



**IN THE CIRCUIT COURT OF CLINTON COUNTY, MISSOURI
DIVISION II**

DAVID and CRYSTAL HOLM,)
)
Plaintiffs,)
 v.)
)
WELLS FARGO HOME MORTGAGE)
INC.)
)
and)
)
FEDERAL HOME LOAN MORTGAGE)
CORPORATION (FREDDIE MAC).)
)
Defendants.)

F I L E D
 JAN 26 2015
 MOLLY LIVINGSTON
 Clerk of Clinton Co. Circuit Court

Case No. 08CN-CV00944

JUDGMENT

NOW, THEREFORE, this matter having been tried before the Court, commencing on the 14th day of January, 2015, and, further, the Court having taken this matter under advisement upon its submission on the 16th day of January, 2015, and

WHEREAS, Plaintiffs appeared in person and by and through counsel, Gregory Leyh, and Defendants appeared by and through counsel, Martin Blanchard, Janet McKillip, and Andrew Jones, and

WHEREAS, Plaintiffs having dismissed Count III, the Court finds on Count II and Count I as follows:

GENERAL FINDINGS

Plaintiffs Crystal G. Holm and David E. Holm were, at all times relevant to this proceeding, husband and wife residing in Clinton County, Missouri. Further, Plaintiffs were,

until the foreclosure sale at issue, owners of real property situate in Clinton County, Missouri, commonly known as 3800 Timberlake Drive, Holt, Missouri, more particularly described as follows:

LOT SIXTEEN (16) IN WOODRAIL, A SUBDIVISION IN CLINTON COUNTY, MISSOURI, ACCORDING TO THE RECORDED PLAT THEREOF.

In 2008, a dispute arose as to Plaintiffs' debt on the property. The property also sustained substantial damage from a storm and the application of insurance proceeds was at issue. Plaintiffs had numerous communications (both verbal and written) with various representatives of Defendant Wells Fargo Home Mortgage, Inc. (hereinafter referred to as Wells Fargo), and various representatives of Kozeny & McCubbin, L.C. (legal counsel for both Defendants in this proceeding and hereinafter referred to as Kozeny & McCubbin).

Plaintiffs were still seeking to resolve the disputed debt issues when Kozeny and McCubbin, acting, as Successor Trustee, and/or as legal counsel for the Successor Trustee, and/or as legal counsel for Defendant Wells Fargo, commenced foreclosure proceedings against Plaintiffs relating to the above-referenced property.

Undisputed evidence reveals Plaintiffs finally received a dollar amount to stop the foreclosure from Kozeny & McCubbin and Defendant Wells Fargo. Plaintiffs procured the necessary funds per the agreement. Regardless, on August 15, 2008, Kozeny & McCubbin proceeded to foreclosure, selling the property to Defendant Federal Home Loan Mortgage Corporation (hereinafter referred to as Freddie Mac) for the sum of \$141,792.30. Plaintiffs' efforts to set aside the foreclosure and/or reinstate the loan were in vain. Ultimately, Freddie Mac filed an action in Unlawful Detainer (14CN-CV00501), currently pending against Plaintiffs, and Plaintiffs filed the instant lawsuit.

The Court will first address Plaintiffs' claim for quiet title relief set forth in Count II.

COUNT II

Uncontroverted evidence at trial establishes Plaintiffs possessed title to the subject property until the date of the foreclosure sale. Prior to the sale, June 26, 2008, the "Foreclosure Department" of Kozeny & McCubbin sent a letter to Plaintiffs "in response to your correspondence disputing the validity of the debt" on the subject property. (It is unclear to the Court whether Kozeny & McCubbin issued the letter in their capacity as Successor Trustees, Attorneys for Successor Trustees, Attorneys for Wells Fargo, or in some other capacity.) The correspondence indicated they were providing Plaintiffs with "1. A copy of the deed of trust, and 2. A copy of the note", to "verify the debt which is owed." The promissory note (included in Plaintiffs' Exhibit 26) was a promise to pay the original lender, Commercial Federal Mortgage Corp., and contained no endorsements, either in blank or to a specific party. The undisputed facts are neither Wells Fargo nor Freddie Mac had the right to enforce the note rendering the foreclosure sale void. In Williams v. Kimes, 996 S.W. 2nd 43, 45 (Mo. 1999), the Missouri Supreme Court indicated "no title is conveyed through the sale" when a party who lacks a right to enforce the note proceeds with foreclosure sale.

Based upon the evidence, the Court finds neither Wells Fargo nor Freddie Mac had the right to enforce the unendorsed note incorrectly described by Kozeny & McCubbin as evidence to "verify the debt which is owed." This Court finds Freddie Mac did not obtain title to the instant property through the foreclosure sale and title to the instant property should be quieted in the name of Plaintiffs.

