SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT

Ahmed v Carrington Mtge. Servs., LLC

Ahmed v. Carrington Mtge. Servs., LLC, 2020 NY Slip Op 07337 (N.Y. Ct. App. 2020) · No. 2019-13407 · Decided December 9, 2020

SUMMARY

The Appellate Division, Second Department, affirmed a judgment dismissing the plaintiff's claims against a mortgage servicer for breach of a loan modification agreement and violation of the Fair Credit Reporting Act. The court held that the plaintiff failed to prove actual damages from allegedly late property-tax payments or inaccurate credit reporting, and that the law-of-the-case doctrine did not preclude the trial court from determining damages after trial.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	William F. Mastro, J.P.; Sheri S. Roman, J.; Sylvia O. Hinds-Radix, J.; Francesca E. Connolly, J.
JURISDICTION	New York
DECIDED	December 9, 2020
DOCKET	2019-13407
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from a judgment entered after a nonjury trial that dismissed his breach-of-contract and Fair Credit Reporting Act claims for failure to prove damages.
STANDARD OF REVIEW	The Appellate Division reviewed the Supreme Court's posttrial determinations and affirmed its findings that the plaintiff failed to prove damages.
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Lofty Rashed Ahmed v. Carrington Mortgage Services, LLC

TOPICS

breach of contract · credit reporting · mortgages · damages · appellate procedure

PRACTICE AREAS

contracts · mortgages · consumer protection · credit reporting · appellate procedure

QUESTIONS PRESENTED

1. Whether the law-of-the-case doctrine barred the Supreme Court from determining after trial that the plaintiff failed to prove damages despite an earlier summary judgment determination concerning liability.
2. Whether the plaintiff proved actual damages necessary to recover for breach of the loan modification agreement.
3. Whether the plaintiff proved actual damages on his viable Fair Credit Reporting Act claim.

HOLDINGS

1. The law-of-the-case doctrine did not prevent the Supreme Court from determining after trial that the plaintiff failed to prove damages.
2. The plaintiff failed to establish actual damages resulting from Carrington's alleged breach of the loan modification agreement.
3. The plaintiff failed to prove actual damages resulting from the allegedly incorrect credit reporting and therefore could not recover on his viable FCRA claim.

KEY QUOTATIONS

> *"To prevail on a cause of action alleging breach of contract, the plaintiff must demonstrate that it sustained 'actual damages as a natural and probable consequence' of the defendant's breach"* (*2)

> *"The doctrine of the law of the case seeks to prevent relitigation of issues of law that have already been determined at an earlier stage of the proceeding"* (*2)

> *"this Court is not bound by the Supreme Court's prior determination pursuant to the law of the case doctrine"* (*2)

FACTUAL BACKGROUND

The plaintiff owned real property encumbered by a mortgage and entered into a loan modification agreement with Carrington, which assumed servicing of the mortgage. The agreement required escrow payments for taxes and insurance and made the total monthly payment subject to annual escrow analysis. The plaintiff claimed Carrington failed to timely pay property taxes and reported incorrect information concerning the escrow payment to credit reporting bureaus. At trial, however, the evidence showed that the taxes had been paid, and the plaintiff did not establish any penalty, late fee, denied credit, or increased cost of credit.

