

FILED
Court of Appeals
Division II
State of Washington
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Case No. 53819-9

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

PAUL A. MOSELEY

Defendant/Appellant,

v.

CITIMORTGAGE, INC.

Plaintiff / Respondent.

RESPONSE BRIEF

Warren Lance, WSBA #51586
McCarthy & Holthus, LLP
108 1st Ave S, Ste 300
Seattle, WA 98104
206-596-4842
wlance@mccarthyholthus.com

Attorney for CITIMORTGAGE, INC.

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I. RESPONSE TO ISSUES PERTAINING TO ASSIGNMENT OF ERROR

A. RESPONSE TO ASSIGNMENT OF ERROR NO. 1

ISSUE 1: CitiMortgage, Inc. is the correct party in interest as it is the beneficiary of the loan and the current assignee of the Deed of Trust.

B. RESPONSE TO ASSIGNMENT OF ERROR NO. 2

ISSUE 2: Appellant improperly attempted to litigate a matter on behalf of Defendant Michelle Moseley in an effort to prevent a foreclosure sale for his own benefit.

II. STATEMENT OF THE CASE

Respondent filed its Complaint for Foreclosure on December 7, 2016. Summary judgment was granted and a decree of foreclosure was entered on September 1, 2017.

On October 5, 2018, a Stipulated Judgment was entered between Respondent and Defendant Michelle Moseley.

On June 26, 2019, an Order of Sale was issued to Respondent. On August 21, 2019, Appellant filed a Motion to Dismiss Order of Sale. Respondent filed a response on September 3, 2019 and a hearing was held on September 6, 2019. Appellant is appealing the Order Denying his motion.

The Order of Sale that was issued June 26, 2019 expired 90 days later, on September 24, 2019.

Appellant currently has a bankruptcy pending, barring further issuance of any orders of sale.

III. ARGUMENT

A. RESPONSE TO ASSIGNMENT OF ERROR NO. 1: CitiMortgage, Inc. is the correct party in interest as it is the beneficiary of the loan and the current assignee of the Deed of Trust.

Appellant makes a variety of arguments, but they all stem from a single belief that Respondent is not the correct party of interest and a foreclosure sale cannot proceed until Cenlar is named as Plaintiff. This is absolutely incorrect.

As Respondent argued in its Opposition to the Appellant's Motion to Dismiss Order of Sale and at the hearing, Respondent is still the beneficiary of the loan, despite the servicing duties for the loan being transferred to Cenlar. Appellant appears to have been confused by the content of the Servicing Transfer Letter¹, sent to him by both CitiMortgage and Cenlar on October 16, 2018, which clearly states that "...we have entered into an agreement with Cenlar FSB dba Central Loan Administration & Reporting, where CitiMortgage will utilize Cenlar FSB **to perform various servicing functions.**" (emphasis added.) Appellant admits to having received this letter², however he is incorrect about the contents of the letter.

At summary judgment, the trial court determined that Respondent was the holder of the Note and the Deed of Trust has been assigned to it and this was

¹ A true and correct copy of this letter is attached as Appendix A.

² Appellant's Opening Brief, page 13

affirmed upon appeal. Neither of those statuses have changed and Appellant provides no evidence to the contrary.

With it clear that Respondent is still the beneficiary of the loan and the correct Plaintiff, Appellant's myriad other arguments begin to fall apart. It would be prudent to mention that none of these additional arguments should be considered by this Court as Appellant did not raise them with the trial court.

There are not two servicers attempting to foreclose on the same loan since Cenlar is a servicer and Respondent is the beneficiary of the loan. The Servicing Transfer Letter complies with 12 U.S. § 2605(b)(1) because Appellant was notified of the servicing change by both the beneficiary of the loan and the new loan servicer.

Respondent is not violating RCW 61.12.120 because there is only one action on this debt currently pending, this current action. Appellant's arguments to the contrary are not supported by facts or relevant case law. Even if there were two servicers handling the same loan, it would not be a violation of RCW 61.12.120 because there is only one action pending on the relevant debt.

