


Mark Reynolds

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Opinion Number: _____

Filing Date: **JUNE 26, 2019**

No. A-1-CA-36688

**THE BANK OF NEW YORK MELLON
f/k/a THE BANK OF NEW YORK, as
Trustee for the CERTIFICATEHOLDERS
OF THE CWABS, INC., ASSET-BACKED
CERTIFICATES, SERIES 2007-9,**

Plaintiff-Appellee,

v.

PHUONG T. LUU,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

Alan M. Malott, District Judge

Rose L. Brand & Associates, P.C.

Eraina M. Edwards

Albuquerque, NM

for Appellee

Cravens Law LLC

Richard H. Cravens, IV

Albuquerque, NM

for Appellant

1 **OPINION**

2 **M. ZAMORA, Chief Judge.**

3 {1} Defendant Phuong T. Luu appeals from the district court's judgment on the
4 merits and order for foreclosure sale in favor of Plaintiff The Bank of New York
5 Mellon f/k/a The Bank of New York, as Trustee for the Certificate holders of the
6 CWABS, Inc., Asset-Backed Certificates, Series 2007-9. On appeal, Defendant
7 challenges the district court's conclusion that Plaintiff had standing to enforce the
8 promissory note. Specifically, Defendant questions the validity of the note's
9 indorsement, claiming it is fraudulent and therefore ineffective to show that Plaintiff
10 holds the note, and alleges that the district court's determination to the contrary was
11 unsupported by any evidence. Concluding the district court's ruling is supported by
12 substantial evidence, we affirm.

13 **BACKGROUND**

14 {2} On May 3, 2007, Defendant executed a promissory note in the principal sum
15 of \$160,800, payable to Countrywide Home Loans, Inc. d/b/a America's Wholesale
16 Lender (Countrywide). Around the same time, and as security for repayment of the
17 debt evidenced by the note, Defendant executed a mortgage in favor of Mortgage
18 Electronic Registration Systems, Inc., as nominee for Countrywide.

19 {3} Plaintiff is trustee for a trust created on May 1, 2007. According to the
20 evidence introduced at trial, on May 8, 2007, Defendant's loan was transferred from

1 Countrywide to the Plaintiff trust, which had a cut-off date for receiving loans of
2 June 8, 2007. Defendant's loan was initially serviced by Bank of America until
3 Specialized Loan Servicing (SLS) took over servicing the loan. SLS records show
4 the original note was delivered to Bank of America on May 8, 2007, and thereafter
5 transferred to counsel for Plaintiff on July 10, 2012.

6 {4} Defendant became delinquent on payments due under the note, and on
7 October 4, 2012, Plaintiff filed its initial complaint for foreclosure against
8 Defendant.¹ Plaintiff attached a copy of the note as an exhibit to that complaint,
9 which was unindorsed and contained a stamp from LandAmerica Albuquerque Title
10 Company certifying the note as a true and correct copy of the original. On October
11 22, 2014, that complaint was voluntarily dismissed without prejudice. No rulings
12 regarding standing were made prior to dismissal.

13 {5} On April 21, 2015, Plaintiff filed a second complaint for foreclosure against
14 Defendant, initiating the case that forms the basis for this appeal. In its complaint,
15 Plaintiff alleged it is the holder of the note and the mortgage and is therefore entitled
16 to enforce the note. Plaintiff further alleged that it was in possession of the original
17 note at the time of filing, and attached a copy of the note to the complaint, as well as
18 an affidavit from Plaintiff's counsel attesting to possession of the original note. The

¹At trial, the district court took judicial notice of the entire case file from the previous district court case, *Bank of N.Y. Mellon v. Luu*, No. D-202-CV-2012-09169.

1 note attached to the complaint contains a blank indorsement signed by Michele
2 Sjolander, Executive Vice President of Countrywide. The indorsement is undated,
3 and the parties and the district court agree that the indorsement was signed by stamp,
4 rather than by hand. The note attached to the present complaint does not contain the
5 title company's stamp, as the 2012 copy did.

