SUPREME COURT OF THE STATE OF WASHINGTON

Lyons v. U.S. Bank National Association

Lyons · No. 89132-0 · Decided October 30, 2014

SUMMARY

The Washington Supreme Court considers claims arising from a nonjudicial foreclosure that was discontinued before a sale occurred. It holds that the Deed of Trust Act does not provide an independent damages claim absent a completed foreclosure sale, but that related conduct may support a Consumer Protection Act claim. The court affirms summary judgment on the Deed of Trust Act and intentional infliction of emotional distress claims, reverses summary judgment on the Consumer Protection Act claim, and remands.

CASE DETAILS

COURT	Supreme Court of the State of Washington
WRITING FOR THE COURT	Fairhurst, J.
JURISDICTION	Washington
DECIDED	October 30, 2014
DOCKET	89132-0
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Lyons brought claims against the foreclosure trustee for violations of Washington's Deed of Trust Act, violations of the Consumer Protection Act, and intentional infliction of emotional distress. The trial court granted summary judgment to Northwest Trustee Services on all claims. The Washington Supreme Court granted direct review.
STANDARD OF REVIEW	Questions of law and summary judgment rulings are reviewed de novo. The appellate court engages in the same inquiry as the trial court and views facts and reasonable inferences in favor of the nonmoving party. Summary judgment is proper only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Winnie Lyons v. Northwest Trustee Services, Inc.

TOPICS

wrongful foreclosure | foreclosure | consumer protection | statutory interpretation | summary judgment

PRACTICE AREAS

foreclosure | consumer protection | real estate | torts | remedies

QUESTIONS PRESENTED

1. Whether a homeowner may bring a claim for damages under Washington's Deed of Trust Act when no nonjudicial foreclosure sale has occurred.
2. Whether a homeowner may bring a Consumer Protection Act claim based on alleged Deed of Trust Act violations when no foreclosure sale has occurred.
3. Whether summary judgment was proper on Lyons's Consumer Protection Act claim where factual disputes existed concerning the trustee's good faith, impartiality, and proof of beneficiary ownership.
4. Whether summary judgment was proper on Lyons's intentional-infliction-of-emotional-distress claim.

HOLDINGS

1. A plaintiff may not bring an independent claim for damages under the Deed of Trust Act based on alleged statutory violations when no nonjudicial foreclosure sale has been completed.
2. A homeowner may maintain a Consumer Protection Act claim based on alleged Deed of Trust Act violations even when no foreclosure sale has occurred, subject to the ordinary elements of a Consumer Protection Act claim.
3. Summary judgment for NWTS on the Consumer Protection Act claim was improper because material factual disputes existed concerning whether NWTS breached its statutory duty of good faith and whether it possessed adequate proof that the beneficiary owned the note before initiating the trustee's sale.
4. Summary judgment for NWTS was proper because the alleged foreclosure-related conduct was not sufficiently extreme and outrageous to support intentional infliction of emotional distress.

KEY QUOTATIONS

> *“Without the sale of the property, damages are not recoverable under the DTA, but a CPA claim may be maintained regardless of the status of the property.”* (7-8)

> *“Thus, there remains a material issue of fact as to whether Wells Fargo was the owner prior to initiating the trustee's sale. NWTS will need to furnish that proof but may not just rely on this ambiguous declaration.”* (16)

> *“If a trustee's sale has not occurred, an allegedly wronged homeowner cannot bring a damages claim under the DTA. However even if a trustee's sale has not occurred, an allegedly wronged homeowner can bring a claim for damages under the CPA.”* (19)

FACTUAL BACKGROUND

Winnie Lyons obtained a loan secured by a deed of trust on her Burien residence, where she operated an adult family home that supplied her primary income. While she was pursuing a loan modification, Northwest Trustee

Services issued a notice of trustee's sale. Lyons paid $10,000 required under the modification, but the loan was transferred to U.S. Bank and serviced by Carrington, and NWTS continued the scheduled sale despite information about the modification and transfer. NWTS discontinued the sale before it occurred, after which Lyons alleged that the foreclosure activity caused her to lose adult-family-home clients and suffer emotional and economic harm.

PROCEDURAL HISTORY

Lyons received a notice of trustee's sale while awaiting a loan-modification decision, later paid the required modification amount, and informed the trustee that the loan had been transferred and modified. The trustee's sale was discontinued before it occurred. The trial court granted NWTS summary judgment on all claims and denied reconsideration. The Supreme Court affirmed summary judgment on the Deed of Trust Act and intentional-infliction claims, reversed summary judgment on the Consumer Protection Act claim, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must proceed with the Consumer Protection Act claim, including factual determination of whether NWTS violated its duty of good faith, improperly relied on the beneficiary declaration, and thereby engaged in unfair or deceptive conduct. Summary judgment remains affirmed on the Deed of Trust Act and intentional-infliction-of-emotional-distress claims.

CASES CITED

- Frias v. Asset Foreclosure Services, Inc., 334 P.3d 529 (Wash. 2014)
- Dreiling v. Jain, 151 Wash. 2d 900, 93 P.3d 861 (2004)
- Reid v. Pierce County, 136 Wash. 2d 195, 961 P.2d 333 (1998)
- Bain v. Metropolitan Mortgage Group, Inc., 175 Wash. 2d 83, 285 P.3d 34 (2012)
- Walker v. Quality Loan Service Corp. of Washington, 176 Wn. App. 294, 308 P.3d 716 (2013)
- Vawter v. Quality Loan Service Corp. of Washington, 707 F. Supp. 2d 1115 (W.D. Wash. 2010)
- Klem v. Washington Mutual Bank, 176 Wn.2d 771, 295 P.3d 1179 (2013)
- Hangman Ridge Training Stables, Inc. v. Safeco Title Insurance Co., 105 Wn.2d 778, 719 P.2d 531 (1986)
- Panag v. Farmers Insurance Co. of Washington, 166 Wn.2d 27, 204 P.3d 885 (2009)
- Mason v. Mortgage America, Inc., 114 Wn.2d 842, 792 P.2d 142 (1990)
- Cox v. Helenius, 103 Wn.2d 383, 693 P.3d 683 (1985)
- Beaton v. JPMorgan Chase Bank N.A., No. C11-0872 RAJ, 2013 WL 1282225 (W.D. Wash. Mar. 26, 2013)
- Kloepfel v. Bokor, 149 Wn.2d 192, 66 P.3d 630 (2003)
- Dicomes v. State, 113 Wn.2d 612, 782 P.2d 1002 (1989)
- Robel v. Roundup Corp., 148 Wn.2d 35, 59 P.3d 611 (2002)

- Montgomery v. SOMA Financial Corp., No. C13-360 RAJ, 2014 WL 2048183 (W.D. Wash. May 19, 2014)
- McGinley v. American Home Mortgage Servicing, Inc., No. 2:10-CV-01157 RJB, 2010 WL 4065826 (W.D. Wash. Oct. 15, 2010)
- Cervantes v. Countrywide Home Loans, Inc., 656 F.3d 1034 (9th Cir. 2011)
- Wells v. Chase Home Finance, LLC, No. C10-5001RJB, 2010 WL 4858252 (W.D. Wash. Nov. 19, 2010)