Finally, Appellant argues that Respondent is dual tracking the loan in violation of 12 CFR § 1024.41. Dual tracking is when a loan servicer actively pursues a foreclosure judgment or sale after a facially complete loss mitigation package has been submitted by the borrower. Under the relevant portion of the code, 12 CFR § 1024.41(g), a servicer is prevented from proceeding with a

foreclosure sale if a facially complete package is received more than 37 days before the sale. That is not the case here. Appellant makes no claim that he has submitted a loss mitigation application, so he cannot argue that Respondent is dual tracking.

Appellant also argues that Respondent violated 12 CFR § 1024.41(k). This section sets the guidelines for loss mitigation options currently pending when a servicer transfer has happened. This argument fails for two reasons. First, Appellant admits in his history of the case that the loan was service transferred to Cenlar “well over a year ago”³ and then states that he received a loan workout offer dated November 14, 2019⁴. That letter, attached to Appellant’s brief as Attachment A, requests the Appellant to call them to discuss the possibilities of bringing the loan current. By the time he received that letter, the service transfer had already occurred over one year earlier, and Appellant does not allege that there was a pending loss mitigation offer when the servicing transferred. Therefore 12 CFR § 1024.41(k) is inapplicable. Second, the loan workout program that Appellant attaches to his brief is a request to contact Cenlar about mortgage assistance, it is not a loss mitigation offer. Therefore, again, 12 CFR § 1024.41 is wholly inapplicable.

³ Appellant’s Opening Brief, page 6

⁴ Appellant’s Opening Brief, page 14

B. RESPONSE TO ASSIGNMENT OF ERROR NO. 2: Appellant improperly attempted to litigate a matter on behalf of Michelle Moseley in an effort to prevent a foreclosure sale for his own benefit.

It is well established that a non-attorney cannot argue on behalf of another party to a lawsuit and this is codified in RCW 2.48.170. In fact, if it has been found that a husband cannot represent his wife in court, it would stand to reason that an ex-husband could not do the same. *City of Seattle v. Shaver*, 23 Wn. App. 601, 597 P.2d 935, 1979 Wash. App. LEXIS 2493 (Wash. Ct. App. 1979).

The agreement Appellant believes is being violated was entered into solely between Respondent and Michelle Moseley. Appellant has no standing as a party to that agreement to intervene. If Ms. Moseley had an issue with how Respondent was performing under the agreement, it would be up to her raise that issue.

Ms. Moseley consented to the relief that Respondent sought in this action, which was a foreclosure judgment. The fact that Ms. Moseley is named in the judgment does not result in Respondent not complying with its covenants in the Stipulation of Dismissal because Respondent has not sought deficiency from her by doing so and at this point is merely seeking to foreclose on the property.

Appellant's attempt to argue that raising a claim on behalf of Michelle Moseley was appropriate because it was done to ostensibly prevent harm to Respondent is just pretext in an effort to sneak the argument before the court. Appellant did not just file a simple memorandum with the trial court explaining his

concerns, or contact Respondent to discuss the issue; he filed a motion to effectively stop the sale of his home at foreclosure auction. Appellant's behavior was entirely self-serving.

IV. CONCLUSION

This Court should uphold the decision of the trial court and determine that Respondent is the correct party of interest moving forward.

DATED February 3, 2020

/s/ Warren Lance
Warren Lance, WSBA # 51586
Attorney for Respondent CITIMORTGAGE, INC.

CERTIFICATE OF SERVICE

I, Jacob Flatau, certify that on 2/3/2020, I served a copy of the foregoing document, described as **RESPONDENT'S RESPONSE BRIEF**, on the following person by U.S. First Class Mail and E-Mail:

Paul Moseley
101 Fleet Drive
Port Ludlow, WA 98365

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and that this Declaration was executed in Portland, Oregon.

