

COURT OF APPEALS OF TEXAS, FIFTH DISTRICT AT DALLAS

Maria De La Fuente v. The Bank of New York Mellon Trust Company, N.A., as Trustee on Behalf of CWABS Inc., Asset-Backed Certificates Trust 2006-2 by Green Tree Servicing LLC

No. 05-15-00559-CV (Tex. App.—Dallas Aug. 10, 2015) · No. No. 05-15-00559-CV · Decided August 11, 2015

SUMMARY

The Texas Fifth District Court of Appeals dismissed Maria De La Fuente’s appeal because she failed to pay the filing fee, file the required docketing statement, or provide documentation regarding payment for the clerk’s record. The court ordered the appellee to recover its appellate costs from the appellant.

CASE DETAILS

COURT	Court of Appeals of Texas, Fifth District at Dallas
WRITING FOR THE COURT	David J. Schenck; Justice Bridges; Justice Lang; Justice Schenck
JURISDICTION	Texas
DECIDED	August 11, 2015
DOCKET	No. 05-15-00559-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appellant's civil appeal was dismissed after appellant failed to pay the filing fee, file a docketing statement, or provide documentation concerning payment for the clerk's record despite repeated notices and warnings.
PRECEDENTIAL VALUE	published
PARTIES	Maria De La Fuente v. The Bank of New York Mellon Trust Company, N.A., as Trustee on Behalf of CWABS Inc., Asset-Backed Certificates Trust 2006-2 by Green Tree Servicing LLC

TOPICS

appellate procedure

costs

civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the appeal should be dismissed because appellant failed to pay the filing fee, file the required docketing statement, and provide documentation concerning payment for or waiver of costs for the clerk's record after receiving notice and warnings.

HOLDINGS

1. An appeal may be dismissed when the appellant fails, after notice and warning, to pay the filing fee, file the required docketing statement, and provide the documentation necessary to obtain the clerk's record.

FACTUAL BACKGROUND

The appellate filing fee, docketing statement, and clerk's record were not timely filed or obtained. The court sent multiple notices directing appellant to pay the filing fee, file the docketing statement, and provide verification of payment or arrangements for the clerk's record, or documentation establishing entitlement to proceed without payment of costs. Appellant failed to comply with any of those directives and did not otherwise correspond with the court regarding the clerk's record.

PROCEDURAL HISTORY

The appeal was taken from the County Court at Law No. 1 of Dallas County, Texas, in trial court cause number CC-15-01366-A. The court of appeals notified appellant that the filing fee and docketing statement were past due and later directed appellant to address payment or waiver of costs for the clerk's record. After appellant failed to comply or otherwise communicate with the court, the court dismissed the appeal and taxed appellate costs against appellant.

DISPOSITION

dismissed

OPINION**PER CURIAM.**

DISMISS; and Opinion Filed August 10, 2015. S In The Court of Appeals Fifth District of Texas at Dallas No. 05-15-00559-CV MARIA DE LA FUENTE, Appellant V. THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., AS TRUSTEE ON BEHALF OF CWABS INC., ASSET-BACKED CERTIFICATES TRUST 2006-2 BY GREEN TREE SERVICING LLC, Appellee On Appeal from the County Court at Law No. 1 Dallas County, Texas Trial Court Cause No. CC-15-01366-A MEMORANDUM OPINION Before Justices Bridges, Lang, and Schenck Opinion by Justice Schenck The filing fee, docketing statement, and clerk's record in this case are past due.

By postcard dated April 30, 2015, we notified appellant the \$195 filing fee was due. We directed appellant to remit the filing fee within ten days and expressly cautioned appellant that failure to do so would result in dismissal of the appeal. Also by postcard dated April 30, 2015, we notified appellant the docketing statement had not been filed in this case.

We directed appellant to file the docketing statement within ten days. We cautioned appellant that failure to do so might result in dismissal of this appeal. By letter dated May 29, 2015, we informed appellant the clerk's record had not been filed because appellant had not paid for or made arrangements to pay for the clerk's record.

We directed appellant to provide verification of payment or arrangements to pay for the clerk's record or written documentation that appellant had been found to be entitled to proceed without payment of costs. We cautioned appellant that failure to do so would result in the dismissal of this appeal without further notice.

To date, appellant has not paid the filing fee, filed the docketing statement, provided the required documentation, or otherwise corresponded with the Court regarding the status of the clerk's record. Accordingly, we dismiss this appeal. See TEX. R. APP. P. 5; 37.3(b); 42.3(b), (c). /David J. Schenck/ DAVID J. SCHENCK JUSTICE 150559F.P05 –2– S Court of Appeals Fifth District of Texas at Dallas JUDGMENT MARIA DE LA FUENTE, Appellant On Appeal from the County Court at Law No. 1, Dallas County, Texas No. 05-15-00559-CV V. Trial Court Cause No. CC-15-01366-A.

Opinion delivered by Justice Schenck. THE BANK OF NEW YORK MELLON Justices Bridges and Lang participating. TRUST COMPANY, N.A., AS TRUSTEE ON BEHALF OF CWABS INC., ASSET- BACKED CERTIFICATES TRUST 2006-2 BY GREEN TREE SERVICING LLC, Appellee In accordance with this Court's opinion of this date, this appeal is DISMISSED. It is ORDERED that appellee THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., AS TRUSTEE ON BEHALF OF CWABS INC., ASSET-BACKED CERTIFICATES TRUST 2006-2 BY GREEN TREE SERVICING LLC recover its costs of this appeal from appellant MARIA DE LA FUENTE.

Judgment entered this 10th day of August, 2015. –3–