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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

THE HON. GEORGE H. WU, JUDGE PRESIDING

Margaret Carswell,)	
)	
Plaintiff,)	
)	
vs.)	No. CV-10-05152-GW
)	
JP Morgan Chase Bank N.A.)	
et al.,)	
)	
Defendants.)	
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
Los Angeles, California
Thursday, September 30, 2010; 9:09 A.M.

Wil S. Wilcox, CSR 9178
Official U.S. District Court Reporter
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1 LOS ANGELES, CA.; THURSDAY, SEPTEMBER 30, 2011; 9:09 A.M.

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3 THE COURT: Let me call the matter of Carswell
4 versus JP Morgan. Let me have appearance of counsel.

5 MR. GILLIES: Good morning, Your Honor. Douglas
6 Gillies for the plaintiff Margaret Carswell.

7 THE COURT: All Right.

8 MR. TANNATT: Good morning, your Honor. Mike
9 Tannatt for JP Morgan and for California Reconveyance
10 Company.

11 THE COURT: All right. Let me ask counsel. You
12 saw the Court's tentative?

13 MR. GILLIES: Yes, Your Honor.

14 MR. TANNATT: Yes, your Honor.

15 THE COURT: Does anybody want to argue anything?

16 MR. GILLIES: I have a few words, Your Honor.

17 THE COURT: All right.

18 MR. GILLIES: The issue that we are trying to
19 articulate is, if WaMu did not own the loan at the time of
20 the FDIC transfer, then Chase acquired nothing. And if
21 Chase acquired nothing because WaMu owned nothing, then
22 plaintiff is entitled to find out what they based their
23 claim on. It can't just be based on an order because if
24 WaMu owned nothing the FDIC transfer didn't change that.

25 THE COURT: Well, let me ask the defense counsel.

1 What's your response to that?

2 MR. TANNATT: I don't know the basis of their
3 claim that WaMu did not own anything.

4 THE COURT: Let me just ask you this. What is the
5 basis of your client's claim that it does own the
6 interest -- sorry -- that WaMu did own an interest in the
7 property at the time that, that interest was purportedly
8 transferred to your client?

9 MR. TANNATT: The allegations in the complaint say
10 that they signed the loan agreement. She claims she
11 received \$2.5 million. She has an obligation to somebody.
12 Our records show that it is to Washington Mutual Bank.
13 No, she doesn't get to walk away with \$2.5 million.

14 Thank you. That's my response.

15 THE COURT: Pithy.

16 MR. GILLIES: We don't argue with that. She is
17 willing to pay whoever it is that is entitled to the money,
18 and in their files they know who that is.

19 THE COURT: Let me stop you. When you say she's
20 willing to pay if she has 2.5 million, I presume that his
21 client would be ecstatic to get 2.5 million.

22 MR. TANNATT: That's correct.

23 THE COURT: So if that's the case, then why are we
24 here?

25 MR. GILLIES: Because she, the plaintiff, never

1 contracted with Chase. Chase is now saying give us your
2 home, and she's saying show me that you have an interest in
3 this. I will pay the beneficiary. I will pay the owner of
4 the loan.

5 THE COURT: Let me stop you. All of this stuff is
6 recorded I presume in the county. The county has a
7 recording as to who supposedly has an interest in the
8 property.

9 MR. TANNATT: Correct. And you have taken
10 judicial notice of the Purchase and Assumption Agreement.

11 THE COURT: If that is recorded that is a
12 presumptive showing, so why isn't that sufficient?

13 MR. GILLIES: If the bank sells the loan and does
14 not record that sale, the bank no longer is entitled to the
15 funds and the person who borrowed the money is paying the
16 wrong party. It's simply a matter of finding out who
17 actually is entitled to the money.

18 Now if we were not talking about banks and
19 mortgages it would seem perhaps a little simpler. We are in
20 the arena in which banks are considered to be infallible.

21 THE COURT: No. We are not talking about that.
22 We are just talking about normal things. There is no
23 difference between the sale of the property than for example
24 the sale of a car. In other words, cars are normally
25 registered to a registered owner. They may be transferred,

1 and there may be some things that should be recorded that
2 are not recorded or something of that sort.