DATED: 2/3/2020
MCCARTHY & HOLTHUS LLP
Legal Assistant: /s/ Jacob Flatau

APPENDIX A



CITIMORTGAGE, INC.
P.O. Box 6243
Sioux Falls, SD 57117-6243



0035416-0350539 00106 008 ---4-- 742091



PAUL A MOSELEY
MICHELLE L MOSELEY
101 FLEET DR
PORT LUDLOW WA 98365-9623

10/16/2018

BUS1008815.72076



Dear CitiMortgage Client(s):

CitiMortgage Account Number: [REDACTED] 4142

When it comes to your mortgage, you want a simple, easy experience. From payments and insurance to escrow and year-end tax statements, you want access to important information when you want it, so you can get back to living your life with the full confidence your home loan is in good hands.

We are proud of the service we provide to mortgage customers. To continue this tradition, we have entered into an agreement with Cenlar FSB d/b/a Central Loan Administration & Reporting ("Cenlar FSB"), where CitiMortgage will utilize Cenlar FSB to perform various servicing functions. For decades, Cenlar FSB has specialized in caring for mortgage customers. Simply put, this is all they do, and they do it extraordinarily well.

ACTION NEEDED

Beginning November 1, 2018, all mortgage payments should be made to Cenlar FSB directly. To reach Cenlar FSB, please call 1-855-839-6253 or go online at www.loanadministration.com.

Your new Cenlar FSB account number: [REDACTED]

If you currently make your loan payments via EZPay, Equity Builder, Auto Deduct or BiWeekly Advantage, this service will continue automatically. If you do not currently use one of these plans to make your payments, we have enclosed an ACH authorization form for your convenience. If you would like to take advantage of automated payments please complete and return the authorization form using the mailing instructions provided or visit www.loanadministration.com. Although you will be receiving regular monthly statements from Cenlar FSB we have attached a temporary payment coupon that may be used to make your next payment. You may use this coupon should you wish to make a payment prior to receiving your monthly statement. Citibank checking or savings accountholders may continue to make payments through Citi Mobile or Online Banking.

After the transfer of your mortgage servicing, Cenlar FSB will be your new contact for all questions related to payments, escrow, insurance and other details of your mortgage account. The Notice of Servicing Transfer required by federal law is enclosed. To answer some of the questions you may have, please see the enclosed information or visit www.loanadministration.com.

This transfer of servicing does not impact any other relationship(s) you may have with Citi, and your current Personal Banker, Relationship Manager, or Financial Advisor is still available to help you with all of your other banking needs. We are also happy to continue providing you with new home loan solutions, including refinances of your existing loans.

Thank you for allowing CitiMortgage to meet your home financing needs. We look forward to continuing this relationship for many years to come.

Sincerely,

Sincerely,

CitiMortgage, Inc.

Cenlar FSB

Enclosures

183500



NOTICE OF SERVICING TRANSFER

The servicing of your mortgage loan is being transferred effective November 1, 2018. This means that after this date a new servicer will be collecting your mortgage loan payments from you. Nothing else about your mortgage loan will change.

CitiMortgage, Inc. is now collecting your payments. CitiMortgage, Inc. will stop accepting payments received from you after October 31, 2018.

Central Loan Administration & Reporting will collect your payments going forward. Your new servicer will start accepting payments received from you on November 1, 2018.

Send all payments due on or after November 1, 2018, to Central Loan Administration & Reporting at this address: Payment Processing Center P.O. Box 11733, Newark, NJ 07101-4733.

If you have any questions for either your present servicer, CitiMortgage, Inc., or your new servicer, Central Loan Administration & Reporting, about your mortgage loan or this transfer, please contact them using the information below:

Current Servicer:

CitiMortgage, Inc.
Attention: Customer Research Team
P.O. Box 6243
Sioux Falls, SD 57117-6243
1-800-283-7918*

New Servicer:

Central Loan Administration & Reporting
P.O. Box 77404
Ewing, NJ 08628
1-855-839-6253

OPTIONAL INSURANCE/PRODUCTS WILL TRANSFER:

Important note about insurance: If you have mortgage life or disability insurance or any other type of optional insurance, the transfer of servicing rights may affect your insurance in the following way: The transfer of servicing is not affecting your optional insurance coverage. The premiums for your optional insurance will be collected by Central Loan Administration & Reporting as part of your mortgage payment. You should do the following to maintain coverage: Continue to include your optional insurance premiums as part of your mortgage payment.

