

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

State of Arizona ex rel. Terry L. Goddard ex rel. Thomas C. Horne v.
Countrywide Financial Corporation, et al.

State of Arizona ex rel. Terry L. Goddard ex rel. Thomas C. Horne v. Countrywide Financial Corporation, 665
F.3d 1165 (9th Cir. 2012) · No. 11-80086 · Decided January 3, 2012

SUMMARY

The Ninth Circuit denied the petitioner’s motion for reconsideration in the State of Arizona’s parens patriae action against Countrywide and related defendants, and denied the respondent’s request for costs. Judge Gould dissented, arguing that the court should permit an appeal to resolve conflicting district court decisions concerning application of the Class Action Fairness Act to parens patriae actions seeking restitution for state citizens.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Per curiam; Canby, Circuit Judge; Gould, Circuit Judge; Tallman, Circuit Judge
JURISDICTION	Federal
DECIDED	January 3, 2012
DOCKET	11-80086
DISPOSITION	other
PROCEDURAL POSTURE	The Ninth Circuit considered petitioners' motion for reconsideration of a prior order concerning permission to appeal. The motions panel denied reconsideration and denied respondent's request for costs.
PRECEDENTIAL VALUE	Published Ninth Circuit opinion; the per curiam order primarily resolves a motion for reconsideration and a request for costs, while the substantive CAFA discussion appears in dissent.
PARTIES	Countrywide Financial Corporation, Countrywide Home Loans Incorporated, Full Spectrum Lending Incorporated, now known as Countrywide Home Loans Incorporated, Bank of America Corporation, Bank of America, N.A., BAC Home Loans Servicing LP, ReconTrust Company, N.A., Unknown Parties, named as Black Corporations 1-10 v. State of Arizona ex rel. Terry L. Goddard ex rel. Thomas C. Horne

TOPICS

appellate procedure

motion for reconsideration

costs

class actions

civil procedure

PRACTICE AREAS

Appellate procedure

Civil procedure

Consumer protection

QUESTIONS PRESENTED

1. Whether the petitioners' motion for reconsideration of the Ninth Circuit's prior order should be granted.
2. Whether the respondent should be awarded costs based on its response to the motion for reconsideration.

HOLDINGS

1. The petitioners' motion for reconsideration was denied.
2. Respondent's request for an award of costs, included in its response to the motion for reconsideration, was denied.

KEY QUOTATIONS

"Petitioner's motion for reconsideration is denied."

"Respondent's request that it be awarded its costs, contained in its response to the motion to reconsider, is denied."

"No further filings will be accepted in this closed case."

FACTUAL BACKGROUND

Arizona, through its attorney general, pursued claims against Countrywide-related entities on behalf of state citizens. The case implicated differing district-court views concerning application of the Class Action Fairness Act to parens patriae actions seeking restitution for state citizens, as described in the dissent. The Ninth Circuit's order resolved only the petitioners' motion for reconsideration and the respondent's request for costs.

PROCEDURAL HISTORY

The State of Arizona brought an action in the District of Arizona against Countrywide-related entities. After the Ninth Circuit entered a prior order addressing permission to appeal, the defendants petitioned for reconsideration. The motions panel denied reconsideration, denied the State's request for costs, and closed the case.

DISPOSITION

other

CASES CITED

- Nevada v. Bank of America Corp., No. 11-80165

OPINION

PER CURIAM.

FILED FOR PUBLICATION JAN 03 2012 MOLLY C. DWYER, CLERK UNITED STATES COURT OF APPEALS U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT STATE OF ARIZONA, ex rel Terry L. No. 11-80086 Goddard ex rel Thomas C. Horne, D.C. No. 2:11-cv-00131-FJM Plaintiff - Respondent, District of Arizona, Phoenix v. COUNTRYWIDE FINANCIAL ORDER CORPORATION, a Delaware corporation; COUNTRYWIDE HOME LOANS INCORPORATED, a New York corporation; a wholly owned subsidiary of Countrywide Financial Corporation; FULL SPECTRUM LENDING INCORPORATED, a California corporation now known as Countrywide Home Loans Incorporated; BANK OF AMERICA CORPORATION, a Delaware corporation; BANK OFAMERICA NA, a national bank; BAC HOME LOANS SERVICING LP, a foreign limited partnership and subsidiary of Bank of America NA; RECON TRUST COMPANY NA, a wholly-owned subsidiary of Bank of America NA; UNKNOWN PARTIES, names as: Black Corporations 1-10, Defendants - Petitioners.

Submitted to a Motions Panel June 29, 2011 Before: CANBY, GOULD, and TALLMAN, Circuit Judges. PER CURIAM: Petitioner's motion for reconsideration is denied. See 9th Cir. R. 27-10. Respondent's request that it be awarded its costs, contained in its response to the motion to reconsider, is denied. No further filings will be accepted in this closed case. 2 11-80086 Counsel Listing Carolyn R. Matthews, Esquire, Senior Litigation Counsel, Office of the Attorney General, Phoenix, Arizona.

Thomas K. Chenal, Esquire, Assistant Attorney General, Office of the Attorney General, Phoenix, Arizona. Matthew W. Close, Esquire, O'Melveny & Myers LLP, Los Angeles, California. Don Bivens, Esquire, Snell & Wilmer LLP, Phoenix, Arizona. Brian D. Boyle, Esquire, O'Melveny & Myers LLP, Washington, DC. Robert Arthur Henry, Esquire, Snell & Wilmer LLP, Phoenix, Arizona.

3 11-80086 FILED JAN 03 2012 State of Arizona v. Countrywide Financial, et al., 11-80086 MOLLY C. DWYER, CLERK U.S. COURT OF APPEALS GOULD, Circuit Judge, dissenting: I dissent and would grant reconsideration and would permit appeal.

We have decisions in different district courts in Nevada and Arizona going in opposite directions on the same or very similar issues. Although we have permitted appeal in Nevada v. Bank of America Corp., No. 11-80165, there are ways in which that decision might be resolved without clarifying the legal points concerning application of the Class Action Fairness Act to parens patriae actions in which an attorney general seeks restitution for state citizens, on which our district courts are divided.

In my view, if there is one thing we should readily do as a circuit, it is to take steps to eliminate intra-circuit conflicts in our district courts. A state attorney general should face the same law and orientation of a district court in each of the states within our circuit.

To my thinking, it just doesn't make sense to leave the attorney generals of the various states at sea when we could easily simplify and clarify matters by permitting appeal in both this decision coming from Arizona and the related case in Nevada on which we are allowing an appeal. A panel hearing both appeals on an expedited basis could provide an opinion that would set uniform law within our circuit.

I regret that our panel here passes on that opportunity.