6 {6} Defendant filed a motion to dismiss the complaint, arguing Plaintiff lacked
7 standing because the note's indorsement is invalid. In her motion, Defendant
8 claimed it was "suspicious" that the note attached to Plaintiff's prior complaint in
9 2012 was unindorsed, yet the note attached to the present complaint contains an
10 indorsement, and therefore contended that the indorsement in the present case must
11 be a result of fraud. The district court denied Defendant's motion. Following
12 discovery, Plaintiff moved for summary judgment, which the district court also
13 denied, ruling there was a genuine issue of material fact as to whether Plaintiff had
14 standing because of the dispute over the timing and effectiveness of the note's
15 indorsement.

16 {7} The matter proceeded to a bench trial, wherein the original note containing
17 the indorsement was presented and admitted as an exhibit, as were other documents
18 concerning Defendant's loan. Based on the evidence admitted at trial, which is
19 discussed in more detail below, the district court concluded that Plaintiff had
20 standing to enforce the note and mortgage lien. Rejecting Defendant's argument that

1 the indorsement was fraudulent, the district court determined the indorsement was
2 properly made. Following a bench trial, the district court concluded that Plaintiff had
3 standing and was thus entitled to enforce the note and foreclose the mortgage. The
4 district court issued an order ruling in favor of Plaintiff and ordering a foreclosure
5 sale.

6 **DISCUSSION**

7 {8} Defendant argues the district court erred in finding that the note was indorsed
8 by Ms. Sjolander of Countrywide prior to April 1, 2009, and in ruling that Plaintiff
9 has standing to bring the action as the real party in interest. Defendant similarly
10 argues that the district court erred in ruling that the original note is indorsed in blank
11 and has been transferred by possession alone. In short, these arguments challenge
12 whether the indorsement was effective to show Plaintiff was the holder of the note
13 at the time the complaint was filed and, thus, whether Plaintiff has standing to
14 enforce the note. We first review whether Plaintiff made a prima facie case of
15 standing and then review Defendant's challenge to the legitimacy of the
16 indorsement.

17 **Standard of Review**

18 {9} In this case, we review the district court's conclusion that Plaintiff had
19 standing under a substantial evidence standard of review. *See Deutsche Bank Nat'l*
20 *Tr. Co. v. Johnston*, 2016-NMSC-013, ¶ 28, 369 P.3d 1046; *Bank of New York v.*

1 *Romero*, 2014-NMSC-007, ¶ 18, 320 P.3d 1 (“Because the district court determined
2 after a trial on the issue that the Bank of New York established standing as a factual
3 matter, we review the district court’s determination under a substantial evidence
4 standard of review.”). “ ‘Substantial evidence’ means relevant evidence that a
5 reasonable mind could accept as adequate to support a conclusion.” *Johnston*, 2016-
6 NMSC-013, ¶ 28 (quoting *Romero*, 2014-NMSC-007, ¶ 18). In conducting our
7 review, we “resolve all disputed facts and indulge all reasonable inferences in favor
8 of the trial court’s findings.” *Id.* (internal quotation marks and citation omitted).

9 **I. Plaintiff Made a Prima Facie Showing of Standing**

10 {10} A plaintiff seeking to foreclose a mortgage must show standing at the time of
11 filing by demonstrating that it has the right to enforce the mortgage lien and the
12 underlying promissory note. *Bank of N.Y. Mellon v. Lopes*, 2014-NMCA-097, ¶ 8,
13 336 P.3d 443. To establish the right to enforce the note, New Mexico’s Uniform
14 Commercial Code (UCC) requires a plaintiff to prove it is either: “(i) the holder of
15 the instrument[;] (ii) a nonholder in possession of the instrument who has the rights
16 of a holder[;] or (iii) a person not in possession of the instrument who is entitled to
17 enforce the instrument[.]” NMSA 1978, § 55-3-301 (1992). A plaintiff may show it
18 is the holder of a note and satisfy the requirements of standing by attaching a note
19 indorsed in blank to its complaint. *Johnston*, 2016-NMSC-013, ¶ 23; *BAC Home*
20 *Loans Servicing, LP v. Smith*, 2016-NMCA-025, ¶ 11, 366 P.3d 714 (“[U]nder the

1 UCC, possession of a note indorsed in blank ordinarily establishes the right of a third
2 party as the holder of that note.”).

