Court of Appeal Cause No. 73336-2-1 93777-0

Byron Barton and Jean Barton

Appellants

JP MORGAN CHASE BANK, N.A., FIRST AMERICAN TITLE,

QUALITY LOAN SERVICE CORPORATION OF WASHINGTON,

AND TRIANGLE PROPERTY DEVELOPMENT, INC., A Washington Corporation,

Respondents

Appeal from Appeals Court for King County

The Honorable Becker, J.

NOTICE OF APPEAL TO WASHINGTON STATE SUPREME COURT

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STANDARD OF REVIEW

Byron L. Barton asks this honorable court to accept review of the decision designated in Part B of this motion. The standard of review Per Appellate Procedure ("RAP"), rule 13, 4 (b), a petition for review will be accepted by the Supreme Court only:
"(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
(2) If the decision of the Court of Appeals is in conflict with a decision with another decision of Court Appeals; or
(3) If a significant question of law "under the Constitution of the State of Washington or of the United State is involved; or,
(4) if the petition involves an issue of substantial public interest that should be determined by the Supreme Court."

The Petition for Review rest on grounds (1) and (4) and does not implicate grounds. (2) and (3), there is grounds that exists for accepting review; WA Deed Of TRUST Act that Supreme Court has ruled must be.

AGUMENT

In Albice v. Premier Mortgage Services of Washington, Inc., 174 Wn.2d 560 (2012) the Supreme Court found that Albice v Premier Mortgage Service of Washington, Inc.174 Wn. 2d 560 (2012)
procedural irregularities, such as those that gives the trustee the right to conduct a sale, can invalidate a sale. The Appeals Court erred in granting a foreclosure 436 days from the 12/23/2012 date against WA Deed of Trust Act that the Supreme Court ruled must be The Respondents' action were unfair when the trustee stated all the requirements of the WA Deed Of trust Act were meet and sale is 120 days or less. Their statement of facts are untrue and impacts the reliability of sound sales to the public. No default was reissued within the 120 days to comply with WA Deed Of Trust Act.
The previous two lawsuits were not completed sales thus it's impossible for the Appeals Court barred and applied res judicata.
The Appeals ruling below impact the WA Deed of Trust Act and is in violation of a Supreme Court ruling: WA Deed Of Trust act. I have enclosed a copy of the Appeals Court ruling.

Issues Presented for Review

Becker, J.-Because the appellants' claims were brought, or could and should have been brought, in their previous lawsuits, they are barred by res judicata. We affirm the trial court's dismissal of their claims.
Equitable Estoppel Cannot Be Established. Respondents' and the Court of Appeals dismiss based on equitable estoppel (res judicata) theory. In Washington, res judicata occurs when a prior judgment has a concurrence of identity in subsequent action (1) persons and party. (2) the quality of the action. (3) Subject matter, and (4) cause of action. The (3) subject matter of a foreclosure 436 days is in violation of the Deed Of Trust Act that Supreme Court has ruled it must be.

Conclusion

The Supreme Court of Washington should accept review because it impacts public Deed of Trust and Supreme Court ruling; WA Deed Of Trust Act must be. If one of the elements had not been met there's no res judicata. The plain fact the earlier lawsuits lacked a completed sale that was 436 days after the original sale without reissuing a new Default order which is against WA Deed of Trust Act.

The Deed Of Trust Act, RCW 61.24. 130 provides for an action to restrain a trustee's sale, and specifically states, in pertinent part:

(1) Noting contained in this chapter shall prejudice the right of the borrower, grantor, any guarantor, or any person who has an interest in, lien, or claim of lien against the property or some part thereof, to restrain, on any proper legal ground, a trustee's sale.

(2) Accordingly, this Honorable Court should reverse the trial Appeals Court Ordersand affirm in part and void the sale and remand part: WA Deed Of Trust Act must be.

