2014 PA Super 82

MARY E. GLOVER, INDIVIDUALLY AND ON BEHALF OF OTHER SIMILARLY SITUATED FORMER AND CURRENT HOMEOWNERS IN PENNSYLVANIA, Appellant v. UDREN LAW OFFICES, P.C., A NEW JERSEY DEBT COLLECTOR, Appellee	:	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 938 WDA 2012

Appeal from the Order June 13, 2012,
Court of Common Pleas, Allegheny County,
Civil Division at No. GD 11-018015

EDELLA JOHNSON (A/K/A EDELLA ROBINSON, A/K/A EDELLA ROBINSON JOHNSON), ERIC JOHNSON, INDIVIDUALLY AND ON BEHALF OF OTHER SIMILARLY SITUATED FORMER AND CURRENT HOMEOWNERS IN PENNSYLVANIA, Appellants v. PHELAN HALLINAN & SCHMIEG, LLP, Appellee	:	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1131 WDA 2012

Appeal from the Order entered July 17, 2012,
Court of Common Pleas, Allegheny County,
Civil Division at No. GD 12-005395

BEFORE: DONOHUE*, SHOGAN and WECHT, JJ.

*Writing of the majority opinion was reassigned to this author on March 17, 2014.

OPINION BY DONOHUE, J.: FILED: April 23, 2014

In these appeals, Mary E. Glover, individually and on behalf of a similarly situated class ("Glover"), and EdElla and Eric Johnson, individually and on behalf of a similarly situated class ("the Johnsons"), appeal from the orders of court sustaining preliminary objections filed by Udren Law Offices, P.C. ("Udren") and Phelan Hallinan & Schmieg, LLP ("Phelan") and dismissing the appellants' complaints with prejudice. We affirm.

At the outset, we explain our decision to address these appeals together. The claims raised by Glover and Johnson are based on similar facts, raise claims alleging the same violations of the same laws, and name the law firm that acted as foreclosure counsel for their mortgagee as defendants. Furthermore, and more to the point, the Johnsons agreed in the trial court that this Court's resolution of the issues raised in Glover's case would control the outcome of their case. ***See*** Trial Court Order, 7/16/12 (sustaining Phelan's preliminary objections, dismissing the Johnsons' complaint and stating that "parties agree that ***Glover v. Udren*** [] governs this litigation."); Trial Court Order, 9/4/12 ("[B]oth parties agree that this case is governed by my [m]emorandum and [o]rder dated June 13, 2012 entered in ***Glover v.*** [***Udren***] ... The ***Glover*** ruling is on appeal."). For

these reasons, we have elected to address these appeal together and we address only the claims raised by Glover.[1]

We begin with a summary of the relevant factual history, as set forth by the trial court:

> On August 2, 2002, [Glover] entered into a mortgage transaction with Washington Mutual Bank ('WaMu'). On August 18, 2005, [Glover's] mortgage was in default and she was told she owed $551.08. On December 1, 2005, [Glover] and WaMu entered into a forbearance agreement. The agreement stated that on 'April 1, 2006, we will reevaluate your application for assistance. If you do not have evidence of full time employment at that time, we will have to deny your application[.]' On March 14, 2006, WaMu denied a loan workout.
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> On April 10, 2006[,] [Udren], as counsel for WaMu filed a Complaint in Mortgage Foreclosure. The foreclosure complaint in paragraph [six] asked for 'Court Costs (anticipated, excluding Sheriff's Sale costs)' of $280.00 and 'Attorneys Fees (anticipated and actual to 5% of principal)' in the amount of $1,250.00.
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> On June 7, 2006, WaMu 'flip-flopped' and offered [Glover] a Loan Modification Agreement under which, beginning August 1, 2006, [Glover] would begin to again make payments but in an increased amount. [According to the allegations pled in Glover's complaint, in the June 7, 2006 letter, WaMu added $2,237.73 to Glover's principal balance and charged her $806.45 for delinquent interest and $1,431.19 for 'escrow advance/set up.' WaMu also indicated that Glover owed $3,696 for 'foreclosure

[1] Additionally, although Glover is proceeding in her own right and on behalf of similarly situated individuals, for clarity and ease of reference we will refer only to Glover.

