SUPREME COURT OF THE STATE OF MONTANA

Bruce v. National City Mortgage

2013 MT 7N · No. DA 12-0350 · Decided January 15, 2013

SUMMARY

The Montana Supreme Court affirmed summary judgment for National City Mortgage in a dispute arising from a construction-to-permanent home loan. The court held that the borrowers' untimely interest payment meant they were not entitled to the lower permanent-loan interest rate, and that the lender acted within its contractual rights in increasing the rate and pursuing foreclosure. The court designated the decision as a noncitable memorandum opinion.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Justice Beth Baker; Chief Justice Mike McGrath; Justice Patricia O. Cotter; Justice Michael E. Wheat; Justice Jim Rice
JURISDICTION	Montana
DECIDED	January 15, 2013
DOCKET	DA 12-0350
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the District Court's grant of summary judgment in favor of National City Mortgage in an action seeking declaratory and injunctive relief and damages for breach of contract, breach of the implied covenant of good faith and fair dealing, and fraud.
STANDARD OF REVIEW	Summary judgment is reviewed de novo under the same M. R. Civ. P. 56(c) criteria applied by the district court; the court reviews for correctness the legal conclusion that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Joseph M. Bruce, Angela A. Bruce v. National City Mortgage, a Division of National City Bank

TOPICS

breach of contract · summary judgment · foreclosure · implied covenant of good faith · appellate procedure

PRACTICE AREAS

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

QUESTIONS PRESENTED

1. Whether the District Court properly granted summary judgment on the Bruces' breach-of-contract and related claims despite factual disputes concerning completion of construction and the timing of the final construction-loan draw.
2. Whether National acted within its contractual rights in increasing the interest rate and instituting foreclosure proceedings after the Bruces failed to make required payments timely.

HOLDINGS

1. Summary judgment was proper because the undisputed failure to make required construction-loan interest payments timely meant that the Bruces could not qualify for the lower interest rate, and the remaining factual disputes were not material to their claims.
2. National acted within its contractual rights to raise the interest rate to 11.75% and, when the Bruces failed to make required payments, to institute foreclosure proceedings.

KEY QUOTATIONS

> *"this case is decided by memorandum opinion and shall not be cited and does not serve as precedent."* (¶ 1)

> *"National was within its contract rights to raise the interest rate on the loan and, when the Bruces were unable to make required payments, to institute foreclosure proceedings."* (¶ 9)

FACTUAL BACKGROUND

The Bruces obtained a construction and permanent mortgage loan from National in June 2007. The loan permitted a lower permanent-loan interest rate if construction was completed and the final draw was received by April 1, 2008, but required the borrowers to be current on construction-phase interest-only payments before the final draw. The Bruces were twenty-two days late on the interest payment due March 25, 2008, later stopped making payments, and National increased the rate to 11.75% and instituted foreclosure proceedings.

PROCEDURAL HISTORY

The Bruces filed suit in the Eleventh Judicial District Court approximately one week before a foreclosure sale under their deed of trust. They did not seek a preliminary injunction, and the trustee's sale occurred as scheduled. The District Court granted National summary judgment, concluding that the Bruces' failure to make required construction-loan interest payments timely defeated their claims; the Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Turner v. Wells Fargo Bank, N.A., 2012 MT 213, ¶ 11, 366 Mont. 285, ___ P.3d ___

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