COUNT I

In Count I, Plaintiffs seek both compensatory and punitive damages for wrongful foreclosure of their property by Defendant Wells Fargo. Based upon the facts presented at trial, including, but not limited to, the facts set forth herein, the Court finds the foreclosure sale of the subject property on August 15, 2008, was wrongful.

Compensatory Damages

The uncontroverted evidence is that on August 15, 2008, Freddie Mac paid \$141,762.30 to purchase Plaintiffs' property. Due to the actions of Defendant Wells Fargo, Plaintiffs have spent the last six and one-half years living in limbo. This Court is acutely aware of a pending unlawful detainer suit against David and Crystal Holm (Clinton County Case No. 14CN-CV00501). An unlawful detainer case was initially filed by Freddie Mac against David and Crystal Holm on September 8, 2008, less than one month following the foreclosure sale (Clinton County Case No. 08CN-CV00729). Mr. and Mrs. Holm have been under the threat of eviction for well over six years. Upkeep and maintenance are constants when it comes to property. It would be ludicrous to spend large sums of money to maintain a home titled to Freddie Mac and to which Plaintiffs might never regain title.

Plaintiff David Holm testified that the current value of the property is \$52,000. Mr. Holm's testimony was uncontroverted. The difference in value is \$89,762.30, which constitutes reasonable lost value to Plaintiffs' property. In addition, Plaintiffs testified they made repairs in the amount of \$6,150 to the property to prevent even greater deterioration or diminution in value.

Mr. Holm made the repairs himself and paid for the necessary materials. The cost of past home repairs to prevent additional loss of the value of his home was \$6,150. Exhibit 40 was received as additional evidence of the cost of past home repairs. Crystal Holm testified to her role in preparing Exhibit 40 and to the accuracy of the costs identified.

The Court finds Plaintiffs sustained actual damages as set forth hereinabove in the amount of NINETY-FIVE THOUSAND NINE HUNDRED TWELVE DOLLARS AND THIRTY CENTS (\$95,912.30).

The evidence further established Plaintiffs suffered considerable emotional distress and mental and physical anxiety attributable to, or as a direct result of, Defendant Wells Fargo's actions. Plaintiff David Holm suffered panic attacks, heart problems requiring a heart monitor, high blood pressure, and daily anxiety due to the circumstances relating to the wrongful foreclosure. Plaintiff Crystal Holm testified regarding her "fear" of losing her family's home, and the impact of such a loss on her 12-year-old daughter, Liberty, and family. Mrs. Holm recounted her loss of optimism regarding a property that she hoped would be populated by horses and other animals. Both Plaintiffs testified about the substantial stress on their marriage resulting from the Defendants' predatory and extreme and outrageous conduct.

Based upon the uncontroverted facts presented at trial, and including, but not limited to, the facts set forth hereinabove, the Court finds Plaintiffs are entitled to damages for emotional distress against Defendant Wells Fargo Home Mortgage, Inc. in the amount of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00). Based upon the record, the Court finds this sum to be fair and reasonable and supported by the evidence adduced at trial.

Punitive Damages

The evidence established that Wells Fargo intentionally promised a reinstatement to Plaintiffs and told David Holm that no foreclosure sale would take place if he accepted the reinstatement. Mr. Holm immediately accepted the offer, but Wells Fargo deliberately ignored the reinstatement deal and, in an egregious and deceitful manner, intentionally foreclosed on David and Crystal Holm's family home.

Through its agent Kozeny & McCubbin, Wells Fargo received a facsimile copy of Plaintiffs' reinstatement check on the date of the foreclosure sale. Kozeny & McCubbin received the physical reinstatement check on August 16, 2008. Plaintiffs fully and completely complied with the instructions provided by Wells Fargo and Kozeny & McCubbin regarding payment of the reinstatement check.

Defendant Freddie Mac's representative, Dean Meyer, testified that there is nothing in the Freddie Mac servicing guide stating that a reinstatement check must be received before the foreclosure sale. This is particularly true when the servicer and trustee make explicit promises to a borrower that they will not foreclose.

Notwithstanding these promises, contracts, and commitments to Plaintiffs, Wells Fargo refused to stop the foreclosure. Further, Wells Fargo refused to cash the reinstatement check and reinstate Plaintiffs' loan. The Court finds Defendant Wells Fargo's attitude toward Plaintiffs unfathomable. The incredible effort made by Plaintiffs to keep the property they so clearly love should have been commended, not condemned. Wells Fargo's decisions to renege on its promises and contract, and to deceive Plaintiffs with the pledge to cancel the foreclosure sale, were outrageous and reprehensible.

The Court finds Defendant Wells Fargo was deceitful in its dealings with David and Crystal Holm. Defendant Wells Fargo's deceptive and intentional conduct displayed a complete and total disregard for the rights of David and Crystal Holm.