> fees and costs, and demanded payment of the foreclosure fees and costs. Glover did not remit this amount, but began making payments to WaMu.]
>
> The loan was transferred to Wells Fargo on December 1, 2006. On January 4, 2008, [Glover] and Wells Fargo entered into a loan modification/restructure and 'it was mutually agreed that a contribution of $1,492.39 would be required, which will be applied toward the delinquency.'
>
> This Loan Modification Agreement states that the unpaid principal balance as of February 4, 2008 is $9,508.36 and the modified principal balance is $12,152.02. ... . [Glover] made payments in accordance with the loan modification agreement.

Trial Court Opinion, 6/13/12, at 1-3 (citation to Glover's complaint omitted).

On June 9, 2008, Glover commenced this action in state court against WaMu, Wells Fargo, and Udren. She alleged violations of the Loan Interest and Protection Act ("Act 6"),[2] 41 P.S. § 101 *et seq.*; the Uniform Trade

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[2] This statute is commonly referred to as Act 6 as it was enacted as the "Act of January 30, 1974 (P.L.13, No.6)." Act 6 has been amended various times, most recently in 2008. S.B. 483, 192d Gen. Assemb., Reg. Sess. (Pa. 2008). The preamble to Act 6 describes it as follows:

> An Act regulating agreements for the loan or use of money; establishing a maximum lawful interest rate in the Commonwealth; providing for a legal rate of interest; detailing exceptions to the maximum lawful interest rate for residential mortgages and for any loans in the principal amount of more than fifty thousand dollars and federally insured or guaranteed loans and unsecured, uncollateralized loans in excess of thirty-five thousand dollars and business loans in excess of ten thousand dollars; providing protections to debtors to whom loans are made including the

Practices and Consumer Protection Law ("UTPCPL"), 73 P.S. § 201-1, *et seq.*; the Fair Credit Extension Uniformity Act ("FCEUA"), 73 P.S. § 2270.1, *et seq.*; and the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, *et seq.* The case was removed to the Western District of Pennsylvania, where the parties agreed to the dismissal of Glover's claims under Act 6 and the UTPCPL without prejudice to her right to pursue them in state court.

On August 31, 2011, Glover raised these statutory claims in a complaint filed in the Court of Common Pleas of Allegheny County. Specifically, Counts I–IV of the complaint alleged violation of section 406 of Act 6 and Counts V-IX alleged violations of the UTPCPL. ***See*** Complaint, 8/31/11, at 17-27. Udren filed preliminary objections in response thereto, demurring as to each count raised in the complaint. Preliminary Objections,

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> provision for disclosure of facts relevant to the making of residential mortgages, providing for notice of intention to foreclose and establishment of a right to cure defaults on residential mortgage obligations, provision for the payment of attorney's fees with regard to residential mortgage obligations and providing for certain interest rates by banks and bank and trust companies; clarifying the substantive law on the filing of an execution on a confessed judgment; prohibiting waiver of provisions of this act, specifying powers and duties of the secretary of banking, and establishing remedies and providing penalties for violations of this act.

Act of Jan. 30, 1974, P.L. 13, No. 6.

10/21/11, at 3-9. The trial court heard argument on Udren's preliminary objections on February 2, 2012 and on June 13, 2012, it sustained the preliminary objections and dismissed Glover's complaint with prejudice.[3]

With that background, we turn our attention to the issues raised on appeal:[4]

> 1. Did [Glover] (a homeowner) plead viable claims against [Udren] (a debt collector), under Act 6?
>
> 2. Did [Glover] plead viable claims against [Udren] under the UTPCPL?

Glover's Brief at 2. Although not explicit in Glover's statement of questions, we are mindful that she is challenging the trial court's ruling on Udren's preliminary objections. When reviewing a challenge to an order sustaining preliminary objections, we recognize that

> [t]he impetus of our inquiry is to determine the legal sufficiency of the complaint and whether the pleading would permit recovery if ultimately proven. This Court will reverse the trial court's decision regarding preliminary objections only where there has been an error of law or abuse of discretion. When sustaining the trial court's ruling will result in the denial of claim or a dismissal of suit, preliminary

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[3] The trial court did not order the filing of a statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b), nor did it author an opinion pursuant to Pa.R.A.P. 1925(a).

