

## COURT OF APPEALS OF INDIANA

### GMAC Mortgage, LLC v. Dyer

965 N.E.2d 762 (Ind. Ct. App. 2012) · No. No. 28A04-1107-MF-404 · Decided April 5, 2012

#### SUMMARY

The Indiana Court of Appeals considered whether a proposed deed-in-lieu-of-foreclosure agreement for an FHA-insured mortgage adequately released the borrower from personal liability. The court held that the agreement's provision stating that GMAC and HUD would not pursue a deficiency judgment complied with federal law and HUD regulations and was sufficient to release the borrower from all obligations under the mortgage. The court reversed the trial court's order requiring GMAC to add express language releasing the borrower from personal liability and remanded for further proceedings.

#### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                      |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Court of Appeals of Indiana                                                                                                                                                                                                                                                                                                          |
| WRITING FOR THE COURT | Vaidik, Judge; Najam, Judge; Robb, Chief Judge                                                                                                                                                                                                                                                                                       |
| JURISDICTION          | Indiana                                                                                                                                                                                                                                                                                                                              |
| DECIDED               | April 5, 2012                                                                                                                                                                                                                                                                                                                        |
| DOCKET                | No. 28A04-1107-MF-404                                                                                                                                                                                                                                                                                                                |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                                |
| PROCEDURAL POSTURE    | GMAC appealed from the trial court's grant of Dyer's motion for judgment on the pleadings, which the trial court treated as a motion for summary judgment, and from the denial of GMAC's motion to correct error.                                                                                                                    |
| STANDARD OF REVIEW    | Summary judgment is reviewed de novo under the same standard applicable in the trial court. Summary judgment is proper only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law; designated facts and reasonable inferences are construed in favor of the nonmoving party. |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                                                                                       |
| PARTIES               | GMAC Mortgage, LLC v. Ronald Glenn Dyer                                                                                                                                                                                                                                                                                              |

#### TOPICS

[foreclosure](#)[mortgages](#)[summary judgment](#)[real estate](#)[civil procedure](#)

## PRACTICE AREAS

real estate

mortgages

foreclosure

civil procedure

remedies

## QUESTIONS PRESENTED

1. Whether the trial court properly treated Dyer's motion for judgment on the pleadings as a motion for summary judgment.
2. Whether GMAC's proposed deed in lieu of foreclosure agreement, containing HUD-required language that neither GMAC nor HUD would pursue a deficiency judgment, released Dyer from all personal liability under the FHA-insured mortgage.
3. Whether GMAC was required to add Dyer's requested express personal-liability-release provision to the deed in lieu of foreclosure agreement.

## HOLDINGS

1. Because matters outside the pleadings were presented and considered, the trial court properly treated the motion for judgment on the pleadings as one for summary judgment, and the appellate court applied the summary judgment standard.
2. Under federal law and HUD regulations, a deed in lieu of foreclosure for an FHA-insured mortgage releases the borrower from all obligations under the mortgage, including personal liability for a deficiency.
3. GMAC's proposed deed in lieu agreement contained the precise HUD-required language and therefore sufficiently released Dyer from all personal liability; GMAC was not required to add Dyer's requested express release provision.

## KEY QUOTATIONS

*“HUD regulations are clear: a deed in lieu of foreclosure releases the borrower from all obligations under the mortgage and the deed in lieu of foreclosure written agreement must contain an acknowledgement that the borrower shall not be pursued for deficiency judgments.”* (965 N.E.2d at 769)

*“Accordingly, GMAC’s proposed agreement releases Dyer from all obligations under the mortgage.”* (965 N.E.2d at 769)

## FACTUAL BACKGROUND

Dyer and his wife executed an FHA-insured note and mortgage for their Indiana home, and Dyer later defaulted. At a statutory settlement conference, Dyer and GMAC agreed to proceed with a deed in lieu of foreclosure. GMAC's proposed agreement stated that, upon satisfaction of its terms, neither GMAC nor HUD would pursue a deficiency judgment, but Dyer refused to sign because he wanted an express release from all personal liability. The trial court ordered GMAC to add that express language.

## PROCEDURAL HISTORY

GMAC filed a complaint on the note and to foreclose the mortgage after Dyer defaulted on an FHA-insured loan. Following a settlement conference, the parties agreed to pursue a deed in lieu of foreclosure, but disputed whether GMAC's proposed agreement sufficiently released Dyer from personal liability. The trial court granted Dyer's motion, declared that GMAC had not complied with HUD requirements, and ordered GMAC to add express release language. The Court of Appeals reversed and remanded.

#### **DISPOSITION**

reversed\_and\_remanded

#### **REMAND INSTRUCTIONS**

The parties were directed to proceed with the deed in lieu of foreclosure agreement as proposed by GMAC.

#### **CASES CITED**

- *Dreaded, Inc. v. St. Paul Guardian Insurance Co.*, 904 N.E.2d 1267, 1269 (Ind. 2009)
- *Naugle v. Beech Grove City School*, 864 N.E.2d 1058, 1062 (Ind. 2007)
- *Ingram v. Cuomo*, 51 F. Supp. 2d 667 (M.D.N.C. 1999)