



ATTORNEY FOR APPELLANT

Duran L. Keller
Lafayette, Indiana

ATTORNEYS FOR APPELLEE

David J. Jurkiewicz
Nathan T. Danielson
Bose McKinney & Evans, LLP
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Edward Gaeta,
Appellant,

v.

Huntington National Bank,
Appellee.

February 23, 2021

Court of Appeals Case No.
20A-MF-47

Appeal from the Tippecanoe
Superior Court

The Honorable Randy Williams,
Judge

Trial Court Cause No.
79D01-1604-MF-97

Pyle, Judge.

Statement of the Case

[1] This case returns after a previous panel of this Court reversed in part and affirmed in part a judgment entered in favor of Huntington National Bank (“Huntington”) and against Edward Gaeta (“Gaeta”). This Court reversed the trial court’s judgment granting Huntington’s request to foreclose on a mortgage but affirmed a money judgment against Gaeta. On remand, the trial court issued a new order that set aside the foreclosure judgment and retained the money judgment against Gaeta. Gaeta appeals the trial court’s order on remand, arguing that the trial court abused its discretion by failing to remove attorney fees and expenses that had been included in the original money judgment. Concluding that Gaeta’s claim is barred by the law of the case doctrine, we affirm.

[2] We affirm.

Issue

Whether Gaeta’s claim is barred by the law of the case doctrine.

Facts

[3] The underlying facts and procedural history of this appeal, as found by this Court, are as follows:

In September 2008, Gaeta executed a promissory note (the “Note”) payable to Huntington in the principal amount of \$78,859. This loan was secured via a mortgage (the “Mortgage”)

against a residence on Chilton Drive in Lafayette, Indiana (“the Property”). The terms of the Note required Gaeta to make monthly payments of \$498.45, plus additional amounts to be placed in escrow for property taxes. The loan was insured by the Federal Housing Administration (“FHA”), thereby subjecting the Note and Mortgage to regulations promulgated by the federal Department of Housing and Urban Development (“HUD”). In fact, the Note and Mortgage expressly incorporate the relevant HUD regulations.

Gaeta failed to make a timely payment on the first due date of November 1, 2008. Instead, he made a payment of \$644.61 on November 24, 2008. The following month, he made a payment of \$619.82 on December 23, 2008. Gaeta did not make any payment in January 2009, but he did make two payments of \$619.82 on February 9, 2009. Gaeta then made no payments in March or April 2009, but made a payment of \$644.61 on May 15, 2009, which was applied to the March payment. Gaeta made no payment in June 2009. Thus, at that point, he was three months behind in his payments, as the payments for April, May, and June were unpaid. This is important because federal regulations require Huntington to engage in certain steps, including seeking a face-to-face meeting with the mortgagor, “before three full monthly installments due on the mortgage are unpaid” on an FHA loan.

* * *

On April 8, 2016, Huntington filed a second complaint on the Note and to foreclose the mortgage. Gaeta filed an answer on July 19, 2016, asserting eighteen affirmative defenses. On November 7, 2016, Huntington filed a motion for summary judgment. Gaeta filed a response opposing summary judgment on April 17, 2017. The trial court held a summary judgment hearing on June 12, 2017. Four days later, Gaeta filed a motion for leave to file an amended answer, along with his proposed amended answer. Huntington objected to Gaeta’s motion for leave to amend. On August 2, 2017, the trial court denied Gaeta’s motion for leave to amend his answer and also denied Huntington’s motion for summary judgment.

A bench trial was held on August 30, 2017. After Huntington rested its case-in-chief, Gaeta moved for a judgment on the evidence and again moved to amend his answer to assert

additional affirmative defenses. The trial court denied the motion for judgment on the evidence but took the motion to amend under advisement. At the conclusion of the trial, the court took the matter under advisement and ordered both parties to submit post-trial briefs and proposed orders by October 6, 2017.

* * *

On December 20, 2017, the trial court entered its findings of fact and conclusions of law [(“the Original Judgment”). The trial court found that Gaeta was in default and that Huntington had satisfied any conditions precedent to foreclosure, specifically meeting certain requirements set forth in HUD regulations that Gaeta had raised as affirmative defenses.

