

DA 18-0312

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 15N

U.S. BANK NATIONAL ASSOCIATION
TRUSTEE UNDER POOLING AND
SERVICING AGREEMENT DATES AS
OF SEPTEMBER 1, 2005, WACHOVIA
MORTGAGE LOAN TRUST MORTGAGE
LOAN ASSET-BACKED CERTIFICATES,
SERIES 2005-WMCI,

Plaintiff and Appellee,

v.

JOHN JENKINS, CANDACE JENKINS,
and/or ALL UNKNOWN OCCUPANTS,

Defendants and Appellants.

APPEAL FROM: District Court of the Fourth Judicial District,
In and For the County of Missoula, Cause No. DV 17-1212
Honorable James B. Wheelis, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

John Jenkins, Self-Represented, Missoula, Montana

Candace Jenkins, Self-Represented, Missoula, Montana

For Appellee:

Paul J. Lopach, Bryan Cave Leighton Paisner LLP, Denver, Colorado

Submitted on Briefs: December 12, 2018
Decided: January 22, 2019

Filed:


Clerk

Justice James Jeremiah Shea delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 John and Candace Jenkins appeal the Order of the Fourth Judicial District Court, Missoula County, granting U.S. Bank's Motion for Summary Judgment on an unlawful detainer action. We affirm.

¶3 The facts of this matter are detailed in this Court's two previous opinions regarding the Jenkins foreclosure.¹ Despite our rulings in favor of U.S. Bank, the Jenkins refuse to vacate their foreclosed property. Our previous opinions clearly established that U.S. Bank properly foreclosed and owns the property and, therefore, U.S. Bank is entitled to judgment because the Jenkins are unlawfully detaining the property by refusing to vacate. *See* § 70-27-108, MCA; *see also* M. R. Civ. P. 56(c)(3); *Estate of Donald v. Kalispell Reg'l Med. Ctr.*, 2011 MT 166, ¶ 16, 361 Mont. 179, 258 P.3d 395 (citation omitted) ("Summary judgment is appropriate only when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law."). Moreover, *res judicata* bars the Jenkins's additional arguments seeking to attack the underlying foreclosure. *See Baltrusch v. Baltrusch*, 2006 MT 51, ¶¶ 15-16, 331 Mont. 281, 130 P.3d 1267 (citations omitted).

¹ *Jenkins v. U.S. Bank, et al.*, No. DA 16-0732, 2017 MT 194N, ¶¶ 3-4, 2017 Mont. LEXIS 484; *Jenkins v. U.S. Bank, et al.*, No. DA 13-0838, 2014 MT 229N, ¶¶ 3-9, 2014 Mont. LEXIS 482.

The District Court did not err by granting U.S. Bank's Motion for Summary Judgment. See M. R. Civ. P. 56(c)(3); *Estate of Donald*, ¶ 16.

¶4 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. We affirm.

/S/ JAMES JEREMIAH SHEA

We concur:

/S/ LAURIE McKINNON
/S/ DIRK M. SANDEFUR
/S/ BETH BAKER
/S/ JIM RICE