MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE:

STEVEN AND RUTH MITCHELL, ET AL.

Appellant-Respondents

v.

RESIDENTIAL FUNDING CORP, ET AL.,

Respondent-Appellants

DOCKET NUMBERS **WD70210, WD70227, WD70244, and WD70263**

DATE: November 23, 2010

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Justine Elisa Del Muro, Judge

Appellate Judges:

Division Three: Thomas H. Newton, P.J., Gary D. Witt, J., and Stephen K. Willcox, Sp.J.

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MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STEVEN AND RUTH MITCHELL, ET AL., Appellant-Respondents, v.
RESIDENTIAL FUNDING CORP, ET AL., Respondent-Appellants

WD70210, WD70227, WD70244, and WD70263 Jackson County

Before Division Three Judges: Thomas H. Newton, P.J., Gary D. Witt, J., and Stephen K. Willcox, Sp.J.

The Mitchells obtained a second mortgage loan from Mortgage Capital Resource Corporation (MCR), paying roughly $3400 in closing costs and fees. MCR assessed similar types of fees for more than 300 other Missouri loans from 1998 to 2000. Residential, Household, and Wachovia (collectively, "Assignee Defendants") were the assignees of loans from MCR. MCR subsequently went bankrupt. The Mitchells brought a class action against Assignee Defendants and Homecomings, who processed Residential's loans, alleging that MCR had charged closing fees that were illegal under Missouri's Second Mortgage Loan Act (MSMLA), that Assignee Defendants were derivatively liable for MCR's conduct as its assignees, and that Defendants themselves had violated the MSMLA and were therefore directly liable. The trial court directed a partial verdict that the relevant loan fees were illegal and that Assignee Defendants were derivatively liable for MCR's violation of the MSMLA. At the close of the first phase of the bi-furcated trial, the jury awarded Plaintiffs the unauthorized fees and the past and future interest on their loans. After the second phase, the jury awarded $99 million in punitive damages. In response to post-trial motions, the trial court awarded Plaintiffs prejudgment interest on the loan fees but denied prejudgment interest on their interest payments. Defendants appeal, raising fifty-three points. Plaintiffs cross-appeal, raising two points.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED. Plaintiffs' motion for attorney fees is granted and remanded for determination.

Division Three Holds:

The MSMLA permits lenders to charge interest rates higher than Missouri's usury rate, provided they otherwise comply with its restrictions. The federal Home Ownership Equity Protection Act (HOEPA) creates a means for a plaintiff to seek relief from an assignee of a HOEPA loan for all claims (including state law claims) which the plaintiff could have brought against the original creditor.

Jurisdiction and Class Certification

Household and Wachovia contend that because the Mitchells' loan was held by Residential, the Mitchells lacked standing to assert claims against them and that their claims were not typical of the class. We do not agree because all of the class members' claims relied on common, essential factual and legal determinations as to MCR, its lending practices in Missouri, and the liability of its assignees.

Compensatory Damages

Defendants contend that the trial court erred in applying the MSMLA, directing a partial verdict, and in awarding compensatory damages. First, the MSMLA was applicable to Plaintiffs' claims. We reject Defendants' proffered interpretations of the MSMLA and its arguments of trial court error as incompatible with the legislative intent of the Act. Second, Defendants' documents conclusively showed that illegal loan fees were charged and HOEPA provides for Assignee Defendants to be liable for MCR's violation of the MSMLA. However, we agree with Defendants that the trial court could not properly direct a verdict against them under a "common law assignee liability." Defendants' liability must be predicated on either assignee liability for MCR's conduct through HOEPA or through their own violations of the MSMLA. Because liability under HOEPA was an alternative basis for the directed verdict, this finding does not affect the jury's award of compensatory damages.

On cross-appeal Plaintiffs argue the trial court erred in denying their motions to increase the past interest award against Homecomings and in denying prejudgment interest on the past interest awards. We uphold the jury's determination of past interest awarded against Homecomings. However, we agree with Plaintiffs that they were entitled to prejudgment interest on their past interest paid. We reverse the trial court's denial of prejudgment interest and remand for determination.

Punitive Damages

Defendants further contend the trial court erred in denying their motions as to punitive damages. We find Plaintiffs made a submissible case for punitive damages, Defendants had fair notice that their conduct could subject them to punitive damages, and that punitive damages are not redundant to the compensatory damages. However, we agree that Defendants could not be subjected to punitive damages for MCR's culpable conduct as MCR's assignees. Rather, a punitive damages award required the jury to find Defendants culpable for their own actions in violating the MSMLA. Because the jury was instructed in the disjunctive, it is impossible to ascertain whether the jury awarded punitive damages on a legally valid, or a legally invalid, ground. Consequently, we remand for a new trial as to punitive damages.

Opinion by: Thomas H. Newton, Presiding Judge November 23, 2010

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