3 {11} Plaintiff demonstrated that it was the holder of the note at the time the present
4 complaint was filed. *See* NMSA 1978, § 55-1-201(b)(21)(A) (2005) (defining holder
5 of the note as “the person in possession of a negotiable instrument that is payable
6 either to bearer or to an identified person that is the person in possession”). The
7 complaint alleged the note was indorsed in blank and transferred to Plaintiff. A copy
8 of the indorsed note was included as an exhibit to the complaint. In addition, Plaintiff
9 concurrently filed an affidavit of Plaintiff’s counsel attesting to possession of the
10 original note. These facts demonstrate possession of the note indorsed in blank at the
11 time the complaint was filed, and thus Plaintiff made a prima facie showing of
12 standing in accordance with our case law. *See Johnston*, 2016-NMSC-013, ¶ 25
13 (recognizing that where a party presents a note indorsed in blank with the initial
14 complaint, it is “entitled to a presumption that it could enforce the note at the time
15 of filing and thereby establish standing”). Accordingly, Plaintiff is entitled to a
16 presumption that it has the right to enforce the note. *See id.* Although we conclude
17 Plaintiff made a prima facie showing of standing, this does not dispose of the matter
18 because Defendant takes issue with the validity of the note’s indorsement. We must
19 therefore determine whether substantial evidence supports the district court’s

1 conclusion as to the legitimacy of the indorsement. *See id.* ¶¶ 28-32 (reviewing the
2 district court’s conclusions for substantial evidence).

3 **II. Substantial Evidence Exists to Support the District Court’s Conclusion**
4 **That the Note Was Properly Indorsed**

5 {12} Defendant challenges the legitimacy of the indorsement on the note.
6 Specifically, Defendant argues on appeal that Plaintiff lacks standing to enforce the
7 note because the indorsement on the note is invalid. Defendant bases her argument
8 on the fact that Plaintiff filed a foreclosure complaint against Defendant in 2012 and
9 attached thereto a certified copy of the note that did not contain any indorsements.

10 When Plaintiff filed the present complaint in 2015, it attached a copy of the original
11 note containing a blank indorsement signed by the Countrywide representative Ms.
12 Sjolander. According to Defendant, the copy of the unindorsed note attached to the
13 2012 complaint was allegedly a copy of the original note as it existed in 2012, and
14 Defendant suggests that the indorsement on the note attached to the present
15 complaint was made after the fact, and therefore must be fraudulent. Moreover,
16 because Countrywide ceased existing after April 1, 2009, Defendant contends
17 Countrywide’s indorsement is only effective if it was made prior to that date.

18 {13} To address whether the note was properly indorsed, the district court was
19 required to resolve a conflict in the evidence. In the district court, two versions of
20 the note were admitted into evidence—one containing the indorsement and one with
21 no indorsement. By “reconcil[ing] inconsistencies[] and determin[ing] where the

1 truth lies,” the district court found that, after the note’s execution but sometime
2 before April 1, 2009, the note was indorsed in blank by Ms. Sjolander of
3 Countrywide. *N.M. Taxation & Revenue Dep’t v. Casias Trucking*, 2014-NMCA-
4 099, ¶ 23, 336 P.3d 436 (alteration, internal quotation marks, and citation omitted).
5 The district court also found that the copy of the note attached to the 2012 complaint
6 was a copy that the title company made at loan closing in 2007. In concluding the
7 note was properly indorsed, the district court rejected Defendant’s theory that the
8 indorsement was fraudulent. The district court was entitled to resolve the apparent
9 evidentiary conflict created by the existence of the contrary notes. *Hess Corp. v.*
10 *N.M. Taxation & Revenue Dep’t*, 2011-NMCA-043, ¶ 37, 149 N.M. 527, 252 P.3d
11 751 (“Resolution of factual conflicts, credibility, and weight is the task of the
12 [district] court.” (internal quotation marks and citation omitted)). We will not
13 reweigh the evidence on appeal. *See Clark v. Clark*, 2014-NMCA-030, ¶ 26, 320
14 P.3d 991 (“We will not reweigh the evidence nor substitute our judgment for that of
15 the fact[-]finder.” (alteration, internal quotation marks, and citation omitted)).
16 Rather, “[w]e simply review the evidence to determine whether there is evidence
17 that a reasonable mind would find adequate to support a conclusion.” *Charles v.*
18 *Regents of N.M. State Univ.*, 2011-NMCA-057, ¶ 15, 150 N.M. 17, 256 P.3d 29
19 (alteration, internal quotation marks, and citation omitted). On appeal, we must

1 indulge all reasonable inferences in favor of the district court's ruling. *Johnston*,
2 2016-NMSC-013, ¶ 28.

