

Client Alert: Wheeling v. Selene Finance, LP

11 May 2021

Christopher A. Glaser

The Court of Appeals of Maryland has held that a protected resident need not be deprived of actual possession as a condition to suit against a loan servicer under the 2013 residential eviction amendments set forth in Maryland Code Real Property Article § 7-113. In *Wheeling v. Selene Finance, LP*, the Court weighed-in on claims from two families regarding the 2013 amendments which permit self-help in certain residential evictions, provided that the person claiming the right to possession reasonably believes the property is abandoned and posts notice in compliance with the statute.

Eric and Whitney Wheeling alleged that they openly occupied the property at the time that Selene Finance, LP posted a notice that the property would be considered abandoned unless the servicer was contacted. The Wheelings did not vacate the property but, instead, incurred legal expenses in consulting with counsel and alleged to have suffered emotional distress with physical manifestations.

As to Joanne Rodriguez, Selene had filed a foreclosure action against the Rodriguez property. After the foreclosure sale was ratified, but prior to the scheduled sheriff's eviction, a notice similar to that posted at the Wheeling property was posted on the Rodriguez property. Ms. Rodriguez also alleged to have suffered legal expenses and emotional distress with physical manifestations as a result of the notification.

The Court, in holding that § 7-113 permits a private right of action, noted that self-help in a residential foreclosure is permitted only after first making "a reasonable inquiry into the occupancy status of the property" and concluding that it has been abandoned or surrendered, and then only after posting proper notice. Violation of the statute may give rise to actual damages, attorneys' fees and "possession of the property, if no other person resides in the property." Notably absent from the statute is the necessity that the plaintiff vacate the property. As the Court noted, "[t]aking possession of property and threatening to take possession of property are two distinct acts. One may threaten action but never consummate the act." The plaintiffs' claims were permitted to proceed beyond the pleading stage.

While the Court of Appeals permitted the plaintiffs' claims to proceed, the Court limited the attorneys' fees potentially recoverable to those actually incurred in the litigation itself and disallowed the pre-suit "consultation" fees. The Court provided further instruction that the plaintiffs may have sufficiently pled emotional distress damages but that proving them would be a much different hurdle.

Jackson & Campbell, P.C. represents title insurers and insureds in Maryland, Virginia, and Washington, D.C. and we strive to keep our clients and other title professionals up to date on various developments in the law. Additionally, we present no cost in-house updates of the nation's most noteworthy cases and national trends following the spring and fall American Land Title Association's Title Counsel meetings.

If you have any questions about this case or laws impacting real estate in and around the Washington, D.C. region, feel free to contact us. Our [Real Estate Litigation and Transactions](#) Practice Group is ready to assist.

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