

ORIGINAL

IN THE SUPREME COUR OF OHIO

WELLS FARGO BANK, N.A.,

Plaintiff- Appellant,

v.

BRIAN T. HORN, *et al.*,

Defendants- Appellee.

Case No. 2013-1534

On Appeal from the Lorain County
Court of Appeals, Ninth Appellate
District

Court of Appeals
Case No. 12CA010230

BRIEF OF DEFENDANT-APPELLEE
BRIAN T. HORN

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RECORD)

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Wells Fargo Bank, N.A.*

Brian Horn
9800 Root Road
Columbia Station, Ohio 44028
(440) 409-3153

Pro Se

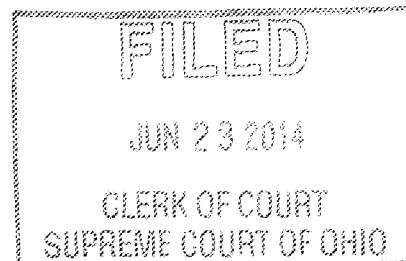
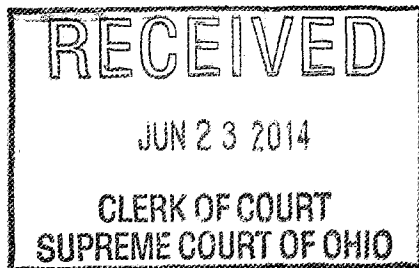


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TABLE OF AUTHORITIES

CFR 203.604

EVERY CASE SHOULD BE JUDGED
ON ITS OWN MERITS

I. INTRODUCTION

Appellee agrees this case presents issues of great public interest, but it is not about an earlier court ruling. This case is about Wells Fargo Bank, N.A. v. Brian T. Horn, a foreclosure case that should have never been created.

The Supreme Court of Ohio has already declined to hear this case. However, upon the filing of reconsideration, The Supreme Court of Ohio has decided to entertain the Plaintiff's request.

The simple and obvious issues seem to have been ignored and dismissed. This case has been reviewed by the Lorain County Court, multiple judges and magistrates, attorneys, the bankruptcy court, the appeals court, and now, The Supreme Court of Ohio. In addition, even *Schwartzwald* has been introduced in relation to this case.

The Ninth District Court of Appeals made the right choice by initially ordering this case to be dismissed.

This case has been continued upon reasons that appear to errors relating to Mr. Horn's bankruptcy filing. These errors were in result of Mr. Horn's prior attorney, Marc Dann, not including Mr. Horn's debt with First Merit Bank in the bankruptcy. Mr. Dann's error in the bankruptcy case has caused much discrepancy and has been a serious factor in Mr. Horn's foreclosure case.

II. STATEMENT OF FACTS

Due to a unique set of circumstances, Mr. Horn was delinquent on mortgage payments to Wells Fargo Bank, which resulted in a loan modification. The loan was in modification at the time that the foreclosure action was filed.

An independent foreclosure review with federal banking regulators found Wells Fargo accountable for deficient mortgage servicing and foreclosure processes. It was clear that the Ninth District Appeals Court found inadequate practices of the Lorain County Court.

The outcome of proceedings resulted in a letter from Wells Fargo Bank, Annual Disclosure Statement, which stated “prepayment for indebtedness due under your mortgage- \$56, 162.42”. This amount quoted in this letter is \$7,000 more than what Mr. Horn purchased the property for 20 years ago. It appears that 20 years of monthly payments towards the mortgage have been erased or dismissed.

An important factor in Wells Fargo v. Brian Horn case that must be taken into consideration is the fact that Mr. Horn’s bankruptcy case does not allow a fair or accurate presentation of his foreclosure appeal. The serious error that Horn’s attorney, Marc Dann, made by not including all of Mr. Horn’s debts with First Merit Bank is unacceptable and should not be dismissed or overlooked by the courts. Due to the errors in the foundation of Mr. Horn’s bankruptcy and foreclosure case, the current foreclosure case should not have been created until the errors were rectified.

III. ARGUMENT

Mr. Horn's four assignments of error:

1. The trial court erred in allowing inaccurate documents submitted as evidence. There are many words and numbers that have been "white-out" or omitted from the official loan documents. FHA numbers disappeared.
2. The trial court erred in finding Wells Fargo Bank made reasonable efforts to arrange face-to-face interview (CFR 203.604). If Wells Fargo wants the advantage of an FHA loan, they should be held accountable for FHA regulations. Wells Fargo bank claims to not have a servicing agent within 200 miles of Mr. Horn's home. At the same time, Wells Fargo bank claims to have made repeated attempts to arrange face-to-face meetings. At the same time, with the loan in modification, there was no reason to have a face-to-face meeting. Much like Lorain County Court, all business was conducted via telephone. Wells Fargo would not meet with the judge, so why would they meet with the appellee?
3. The trial court erred in granting a summary judgment, in which the judgment was not final or appealable. The trial courts claim of being "final and appealable" was determined by the Ninth District Court to not be final or appealable. Costs are taxed to Mr. Horn. In addition, the Lorain County Court set property Sheriff sales twice while a stay was in place.
4. Was Brian Horn's Attorney, Mr. Marc Dann acting in client's best interest? With Wells Fargo unable to produce reinstatement numbers, a filing of a Summary of Judgment was rendered. Mr. Dann came with high regard from legal aid (Save the Dream). Mr. Horn believed that Mr. Dann had the experience and knowledge to handle the case properly. While compiling a bankruptcy, Mr. Horn was approached and had a conversation with