3 {14} The district court's determination that the note was properly indorsed is
4 supported by substantial evidence. At trial, Nicholas Raab, Assistant Vice President
5 of the High Risk Department at SLS, testified for Plaintiff. At the time of trial, SLS
6 serviced Defendant's loan for Plaintiff. Mr. Raab had been employed by SLS for
7 over ten years. Mr. Raab testified as to his familiarity with SLS practices and
8 business records, as well as his experience working with loans originated by
9 Countrywide. Based on his knowledge and experience, Mr. Raab explained that a
10 title company typically stamps a copy of the note when the loan closes. Mr. Raab
11 explained that a title company would only be involved with the note at loan closing
12 and that the copy of the note attached to the 2012 complaint was the title company's
13 certified copy of the note made at loan closing. Defendant's loan closed on May 3,
14 2007. Mr. Raab also explained that Countrywide indorses notes at the time such
15 notes are transferred to the next owner. Defendant's loan was transferred to the trust
16 by a Pooling and Servicing Agreement wherein Countrywide conveyed all of its
17 interest in Defendant's mortgage loan to Plaintiff. The transfer of Defendant's loan
18 took place on May 8, 2007—a few days after the loan closed.

19 {15} Initially, we address Defendant's concern that Mr. Raab was an unqualified
20 witness. Although Defendant does not specifically challenge on appeal the

1 admission of that evidence, she fleetingly asserts in her reply brief that Mr. Raab's
2 testimony should be deemed inadmissible because it was not based on personal
3 knowledge. We will not consider the admissibility of Mr. Raab's testimony because
4 the issue was raised for the first time in Defendant's reply brief. *See Mitchell-Carr*
5 *v. McLendon*, 1999-NMSC-025, ¶ 29, 127 N.M. 282, 980 P.2d 65 (“[T]he general
6 rule is that we do not address issues raised for the first time in a reply brief[.]”); *cf.*
7 Rule 12-318(C) NMRA (stating in pertinent part that a reply brief “shall reply only
8 to arguments or authorities presented in the answer brief”). Nonetheless, we note
9 that Mr. Raab's testimony was grounded in his personal knowledge and experience
10 working at SLS. Based on his knowledge, Mr. Raab testified as to practices and
11 procedures and explained SLS business records in detail.

12 {16} We thus turn to the district court's determination that the certified copy of the
13 note attached to the 2012 complaint was a copy from the title company made at loan
14 origination, and not a copy of the original note as it existed in 2012. Defendant's
15 theory of fraud relies in part on the assumption that the note attached to the 2012
16 complaint represented the original note as it existed in 2012. However, our review
17 of the evidence, including Mr. Raab's testimony that the title company was only
18 involved at loan closing, does not support Defendant's position. The evidence shows
19 that Defendant's loan closed on May 3, 2007, and that at closing the title company
20 made a copy of the note and stamped the copy to designate it as a certified copy of

1 the original. Further, the evidence supports a conclusion that the title company did
2 not place a stamp on the original note as no such stamp appears on the original note
3 that was introduced at trial, and that the title company would not have made a copy
4 of the note or otherwise have been involved with the note other than at closing.
5 Therefore, the fact that the copy of the note attached to the complaint in 2012 states
6 it is a certified copy does not mean the copy was a copy of the note as it existed in
7 2012; but only that it was a copy of the original as it existed at loan origination in
8 2007. Substantial evidence supports the conclusion that the note attached to the 2012
9 complaint was not a copy of the original note as it existed in 2012.

10 {17} To the extent Defendant implies that the best evidence rule indicates that we
11 must take the unindorsed note attached to the 2012 complaint as the true copy of the
12 original, we disagree. The accuracy of the copy of the indorsed original note attached
13 to the present complaint was confirmed when the district court made a copy of the
14 actual original note and admitted it into evidence. The requirements of Rule 11-1002
15 NMRA are thus met because the original note was inspected by the district court,
16 copied, and admitted as an exhibit during trial. Defendant's contention that the
17 provisions of Rule 11-902 NMRA regarding public records affects the authentication
18 of the original note is likewise misplaced because the original note is not a copy of
19 a public record.

