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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
BY _____

NO. 307263
COURT OF APPEALS STATE OF WASHINGTON
DIVISION III

Wells Fargo Bank NA, as Trustee for Wamu Mortgage Pass-Through
Certificates Series 2005 PRI Trust and their loan
servicing agent JP Morgan Chase Bank NA, Respondent

v.

Christopher L. Short et al., Appellant

Reply Brief

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I. INTRODUCTION

Appellant believes that the court may shorten their analysis of Respondent's Brief regarding the material facts describing the chain of title by asking Respondent's attorney Ms. Barbara Bollero in accordance with RPC 3.3 if the allegation at ¶6 of Respondent's Complaint [CP 409, ¶6.] is a true statement of fact. Ms. Bollero knows ¶6 of Trust's Complaint to be a false statement and therefore the mirrored statements in the declarations [CP 111, ¶ 9 & CP 355, ¶9] supporting Trust's Motion for Summary Judgment [CP 349, ¶7] to also be false statements as well as all allegations and statements predicated on the truth of ¶6 of the allegations in Trust's Complaint.

At page 20 ¶ 2 of Respondent's Brief we find the statement:

"Mr. Short argues that because his Note was "not part of the [WaMu] asset pool seized by the FDIC ... [it] could not have been assigned to [Chase] ..., and therefore ... subsequent assignments of the [Note and Deed of Trust] ... would be of necessity a nullity[.]" (Appellant's Brief pp.21-22.)

The factuality of the Appellant's statement is not disputed

II. ARGUMENT

A. Allegations 6 & 7 [CP 409, ¶6, ¶7]

In the event the short analysis remedy above is insufficient, the story the allegations in Trust's Complaint tell is not a factually accurate

story and therefore the declarations supporting Trust's Motion for Summary Judgment which mirror said story, are also factually inaccurate.

Trust states that on 10/02/2008 a Note and Deed of Trust (Loan) executed by Mr. Short was assigned to JP Morgan Chase Bank NA by means of an FDIC seizure and assignment of WAMU assets [CP 409, ¶6]. The Note and the Deed of Trust (Loan) were thus the sole property of JP Morgan Chase Bank NA.

Trust states that on 04/01/2010 and subsequent months Mr. Short failed to make monthly installment payments on the Note. [CP 410, ¶10.]

Then almost eight months later on 08/17/2010 JP Morgan Chase Bank, NA sells Mr. Short's Note and Deed of Trust (Loan) which is in alleged default to Plaintiff, Trust [CP 409, ¶7.].

Trust's story would have us believe that JP Morgan Chase Bank, NA, with the complicity of several attorneys including Trust's current attorneys, conspired with JP Morgan Chase Bank, NA to defraud the investors in Trust by selling the investors in Trust a "Loan" that was in default and then defending the assets of the investors in Trust by charging the investors to foreclose on the defaulting "Loan" JP Morgan Chase Bank NA had not only sold to Trust but as "Gatekeeper" for Trust had approved for purchase.

To give the court some background Mr. Short has extensive experience in banking and real estate and he understands the rudiments of mortgage backed securities, so to him the above scenario did not seem plausible, even though Mr. Short had read and heard of a lot of corruption and fraud in the banking industry, this story just seemed over the top. Not only would it be prima facie evidence and an admission of securities fraud, but the special IRS tax status of the trust could be compromised by the failure to comply with the trust's charter.

Therefore Mr. Short initiated discovery, i.e. First Set of Interrogatories and Request for Production of Documents¹ to get to the bottom of the matter.

