UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

PHH Mortgage Corporation v. Joseph Scott Stuber, et al.

PHH Mortgage · No. 23-1123-DDC-TJJ · Decided December 16, 2025

SUMMARY

The United States District Court for the District of Kansas denied PHH Mortgage Corporation's motion for summary judgment in its foreclosure action against Joseph Scott Stuber. The court found that evidence regarding the alleged misapplication of mortgage payments to an escrow account could allow a reasonable factfinder to conclude that the lender's predecessor induced Stuber's breach. The court also denied Stuber's motion for reconsideration and rejected PHH's issue-preclusion argument based on a prior bankruptcy proceeding.

CASE DETAILS

COURT	United States District Court for the District of Kansas
WRITING FOR THE COURT	Daniel D. Crabtree
JURISDICTION	United States District Court for the District of Kansas
DECIDED	December 16, 2025
DOCKET	23-1123-DDC-TJJ
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved for summary judgment on its foreclosure and breach-of-contract claim, and defendant Joseph Scott Stuber moved for reconsideration of an earlier order dismissing his counterclaim. The district court denied both motions and directed plaintiff to cure service deficiencies as to the remaining defendants.
STANDARD OF REVIEW	Summary judgment is proper when no genuine dispute of material fact exists and the movant is entitled to judgment as a matter of law. The court viewed the evidence and reasonable inferences in the light most favorable to the nonmovant. For reconsideration, the court applied D. Kan. Rule 7.3 and reviewed whether there was an intervening change in controlling law, newly available evidence, clear error, or manifest injustice; the decision whether to reconsider was discretionary.
PRECEDENTIAL VALUE	unknown

TOPICS

foreclosure | breach of contract | summary judgment | service of process | motion for reconsideration

PRACTICE AREAS

civil procedure | contracts | real estate | foreclosure | service of process | bankruptcy

QUESTIONS PRESENTED

1. Whether PHH was entitled to summary judgment on its foreclosure and breach-of-contract claim when the record supported a reasonable inference that PHH's predecessor misapplied Stuber's mortgage payments and thereby caused or induced the alleged breach.
2. Whether Stuber's defense based on allegedly misapplied payments was barred by issue preclusion based on a prior bankruptcy proceeding.
3. Whether PHH was entitled to summary judgment against the remaining defendants when it had not shown due diligence supporting service by publication.
4. Whether Stuber was entitled to reconsideration of the prior dismissal of his counterclaim under Federal Rules of Civil Procedure 54(b) or 60(b) and D. Kan. Rule 7.3.

HOLDINGS

1. Summary judgment was inappropriate because a rational factfinder could conclude that Ocwen improperly applied Stuber's mortgage payments to escrow, causing or inducing his contractual breach.
2. PHH failed to establish issue preclusion because it did not show that the bankruptcy proceeding decided the identical improperly-applied-payments issue or finally adjudicated that issue on the merits.
3. PHH was not entitled to summary judgment against the remaining defendants because it had not demonstrated proper service or due diligence supporting service by publication.
4. The motion for reconsideration was untimely under Rule 54(b) and D. Kan. Rule 7.3, and Rule 60(b) was unavailable because no final, appealable judgment had been entered.
5. Even if timely, Stuber's motion failed on the merits because he did not show clear error or manifest injustice; the counterclaim pleaded a Kansas Consumer Protection Act claim subject to a three-year limitations period.

KEY QUOTATIONS

> *"A party to a contract may not, in absence of justifiable cause, interfere, hinder or prevent performance by the other party and claim benefits or escape liability on the ground of nonperformance."* (III.A)

> *"Generally speaking, when a particular fact is established not by judicial resolution but by stipulation of the parties, that fact has not been 'actually litigated' and thus is not a proper candidate for issue preclusion."* (III.A.2)

> *"Mr. Stuber has presented a triable issue whether plaintiff's predecessor induced his breach by improperly applying his mortgage payments to the escrow account."* (V)

FACTUAL BACKGROUND

Stuber executed a note and mortgage in 2009 to secure a $70,207 loan on a Wichita, Kansas condominium. Ocwen Loan Servicing, LLC, PHH's predecessor, notified Stuber of default in 2017 and later refused or returned payments that were less than the amount needed to reinstate the mortgage. Stuber submitted an escrow analysis showing two $3,723 deposits and a substantial escrow surplus, along with an internal Ocwen memo acknowledging multiple insurance-related errors. Viewing the evidence favorably to Stuber, the court concluded that a rational factfinder could infer that Ocwen misapplied mortgage payments to escrow, thereby preventing Stuber from becoming current.

PROCEDURAL HISTORY

PHH Mortgage Corporation sued to foreclose on a condominium owned by Joseph Scott Stuber, alleging that he defaulted on the note and mortgage. After the parties submitted a pretrial order, PHH moved for summary judgment against Stuber, Chisholm Creek Condominium Homeowners Association, and Ester Kay Manns. Stuber opposed summary judgment and moved for reconsideration of the dismissal of his Kansas Consumer Protection Act counterclaim. The court denied summary judgment because the record supported a triable issue that PHH's predecessor caused or induced the alleged breach, denied summary judgment against the other defendants for insufficient service, and denied reconsideration as untimely and meritless.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand was ordered. PHH was directed within 30 days to either file documentation of its due diligence in attempting to serve Chisholm Creek Condominium Homeowners Association and Ester Kay Manns or serve those defendants and submit proof of service. If PHH failed to do so, the court stated that it would dismiss those defendants without prejudice.

CASES CITED

- Haines v. Kerner, 404 U.S. 519, 520–21 (1972)
- Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991)
- Scott v. Harris, 550 U.S. 372, 378 (2007)
- Nahno-Lopez v. Houser, 625 F.3d 1279, 1283 (10th Cir. 2010)
- Oldenkamp v. United Am. Ins. Co., 619 F.3d 1243, 1245–46 (10th Cir. 2010)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248–49 (1986)
- Kannady v. City of Kiowa, 590 F.3d 1161, 1169 (10th Cir. 2010)
- Briney v. Toews, 95 P.2d 355 (Kan. 1939)
- Washburn S. Apartments LLC v. Hession, 570 P.3d 1268, 1277 (Kan. Ct. App. 2025)
- Burrell v. Armijo, 456 F.3d 1159, 1172 (10th Cir. 2006)
- Stan Lee Media, Inc. v. Walt Disney Co., 774 F.3d 1292, 1297 (10th Cir. 2014)

- Turney v. O'Toole, 898 F.2d 1470, 1472 n.1 (10th Cir. 1990)
- Truman v. Johnson, 60 F.4th 1267, 1272 (10th Cir. 2023)
- United States v. Botefuhr, 309 F.3d 1263, 1282 (10th Cir. 2002)
- Arizona v. California, 530 U.S. 392, 414 (2000)
- Spiess v. Meyers, 483 F. Supp. 2d 1082, 1096 (D. Kan. 2007)
- Unified Gov't of Wyandotte Cnty./Kansas City v. Adauto, 559 P.3d 354, 2024 WL 4901009, at *4 (Kan. Ct. App. 2024)
- Servants of Paraclete v. Does, 204 F.3d 1005, 1012 (10th Cir. 2000)
- Hancock v. City of Oklahoma City, 857 F.2d 1394, 1395 (10th Cir. 1988)
- King v. IC Group, Inc., 743 F. Supp. 3d 1346, 1351 (D. Utah 2024)
- Alexander v. Certified Master Builders Corp., 1 P.3d 899, 908 (Kan. 2000)