

NORTH CAROLINA COURT OF APPEALS

CHESTER TAYLOR III, JEANETTE)	
and ANDREW ALESHIRE, LORI)	
MARTINEZ, ZELMON MCBRIDE,)	
LORI MENDEZ, KEITH PEACOCK,)	<u>From Mecklenburg County</u>
MARQUITA PERRY, KIMBERLY)	
STEPHAN, RONDA and BRIAN)	
WARLICK,)	
)	
Appellants,)	
)	
v.)	
)	
BANK OF AMERICA, N.A.,)	
)	
Appellee.)	
)	

**Plaintiffs/Appellants Motion Requesting Oral
Argument**

Plaintiffs/Appellants, pursuant to Rules 3 and 30 of the North Carolina Rules of Appellate Procedure, respectfully file this Motion Requesting Oral Argument.

Introduction and Procedural History

Appellants have repeatedly noted that the Defendant/Appellee, Bank of America (“the Bank”) defrauded countless families through the Home Affordable Modification Program (“HAMP”). Although this case involves a straightforward application of Rule 12(b)(6), the unique procedural history and the high-stakes

nature of this case warrant granting this request for oral argument.

The procedural history of this litigation is unique. Plaintiffs/Appellants first filed this case on 1 May 2018 in the Superior Court of the County of Mecklenburg, North Carolina, Case No. 18-CVS-8266. Defendant/Appellant, removed the case to the United States District Court for the Western District of North Carolina. Plaintiffs/Appellees then moved to remand the case to the Superior Court of the County of Mecklenburg, North Carolina. Appellee's Motion to Remand was granted. (11(c) Supp. p 1).

After the case was remanded to the Superior Court of Mecklenburg County, the several hundred other cases against the Bank were designated under Rule 2.1 and consolidated before Judge Bell. The remaining cases not involved in this appeal are currently stayed in Superior Court, pending the resolution of this appeal. Further, after Remand, the Bank filed its Motion to Dismiss the Amended Complaint. Then, after almost a year and a half, the Superior Court ruled in favor of the Bank, dismissing the cases, without any details or explanation, on the grounds that Appellee's claims were barred by the statute of limitations, res judicata, and collateral estoppel. Plaintiffs/Appellees then appealed that Order to the North Carolina Court of Appeals. On 31 December 2020, the Court of Appeals affirmed the trial court's ruling, upholding the Superior Court's impermissible fact-finding and contradicting established precedent of the North Carolina Supreme Court.

On 2 February 2021, Plaintiffs/Appellees filed a Petition for Rehearing.

That Petition was granted by the North Carolina Court of Appeals (Carpenter, Dillon, Jackson, JJ) on 10 March 2021. The case was reheard on the briefs without oral arguments, and on 5 October 2021, the new panel issued its opinion, reversing and remanding the case for further findings of fact and conclusions of law, determining that the Superior Court failed to make findings sufficient for the Panel to determine the reasons behind the decision. That opinion did not address the merits of the arguments pertaining to the statute of limitations or res judicata issues.

The Bank then appealed to the North Carolina Supreme Court. On 4 November 2022, the Supreme Court vacated the Court of Appeals' decision and remanded the case to the Court of Appeals instructing this Court to address "whether the allegations of the complaint, if treated as true, are sufficient to state a claim upon which relief can be granted under some legal theory." *Bridges v. Parrish*, 366 N.C. 539, 541 (2013).

Argument

First, oral argument is warranted in this case because of the complex and unique nature of the procedural history outlined above. While underlying law of this case is straightforward, the procedural history indicates that while many courts have reviewed this case, only one has ruled on the merits. Moreover, it is critical that this Court address the underlying Rule 12(b)(6) Motion – and not the many distracting elements of the case that may have arisen since its filing more than four years ago. As such, oral argument is warranted.

Moreover, Oral argument in this case is warranted because of the high-stakes nature of this litigation. Under the guise of HAMP, BOA fraudulently denied benefits to homeowners by repeatedly lying to them and destroying their documents, ultimately forcing unsuspecting homeowners into foreclosure. In bringing this case, Chester Taylor and the other Plaintiff homeowners seek to hold BOA accountable for this egregious fraud.

In late 2008 / early 2009, America experienced one of its worst economic downturns since the Great Depression. A housing crisis accompanied the collapse as mortgages became increasingly unaffordable. Housing loan defaults were rampant, threatening the viability of several major banks, including BOA. Because the economy could not withstand bank insolvency, the federal government implemented the Troubled Assets Relief Program (TARP), in which over \$200 billion in taxpayer funds was provided to banks. BOA's share of this funding totaled \$45 billion, with an additional \$100 billion in future commitments.