(3) The Barton's acknowledge the Court of Appeals' concerns that every judgment could have some reverberation in the future. However. The Barton's are not arguing that every summary judgment for dismissal has prospective application, but rather that the summary dismissal in their case has prospective application as it allowed the non-judicial foreclosure of a void note. As the Court Appeals decision contrast with WA Deed Of Trust Act in it fails to recognize that the mortgage loan was void, this Court should grant review pursuant to RAP 13.4 (b)(3).

Byron Barton

Byron L. Barton
Pro Se

NOTICE OF APPEAL TO WASHINGTON STATE SUPREME COURT
DECARATION OF SERVICE

1 I, Byron Barton, Pro Se, certify under penalty of perjury under the laws of the State of Washington, that on October 17, 2016 on that I signed this declaration of service to the Court and have properly served to the counsel listed below, on October 17, 2016, via certified mail postage prepaid.

RICHARD D. JOHSON

Court Administrator/ Clerk

October 18, 2016.

DIVISION 1

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JEAN MARIE BARTON and BYRON LEE BARTON, Appellants, v. JP MORGAN CHASE BANK, N.A., QUALITY LOAN SERVICE CORPORATION OF WASHINGTON, and TRIANGLE PROPERTY DEVELOPMENT, INC., a Washington corporation, Respondents, and FIRST AMERICAN TITLE, Defendant.	)	No. 73336-2-I DIVISION ONE UNPUBLISHED OPINION FILED: September 26, 2016

BECKER, J. – Because the appellants' claims were brought, or could and should have been brought, in their previous lawsuits, they are barred by res judicata. We affirm the trial court's dismissal of their claims.

FACTS

In August 2007, Byron and Jean Barton, husband and wife, obtained a refinance loan from Washington Mutual Bank secured by a deed of trust to their

home. This deed of trust provided that if the Bartons defaulted on their loan, the lender could foreclose nonjudicially and sell the Bartons' home.

On September 25, 2008, the Federal Deposit Insurance Corporation placed Washington Mutual in receivership and sold some of Washington Mutual's assets to JP Morgan Chase Bank N.A. Chase thus became the beneficiary and holder of the Bartons' loan note.

The Bartons defaulted on their loan as of about July 2011.

On June 7, 2012, Chase appointed Quality Loan Service Corporation as successor trustee under the deed of trust for the purpose of foreclosing. The next month, Quality issued a notice of default to the Bartons.

On August 20, 2012, Quality issued the first notice of sale to the Bartons. The Bartons filed a pro se complaint in King County Superior Court against Chase and Quality, among other defendants, to stop the sale of their home. The defendants removed the proceedings to federal district court, and the court dismissed the case without prejudice. The sale of the Bartons' property did not go forward, and the first notice of sale eventually expired.

On April 4, 2013, Quality issued a second notice of sale to the Bartons. Later that month, the Bartons again responded by filing a pro se complaint, almost identical to their first, in King County Superior Court to stop the sale of their home. We will refer to this complaint as the 2013 lawsuit. The defendants again removed the case to federal district court, and the court again dismissed, this time with prejudice. Again, the sale of the Bartons' property did not go forward and the second notice of sale eventually expired.

On December 6, 2013, Quality issued a third notice of sale to the Bartons. This time, the Bartons did not sue to stop the sale. The Bartons' home was sold at auction on April 16, 2014, to the winning bidder, Triangle Property Development Inc.

The month after their home was sold, the Bartons filed a complaint, again pro se, in King County Superior Court against Chase and Quality, among other defendants. We will refer to this complaint as the 2014 lawsuit. This lawsuit alleged a variety of claims, including a consumer protection violation, noncompliance with the deed of trust act, chapter 61.24 RCW, and an allegation that the sale was void. Chase filed a motion to dismiss, and Quality joined. Triangle intervened.

At oral argument on the defendants' motion to dismiss, in January 2015, the Bartons were represented by an attorney for the first time throughout this foreclosure process. Upon request of their attorney, the court allowed the Bartons a chance to move to amend their complaint. The Bartons moved to amend their complaint and filed a proposed amended complaint. On March 2, 2015, the superior court denied the Bartons' motion to amend their complaint and dismissed all claims against Chase and Quality with prejudice. The Bartons appeal.