1 {18} Having concluded that substantial evidence supports the district court's
2 conclusion that the note attached to the 2012 complaint was not a copy of the original
3 note as it existed in 2012, we next turn to the court's determination that the note was
4 indorsed prior to April 1, 2009, when Countrywide ceased doing business. Mr. Raab
5 testified that Countrywide indorsed notes at the time of transfer to a subsequent
6 owner. The evidence shows that Defendant's loan was transferred to the trust on
7 May 8, 2007, and that the cut-off date for loans to be transferred to the trust was June
8 8, 2007. Based on Countrywide's practice of indorsing notes at the time of transfer
9 to a subsequent owner, and the fact that Defendant's loan was transferred to the trust
10 in 2007, it was reasonable for the district court to conclude that the indorsement was
11 made prior to April 1, 2009. Defendant did not present any evidence at trial to refute
12 the foregoing timeline of events, but rather argued that the evidence supported her
13 theory of fraud. We note that the arguments of counsel are not evidence, *Muse v.*
14 *Muse*, 2009-NMCA-003, ¶ 51, 145 N.M. 451, 200 P.3d 104, and the district court,
15 as the fact-finder, was free to reject Defendant's version of the facts. *See Casias*
16 *Trucking*, 2014-NMCA-099, ¶ 23 ("It is the sole responsibility of the trier of fact to
17 weigh the testimony, determine the credibility of the witnesses, reconcile
18 inconsistencies, and determine where the truth lies[.]" (internal quotation marks and
19 citation omitted)). On appeal, we will not speculate as to other possible outcomes.
20 *See Las Cruces Prof'l Fire Fighters v. City of Las Cruces*, 1997-NMCA-044, ¶ 12,

1 123 N.M. 329, 940 P.2d 177. (“The question is not whether substantial evidence
2 exists to support the opposite result, but rather whether such evidence supports the
3 result reached.”).

4 {19} In her briefing, Defendant repeatedly emphasizes the lack of evidence
5 conclusively proving the date on which the indorsement was made, noting that Mr.
6 Raab could not point to a specific piece of evidence showing the indorsement was
7 made prior to April 1, 2009. But this does not foreclose the district court’s conclusion
8 that the evidence, *as a whole*, supports that the indorsement was made at some point
9 prior to April 1, 2009. In evaluating the evidence, we accept inferences made by the
10 district court based on the evidence, so long as they are reasonable. *See Smyers v.*
11 *City of Albuquerque*, 2006-NMCA-095, ¶ 17, 140 N.M. 198, 141 P.3d 542 (“We
12 accept the reasonable inferences made by the fact-finder.”).

13 In a civil case, circumstantial evidence is competent to prove a fact in
14 issue and it is unnecessary that such proof rise to the degree of certainty
15 to support only one conclusion to the exclusion of all others.
16 Circumstantial evidence consists of proof of facts or circumstances
17 which give rise to a reasonable inference of the truth of the facts sought
18 to be proved.

19 *Alfieri v. Alfieri*, 1987-NMCA-003, ¶ 30, 105 N.M. 373, 733 P.2d 4 (citation
20 omitted). Although the district court based its conclusions regarding the timing of
21 the indorsement on circumstantial evidence, the evidence is, nonetheless, sufficient.
22 *See Consol. Elec. Distribs., Inc. v. Santa Fe Hotel Grp., LLC*, 2006-NMCA-005,
23 ¶¶ 13-14, 138 N.M. 781, 126 P.3d 1145 (“[S]ubstantial evidence may be comprised

1 of either direct or circumstantial evidence.”). We conclude substantial evidence
2 exists to support the district court’s ruling that the original note was indorsed at some
3 point subsequent to execution and prior to April 1, 2009.

4 **III. Defendant Failed to Overcome a Legal Presumption That the**
5 **Indorsement Is Valid**

6 {20} We therefore turn to Defendant’s argument that Ms. Sjolander’s signature was
7 fraudulently applied or that there was falsification of her indorsement based on a
8 “robo-signing” theory. Our analysis focuses on the legal presumption addressing the
9 validity and authenticity of signatures, which we conclude Defendant failed to
10 overcome.

