

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Del Rosario v. Wells Fargo Bank, N.A.

714 F. App'x 722 (9th Cir. 2018) · No. 17-56466 · Decided March 1, 2018

SUMMARY

A Ninth Circuit panel affirmed the district court's denial of the appellants' motion to vacate judgment. The court held that the district court did not abuse its discretion under Rule 60(b) because the appellants failed to establish any basis for relief. The court also declined to consider arguments raised for the first time on appeal.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Leavy; Fernandez; Murguia
JURISDICTION	Federal
DECIDED	March 1, 2018
DOCKET	17-56466
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of the United States District Court for the Southern District of California denying Appellants' motion to vacate a judgment dismissing their diversity action related to a mortgage.
STANDARD OF REVIEW	Abuse of discretion. Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc., 5 F.3d 1255, 1262 (9th Cir. 1993).
PRECEDENTIAL VALUE	unpublished
PARTIES	Amor Medina Del Rosario; Elvie Canlas Del Rosario v. Wells Fargo Bank, N.A., as Trustee for the Merrill Lynch Mortgage Investors Trust, Series 2006-F1.; PNC Mortgage, Inc., FKA National City Mortgage Company

TOPICS

[motion for reconsideration](#) [mortgages](#) [real estate](#) [civil procedure](#) [appellate procedure](#)

PRACTICE AREAS

[real estate](#) [civil procedure](#) [appellate procedure](#)

QUESTIONS PRESENTED

1. Whether the district court abused its discretion in denying Appellants' motion to vacate the judgment under Federal Rule of Civil Procedure 60(b).

HOLDINGS

1. The district court did not abuse its discretion because Appellants failed to establish any basis for relief under Rule 60(b).

KEY QUOTATIONS

“The district court did not abuse its discretion by denying appellants' motion to vacate because appellants failed to establish any basis for relief.” (722)

“We do not consider arguments raised for the first time on appeal or matters not specifically and distinctly raised and argued in the opening brief.” (722)

FACTUAL BACKGROUND

Appellants brought a diversity action against Wells Fargo Bank, N.A. and PNC Mortgage, Inc. concerning a mortgage on their property. The district court dismissed the action. Appellants then moved to vacate the dismissal, and the district court denied the motion.

PROCEDURAL HISTORY

Appellants filed a diversity action in district court alleging claims related to their mortgage. The district court dismissed the action. Appellants moved to vacate the judgment under Federal Rule of Civil Procedure 60(b). The district court denied the motion, and Appellants appealed.

DISPOSITION

affirmed

CASES CITED

- Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc., 5 F.3d 1255 (9th Cir. 1993)
- Padgett v. Wright, 587 F.3d 983 (9th Cir. 2009)

OPINION

PER CURIAM.

NOT FOR PUBLICATION FILED UNITED STATES COURT OF APPEALS MAR 1 2018
MOLLY C. DWYER, CLERK U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT AMOR
MEDINA DEL ROSARIO; ELVIE No. 17-56466 CANLAS DEL ROSARIO, D.C. No. 3:16-cv-
00649-BEN-NLS Plaintiffs-Appellants, v. MEMORANDUM* WELLS FARGO BANK, N.A., as

Trustee for the Merrill Lynch Mortgage Investors Trust, Series 2006-F1.; PNC MORTGAGE, INC., FKA National City Mortgage Company, Defendants-Appellees.

Appeal from the United States District Court for the Southern District of California Roger T. Benitez, District Judge, Presiding Submitted February 13, 2018** Before: LEAVY, FERNANDEZ, and MURGUIA, Circuit Judges. Amor Medina Del Rosario and Elvie Canlas Del Rosario appeal pro se from the district court's order denying their motion to vacate its judgment dismissing * This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3. ** The panel unanimously concludes this case is suitable for decision without oral argument.

See Fed. R. App. P. 34(a)(2). their diversity action alleging claims related to their mortgage. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc., 5 F.3d 1255, 1262 (9th Cir. 1993).

We affirm. The district court did not did not abuse its discretion by denying appellants' motion to vacate because appellants failed to establish any basis for relief. See *id.* at 1263 (grounds for reconsideration under Federal Rule of Civil Procedure 60(b)).

We do not consider arguments raised for the first time on appeal or matters not specifically and distinctly raised and argued in the opening brief. See *Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009). AFFIRMED. 2 17-56466