

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION THREE

FRONTENAC BANK,)	No. ED97499
)	
Respondent/Cross Appellant,)	
)	Appeal from the Circuit Court
vs.)	of St. Louis County
)	
T.R. HUGHES, INC., SUMMIT POINTE,)	
L.C. , THOMAS R. HUGHES, AND)	Honorable Robert S. Cohen
CAROLYN A. HUGHES,)	
)	
Appellants/Cross-Respondents.)	FILED: September 25, 2012

Plaintiff Frontenac Bank ("Frontenac") sued Defendants/Cross-Appellants Summit Point, L.C. ("Summit"), T.R. Hughes, Inc. ("Homebuilder"), Thomas R. Hughes ("Thomas"), (collectively, "Defendants"), and Thomas's wife Carolyn Hughes ("Carolyn") to recover on seven promissory notes and certain related guaranty agreements. The circuit court granted summary judgment in favor of Frontenac with respect to its claims against Defendants, from which Defendants now appeal. Additionally, after evidence was presented at trial, the circuit court found in favor of Carolyn, granting her equitable relief based on her affirmative defense that Frontenac violated the Equal Credit Opportunity Act, 15 U.S.C. § 1691 et seq. ("ECOA"), with respect to Frontenac's claims against her. From this judgment, Frontenac now appeals.

AFFIRMED IN PART; REVERSED AND REMANDED IN PART.

Division Three Holds: Based on the Missouri Supreme Court's decision in First Bank v. Fischer & Frichtel, Inc., 364 S.W.3d 216 (Mo. banc 2012), the circuit court did not err in awarding judgment as a matter of law regarding the deficiency balances or a breach in conducting the foreclosure sales. However, the issues of Defendants' insolvency and Frontenac's good faith belief for their insecurity are genuinely disputed and not well-defined for purposes of a summary judgment motion. Thus, we find the circuit court erred in granting summary judgment on Frontenac's Petition seeking recovery under the underlying promissory notes and personal guarantees of Thomas, Homebuilder and Summit. Defendants' second point on appeal is granted and the circuit court's decision is reversed and remanded for further proceedings regarding the circuit court's ruling of summary judgment in favor of Frontenac on its claims arising from the loan agreements, including promissory notes and guaranty agreements with Defendants.

Regarding Frontenac's appeal from the circuit court's ruling in favor of Carolyn and against Frontenac based on the Carolyn's ECOA affirmative defense on Counts VI, IX, XIII, and XVI of Frontenac's Petition, we find no error. On *de novo* review,

Frontenac's first, second, and sixth point raising questions of law under the ECOA are denied because the circuit court's ruling is supported by substantial evidence and did not erroneously declare or misapply the law. The judgment of the circuit court is affirmed with respect to its ruling in favor of Carolyn and against Frontenac.

Opinion by: Roy L. Richter, P.J.
Robert G. Dowd, Jr., J., and Angela T. Quigless, J., concur

Attorneys for Appellant: R. Thomas Avery, Douglas A. Stockenberg

Attorneys for Respondent: Ronald A. Norwood, Larry E. Parres

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT.
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