



ORIGINAL

IN THE COURT OF APPEALS FOR THE STATE OF NEW MEXICO

ANDRES CSANYI,
Defendant/Appellant,

COURT OF APPEALS OF NEW MEXICO

ALBUQUERQUE

FILED

Appeal No. 35,279

vs.

MARINERS PAC HOLDINGS, LLC,
Plaintiff/Appellee.

MAY 10 2017

**REPLY IN SUPPORT OF BRIEF IN CHIEF OF THE APPELLANT
ANDRES CSANYI**

AN APPEAL FROM DISTRICT COURT BERNALILLO COUNTY
THE HONORABLE VALERIE HULING
District Court No. CV 2009-090702

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As shown in Defendant-Appellant Csanyi's Brief in Chief and acknowledged by Plaintiff-Appellee Mariners Pac, see Answer Brief at p. 3, the crux of the issue of this appeal is whether counterclaims under the HLP Act against a lender can continue once the foreclosure component of the lawsuit has been settled and therefore dismissed. Contrary to Plaintiff-Appellee Mariners Pac's allegations, see Answer Brief at p. 8, Defendant-Appellant Csanyi's Brief in Chief did address the exact Home Loan Protection Act ("HLP Act") issues he appealed, and which were discussed in Plaintiff-Appellee Mariners Pac's Answer Brief. See Brief in Chief, filed January 17, 2016, at pp. 23-28 and throughout.

Nothing in Plaintiff-Appellee Mariners Pac's Answer Brief successfully disputes Defendant-Appellant Csanyi's argument that he is entitled to attorneys' fees under the HLP Act; instead, the Answer Brief attempts to bring in statutes and case law that are inapplicable to the case at hand. The Answer Brief, after stating that "[t]his court should not read into the statute language that is not there," see Answer Brief at 11, citing *Hinkle Joint Venture*, 1998-NMSC-050, ¶ 5, then uses an example of a different statute that contains language *not* present in the HLP Act in an attempt to conflate issues and urge a reading of the HLP Act that includes language that simply does not exist. See Answer Brief at 12, citing New Mexico's Unfair Practices Act, NMSA 1978, § 57-12-10(C) ("The court shall award attorney fees and costs to the party . . . if the party prevails.").

Next, Plaintiff-Appellee Mariners Pac cites case law from outside the jurisdiction of New Mexico to argue that “[i]t would be unreasonable to pursue an HLPA claim where there can be no recovery of actual damages, solely to recoup the very costs and fees associated with prosecuting the claim.” See Answer Brief at p. 12 (citing *In re Nalle Plastics Family Ltd. P’ship*, 406 S.W. 3d 168, 173 (Tex. 2013)). See also *Haubold v. Med. Carbon Research Inst., LLC*, No. 03-11-00115-CV- 2014 Tex. App. LEXIS 2863, at *20 (App. Marc. 14, 2014 (cited in Answer Brief at pp. 12-13)). Although this case law is not controlling because it is outside of New Mexico, nevertheless it does not bar Defendant-Appellant Csanyi’s claims. Here, Defendant-Appellant Csanyi settled his foreclosure case and did receive money.

Plaintiff-Appellee Mariners Pac’s Answer Brief clearly establishes that “[t]he pertinent language of the HLPA provides ‘the borrower may recover only amounts required to reduce or extinguish the borrower’s liability under the home loan *plus* amounts required to recover costs and reasonable attorney fees.’” See Answer Brief at p. 13 (citing NMSA 1978, § 58-21A-11(C) (emphasis added)). Here, Defendant/Appellant Csanyi did have his borrower’s liability extinguished in the settlement he reached on the foreclosure claim and now he is rightfully seeking to recover costs and reasonable attorneys’ fees that he incurred in doing so. Plaintiff-Appellee Mariners Pac incorrectly argues that was no recovery of anything of value

(i.e., amounts to reduce or extinguish the loan), see Answer Brief at p. 13, when in this case there was.

Plaintiff-Appellee Mariners Pac next argues that in *Texas* “attorney fees are ordinarily not recoverable as actual damages in and of themselves: nor should they be under the HLPAs,” see Answer Brief at 13 (citing *Worldwide Asset Purchasing, LLC v. Rent-A-Center East, Inc.*, 290 S.W.3d 554, 570 (Tex. Ct. App. 2009)), and that in *Texas* “a party is not entitled to attorney fees incident to recovery unless the party independently recovers actual damages. Id. This argument not only uses case law that is not binding in this jurisdiction but also uses case law that is irrelevant because Defendant-Appellant Csanyi is not seeking attorneys fees as actual damages in and of themselves. Defendant-Appellant Csanyi already received compensation in the settlement of the underlying foreclosure claim, in the form of loan forgiveness/ extinguishment of his borrower liability.