Important note about optional products: If you have other optional products, the transfer of servicing rights may affect your products in the following way: The transfer of servicing is not affecting your optional products. The fees for your optional product will be collected by Central Loan Administration & Reporting as part of your mortgage payment. You should do the following to maintain coverage: Continue to include your optional product fees as part of your mortgage payment.

HOME AFFORDABLE MODIFICATION PROGRAM:

If you previously accepted an offer for financial counseling under HAMP and have not completed your counseling sessions, you may continue to receive financial counseling with your existing counselor even after the loan is transferred.

Under Federal law, during the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer on or before its due date may not be treated by the new servicer as late, and a late fee may not be imposed on you.

CitiMortgage, Inc.
Cenlar FSB

10/16/2018

For New York Accounts Only: You may file complaints about the servicing of your mortgage loan by CitiMortgage, Inc. with the New York State Department of Financial Services. You may obtain further information from the New York State Department of Financial Services by calling the Department's Consumer Assistance Unit at 1-800-342-3736 or by visiting the Department's website at www.dfs.ny.gov.

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GENERAL TRANSFER FAQs

Q: Why is my mortgage transferring?

A: CitiMortgage has made the decision to exit the mortgage loan servicing business. The transfer of mortgage servicing is a common practice in today's mortgage industry. It simply means that going forward Cenlar FSB will manage your mortgage, including collecting payments, handling escrow transactions and providing you with high-quality customer service.

Q: Who is Cenlar FSB?

A: For decades, Cenlar FSB has specialized in caring for mortgage customers. Cenlar FSB is the nation's leading mortgage loan servicing provider and focuses exclusively on mortgage loan servicing. Cenlar FSB's commitment to customer satisfaction, teamwork and effective management continues to earn them the number one position among mortgage servicers.

Q: How can I access my account information?

A: After the transfer of the servicing of your mortgage, you may enroll your account at Cenlar FSB's secured website, www.loanadministration.com. Cenlar FSB's website accepts online payments, will show your payment history and account balances, and allows you to sign up for paperless statements and other email notifications. You may also obtain account information quickly and easily 24 hours a day by calling Cenlar FSB's automated line at 1-855-839-6253. You may speak with a representative by calling this number Monday through Friday, from 8:30 a.m. to 8 p.m., ET, and Saturday, from 8:30 a.m. to 5 p.m., ET.

Q: Will this impact my other Citi banking relationships in any way?

A: No. All of your non-mortgage Citi relationships will remain exactly the same. Citi will also still be available to assist you with any future home lending needs, such as refinancing your mortgage or obtaining a new mortgage.

Q: I am currently under the protection of the Servicemembers Civil Relief Act (SCRA). What action do I need to take regarding this?

A: All protections under SCRA will continue. Please notify Cenlar FSB of any change in your active duty status.

Q: Will I receive Year-End Statements from CitiMortgage and Cenlar FSB?

A: Yes. You will receive two Year-End Statements in 2019, one from CitiMortgage and one from Cenlar FSB, for activity that occurs in 2018.

PAYMENT FAQs

Q: When should I begin sending my payments to Cenlar FSB?

A: You should immediately, upon the transfer of the servicing of your mortgage, begin making payments to Cenlar FSB. CitiMortgage will no longer accept payments at branches or ATMs. For the first 90 days after the transfer date, any payments mailed to (or transmitted by a third party to) CitiMortgage will be forwarded to Cenlar FSB. Forwarded payments may experience a delay in posting to your account.

Q: My payment is automatically drafted by CitiMortgage, do I need to do anything?

- If CitiMortgage is currently deducting payments from your checking or savings account on a recurring basis through EZPay, Equity Builder or Auto Deduct, Cenlar FSB will continue this service.
- The initial draft after the servicing transfer may be delayed approximately 10 days, but future drafts will occur on the previously scheduled draft date (no late charge will be assessed due to this delay in the first draft). If your automatic draft includes additional funds for escrow, this will be discontinued at Cenlar FSB. Any additional funds you have authorized to draft for principal will continue.
- Any other automatic payment drafts, which may have been setup during phone conversations with Citi representatives, will not be transferred. You will need to make new arrangements with Cenlar FSB.
- If your payment is initiated from your bank account by an online service or third party, please contact the company performing this service and provide them with your new Cenlar FSB account number and payment address listed in the enclosed Notice of Servicing Transfer.

