

[Cite as *Wells Fargo Bank, N.A. v. Isaacs*, 2010-Ohio-5811.]

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

WELLS FARGO BANK, N.A.,	:	APPEAL NO. C-100111
	:	TRIAL NO. A-0806675
Plaintiff-Appellant,	:	
	:	<i>DECISION.</i>
vs.	:	
TONY N. ISAACS,	:	
	:	
Defendant,	:	
	:	
ALFREDA ISAACS,	:	
	:	
Defendant-Appellee,	:	
	:	
and	:	
	:	
WACHOVIA BANK OF DELAWARE,	:	
N.A., f.k.a. FIRST UNION NATIONAL	:	
BANK OF DELAWARE,	:	
	:	
Defendant.	:	

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: December 1, 2010

Thompson Hine, LLP, Scott A. King, and Victoria L. Nilles, for Plaintiff-Appellant,

Legal Aid Society of Southwest Ohio, LLC, Noel M. Morgan, Elizabeth Tull, and Steven Sharpe, for Defendant-Appellee.

Please note: This case has been removed from the accelerated calendar.

SUNDERMANN, Judge.

{¶1} Wells Fargo Bank, N.A., appeals the trial court’s judgment that denied its motion for summary judgment and granted summary judgment to Alfreda Isaacs. Because Wells Fargo did not comply with the regulations promulgated by the United States Department of Housing and Urban Development (“HUD”) in its foreclosure action against Isaacs and her former husband, Tony, we affirm the judgment of the trial court.

{¶2} In 1998, the Isaacses executed a federally insured promissory note and mortgage for property that they owned at 5510 Section Road in Cincinnati, Ohio. The note and mortgage, which were originally held by Old Kent Mortgage Company, were assigned to Wells Fargo in 2008. According to Wells Fargo, the Isaacses defaulted on the note, and Wells Fargo elected to accelerate the remaining balance. Wells Fargo filed a complaint in foreclosure, seeking judgment against the Isaacses on the note.

{¶3} Wells Fargo and Alfreda Isaacs filed opposing motions for summary judgment.¹ Following a hearing, a magistrate concluded that Wells Fargo had not complied with HUD requirements before filing its foreclosure action and granted summary judgment in favor of Isaacs. The magistrate denied Wells Fargo’s motion for summary judgment. After a hearing on Wells Fargo’s objections, the trial court adopted the magistrate’s decision and entered judgment accordingly. This appeal followed.

{¶4} Wells Fargo’s sole assignment of error is that the trial court erred when it denied Wells Fargo’s motion for summary judgment and granted Isaacs’s motion for summary judgment.

¹ Tony Isaacs gave up his interest in the property as part of an agreed property settlement in the Isaacses’ divorce case.

{¶5} Summary judgment is proper when (1) there remains no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion, and with the evidence construed in favor of the party against whom the motion is made, that conclusion is adverse to that party.² We review the trial court’s decision to grant summary judgment de novo.³

{¶6} At issue in this case are the regulations promulgated by HUD. Wells Fargo, as the holder of the note, was required to comply with HUD regulations before instituting foreclosure proceedings against Isaacs.⁴ Wells Fargo alleged that, in January 2008, it had sent Isaacs a notice entitled “FHA Interview Request” in which Wells Fargo requested a meeting with Isaacs to discuss her default on the loan. The notice invited Isaacs to contact Wells Fargo at a toll-free number to discuss her financial situation. Isaacs acknowledged that she had received the notice, but she maintained that she had not received a certified letter and that Wells Fargo had not made an effort to meet with her in person.

{¶7} Under the applicable HUD regulation, Section 203.604, Title 24, C.F.R., a “mortgagee must have a face-to-face interview with the mortgagor, or make a reasonable effort to arrange such a meeting, before three full monthly installments due on the mortgage are unpaid[.]” The regulation further provides that “[a] reasonable effort to arrange a face-to-face meeting with the mortgagor shall consist at a minimum of one letter sent to the mortgagor certified by the Postal Service as having been dispatched.”⁵ But “[a] face-to-face meeting is not required if * * * [t]he mortgaged property is not within 200 miles of the mortgagee, its servicer, or a branch office of either.”⁶

² Civ.R. 56(C); *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 364 N.E.2d 267.

