Court of Appeals, State of Michigan

ORDER

Cheryl Sobh v Bank of America NA

Docket No. 308441

LC No. 11-008363 CH

Kurtis T. Wilder
Presiding Judge

Cynthia Diane Stephens

Amy Ronayne Krause
Judges

The Court orders that the motion for reconsideration is DENIED. The disputed statement from *Kim v JP Morgan Chase Bank, N.A.*, 493 Mich 98, 106; 825 NW2d 329 (2012), that "a mortgagee cannot validly foreclose a mortgage by advertisement before the mortgage and all assignments of that mortgage are duly recorded[,]" is not dicta. Furthermore, the disputed statement is entirely consistent with the plain language of MCL 600.3204(3), which unambiguously requires that "a record chain of title shall exist," rather than only requiring evidence of the last assignment to the party foreclosing the mortgage. "When a court of last resort intentionally takes up, discusses and decides a question germane to, though not necessarily decisive of, the controversy, such decision is not a dictum but is a judicial act of the court which it will thereafter recognize as a binding decision." *City of Detroit v Public Utilities Comm*, 288 Mich 267, 299-300; 286 NW 368 (1939) (quotation omitted). Indeed, in such a situation, "all that is necessary for a decision to be authoritative is to show application of the judicial mind to the subject." *Id.* at 299. A holding is not dicta merely because it contradicts a prior decision without explicitly stating as much; this Court is obligated to construe what our Supreme Court actually states, not engage in suppositions that it meant something else. Because The Michigan Supreme Court decided this issue and it was germane to the controversy in *Kim*, it is binding on this Court.

Presiding Judge

Wilder, P.J., I would grant reconsideration because there is no indication by the disputed language from *Kim v JP Morgan Chase Bank, N.A.*, 493 Mich 98, 106; 825 NW2d 329 (2012), that "a mortgagee cannot validly foreclose a mortgage by advertisement before the mortgage and all assignments of that mortgage are duly recorded[,]" that the Michigan Supreme Court intended to overrule its holding in *Arnold v DMR Financial Services, Inc*, 448 Mich 671, 676-677; 532 NW2d 852 (1995). I would find the disputed language to be dicta. Moreover, the plain language of MCL 600.3204(3) ["If the party foreclosing a mortgage by advertisement is not the original mortgagee, a record chain of title shall exist prior to the date of sale under [MCL 600.3216] *evidencing the assignment of the mortgage to the party foreclosing the mortgage*" (emphasis added)], requires only that the record chain of title evidence that

there has been an assignment of the mortgage to the foreclosing party. *Arnold* and the position articulated by appellee are both consistent with this interpretation of the statute. Thus, I conclude that our opinion in this matter was in error.

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

NOV 12 2013

Date

Chief Clerk