* * *

The trial court also concluded that Gaeta had failed to establish his other claimed affirmative defenses. The trial court’s order included a money judgment in favor of Huntington, a decree foreclosing the mortgage, and an order to sell the Property.

Gaeta v. Huntington Nat’l Bank, No. 18A-MF-408, slip. op at *1-5 (Ind. Ct. App. June 24, 2019) (citations and footnotes omitted) (“*Gaeta I*”). In relevant part, the Original Judgment stated as follows:

[A] personal judgment against the defendant, Edward Gaeta, in the sum of \$112,310.80, being the principal amount of \$72,481.59; plus interest and late charges in the amount of \$15,793.59 to September 1, 2017; plus the net sum of \$4,846.65 expended by plaintiff for advances made by the plaintiff; plus costs of collection incurred by plaintiff in the sum of \$461.59, as evidenced on the affidavit of attorney fees and costs filed herein; plus attorney’s fees in the amount of \$18,193.00, making this judgment a total amount of \$112,310.80, with interest from September 1, 2017 at a rate of 6.500% per annum to the date hereof and interest thereafter at the rate of 6.500% per annum[.]

(App. Vol. 2 at 152).

[4] Thereafter, Gaeta initiated the appeal in *Gaeta I*. This Court issued an unpublished memorandum decision affirming in part and reversing in part the Original Judgment. We held that Huntington was not entitled to foreclose on the mortgage because Huntington had failed to comply with a condition precedent of the HUD regulations. We also affirmed the money judgment in favor of Huntington. Specifically, this Court stated:

[W]e do agree with Huntington that, even if it is prohibited from seeking foreclosure due to its failure to abide by the applicable HUD regulations, this does not mean that the money judgment in favor of Huntington is improper. Gaeta’s failure to pay the loan secured by the mortgage was clearly established. And the failure to comply with the HUD regulations is an affirmative defense to foreclosure. But this does not mean that Huntington is not entitled to a money judgment on the loan based on Gaeta’s failure to pay.

Accordingly, we reverse the judgment of the trial court to the extent it granted Huntington’s request to foreclose on the mortgage. But we affirm the trial court’s money judgment in favor of Huntington on the unpaid balance of the Loan.

Gaeta I, slip op. at *11 (footnotes omitted). Gaeta then petitioned for rehearing. One of the issues raised by Gaeta stated “[w]hether the money judgment should exclude attorney’s fees and expenses related to the foreclosure when the Court determined that foreclosure is not permitted.” (Huntington’s App. Vol. 3 at 5). In August 2019, this Court denied Gaeta’s petition for rehearing, and Gaeta did not seek transfer.

[5] In November 2019, the trial court held a hearing regarding *Gaeta I*. During the hearing, the trial court explained:

So, now what we have is this, I need to correct that portion of the Order which and I'll do it in a more formal way but that portion of the Court's original Order which foreclosed on the mortgage, but as the Court of Appeals decision does indicate, the judgment as to the damages does remain.

(Tr. 4-5). The trial court also briefly addressed Gaeta's argument that the trial court should exclude foreclosure related fees and expenses from the money judgment. Specifically, Gaeta argued that "the judgment should not include an additional \$18,000 or \$20,000 worth of all things that were based on foreclosure[.]" (Tr. 6).

[6] Huntington responded by pointing out that "[t]he Note by its own terms provide[d] for recovery of reasonable attorney's fees upon default" and that the trial court had "determined reasonable attorney's fees pursuant to the unambiguous terms of the note." (Tr. 8-9). Additionally, Huntington drew attention to the fact that Gaeta had not raised an attorney fee issue on appeal in *Gaeta I*. Huntington also highlighted that *Gaeta I* did not remand with directions to reconsider attorney fees and argued that the amount of the money judgment "survived the appeal and should stand." (Tr. 9). The trial court then requested that each party submit proposed orders on what "the court should enter on remand as directed by the Court of Appeals."¹ (Tr. 10).