What Mr. Short learned from Trust's responses to his discovery requests is that indeed the story told in Trust's complaint was not true. The pivotal event described at allegation ¶6 of Trust's Complaint [CP 409, ¶6.] that JP Morgan Chase Bank, NA had acquired Mr. Short's Note and Deed of Trust ("Loan") from Washington Mutual FA ("WAMU") by means of

¹ Trust failed to respond to the discovery requests and instead filed a motion for summary judgment. Now the odd thing about this first motion for summary judgment was that the person making the declaration in support of the motion was Trust's attorney Mr. Albert Lin [CP 398-401]. So not only was there the RPC 3.1 violation of lawyer as witness, but the fact it seemed completely un-plausible that Mr. Lin would have the personal knowledge of events or employment history he swore under penalty of perjury to have. Mr. Short checked Mr. Lin's resume on the company website and other sources and found no evidence Mr. Lin had ever worked for any of the plaintiff's as stated. Mr. Short suspicious, sent Mr. Lin a letter informing Mr. Lin he intended to take his deposition and requested Mr. Lin supply him dates he could available for such inquiry. Mr. Lin did not respond. Meanwhile the interrogatories remain unanswered and Mr. Short moved the court to compel Trust to respond, which the court so ordered and Trust complied. Ms. Urquidi was substituted for Mr. Lin on Trust's second motion for summary judgment.

an FDIC seizure and assignment of WAMU assets, in fact did not happen. The reason it did not and could not happen was WAMU did not own Mr. Short's Note ("Loan") at the time the FDIC seized WAMU.

INTERROGATORY NO. 1.4: Was the subject loan owned by WAMU at the time the FDIC sold certain WAMU assets to JP Morgan Chase?

Yes or No? If the answer is yes, provide all documents relating to the transfer of the subject loan to JP Morgan Chase.

RESPONSE TO INTERROGATORY NO. 1.4:

No ... [CP 605, ¶1.4]

Trust in their response to Interrogatory 1.4 goes on to provide an alternative scenario of events, however Trust did not amend their Complaint, declarations or other pleadings to conform to facts as now alleged.

In Respondent's Brief Trust at page 20 ¶2 sentence 2 appears to be arguing this alternate un-plead theory by first tacitly admitting that ¶6 of Trust's Complaint is false and then claiming "Chase" has some right, again up-plead and unsubstantiated, to "foreclose irrespective of what entity owned the Note"

Again Trust has not amended their original Complaint or other pleadings nor is there any evidence to support a claim based solely on the unsubstantiated answer to Interrogatory 1.4. This statement may be false as well.

The only thing we know for sure is that the response to Interrogatory 1.4 [CP 605 ¶1.4] directly contradicts the allegation at ¶6 of Trust's complaint [CP 409, ¶6.], Motion for Summary Judgment [CP 349, ¶7] and the declarations of Ms. Urquidi [CP 111, ¶ 9 & CP 355, ¶9]. And further because each statement describes the same event happening at different times, each statement mutually excludes the other from being true. It is possible however that both statements are false.

Again, Appellant is not saddled with the burden of sorting out the disparate statements made by Respondent or defending some un-plead theory, but the Appellant's burden is to show that the allegations, the material facts of the Complaint, Motion for Summary Judgment and supporting declarations are in dispute, and here the evidence of a dispute in the material facts, comes directly from Respondent.

Trust brings up the issue securitization at Respondent's brief page 20 ¶3. Appellant has made no argument about securitization on a parties right to foreclose, but rather whether and when such alleged securitization took place.

B. RESPONDENT'S STATEMENT OF CASE §B.

Trust's attorney Ms. Bollero at page 3 §B of Respondent's Brief under the heading Statement of the Case puts on a textbook demonstration on how to deceive the court while maintaining some plausible deniability for doing so. The information is presented in such a way so as to camouflage the fact that Trust's Complaint at ¶6 & ¶7 of the allegations

and repeated word for word in the declaration of Ms. Araceli Urquidi at ¶ 9 & ¶10 [CP 111, ¶¶9 &10.] are false statements, which as previously stated is known to Trust's attorneys.

§ B is a recounting of the chain of title of Mr. Short's Loan.

