

Wisconsin Supreme Court
Monday, October 23
10:45 a.m.

2015AP1586

Nationstar Mortgage v. Stafsholt

Supreme Court case type: Petition for Review

Court of Appeals: District III

Circuit Court: St. Croix County, Judge Scott R. Needham, affirmed in part; reversed in part and cause remanded for further proceedings

Long caption: Nationstar Mortgage LLC n/k/a Bank of America, NA, as successor by merger to BAC Home Loans, plaintiff-appellant-cross-respondent v. Robert R. Stafsholt, defendant-respondent-cross-appellant-petitioner, Colleen Stafsholt f/k/a Coleen McNamara, unknown spouse of Robert R. Stafsholt, unknown spouse of Colleen Stafsholt, f/k/a Colleen McNamara, Richmond Prairie Condominiums Phase I, Association and The First Bank of Baldwin, defendants.

Issues presented: This case involves a dispute over attorney fees arising from a home loan foreclosure. The Supreme Court reviews issues related to the awarding of attorney fees, the method by which attorney fees may be recovered, and the decision-making processes of lower courts in this case.

Some background: Robert R. Stafsholt and his former wife owned property in New Richmond. In October 2002, Colleen Stafsholt executed a note in the amount of \$208,000 in favor of RBMG, Inc. The note was secured by a mortgage on the New Richmond property, which both Stafsholts granted to Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for RBMG.

The note came into the possession of Ocwen Loan Servicing, LLC after being serviced at times between 2008 and 2011 by Countrywide Home Loans, BAC Home Loans, and BOA.

BAC Home Loans filed a foreclosure action against the Stafsholts and other parties in February of 2011. The complaint alleged that the Stafsholts had defaulted on the terms of the note and mortgage by failing to pay past due payments as required.

On May 31, 2012, BOA, successor by merger to BAC Home Loans, assigned the mortgage to Homeward Residential, Inc., f/k/a American Home Mortgage Servicing, Inc. Homeward Residential assigned the mortgage to Ocwen. Ocwen was substituted as the plaintiff in the action in December of 2013.

Stafsholt asserted counterclaims for breach of contract, breach of the implied covenant of good faith and fair dealing, equitable estoppel, declaratory judgment, and assignment of mortgage under § 846.02, Stats.

The circuit court issued an order on April 8, 2015, finding that BOA had improperly charged the Stafsholts for lender placed insurance (LPI); that BOA “caused the Stafsholts to default on the Mortgage and Note”; and that Stafsholt “acted in good faith and reliance on the misrepresentations of the BOA agent.” The circuit court concluded, among other improper actions, that BOA had breached the implied covenant of good faith and fair dealing and that Stafsholt had established the affirmative defense of equitable estoppel.

The circuit court dismissed the foreclosure action and reinstated the Stafsholts' mortgage. It concluded Ocwen was entitled to be paid the principal balance of the loan, some \$172,000. However, the court held that Ocwen could not recover any other "fees or costs, including late fees, mortgage fees, bankruptcy fees or interest."

The circuit court rejected Stafsholt's request for attorney fees, stating there was no basis to award them. The court also declined to award Stafsholt attorney fees and costs as a sanction against Ocwen under § 802.05, Stats.

Stafsholt moved for reconsideration and asked the circuit court to declare that the principal balance of the mortgage was \$10,167.38. He arrived at that figure by subtracting from the \$172,000 mortgage balance some \$71,000 in attorney fees and costs he had incurred during the foreclosure proceedings and a \$90,000 payment he made on April 17, 2015.

On June 16, 2015, the circuit court entered a written order granting Stafsholt's motion for reconsideration in part. It concluded Stafsholt was entitled to recover a portion of his claimed attorney fees and costs. Using the "Lodestar Method," the court determined a 10-percent reduction in Stafsholt's claimed attorney fees and costs was warranted. After all of its calculations, the court concluded that the remaining balance on the loan was some \$57,000. The court ordered that if Stafsholt paid that amount by Aug. 1, 2015, Ocwen would be required to assign the mortgage to Stafsholt and terminate the underlying note.

Ocwen transferred the servicing of the mortgage to Nationstar as of March 1, 2015. Nationstar was substituted for Ocwen as plaintiff. Nationstar appealed from the portion of the circuit court order dismissing the foreclosure action and from the order granting in part Stafsholt's motion for reconsideration. Stafsholt cross-appealed, arguing that the circuit court erred in reducing his requested attorney fees and costs.

The Court of Appeals' upheld many of the trial court determinations. However, it reversed a circuit court order which granted Stafsholt an offset against the principal balance due on his mortgage with Nationstar Mortgage LLC, n/k/a Bank of American, NA, for his attorney fees and costs. The Court of Appeals concluded that the lower court lacked authority to award Stafsholt attorney fees and costs on that basis.

Nationstar says that the longstanding American Rule that prohibits an award of attorney fees to the prevailing party except where limited exceptions, not present here, apply.

Nationstar goes on to say the Court of Appeals correctly declined to address Stafsholt's claim that the trial court had the inherent authority to grant attorney fees. It says even if the Court of Appeals had reached the merits of that issue, Stafsholt's argument does not support his claim for attorney fees.