

No. 74602-2-1

COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

JOHN PHILLIP HALL,

Appellant,

v.

JPMORGAN CHASE BANK, a national bank, QUALITY LOAN
SERVICE CORPORATION OF WASHINGTON, a Washington
corporation, WELLS FARGO BANK, N.A., as Trustee for WaMu Pass-
Through Certificates, Series 2005-PR4 Trust, WAMU MORTGAGE PASS
THROUGH CERTIFICATES SERIES 2005-PR4 TRUST, a foreign trust,

Respondents.

**AMICUS CURIAE MEMORANDUM OF NORTHWEST
CONSUMER LAW CENTER IN SUPPORT OF BRIEF OF
APPELLANT JOHN PHILLIP HALL**

Amanda Martin, WSBA #49581
Northwest Consumer Law Center
520 E. Denny Way
Seattle, WA 98122
(206) 805-0989

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2016 JUL -6 AM 11:35

TABLE OF CONTENTS

I. Interest of *Amicus Curiae*..... 1

II. Argument 1

III. Conclusion..... 9

TABLE OF AUTHORITIES

CASES

<i>Ramirez-Melgoze v. Countrywide Home Loan Servicing LP</i> , No. CV-10-0049-LRS, 2010 WL 4641948 (E.D. Wash. 2010).....	7
<i>Robertson v. GMAC Mortg. LLC</i> , 982 F. Supp. 2d 1202 (W.D. Wash. 2013)	7

STATUTES

12 C.F.R. § 1024.38(b)(1)(vi).....	5
RCW 61.24.005	2
RCW 61.24.135	3
RCW 61.24.163	1, 2
RCW 61.24.165	1, 2, 3, 8

LAW REVIEW ARTICLES

Sarah Bolling Mancini & Alys Cohen, <i>Surviving the Borrower: Assumption, Modification, and Access to Mortgage Information after a Death or Divorce</i> , 43 PEPP. L. REV. (forthcoming 2016)	4, 6
--	------

OTHER AUTHORITIES

<i>Comments to the Consumer Financial Protection Bureau regarding 12 CFR Parts 1024 & 1026</i> , NATIONAL CONSUMER LAW CENTER (March 16, 2015), available at https://www.nclc.org/images/pdf/rulemaking/comments-servicing-cfpb-march16-15.pdf	4, 5
Department of the Treasury, Supplemental Directive 13-06 (Aug. 30, 2013), available at https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/sd1306.pdf	6
<i>Foreclosure Fairness Program Guidelines</i> , DEPT. OF COMMERCE (May 1, 2016), available at http://www.commerce.wa.gov/Documents/FINAL-FFP-Guidelines-5-1-2016.pdf	3
Freddie Mac, Freddie Mac Bulletin 2013-3 (Feb. 15, 2013), available at http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bl11303.pdf	6

I. INTEREST OF *AMICUS CURIAE*

Northwest Consumer Law Center (“NWCLC”) is a nonprofit law firm that represents low and moderate-income homeowners in Washington State. NWCLC has assisted thousands of clients facing the prospect of losing their homes as a result of foreclosure. NWCLC represents clients in pursuing loan modifications, mediations, and bankruptcy protection in order to save homes. When saving a home is not possible, NWCLC works to guide homeowners through a process that is fair and transparent. Our clients have an interest in ensuring that every eligible homeowner has the opportunity to participate in Foreclosure Fairness Act (FFA) mediations and work with their mortgage servicer to achieve the best possible solution. NWCLC agrees with Appellant John Phillip Hall that RCW 61.24.165(6) should be interpreted to allow homeowners to participate in FFA mediations without the ex-spouse from whom they gained title.

II. ARGUMENT

The Foreclosure Fairness Act states that “a person may be referred to mediation if the person has been awarded title to the property in a proceeding for dissolution or legal separation...For purposes of mediation under RCW 61.24.163, the person must be treated as a ‘borrower.’” RCW 61.24.165(6). The FFA also provides that persons who are successors in

interest to a deceased borrower may also be referred to mediation and must be treated as a borrower. RCW 61.24.165(5).

A borrower is “a person or a general partner in a partnership, including a joint venture, that is liable for all or part of the obligations secured by the deed of trust under the instrument or other document that is the principal evidence of such obligations, or the person's successors if they are liable for those obligations under a written agreement with the beneficiary.” RCW 61.24.005. The Foreclosure Fairness Act does not impose an affirmative duty on a beneficiary to accept assumption of a loan by a borrower as defined under RCW 61.24.165(5)-(6).

