 74602-2

Case No. 74602-2-1

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

JOHN PHILLIP HALL

Appellant,

vs.

JPMORGAN CHASE BANK, N.A., et. al.

Respondents.

BRIEF BY RESPONDENT QUALITY LOAN SERVICE CORP. OF WASHINGTON

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STATUTES

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I. INTRODUCTION

Quality, the trustee, advanced the foreclosure pursuant to law and contract. Appellant does not have any claims for relief against the trustee and dismissal was appropriate. This court should affirm.

II. FACTS

A. Loan and Foreclosure.

In 2005, Diane Hough took out a $272,000.00 mortgage loan from Washington Mutual Bank ("WaMu") and gave back a promissory note and deed of trust encumbering her condo in Edmunds, WA. CP at 198-203; 280-305. WaMu sold the mortgage loan to a securitized trust with Wells Fargo acting as trustee. CP at 194. WaMu retained the servicing rights, which were later acquired by Chase.

In 2008, Ms. Hough stopped making her mortgage payments. CP at 253. Ms. Hough's failure to timely make mortgage payments was an event of default triggering the deed of trust power of sale. In 2013, Wells Fargo appointed Quality as successor trustee of the deed of trust to advance a non-judicial foreclosure of the condo. CP at 307-08.

In January of 2014, while the mortgage loan was in foreclosure, Appellant acquired the condo in his divorce proceeding with Ms. Hough. Appellant was supposed to either re-finance the mortgage loan or sell the condo. CP at 316. Ms. Hough did not agree to an assumption of the mortgage loan by Appellant. CP at

26-27.

Against the instructions of the divorce court order and Ms. Hough, Appellant attempted to assume the mortgage loan. His efforts to assume the mortgage loan, which included foreclosure mediation[1], were denied.

B. Lawsuit.

In June of 2015, Appellant filed the underlying lawsuit in superior court. CP at 507-511. The foreclosure sale was voluntarily canceled shortly thereafter. CP at 195.

In his complaint, Appellant claims that he should have been able to assume mortgage loan, and that Quality violated its trustee duty to Appellant in advancing the foreclosure.

In November of 2015, Quality filed its summary judgment motion. CP at 184-187. On December 15, 2015, the summary judgment motion was granted and Quality was dismissed. CP at 11-12.

III. ARGUMENT

Under RCW 61.24.010(4) the trustee owes a duty of good faith borrower, beneficiary, and grantor in advancing the foreclosure.

In this case, Ms. Hough is the "borrower" and "grantor". Wells Fargo is

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[1] At the foreclosure mediation, Chase was represented by this law firm, McCarthy & Holthus, LLP ("M&H"). The firm's attorney who attended the mediation, Robert McDonald, was subsequently hired as in-house counsel by the trustee company, Quality. Mr. McDonald was not working for both companies at the same time, as Appellant appears to allege in his pleadings.

the "beneficiary". Quality's statutory duty of good faith in advancing the foreclosure is owed to those parties and those parties alone.

Wells Fargo, through its loan servicer and agent Chase, instructed Quality to proceed with the foreclosure sale on account of the material default on the mortgage loan obligation. Ms. Hough similarly instructed Quality to proceed with the foreclosure sale. Ms. Hough did not agree to Appellant assuming the mortgage loan, plus, Appellant was violating the terms of the divorce decree in attempting to do so.

Quality proceeding with the foreclosure sale was consistent with its statutory duty of good faith owed to Ms. Hough and Wells Fargo. Quality does not owe and did not breach a duty of good faith to Appellant.

Furthermore, the fact that an attorney for the law firm representing Chase at foreclosure mediation was later hired and worked for the trustee did not change anything. The foreclosure was advanced by the trustee because it was appropriate under the law, not because of a bias by the trustee's employee against the Appellant.

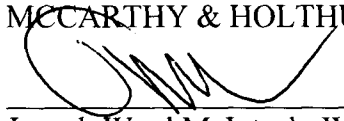
Appellant has no claims for relief against Quality and dismissal without leave to amend was appropriate.

IV. CONCLUSION

The claims against Quality were properly dismissed and this court should affirm.

Dated: April 13, 2016

MCCARTHY & HOLTHUS, LLP



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CERTIFICATE OF MAILING

The undersigned declares under penalty of perjury under the laws of the state of Washington that the following is true and correct. On April 13, 2016, I arranged for service of the forgoing Brief by Respondent Quality Loan Service Corp. of Washington on the following parties via U.S. 1st Class Mail:

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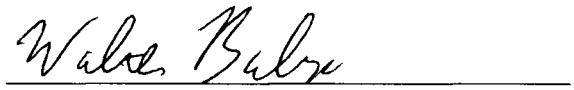

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