[4] The Johnsons phrased the questions presented on appeal differently, parsing their issues into five, rather than two, questions for our review. Johnsons' Brief at 2. To the extent that the Johnsons have included issues beyond those presented in Glover's appeal, we conclude that they are waived, as they agreed to be bound by the resolution of Glover's appeal.

> objections will be sustained only where the case i[s] free and clear of doubt. ... Thus, the question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. Where a doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it.

Weiley v. Albert Einstein Med. Ctr., 51 A.3d 202, 208-09 (Pa. Super. 2012) (citations omitted).

Glover's initial claim is that the trial court erred as a matter of law in concluding that no cause of action may lie against Udren for a violation of 41 P.S. § 406, ***infra***, which controls attorney's fees under Act 6. Glover's Brief at 8. An issue challenging the interpretation of a statute presents a question of law, for which our standard of review is *de novo* and our scope of review is plenary. ***Renna v. Schadt***, 64 A.3d 658, 664 (Pa. Super. 2013).

Glover argues that Udren, as foreclosure counsel, violated section 406 by collecting certain costs and fees prohibited by that provision.[5] Glover's Brief at 8-11. The premise of this claim is that Udren, acting in its capacity as the attorney for the mortgagee, violated section 406 by collecting fees in excess of those allowed under Act 6, and therefore, Glover is entitled to treble damages as provided by section 502, ***infra***, which provides remedies for violation of the Act.

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[5] Because the resolution of this issue turns of the interpretation of the statute, we need not detail the precise fees and costs that Glover contends were in violation of the statute.

We begin with the relevant statutory language. Article IV of Act 6 contains the statute's protective provisions. As noted above, it is undisputed that Glover pled claims alleging violations of only one of these protective provisions, section 406, which provides as follows:

> § 406. Attorney's fees payable
>
> With regard to residential mortgages, no ***residential mortgage lender*** shall contract for or receive attorney's fees from a residential mortgage debtor except as follows:
>
> (1) Reasonable fees for services included in actual settlement costs.
>
> (2) Upon commencement of foreclosure or other legal action with respect to a residential mortgage, attorney's fees which are reasonable and actually incurred by the residential mortgage lender may be charged to the residential mortgage debtor.
>
> (3) Prior to commencement of foreclosure or other legal action attorneys' fees which are reasonable and actually incurred not in excess of fifty dollars ($50) provided that no attorneys' fees may be charged for legal expenses incurred prior to or during the thirty-day notice period provided in section 403 of this act.

41 P.S. § 406 (emphasis added). Article V contains the remedies and penalties granted by Act 6, and section 502 provides a remedy for the imposition of excessive rates and fees:

> § 502. Usury and excess charges recoverable
>
> A person who has paid a rate of interest for the loan or use of money at a rate in excess of that provided

> for by this act or otherwise by law or has paid charges prohibited or in excess of those allowed by this act or otherwise by law may recover triple the amount of such excess interest or charges in a suit at law against the ***person*** who has collected such excess interest or charges: Provided, That no action to recover such excess shall be sustained in any court of this Commonwealth unless the same shall have been commenced within four years from and after the time of such payment. Recovery of triple the amount of such excess interest or charges, but not the actual amount of such excess interest or charges, shall be limited to a four-year period of the contract.

41 P.S. § 502 (emphasis added). Act 6 also contains the following relevant definitions:

> 'Person' means an individual, corporation, business trust, estate trust, partnership or association or any other legal entity, and shall include but not be limited to residential mortgage lenders.
>
> * * *
>
> 'Residential mortgage lender' means any person who lends money or extends or grants credit and obtains a residential mortgage to assure payment of the debt. The term shall also include the holder at any time of a residential mortgage obligation.

