IN THE SUPREME COURT OF THE STATE OF DELAWARE

U.S. BANK NATIONAL f/k/a FIRST BANK NATIONAL ASSOCIATION TR U/A dated June 1, 1997, solely in its capacity as Trustee for EQCC HOME EQUITY TRUST 1997-2, ASSIGNEE OF EQUI CREDIT CORPORATION OF AMERICA, ASSIGNEE OF EQUI CREDIT CORPORATION OF DE,	)	No. 268, 2006
Plaintiff Below, Appellant,	)	Court Below: Superior Court of the State of Delaware in and for New Castle County
v.	)	C.A. No. 03L-09-142
POSIE H. SWANSON,	)	
Defendant Below, Appellee.	)	

Submitted: October 25, 2006
Decided: December 27, 2006

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices:

O R D E R

This 27th day of December, 2006, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

(1) U.S. Bank National appeals the Superior Court's judgment that $54,656.16 satisfied the mortgage of record of 140 Winder Road, New Castle, Delaware. U.S. Bank argues that the trial judge incorrectly applied the doctrine of estoppel in this case. Because the trial judge's finding that the property buyer

reasonably relied on the conduct of U.S. Bank when he purchased the property is supported by the record, we affirm the Superior Court's judgment.

(2) Appellee, Posie Swanson, purchased 140 Winder Road, New Castle, Delaware in 1979. On March 21, 1997, Swanson refinanced this property with EquiCredit. EquiCredit later assigned the debt and mortgage to U.S. Bank. On September 26, 2003, Swanson sold the property to Meyer & Meyer (Meyer). Earlier that same day, Meyer's attorney requested a mortgage payoff quote and the law firm of Draper & Goldberg faxed him a Validation of Debt Notice Pursuant to 15 U.S.C. § 1692 from the EquiCredit mortgage department. The Notice indicated that the amount of debt was $50,433.01, as of September 17, 2003. The Notice also stated that the amount should "not be construed as a payoff statement as the debt continues to accrue interest, fees and costs on a daily basis." EquiCredit stated that the per diem interest charge was $12.81. In response to the Notice, Meyer deposited $50,676.40 in escrow that day.

(3) Without Meyer's knowledge, EquiCredit filed a foreclosure action on September 30, 2003. At the time of their September 26th communications, the EquiCredit mortgage department did not know that EquiCredit had filed the action. The amount EquiCredit demanded in the foreclosure action was inconsistent with the amount their own mortgage department cited in the "Notice." On October 6, 2003, EquiCredit faxed Meyer a payoff of $59,787.97. Confused by the

discrepancies between the "Notice" and the faxed "payoff," Meyer's attorney requested that EquiCredit clarify the additional charges. EquiCredit, however, did not respond.

(4) On November 17, 2003, Meyer requested a revised payoff quote. Again, EquiCredit did not respond. On December 3, Meyer filed a report with the Department of Financial Services for the State of Florida, alleging that EquiCredit had failed to respond to his repeated requests for information in a timely manner. On that same day, EquiCredit sent a payoff quote of $68,147.74 to Swanson, but not to Meyer. On December 30, Meyer sent EquiCredit a check for $54,656.16 based on the numbers in the "Notice" the mortgage department provided on September 26. EquiCredit returned the check to Meyer with a letter dated January 8, 2004.

(5) On February 19, 2004, Meyer filed a motion to satisfy the judgment in the Superior Court and requested that the court declare $54,615.16 to be a sufficient payment to satisfy the mortgage. A Superior Court judge held a hearing on March 5, 2004. The judge denied the motion to satisfy without prejudice and ordered that U.S. Bank, EquiCredit's assignee, file a payoff amount with the court by March 22, 2004. U.S. Bank did not file the payoff quote until May 24, 2004, and stated that the quote that it did file was not "the final breakdown." U.S. Bank never filed "the final breakdown" with the Superior Court.

(6) On September 24, 2004, the Superior Court notified U.S. Bank that the foreclosure action would be dismissed pursuant to Superior Court Rule 41(e) because of six months of inactivity. When U.S. Bank did not respond, a judge dismissed the case on November 16, 2004. On November 8, 2005, nearly a year after the Superior Court dismissed the case, U.S. Bank filed a motion to vacate the judgment. A judge granted the motion to vacate and allowed the parties to provide supplemental memorandums on the motion to satisfy the mortgage. On May 1, 2006, a judge granted Meyer's motion to satisfy based on the doctrine of equitable estoppel.

(7) U.S. Bank argues that the trial judge erred when he found that Meyer met the reliance requirement of equitable estoppel because the disclaimer language contained in the September 26, 2003, Notice provided that the Notice should "not be construed as a payoff statement as the debt continues to accrue interest, fees and costs on a daily basis" thus rendering Meyer's reliance on the Notice unreasonable.

(8) The doctrine of equitable estoppel entails mixed questions of law and fact.[1] We review legal questions de novo.[2] We will not disturb the trial judge's factual findings if they are supported by the record and are not clearly wrong.[3]

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1 *Am. Family Mortgage Corp. v. Acierno*, 640 A.2d 655, 1994 WL 144591, at *4 (Del. 1994).

2 *Id.*

3 *McAllister v. State*, 807 A.2d 1119, 1123 (Del. 2002).

Because U.S. Bank disputes the trial judge's finding that the evidence satisfies the elements of estoppel, we review the matter to determine if the record adequately supports this finding.

(9) Equitable estoppel applies "when a party by his conduct intentionally or unintentionally leads another, in reliance upon that conduct, to change position to his detriment."[4] "To establish estoppel, it must be shown that the party claiming estoppel lacked knowledge of the truth of the facts in question; relied on the conduct of the party against whom estoppel is claimed; and suffered a prejudicial change of position as a result of his reliance."[5] Furthermore, the "reliance upon the conduct . . . must be reasonable and justified under the circumstances."[6] U.S. Bank challenges only the reasonableness of Meyer's reliance.

(10) The record shows that Meyer reasonably relied on the *$50,433.01* Notice plus *per diem* that would pay off the mortgage. On September 26, 2003, when Meyer requested a payoff quote from EquiCredit, EquiCredit's agent, the law firm of Draper & Goldberg, faxed Meyer a Notice pursuant to the Fair Debt Collection Act, 15 U.S.C. § 1692, citing a payoff of $50,676.40. The Notice was provided pursuant to the Fair Debt Collection Act, which prohibits giving "the

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4 *Dep't of Natural Res. and Envtl. Control v. Front St. Prop.*, 808 A.2d 1204, 2002 WL 31432384, at *5 (Del. 2002).

5 *Id.*

6 *Id.*

false representation of the character, amount, or legal status of any debt."[7] The Notice appeared on its face to be unequivocal, despite the disclaimer, and the title of the Notice and the fact that EquiCredit's law firm sent the Notice would invite reliance. EquiCredit stated that the per diem interest charge was $12.81 and provided no other payoff figure before the September 26, 2003, real estate closing. EquiCredit provided two additional payoff statements in October and December, but when Meyer requested clarification for the discrepancy, neither EquiCredit, its agent, nor U.S. Bank responded. For these reasons, the trial judge properly found that U.S. Bank is estopped from recovering any additional payoff costs on the mortgage.

(11) We are satisfied that the record supports the trial judge's finding that Meyer's reliance upon U.S. Bank's conduct was reasonable.

NOW, THEREFORE, IT IS ORDERED that the Superior Court's judgment is **AFFIRMED**.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

[7] 15 U.S.C. § 1692e(2)(A) (2000).