The respondents contend the Bartons' claims are barred by the principle of res judicata.[1] Res judicata, or claim preclusion, bars the relitigation of claims

[1] It appears that the Bartons are referring to res judicata when they argue the trial court erred in applying "the principle of equitable estoppel."

and issues that were litigated, or might have been litigated, in a prior action. Loveridge v. Fred Meyer, Inc., 125 Wn.2d 759, 763, 887 P.2d 898 (1995). Res judicata "applies where a final judgment previously entered and a present action are so similar that the current claim should have been litigated in the former action. In this way, res, judicata promotes judicial economy, efficiency, and fairness to litigants." Storti v. Univ. of Wash., 181 Wn.2d 28, 40, 330 P.3d 159 (2014). See also Sound Built Homes, Inc. v. Windermere Real Estate/South, Inc., 118 Wn. App. 617, 628, 72 P.3d 788 (2003) ("'This court from early years has dismissed a subsequent action on the basis that the relief sought *could have and should have been* determined in a prior action.'")

For res judicata to apply, a prior judgment must have a concurrence of identity with a subsequent action in (1) persons and parties, (2) the quality of the persons for or against whom the claim is made, (3) subject matter, and (4) cause of action. Loveridge, 125 Wn.2d at 763. Here, there is no dispute that the Bartons' 2013 lawsuit—the one dismissed with prejudice by the federal district court—had the same parties and quality of persons as the current lawsuit—the Bartons sued Chase and Quality, among other defendants.

The Bartons argue, however, that the cause of action and subject matter are not identical. To determine whether two causes of action are identical for purposes of res judicata, the court takes into account whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; whether substantially the same evidence is presented in the two actions; whether the two suits involve infringement of the same right; and

whether the two suits arise out of the same transactional nucleus of facts. Berschauer Phillips Const. Co. v. Mut. of Enumclaw Ins., 175 Wn. App. 222, 230, 308 P.3d 681 (2013).

Here, the Bartons' 2013 and 2014 lawsuits both arose out of the August 2007 loan transaction between the Bartons and Washington Mutual. Both lawsuits involve Chase and Quality's alleged infringement of the Bartons' rights regarding the foreclosure of their home. The same evidence is necessary for each suit—the Bartons' loan note and deed of trust, the purchase and assumption agreement between the FDIC and Chase, and the notices of default and sale. The causes of action were identical for res judicata purposes. For the same reasons, the subject matter was also identical.

The Bartons claim that Chase is an unlawful beneficiary because their loan was not properly assigned or transferred to Chase. They raised the same claim in their 2013 complaint. The federal district court specifically rejected this claim when it granted the defendants' motions to dismiss with prejudice: "The Chase Entities acquired plaintiffs' loans through a purchase and assumption agreement with the FDIC. No additional approval, assignment, or consent was necessary to affect the transfer. 12 U.S.C. § 1821(d)(2)(G)(i)(II). Any liabilities arising from the way the loans were negotiated and/or structured remained with the FDIC; the named defendants cannot be held responsible for claims related to the origination of the loan under any of the theories mentioned in plaintiffs' complaint." This ruling established Chase's status as lawful owner of the

Bartons' loan, a status that would be destroyed if we ruled differently in this current suit. This claim is barred by res judicata.

The Bartons' additional claims addressed below were all raised for the first time in their proposed amended complaint. The trial court denied leave to amend the complaint. Because the Bartons have not assigned error to the trial court's order denying their motion for leave to amend and have not explained how the new claims are properly before this court notwithstanding that order, it is doubtful that they are entitled to review of the new claims. Assuming for the sake of argument that the new claims were properly considered by the trial court on the merits, we briefly address them.

