

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0065**

Barry Wayne Beecroft, et al.,
Appellants,

vs.

Deutsche Bank National Trust Company, et al.,
Respondents,

Ameriquest Mortgage Company, et al.,
Defendants.

**Filed August 27, 2012
Affirmed
Johnson, Chief Judge**

Kandiyohi County District Court
File No. 34-CV-09-802

John E. Mack, Mack & Daby, P.A., New London, Minnesota (for appellants)

David R. Mortensen, Wilford, Geske & Cook, P.A., Woodbury, Minnesota (for
respondents)

Considered and decided by Larkin, Presiding Judge; Johnson, Chief Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

JOHNSON, Chief Judge

This case is before the court of appeals for a second time. In a prior opinion, we affirmed in part the district court's grant of a motion for summary judgment but remanded the case to the district court for further consideration of the motion. On remand, the district court considered the motion further and again granted it. Appellants argue that the district court erred by not following this court's remand instructions and by not consolidating the case with another, related case. We conclude that the district court did not abuse its discretion in either respect and, therefore, affirm.

FACTS

In December 2005, Barry Wayne Beecroft and Tracee Ann Beecroft executed a \$279,000 promissory note to Ameriquest Mortgage Company. The note was secured by a mortgage encumbering the Beecrofts' residence in the city of New London.

In March 2009, Ameriquest assigned its mortgage to Deutsche Bank. The assignment was executed by Citi Residential Lending Inc., which acted as attorney-in-fact for Ameriquest. The document that effected the assignment bears the signatures of Linda Green and Tywana Thomas, acting on behalf of Citi Residential.

In October 2008, the Beecrofts stopped making their mortgage payments. In 2009, Deutsche Bank commenced a foreclosure by advertisement.

In October 2009, the Beecrofts commenced this action to quiet title, alleging that Deutsche Bank did not have authority to foreclose on their mortgage because the assignment of the mortgage by Ameriquest was "a fraud and a sham." Specifically, the

Beecrofts alleged that Green and Thomas did not have authority to act on behalf of Citi Residential and that they did not actually sign the assignment document.

In May 2010, the district court granted Deutsche Bank's motion for summary judgment, concluding that "the undisputed material evidence before the court regarding this particular mortgage and assignments shows that the assignments were properly executed by parties with the power to execute them."

On appeal, this court upheld the district court's conclusion that Green and Thomas had authority to act on behalf of Citi Residential and the conclusion that they actually signed the assignment document. *Beecroft v. Deutsche Bank Nat'l Trust Co.*, 798 N.W.2d 78, 82-85 (Minn. App. 2011). But this court was unable to determine whether Citi Residential had authority to assign the mortgage on behalf of Ameriquest. *Id.* at 86. Therefore, we affirmed in part and remanded to the district court "to explain the basis for its determination that the undisputed facts establish that the conditions of the limited power of attorney authorizing Citi Residential to assign the mortgage on behalf of Ameriquest to Deutsche Bank were met." *Id.*

In May 2011, after this court remanded the case but before the district court reconsidered the summary judgment motion, Deutsche Bank commenced a separate action related to the Beecrofts' mortgage while represented by a law firm other than the firm that had been counsel of record in prior proceedings. In the new action, Deutsche Bank alleged, among other things, that the assignment of the Beecrofts' mortgage "was not in fact executed by Linda Green and Tywana Thomas, but rather executed by surrogate third parties." For its requested relief, Deutsche Bank sought a judgment

declaring the assignment null and void and reinstating Ameriquest's mortgage interest. In its appellate brief in this case, Deutsche Bank states, through its original law firm, that its complaint was inadvertently filed. In any event, the Beecrofts promptly responded to the summons and complaint with an answer and counterclaims. In November 2011, the parties stipulated to a consolidation of the Beecrofts' action and Deutsche Bank's action, and the district court adopted the stipulation. But the district court issued a scheduling order the following month stating that the two cases "shall track together but shall not be consolidated together as the same cause of action or case."

On December 30, 2011, the district court issued an order reflecting the further consideration ordered by this court and granted Deutsche Bank's summary judgment motion. The Beecrofts appeal.

D E C I S I O N

I. Compliance with Remand Instructions

The Beecrofts argue that the district court erred by failing to comply with this court's remand instructions.

