

[REDACTED]

'wide range of reasonableness' within which unions may act without breaching their fair representation duty." *Id.* at 79 (citation omitted).

The petitioner next contends that "the overwhelming weight of testimony from the [Union's] own witness [was] that [the Union] was . . . motivated by a belief that it could not represent retired troopers." This belief, the petitioner asserts, was the Union's "exclusive motivation" for "failing to advocate" on behalf of the retired troopers. The Union, for its part, appears to agree with the petitioner that it decided, ultimately, to exclude retired troopers from the settlement agreement based upon advice from counsel.

The petitioner argues that the Union cannot satisfy its duty of fair representation by contending that it relied upon advice of counsel. *See Gregg v. Chauffeurs, Teamsters & Helpers U. Local*, 699 F.2d 1015, 1017 (9th Cir. 1983) (reliance on advice of counsel does not "insulate [a] union from liability for its breach of its duty to represent its members fairly"). While we agree with this general proposition, we conclude that where, as here, counsel's advice was itself reasonable given the legal landscape at the time, the Union's reliance on such advice was rational. *Letter Carriers (Postal Service)*, 347 N.L.R.B. at 289.

Although the petitioner challenges other PELRB factual findings, they are not material to our decision and are supported by the record. Because the petitioner has failed to demonstrate by a clear preponderance of the evidence that the PELRB's order was unjust or unreasonable, we uphold it. *See Appeal of Laconia Sch. Dist.*, 150 N.H. at 496.

Affirmed.

DALIANIS, C.J., and HICKS, CONBOY and LYNN, JJ., concurred.

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10th Circuit Court — Plaistow District Division
No. 2012-051

WELLS FARGO BANK

v.

SCOTT SCHULTZ

Argued: February 7, 2013
Opinion Issued: February 25, 2013

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alleged possessory right was based upon two prior assignments that were "fatally defective, if not fraudulent." He submitted several affidavits and documents in support of his motion. On October 18, 2011, the trial court denied the defendant's motion to dismiss because it found that it lacked jurisdiction to rule on issues directly affecting title to real estate. *See* RSA 502-A:14 (2010).

On October 24, 2011, the defendant moved for reconsideration, which the trial court denied. Thereafter, the court held a hearing on the merits. The plaintiff submitted a certified copy of its foreclosure deed, and the trial court took judicial notice of the eviction notice. On December 16, 2011, the court entered judgment for the plaintiff. This appeal followed.

On appeal, the defendant argues that the trial court erred by denying his motion to dismiss. He argues that the plaintiff lacked standing to bring a possessory action under RSA 540:12 because the plaintiff failed to prove that it was the "owner" of the Property. The issue presents a question of statutory interpretation. *See Deutsche Bank Nat'l Trust Co. v. Kevlik*, 161 N.H. 800, 802 (2011). "We are the final arbiter of the intent of the legislature as expressed in the words of the statute considered as a whole." *Id.* "We first examine the language of the statute, and, where possible, we ascribe the plain and ordinary meanings to the words used." *Id.* "We review the trial court's interpretation of a statute de novo." *Id.*

Under RSA 540:12, "[t]he owner, lessor, or purchaser at a mortgage foreclosure sale of any tenement or real estate may recover possession thereof from a lessee, occupant, mortgagor, or other person in possession, holding it without right, after notice in writing to quit." *In Kevlik*, we addressed whether a plaintiff in a possessory action satisfied the "ownership" element of RSA 540:12. *See Kevlik*, 161 N.H. at 803-04. In that case, "the plaintiff's attorney presented, as proof of ownership, uncertified copies of a foreclosure deed and affidavit and a mortgage assignment." *Id.* at 803. Because the uncertified documents failed to comport with New Hampshire Rules of Evidence 902(4) or 1005, we held that "the plaintiff [had] not carried its burden to show ownership of the property." *Id.* at 803-04. In so ruling, however, we noted:

Had the plaintiff proffered authenticated documents, with supporting testimony if necessary, regarding the foreclosure sale, or other proof of its ownership of the property, the trial court could have properly ruled on the issue of the plaintiff's entitlement to possession . . .

Id. at 804.

■ Unlike in *Kevlik*, here the plaintiff "proffered [an] authenticated document . . . regarding the foreclosure sale." *Id.*; *see also* N.H. R. Ev.

