TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-15-00339-CV

Ben Melton, Appellant

v.

CU Members Mortgage, a division of Colonial Savings, F.A.; and First Western Title Co., Appellees

FROM THE DISTRICT COURT OF TOM GREEN COUNTY, 340TH JUDICIAL DISTRICT NO. C130102C, HONORABLE JAY K. WEATHERBY, JUDGE PRESIDING

M E M O R A N D U M O P I N I O N

The controversy giving rise to this appeal centers on a home-equity loan obtained by appellant Ben Melton, his ensuing alleged default, and his subsequent efforts to resist foreclosure under the accompanying security instrument. Melton sued the lender (appellee CU Members Mortgage), the title company (appellee First Western), and a third defendant,[1] asserting claims and theories centering on alleged constitutional noncompliance in the loan's origination. Relying principally on a limitations defense, appellees obtained summary judgment that Melton take nothing on his claims. In turn, appellees also obtained summary judgment on counterclaims establishing

[1] The third defendant was an appraiser involved in the loan's origination, Bob Mims. Mims ultimately obtained a take-nothing judgment as to Melton's claims against him, plus sanctions against both Melton and Melton's then-attorney, James C. Mosser. Melton has not challenged these portions of the judgment, but Mosser has filed a separate appeal to contest the sanctions award against him, which has been docketed as Cause No. 03-15-00365-CV.

their right to foreclose under the security instrument, plus an award of attorney's fees. After these rulings were merged into a final judgment, Melton appealed, arguing chiefly (as he had in opposing summary judgment) that his claims alleging constitutional defects in the loan were not subject to any limitations defense.

In the interim, the Texas Supreme Court has essentially agreed with Melton's position regarding limitations, holding in *Wood v. HSBC Bank USA, N.A.* that "liens securing constitutionally noncompliant home-equity loans are invalid until cured and thus not subject to any statute of limitations."[2] Melton has filed supplemental briefing urging that *Wood* entitles him to the appellate relief he seeks. Appellees, likewise, have filed a "motion to remand" in which they acknowledge *Wood*, request reversal of the district court's final judgment, and "further recognize that the costs on appeal are to be taxed against them." Accordingly, in light of *Wood*, we reverse the judgment of the district court (which, again, did not have the benefit of *Wood* at the time it rendered that judgment) and remand for further proceedings.

Bob Pemberton, Justice

Before Chief Justice Rose, Justices Pemberton, and Bourland

Reversed and Remanded

Filed: February 22, 2017

[2] 505 S.W.3d 542, 2016 Tex. LEXIS 383, at *2 (Tex. May 20, 2016); *see id.* at *10–20.