

NO. 23-CV-0189



DISTRICT OF COLUMBIA COURT OF APPEALS

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LOLILLIAN SMITH

Appellant,

v.

NATIONSTAR MORTGAGE, LLC D/B/A MR. COOPER, *et al.*,

Appellees.

**Appeal from the Superior Court of the District of Columbia
Civil Division**

Brief of Appellee Selene Finance LP

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Rule 28(a)(2)(A) Statement

The parties to the case are: Appellant Lolillian Smith; Appellee Selene Finance LP as successor in interest to Nationstar Mortgage, LLC d/b/a Mr. Cooper; Appellee Wilmington Savings Fund Society, FSB d/b/a Christina Trust, not in its Individual Capacity but Solely as Owner Trustee of Residential Credit Opportunities Trust II; Gregory Allan Jefferson; Gerard Fryer; and SJ & F Builders, LLC.

In Superior Court, Ms. Smith was represented by Rachael Flanagan and Scott Lempert from Cohen Milstein; Richard Lash, of Buonassissi, Henning & Lash, PC, was counsel for Wilmington; Aaron Neal of McNamee Hosea represented Rushmore; Edward Cohn, Matthew Fischer, and Kevin Hildebeidel of Cohn, Goldberg, and Deutsch, LLC represented Capital One, along with Stephen Hessler of Offit Kurman. Jefferson, Fryar, and SJ&F were not represented. No amici appeared.

In this Court, Thomas Landers, Daniel Martin, and Meghan Greenfield represent Ms. Smith as pro bono counsel, in affiliation with the Legal Aid Society of the District of Columbia; Mr. Lash continues to represent Wilmington; Peter Duhig previously represented Nationstar Mortgage, and Jason McElroy now represents Selene. Jefferson, Fryar, and SJ&F are not represented. No intervenors or amici have appeared in this Court at the time of this filing.

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D.C. Code § 11-721(a)(1)1

Selene Finance LP (“Selene”), as successor in interest to Nationstar Mortgage, LLC d/b/a Mr. Cooper¹, respectfully submits its Appellee’s Brief.

STATEMENT OF JURISDICTION

This Court has jurisdiction to hear this appeal pursuant to D.C. Code § 11-721(a)(1).

SUMMARY OF ARGUMENT

Appellant Lolillian Smith has not challenged any part of the Superior Court’s Order granting Selene’s Motion for Summary Judgment. Because Ms. Smith does not challenge the Trial Court’s ruling in favor of Selene, this Court should affirm the Superior Court’s order granting Selene’s Motion for Summary Judgment.

ARGUMENT

Ms. Smith’s Brief barely mentions Selene’s predecessor. Indeed, her brief substantively mentions Selene’s predecessor only twice: once to note that a foreclosure proceeding was instituted against her, and once to acknowledge (without challenge) the loan and lien on her property in Selene’s favor. *See* Appellant’s Brief at 3 (“Appellee Nationstar’s predecessor-in-interest, non-party Capital One, N.A.,

¹ Neither Selene nor Nationstar were the real party in interest when the Superior Court’s Order was issued. For ease of reference, Selene will refer to that ruling as if it were the real party in interest at that time: *e.g.*, the Trial Court ruled in Selene’s favor, instead of naming the company that was the real party in interest at that time (which was Rushmore Loan Management Services, LLC).

brought a judicial foreclosure action against Ms. Smith’s home in 2017); at 4 (“Ms. Smith could not afford the full purchase price of her home in cash, so she took out a mortgage, which was eventually transferred to Nationstar”). Every other reference to Selene’s predecessors is in reference to Appellee Wilmington Savings Fund Society’s (“WSFS”) motions and the Superior Court’s ruling on that motion. *See* Appellant’s Brief at 12 (discussing communications with Rushmore’s counsel); 13 (discussing attempts to obtain a payoff statement for the first line loan from Rushmore); 14 (discussing communications with Rushmore’s counsel); 15 (discussing a Rushmore payoff statement); 16 (citing the Rushmore Amended Complaint); 17 (discussing communications with Rushmore’s counsel); 48 (discussing communications with Rushmore’s counsel). And Ms. Smith did not include any filings in the Appendix related to Selene’s motions—only her Statement of Facts on Summary Judgment related to WSFS’s motion. App. 429-442.