"After an appellate court has remanded a case, a district court must abide by the appellate court's mandate 'strictly according to its terms' and 'has no power to alter, amend, or modify' the mandate." *State ex rel. Swan Lake Area Wildlife Ass'n v. Nicollet Cnty. Bd. of Cnty. Comm'rs*, 799 N.W.2d 619, 631 (Minn. App. 2011) (quoting *Halverson v. Village of Deerwood*, 322 N.W.2d 761, 766 (Minn. 1982)). Nonetheless, "district courts are given broad discretion to determine how to proceed on remand, as they may act in any way not inconsistent with the remand instructions provided." *Id.*

(quoting *Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 763 (Minn. 2005)). Accordingly, we apply an abuse-of-discretion standard of review to a district court's compliance with an appellate court's remand instructions. *See id.*

In our prior opinion, we remanded Deutsche Bank's summary judgment motion to the district court "to explain the basis for its determination that the undisputed facts establish that the conditions of the limited power of attorney authorizing Citi Residential to assign the mortgage on behalf of Amerquest to Deutsche Bank were met." *Beecroft*, 798 N.W.2d at 86. In its December 2011 order, the district court explained the basis of its conclusion that the limited power of attorney authorized Citi Residential to assign Amerquest's mortgage to Deutsche Bank. Specifically, the district court stated that paragraph 7 of the limited-power-of-attorney document contains two conditions and further stated that the Beecrofts did not introduce any evidence that would tend to prove that those conditions had not been satisfied. For those reasons, the district court concluded that Citi Residential was authorized to assign the Beecrofts' mortgage on behalf of Amerquest. In so doing, the district court complied with this court's remand instructions. As ordered, the district court "explain[ed] the basis for its determination that . . . the conditions of the limited power of attorney authorizing Citi Residential to assign the mortgage on behalf of Amerquest to Deutsche Bank were met." *Id.* Thus, the district court did not abuse its discretion in the manner in which it followed this court's remand instructions.

The Beecrofts do not challenge the reasoning or conclusions of the district court's December 2011 order. Rather, they argue only that the district court erred by failing to

adhere to our remand instructions. Accordingly, we need not and do not analyze the district court's application of the law to the facts in the summary judgment record. Rather, we resolve the Beecrofts' first argument simply by concluding that the district court did not abuse its discretion in the manner in which it conducted its further consideration of Deutsche Bank's summary judgment motion.

II. Consolidation

The Beecrofts also argue that the district court erred by not considering their lawsuit and Deutsche Bank's lawsuit in a consolidated manner.

A district court may consolidate two civil actions if they have a common question of law or fact. Minn. R. Civ. P. 42.01. "The trial court may order consolidation upon motion of any party, and it also has the power to order consolidation on its own motion." *Simchuck v. Fullerton*, 299 Minn. 91, 97, 216 N.W.2d 683, 687 (1974). We apply an abuse-of-discretion standard of review to a district court's consolidation ruling. *Minnesota Personal Injury Asbestos Cases v. Keene Corp.*, 481 N.W.2d 24, 26 (Minn. 1992).

The Beecrofts contend that the two cases have common questions related to the validity of Deutsche Bank's foreclosure. But at the time of the district court's decision to not consolidate the two cases, common questions no longer were present because this court had disposed of most of the Beecrofts' challenges in our prior opinion. In affirming the district court's grant of summary judgment, we resolved the question whether Green and Thomas had authority to act on behalf of Citi Residential by stating:

Our careful review of the record, including the documentation of the election and the limited powers of attorney, establishes that there is no genuine issue of material fact as to whether Green and Thomas had authority to act on behalf of Citi Residential with respect to the powers granted in the limited power of attorney.

Beecroft, 798 N.W.2d at 84-85. In addition, we resolved the question whether Green and Thomas actually signed the assignment document by stating:

Absent evidence rebutting the affidavits of Green and Thomas and creating a genuine issue of material fact, these affidavits provide a sound basis for the district court to conclude that the validity of Green's and Thomas's signatures on the Beecroft mortgage assignment is not a genuine issue of material fact precluding summary judgment.

Id. at 85. On remand, the district court was not free to reconsider those questions. *See Harry N. Ray, Ltd. v. First Nat'l Bank of Pine City*, 410 N.W.2d 850, 856 (Minn. App. 1987) (stating that district court "may not . . . decide issues beyond those remanded"). The only question for the district court on remand was the question whether Citi Residential was authorized by the limited-power-of-attorney document to act on behalf of Ameritrust. *See Beecroft*, 798 N.W.2d at 86. That question was not implicated by Deutsche Bank's complaint. Accordingly, the Beecrofts' action and Deutsche Bank's action did not have common questions of law or fact after this court's remand.

Thus, the district court did not abuse its discretion by not considering the Beecrofts' action and Deutsche Bank's action as consolidated cases.

Affirmed.