ATTORNEY LENORE ALBERT, WHO GOT A GOOD RULING FOR HOMEOWNER HELEN GALOPE IN THE NINTH CIRCUIT COURT OF APPEAL AT THE END OF MARCH, DEMANDS A RETRACTION OF LEXIS NEXIS PUBLICATION ABOUT THE CASE!!

April 10, 2014

To the President/CEO of Reed Elsevier,

I have sent two emails to Lexis Nexis without response. Your publications on Lexis Nexis of consumer cases concerning wrongful foreclosure are misleading and downright deceitful. You have failed to properly train and supervise your employees to ensure as the "Official" reporter for California, that you are giving an unbiased case summary, correct key/head notes, and core terms. However, you have instituted a pattern and practice of yellow flagging all opinions that came out in favor of the consumer. To my HORROR and SHOCK, you have even went so far to proclaim the BANK a winner in a Ninth Circuit win for the homeowner.

This is not only damaging my reputation in the legal community, but also is frustrating my ability to litigate my other cases or use the consumer friendly opinions the way they were intended.

Your corruption has gone too far. Those case summaries and core terms need to change as well as the flags. For example Galope v Deutsche Bank should have a green flag, should include the core term of LIBOR, and at the very least phrase the case summary that the homeowner won. Are you kidding me? I am so furious you are lucky you are in New York or else I would be on your doorstep right now. Lueras should be a green flag as well. Where is the Ballard v Bank of America opinion on the motion to dismiss which I defeated?

You have yellow flagged Lueras v Bank of America, Glaski v Bank of America, West v JP Morgan Chase, Jolley v Chase, Ragland v US Bank... and made such weak banker friendly case summaries your lips must be chaffed.

I cannot find the Ballard v Bank of America opinion where I defeated the bank's motion to dismiss, but the opinions where they won the denial of class certification and motion for summary judgment pop right out there.

There is a definite pattern and practice I can PROVE.

This affects they way students portray the law and become lawyers, it affects the way judges view the case law and it affects consumer attorney's careers.

Because it affects the way the courts view the strength of precedent, you are interfering with my caseload.
So not only have you defamed me, but you are inteferring with a prospective economic advantage of mine.

I surely have standing to bring a UCL claim based on your pattern and practice and I can use that pattern and practice for a straight out claim of fraud.

How much do you think that would garner, if I were able to prove fraud, as an attorney, and what kind of damages I could receive?

What I really want to know is why are you doing this? Have you become a mainstream pundit?

As much as you are affecting my pocketbook and causing me emotional distress, you are decimating a significant portion of the human race.

Why do you want more homeless families? We have over 40,0000 homeless in Los Angeles county alone right now.

Do you know that one of my clients DIED as a DIRECT result of a wrongful foreclosure? Although a judge halted the sale, the banks went ahead and had the sheriff take my client who was on oxygen - off of the oxygen hooked up in her home and throw her out in the street? Only a psychopath could do that to another human being. Is your company being run by psychopaths or are your hiring psychopaths to write up the case summaries in this area of law?

Who wrote the case summaries and assigned the flags? What is the name of the employee? What is their background and where to do they live?

I checked out your latest stock prices. Your stock is at the same level as it was before the crash. Was that off of the blood of the homeowner?

Do you know how many homeowners were forced to commit suicide due to the massive fraud? The massive fraud you continued to perpetrate through the way you slanted the case summaries and careful selection of core terms?

You have blood on your hands.

You appear to be nothing more than corrupt lying bastards with your hand in the pocket of the banks.

Shame on you Reed Elsevier and your Lexis/Nexis platform.

Your service sucks, too. I pay for a Table of Authorities feature I cannot even use because you don't update your Lexis to work with Internet Explorer. Are you kidding me? Where was that in the disclosure?

I expect you to answer all of my questions fully and accurately and to correct this immediately or else I am going to sue you.

Sincerely,

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HELEN GALOPE, an individual, Plaintiff - Appellant, v. DEUTSCHE BANK NATIONAL TRUST COMPANY, as Trustee under Pooling and Servicing Agreement dated as of May 1, 2007 Securitized Asset Backed Receivables LLC Trust 2007-BR4; et al., Defendants - Appellees.

