

**NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED
IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION**

WELLS FARGO BANK NA,
Appellant,
v.

Ref. No.: 16-000046-AP-88B
UCN: 522016AP000046XXXXCI

TERRENCE BROWN,
Appellee.

ORDER AND OPINION

Appellant appeals an order of the county court that denied its Motion to Dismiss for lack of jurisdiction. On appeal, Appellant contends that venue is improper in Pinellas County under the Federal Real Estate Settlement Procedures Act (“RESPA”). We agree. For the reasons set forth below, the order is reversed and remanded.

Facts and Procedural History

On May 10, 2016, Appellee, Terrence Brown, filed a one-count complaint in Pinellas County against Appellant, Wells Fargo Bank, alleging a violation of 12 U.S.C. § 2605(k) and 12 C.F.R. § 1024.36(c). Specifically, Appellee alleged that Appellant failed to provide a timely acknowledgement of receipt of a Request for Information (“RFI”) that Appellee mailed to Appellant in Des Moines, Iowa. The complaint stated that the Pinellas County Court had jurisdiction under section 34.01(c), Florida Statutes, based on the amount in controversy and 12 U.S.C. § 2614 because a “substantial part of the events or omissions giving rise to the claim occurred” in Pinellas County.¹

On June 13, 2016, Appellant filed a Motion to Dismiss alleging that the county court lacked jurisdiction under 12 U.S.C. § 2614, which states that jurisdiction under RESPA lies in “the district in which the property involved is located, or where the violation is alleged to have occurred.” Appellant argued that jurisdiction does not lie in Pinellas County, but rather lies in either Marietta, Georgia, where Appellee’s property is located, or Des Moines, Iowa, where the

¹ The Court notes that Appellee misrepresented its jurisdictional statement to the county court in its complaint by improperly quoting language that does not actually exist in the cited statute.

violation occurred. On August 9, 2016, the county court denied Appellant's Motion to Dismiss without explanation. Thereafter, Appellant filed the instant appeal.

Standard of Review

On review of a trial court's order denying a motion to dismiss for improper venue, the court's interpretation of the statute governing venue presents a question of law subject to de novo review. *See Dive Bimini, Inc. v. Roberts*, 745 So. 2d 482, 483 (Fla. 1st DCA 1999); *Mgmt. Computer Controls, Inc. v. Charles Perry Const., Inc.*, 743 So. 2d 627, 630 (Fla. 1st DCA 1999) ("Whether venue is proper in a particular forum, however, is not a matter of judicial discretion. If there is no legal basis to support the plaintiff's choice of venue, the trial court must dismiss the case or transfer it to a forum that is authorized under the applicable venue statute.").

Discussion

RESPA "insure[s] that consumers throughout the Nation are provided with greater and more timely information on the nature and costs of the settlement process and are protected from unnecessarily high settlement charges." 12 U.S.C. § 2601, *et seq.* It also imposes certain duties on mortgage loan servicers. Under RESPA, "[a] servicer of a federally related mortgage shall not . . . fail to comply with any other obligation found . . . by regulation . . . to be appropriate to carry out the consumer protection purposes of this chapter." *Id.* at § 2605(k)(E).

The Code of Federal Regulations ("CFR") implements RESPA. *See* 12 C.F.R. Ch. X, Pt. 1024, *et seq.* Under the CFR, a servicer "shall provide to the borrower a written response acknowledging receipt" of a RFI within five business days of receiving it and respond to the RFI within ten business days of receiving it. *Id.* at § 1024.36(c), (d)(2)(i)(A). Here, Appellee alleged that it sent the RFI to Appellant and Appellant failed to timely respond with an acknowledgment of receipt, which constituted a violation of both 12 U.S.C. § 2605(k) and 12 C.F.R. § 1024.36(c).

Under RESPA, "[a]ny action pursuant to the provisions of section 2605 . . . may be brought in the United States district court or in any other court of competent jurisdiction, for the district in which the property involved is located, **or where the violation is alleged to have occurred.**" 12 U.S.C. § 2614 (emphasis added). Neither party disputes that venue would be proper where the property is located in Marietta, Georgia. Rather, the central issue in this appeal is determining where the violation occurred so as to establish venue. Appellant argues that the

violation, the failure to timely send an acknowledgment of receipt, occurred in Des Moines since that is where Appellant is located, where Appellee sent the RFI, and from where Appellant did not respond. Appellee argues that the violation occurred where Appellee discovered Appellant's non-compliance and incurred damages by mailing Appellant a letter from his attorney's Pinellas County office. However, Appellee's interpretation would require the Court to ignore the plain language of the law, which establishes that a violation occurs when the servicer fails to acknowledge receipt.

“Statutory interpretation in any case begins with the actual language used in the statute When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.” *Williams v. State*, 186 So. 3d 989, 991 (Fla. 2016) (internal citations omitted); *see Kephart v. Hadi*, 932 So. 2d 1086, 1091 (Fla. 2006). Here, the law clearly states that a servicer must timely send an acknowledgment of receipt; failure to do so constitutes a violation. *See* 12 U.S.C. § 2605(k); 12 C.F.R. § 1024.36(c). Accordingly, the violation occurred in Des Moines, Iowa, when Appellant failed to send the requisite acknowledgment.

Appellant's position is supported by the reasoning of *Crenshaw v. Specialized Loan Servicing, LLC*, which is a federal case rendered by the Southern District of Florida that is factually and legally similar to the instant appeal. 16-CV-81215, 2016 WL 4440511 (S.D. Fla. 2016). In *Crenshaw*, the plaintiff, represented by the same firm as the instant Appellee, sued a servicer for violation of 12 U.S.C. § 2605 and 12 C.F.R. § 1024.36(d)(2)(i)(A) for failure to timely respond to a RFI. The plaintiff's attorney brought the action where its office was located in Florida, despite having mailed the RFI to the defendant servicer in Colorado. The parties employed the same arguments regarding venue that the parties use in the instant appeal. The *Crenshaw* court agreed with the defendant servicer and held that under 12 U.S.C. § 2614, venue based on the violation was proper in Colorado where the servicer was located when it failed to comply with the law. *Crenshaw*, 16-CV-81215, 2016 WL 4440511, at *3.

Here, venue would be proper in either Marietta, Georgia, where Appellee's property is located, or where the violation occurred. Since the plain language of the statute and regulation indicates that the servicer has committed a violation when it fails to acknowledge receipt of the

RFI within five days, jurisdiction based on the violation lies in Des Moines, Iowa, not Pinellas County, Florida. Accordingly, the lower court improperly denied Appellant's Motion to Dismiss.

Conclusion

Because the lower court lacks jurisdiction to hear this matter under 12 U.S.C. § 2614, it is **ORDERED AND ADJUDGED** that the order is REVERSED and REMANDED.

DONE AND ORDERED in Chambers at St. Petersburg, Pinellas County, Florida, this 27th day of December, 2016.

Original Order entered on December 27, 2016, by Circuit Judges Jack Day, Amy M. Williams, and Thomas Ramsberger.

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