West Virginia Supreme Court Dismisses M.E.R.S. Recording Fee Putative Class Action

Feb 06, 2015

Categories:

Blockchain and Digital Assets

Blogs

Authors:

Jared M. Tully

In State ex rel. U.S. Bank National Association v. McGraw, Frost Brown Todd recently assisted in obtaining a dismissal, with prejudice, of a putative class action filed by Wyoming County, West Virginia claiming that the use of the private corporation, Mortgage Electronic Registration Systems, Inc., commonly known as "MERS", as the designee for assignments of deeds of trust in West Virginia violates state law and unjustly enriched the trustees of various mortgage backed security trusts. Wyoming County asserted that the use of MERS (1) undermines the integrity of the counties' real property records, to the detriment of an open and vibrant real estate market, (2) fails to provide transferees in the MERS registry with adequate perfection of the debts secured by the trust deeds, (3) deprives the counties of revenue, and (4) unjustly enriches the trustees through the nonpayment of recording fees.

The defendant trustees moved to dismiss the action at the trial court level. The trial court denied the motion on July 22, 2014, ruling that assignments of deeds of trust are required to be recorded and that Wyoming County was entitled to show that the trustees had been unjustly enriched using MERS. The trustees consequently sought a writ of prohibition from the Supreme Court of Appeals of West Virginia.

On February 5, 2014 the Supreme Court of Appeals of West Virginia issued a writ of prohibition. The Supreme Court prohibited the enforcement of the July 22, 2014 order and directed the trial court to dismiss the action with prejudice. The Court found that under West Virginia law it is not mandatory that an assignment of a deed of trust be recorded in the office of the clerk of the county commission. The court concluded: "The Circuit Court of Wyoming County exceeded its jurisdiction in entering the July 22, 2014, order which denied the trustees' motion to dismiss. The trustees are granted relief prohibiting the enforcement of the order, and the circuit court is directed to dismiss the Wyoming County action with prejudice."

This ruling confirms that in West Virginia trustees of pooled mortgage trusts can use MERS as a selected designee to hold and transfer ownership of deeds of trust. However, the Court identified do so is not without certain priority risks. The Court confirmed: "The failure to record the assignment, however, affords no protection to the assignee with regard to other creditors or bona fide purchasers of the real estate for value, without notice of the unrecorded assignment."

FBT Gibbons