No. 12-56892

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

2014 U.S. App. LEXIS 5686

February 11, 2014, Argued and Submitted, Pasadena, California
March 27, 2014, Filed

NOTICE: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

PRIOR HISTORY: [*1]

Appeal from the United States District Court for the Central District of California. D.C. No. 8:12-cv-00323-CJC-RNB. Cormac J. Carney, District Judge, Presiding.

DISPOSITION: REVERSED, IN PART, AFFIRMED, IN PART, AND REMANDED.

CASE SUMMARY:

OVERVIEW: HOLDINGS: [1]-The district court properly granted summary judgment to a bank on a borrower's claims under *15 U.S.C.S. §§ 1-2* and state law because, while her standing did not turn on whether she actually made interest payments that were adjusted in response to the allegedly manipulated rate and she adequately alleged that she would not have purchased her loan had she known that the rate was being manipulated, she failed to present any evidence that the bank was involved in, or conspired in, the alleged manipulation; [2]-The district court erred in granting summary judgment to the bank on the borrower's claim for breach of the covenant of good faith and fair dealing associated with violation of the automatic bankruptcy stay because there was sufficient evidence to support an inference that the bank had notice of the stay when it executed the trustee's sale and refused to rescind it.

OUTCOME: Judgment reversed in part, affirmed in part, and remanded.

CORE TERMS: automatic stay, manipulation--, leave to amend, antitrust, summary judgment, interest rate, good faith, fair dealing, misrepresentation, discretionary, misconduct, covenant, notice, missing-fax-page, anticompetitive, manipulated, foreclosure, attenuated, traceable, deceptive, defaulted, modification agreement, collectively

LexisNexis(R) Headnotes

Contracts Law > Contract Interpretation > Good Faith & Fair Dealing

[HN1] The covenant of good faith and fair dealing finds particular application in situations where one party is invested with a discretionary power affecting the rights of

another. Discretionary power of this kind must be exercised in good faith.

Civil Procedure > Pleading & Practice > Pleadings > Amended Pleadings > Leave of Court

[HN2] Futility of amendment can, by itself, justify the denial of a motion for leave to amend.

COUNSEL: For HELEN GALOPE, an individual, Plaintiff - Appellant: Lenore Albert, Esquire, Attorney, Law Offices of Lenore Albert, Huntington Beach, CA.

For DEUTSCHE BANK NATIONAL TRUST COMPANY, as Trustee under Pooling and Servicing Agreement dated as of May 1, 2007 Securitized Asset Backed Receivables LLC Trust 2007-BR4, WESTERN PROGRESSIVE, LLC, OCWEN LOAN SERVICING, LLC, Defendants - Appellees: Eric D. Houser, Attorney, Robert W. Norman, Jr., Attorney, Houser & Allison, APC, Irvine, CA.

For BARCLAYS BANK PLC, BARCLAYS CAPITAL REAL ESTATE, INC., DBA Homeq Servicing, Defendants - Appellees: David Harold Braff, Yvonne S. Quinn, Jeffrey T. Scott, Matthew J. Porpora, Sullivan & Cromwell LLP, New York, NY; Margaret Anne Grignon, Esquire, Scott H. Jacobs, Attorney, Reed Smith LLP, Los Angeles, CA; James Meadows, Esquire, Jonathan D. Schiller, Boies, Schiller & Flexner LLP, New York, NY; Adam S. Paris, Attorney, Sullivan & Cromwell LLP, Los Angeles, CA.

JUDGES: Before: D.W. NELSON, PAEZ, and NGUYEN, [*2] Circuit Judges. NGUYEN, Circuit Judge, dissenting in part.

OPINION

MEMORANDUM *

> * This disposition is not appropriate for publication and is not precedent except as provided by *9th Cir. R. 36-3*.

Helen Galope appeals the district court's grant of summary judgment in favor of Deutsche Bank National Trust Company ("DBNTC"), Ocwen Loan Servicing, and Western Progressive, LLC ("WPT") (collectively, "DBNTC Defendants") and dismissal of her claims against Barclays Bank PLC and Barclays Capital Real Estate Inc. d/b/a HomEq Servicing (collectively, "Barclays Defendants"). We affirm in part, reverse in part, and remand for further proceedings.