The Bartons first claim that they never received a notice of preforeclosure options as required by RCW 61.24.031(1). As trustee, Quality was required to issue a notice of preforeclosure options before it issued the notice of default to the Bartons in July 2012. See RCW 61.24.031(1)(a). To the extent the Bartons are alleging that they never received a notice of preforeclosure options at any time, this claim is barred by res judicata because it could have and should have been brought in their earlier complaints.

The Bartons argue that when RCW 61.24.031 was amended effective June 7, 2012, it added the requirement of sending a notice of preforeclosure options prior to issuing a notice of default. The same notice of preforeclosure options was already required under RCW 61.24.031(1) before the amendment. See former RCW 61.24.031 (effective July 22, 2011, to June 6, 2012); LAWS OF 2012, ch. 185 (showing exact amendments to RCW 61.24.031(1)). The timing of

the amendments thus does not alter our conclusion that this claim could have and should have been brought in the earlier lawsuits.

The Bartons claim the April 2014 trustee's sale was wrongful because they were not issued a notice of default related to this sale. But the Bartons acknowledge that Quality issued a notice of default to them in July 2012, before issuing the first notice of sale in August 2012. Quality was not required to issue a new notice of default before each new notice of trustee's sale. Leahy v. Quality Loan Serv. Corp. of Wash., 190 Wn. App. 1, 359 P.3d 805 (2015), review denied, 185 Wn.2d 1011 (2016). Therefore, regarding the notice of default, the Bartons failed to state a claim upon which relief can be granted. See Tenmore v. AT&T Wireless Servs., 136 Wn.2d 322, 329-30, 962 P.2d 104 (1998) (dismissal under CR 12(b)(6) is appropriate only if it appears beyond doubt that the plaintiff cannot prove any set of facts which would justify recovery), cert. denied, 525 U.S. 1171 (1999).

The Bartons also claim that the respondents did not enter into the foreclosure mediation program with them in violation of RCW 61.24.163. The notice of default issued to the Bartons in July 2012 put them on notice of the possibility of mediation: "You may be eligible for mediation in front of a neutral third party to help save your home. **CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN WASHINGTON NOW** to assess your situation and refer you to mediation if you might benefit. Mediation **MUST** be requested between the time you receive the Notice of Default and no later than twenty days after the Notice of Trustee Sale is recorded." (Emphasis in original.) Thus, the

Bartons were aware of the mediation program before they even filed their first lawsuit, yet they did not make any claim alleging failure to mediate when they filed their 2012 and 2013 complaints. This claim is barred by res judicata because it could have and should have been brought in these earlier complaints.

We conclude that the trial court properly granted the respondents' motion to dismiss the Bartons' 2014 lawsuit, including the Bartons' allegation that the foreclosure sale was invalid.

Affirmed.

Becker, J.

WE CONCUR:

Spearman, J.

Appelwick, J.

HARD D. JOHNSON,
ourt Administrator/Clerk

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September 26, 2016

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CASE #: 73336-2-I
Byron & Jean Barton, Apps. v. JP Morgan Chase Bank, N.A. and Quality Loan Service Corp., Resps.
King County, Cause No. 14-2-12762-6 SEA

Counsel:

Enclosed is a copy of the opinion filed in the above-referenced appeal which states in part:

"We affirm the trial courts' dismissal of their claims"

Counsel may file a motion for reconsideration within 20 days of filing this opinion pursuant to RAP 12.4(b). If counsel does not wish to file a motion for reconsideration but does wish to seek review by the Supreme Court, RAP 13.4(a) provides that if no motion for reconsideration is made, a petition for review must be filed in this court within 30 days. The Supreme Court has determined that a filing fee of $200 is required.

In accordance with RAP 14.4(a), a claim for costs by the prevailing party must be supported by a cost bill filed and served within ten days after the filing of this opinion, or claim for costs will be deemed waived. Should counsel desire the opinion to be published by the Reporter of Decisions, a motion to publish should be served and filed within 20 days of the date of filing the opinion, as provided by RAP 12.3 (e).

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

lls

Enclosure

c: The Honorable Mary Roberts

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