“B. Mr. Short's Loan is Securitized, Beneficial Interest in the Deed of Trust is Assigned to the Loan Owner's Trustee, and Servicing Rights to Mr. Short's Loan are Acquired by Chase”

Let's first look at how Trust's Complaint at ¶7 of the allegations [CP 409, ¶7.] and repeated word for word in the declarations of Ms Araceli Urquidi at ¶10 [CP 111, ¶10] which describe part of the events described at page 4 §B of Respondent's Brief.

“On 08/17/2010, the Note and Deed of Trust was assigned by JP Morgan Chase Bank, NA to Plaintiff. A copy of the assignment is attached as Exhibit D.”

Clear and straightforward, contrasted with Respondent's Brief at page 4 §B where the first sentence provides this description of the event:

“The ownership interest in Mr. Short's loan was assigned to a securitized mortgage loan trust named “WaMu Mortgage Pass-Through Certificates Series 2005-PRI Trust” (the WaMu Trust”). (CP 39, ¶14.)”

In unpacking the terms used above we find that “WaMu Trust is the plaintiff, so that's a match. The term “loan” means the Note and Deed of Trust, so that's a match. The new information is the qualifying term

“ownership interest”. The term “ownership interest” bifurcates the Note and the Deed of Trust. One has a beneficial interest in a Deed of Trust due to one’s ownership of the obligation secured by the Deed of Trust i.e. the Note. This means the Note was sold separately and not on 08/17/2010, the date alleged by Trust in their Complaint and in the declarations of Ms. Urquidi.

In order to further analyze what is being said here we need to notice that we are only told to whom Mr. Short’s loan was assigned and not who assigned it. Why would this important piece of information be left out when it is so simply and clearly stated at ¶7 of the allegations of Trust’s Complaint and the declarations of Ms. Urquiti, that JP Morgan Chase Bank, NA assigned it. The reason for this is the simple fact that JP Morgan Chase Bank, NA did not ever own Mr. Short’s loan. JP Morgan Chase Bank NA has never owned Mr. Short’s loan and therefore would not have ever had any right to assign Mr. Short’s loan (Note) to any person or entity.

Another point to take note of is, that unlike every other event described in §B, for the event “the ownership interest in Mr. Short’s loan was assigned”, no date is given. This oversight is disguised by what appears to be such meticulous attention to detail in this mundane looking section, surely all the details must be there.

In sentence 3 of §B an attempt is made to falsely link the securitization at sentence one and the assignment of the Deed of Trust

together without being definitive enough to compromise the dual connotations. The inference implied and the inference one might take from a preliminary reading by someone unfamiliar with the facts of this rather bland appearing paragraph is that it matches the statements of Trust's Complaint and the declaration of Ms. Urquidi, and not that it would conceal in it a devious plot, to "muddy the water" to obfuscate §B's direct contradiction of essential material facts stated in Trust's Complaint and the declarations of Ms. Urquidi.

Sentence 3:

"An assignment reflecting the transfer of interest to Wells Fargo as Trustee of the WaMu Trust, dated August 10, 2010, was recorded on August 17, 2010 – prior to commencement of the judicial foreclosure action – under Okanogan County Auditor's Instrument No. 3157196 (the Assignment). (CP 111, ¶10; CP 155-57)"

Referring back to the heading at §B it becomes clear that the alleged securitization of Mr. Short's loan and the "Beneficial Interest in the Deed of Trust is Assigned to the Loan Owner's Trustee", are definitely separate events. This means that the allegation in Trust's Complaint at ¶7 [CP 409, ¶7] of the allegations and repeated word for word in the declaration of Ms Araceli Urquidi at ¶10[CP 111, ¶10.] is a false statement.

~~“On 08/17/2010, the Note and Deed of Trust was assigned by JP Morgan Chase Bank, NA to Plaintiff. A copy of the assignment is attached as Exhibit D.”~~ [CP 409, ¶7.] This, as well ¶6 are false allegations of fact.