Plaintiff-Appellee Mariners Pac states that “recovery is not available under the HLPAs to reduce or extinguish the home loan, because the loan no longer exists” and therefore argues that “there can be no recovery of attorney fees and costs,” see Answer Brief at p. 13, but wholly leaves out the fact that the reason the “loan no longer exists” is because the underlying foreclosure claim, on which the HLPAs claim is based, was settled and as part of that settlement Defendant-Appellant Csanyi’s borrower liability was extinguished; that is, reduced to the point where it became

non-existent. Therefore, even using Plaintiff-Appellee Mariners Pac's argument and out-of-state case law, which Defendant-Appellant Csanyi does not concede but is using for the sake of argument only, Defendant-Appellant Csanyi nevertheless has a right to attorneys' fees under the HLPAs.

As pointed out in Defendant-Appellant Csanyi's Brief in Chief, in this case the district court overturned its own previous ruling that Defendant-Appellant Csanyi was permitted to add counterclaims based on the lack of documents and information received from Plaintiff-Appellee. See Brief in Chief at pp. 21-22. This ruling by the district court, then, is in direct contradiction to this Court's former Mandate that the case be remanded to district court because Defendant-Appellant Csanyi is entitled to discovery of documents and information related to his loan, including his loan origination file, which Plaintiff-Appellee has admitted it does not have.

Therefore, Defendant-Appellant Csanyi's independent causes of action/counter-claims should be allowed to proceed despite the fact that the underlying foreclosure case was settled. Further, had he not expended attorneys' fees in the original defense and appeal, the underlying foreclosure case would have remained dismissed per the district court's original ruling. Therefore, contrary to Plaintiff-Appellee Mariners Pac's arguments, Defendant-Appellant Csanyi was *harmed* by Plaintiff-Appellee Mariners Pac's violation of the HLPAs and under the language of

the statute, his action to recover “costs and reasonable attorney fees” should be allowed to continue. See Answer Brief at pp. 10-11.

Further, Plaintiff-Appellee Mariners Pac once again attempts to place blame on Defendant-Appellant Csanyi for the length of time that this case has been pending when it is the actions of Plaintiff-Appellee Mariners Pac and/or its predecessors that necessitated the delay. See Answer Brief at pp. 14-15. The various plaintiffs in the chain of plaintiffs this case has seen resisted discovery and required Defendant-Appellant Csanyi to file his first appeal, upon which he was successful. After remand to the district court, Plaintiff finally answered the discovery requests and stated that it did not have the documents requested, giving rise to new claims by Plaintiff-Appellee Mariners Pac. Had it not been for Plaintiff’s actions, and inactions, the case would have moved much faster and therefore it is not only irrelevant but also hypocritical for Plaintiff-Appellee Mariners Pac to lay the blame for a lengthy process on Defendant-Appellant Csanyi.

Finally, Plaintiff-Appellee Mariners Pac’s argument that Defendant-Appellant Csanyi did not appeal the decision on the motion to amend his counterclaim is incorrect. Defendant-Appellant Csanyi appealed the Order Resulting from October 13, 2015 hearing, which was a depository hearing that dismissed Defendant-Appellant Csanyi’s Counterclaims and any attempt to amend them. See Notice of Appeal, filed 11/23/2015 and Exhibit 1 (“Order”) attached thereto; see also

transcript of October 13, 2015 hearing designated in this case; Docketing Statement, filed January 27, 2016 p. 21 (“Whether the District Court erred by denying Defendant/Appellant Csanyi’s Motion to Amend Counterclaims to add additional Counterclaims.”). To the extent that Defendant/Appellant Csanyi’s appeal somehow does not adequately cover the denial of his right to amend his Counterclaims, then Defendant/Appellant Csanyi moves to amend his Notice of Appeal.

Plaintiff-Appellee Mariners Pac correctly points out that the issue of attorneys’ fees under the HLP A in this situation is a matter of first impression in New Mexico. See Answer Brief at p. 3. Therefore, it is Defendant-Appellant Csanyi’s position that if it is not clear from the face of the appeal brief and the applicable statute itself that he is entitled to attorneys’ fees in this lawsuit (although his primary position is that it is clear), then oral argument is requested in this important matter, see Brief in Chief at p. 35 (requesting oral argument). Plaintiff-Appellee Mariners Pac has also requested oral argument. See Answer Brief at 16.

WHEREFORE, for the above reasons Defendant-Appellant Andres Csanyi respectfully requests that this Court overturn the district court’s Order and remand this case to district court so that his Counterclaims and amendments thereto may proceed and so that he may recover attorneys’ fees to which he is rightfully entitled.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

This will certify that a true copy of the foregoing *Reply in Support of Brief in Chief* was mailed and/or emailed on May 10, 2017 to the following opposing counsel of record:

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