

SUPREME COURT OF VIRGINIA



SUPREME COURT BUILDING
100 NORTH NINTH STREET
RICHMOND, VIRGINIA 23219
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Granted Appeal Summary

Case

MARY HARRIS MEADE v. BANK OF AMERICA, N.A., ET AL.
(Record Number 180244)

From

From the Circuit Court of Chesterfield County; E. Robbins, Jr., Judge.

Counsel

Henry W. McLaughlin (The Law Office of Henry McLaughlin, P.C.) for appellant.

Robert W. Loftin, Ryan Van Patten Dougherty, and E. Rebecca Gantt (McGuireWoods LLP) and Daniel Miktus (Akerman LLP) for appellees.

Assignments of Error

1. The Circuit Court of Chesterfield County, Virginia (“the trial court”) erred in its order entered on May 1, 2017 sustaining the pleas in bar filed by appellees Bank of America, N.A. (“Bank of America”) and Carrington Mortgage Services, LLC (“Carrington Mortgage”) holding that the complaint filed by the appellant Mary Harris Meade (“Meade”) seeking rescission of a foreclosure and foreclosure deed of her home (“the home”) located at 2541 Grassy Knoll Lane, North Chesterfield, Virginia 23236 was barred by the five year statute of limitations of Va. Code Ann. Section 8.01-246(2); and ordering dismissal with prejudice of Meade’s complaint, in which she pled Bank of America breached a prohibition against acceleration of the note and foreclosure under the deed of trust absent compliance with a face-to-face FHA regulatory requirement incorporated into the note and deed of trust. The May 1, 2017 order was based on the trial court’s holding that Meade’s cause of action accrued when Bank of America first failed to comply with the FHA face-to-face regulatory requirement (“the face-to-face regulation”) and that, on that basis, her complaint was filed past expiration of the aforesaid five-year statute of limitations. This was error because Meade had no cause of action when Bank of America first failed to comply with the FHA face-to-face regulatory requirement because there is no private right of action for breach of an FHA regulation. Meade’s cause of action first accrued upon acceleration of the note in breach of prohibitions against acceleration in the face-to-face regulation incorporated into the note and deed of trust and upon foreclosure of the home in breach of prohibition against foreclosure in the deed of trust absent compliance with the face-to-face regulation. Because the foreclosure occurred on March 13, 2014, less than five years before Meade’s complaint filed on December 7, 2016 and because there was no evidence of the date of

Bank of America's acceleration of the note, the trial court erred in ruling that the statute of limitations had expired before Meade filed suit and erred in ordering dismissal with prejudice of her complaint.

2. The trial court erred in its final order entered on November 20, 2017 reaffirming the trial court's May 1, 2017 order granting the pleas in bar of Bank of America and Carrington and dismissing with prejudice Meade's complaint as against all parties on grounds that the complaint was filed after expiration of the five-year statute of limitations in Va. Code Ann. Section 8.01-246(2). This was error because no cause of action averred in the complaint accrued on breach of the FHA face-to-face regulatory requirement, rather the accrual of any cause of action on behalf of Meade involved in her complaint did not first accrue until the lender first accelerated the note, and foreclosure on the home and there was no evidence as to the date of acceleration and the foreclosure occurred on March 13, 2014, less than five years before the complaint filed December 7, 2016.