As Appellant states elsewhere in this Reply Brief, if Trust’s has an alternate set of facts to plead, let them do so in the appropriate manner. To not disclose the facts as known to them is simply unacceptable.

Sentences 4 & 5:

Sentences 4 & 5 of §B, page 4 of Respondent’s Brief under the heading Statement of Case, completes the ruse. The statements there are: “In September of 2008 all WaMu assets, including all loans debts due to Wamu and its servicing rights, were acquired by Chase under the terms of a Purchase and Assumption Agreement between the Federal Deposit Insurance Corporation a Receiver for WaMu and Chase (the “WaMu Agreement”). (CP 111, ¶9; CP 150-53).”

Accordingly, on September 25, 2008, Chase became the servicing agent for Mr. Short’s loan in place of WaMu. (CP 112, ¶14.]”

Neither Trust’s Complaint at ¶6 of the allegations [CP 409 ¶6.], nor Ms. Urquidi’s declarations at ¶9 [CP 111, ¶9.] speak of Chase becoming “the servicing agent for Mr. Short’s loan”

Trust and Ms. Urquidi specifically and clearly state:

“On 9/25/2008², the Note and Deed of Trust was assigned by Washington Mutual, FA, to JP Morgan Chase Bank, National Association...”

Rather than disclose to the Tribunals the known facts that the allegation made in Trust’s Complaint at ¶¶6 & 7 [CP 409 ¶6, CP 409, ¶7.] and the declaration of Ms. Urquidi [CP 111, ¶¶9 &10.] are false statements, Trust’s attorney, Ms. Bollero has woven a serpentine narrative at §B to conceal the truth of the matter.

Although, Ms. Bollero can with a straight face say the facts are there if one has paid close attention, she has failed in her duty of Candor Toward the Tribunal and has wasted a significant amount of the Tribunal’s and Appellant’s time and effort. This goes well beyond advocacy.

C. Promissory Note

Respondent argues Trust is not suing on a negotiable instrument i.e. a Note can similarly be dispatched by the court by simply reading the clear language at ¶1, ¶2, and stated even more straightforwardly at ¶7 of Trust’s prayer for judgment of the Complaint [CP 411 ¶1, CP 412, ¶2, CP 412, ¶7.].

COMPLAINT-PRAYER JUDDGMENT

Paragraph 1, 2 & 7 of Trust’s payer for judgment are inserted here for ease of access. [CP 411¶1; CP 412, ¶2, CP 412, ¶7.]

1. **For judgment against the borrower in the sum of \$122,945.74,**
together with interest at the rate of 3.665% per annum, late

² The Complaint contains the date 10/02/2008. This date appears to be in error

charges, and for such other sums advanced under the terms of the Note and Deed of Trust, for taxes, assessments, municipal charges, and other items which may constitute liens on the Property, together with insurance and repairs necessary to prevent impairment of the security, together with the costs of the title report, attorneys fees of \$6,500.00 if this matter is uncontested, or as submitted by counsel, and such other amounts as the Court shall deem reasonable in case this action is contested, together with the costs and disbursements herein.

2. It be adjudged, **in the event of non-payment of the judgment** forthwith upon its entry, that the Deed of Trust be declared a valid first lien upon the land and premises described herein; **that the Deed of Trust be foreclosed** and that the Property covered thereby sold at a foreclosure sale in the manner provided by law, and the proceeds thereof be applied on said judgment and increased interest and such additional amounts as the plaintiff may advance for taxes, assessments, municipal charges, and such other items as may constitute lien upon the Property, together with insurance and repairs necessary to prevent impairment of the security, together with interest thereon from the date of payment.
7. **Adjudging Borrower personally liable for payment of the obligation secured** by the Deed of Trust and that a deficiency

judgment be ordered following proceedings prescribed by law”

[CP 411, ¶ 1; CP 412, ¶2 & 7.]