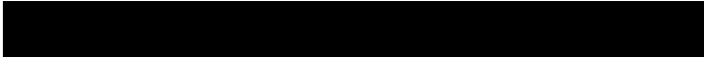
902(4), 1005. In fact, the defendant does not dispute that the plaintiff submitted a certified copy of its foreclosure deed. Further, RSA 540:12 provides that an “owner, lessor, or purchaser at a mortgage foreclosure sale . . . may recover possession.” (Emphasis added.) A plaintiff may recover possession under RSA 540:12 by demonstrating that it is one of the three enumerated entities. We conclude that the plaintiff’s certified copy of the foreclosure deed was sufficient to establish that it was a “purchaser at a mortgage foreclosure sale” eligible to seek possession under RSA 540:12. See *Kevlik*, 161 N.H. at 804.

The defendant argues that even if the plaintiff satisfied *Kevlik*, “in the current mortgage market, the mere provision of a foreclosure deed . . . should not be sufficient to establish the standing of a possessory plaintiff to bring an eviction action, particularly where there are intervening transfers between the original lender and the foreclosing entity.” He argues that the plaintiff should be required to prove in the district division its “record title” through assignments leading up to the foreclosure sale. We disagree.

The defendant relies on several out-of-state cases to support his position. See, e.g., *Bank of New York v. Bailey*, 951 N.E.2d 331 (Mass. 2011); *Manufacturers Hanover Mortg. Corp. v. Snell*, 370 N.W.2d 401 (Mich. Ct. App. 1985). We agree that the cases cited by the defendant stand for the proposition that a mortgagor may contest issues of title in a post-foreclosure proceeding. See *Sturdivant v. BAC Home Loans Servicing, LP*, No. 2100245, 2011 WL 6275697, at *5-6 (Ala. Civ. App. Dec. 16, 2011). However, the results reached in these cases were dependent upon interpretations of each state’s statutory scheme. See *Eaton v. Federal Nat. Mortg. Ass’n*, 969 N.E.2d 1118, 1127 (Mass. 2012) (“Statutes play an especially significant role in connection with mortgage foreclosures effected under a power of sale.”). As the plaintiff notes, these cases offer little guidance in construing our own statutory foreclosure scheme. Thus, we find the cases unhelpful to our analysis.

■ ■ In New Hampshire, the district division lacks jurisdiction to adjudicate issues of “title of real estate.” RSA 502-A:14, I. Thus, although “[t]he district [division] has the authority to adjudicate possessory actions,” *Bank of N.Y. Mellon v. Cataldo*, 161 N.H. 135, 139 (2010), issues of title must be resolved in superior court, see *Kevlik*, 161 N.H. at 803. In a possessory action in the district division, “the defendant shall not offer evidence which may bring the title to the demanded premises in question.” RSA 540:16 (2007). Rather,

[i]f the defendant shall plead a plea which may bring in question the title to the demanded premises he shall forthwith recognize to the plaintiff, with sufficient sureties, in such sum as the court shall



order, to enter his action in the superior court for the county at the next return day, and to prosecute his action in said court, and to pay all rent then due or which shall become due pending the action, and the damages and costs which may be awarded against him.

RSA 540:17 (2007). Because the district division lacks jurisdiction to adjudicate issues related to title, we reject the proposition that a defendant in a possessory action before the district division can challenge a plaintiff's chain of "record title" underlying a foreclosure deed other than by complying with the requirements of RSA 540:17.

As a final matter, the defendant argues that allowing a defendant in an eviction action to raise issues related to alleged title defects would not overly burden the district division. Whether litigation of title issues would burden the district division, however, is irrelevant to our determination. The question is whether the district division has jurisdiction to hear title issues.

Based on the foregoing, we conclude that the plaintiff satisfied its burden of proving that it was a "purchaser at a mortgage foreclosure sale" by submitting a certified copy of its foreclosure deed. Thus, we hold that the trial court did not err in denying the defendant's motion to dismiss.

Affirmed.

DALLANIS, C.J., and HICKS, LYNN and BASSETT, JJ., concurred.



Merrimack
No. 2012-088

GREAT AMERICAN DINING, INC.

v.

PHILADELPHIA INDEMNITY INSURANCE COMPANY

Argued: January 10, 2013
Opinion Issued: February 25, 2013

