

Summary of SC91880, *Fannie Mae v. My Truong*

Appeal from the Circuit Court of Jefferson County, Judge Ray Dickhaner

Argued and submitted Jan. 11, 2012; opinion issued March 6, 2012

Attorneys: My Quang Truong was represented by Alicia A. Campbell of Campbell Law LLC in St. Louis, (314) 588-8101, and John Campbell and Erich Vieth of The Simon Law Firm in St. Louis, (314) 241-2929; and Fannie Mae was represented by Thomas C. Walsh, John J. Schoemehl and Louis F. Bonarcorsi of Bryan Cave LLP in St. Louis, (314) 259-2000.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A homeowner appeals the grant of summary judgment to Fannie Mae on its unlawful detainer action (to remove him from the property). In a 6-1 decision written by Judge George W. Draper III, the Supreme Court of Missouri dismisses this action for lack of appellate jurisdiction. The homeowner failed to apply for a trial *de novo* (a new trial in the circuit court) prior to seeking relief in this Court, depriving this Court of authority to decide his claim. The right to appeal in Missouri is purely statutory, and if the statute gives no right to appeal, then no right exists.

In a dissenting opinion, Chief Justice Richard B. Teitelman disagrees that the homeowner was compelled or limited to applying for trial *de novo* over the normal course of appellate review. He writes separately to explain why the Court should hear the appeal of this case on the merits and reverse the trial court's judgment, alternatively allowing the homeowner to have a full trial before a jury or circuit judge.

Facts: My Truong purchased a house in 2006 in Imperial, Missouri, and encountered difficulty in making the payments in 2010. He entered into a loan modification agreement with his lender and then traveled to Vietnam for a month. While out of town, letters were sent to his Missouri residence regarding approval of the modification agreement, notices of default and notice of a trustee's sale of the house. Truong returned home to find the letters one day before the trustee's sale, at which Fannie Mae purchased the house. Truong remained living in the house, and Fannie Mae filed an action for unlawful detainer. At trial, the associate circuit division issued a 30-day stay to allow Truong to file an action in circuit court to challenge title to the house. Truong did not file any action in this time period, and the associate circuit division granted Fannie Mae's motion for summary judgment (judgment based solely on the briefs). Truong did not seek a trial *de novo* but rather appeals to this Court.

APPEAL DISMISSED.

Court en banc holds: This Court lacks jurisdiction over Truong's appeal. Pursuant to section 534.180.1, RSMo, appeals and applications for trial *de novo* in unlawful detainer actions are governed by chapter 512, RSMo. Pursuant to section 512.180.1, "any person aggrieved by a judgment in a civil case without a jury before an associate circuit judge ... shall have the right of a *de novo* in all cases tried ...," and section 512.180.2 states, "in all other contested civil cases tried with or without a jury before an associate circuit judge ... any person aggrieved by a judgment rendered in any such case may have an appeal upon that record to the appropriate appellate court." As such, section 512.180.1 requires application for trial *de novo* in the case of judgment of a civil case without

a jury before an associate circuit judge. A case is considered “tried” when all the issues in the case are disposed fully. Here, the associate circuit judge granted the motion for summary judgment, fully disposing of Truong’s unlawful detainer action and denying his other claims. Truong was required to apply for trial *de novo* instead of appeal.

Dissenting opinion by Judge Teitelman: The author disagrees that section 512.180.1 compelled Truong to exercise the right to trial *de novo* or limited him to that option. The statute granted a right that Truong declined to exercise in favor of appealing to this Court and raising substantial constitutional challenges. Section 534.210 violates due process by prohibiting property owners from disputing deciding factors in title ownership and asserting their own proof of title. The right to file a separate action contesting the validity of title is not a realistic alternative because plaintiffs in unlawful detainer actions likely already are facing financial struggles and do not have the means to afford a separate legal action. Truong was deprived of his right to a trial by jury by the associate circuit division granting summary judgment to Fannie Mae. Unlawful detainer actions are already summary in nature, and a trial appears to be the only way for homeowners in situations like Truong to prove their allegations.