3 Again, what can one say. I don't understand what
4 the point of this lawsuit is. If your client is willing to
5 pay the outstanding amount to someone, what she could simply
6 do is she could do an interpleader at this point. Deposit
7 the money in this Court and say, you know, give me my title
8 to my house free and clear and let me have everybody who
9 potentially might have a claim fight it out between
10 themselves.

11 MR. GILLIES: I suppose, but when you have someone
12 coming in and saying give me your house, she also has the
13 option to say do you have a right to this.

14 THE COURT: Well, look at the recorded ownership,
15 and the answer would be if the recorded ownership is there
16 in the county --

17 MR. GILLIES: But we have also alleged that the
18 other documents that are being recorded show that WaMu
19 transferred all of its interests.

20 THE COURT: To whom?

21 MR. GILLIES: To the trust that I described. I
22 don't have it memorized, but within days of this transaction
23 their interests had already been transferred to a pool of
24 investors. So what did they keep?

25 If they merely retained the servicing rights, if

1 their only role -- and this is true of most loans. If their
2 only role is to collect the money and send it to somebody
3 else, we just want to know who that is. Does Chase have any
4 idea? Did WaMu keep those records?

5 To say that everyone has to keep paying the bank
6 when what happened was the banks mostly sold all of their
7 interests to other investors makes no sense. Why would
8 somebody pay somebody that has no claim to the property?

9 THE COURT: Let me ask you this. It's quite
10 common that when one gets a mortgage part of the documents
11 that you sign indicate that the financial institution which
12 is initially lending the money is free to assign its rights,
13 et cetera, et cetera, to anyone, and so what difference does
14 it make.

15 MR. TANNATT: Yes, Your Honor. If I may be heard.
16 Part of all mortgages is you have the trustee, you have the
17 servicer and you have the beneficiary.

18 In this particular case, yes, it's right. The
19 beneficiary rights were securitized. In the Opposition of
20 the Motion to Dismiss there is several authorities that,
21 that has not been held to be a particularly good point to
22 not pay your mortgage payment, which apparently is the
23 point.

24 In her declaration -- if I may just read it into
25 the record -- at paragraph 10 she says: I made regular

1 monthly payments to the bank, was never late with a payment
2 and I have no other debt. I stopped making payments to
3 Chase bank in December 2009 when the research I had begun
4 two months earlier started to reveal non-disclosed
5 securitization of my mortgage and many irregularities
6 departing from usual.

7 Then in paragraph 11 it appears that what she's
8 protesting by not paying her mortgage obligations was the
9 repeal of the Glass-Steagall Act in 1999.

10 Now I've read a fair share of complaints as to why
11 people are not making their payments, but as a protest on
12 the Glass-Steagall Act this, Your Honor, is a first.

13 THE COURT: Well, let's put it this way. Her
14 protest may have unfortunate consequences.

15 Let me just ask the plaintiff's counsel. I have
16 issued a tentative here. You haven't given me any reason
17 why I shouldn't make my tentative my final. The question is
18 whether or not I'm going to give you leave to amend.

19 MR. GILLIES: Right. We went into the question of
20 whether WaMu owned anything at the time that Chase acquired
21 rights, and that's what we've been arguing.

22 The other side of the argument is that if a
23 contract is formed and one party intends that the other one
24 will fail, can that possibly be a contract. That's an
25 important question of law.

1 THE COURT: What is the difference between that
2 and a pawnbroker's arrangement?

3 MR. GILLIES: Well, I don't know.

4 THE COURT: Are pawnbrokers' deals illegal? In
5 other words, the pawnbroker always gives you much less money
6 than the thing's worth. And they are hoping that you take
7 the money and you spend it on dope and die. Does that mean
8 that the contract that's formed is not enforceable?

9 MR. GILLIES: No. They may hope that you don't
10 come back and buy it back --

11 THE COURT: Yes.

12 MR. GILLIES: -- but if their intention -- when I
13 say you and I have a contract, we are going to exchange
14 promises and we are going to exchange consideration --

15 THE COURT: Let me stop you. The only thing that
16 you have is the covenant of good faith and fair dealing. In
17 other words, you cannot impede the other side from getting
18 the benefit of the contract, but the mere fact that you
19 enter into a contract, it's also like life insurance.