one of Mr. Dann's associates. It was brought to Mr. Horn's attention from this associate that Mr. Dann was performing community service to appease the courts for a disciplinary action. It appears that Mr. Dann, while participating in this case for community service hours, did not take Mr. Horn's case seriously, as he carelessly overlooked Mr. Horn's debt with First Merit when filing the bankruptcy case.

While taking all information provided into consideration, the Ninth District Court of Appeals made the appropriate decision by ordering this case to be dismissed.

IV. CONCLUSION

Give the information and factual arguments that Mr. Horn has provided to the courts, The Ninth District's holding in this case was appropriate and fair. With the respect of the courts, Mr. Horn requests that the courts take his lack of formal law training into consideration when reviewing his case. This case is regarding his home that he has resided for 20 years, and he is committed to full cooperation with the courts in efforts to keep his home. It would be unjust if his home was foreclosed under the given circumstances and discrepancies in his bankruptcy and foreclosure case. Due to the evidence provided regarding inaccurate documentation submitted in Mr. Horn's bankruptcy and foreclosure case, the Ninth District's Opinion should stand.

Respectfully submitted,

Brian T. Horn- Appellee
9800 Root Road
Columbia Station, OH 44028
(440) 409-3153

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following via regular, U.S. mail, on this 20th day of June, 2014.

Scott A. King
THOMPSON HINE LLP
10050 Innovation Drive
Suite 400
Miamisburg, Ohio 45342-4934

Brian T. Horn

Paying Agent – Rust Consulting, Inc.
P.O. Box 8055
Faribault, MN 55021-9455



Independent Foreclosure Review

April 26, 2013

IMPORTANT PAYMENT AGREEMENT INFORMATION ENCLOSED

W



* 1 4 0 3 1 2 1 3 3 0 - 5 7 4 3 4 9 6 *

BRIAN T HORN
9800 ROOT RD
COLUMBIA STATION, OH 44028-9584



Your payment is enclosed.

Reference Number: 1403121330

Property Address:

9800 ROOT RD

COLUMBIA STATION OH 44028

Si usted habla español, tenemos representantes que pueden asistirle en su idioma.



Dear Brian T Horn,

You were recently sent a notice that you are eligible to receive a payment as a result of an agreement between federal banking regulators and Wells Fargo in connection with an enforcement action related to deficient mortgage servicing and foreclosure processes.

This letter includes your check. It also explains the amount of the payment, why you are receiving a payment, how to cash the check, and other important information and disclosures.

Your payment is: \$500.00.

Why you are receiving a payment

Earlier this year, Wells Fargo entered into an agreement with federal banking regulators—the Office of Comptroller of the Currency and the Board of Governors of the Federal Reserve System. This agreement resolved the Independent Foreclosure Review required by the regulators. Additional information about this agreement can be found at www.occ.gov and www.federalreserve.gov.

Regulators determined your payment amount based on the stage of your foreclosure process and other considerations related to your foreclosure.

How to cash the check

You must cash or deposit the check within 90 days, or the check will be void. All borrowers listed on the check must sign it to cash it.

**The payment amount is final.
There is no process to appeal the payment.**

Continued on reverse side



Wells Fargo Home Mortgage
MAC X7801-018
3476 Stateview Blvd
Fort Mill, SC 29715

April 20, 2010

Brian T Horn
Carol A Horn
9800 Root Rd
Columbia Station OH 44028

Dear Brian T Horn & Carol A Horn :

RE: Loan Number 1419910, Client 472

This letter will confirm our conversation where we agreed to a modification of your mortgage loan.

In order to complete the modification, we will need you to complete the required steps outlined below.