11 {21} Under the UCC, “[i]n an action with respect to an instrument, the authenticity
12 of, and authority to make, each signature on the instrument is admitted unless
13 specifically denied in the pleadings.” NMSA 1978, § 55-3-308(a) (1992). If the
14 validity of a signature is denied in the pleadings, the party claiming under the
15 signature bears the ultimate burden of proving its validity. *See id.* However, the
16 signature is still entitled to a presumption of validity. *See id.* Such presumption
17 remains intact unless evidence supporting the signature’s invalidity is introduced.
18 *See id.* cmt. 1 (explaining that “presumed” “means that until some evidence is
19 introduced which would support a finding that the signature is forged or
20 unauthorized, the plaintiff is not required to prove that it is valid”); NMSA 1978,
21 § 55-1-206 (2005) (“Whenever the [UCC] creates a ‘presumption’ with respect to a

1 fact, or provides that a fact is ‘presumed’, the trier of fact must find the existence of
2 the fact unless and until evidence is introduced that supports a finding of its
3 nonexistence.”).

4 {22} Defendant claims because she questioned the validity of the indorsement in
5 the pleadings, Plaintiff bears the burden of proving the indorsement’s authenticity.
6 Defendant’s interpretation of Section 55-3-308 is flawed. Although Defendant is
7 correct that Plaintiff bears the ultimate burden of establishing the indorsement’s
8 validity, when Plaintiff’s evidence gives rise to the presumption of validity, the
9 obligation to further prove validity only arises when that presumption is overcome
10 by Defendant’s evidence. *See* § 55-3-308 cmt. 1. Pursuant to the UCC, Ms.
11 Sjolander’s signature in the indorsement on the note is presumed valid until and
12 unless Defendant introduces evidence that would support a finding that the signature
13 is forged or unauthorized. *See id.* In the absence of such evidence, Plaintiff’s burden
14 of proof is not triggered; rather, the signature is presumed authentic as a matter of
15 law. *See id.*

16 {23} Defendant did not introduce any evidence in the district court to support a
17 finding that the note’s indorsement was either forged or unauthorized, and, instead
18 only presented her own speculation and inferences. In support of her theory of fraud,
19 Defendant relied on the unindorsed copy of the note attached to Plaintiff’s prior
20 complaint and evidence as to the date Countrywide ceased doing business.

1 Defendant contends because the note attached to the prior complaint was unindorsed,
2 the indorsement on the note attached to the present complaint *must* be fraudulent
3 since the evidence does not show the indorsement was made prior to April 1, 2009.
4 Defendant's argument relies on the assumption that if Plaintiff was in possession of
5 the indorsed note in 2012, it would have attached the indorsed note to its complaint
6 rather than attach an unindorsed copy. However, as we discussed above, Defendant
7 provided no actual evidence to support her contention that the unindorsed note was
8 a copy of the original note as it existed in 2012 rather than merely a copy of the note
9 made at some point prior to indorsement.

10 {24} Indeed, the existence of both an indorsed note and a prior copy of the note
11 made before indorsement is not unusual, and we hold that it is insufficient on its own
12 to support a finding of fraud. Numerous courts applying identical signature
13 presumptions have reached the same conclusion. *See, e.g., In re Phillips*, 491 B.R.
14 255, 273 (Bankr. D. Nev. 2013) (explaining that the subsequent appearance of an
15 indorsed note that had not initially been filed did not constitute a threshold showing
16 of fraud or forgery); *In re Hunter*, 466 B.R. 439, 449-50 (Bankr. E.D. Tenn. 2012)
17 (concluding the presence of two notes, one indorsed and one with no indorsements,
18 was inadequate to overcome the presumption of indorsement's validity); *In re*
19 *Wilson*, 442 B.R. 10, 15 n.6 (Bankr. D. Mass. 2010) ("The mere existence of one or
20 more copies of the note that were made from the original before it was indorsed does

1 not create a genuine issue as the timing of the indorsement without further evidence
2 as to when the copies were made from the original.”).