PROCEDURAL HISTORY

The plaintiff sued Carrington Mortgage Services, LLC, alleging breach of a loan modification agreement and violations of the Fair Credit Reporting Act. The Supreme Court initially determined on summary judgment that plaintiff was entitled to judgment on liability for both causes of action, then conducted a nonjury trial on damages and found that plaintiff had failed to establish damages. The Supreme Court entered judgment dismissing the complaint, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Brownrigg v New York City Hous. Auth., 29 AD3d 721, 722
- People v Evans, 94 NY2d 499, 502-503
- Matter of Mazur Bros. Realty, LLC v State of New York, 117 AD3d 949, 952
- Odierna v RSK, LLC, 171 AD3d 769, 772
- White Plains Plaza Realty, LLC v Town Sports Intl., LLC, 79 AD3d 1025, 1027
- Wynkoop v County of Nassau, 139 AD2d 731, 732
- Family Operating Corp. v Young Cab Corp., 129 AD3d 1016, 1017
- Rakylar v Washington Mut. Bank, 51 AD3d 995, 996
- Nguyen v Ridgewood Sav. Bank, 66 F Supp 3d 299, 304 n 8
- Safeco Ins. Co. of Am. v Burr, 551 US 47, 53
- Burns v Bank of Am., 655 F Supp 2d 240, 250, affd 360 Fed Appx 255
- Smith v Santander Consumer USA, Inc., 703 F3d 316, 317
- Caltabiano v BSB Bank & Tr. Co., 387 F Supp 2d 135, 141
- Trikas v Universal Card Services Corp., 351 F Supp 2d 37, 45
- Evans v Credit Bur., 904 F Supp 123, 126

OPINION

PER CURIAM.

Ahmed v Carrington Mtge. Servs., LLC (2020 NY Slip Op 07337) Ahmed v Carrington Mtge. Servs., LLC 2020 NY Slip Op 07337 Decided on December 9, 2020 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on December 9, 2020 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department WILLIAM F. MASTRO, J.P. SHERI S. ROMAN SYLVIA O. HINDS-RADIX FRANCESCA E. CONNOLLY, JJ. 2019-13407 (Index No. 15575/13) [*1]Lofty Rashed Ahmed, appellant, vCarrington Mortgage Services, LLC, respondent, et al., defendant. Blodnick, Fazio & Clark, Babylon, NY (Adam Crowley and James E. Clark of counsel), for appellant.

Knuckles Komosinski & Manfro, LLP, Elmsford, NY (John E. Brigandi of counsel), for respondent. DECISION & ORDER In an action, inter alia, to recover damages for breach of contract and violation of the Fair Credit Reporting Act (15 USC § 1681 et seq.), the plaintiff appeals from a judgment of the Supreme Court, Suffolk County (Joseph A. Santorelli, J.), entered August 9, 2019.

The judgment, upon a decision dated November 26, 2018, made after a nonjury trial, is in favor of the defendants and against the plaintiff dismissing the complaint. ORDERED that the judgment is affirmed, with costs.

The plaintiff owns certain real property located in Lake Grove (hereinafter the subject property), which was encumbered by a mortgage executed in 2006 (hereinafter the mortgage). On July 1, 2007, the defendant Carrington Mortgage Services, LLC (hereinafter the defendant), assumed servicing the plaintiff's mortgage.

On September 29, 2009, the plaintiff entered into a loan modification agreement with the defendant. Article II(C) of the loan modification agreement provided that the "modified loan will be escrowed for payment of taxes and/or insurance," and the escrow portion of the plaintiff's payments would be $129.08. Article II(D) of the loan modification agreement provided that the plaintiff's "total monthly payment of principal, interest, taxes and insurance" would be $2,162.33 " (subject to annual escrow analysis)."

By the filing of a summons and complaint dated June 7, 2013, the plaintiff commenced this action, alleging that the defendant breached the loan modification agreement by failing to remit timely payment of property taxes to the County of Suffolk, and that the defendant violated the Fair Credit Reporting Act (15 USC § 1681 et seq.) (hereinafter the FCRA) by improperly deeming the plaintiff's modified monthly escrow payment insufficient and making negative reports to credit reporting bureaus, thereby damaging the plaintiff's credit rating.

In 2016, the defendant moved for summary judgment dismissing the complaint, and the plaintiff cross-moved, inter alia, for summary judgment in his favor on his breach of contract cause of action. By order dated February 17, 2017, the Supreme Court held, among other things, that the defendant failed to establish its prima facie entitlement to summary judgment dismissing the [*2]breach of contract cause of action, and that the plaintiff had established his entitlement to summary judgment on the issue of liability on that cause of action.