PLEASE COMPLETE REQUIRED NEXT STEPS (SIGNATURES and RETURNING DOCUMENTS):

- ___ Sign and acknowledge the enclosed Loan Modification Agreement.
- ___ Sign the Truth-in-Lending Statement, if enclosed with your Loan Modification Agreement.
- ___ Provide the payment in the amount of \$2,511.78, which will be applied towards the unpaid balances. Information about this payment amount is listed on the Loan Modification Settlement Statement as "Funds from Borrower".
- ___ Sign the notice of Special Flood Hazard Area (SFHA), if enclosed with Loan Modification Agreement.
- ___ Return ALL of the above documents along with the payment, if required, within ten (10) business days from the date of this letter in the enclosed, self-addressed, prepaid express mail envelope to the address provided below:
1000 Blue Gentian Rd, Ste. 300, MAC X9999-01N
Eagan, MN 55121

NOTE: All mortgagors need to sign their name as it is printed on the documents. If one of the mortgagors listed should NOT be required to sign the documents OR has a different name than what is listed on the documents, please provide the appropriate documentation that supports this change. Acceptable documents may include a death certificate, divorce decree, or marriage certificate.

LM550/NQO/1

FORBEARANCE AGREEMENT - TERMS

1. Currently, your loan is in default. The lender is waiving the default and in consideration of your extending forbearance for the period of 90 days, necessary that you indicate your understanding and acceptance of the terms of the forbearance agreement by immediately signing and returning this agreement.
2. This Agreement temporarily accepts reduced payments or maintains regular monthly payments as outlined in section 5 below. Upon successful completion of the Agreement, your loan will not be contractually current. If the installments may be less than the total amount due you may still have outstanding payments and fees. Your outstanding payments and fees will be reviewed for a loan modification. If approved for a loan modification, based on the lender's guidelines, this will satisfy the remaining due payments of your loan. The lender will send you a loan modification agreement. An additional contribution may be required.
3. The lender has no obligation to enter into any further agreement, and this Agreement shall not constitute a waiver of the lender's right to insist upon strict performance in the future.
4. All of the provisions of the Note and Security Instrument, except as herein provided, shall remain in full force and effect. Any breach of any provision of the Agreement or non-compliance with this Agreement, shall render the Agreement null and void. The lender, in its sole discretion and without further notice to you, may terminate this Agreement. If the Agreement is terminated, the lender may institute foreclosure proceedings according to the terms of the Note and Security Instrument. In the event of foreclosure, you may incur additional expenses of attorney's fees and foreclosure costs.

Each payment must be remitted according to the schedule below.

PLAN	DATE	AMT.	PLAN	DATE	AMT.
01	02/11/10	464.05 ✓	02	03/11/10	464.05 ✓
03	04/11/10	464.05			

636.00 ✓

6. There is no "grace period" allowance in this Agreement. All installments must be received on or before the agreed due date and made strictly in accordance with section 5 above. If any installment is not received on or before the respective due date, the Agreement will be void and the total delinquency, including fees, will be due immediately.
7. The total amount indicated on each installment must be remitted. In the event the total amount due of each payment is not received, the Agreement will be rendered null and void.

By signing this Agreement, I hereby consent to being contacted concerning this loan at any cellular or mobile telephone number I may have. This includes text messages, at no cost to me, and telephone calls including the use of automated dialing systems to contact my cellular or mobile telephone.

Mortgagor _____ Date _____
 Loan Number 472/1419910

Co-mortgagor _____ Date _____

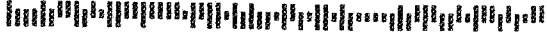
MODIFICATION

Wells Fargo Bank, N.A.
Return Mail Operations
Po Box 14411
Des Moines, IA 50306-3411

**Disclosure statement
annual disclosure
notice to mortgagor**

January 21, 2012

RE: Loan number: 1419910
FHA number: 412-352787



1AB 03518/003518/003518 0015 1 AGP8U4 472

BRIAN T HORN
CAROL A HORN
9800 ROOT RD
COLUMBIA STATION, OH 44028-9584

Notice: Section 329 of the Cranston Gonzales National Affordable Housing Act requires that mortgage companies shall annually provide to their customers a written disclosure statement which describes the requirements that the customer must fulfill upon prepayment of their mortgage. The following notice is not demanding prepayment of your mortgage, only notifying you of your right to do so. You do not need to respond.

Dear Mortgagor:

This notice is to advise you of requirements that must be followed to accomplish a prepayment of your mortgage, and to advise you of requirements you must fulfill upon prepayment to prevent accrual of any interest after the date of prepayment.

The amount listed below is the amount outstanding on the loan for prepayment of the indebtedness due under your mortgage. This amount is good through 02/01/12. (The amount provided is subject to further accounting adjustments. Also, any mortgage payments received or advances made by us before the stated expiration date will change the prepayment amount.)

\$56,162.42

You may prepay your mortgage at any time without penalty. However, in order to avoid the accrual of interest on any prepayment after the date of the prepayment, the prepayment must be received on the installment due date (the first day of the month). Otherwise, you may be required to pay interest on the amount prepaid through the end of the month.

If you have any questions regarding this notice, please call our Customer Service Department at 1-800-288-3212.

Please remember that the amount listed on this notice above may not correspond with your current principal balance. It may include interest and other charges associated with the payoff of your mortgage loan.