The federal funds BOA sought under HAMP were not some unrestricted windfall for the benefit of the banks. Instead, there was a specific federal objective —namely, a commitment to modify mortgage terms to help prevent homeowners from defaulting on loans and losing their homes. Thus, BOA was compelled to contractually commit to use “reasonable efforts” to “effectuate any modification of a mortgage loan under the Program.”

BOA knew the loan modifications would reduce the profits anticipated by the bank by millions of dollars. Instead of using the billions in federal funding it received to help homeowners out of financial difficulty — as it promised to do — BOA instead opted to prevent HAMP applicants from becoming or remaining eligible for permanent HAMP modifications. BOA's covert scheme involved numerous acts that misled and deceived mortgagors, like Chester Taylor, into believing they did not qualify for loan modifications or had failed to follow required procedures. The result—numerous foreclosures of properties including the properties of the Plaintiffs here, for individuals deprived of a legitimate opportunity to avoid foreclosure had BOA not engaged in the fraudulent scheme.

By way of example only, BOA instructed its employees: to shred paper documents and delete electronic files from applicants, tell applicants their submissions were incomplete or untimely, offer modifications with illegal terms including higher interest rates than the law allows, tell homeowners they were required to be in default in order to qualify for a HAMP modification, and convert trial payments into BOA assets rather than applying them against consumers' mortgage obligations. Then, BOA foreclosed on mortgagors whose applications were denied as a result of any of the above actions by BOA.

BOA has been accused in this case of committing some of the most widespread and egregious fraud in the history of the mortgage industry. After agreeing to participate in the HAMP program, BOA denied HAMP benefits to a

staggering 79 percent of homeowners who applied for the program. *See* SIGTARP, Office of the Special Inspector General For the Troubled Asset Relief Program, Quarterly Report to Congress, January 27, 2017, full report accessed at: <https://www.sigtarp.gov/pages/Reports-Testimony-Home.aspx>. The report noted that BOA “has one of the worst track records in HAMP.” *Id.* BOA was also involved in the largest ever False Claims Act payout related to mortgage fraud. *Id.*

On this other side of the case is a group of homeowners like Chester Taylor. Mr. Taylor is a forty-four-year-old who went to work in the boating industry near Wilmington, North Carolina. He first purchased his dream home in 2005, and for years, he never missed a payment. Unfortunately, around the time the economy took a turn for the worse, Mr. Taylor also needed to care for his ailing father. He turned to BOA for help, and he requested a modification, sending in at least ten properly completed applications and faxing documents, requested by BOA, more than thirty times, all to no avail. In fact, Mr. Taylor said that there were days he would call BOA up to seven times in one day to check on the status of his application. Each time, he was told his documents were missing or incomplete. At the instruction of BOA representatives, Mr. Taylor also made timely trial payments for a full year, despite the fact that HAMP only required these payments to be made for three months. Then, despite Mr. Taylor’s compliance with BOA’s instructions, submissions of completed applications, and timely trial payments, BOA noticed the foreclosure

of Mr. Taylor's home in 2012. Mr. Taylor did not understand where he went wrong until he saw an advertisement in November 2016, stating that BOA had wrongfully denied modifications to thousands of homeowners, after shredding and deleting customer files. His case, along with ten other Plaintiffs, was filed in the Superior Court of Mecklenburg County in May 2018.

Here, Plaintiffs seek review of a case that has garnered widespread public interest and media coverage.¹ This public interest is justified, as this case will likely impact the rights of hundreds of homeowners who faced foreclosure, bankruptcy, and more. In addition to the plaintiffs listed on this Complaint, the complaints of several hundred additional plaintiffs are pending in Superior Court but are currently stayed pending the resolution of this appeal. Until this appeal is resolved, hundreds of people have no avenue within which to pursue their claims.

This case involves a critically important issue as well as important litigants, many of whom, like Mr. Taylor, cannot move on or seek any other recourse until this appeal is resolved. The subject matter of this appeal has immense public interest and importance. As a result, oral argument is warranted.

¹ *Bank of America destroyed documents as borrowers tried to save their homes, suit says*, Charlotte Observer, June 5, 2018, accessed January 9, 2020 at <https://www.charlotteobserver.com/news/business/banking/article212484029.html>; *Homeowners Claim Bank of America Schemed to Steal Their Homes*, Courthouse News Service, June 29, 2017, accessed January 9, 2020 at <https://www.courthousenews.com/homeowners-claim-bank-america-schemed-steal-homes/>.

Conclusion

For the reasons stated herein, Plaintiffs/Appellants respectfully requests that this Court allow oral arguments to be presented on the important questions presented in this case.

This 11th day of August 2020.

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