The Foreclosure Fairness Act was passed in 2011 to create a forum for homeowners and beneficiaries to meet with a neutral third party to discuss retention and non-retention options for homeowners facing foreclosure. RCW 61.24.005. The intent of the Foreclosure Fairness Act is to “create a framework for homeowners and beneficiaries to communicate with each other to reach a resolution and avoid foreclosure whenever possible.” *Id.* “For mediation to be effective, the parties should...willingly share information, actively present, discuss, and explore options to avoid foreclosure, [and] negotiate willingly and cooperatively.” *Id.* The Foreclosure Fairness Act imposes a duty on the parties to mediate in good faith. RCW 61.24.163. The failure of a beneficiary to mediate in

good faith is a per se violation of the Consumer Protection Act. RCW 61.24.135.

The Foreclosure Fairness Act was amended in 2014 to allow persons awarded title to a property in a dissolution and persons who are successors in interest of a deceased borrower to be referred to mediation. RCW 61.24.165. While the guidelines published by the Department of Commerce require all borrowers to attend the mediation session, the statute is silent on this issue. *Foreclosure Fairness Program Guidelines*, DEPT. OF COMMERCE (May 1, 2016), available at <http://www.commerce.wa.gov/Documents/FINAL-FFP-Guidelines-5-1-2016.pdf>. NWCLC agrees with Appellant John Phillip Hall that RCW 61.24.165(6) should be interpreted to allow the homeowner to participate without the ex-spouse as the homeowner has stepped into the shoes of the ex-spouse after being awarded title.

Homeowners who are awarded title in a dissolution enter mediation seeking a solution to pay the mortgage or workout a non-retention option. This benefits the beneficiary as when the parties are able to come to a solution, the beneficiary either (a) has another party personally liable for the loan and has an incentive to pay the mortgage as the property is their primary residence; or (b) has arranged a non-retention option which requires the homeowner to exit the property at a certain date

in a reasonable condition. *See generally* Sarah Bolling Mancini & Alys Cohen, *Surviving the Borrower: Assumption, Modification, and Access to Mortgage Information after a Death or Divorce*, 43 PEPP. L. REV. (forthcoming 2016). The non-retention options save the beneficiary the cost of hiring an attorney to conduct an eviction, allow the beneficiary to access the property sooner, and prevent waste on the property.

Homeowners who inherit title or are awarded title in a dissolution are at an increased risk of foreclosure. These homeowners typically lose the contribution of the original borrower's income to the household, and as such, must readjust their finances to afford their mortgage payment. Some loans are already in default by the time the homeowner is awarded title in a dissolution. One of the largest problems faced by these homeowners is that servicers refuse to communicate with them since they are not originally on the loan documents. *See Comments to the Consumer Financial Protection Bureau regarding 12 CFR Parts 1024 & 1026*, NATIONAL CONSUMER LAW CENTER (March 16, 2015), *available at* <https://www.nclc.org/images/pdf/rulemaking/comments-servicing-cfpb-march16-15.pdf>, at *3-4. As a result, these homeowners lack the ability to learn about possible solutions to default, or even obtain basic information such as the current loan balance.

The Consumer Financial Protection Bureau addressed this problem faced by successor homeowners by issuing regulations in early 2013 to require servicers to identify and communicate with successor homeowners. 12 C.F.R. § 1024.38(b)(1)(vi), 78 Fed. Reg. 10696 (Feb. 14, 2013), *available at* <http://www.consumerfinance.gov/regulations/>.

Despite this refusal to communicate, many servicers actually participate in programs allowing a person awarded title in divorce to assume the loan and also seek a loan modification. *Comments to the Consumer Financial Protection Bureau regarding 12 CFR Parts 1024 & 1026*, NATIONAL CONSUMER LAW CENTER (March 16, 2015), *available at* <https://www.nclc.org/images/pdf/rulemaking/comments-servicing-cfpb-march16-15.pdf>, at *3. The National Consumer Law Center has noted that “many successors are eligible for loan modifications under the applicable program rules (HAMP, Fannie, Freddie, etc.), but are experiencing unnecessary delays, frustrations, and an elevated risk of foreclosure due to servicers’ unwillingness to properly review them for these loan modification programs.” *Id.* Nonetheless, “attorneys and counselors representing homeowners continue to cite successor problems as among the most difficult problems they face as they work to save homes from foreclosure.” *Id.* at *4; Sarah Bolling Mancini & Alys Cohen, *Surviving the Borrower: Assumption, Modification, and Access to Mortgage*

Information after a Death or Divorce, 43 PEPP. L. REV. (forthcoming 2016).