1. We reverse the district court's ruling that Galope failed to establish injury-in-fact necessary for Article III standing on her LIBOR-based claims. Galope adequately alleged that she would not have purchased her loan had she known that the Defendants were manipulating the LIBOR rate. Article III standing exists when a plaintiff purchases a product she would not have otherwise purchased but for the alleged misconduct of the defendant. *Hinojos v. Kohl's Corp., 718 F.3d 1098, 1104 n.3 (9th Cir. 2013)* (citing *Mazza v. Am. Honda Motor Co., 666 F.3d 581, 595 (9th Cir. 2012)*); [*3] *Maya v. Centex Corp., 658 F.3d 1060, 1069 (9th Cir. 2011)*. Contrary to the dissent's assertion, Galope's standing does not turn on whether she actually made interest payments that were adjusted in response to the allegedly manipulated LIBOR rate. Galope's cognizable injury occurred when she purchased the loan, not upon payment of LIBOR-affected interest.[1] *Maya, 658 F.3d at 1069*.

> 1 At oral argument, the Barclays Defendants argued for the first time that Galope's LIBOR-based claims were not traceable to their misconduct because they did not actually sell the loan to Galope. Galope, however, adequately alleged in her complaint that Barclays PLC simply contracted with another entity to sell the LIBOR-based loan product that is the subject of this litigation. At the motion-to-dismiss stage, Galope's allegations are sufficient to satisfy the traceability requirement of Article III standing. *See Lujan v. Defenders of Wildlife, 504 U.S. 555, 561, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992)*.

We therefore reverse and remand for further proceedings on Galope's LIBOR claims against the Barclays Defendants under the Sherman Antitrust Act, *15 U.S.C. §§ 1-2*, and her state law claims for breach of the covenant of good faith and fair dealing, [*4] and fraud. However, we conclude that the district court properly granted summary judgment on all LIBOR-based claims against the DBNTC Defendants because Galope failed to present any evidence that DBNTC was involved in, or conspired in, the alleged LIBOR manipulation.

2. We reverse the district court's ruling that Galope lacks statutory standing to pursue her LIBOR-based

Unfair Competition Law ("UCL"), *Cal. Bus. & Prof. Code § 17200*, and False Advertising Law ("FAL"), *Cal. Bus. & Prof. Code § 17500*, claims against the Barclays Defendants and remand for further proceedings. Galope has statutory standing to pursue these claims because she alleged that she purchased a loan that she would not have otherwise purchased but for the Barclays Defendants' alleged misconduct. *See Kwikset Corp. v. Superior Court, 51 Cal. 4th 310, 120 Cal. Rptr. 3d 741, 246 P.3d 877, 890 (Cal. 2011)*; *Cal. Bus. & Prof. Code §§ 17204, 17535*.

3. We affirm the district court's rulings on all claims associated with the "missing-fax-page scheme." Galope stated in her Third Amended Complaint ("TAC") that the portions of the fax transmission that she received put her on notice that her payments would increase. This admission directly undermines her allegations [*5] that the Barclays Defendants and DBNTC deceived her into believing that the initial payment amounts were fixed throughout the term of the loan.

4. We reverse the district court's rulings that Galope's wrongful foreclosure [2] and UCL claims based on the DBNTC Defendants' violation of the bankruptcy court's automatic stay are not justiciable. Although rescission of the sale--almost seven months after the violation--mooted Galope's claims for injunctive and declaratory relief, it did not affect her claim for damages. *See Wilson v. State of Nev., 666 F.2d 378, 380-81 (9th Cir. 1982)*. Further, regardless of whether Galope has equity in the home, *11 U.S.C. § 362(k)(1)* provides a statutory basis for damages.[3]

2 Although Galope's seventh claim in her TAC is styled as a "wrongful foreclosure" claim, the content of the claim is exclusively focused on violation of the automatic stay under *11 U.S.C. § 362*. The panel thus construes this as a claim for damages under *11 U.S.C. § 362(k)(1)*.

3 The DBNTC Defendants' alternative argument that Galope released her right to pursue her UCL claim when she signed her loan modification agreement fails, in part, because the release only purports to apply to "claims, [*6] damages or liabilities . . . existing *on the date of this Agreement* . . . ." The loan modification agreement is dated April 17, 2008. The alleged violation of the automatic stay did not occur until September 1, 2011.

