

Field v. U.S. Bank National Assn. as Trustee, etc., et al.
(2022) 79 Cal.App.5th 703

A responding party may not provide an ambiguous answer to an interrogatory and later contradict their response with new evidence in an opposition to summary judgment.

FACTS/PROCEDURE

In 2007, Plaintiff executed a promissory note for over a million dollars. In 2017, she defaulted on her payments and applied for a loan modification. Plaintiff's home was foreclosed in 2017 and she proceeded with a wrongful foreclosure action against a bank and the loan management servicer the next year. Defendants propounded an interrogatory that targeted a contentious issue, that being whether the Notice of Trustee Sale was mailed to Plaintiff in compliance with the statute. Plaintiff's answer to this interrogatory was "unsure."

Defendants moved for summary judgment on the ground that the foreclosure was sound because they had properly recorded the notice of the trustee sale. In Plaintiff's opposition, Field contradicted her prior interrogatory stating that she was now "sure" that she never received the notice of sale in the mail and swore to it. The trial court granted Defendant's motion for summary judgment.

The trial court rejected Plaintiff's wrongful foreclosure claim because Defendants properly changed the loan's successor trustee. Additionally, there was no requirement, by deed of trust or by statute, that required Defendants to provide Plaintiff with notice by mail of the executed substitution of trustee. The court also noted that Plaintiff did not have a written loan modification at the time of the sale, nor was there any evidence of wrongful conduct by Defendants.

Plaintiff appealed the trial court's decision on two grounds: (1) whether she received notice of the trustee's sale and (2) whether she could tender the amount of the loan.

HOLDING/DISCUSSION

The Second Appellate District affirmed the lower court's judgment in granting Defendant's summary judgment motion. The court found that Plaintiff could not argue in opposition to Defendant's summary judgment motion that she never received notice of sale after submitting an ambiguous, one word response to Defendant's interrogatory that targeted this issue, thus violating Code Civ. Proc., section 2030.220, subds. (a)-(c).

The court reasoned that it was unjust and improper for Plaintiff to claim that she was "unsure" whether the notice of sale was proper but then contradict her position during summary judgment. Plaintiff did not attempt to amend her response under Code Civ. Proc., section 2030.310 but rather sought to create a disputed issue of fact with assertions she had failed to formulate or disclose during discovery. The court stated, "A party opposing summary judgment may not move the target after the proponent has launched its arrow."