¹ In Gaeta's proposed order, he argued that "Huntington is entitled to a money judgment against Gaeta for \$72,481.59; plus interest and late charges in the amount of \$15,793.59 to September 1, 2017, making this judgment total amount \$88,275.18[.]" (App. Vol. 2 at 158).

[7] Thereafter, in December 2019, the trial court issued an order that set aside the relief granting the foreclosure of the mortgage. The order further stated that “the Court of Appeals affirmed the money judgment without a specific carve out or reduction[.]” and restated the monetary amounts reflected in the Original Judgment. (App. Vol. 2 at 23). This appeal ensued.

Decision

[8] Gaeta contends that the trial court improperly determined that he was liable for the entire money judgment following this Court’s decision in *Gaeta I*.

According to Gaeta, because *Gaeta I* held that Huntington was prohibited from seeking foreclosure, the trial court misinterpreted *Gaeta I* by not revising the amount of the money judgement award and removing foreclosure-related fees and expenses. As Gaeta reads this Court’s prior decision, Huntington is only entitled to recover the amount on the unpaid balance of the loan, language used in the final paragraph of *Gaeta I*.

[9] In response, Huntington argues that the final paragraphs of *Gaeta I* mandates the result reached by the trial court. Huntington argues that the law of the case doctrine precludes both the trial court and this Court from addressing the attorney fees set forth in the money judgment that was affirmed in *Gaeta I*. We agree with Huntington.

[10] The law of the case doctrine provides that an appellate court’s determination of a legal issue binds the trial court and the appellate court in any subsequent appeal involving the same case and substantially the same facts. *Think Tank*

Software Dev. Corp. v. Chester, Inc., 30 N.E.3d 738, 744 (Ind. Ct. App. 2015), *trans. denied*. The purpose of the doctrine is to minimize unnecessary repeated litigation of legal issues once they have been resolved by an appellate court. *Id.* The doctrine is based upon the sound policy that once an issue is litigated and decided, that should be the end of the matter. *Id.* at 744-45. To invoke the doctrine, the matters decided in the earlier appeal must clearly appear to be the only possible construction of a decision. *Id.* at 745. “Accordingly, under the law-of-the-case doctrine, relitigation is barred for all issues decided ‘directly or by implication in a prior decision.’” *In re Change to Establish Water Level of Lake Woods in Marshall Cty.*, 822 N.E.2d 1032, 1042 (Ind. Ct. App. 2005) (quoting *Certain Northeast Annexation Area Landowners v. City of Fort Wayne*, 622 N.E.2d 548, 549 (Ind. Ct. App. 1993), *reh’g denied, trans. denied*), *trans. denied*. Thus, questions not conclusively decided in the earlier appeal do not become the law of the case. *Dutchmen Mfg., Inc. v. Reynolds*, 891 N.E.2d 1074, 1083 (Ind. Ct. App. 2008), *trans. denied*.

[11] In *Gaeta I*, this Court reversed the trial court’s grant of Huntington’s request to foreclose on the mortgage and affirmed the money judgment in favor of Huntington. We explained that “even if [Huntington] is prohibited from seeking foreclosure due to its failure to abide by the applicable HUD regulations, this does not mean that the money judgment in favor of Huntington is improper.” *Gaeta I*, slip op. at *11. *Gaeta* then petitioned for rehearing, seeking clarification of the amount of the money judgment, and this Court denied his petition. He did not seek transfer for consideration of the

matter by our supreme court. After the case was remanded, the trial court withdrew the foreclosure judgment but retained the money judgment in favor of Huntington.

[12] Here, our resolution of Gaeta's argument is informed by the *Gaeta I* Court's holding that affirmed the money judgment contained in the Original Judgment in favor of Huntington based on Gaeta's failure to pay. Thus, there can only be only one possible construction of *Gaeta I*; Huntington is entitled to the entirety of the money judgment. Therefore, we apply the law of the case doctrine and affirm the trial court.

[13] Affirmed.

Kirsch, J., and Tavitas, J., concur.