Appellant directs the courts attention to said Judgment of Foreclosure and it will notice the first order of business is a MONEY AWARD wherein it is specifically stated at ¶ 1 [CP 456-58]

“1. A money judgment is granted against defendant, Christopher L. Short, borrower as listed above.”

This appears in direct contradiction to Trust’s statements at page 16 last sentence of Respondent’s Brief where Trust states: “Further, Wells Fargo’s counsel acknowledged to the Court that it was suing to foreclose the Deed of Trust, not for a money judgment on the Note:

MS. STEARNS: ...[A]dditonally I would just state that we are not collecting on he note. We are foreclosing or we are seeking a judgment to foreclose against the property...But again, we’re not collecting on the note. We are foreclosing on the property and that would extinguish-extinguish the obligation. (RP 07/02/12, p6, 1.16-p 7, 1.2.)”.

Further at Respondent’s Brief page 17 “Wells Fargo did not seek a judgment on the Note. Accordingly, there was no requirement to present the original Note to the trial court prior to entry of judgment.”

As has been shown of course Wells Fargo *did* seek judgment on the Note. Accordingly, there was a requirement to present the original Note to the trial court prior to entry for judgment.

III. CONCLUSION

RPC 3.3

(a) A lawyer shall not knowingly:

(4) offer evidence that the lawyer knows to be false.

[11] The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 1.2(d). **Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to fraud on the court.**

Duration of Obligation

[13] A practical time limit on the obligation to rectify false evidence or false statements of law and fact has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. A proceeding has concluded within the meaning of this Rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed.

Although Trust's attorney Ms. Bollero was not Trust's attorney until relatively recently, Mr. Short over the past few months informed and sought to resolve the aforementioned breaches with Ms. Bollero. Obviously to no avail.

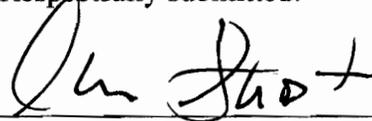
The allegations at ¶¶ 6 & 7 of Trust's Complaint [CP 304 ¶6, 305¶7.], and their word for word counterpart in the declarations of Ms. Urquidi [CP113, ¶ 9 &10] are false statements. Trust's Complaint clearly and specifically is a suit that prays for judgment on the Note thereby requiring the filing of the original promissory note, which as acknowledged by Trust, they have failed to do.

Mr. Short requests the court:

1. Remand the case back to the Okanogan County Superior Court with instruction that that the allegations at ¶¶6 & 7 of Trust's Complaint are false statements, that ¶¶ 9 &10 of the declarations of Ms. Urquidi are false statements, that Trust's Complaint is indeed a suit on the Note;
2. Award Mr. Short \$12,000.00 for his fees and expenses in bringing this appeal.
3. Such other and further relief the court deems fair and just.

Dated 5-20-2013

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Chris Short", written over a horizontal line.

Christopher L. Short
Appellant

COURT OF APPEALS DIVISION III OF THE STATE OF WASHINGTON

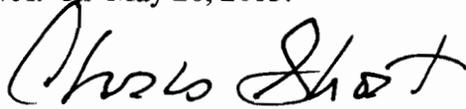
Wells Fargo Bank, N.A. as Trustee)
for Wamu Mortgage Pass-Through)
Certificates Series 2005-PRI Trust)
through their loan servicing agent)
JP Morgan Chase Bank,N.A.)
Respondents,)
vs)
Christopher L. Short; et al)
Appellants.)

Case No: 307263-3-III
Case No: 102006232 Okanogan
DECLARATION OF
SERVICE

I certify that on or about May 20, 2013, I sent by United States Mail copies of the attached Appellant's Reply Brief to:

Barbara L. Bollero and Ann T. Marshall (individually)
Bishop White Marshall & Weibel PS
720 Olive Way, Suite 1201
Seattle, WA. 98101

I declare under penalty of perjury and the laws of the State of Washington that the foregoing is true and correct and that this Declaration was executed in Republic, WA. on May 20, 2013.



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