5. We reverse the district court's grant of summary judgment on Galope's claim for breach of the covenant of good faith and fair dealing associated with violation of the automatic stay. [HN1] The covenant of good faith and fair dealing "finds particular application in situations where one party is invested with a discretionary power affecting the rights of another." *Hicks v. E.T. Legg & Associates, 89 Cal. App. 4th 496, 108 Cal. Rptr. 2d 10, 19 (Ct. App. 2001)*. Discretionary power of this kind "must be exercised in good faith." *Carma Developers (Cal.), Inc. v. Marathon Dev. California, Inc., 2 Cal. 4th 342, 6 Cal. Rptr. 2d 467, 826 P.2d 710, 726 (Cal. 1992)*. The power of sale in the deed of trust provided the DBNTC Defendants with discretionary authority to foreclose upon Galope's home in the event of default. Contrary to the DBNTC Defendants' argument, there is sufficient evidence in the record to support a reasonable inference that the DBNTC Defendants had notice of the automatic stay when they executed the trustee's sale, and that [*7] they refused to rescind it upon Galope's request.

6. Galope argues on appeal that the district court erred because it did not provide her with leave to amend her complaint. On remand, Galope may seek further leave to amend at the district court's discretion. However, leave to amend is foreclosed on all claims associated with the alleged missing-fax-page scheme. No additional allegations will change the fact that the portion of the document Galope received and signed provided her with notice that her payments were subject to change after five years and would increase. *See Bonin v. Calderon, 59 F.3d 815, 845 (9th Cir. 1995)* ([HN2] "Futility of amendment can, by itself, justify the denial of a motion for leave to amend.").

7. The parties shall bear their own costs on appeal.

REVERSED, IN PART, AFFIRMED, IN PART, AND REMANDED.

DISSENT BY: NGUYEN (In Part)

DISSENT

NGUYEN, Circuit Judge, dissenting in part:

Because I conclude that Galope failed to establish standing on her LIBOR-based claims, I respectfully dissent from the majority's decision reversing these claims as to the Barclays Defendants. Galope does not allege that she suffered any loss due to the Barclays

Defendants' purported deceptive conduct, nor does she [*8] allege that any loss is traceable to a misrepresentation related to the LIBOR-rate manipulation or to the LIBOR-rate manipulation itself. *See, e.g., Hinojos v. Kohl's Corp., 718 F.3d 1098, 1104 (9th Cir. 2013)* (concluding that the plaintiff adequately had alleged standing where, "because of the misrepresentation the consumer (allegedly) was made to part with more money than he or she otherwise would have been willing to expend" (quoting *Kwikset Corp. v. Superior Court, 51 Cal. 4th 310, 120 Cal. Rptr. 3d 741, 757, 246 P.3d 877 (2011)*)); *Mazza v. Am. Honda Motor Co., 666 F.3d 581, 594 (9th Cir. 2012)* ("To the extent that class members were relieved of their money by Honda's deceptive conduct--as Plaintiffs allege--they have suffered an 'injury in fact'" under Article III (citing *Stearns v. Ticketmaster Corp., 655 F.3d 1013, 1021 (9th Cir. 2011)*); *Maya v. Centex Corp., 658 F.3d 1060, 1070 (9th Cir. 2011)* ("To survive a motion to dismiss for lack of constitutional standing, plaintiffs must establish a 'line of causation' between defendants' action and their alleged harm that is more than 'attenuated.'" (citing *Allen v. Wright, 468 U.S. 737, 757, 104 S. Ct. 3315, 82 L. Ed. 2d 556 (1984)*). Indeed, as the majority concedes, Galope's payments never were [*9] affected--she paid a fixed interest rate and defaulted before the allegedly manipulated LIBOR rate went into effect on her loan; she then was granted a loan modification with a (lower) fixed interest rate that likewise was unrelated to the LIBOR rate and defaulted again. Although Galope alleges that she would not have purchased the loan but for the Barclays Defendants' alleged manipulation of the LIBOR rate, Galope alleges no loss from the alleged manipulation--or any related misrepresentation or omission. Therefore, Galope's alleged injury is far too attenuated to establish Article III standing.[1]

1 For the same reasons, Galope lacks statutory and antitrust standing. *See, e.g., Rebel Oil Co. v. ARCO, 51 F.3d 1421, 1433 (9th Cir. 1995)* ("To show antitrust injury, a plaintiff must prove that his loss flows from an anticompetitive aspect or effect of the defendant's behavior, since it is inimical to the antitrust laws to award damages for losses stemming from acts that do not hurt competition." (citation omitted)). The interest rates on Galope's loan were unaffected by the Barclays Defendants' anticompetitive behavior.