Q: My account is enrolled in The BiWeekly Advantage Plan® administered by FNC Insurance Agency (FNCIA). Will this program continue with Cenlar FSB?

A: The program will continue. FNCIA will send you a separate letter with additional information.

Q: How do I enroll in automatic payments with Cenlar FSB?

A: Cenlar FSB offers a convenient service that automatically debits your payment each month from your checking or savings account. You may enroll in this service by logging on to Cenlar FSB's website, www.loanadministration.com, and selecting the Auto Payment Draft option. You may also enroll in automatic payments by completing the enclosed Automatic Payment (ACH) Authorization form.

Q: Can I still make a payment at a Citi branch or ATM?

A: No. Effective upon the servicing transfer of your mortgage to Cenlar FSB, Citi will be unable to accept payments at our branches or ATMs.

Automatic Payment (ACH) Authorization

We offer a convenient system that automatically debits your payment from your checking or savings account each month. To take advantage of this **FREE** service, simply complete this form and return to: **Drafting Department, PO Box 77421, Ewing, NJ 08628, Fax: (609) 718-1735, or Email to customerservice@loanadministration.com.** For faster processing, you can sign up for monthly Automatic Payments online at <https://www.loanadministration.com>.

I/We hereby authorize my/our lender, its successors, assigns, and subservicers to initiate a debit from my/our checking/savings account listed below for my/our recurring scheduled monthly loan payment. If the required payment changes for any reason, this authorization will be automatically amended to authorize the debit of an amount equal to the new required payment plus any optional additional principal that you indicate below.

Name: _____

Loan Number: _____

Bank Name: _____

ABA Routing Number: _____

Account Number: _____

Account Type (please check one): Checking Savings

Draft my payment monthly (please check one):

- | | | | | |
|--|--|--|--|--|
| <input type="checkbox"/> On the due date | <input type="checkbox"/> 1 day following due date | <input type="checkbox"/> 2 days following due date | <input type="checkbox"/> 3 days following due date | <input type="checkbox"/> 4 days following due date |
| <input type="checkbox"/> 5 days following due date | <input type="checkbox"/> 6 days following due date | <input type="checkbox"/> 7 days following due date | <input type="checkbox"/> 8 days following due date | <input type="checkbox"/> 9 days following due date |

Bi-weekly loans will always be drafted on the due date regardless of which option is selected.

You will be notified of the month in which the first transfer will occur, and this notification will serve as a substitute of the photocopy of your authorization form. **Please continue making payments by check or online through the website (<https://www.loanadministration.com>) until you are notified that this authorization has been processed.**

Optional: In addition to my/our regular payment, please deduct an additional \$_____ **per debit** and apply to the principal. The authorization to initiate a debit from your account will remain in full force and effect until my/our lender receives written notice from you of its termination at least 15 business days prior to the next scheduled draft date, or in such manner and time frame as to afford my/our lender and its correspondent bank a reasonable opportunity to act upon it. Termination requests can be mailed, faxed, or emailed to: **Drafting Department, PO Box 77421, Ewing, NJ 08628 Fax: (609) 718-1735 Email: customerservice@loanadministration.com.**

Account Holder
Signature: _____ Date: _____

Joint Account Holder
Signature: _____ Date: _____

If you have questions regarding this program, please visit <https://www.loanadministration.com> or email customerservice@loanadministration.com.

PAY TO THE ORDER OF: _____		
MEMO _____		
 1 2 3 4 5 6 7 8 9	 1 2 3 4 5 6 7 8 9	 1 2 3 4
ABA Routing Number	Account Number	Check Number

MCCARTHY HOLTHUS

February 03, 2020 - 12:19 PM

Transmittal Information

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Appellate Court Case Title: Citimortgage, Respondent v Paul and Michelle Mosley, et al, Appellant
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