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Mortgages

Bank of America Didn't Have Answers Court Wanted About Mortgage Procedures

Bank of America was ordered to pay over $200,000 in damages after it spent more than two years accusing a Florida couple of being in default on their mortgage, when in fact they were making the payments through an approved bankruptcy plan (*Goodin v. Bank of Am., N.A.*, 2015 BL 200245, M.D. Fla., No. 3:13-cv-00102-TJC-JRK, 6/23/15).

Judge Timothy Corrigan said the plaintiffs ''might as well have been talking to a brick wall'' because their repeated attempts to inform Bank of America of its error went ignored. Bank of America's only witness to testify on its servicing procedures said at trial that he was ''not familiar'' with the company's procedures for handling these kinds of errors.

''We are all cattle when it comes to mortgage servicing in this country,'' Chip Parker of Parker & DuFresne, PA, Jacksonville, Fla., who represented the plaintiffs, told Bloomberg BNA July 6. ''Our home loans are frequently shuffled from servicer to servicer with no incentive to treat customers like people. This case was more egregious than most, but it is not an isolated incident. Hopefully, the punishment is enough to discourage Bank of America's institutional disregard for its customers, many of whom are customers by transfer, not choice.''

A spokesperson for Bank of America told Bloomberg BNA July 1 that the mortgage servicing industry has changed dramatically since the height of the housing crisis, including the National Mortgage Settlement intended to improve loan servicing standards (24 BBLR 1313, 10/11/12). The spokesperson also noted that since the housing crisis, Bank of America has helped more than 2 million borrowers avoid foreclosure, but had no comment on the specifics of this case.

Bank of America took over servicing the loan in this case, along with 180,000 Ginnie Mae-securitized mortgage accounts, after the original servicer, Taylor, Bean and Whitaker, was shutdown in 2009. Bank of America said in an Aug. 29, 2009 press release that it was striving for a ''smooth and efficient transition'' and that it was ''pleased and fully prepared to welcome these homeowners to the largest and one of the most advanced servicing platforms in the mortgage industry.''

The court found that the bank's actions violated the Fair Debt Collection Practices Act (FDCPA) and the Florida Consumer Collection Practices Act (FCCPA).

Complaints Ignored. The plaintiffs were already in bankruptcy when Bank of America took over servicing of their mortgage, and they were making monthly mortgage payments to the bankruptcy court under an approved Chapter 13 plan. Under Chapter 13, consumer debtors with regular income can propose a plan to pay off their debts over a period of years.

Bank of America should have filed a transfer of claim with the bankruptcy court to get their mortgage payments, but failed to do so. What followed was years of repeated efforts on behalf of the plaintiffs to inform Bank of America that it needed to go to the bankruptcy court to collect its money. On three occasions, the bank sent e-mails to its outside counsel asking that the transfer claim be filed and inquiring about the status of the claim, but the mistake was never rectified.

Bank of America continued to send letters to the plaintiffs throughout 2011 and 2012 erroneously claiming they were in default on their mortgage. When the bank eventually started the foreclosure process in September 2012, the plaintiffs sued in federal court. Shortly thereafter, Bank of America finally filed the transfer of claim and dismissed the foreclosure action.

Not an Honest Mistake. The court rejected the bank's ''bona fide error'' defense, which essentially argued that the bank made an honest mistake. The court found that the bank's mistakes weren't ''objectively reasonable.''

Michael Foster, the bank's bankruptcy department mortgage servicing unit manager, was the only witness Bank of America offered to describe its loan servicing procedures. When he was asked about the bank's procedures for responding to or investigating customer complaints, he said he was ''not familiar with that procedure.''

Foster was also asked at trial: ''So when — whoever in your group read the letter [from the plaintiffs' attorney] in which it was disclosed that there was [$14,530] ready for [the bank] to pick up if Bank of America would do the paperwork, what would your procedures tell you to do at that time?''

Foster responded, ''I'm unfamiliar with that specific procedure.''

''In light of the [b]ank's failure to have appropriate procedures in place to ensure that a transfer of claim is

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filed and respond to attempts to correct its servicing, and its failure to communicate internally about its knowledge that it needed to file a transfer of claim to obtain the funds, the [c]ourt finds as a fact that the [b]ank's errors were not objectively reasonable,'' the court said.

Consumer Protection Violations. The Florida court agreed with the plaintiffs that Bank of America's actions violated the FDCPA. The court said that Bank of America did qualify as a ''debt collector'' in this case, even though it was only servicing the loan, because it acquired the loan when it was in default. The court rejected the bank's argument that the loan wasn't in default when it was acquired because the bankruptcy plan cured any default, an argument the court said was ''ironic given [the bank's] mishandling of the [plaintiffs'] bankruptcy.''

The court said that the bankruptcy plan only cures the existing default on the mortgage once the plan payments are completed, which wasn't the case when Bank of America began servicing the loan.

The court ultimately held that Bank of America violated the FDCPA when it: ''(1) mailed ten statements from April 25, 2011 to March 29, 2012, indicating, amongst other misstatements, an overstated balance on the loan; (2) mailed statements in March and August 2011 misstating that the [plaintiffs] owed foreclosure fees; (3) sent the [plaintiffs] six letters between December 27, 2011 and March 16, 2012 requesting over $15,000 in payments and threatening to accelerate the debt or foreclose in the absence of payment; and (4) filed a foreclosure complaint on September 17, 2012.''

The court found that these actions also constituted violations of the FCCPA.

'Pure Living Hell.' The plaintiffs argued that the bank's actions caused them anxiety and loss of sleep. One of the plaintiffs described the experience as ''a pure living hell.'' The court found their testimony credible and awarded them $100,000 in damages for emotional distress.

The plaintiffs also sought $10 million in punitive damages, which required a showing of intentional misconduct or gross negligence. The court said that in this case, the bank's employees were ''inattentive, unconcerned, and haphazard'' in their dealings with the mortgage, and acted with a ''conscious disregard and indifference to the [plaintiffs'] rights.''

''It is the [b]ank's employees' failure to respond to the [plaintiffs'] many efforts to correct the [b]ank's errors that sets this case apart,'' the court said. ''Bank of America received numerous communications from the [plaintiffs] and their attorney explaining the problems with the [b]ank's servicing. [] Yet, beyond noting that the communications were received, the [b]ank employees did nothing to correct the servicing errors. With their home at stake, the [plaintiffs] might as well have been talking to a brick wall.''

The court found that the bank's system, or lack thereof, for dealing with the plaintiffs' complaints constituted gross negligence, and the court awarded the plaintiffs $100,000 in punitive damages.

Austin Tyler Brown and Chip Parker of Parker & DuFresne, PA, Jacksonville, Fla., represented the plaintiffs.

Andrew Kemp-Gerstel and J. Randolph Liebler of Liebler, Gonzalez & Portuondo, PA, Miami, represented Bank of America.

By Stephanie Cumings

To contact the reporter on this story: Stephanie Cumings in Washington at sacree@bna.com

To contact the editor responsible for this story: Jay Horowitz at jhorowitz@bna.com

Full text at: http://www.bloomberglaw.com/public/document/Goodin_v_Bank_of_Am_NA_No_313cv102J32JRK_2015_BL_200245_MD_Fla_Ju

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