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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JERRY GREENWOOD et al.,

Plaintiffs,

vs.

OCWEN LOAN SERVICING LLC et al.,

Defendants.

3:16-cv-00527-RCJ-VPC

ORDER

This is an action to quiet title. Now pending before the Court is Defendants’ motion for attorneys’ fees. (Mot. Att’y Fees, ECF Nos. 44, 53.) For the reasons given herein, the Court grants the motion.

I. FACTS AND PROCEDURAL HISTORY

The Court provided a detailed history of this case in a prior order, and it need not be fully reproduced here. (*See* Order 1–5, ECF No. 42.)

In brief, on September 9, 2016, based on what they claimed to be a “botched securitization” of their home loan, Plaintiffs Jerry and Gina Greenwood filed this action seeking a decree that they are the owners of the subject property, and that “Defendants, and each of them, have no estate, mortgage, title, or interest in or to the Greenwoods’ Property.” (Compl. 12, ECF No. 1-2.) On April 17, 2018, the Court granted summary judgment for Defendants. The Court held, first, that the claims asserted in this action are precluded by a final adjudication in a prior

1 adversary proceeding before the bankruptcy court. And second, under the binding precedent of
2 *Wood v. Germann*, 331 P.3d 859 (Nev. 2014), the Greenwoods clearly “lack standing to
3 challenge the assignments of the Note and DOT or to assert claims arising under the trust
4 purchase agreement or Pooling and Servicing Agreement surrounding the securitization of the
5 Note.” (Order 9, ECF No. 42.) Accordingly, because the Greenwoods premised this case on
6 precisely the same argument rejected by the Nevada Supreme Court in *Wood*, the Court ordered
7 the Greenwoods to show cause why sanctions should not be imposed against them for bringing
8 and maintaining this case without reasonable grounds.

9 Now before the Court are the Greenwoods’ response to the order to show cause and
10 Defendants’ motion for attorneys’ fees under NRS § 18.010(2)(b).

11 II. LEGAL STANDARDS

12 “In diversity actions, federal courts are required to follow state law in determining
13 whether to allow attorneys’ fees.” *Swallow Ranches, Inc. v. Bidart*, 525 F.2d 995, 999 (9th Cir.
14 1975). NRS § 18.010(2)(b) provides that a prevailing party can obtain an award of attorneys’
15 fees if the court finds the action was “brought or maintained without reasonable ground.” The
16 Nevada Supreme Court has often expressed that the decision to award attorneys’ fees under
17 section 18.010(2)(b) is “within the sound discretion of the district court.” *Kahn v. Morse &*
18 *Mowbray*, 117 P.3d 227, 238 (Nev. 2005). However, the statute also gives considerable guidance
19 touching on how the Legislature intended courts to exercise their discretion:

20 The court shall liberally construe the provisions of this paragraph in favor of
21 awarding attorney’s fees in all appropriate situations . . . to punish for and deter
22 frivolous or vexatious claims and defenses because such claims and defenses
23 overburden limited judicial resources, hinder the timely resolution of meritorious
24 claims and increase the costs of engaging in business and providing professional
services to the public.

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1 **III. ANALYSIS**

2 **a. Whether attorneys' fees should be awarded under NRS § 18.010(2)(b)**

3 Because the binding decision in *Wood* was issued prior to the filing of this action, the
4 Court finds the Greenwoods had no reasonable grounds to challenge the securitization of their
5 Note. The Greenwoods conceded their lack of standing in response to Defendants' summary
6 judgment motion:

7 In their Motion for Summary Judgment, the Defendants argue that a loan
8 assignment made in violation of a pooling and servicing agreement is voidable
9 and not void. This argument actually has merit. The Greenwoods acknowledge
10 that in *Wood v. Germann*, 130 Nev. Adv. Op. 58, 331 P.3d 859, 861 (decided
11 Aug. 7, 2014), the Nevada Supreme Court concluded that the assignment of a
12 mortgagor's mortgage and the underlying promissory note to the trustee of a
13 securitized mortgage loan trust after the closing date established by the trust's
14 pooling and servicing agreement (PSA) was not void, but was merely voidable;
15 therefore, the mortgagor lacked standing to challenge the validity of the
16 assignment, because the trustee was entitled to ratify the post-closing agreement.
17 Therefore, the Greenwoods are willing, if the Court deems it necessary, to amend
18 their August 10, 2016, Complaint to conform to the holding in *Wood*

14 (Resp. 16, ECF No. 16.)