Dean Meyer testified Freddie Mac considered reinstatement of the Holm note to be the most desirable of all possible outcomes. Freddie Mac's servicing guide champions reinstatement, and requires that servicers comply with its guidelines. Freddie Mac demands that its servicers must go "the extra mile" to obtain a reinstatement whenever possible. Defendant Wells Fargo could easily have kept its word and reinstated the loan. Instead, Wells Fargo and its agents expended immeasurable, if not incomprehensible, time and effort to avert reinstatement. The result of Wells Fargo's egregious conduct was to impose approximately six and one-half years of uncertainty, lost optimism, emotional distress, and paralysis on Plaintiffs' family.

The evidence established that Wells Fargo's intentional choice to foreclose arose from its own financial incentives. Dr. Kurt Krueger testified that Wells Fargo had financial incentives to seek reimbursement of its fees at a foreclosure sale. This economic motivation collided with the well-being of David and Crystal Holm, and was clearly contrary to the interests of Freddie Mac. In other words, in this case, a powerful financial company exerted its will over a financially distressed family in Clinton County, Missouri. The result is predictable. Plaintiffs were severely damaged; Wells Fargo took its money and moved on, with complete disregard to the human damage left in its wake.

Defendant Wells Fargo is an experienced servicer of home loans. Wells Fargo knew that its decision to foreclose after reinstatement was accepted would inflict a devastating injury on the Holm family. Wells Fargo's actions were knowing, intentional, and injurious.

Defendant Wells Fargo operated from a position of superiority provided by its enormous wealth. Wells Fargo's decision took advantage of an obviously financially vulnerable family, and there is no evidence of remorse for the harm caused to David and Crystal Holm. In fact, the Court recalls the lack of remorse and humanity illustrated by a Wells Fargo's corporate representative who testified, "I'm not here as a human being. I'm here as a representative of Wells Fargo."

Based upon the facts presented at trial, and including, but not limited to, the facts set forth hereinabove, the Court finds Plaintiffs are entitled to punitive damages against Defendant Wells Fargo Home Mortgage, Inc., in the amount of TWO MILLION NINE HUNDRED FIFTY-NINE THOUSAND ONE HUNDRED TWENTY-THREE DOLLARS (\$2,959,123.00). Based upon the record, the Court finds this sum to be fair and reasonable and supported by clear and convincing evidence adduced at trial.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED that judgment is entered for damages in favor of Plaintiffs David and Crystal Holm, husband and wife, and against Defendant Wells Fargo Home Mortgage, Inc., in the amount of TWO HUNDRED NINETY-FIVE THOUSAND NINE HUNDRED TWELVE DOLLARS AND THIRTY CENTS (\$295,912.30). Based upon the record, the Court finds this sum to be fair and reasonable and supported by the evidence adduced at trial.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that judgment is entered for punitive damages in favor of Plaintiffs David and Crystal Holm, husband and wife, and against Defendant Wells Fargo Home Mortgage, Inc. in the amount of TWO MILLION NINE HUNDRED FIFTY-NINE THOUSAND ONE HUNDRED TWENTY-THREE DOLLARS

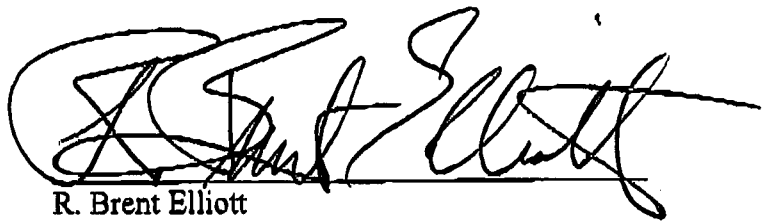
(\$2,959,123.00). Based upon the record, the Court finds this sum to be fair and reasonable and supported by clear and convincing evidence adduced at trial.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that judgment is entered in favor of Plaintiffs David and Crystal Holm, husband and wife, and against Defendant Federal Home Mortgage Corporation (Freddie Mac) on the claim for quiet title relief. Title to the property is quieted in the name of Plaintiffs David and Crystal Holm, husband and wife, who are hereby vested with fee simple title in and to the property commonly known as 3800 Timberlake Dr., Holt, Missouri 64048 and legally described as follows:

LOT SIXTEEN (16) IN WOODRAIL, A SUBDIVISION IN CLINTON COUNTY,
MISSOURI, ACCORDING TO THE RECORDED PLAT THEREOF.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that costs are assessed against Defendant Wells Fargo Home Mortgage Inc., and Defendant Federal Home Loan Mortgage Corporation.

Dated this 26th day of January, 2015



R. Brent Elliott
Circuit Judge Division II
43rd Judicial Circuit, Missouri