20 MR. TANNATT: And again, if I just may be heard.
21 In paragraph 10 --

22 THE COURT: Yes.

23 MR. TANNATT: -- it had nothing to do with the
24 actions of Chase or Washington Mutual. It was the repeal of
25 the Glass-Steagall Act. It has not been alleged that Jammie

1 Diamond of Chase or anyone at WaMu had anything to do with
2 the repeal of the Glass-Steagall Act. Understand, this is
3 her declaration. She made it under oath of perjury.

4 MR. GILLIES: Regardless of the Glass-Steagall
5 Act --

6 THE COURT: Actually, let's not spend too much
7 more time on this. You have some interesting arguments, but
8 other than the fact that they are interesting they are not
9 particularly persuasive. So the real question that I want
10 you to address is should I be granting the motion to dismiss
11 with leave to amend or without leave to amend?

12 Do you have something else that you want to raise
13 that you have not had an opportunity to raise?

14 MR. GILLIES: Yes. There is a couple of things.

15 THE COURT: Don't do it orally here because I'm
16 not going to make a ruling on the presentation.

17 MR. GILLIES: Okay.

18 THE COURT: The only question is what are those
19 additional things that you want to argue?

20 MR. GILLIES: Number one, this foreclosure
21 commenced on the basis of declarations. Yesterday, Chase
22 admitted that they had filed fraudulent declarations or
23 affidavits in 56,000 foreclosures. The presumption that
24 those declarations are accurate is out the window. Nothing
25 like that has happened before.

1 They have admitted that they are stopping 56,000
2 foreclosures because the people signing the declarations had
3 no personal knowledge of what they were signing.
4 Declarations are required under California law to commence a
5 foreclosure. So certainly, we want to amend to include
6 that.

7 THE COURT: Let me stop you and let me ask. What
8 difference does it make in this case since obviously your
9 client has already admitted the basis for the foreclosure is
10 because she stopped paying the mortgages? It's not a
11 situation where they need anybody to file a declaration to
12 that effect because she's already admitted it.

13 MR. GILLIES: Last Friday Attorney General Brown
14 ordered a halt to all foreclosures in California by GMAC
15 because of their declarations.

16 THE COURT: If there's been a halt in the
17 foreclosures, then there has been a halt in the
18 foreclosures. This Court does not do foreclosures because
19 this Court is not a state court. In fact, the foreclosures
20 have been stopped, that's fine and dandy. I don't
21 particularly care.

22 MR. GILLIES: He ordered that in the GMAC, but now
23 Chase has admitted that their declarations were also based
24 on no personal knowledge and that's necessary. So that
25 would be one ground that I would add that I have not.

1 From our discussion today, I understand that I
2 need to be more specific in alleging that there was no
3 contract, and I need to be more specific in alleging that
4 WaMu had no interest at the time Chase acquired assets.
5 This isn't a liability case.

6 THE COURT: Let me stop you. I understand what
7 you are saying.

8 Let me ask the defense. Are you going to jump up
9 and down and say he can't have another chance to amend?

10 MR. TANNATT: Well, there is a recorded deed of
11 trust on this, Your Honor. We do have the Purchase and
12 Assumption Agreement for which you've taken judicial notice.
13 I don't see this case going anywhere. That's my final
14 guesstimation.

15 THE COURT: Let me do this. I will give him one
16 more chance, but I agree with you it should be only one more
17 chance if that. I will give him until the 15th of October
18 to file something.

19 MR. GILLIES: Thank you, Your Honor.

20 THE COURT: And serve it on the same day. All
21 right.

22 *(Court and the clerk conferred.)*

23 THE COURT: I will set this matter for a
24 scheduling conference for November the 14th. And if the
25 defendant desires to file a motion to dismiss I will set it

1 for that date as well. The parties are to agree upon a
2 briefing schedule. All right.

3 Anything else we need to talk about?

4 MR. GILLIES: No, Your Honor.

5 THE COURT: Okay. Have a nice day.

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7 (At 9:22 a.m. proceedings were adjourned.)
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CERTIFICATE

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the
regulations of the Judicial Conference of the United States.

Date: January 21, 2011

WIL S. WILCOX
U.S. COURT REPORTER
CSR NO. 9178