41 P.S. § 101.

"The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions." 1 Pa.C.S.A. § 1921(a). "It is presumed that every word, sentence or provision of a statute is intended for some purpose and accordingly must be

given effect." ***Commonwealth v. Lobiondo***, 501 Pa. 599, 603, 462 A.2d 662, 664 (1983) (citing ***Commonwealth v. Sitkin's Junk Co.***, 412 Pa. 132, 138, 194 A.2d 199, 202 (1963)); ***see also Toy v. Metro. Life Ins. Co.***, 593 Pa. 20, 57, 928 A.2d 186, 209 (2007) ("The legislature must be intended to mean what it has plainly expressed."). It is firmly established that this Court may not disregard the choice of term used by the Legislature. ***Commonwealth v. Pope***, 455 Pa. 384, 388, 317 A.2d 887, 889 (1974) ("A court may not alter, under the guise of 'construction,' the express language and intent of the Legislature."); ***Commonwealth v. Deck***, 954 A.2d 603, 609 (Pa. Super. 2008) ("This Court ... does not have the authority to ignore clear statutory language, even in pursuit of a statute's spirit[.]"); ***City of Allentown v. Pennsylvania Pub. Util. Comm'n***, 96 A.2d 157, 158 (Pa. Super. 1953) (holding that when interpreting a statute, a court may not delete or disregard words contained therein).

Before applying these interpretive rules, we recap Glover's argument: Because section 502 provides a remedy against a person who collects excess fees and charges, and person is defined broadly to "include but not be limited to residential mortgage lenders," Glover can maintain a cause of action against the residential mortgage lender's foreclosure attorney for collecting attorney's fees in excess of those described in section 406.

Given the principles of statutory interpretation by which we are bound, we must reject Glover's argument. To do otherwise would require us to rewrite section 406 and the conduct proscribed by it. By using the specific term "residential mortgage lender" in section 406, the Legislature has expressed its intention to control the conduct of residential mortgage lenders as defined under Act 6 when the residential mortgage lenders contract for attorney's fees and receive those fees from borrowers. The use of this term makes clear that only residential mortgage lenders can commit a violation of section 406 by contracting for or receiving fees in excess of those specified therein. As Udren is not a residential mortgage lender, it cannot violate section 406.

Glover acknowledges that section 406 "regulates attorney fee provisions contained within ... contracts that are entered into by homeowners and residential mortgage lenders, not their foreclosure counsel[,]" but argues that section 502 must be read to encompass law firms acting for residential mortgage lenders because "regulating a residential mortgage lender's ability to contract for and receive such ... fees would not, by itself, protect homeowners from paying such fees if the law permitted law firms to collect those fees on behalf of servicer [*sic*]." Glover's Brief at 18.[6] We are

[6] Glover uses the terms "foreclosure counsel" and "debt collection counsel" interchangeably. The allegations contained in Glover's amended complaint make absolutely clear that Udren, a law firm, was at all times acting on

not swayed by this argument. As discussed above, the Legislature intentionally used the term "residential mortgage lender" to define the entities subject to the constraints contained in section 406. Had it intended to include law firms that act on the behalf of residential mortgage lenders in the prosecution of foreclosure actions, it would have made this explicit in the text of the statute. Moreover, section 406 limits the amount of attorney's fees for which a residential mortgage lender and borrower may contract. 41 Pa. C.S. § 406. A law firm acting as foreclosure counsel for a residential mortgage lender is not a part of the agreement between the residential mortgage lender and borrower.

Section 502 is a general ***remedial*** provision for conduct prohibited by Act 6 or otherwise involving the loan of money. ***See Roethlein v. Portnoff Law Assoc. Ltd.***, __ Pa. __, __, 81 A.3d 816, 825 (2013) (rejecting claim against private tax collectors because "[s]ection 502 does not support a cause of action to challenge costs, unless those costs are incurred in

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behalf of the mortgagee in prosecuting a foreclosure action and not as a debt collector as defined in FCEUA. ***See*** 73 P.S. § 2270.3 (defining a debt collector to include "[a]n attorney, whenever such attorney attempts to collect a debt ... except in connection with the filing or service of pleadings or discovery or the prosecution of a lawsuit to reduce a debt to judgment."). Since Udren was an attorney acting on behalf of a mortgagee in a foreclosure action, the purpose of which was to reduce a debt to judgment, it cannot be classified as a debt collector. Glover's claims under FCEUA and FDCPA were dismissed by the federal district court prior to the commencement of this action. ***See Glover v. Udren***, 2011 WL 1496785 (W.D.Pa. 2011).