15 In their response to the Court's show cause order, the Greenwoods make two main
16 arguments to avoid an assessment of attorneys' fees. First, they assert they were unaware of
17 *Wood* until September 8, 2017, about one year after filing their Complaint and two months prior
18 to the filing of Defendants' summary judgment motion. It was on this date that Defendants'
19 counsel sent the Greenwoods a safe harbor letter stating: "As we have discussed several times
20 since the beginning of this case, it is my client's position . . . that the Greenwoods do not have
21 standing to maintain their claims based on a challenge to the Assignment of the Deed of Trust."
22 (See Letter, ECF No. 37-1.) Attached to the letter was a copy of the Nevada Supreme Court's
23 opinion in *Wood*. The letter also cited *Shaw v. CitiMortgage, Inc.*, No. 3:13-cv-445, 2015 WL
24 2194210 (D. Nev. May 11, 2015), in which Judge Larry Hicks awarded attorneys' fees against a

1 plaintiff for bringing the same type of securitization challenge after the issuance of the *Wood*
2 decision. The letter also included an offer to accept a dismissal with prejudice, with each party to
3 bear its own fees and costs. Of course, the Greenwoods did not accept this offer.

4 The Court is not satisfied with the Greenwoods' argument. *Wood* is a published decision
5 of the Nevada Supreme Court, which predates the filing of this case by more than two years, and
6 which is on all fours with the primary, if not only, legal theory raised in the Greenwoods'
7 Complaint. It is extremely likely to have turned up in any earnest research of the Nevada
8 precedents applicable to this case. Implicit in NRS § 18.010(2)(b) is the Nevada Legislature's
9 judgment that litigants in this state must be cautious in their pursuit of legal claims, and take
10 upon themselves the responsibility of ensuring that there is a reasonable basis for those claims
11 before asserting them in court. The filing of a lawsuit forces defendants to incur costs, which are
12 very often substantial. It is not enough for a plaintiff simply to claim ignorance of the law
13 applicable to his own claims, after filing and maintaining a baseless action for over a year, and
14 needlessly generating tens of thousands of dollars in legal expenses. Moreover, after being
15 specifically advised of *Wood* in Defendants' safe harbor letter, the Greenwoods did not promptly
16 address the fact that their Complaint was without reasonable grounds. Rule 11's safe harbor
17 period is only twenty-one days, and the Greenwoods took no action to withdraw or amend their
18 pleading during that time. On October 5, 2017, after the expiration of the safe harbor period, the
19 Greenwoods engaged with Defendants in a settlement conference, but did not reach a settlement
20 agreement. On November 12, Defendants filed their summary judgment motion, which the
21 Greenwoods opposed. Despite the fact that the settlement conference and summary judgment
22 motion required Defendants to incur further legal expenses, it was not until the Greenwoods'
23 response to the motion that they first acknowledged their Complaint's lack of merit.

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1 The Greenwoods' second main argument against attorneys' fees is that even if their
2 securitization theory is foreclosed by *Wood*, their Complaint nonetheless states a valid claim to
3 quiet title under *Edelstein v. Bank of New York Mellon*, 286 P.3d 249 (Nev. 2012). In *Edelstein*,
4 the Nevada Supreme Court stated that “[s]eparation of the note and security deed creates a
5 question of what entity would have authority to foreclose, but does not render either instrument
6 void.” *Id.* at 259 (internal quotation omitted). “After being split, the documents, and their
7 respective interests, survive even if held by different parties.” *In re Montierth*, 354 P.3d 648, 650
8 (Nev. 2015) (brackets and internal quotation omitted) (citing *In re Phillips*, 491 B.R. 255, 275
9 (Bankr. D. Nev. 2013)). However, “both the promissory note and the deed must be held together
10 to foreclose; the general practical effect of severance is to make it impossible to foreclose the
11 mortgage.” *Edelstein*, 286 P.3d at 258 (brackets and internal quotation omitted).

12 The Greenwoods' challenge under *Edelstein* is that none of the Defendants can prove it is
13 presently entitled to enforce both the Note and the Deed of Trust (“DOT”). However, even if this
14 allegation is true, it is immaterial to the validity and viability of either instrument. Splitting a
15 promissory note and deed of trust “does not render either instrument void,” and does not affect
16 the interest either document protects. The Greenwoods argue they can use a quiet title action at
17 any time to force Defendants to show that they hold both the Note and DOT. (Resp. 9, ECF No.
18 48.) In this case, if no Defendant were able to make that showing, the Greenwoods claim they
19 would be entitled to a decree that they are the owners of the Property, and that “Defendants, and
20 each of them, have no estate or interest whatsoever in or to the . . . Property adverse to the
21 Greenwoods.” (Compl. 12, ECF No. 1-2 at 13.) This argument is unsupported by case law,
22 incompatible with *Edelstein*, and, quite frankly, absurd. No defendant has taken steps toward
23 foreclosure; not so much as a notice of default has been recorded against the Property. Yet, the
24 only practical effect of splitting the Note and DOT is to render *foreclosure* impossible.