In addition, in effect, upon searching the record, the Supreme Court determined that the plaintiff established his entitlement to summary judgment on the issue of liability on his FCRA cause of action. After conducting a nonjury trial on the issue of damages, the Supreme Court determined, inter alia, that the plaintiff had failed to establish any damages on his breach of contract and FCRA causes of action.

By judgment entered August 9, 2019, the court dismissed the complaint. The plaintiff appeals. Contrary to the plaintiff's contentions, the doctrine of law of the case did not prevent the Supreme Court from determining, after trial, that the plaintiff failed to prove that he had sustained damages on his breach of contract and FCRA causes of action. "The doctrine of the law of the case seeks to prevent relitigation of issues of law that have already been determined at an earlier stage of the proceeding" (Brownrigg v New York City Hous.

Auth., 29 AD3d 721, 722; see People v Evans, 94 NY2d 499, 502-503). In contrast to res judicata and collateral estoppel, which are rigid rules of limitation, "'law of the case is a judicially crafted policy that expresses the practice of courts generally to refuse to reopen what has been decided, [and is] not a limit to their power.

As such, law of the case is necessarily amorphous in that it directs a court's discretion, but does not restrict its authority'" (Matter of Mazur Bros. Realty, LLC v State of New York, 117 AD3d 949, 952, quoting People v Evans, 94 NY2d at 503).

Moreover, "this Court is not bound by the Supreme Court's prior determination pursuant to the law of the case doctrine" (Odierna v RSK, LLC, 171 AD3d 769, 772; see White Plains Plaza Realty, LLC v Town Sports Intl., LLC, 79 AD3d 1025, 1027; Wynkoop v County of Nassau, 139 AD2d 731, 732).

We agree with the Supreme Court's determination that the plaintiff failed to prove damages on the breach of contract cause of action. "To prevail on a cause of action alleging breach of contract, the plaintiff must demonstrate that it sustained 'actual damages as a natural and probable consequence' of the defendant's breach" (Family Operating Corp. v Young Cab Corp., 129 AD3d 1016, 1017, quoting Rakylar v Washington Mut.

Bank, 51 AD3d 995, 996). Here, the plaintiff testified that the defendant paid the property taxes on the subject property, which was confirmed by the testimony of the defendant's representative, as well as documentary evidence.

The defendant's representative further testified that the defendant typically pays property taxes on behalf of borrowers by the due date. Although the plaintiff testified that he received letters from Suffolk County informing him that the property taxes were not paid and that "they usually have a penalty," there was no further testimony, nor any documentary evidence, to establish nonpayment, the amount of any penalty, or whether the plaintiff paid any penalties or late fees for the defendant's alleged failure to timely pay property taxes on the subject property.

Furthermore, to the limited extent that the plaintiff alleged a viable claim under the FCRA, we also agree with the court's determination that the plaintiff failed to establish damages on the FCRA cause of action. While "actual damages, costs, and attorneys' fees are... available against entities who are negligent in failing to comply with certain provisions of the FCRA" (Nguyen v Ridgewood Sav.

Bank, 66 F Supp 3d 299, 304 n 8; see 15 USC § 1681o; Safeco Ins. Co. of Am. v Burr, 551 US at 53), the plaintiff failed to demonstrate that he sustained any actual damages as a result of the defendant's actions (see generally Burns v Bank of Am., 655 F Supp 2d 240, 250, affd 360 Fed Appx 255).

The plaintiff failed to prove through admissible evidence that he was denied credit or that his costs of obtaining credit were increased because of the allegedly incorrect information reported by the defendant (see Smith v Santander Consumer USA, Inc., 703 F3d 316, 317; Caltabiano v BSB Bank & Tr. Co., 387 F Supp 2d 135, 141; Trikas v Universal Card Services Corp., 351 F Supp 2d 37, 45; Evans v Credit Bur., 904 F Supp 123, 126).

In view of the foregoing, we need not reach the parties' remaining contentions. MASTRO, J.P., ROMAN, HINDS-RADIX and CONNOLLY, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court