

Summary of SC93769, *Shelby E. Watson v. Wells Fargo Home Mortgage Inc., et al.*

Appeal from the St. Louis circuit court, Judge Bryan L. Hettenbach

Argued and submitted April 2, 2014; opinion issued August 19, 2014

Attorneys: Watson was represented by Mitchell B. Stoddard of Consumer Law Advocates in St. Louis, (314) 692-2001, and Wells Fargo and Fannie Mae were represented by David T. Hamilton and John H. Kilper of Hazelwood & Weber LLC in St. Charles, (636) 947-4700.

Two parties filed briefs as friends of the Court. The attorney general was represented by Solicitor General James Layton and Bryan Bear of the attorney general's office in Jefferson City, (573) 751-3321. The National Consumer Law Center was represented by Dale K. Irwin and Gina Chiala of Slough Connealy Irwin & Madden LLC in Kansas City, (816) 531-2224; and Bernard E. Brown and Lee R. Anderson of The Brown Law Firm in Kansas City, (816) 283-3100.

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 woman appeals the summary judgment (judgment on the court filings, without a trial) granted to a mortgage company in her lawsuit claiming violations of the state's merchandising practices act, in chapter 407, RSMo. In a decision written by Chief Justice Mary R. Russell, the Supreme Court of Missouri affirms the judgment in part, reverses it in part and remands (sends back) the case. All seven judges agree summary judgment was not appropriate with respect to the wrongful foreclosure allegations. A lender's right to collect a loan is part of the sale of the loan and, therefore, is "in connection with" the sale and subject to the act. Four judges agree the loan modification negotiations were in contemplation of a new agreement and, therefore, were not "in connection with" the sale of the original loan and did not violate the act.

Judge George W. Draper wrote an opinion concurring in part and dissenting in part that was joined by two other judges. He would hold that, because the "sale" of a loan continues until the last service is performed or the loan is repaid and because the lender chose to renegotiate the terms of the loan as part of its bundle of services, the loan modification negotiations were "in connection with" the sale of the original loan.

Facts: Shelby Watson financed the purchase of a new home in 2006 with a loan that was serviced by Wells Fargo Home Mortgage Inc. When she became unable to make the monthly payments, she requested a loan modification. Watson alleges she accepted and Wells Fargo ratified a modification; Wells Fargo alleges the parties discussed a loan modification but never reached an agreement. Wells Fargo foreclosed on Watson's property and sold it to Fannie Mae. Watson sued Wells Fargo, claiming five violations of the state's merchandising practices act relating to the loan modification negotiations and to the alleged wrongful foreclosure. The court granted Wells Fargo's motion for summary judgment. Watson appeals.

AFFIRMED IN PART, REVERSED IN PART AND REMANDED.

Court en banc holds: (1) The merchandising practices act protects consumers by making unlawful the “act, use or employment by any person” of any unfair or deceptive practice “in connection with the sale or advertisement of any merchandise.” Under the act, an unlawful practice violates the act “whether committed before, during or after the sale” if it was made “in connection with” the sale. The act does not define when an unlawful act is “in connection with” a sale. In SC93951, *Conway v. CitiMortgage*, also decided today, this Court held that, when the operative transaction is the procurement of a loan, the “sale” is not complete when the lender extends the credit but continues throughout the life of the loan.

(2) Summary judgment was not appropriate with respect to Watson’s wrongful foreclosure allegations. In context of an alleged wrongful foreclosure, a lender’s right to collect a loan is part of the sale and, therefore, is “in connection with” the loan.

(3) The loan modification negotiations were not “in connection with” the sale of the loan. For the purposes of the act, a loan is a bundle of services. The extent of those services – the parties’ rights and obligations with respect to the loan – is fixed when the parties agree to the terms of the loan. In engaging in loan modification negotiations, Wells Fargo was not enforcing the terms of the original loan but rather was contemplating creating a new agreement. Its actions in the negotiation, therefore, were not “in connection with” the sale of the original loan and did not violate the act.

Opinion concurring in part and dissenting in part by Judge Draper: The author agrees that summary judgment was not appropriate with respect to Watson’s wrongful foreclosure allegations. He disagrees, however, with the holding regarding the loan modification negotiations, which he would hold were “in connection with” the original loan. In *Conway*, this Court held that, for the purposes of the merchandising practices act, a loan is an agreed-upon bundle of services being sold by the lender to the borrower, and the “sale” of the loan continues until the last service is performed or the loan is repaid. Wells Fargo had not performed the last service, Watson had not repaid the loan and Wells Fargo chose to renegotiate the financing terms of the loan as part of its bundle of services. As such, the “sale” of the original loan continued, as per *Conway*, throughout the loan modification process and any new agreement would have been “in connection with” the original loan.