Ms. Smith’s Questions Presented underscore that she is not challenging Selene’s ruling, but instead is challenging the Superior Court’s rulings: on the quitclaim deed from her to those appellees she deems the “fraudsters” (*i.e.*, not Selene); and on whether WSFS and its predecessor had actual or inquiry notice of the alleged fraud. Appellant’s Brief at 2. WSFS’s Brief similarly frames the issues on appeal here. WSFS Appellee’s Brief at 2 (“This is an appeal from the Order of the Superior Court . . . granting [WSFS’s] Post Discovery Closed Motion for

Summary Judgment in a case where Smith contended that the Quitclaim Deed . . . was void *ab initio* In the alternative, Smith contended that [WSFS] was not a *bona fide* purchaser for value”). WSFS’s Brief contains a similar dearth of references to Selene or its predecessors.

While it is not a jurisdictional prerequisite, the D.C. Court of Appeals generally limits its review to “to the issues raised by an appellant” *In re: Smith*, 305 A.3d 826, 843 (D.C. 2023). *See also Mack v. American Sec. & Trust Co.*, 191 F.2d 775, 776-77 (D.C. Cir. 1951) (“In their statement of Points the appellants do not challenge the trial court’s conclusion that the defendants did not engage in a conspiracy. . . . Accordingly, we do not review the judgment in favor of those defendants”). This is a “well-settled rule of practice” *District of Columbia v. Chinn*, 839 A.2d 701, 712 n.10 (D.C. 2003). Diversion from this rule is reserved for “appropriate circumstance. . . .” *See Fort Myer Construction Corp. v. Briscoe*, 298 A.3d 770, 778 (D.C. 2023). Such “appropriate circumstances” do not exist here, and no party has argued that they do. The Court should limit its review here to the questions presented by Ms. Smith, and affirm the Superior Court’s Order granting Selene’s Motion for Summary Judgment.

Even if it were to review the Order granting Selene Summary Judgment, however, it is uncontroverted that Ms. Smith took out the Note and signed the Deed of Trust that now runs in Selene’s favor, and similarly uncontroverted that Ms. Smith

defaulted on that Note. There is no serious question as to whether Selene was entitled to summary judgment in its favor. *See* Rushmore Loan Management Services Memorandum in Support of its Motion for Summary Judgment (February 2, 2022).

CONCLUSION

Because Ms. Smith has not challenged the Superior Court's ruling in Selene's favor, Selene requests that this Court affirm the Superior Court's ruling granting Selene summary judgment.

Dated: March 18, 2024

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief of Appellee Selene Finance LP was served via the Court's electronic filing system on this 18th day of March, 2024, upon the following:

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District of Columbia Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a “CV” docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:
 - An individual’s social-security number
 - Taxpayer-identification number
 - Driver’s license or non-driver’s’ license identification card number
 - Birth date
 - The name of an individual known to be a minor
 - Financial account numbers, except that a party or nonparty making the filing may include the following:
 - (1) the acronym “SS#” where the individual’s social-security number would have been included;
 - (2) the acronym “TID#” where the individual’s taxpayer-identification number would have been included;
 - (3) the acronym “DL#” or “NDL#” where the individual’s driver’s license or non-driver’s license identification card number would have been included;
 - (4) the year of the individual’s birth;
 - (5) the minor’s initials; and
 - (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.
3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.
4. Information about protection orders, restraining orders, and injunctions that “would be likely to publicly reveal the identity or location of the protected party,” 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining “protection order” to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).
5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.
6. Any other information required by law to be kept confidential or protected from public disclosure.

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23-CV-0189

Case Number(s)

3/18/2023

Date