connection with the loan or use of money."). Indeed, section 502 is contained within that portion of Act 6 which is entitled "remedies and penalties." We reject the notion that by use of the term "person" in section 502, the Legislature inferentially expanded the scope of potential violators of section 406 of the Act. While it is clear that the Legislature defined the term person to include various generic legal entities[7] "include[ing] but not [] limited to residential mortgage lenders," we read the definition to clarify that various sections of the Act do not apply ***only*** to residential mortgage lenders. While the majority of the provisions in Act 6 apply to residential mortgage transactions, Act 6 also addresses conduct by actors other than residential mortgage lenders. ***See e.g.***, 41 P.S. §§ 201 (governing the maximum lawful interest rate allowed for the loan or use of money in the amount of $50,000 or less); 407(c) (forbidding a plaintiff in confessed judgment action from receiving payment from defendant for costs associated with satisfying judgment); 503 (providing that reasonable attorney's fees are recoverable for a prevailing "borrower or debtor, including but not limited to a residential mortgage debtor[.]"); Preamble of Act 6, n.1, ***supra***. Thus, the definition of "person" in section 101 makes clear that when the term "person" is used, it is not limited to residential mortgage lenders.

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[7] 41 P.S. § 101 ("'Person' means an individual, corporation, business trust, estate trust, partnership or association or any other legal entity, and shall include but not be limited to residential mortgage lenders.")

We reiterate that this Court may not disregard the words of a statute in an attempt to give effect to what we presume the purpose of the statute to be. ***Pope***, 455 Pa. at 388, 317 A.2d at 889; ***Deck***, 954 A.2d at 609; ***City of Allentown***, 96 A.2d at 158. This is exactly what Glover asks us to do, and so her argument is unavailing.

In her second issue, Glover challenges the trial court's dismissal of her claims under the UTPCPL. Glover's Brief at 19. We find no error in the trial court's ruling.

The trial court dismissed the UTPCPL claims upon finding that all of the claims alleged thereunder were made in connection with Udren's filing of the foreclosure complaint, and its conclusion that the UTPCPL does not apply to actions taken by attorneys while practicing law. Trial Court Opinion, 6/13/12, at 7-14. Our review of the record supports the trial court's finding that all of Glover's UTPCPL claims are based explicitly upon allegations regarding actions taken by Udren in connection with the filing of the foreclosure complaint. ***See*** Complaint, 8/31/11, at 22-27. To determine whether such claims are viable under the UTPCPL, we look to the Pennsylvania Supreme Court's decision in ***Beyers v. Richmond***, 594 Pa. 654, 937 A.2d 1082 (2007), in which it held that the UTPCPL does not apply to claims of attorney misconduct in the context of practicing law. ***Id.*** at

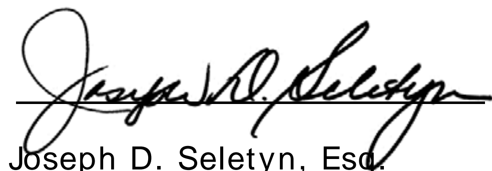
659-60, 937 A.2d at 1086.[8] Accordingly, we agree that Glover's claims are not viable under the UTPCPL.

Having found no error of law or abuse of discretion, we affirm the trial court's orders. ***Weiley***, 51 A.3d at 208.

Orders affirmed.

Wecht, J. files a Concurring and Dissenting Opinion.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/23/2014

[8] Although ***Beyers*** is a plurality decision, this holding garnered the support of a majority of the Court. ***See Beyers***, 594 Pa. at 671, 937 A.2d at 1093 (Cappy, C.J. concurring) (joining Justice Fitzgerald's opinion "to the extent that it holds that as a matter of statutory construction, the [UTPCPL] does not apply to attorneys practicing law."). Therefore, this holding is binding precedent. ***See Commonwealth v. Brown***, 23 A.3d 544, 556 (Pa. Super. 2011) ("In cases where a concurring opinion enumerates the portions of the plurality's opinion in which the author joins or disagrees, those portions of agreement gain precedential value.").