1 Therefore, the best possible outcome of the Greenwoods' premature *Edelstein* challenge, if
2 successful, would be an advisory opinion that no Defendant is presently entitled to foreclose the
3 DOT. And beyond being merely advisory, such an opinion would be entirely unhelpful, because
4 it would only restate what *Edelstein* has already clearly established. Furthermore, *Edelstein*
5 expressly held that a party may cure a split by reunifying the promissory note and deed of trust,
6 and then pursue foreclosure. Thus, a court would directly contradict *Edelstein* by ruling, at any
7 time, that a party holding one instrument is left with "no estate or interest whatsoever" in the
8 subject property merely because it is unable to show it holds the other. And the Greenwoods—
9 even if successful in proving that the Note and DOT are currently split—would certainly not be
10 entitled to the relief they seek: a judicial declaration that they own the Property free and clear.

11 Therefore, the Court finds the Greenwoods have failed to show they had reasonable
12 grounds for bringing this action, and an award of attorneys' fees is appropriate under NRS §
13 18.010(2)(b). *See Shaw*, 2015 WL 2194210, at *2.

14 **b. Whether the fees requested by Defendants are reasonable**

15 With respect to the amount of fees, the Court recognizes that, in Nevada, the method
16 upon which a reasonable fee is determined is subject to the discretion of the court which is
17 tempered only by reason and fairness. *Shuette v. Beazer Homes Holdings Corp.*, 124 P.3d 530,
18 548–49 (Nev. 2005). In determining the amount of fees to award, the Court is not limited to one
19 specific approach, "its analysis may begin with any method rationally designed to calculate a
20 reasonable amount, including those based on a 'lodestar' amount or a contingency fee." *Id.* at
21 549. However, the Court must consider the requested amount in light of the factors enumerated
22 in *Brunzell v. Golden Gate Nat. Bank*, 455 P.2d 31 (Nev. 1969), which include the advocate's
23 professional qualities, the nature of the litigation, the work performed, and the result.

1 Defendants request a total of \$47,103.07 in attorneys' fees. (Suppl. Mot. Att'y Fees 2,
2 ECF No. 53.) The Court finds the request reasonable and will award the full amount. Notably,
3 Defendants and their counsel took effective steps to manage and mitigate their litigation
4 expenses. Defendants' representation was consolidated in one firm, which undoubtedly reduced
5 their fees by eliminating duplicative work. Counsel also appropriately distributed their workload
6 among experienced attorneys, associates, and law clerks, which resulted in a very reasonable
7 average rate of \$216.41 per hour. (Mot. Att'y Fees 9, ECF No. 44.) In fact, all of counsel's
8 hourly rates for this case are well below the high end of what is commonly approved in this
9 District, with partner rates topping out at \$248. The Court further finds that counsel are
10 experienced and well-qualified attorneys, with Ms. Lehman in particular having focused her
11 practice on real property matters for the past ten years. Counsel's motions were well-written,
12 addressed pertinent legal issues, and cited relevant and accurate law to obtain a full summary
13 judgment—a very good result for Defendants. Lastly, while the issues in this case were neither
14 novel nor particularly difficult, the Court has reviewed counsel's affidavits and billing records
15 and finds the hours billed to be commensurate with the work necessary to defend this case
16 diligently.¹

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23 ¹ The Court also notes that the Greenwoods did not respond to the motion for attorneys' fees.
24 Therefore, although they argued in response to the Court's show cause order that attorneys' fees
should not be imposed at all, they presented no argument specifically regarding the amount of
Defendants' fee request. The Court makes this observation only to highlight the lack of
argument, and does not base its award of fees on the Greenwoods' failure to respond.

1 **CONCLUSION**

2 IT IS HEREBY ORDERED that the motion for attorneys' fees (ECF Nos. 44, 53) is
3 GRANTED in the amount of \$47,103.07.

4 IT IS SO ORDERED.

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7 ROBERT C. JONES
8 United States District Judge

9 *July 24, 2018.*

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