DISTRICT OF COLUMBIA COURT OF APPEALS

# Whiting v. Wells Fargo Bank, N.A.

Whiting · No. 19-CV-12 · Decided July 9, 2020

## SUMMARY

The District of Columbia Court of Appeals affirmed summary judgment and an order authorizing foreclosure in favor of Wells Fargo Bank, N.A. The court held that a settlement agreement resolving prior litigation was valid and enforceable, did not clearly violate public policy, and established the enforceability of the deeds of trust. The court also rejected arguments concerning ambiguity, waiver, factual disputes, and issue preclusion.

## CASE DETAILS

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| COURT | District of Columbia Court of Appeals |
| WRITING FOR THE COURT | Per Curiam; Blackburne-Rigsby, Chief Judge; Thompson, Associate Judge; Greene, Senior Judge, Superior Court of the District of Columbia, sitting by designation |
| JURISDICTION | District of Columbia |
| DECIDED | July 9, 2020 |
| DOCKET | 19-CV-12 |
| DISPOSITION | affirmed |
| PROCEDURAL POSTURE | Appeal from a Superior Court of the District of Columbia order granting Wells Fargo summary judgment in a judicial foreclosure action and denying Whiting post-judgment relief. |
| STANDARD OF REVIEW | Summary judgment and interpretation of the settlement agreement and deeds of trust are reviewed de novo. Application of res judicata and collateral estoppel is reviewed de novo. The court may affirm on any basis supported by the record if the appellant suffers no procedural unfairness. |
| PRECEDENTIAL VALUE | Published opinion; precedential value is indicated by the source metadata, although no reporter citation appears in the document text. |
| PARTIES | Terrie C. Whiting v. Wells Fargo Bank, N.A., as trustee under Pooling and Servicing Agreement dated as of September 1, 2006, Securitized Asset Backed Receivables LLC Trust 2006-HE2 Mortgage Pass-Through Certificates, Series 2006-HE2 |

### TOPICS

foreclosure · mortgages · summary judgment · res judicata · contracts

### PRACTICE AREAS

real estate · mortgage foreclosure · contracts · civil procedure · appellate procedure · remedies

### QUESTIONS PRESENTED

1. Whether the settlement agreement was unenforceable as contrary to District of Columbia public policy because it limited Whiting's ability to contest foreclosure and waived defenses.
2. Whether the federal district court's order approving the settlement agreement was ambiguous or inconsistent with the deeds of trust.
3. Whether genuine disputes of material fact concerning waiver, notice, cure amounts, and the amounts secured by the deeds of trust precluded summary judgment.
4. Whether collateral estoppel or res judicata barred Whiting from challenging the validity and enforceability of the deeds of trust.

### HOLDINGS

1. The settlement agreement was valid and enforceable and did not clearly violate public policy merely because it required Whiting to make a specified payment by a date certain or lose the opportunity to retain the property and limited her ability to contest foreclosure.
2. The settlement agreement and the district court's order were not ambiguous or inconsistent with the deeds of trust, and the Deloatch deed was not reasonably construed as void ab initio.
3. The asserted disputes concerning waiver, notice, cure amounts, and the amounts secured by the deeds of trust did not preclude summary judgment because they were immaterial under the settlement agreement.
4. Res judicata barred Whiting from relitigating whether the deeds of trust were valid and enforceable.

### KEY QUOTATIONS

> *"Unfortunately for Ms. Whiting's position, this court will invalidate agreements as contrary to public policy "only in the clearest of cases, and with great caution.""* (12-13)

> *"What settlement agreements such as the one here and consent judgments do occasion, however, is claim preclusion or res judicata."* (22-23)

> *"Accordingly, Ms. Whiting's claim that the Deeds of Trust are not valid and enforceable is barred by res judicata."* (23-24)

### FACTUAL BACKGROUND

Whiting owned property at 1317 W Street, S.E., and used it as collateral for mortgage and home-equity loans. She alleged that Marcus Deloatch fraudulently or forgedly caused her to convey the property to him, after which Wells Fargo's predecessor advanced funds secured by two deeds of trust. In federal litigation, Whiting and Wells

Fargo entered a settlement agreement providing that the property would be held by Whiting subject to valid and enforceable deeds of trust and that Wells Fargo could foreclose unless Whiting paid $121,270 within six months. Whiting did not make the payment, and Wells Fargo brought a judicial foreclosure action.

### PROCEDURAL HISTORY

Wells Fargo filed a judicial foreclosure complaint in the Superior Court after Whiting failed to make the settlement payment required by a prior settlement agreement. The Superior Court granted Wells Fargo summary judgment, later denied Whiting's motion for relief under Rules 59(e) or 60(b), and entered an order authorizing a foreclosure sale. The Court of Appeals affirmed, concluding that the settlement agreement was enforceable and that res judicata barred Whiting's challenge to the validity and enforceability of the deeds of trust.

### DISPOSITION

affirmed

### CASES CITED

- Allen v. Yates, 870 A.2d 39, 44 (D.C. 2005)
- Wilburn v. District of Columbia, 957 A.2d 921, 924 (D.C. 2008)
- Flax v. Schertler, 935 A.2d 1091, 1099-1100 (D.C. 2007)
- Steiner v. Am. Friends of Lubavitch, 177 A.3d 1246, 1256-59 (D.C. 2018)
- Crain v. Crain, 209 A.2d 257, 260 (D.C. 1965)
- Moore v. Jones, 542 A.2d 1253, 1254-56 (D.C. 1988)
- Rogers v. Advance Bank, 111 A.3d 25, 29 (D.C. 2015)
- Landa v. Astin, 193 F.2d 369, 371 (D.C. Cir. 1951)
- Griffin v. McCoach, 313 U.S. 498, 507 (1941)
- Bausch & Lomb, Inc. v. Utica Mut. Ins. Co., 625 A.2d 1021, 1037 (Md. 1993)
- Maryland-Nat’l Capital Park & Planning Comm’n v. Washington Nat’l Arena, 386 A.2d 1216, 1227-29 (Md. 1978)
- Dyer v. Bilaal, 983 A.2d 349, 355 (D.C. 2009)
- Sears v. Catholic Archdiocese of Wash., 5 A.3d 653, 660 (D.C. 2010)
- DSP Venture Grp., Inc. v. Allen, 830 A.2d 850, 852 (D.C. 2003)
- Tillery v. District of Columbia Contract Appeals Bd., 912 A.2d 1169, 1176 (D.C. 2006)
- Prince Constr. Co. v. District of Columbia Contract Appeals Bd., 892 A.2d 380, 385 (D.C. 2006)
- Smith v. Wells Fargo Bank, 991 A.2d 20, 26 n.11 (D.C. 2010)
- In re Bailey, 883 A.2d 106, 118 (D.C. 2005)
- Brooke Grove Found., Inc. v. Bradford, No. 8:17-cv-03364-PWG, 2018 U.S. Dist. LEXIS 206608, at *24 (D. Md. Dec. 4, 2018)
- Elwell v. Elwell, 947 A.2d 1136, 1139 (D.C. 2008)
- M.D. v. R.W., 194 A.3d 374, 379 (D.C. 2018)

- Modiri v. 1342 Rest. Grp., Inc., 904 A.2d 391, 394 (D.C. 2006)
- Arizona v. California, 530 U.S. 392, 414 (2000)
- Washington Med. Ctr., Inc. v. Holle, 573 A.2d 1269, 1280-81 (D.C. 1990)
- Molovinsky v. Monterey Coop., 689 A.2d 531, 533 n.1 (D.C. 1997)

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