purport to track the assignments of the Mortgage, the indorsements of the Note, and the history and mergers of the various entities involved in the loan instruments, concluding that Chase cannot properly bring the foreclosure action.

{5} The district court denied Chase's motion for summary judgment "on grounds that there is a fact issue arising from the two [a]llonges attached to the [N]ote." Chase moved to reconsider the denial of summary judgment, explaining that it is the holder of the Note because the allonges "both contain indorsements from the original lender/mortgagee, Mortgage Strategies Group, LLC, to AmTrust Bank, and they both contain blank indorsements from AmTrust Bank." Because Chase "was in possession of the Note indorsed in blank at the time that it filed its [c]omplaint, and it attached a copy of that Note to the [c]omplaint," it argued that it was the holder of the Note and therefore entitled to its enforcement.

{6} After Chase moved for reconsideration of the denial of summary judgment, Defendant filed amended answers to Chase's complaint, which included two

counterclaims alleging fraudulent inducement. Chase then moved to dismiss the claims in Defendant's amended answers. After a hearing on both of Chase's outstanding motions (the motion to reconsider and the motion to dismiss the counterclaims), the district court entered judgment in Chase's favor, permitting foreclosure and concluding Chase has standing to enforce the Note and the Mortgage. Defendant moved for relief from the judgment under Rule 1-060(B) and appeals from the denial of that motion.

DISCUSSION

{7} "Appellate courts will not interfere with . . . an appeal from the denial of a Rule 1-060(B) motion, except upon a showing of abuse of discretion by the district court." *L.D. Miller Constr., Inc. v. Kirschenbaum*, 2017-NMCA-030, ¶ 16, 392 P.3d 194 (internal quotation marks and citation omitted). However, "[e]ven where we review for an abuse of discretion, we review the court's application of the law to the facts de novo." *Oakey v. Tyson*, 2017-NMCA-078, ¶ 19, 404 P.3d 810, *cert. granted*, ___-NMCERT-___ (S-1-SC-36656, Oct. 10, 2017).

{8} In her Rule 1-060(B) motion, Defendant argued that Chase lacked standing to bring the foreclosure suit because it failed to meet its burden of showing "that it owned the entire instrument[s] of Note and Mortgage at the time suit was filed." On appeal, Defendant makes numerous arguments that are unrelated to whether Chase has standing and instead challenges other conclusions the district court reached in its judgment, for example, whether Defendant herself lacks standing to assert defenses against Chase and whether she is judicially estopped from asserting these defenses. In denying her Rule 1-060(B) motion, the district court considered only the argument she made therein—that is, whether Chase lacks standing—and this appeal stems from the denial of that motion, we therefore address only this issue. *See Campos Enters. v. Edwin K. Williams & Co.*, 1998-NMCA-131, ¶ 12, 125 N.M. 691, 964 P.2d 855 (explaining that an appellate court reviews only matters that were presented to the trial court). Additionally, Defendant makes numerous tangential arguments on appeal concerning Chase's standing that she did not argue to the district court, including whether the loan modification agreement constituted a novation, whether the Note is in fact negotiable, whether Chase gave value in exchange for the Note or Mortgage, and whether Defendant rescinded the Note. We decline to address these arguments based on Defendant's failure to preserve them. *See Benz v. Town Ctr. Land, LLC*, 2013-NMCA-111, ¶ 24, 314 P.3d 688 ("To preserve an issue for review on appeal, it must appear that appellant fairly invoked a ruling of the trial court on the same grounds argued in the appellate court." (internal quotation marks and citation omitted)); *Losey v. Norwest Bank of N.M., N.A.* (*In re Norwest Bank of N.M., N.A.*), 2003-NMCA-128, ¶ 30, 134 N.M. 516, 80 P.3d 98 (stating that this Court will not search the record for evidence of preservation).

{9} There are three categories of persons that are entitled to the enforcement of a negotiable instrument such as a note, and therefore have standing to bring foreclosure proceedings: "(i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the

instrument who is entitled to enforce the lost, destroyed, stolen, or mistakenly transferred instrument pursuant to certain [statutory] enforcement provisions." *Bank of N.Y. v. Romero*, 2014-NMSC-007, ¶ 20, 320 P.3d 1 (internal quotation marks and citation omitted).

{10} Chase argued to the district court and maintains on appeal that it was the holder of the Note at the time it filed the foreclosure complaint. Thus, we examine the first category of persons entitled to enforce negotiable instruments, the holder of the instrument. The holder of the instrument is "the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession[.]" NMSA 1978, § 55-1-201(b)(21)(A) (2005). For an instrument to be one that is payable to an identified person, it must contain a special indorsement. *See* NMSA 1978, § 55-3-205(a) (1992) ("When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person."). In other words, a special indorsement "identifies a person to whom it makes the instrument payable[.]" *Id.* "If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a 'blank indorsement.' " Section 55-3-205(b). "When indorsed in blank, an instrument becomes payable to bearer[.]" *Id.*

{11} Chase argues that it was the holder of the Note because (1) it attached a copy of the original Note to the complaint, demonstrating that it was in possession of the Note; and (2) the allonges show first an endorsement to AmTrust Bank, and second, an endorsement in blank, making the Note bearer paper. We agree. The Note, the negotiable instrument, is payable to bearer. Each allonge contains two endorsements, one special and one blank. First, the allonges make the Note "pay[able] to the order of AmTrust Bank." Second, an authorized agent of AmTrust Bank signed each allonge in blank, i.e., the line following the words "pay to the order of" is left blank. Because the Note was signed without identifying a bearer, it was indorsed in blank. *See* § 55-3-205(b); *see also Romero*, 2014-NMSC-007, ¶ 24 ("A blank indorsement, as its name suggests, does not identify a person to whom the instrument is payable but instead makes it payable to anyone who holds it as bearer paper."). Thus, the Note is payable to bearer, and an instrument that is payable to bearer "may be negotiated by transfer of possession alone until specially endorsed." Section 55-3-205(b). By affixing to its complaint the original Note and the allonges, Chase proved that it possessed the Note at the time it filed the complaint and that the allonges affixed to the Note contained the indorsements that qualify it as the holder of the Note. Unlike *Romero*, in which our Supreme Court held that the bank was not the holder of the note that it physically possessed at the time it filed the complaint because the note was specially indorsed to a different entity, Chase was in possession of a note indorsed in blank. *See* 2014-NMSC-007, ¶ 23. And unlike *Deutsche Bank National Trust Co. v. Johnston*, which held that the bank failed to establish standing because it produced a note indorsed in blank only *after* filing the complaint for foreclosure and not at the time of filing, Chase proved its possession of the note and the blank indorsements at the time of filing by attaching them to the complaint. *See* 2016-NMSC-013, ¶ 25, 369 P.3d 1046.

{12} Therefore, we cannot conclude that the district court abused its discretion or misapplied the law to the factual circumstances of Defendant's case by denying Defendant's Rule 1-060(B) motion, sought on grounds that Chase lacked standing to bring the foreclosure action against her.

CONCLUSION

{13} We affirm the denial of Defendant's Rule 1-060(B) motion.

{14} IT IS SO ORDERED.

STEPHEN G. FRENCH, Judge

WE CONCUR:

M. MONICA ZAMORA, Judge

J. MILES HANISEE, Judge