

Wisconsin Supreme Court
10:45 a.m.
Friday, Dec. 2, 2016

2014AP2581

[Parsons v. Associated Banc-Corp.](#)

Supreme Court case type: Petition for Review

Court of Appeals: District I

Circuit Court: Milwaukee County, Judge Jeffrey A. Conen, reversed and cause remanded

Long caption:

Taft Parsons, Jr. and Carol Parsons, Plaintiffs-Appellants-Respondents, v. Associated Banc-Corp., Defendant-Respondent-Petitioner, XYZ Insurance Company, Defendant.

Issues presented:

The Supreme Court reviews whether, in advance of civil litigation, the right to a jury trial may be contractually waived, and if so, the process and requirements that may be involved in such a waiver. Discussion of this issue concerns Wis. Const. art. I, § 5, which guarantees the right to a jury trial – even for civil litigants – and provides for the waiver of that right “in the manner prescribed by law.”

Some background: This case starts in 2012 with Taft Parsons, Jr.’s and Carol Parsons’s plan to develop townhomes in their Milwaukee neighborhood, and ends up in a dispute with a bank in a case now before the Supreme Court. In the meantime, the couple faced bankruptcy, foreclosure, and loan repayment demands for work that was never done. The bank originating the loan was also sold to another bank, and the loan officer involved was convicted of bank fraud in a different case in federal court.

Over the course of events, one of the many loan documents presented to the Parsons was a promissory note that contained a jury waiver clause. According to the Parsons’ complaint, the Parsons were not allowed any time to review the documents in question or to consult with an attorney before signing them. The complaint also alleges that the loan officer threatened to withdraw the construction loan if Taft Parsons did not promptly sign the documents.

In 2011, five years after Associated Bank acquired State Financial Bank (the bank that originated the loan), the Parsons sued Associated Bank, alleging a pattern of racketeering activity under Wis. Stat. § 946.83, and alleging that the bank negligently hired, supervised, and trained the loan officer that was ultimately convicted of bank fraud related to a different townhouse project. The Parsons alleged that the loan officer’s multiple acts of fraud, extortion, and threats occurred under State Financial Bank’s watch, for which Associated Bank assumed liability when it purchased State Financial Bank and continued to employ the loan officer in question.

The Parsons’ complaint contained a jury demand, as did a subsequent amended complaint. The Parsons paid the jury fee. Associated Bank participated actively in the litigation for nearly three years, filing multiple pleadings with no objection to the jury demand. Three years into the litigation, at the third pretrial conference in 2014, Associated Bank raised an off-the-record objection to the Parsons’ jury demand. Later, the bank filed a motion to strike the Parsons’ jury demand, arguing that when Taft signed the promissory note with the waiver clause

10 years earlier, the Parsons waived any right to a jury trial involving the bank. The trial court granted Associated Bank's motion to strike the Parsons' jury demand.

The Court of Appeals granted the Parsons' motion for leave to appeal the trial court's non-final order and stayed the trial. The Court of Appeals held that the Parsons have both a constitutional and a statutory right to a jury trial that can be waived. The Court of Appeals ultimately concluded that the trial court erroneously exercised its discretion when it ignored the bank's unexplained three-year delay in asserting its jury waiver claim, as well as the prejudice to the Parsons and the waste of judicial resources caused by changing the mode of trial after years of preparation for a jury.

Associated Bank petitioned this court for review, challenging the Court of Appeals' decision.