

Mediation Not Required Prior to Judicial Foreclosure

The U.S. Court of Appeals for the District of Columbia Circuit recently affirmed the dismissal of a borrower's counterclaims and the entry of summary judgment in the mortgagee's favor, holding that the borrower failed to state claims (a) for declaratory and injunctive relief for allegedly failing to properly foreclose a deed of trust; (b) for supposedly violating the federal Fair Debt Collection Practices Act (FDCPA); (c) quiet title; (d) for supposedly violating the Fair Credit Reporting Act (FCRA); and (e) civil conspiracy.

In so ruling, **the Court held that District of Columbia law clearly does not require mediation prior to judicial foreclosure.**

A copy of the opinion is available at: [Link to Opinion.](#)

The borrower took out a loan in 2003 secured by a deed of trust on his home in Washington, D.C., but defaulted in 2012. The loan was assigned to the bank in 2013 by the original lender. The mortgagee filed a foreclosure action in the Superior Court for the District of Columbia, but the case was removed to federal court by the Internal Revenue Service, which was named as a party.

The borrower raised a number of counterclaims against the mortgagee. The trial court granted summary judgment in the mortgagee's favor and dismissed the borrower's counterclaims challenging the validity of the assignment of the loan and deed of trust. The borrower appealed.

The D.C. Circuit first addressed whether summary judgment was appropriate, finding that "[b]ecause [the borrower] provided no evidence to indicate the Bank is not the rightful holder of the Note, there is no dispute of material fact that the Bank holds the Note." The Appellate Court held that, because "D.C. law allows the holder of a note to enforce the deed of trust by judicial foreclosure, ... the district court properly entered summary judgment for judicial foreclosure."

The Court then rejected the borrower's argument that the mortgagee violated the National Housing Act, 12 U.S.C. § 1701x(c)(5), by not providing him with "notice of the 'availability of homeownership counseling'" and also violated D.C. law by not providing him with "notice of his right to 'foreclosure mediation.'"

The D.C. Circuit reasoned that the mortgagee's law firm provided the borrower with a letter "advising him of his default and of a telephone number to call for homeownership counseling," and the borrower "does not explain why this was insufficient notice."

The Court also disagreed that D.C. law "requires mediation prior to judicial foreclosure."

The D.C. Circuit refused to address the borrower's argument that the mortgagee violated the pooling and servicing and trust agreements for the loan at issue, because **"even a pro se complainant must plead factual matter that permits the court to infer more than the mere possibility of misconduct."**

The Court next rejected the borrower's FDCPA claim because that statute only applies to debt collectors, not creditors like the mortgagee here collecting its own debt.

The D.C. Circuit also rejected the borrower's quiet title claim because his argument that **the mortgagee "has no right to the property ... is contradicted by the Deed of Trust signed by [the borrower]."**

The Court affirmed the trial court's dismissal of the FCRA claim on the basis that "there is no private cause of action for the alleged violations," because the borrower did challenge the ruling in his brief and, therefore, "forfeited his claim."

Finally, the D.C. Circuit found that the trial court correctly dismissed the civil conspiracy claim because the borrower "failed to meet the heightened pleading requirements for fraud" by not providing any evidence supporting an inference that an illegal agreement existed among the alleged conspirators, the bank, "unknown new investors," and the mortgagee's attorney, to defraud the borrower.

Accordingly, the trial court's judgment in favor of the mortgagee was affirmed.