3 {25} Defendant additionally argues that falsification of signatures on notes is
4 widespread and points to cases from other jurisdictions where fraud was alleged in
5 connection with stamped indorsements containing Ms. Sjolander’s signature.
6 However, much of what Defendant cites to are merely allegations and not factual
7 findings, and, in any event, we are unconvinced that allegations or even factual
8 findings made in unrelated actions constitute sufficient evidence to support a finding
9 of forgery in this case. *See Muse*, 2009-NMCA-003, ¶ 51 (“The mere assertions and
10 arguments of counsel are not evidence.”); *cf. State v. Kerby*, 2005-NMCA-106,
11 ¶¶ 23-25, 138 N.M. 232, 118 P.3d 740 (stating that propensity to act in a certain way
12 or the fact that a defendant has acted in a certain way in the past does not and may
13 not serve as evidence that the defendant has acted in that way in the present case).

14 {26} Further, although Defendant implies that the fact that Ms. Sjolander’s
15 signature was mechanically applied may reinforce her allegations regarding fraud,
16 she fails to present any evidence or authority that requires such a conclusion, and we
17 are aware of no New Mexico case stating that a mechanically-applied signature is a
18 falsified or fraudulent signature. *See, e.g., Lopes*, 2014-NMCA-097, ¶ 3 (taking no
19 issue with an indorsement that “appear[ed] to be signed by stamp rather than by
20 hand”); *see Curry v. Great Nw. Ins. Co.*, 2014-NMCA-031, ¶ 28, 320 P.3d 482

1 (“Where a party cites no authority to support an argument, we may assume no such
2 authority exists.”). We decline to arrive at such a conclusion now, noting that there
3 is no requirement in the UCC that an indorsement be made by a wet-ink signature
4 rather than a stamp. *See* NMSA 1978, § 55-3-204(a) (1992) (defining “indorsement”
5 as a signature “made on an instrument for the purpose of (i) negotiating the
6 instrument, (ii) restricting payment of the instrument, or (iii) incurring indorser’s
7 liability on the instrument”); § 55-1-201(b)(37) (defining “signed” as “any symbol
8 executed or adopted with present intention to adopt or accept a writing”).

9 {27} To overcome the presumption of the indorsement’s validity, Defendant was
10 “required to make some sufficient showing” of evidence in support of her claim that
11 the indorsement was invalid. Section 55-3-308 cmt. 1. Based on the foregoing
12 discussion, we conclude Defendant failed to make an adequate showing. The
13 evidence offered by Defendant does not indicate that Ms. Sjolander’s signature was
14 invalid, fraudulent, or falsified, and the indorsement was thus entitled to a
15 presumption of validity. *See* § 55-3-308(a). Accordingly, we conclude that the
16 district court did not err in rejecting Defendant’s theory of fraud.

17 **IV. The District Court Did Not Err in Concluding That the Note Was**
18 **Indorsed in Blank and Transferred by Possession**

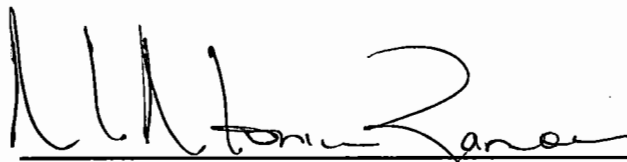
19 {28} Finally, we turn to Defendant’s argument that the district court erred in ruling
20 that the original note was indorsed in blank and was transferred by possession alone.
21 Because Plaintiff established a prima facie case that it had standing based on

1 possession of the original note indorsed in blank, and given that Defendant's
2 argument calling into question the validity of the indorsement has been rejected, we
3 conclude the district court did not err in ruling that the original note is indorsed in
4 blank and has been transferred by possession alone. *See* NMSA 1978, § 55-3-205(b)
5 (1992) ("When indorsed in blank, an instrument becomes payable to bearer and may
6 be negotiated by transfer of possession alone until specially indorsed.").

7 **CONCLUSION**

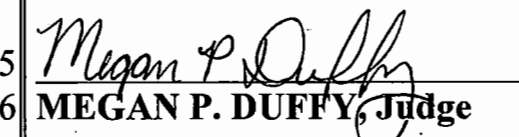
8 {29} Based on the foregoing, we affirm the district court's judgment.

9 {30} **IT IS SO ORDERED.**

10 
11 **M. MONICA ZAMORA, Chief Judge**

12 **WE CONCUR:**

13 
14 **JULIE J. VARGAS, Judge**

15 
16 **MEGAN P. DUFFY, Judge**