

PUBLICATION

A Federal Court's Lifeline to the Servicing Industry: No Physical Pain, no Negligent Servicing Claim

February 14, 2013

Baker Donelson attorneys were recently successful in having a mortgagor's claims seeking punitive damages against a major mortgage servicing company dismissed from a federal lawsuit at the summary judgment stage.

In *Webb v. Ocwen Loan Servicing, LLC*, 2012 WL 5906729 (S.D. Ala. Nov. 26, 2012), the plaintiff-mortgagor filed claims against Ocwen and Freddie Mac in state court involving allegations of wrongful foreclosure, negligent and wanton servicing, defamation, and breach of mortgage agreement. The plaintiff alleged that numerous payments were not applied correctly and that property insurance was wrongfully force-placed on her account even though she allegedly provided proof that she had already obtained insurance.

After removing the case to federal court, Ocwen and Freddie Mac moved for summary judgment as to all claims, and the court granted summary judgment in favor of Ocwen as to all claims and in favor of Freddie Mac as to nearly all claims. The claim that survived summary judgment settled on terms favorable to Freddie Mac.

This federal court decision is particularly significant because the court unequivocally held that claims for negligence and wantonness in the servicing of a mortgage can never be successful unless the servicer causes physical injury to the plaintiff or to the plaintiff's property. "Pure economic loss—which is what [Webb] claims—does not suffice." For the same reasons, the plaintiff's claims for mental anguish damages against Ocwen likewise failed. The court also held that no claim for wanton servicing exists under Alabama law and that failure to comply with the terms of a note or mortgage does not give rise to a claim for negligent servicing.

Moreover, the court held that a servicer cannot be held to have breached a contract such as a mortgage or note when it is not a party to that contract. This is an important victory and this case will be relied upon by the servicing industry in defending against claims regarding improper servicing of a mortgage, which is a common allegation in these types of cases.