³ *Doe v. Shaffer*, 90 Ohio St.3d 388, 390, 2000-Ohio-186, 738 N.E.2d 1243.

⁴ See Section 203.606, Title 24, C.F.R.

⁵ Section 203.604(d), Title 24, C.F.R.

⁶ *Id.*

{¶8} Wells Fargo did not dispute that it had not sent a certified letter to Isaacs in an effort to arrange a face-to-face meeting. Nor did Wells Fargo challenge Isaacs's assertion that Wells Fargo had several branch offices within a 200-mile radius of her mortgaged property. Rather, Wells Fargo contended that because it did not have a branch office with competent servicing personnel within 200 miles of the property, it was not required to have a face-to-face meeting with Isaacs.

{¶9} Despite the fact that the regulation refers only to "branch office," Wells Fargo urges us to interpret the term as meaning "branch office with servicing personnel." Wells Fargo argues that, under case law from the United States Supreme Court, where a regulation is ambiguous, the court should look to the agency's interpretation of its regulations.⁷ To this end, Wells Fargo points to various HUD statements in its handbooks and online information that indicate that HUD interprets the regulation to mean that a face-to-face meeting is required only if the mortgagor's property is within 200 miles of a servicing office.

{¶10} But we are persuaded by the decision of the United States District Court for the Eastern District of Virginia in which the court also considered whether "branch office" in Section 203.604, Title 24, C.F.R., means "service branch office."⁸ In that case, the court distinguished between an agency interpreting the statute that it is administering and an agency interpreting the regulations that it promulgates.⁹ While acknowledging that an agency's interpretation of its regulation is entitled to due deference, the court concluded that that deference applies only if the regulation is ambiguous.¹⁰ The court further concluded that the regulation at issue was not ambiguous.¹¹ We agree. This court need not look to external sources to define the

⁷ See *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.* (1984), 467 U.S. 837, 104 S.Ct. 2778; *Coeur Alaska, Inc. v. Southeast Alaska Conservation Council* (2009), ___ U.S. ___, 129 S.Ct. 2458.

⁸ *Kersey v. PHH Mtge. Corp.* (E.D.Va.2010), 682 F.Supp.2d 588.

⁹ *Id.* at 602.

¹⁰ *Id.* at 601-602.

¹¹ *Id.* at 602-603.

regulation's terms. The definition of branch office is unambiguous. Wells Fargo itself acknowledged that it had branch offices within 200 miles of Isaacs's property. We conclude that the regulation unambiguously required Wells Fargo to make a reasonable attempt to schedule a face-to-face meeting with Isaacs.

{¶11} While not conceding its argument regarding the definition of "branch office" in the regulation, Wells Fargo argues for the first time on appeal that, even if it did not comply with the regulations, that noncompliance was not a bar to its foreclosure action against Isaacs. But Wells Fargo did not raise this issue in its objections to the magistrate's decision. We conclude therefore that the issue has been waived for appellate review.¹² And even if Wells Fargo had properly raised the issue below, we conclude that, under the HUD regulations, Wells Fargo could not commence foreclosure proceedings against Isaacs until it had complied with the regulations.¹³ The trial court properly granted summary judgment to Isaacs. The sole assignment of error is overruled, and we therefore affirm the judgment of the trial court.

Judgment affirmed.

CUNNINGHAM, P.J., and MALLORY, J., concur.

Please Note:

The court has recorded its own entry this date.

¹² Civ.R. 53(D)(3)(b)(iv).

¹³ See Section 203.606(a), Title 24, C.F.R.; Section 203.604, Title 24, C.F.R. See, also, *Washington Mut. Bank v. Mahaffey*, 154 Ohio App.3d 44, 2003-Ohio-4422, 796 N.E.2d 39.