

Summary of SC94152, Thomas Binkley, Harlene J. Binkley, Roland E. Sturhahn and Susan J. Sturhahn v. American Equity Mortgage Inc.

Appeal from the St. Louis County circuit court, Judge Tom DePriest Jr.

Argued and submitted September 24, 2014; opinion issued November 12, 2014

Attorneys: The property owners were represented by Robert Schultz III and Ronald J. Eisenberg of Schultz & Associates LLP in Chesterfield, (636) 537-4645; and American Equity was represented by David P. Stoeberl, Tina N. Babel and Lauren M. Wacker of Carmody MacDonald PC in St. Louis, (314) 854-8600.

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: Property owners appeal summary judgment (judgment on the court filings, without a trial) in favor of a mortgage company on their claims that, by preparing deeds of trust and promissory notes for them, the company unlawfully engaged in “law business;” violated the state’s merchandising practices act and was unjustly enriched. In a unanimous judgment written by Chief Justice Mary R. Russell, the Supreme Court of Missouri affirms the judgment. Because the property owners did not dispute that the mortgage company did not charge a separate fee or vary its fees for these actions, there were no disputed material facts, and the mortgage company was entitled to summary judgment as a matter of law.

Facts: Two sets of property owners refinanced their residential mortgages through American Equity Mortgage Inc. In association with each loan, the mortgage company prepared a settlement statement form itemizing the costs paid in association with obtaining a residential mortgage. For one loan, the origination charge was about \$2,321; for the other, it was \$2,238. The property owners sued the mortgage company. In one count, they alleged the company violated sections 484.010.2 and 484.020, RSMo, in procuring or assisting in drawing legal documents for valuable consideration. In a second count, the property owners allege the company engaged in law business, thereby committing an unlawful practice under the state’s merchandising practices act. In a third count, the property owners allege the company was unjustly enriched by charging for services it did not perform or did not perform lawfully. The circuit court granted judgment to the mortgage company on all three counts. The property owners appeal.

AFFIRMED.

Court en banc holds: (1) The circuit court did not err in granting the mortgage company summary judgment regarding the property owners’ claim under sections 484.010 and 484.020 because they are not entitled to recover under those sections. To constitute “law business” under section 484.010.2, legal documents must be prepared without the assistance of an independent licensed attorney “for valuable consideration.” The mortgage company admits it procured legal documents – promissory notes and deeds of trust – but alleged it did not charge consideration for doing so. Although the property owners denied this allegation, they did not demonstrate any specific facts showing there was a genuine issue for trial. Rule 74.04(c)(2) provides that a

response that fails to support its denial constitutes an admission of the truth of that fact. Further, the settlement statements' itemizations do not reflect any "document preparation" fee.

(2) Summary judgment in favor of the mortgage company regarding the property owners' merchandising practices act claim was proper because they failed to demonstrate they suffered an ascertainable loss of money or property as a result of an unfair practice. As noted in paragraph 1, the property owners admitted they were not charged a fee for preparation of legal documents.

(3) The trial court did not err in granting summary judgment in favor of the mortgage company regarding the property owners' unjust enrichment claim. Such a claim depends on the property owners having paid a fee directly for the preparation of legal documents. As they presented no evidence countering the company's assertion that it did not charge such a fee, there is no factual dispute as to whether the property owners conferred a benefit to the mortgage company.