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
