

FILED
Court of Appeals
Division II
State of Washington
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WASHINGTON STATE COURT OF APPEALS
DIVISION TWO

CASE # 50755-2-II

PATRICIA CHATMAN (SHAW)

Appellant

V.

BENEFICIAL FINANCIAL, U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF9 MASTER
PARTICIPATION TRUST

Respondent

APPELLANT REPLY BRIEF

Patricia Chatman Shaw
5533 SW Paradise Lane
Port Orchard, WA 98367
360-876-9446
Mailing Address:
PO Box 35
Burley, WA 98322-0035
Appellant
Pro Se

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INTRODUCTION

Owning your own home is the American dream and what I thought would be a dream come true, turn into a nightmare that no one would ever want to relive. I never thought of how naïve I was in believing that mortgage companies had your best interest. If someone would have told me that documents gets lost and banks and mortgage lenders do not have your best interest at heart, I would not have believed them.

Unable to refinance or sale your home and living in limbo is something that I wish upon no one. But here I am trying to make sense of everything.

“And then, again, they said that I was served to appear in court October 19, 2016.

I never got those papers either. I never got anything that said I had to appear in court.

THE COURT: Ms. Hood, do you have anything about the showing that the default itself was sent to her?” RP-5

“If she didn’t appear, then we would not have notified her of default.” RP-5

The bank wants me to walk away, that I have no rights to this property. This claim also defies logic---- that a defendant who would lose her home by not showing up to defend a foreclosure would simply ignore it.

REPLY ARGUMENT

CR 60 (b) 4 permits a judgment to be vacated on the grounds of “fraud....misrepresentation misconduct by an adverse party.” Here, there are several layers of fraud, and a motion under *CR60 (b) 4* is not bound by the one year rule. First, the respondent relies on an affidavit of service asserting that I was the person who he claimed personally served. However, on the evening in question, I was out to dinner. The second tier of fraud is the carefully-worded “Affidavit of Lost Note” which omits the crucial allegation that the plaintiff was in possession of the Note when it was lost. This is because the plaintiff can’t be in possession of a Note which does not exist.

Hence, this default was clearly obtained by fraud --- even if the service had not been fraudulent, the papers on which it is based (asserting that Beneficial Finance Inc. held a Note on my home and had standing to foreclose it, were false, and the bank knew it was false at the time. Counsel says that the one year deadline applies to claims under *CR 60 (b) 1, 2 and 3*. But that limit does not apply to action under *CR 60 (b) 4*.

CONCLUSION

I know that I am not alone with my struggles with Beneficial/LSF9 Master Participation Trust. I received a notice of settlement of a class action.

A global settlement agreement has been reached in the following three class action lawsuits:

1. *Hussain v. LSF9 Master Participation Trust; Caliber Home Loans, Inc.; and U.S. Bank Trust, N.A., as Trustee of LSF9 Master Participation Trust, Case No. 1:17-cv-625-TWP-MPB*
2. *Carbone v. Caliber Home Loans, Inc.; and U.S. Bank Trust, N.A., as Trustee of LSF9 Master Participation Trust, Case No. 15-cv-4919-JS-ARL*
3. *Grosz, et al. v. LSF 9 Master Participation Trust; Caliber Home Loans, Inc.; and U.S. Bank Trust, N.A., as Trustee of LSF9 Master Participation Trust, Case No. 2:16-cv-04035-SJF-AKT*

The plaintiffs in these three class action lawsuits claim that a letter sent by or on behalf of Caliber Home Loans, U.S. Bank Trust, and LSF9 Master Participation Trust violated the Fair Debt Collection Practices Act or FDCPA.

Specifically, the homeowners say these letters reportedly suggested that disputes of the mortgage debt need to be made in writing, directed dispute letters to a Dallas Texas address but the also stated that written requests be sent to an Oklahoma City address. The letters also were allegedly in violation of the FDCPA by using wording that recipients may be charged for a payoff statement as permitted by law.

The Fair Debt Collection Practices Act prohibits the collection of debt that it cannot validate. Essentially, by wrongfully attempting to collect on mortgage debts which the defendants do not own or cannot validate, they are in violation of the FDCPA.

Default judgments are not favored in the law. *Ramada Inns, Inc. v. Lan & Bird Advertising, Inc.*, 102 Ariz. 127, 129; *BDM, Inc. v. Sageco, Inc.*, 57 Haw. 73, 76, 549 P.2d 1147 (1976). A default judgment has been described as one of the most drastic actions a court may take to punish disobedience to its commands. *Widucus v. Southwestern Elec. Cooperative, Inc.*, 26 Ill. App. 2d 102, 109, 167 N.E.2d 799 (1960). The reason for this view is that "(i)t is the policy of the law that controversies be determined on

the merits rather than by default.” *Dlouhy v. Dlouhy*, 55 Wash. 2d 718, 721, 349 P.2d 1073, 1075.

The general test is whether the aggrieved party has a good reason for the default, and if the default is vacated, they have a good defense. I prevail on both counts.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Patricia Chatman Shew this 19th day of April 2018

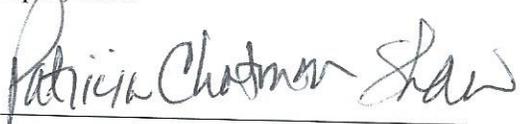
CERTIFICATE OF SERVICE

I, Patricia Chatman Shaw, hereby certify under penalty of perjury under the laws of the State of Washington that the following is true and correct.

On April 19, 2018, I caused to be served the foregoing APPELLANTS' REPLY BRIEF via electronic filing with my appellate courts' portal.

DATED this 19th Day of April, 2018

Patricia Chatman Shaw



PATRICIA SHAW - FILING PRO SE

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Sender Name: Patricia Shaw - Email: chatapa@hotmail.com
Address:
PO BOX 35
BURLEY, WA, 98322
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