Notably, Freddie Mac participates in loan assumptions programs when a person has been awarded title in a dissolution, and also allows such persons to simultaneously seek a loan modification. As do servicers participating in HAMP, such as Respondent JP Morgan Chase. *See* Freddie Mac, Freddie Mac Bulletin 2013-3 (Feb. 15, 2013), *available at* <http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bl11303.pdf>. Department of the Treasury, Supplemental Directive 13-06 (Aug. 30, 2013), *available at* https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/sd1306.pdf.

The Freddie Mac guidelines state that when a mortgage is delinquent, “the non-Borrower applicant may be able to assume the Mortgage if the assumption is accompanied by a loan modification.” Freddie Mac, Freddie Mac Bulletin 2013-3 (Feb. 15, 2013), *available at* <http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bl11303.pdf>, at *2. The homeowner who either inherited title or was awarded title in a divorce should send in a loan modification application and “the Servicer must evaluate the non-Borrower applicant as if the non-Borrower applicant were a Borrower.” *Id.*

Here, Mr. Hall found himself stonewalled by Respondent Chase who did not willingly share information about loan assumptions and options to avoid foreclosure, in violation of the beneficiary's own guidelines and the intent of the Foreclosure Fairness Act. Respondent Chase simply refused to share any information without the participation of Mr. Hall's ex-spouse who had no legal interest in the property per the divorce decree.

Moreover, Respondent Chase is inaccurate when it describes Mr. Hall as a "stranger" to the loan. Answering Brief of Respondents JPMorgan Chase Bank, and Wells Fargo Bank, N.A., as Trustee for WaMu Mortgage Pass-Through Certificates Series 2005-PR4 Trust, at *1. It supports this proposition with cases that are factually distinctive from the instant case. For example, in *Ramirez-Melgoze*, the persons seeking to assume the loan were tenants who failed to properly record their option to purchase contract. *Ramirez-Melgoze v. Countrywide Home Loan Servicing LP*, No. CV-10-0049-LRS, 2010 WL 4641948 (E.D. Wash. 2010). In *Robertson*, the new owner who obtained title from foreclosing on his third deed of trust brought claims against the holder of the first deed of trust. *Robertson v. GMAC Mortg. LLC*, 982 F. Supp. 2d 1202 (W.D. Wash. 2013). Neither case involved a person who was a successor in interest of a deceased borrower nor a person awarded title in a

dissolution. Neither case involved a person seeking to participate in a FFA mediation.

If an ex-spouse is required to participate in a FFA Mediation when a homeowner is otherwise eligible for mediation under RCW 61.24.165, the amendment to the FFA is meaningless. Respondents would require an ex-spouse with no legal interest in the property to participate in a mediation for a home that is not their primary residence. According to Respondents' interpretation, even a homeowner who was originally on the loan and awarded title in a divorce cannot participate without their ex-spouse. This interpretation renders the amendment ineffective as the homeowner must have cooperation from the ex-spouse or face foreclosure. As such, NWCLC urges this Court to interpret RCW 61.24.165(6) to allow homeowners to participate in FFA mediations without the ex-spouse from whom they gained title.

//

//

//

//

//

//

//

III. CONCLUSION

For the foregoing reasons, NWCLC respectfully requests that this Court clarify that RCW 61.24.165(6) permits persons awarded title in a dissolution to be treated as the borrower without requiring participation in the mediation by the ex-spouse from whom title was awarded.

DATED this 30th day of June, 2016.

NORTHWEST CONSUMER LAW
CENTER


Amanda Martin, WSBA #49581

DECLARATION OF SERVICE

I, Amanda Martin, certify under penalty of perjury under the laws of the State of Washington that on this day I caused a copy of the foregoing *Amicus Curiae* Memorandum of Northwest Consumer Law Center in Support of Brief of Appellant John Phillip Hall be served by first-class mail, postage prepaid, upon the following counsel of record:

Attorney for Appellant

Christopher A. Kerl
2366 Eastlake Ave. E., Ste. 228
Seattle, WA 98102

Attorneys for Respondents

Fred B. Burnside
David A. Abadir
David Wright Tremaine LLP
1201 Third Avenue, Ste. 2200
Seattle, WA 98101

Joseph W. McIntosh
McCarthy & Holtus, LLP
108 1st Ave. S., Ste. 300
Seattle, WA 98104

DATED this 30th day of June, 2016.


Amanda Martin, WSBA No. 49581
Northwest Consumer Law Center