

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3721
Summary Calendar

CATHLEEN KORNEGAY, wife of/and
WILLIAM S. WALTER,

Plaintiffs-Appellants,

versus

FEDERAL HOME LOAN MORTGAGE CORP.,
and OAK TREE MORTGAGE CORPORATION,

Defendants-Appellees.

Appeal from the United States District Court for
the Eastern District of Louisiana
CA 91 4519 D

March 16, 1993

Before REAVLEY, HIGGINBOTHAM and EMILIO M. GARZA, Circuit Judges.

REAVLEY, Circuit Judge:*

Cathleen and William Walter (collectively the Walters) sued the Federal Home Loan Mortgage Corporation (FHLMC) and Oak Tree Mortgage Corporation (OTMC) under fraud-based theories. On cross-motions for summary judgment, the district court held that Louisiana *res judicata* law precludes Walter's suit. We affirm on

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

the alternate ground that there is no record evidence of damage or prejudice to Walter from any action of FHLMC or OTMC.

I. BACKGROUND

The Walters purchased a home in 1979 and executed a promissory note and mortgage in favor of Dixie Savings Association (DSA). DSA sold the note and mortgage to FHLMC in 1984. OTMC is FHLMC's servicing agent for the Walter loan. The Walters defaulted in 1988. Attorney Rodney J. Madere then instituted foreclosure proceedings by filing a state-court petition for executory seizure and sale of the Walters' home. In his petition, Madere alleged that DSA owned and held the note and mortgage, and that the Walters were in default. The court issued a writ of seizure. But, pursuant to the Walters' motion, the Louisiana court then enjoined any seizure and sale because DSA did not prove that it received ownership of the loan instruments back from FHLMC after the 1984 transfer to FHLMC.

Madere next presented the Louisiana foreclosure court with a sworn statement by Harold Hillebrand, FHLMC's Regional Manager for Delinquency & Foreclosure, dated May 16, 1989. By this statement, FHLMC "acknowledges and ratifies" that it "transferred and assigned [the Walter note and mortgage] to Dixie Savings" The record contains no evidence of when, why, or for how long FHLMC transferred the note and mortgage to DSA. The Louisiana trial court issued a second order of seizure and sale after receiving Hillebrand's statement. The Walters asked for a second injunction, and the Louisiana trial court refused.

A Louisiana appellate court then stayed the trial-court proceedings, including the seizure order, pending appeal. On appeal, the Walters argued that DSA failed to submit authentic evidence of the transfer of the note and mortgage from FHLMC back to DSA. The court held that Hillebrand's statement combined with DSA's physical possession of the note evidencing the obligation secured by the mortgage constituted sufficient evidence of transfer to DSA, despite the fact that FHLMC never endorsed the note back to DSA. The court then remanded the case to the trial court for further foreclosure proceedings. *Dixie Sav. & Loan Ass'n v. Walter*, 557 So. 2d 1044, 1045-46 (La. App.), cert. denied, 559 So. 2d 1369 (La. 1990).

Facing the writ of seizure once again, the Walters sought bankruptcy protection under Chapter 13. The Walters noticed that FHLMC, acting through OTMC, filed a proof of claim based on the note and mortgage in the Chapter 13 proceeding, and that DSA filed no proof of claim. The Walters then sued FHLMC and OTMC in Louisiana court, alleging fraud, abuse of process, and deceptive trade practices, and alluded to a malicious prosecution claim. At the heart of all theories proffered by the Walters is the allegation that, to save "time and embarrassment," FHLMC and OTMC lied to the Louisiana court in the foreclosure proceeding about whether DSA owned the note and mortgage at the time DSA demanded seizure and sale of the mortgaged property.

FHLMC removed the Walters' suit to federal court, and both parties filed summary-judgment motions. The district court

agreed with FHLMC and OTMC that the Louisiana court's judgment in *Walter* is *res judicata* to the fraud-based claims now brought by the Walters, reasoning that "[t]he relief requested by [the] Walters in the case before this court would necessarily require relitigation of the validity of the assignment of the promissory note in question from [DSA] to FHLMC, then back to [DSA]." The Walters appeal from the district court's dismissal of their case.

II. ANALYSIS

Besides briefing the *res judicata* issue decided by the district court, the parties addressed whether the court should have reached the same result based on the fact that the Walters suffered no damages from any action of FHLMC or OTMC. We may affirm the district court's summary judgment on alternate grounds if the record supports our decision. See *Jaffke v. Dunham*, 352 U.S. 280, 281, 77 S. Ct. 307, 308 (1957) ("A successful party in the District Court may sustain its judgment on any ground that finds support in the record.").

A court appropriately disposes of fraud-based claims under Louisiana law when the record demonstrates that no actual or probable damages exist. *Dutton & Vaughan, Inc. v. Spurney*, 600 So. 2d 693, 700-701 (La. App.), *cert. denied*, 601 So. 2d 663 (La. 1992). Moreover, under Louisiana law, a "debtor ... cannot question the validity or the consideration of a transfer or assignment of a debt unless he can show prejudice." *Keith v. Comco Ins. Co.*, 574 So. 2d 1270, 1276 (La. App.), *cert. denied*, 577 So. 2d 16 (La. 1991). Prejudice exists if an assignment

deprives the debtor of any rights that it otherwise could have asserted, *see id.*, or if it places the debtor at risk of liability to both the assignor and the purported assignee. *See United Bhd. of Carpenters & Joiners v. Tile Helpers Union Local 88*, 740 F. Supp. 167, 170 (E.D.N.Y. 1990).

The district court found, and the Walters do not dispute, that the Walters defaulted on their obligations under the note and that they were never asked to pay the debt to more than one party. There is no record evidence that any transfer or lack of transfer between FHLMC and DSA compromised any rights of the Walters.

The only damages claimed by the Walters in the record consist of the costs and anguish associated with defending a foreclosure action. But they would have incurred the costs and anguish regardless of whether DSA or FHLMC brought the foreclosure action in Louisiana court. Nothing in the record indicates that FHLMC would not have brought a foreclosure action if DSA had not filed one, and the record consistently indicates that FHLMC wanted to foreclose on the property that the Walters had mortgaged. Even by the Walters' theory of what happened in the Louisiana trial court, FHLMC wanted to foreclose. The Walters have not been damaged, and the life of this litigation is now ended.

AFFIRMED.