

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

BEFORE THE HONORABLE FRANK ROESCH, JUDGE

RENEE SHIZUE RAMOS, AKA RENEE
SHIZUE YAMAGISHI,

Plaintiff,

vs.

Case No. 23CV029813

WILMINGTON TRUST NATIONAL
ASSOCIATION, SUCCESSOR TRUSTEE
TO CITI BANK, N.A., AS TRUSTEE
FOR MERRILL LYNCH MORTGAGE
INVESTORS TRUST, MORTGAGE LOAN
ASSET-BACKED CERTIFICATES, AND
SERIES 2006-HES, a business
entity form unknown, et al.,

**CERTIFIED
TRANSCRIPT**

Defendants.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

(Via Remote Appearance)

June 8, 2023

APPEARANCES:

For the Plaintiff: STEPHEN F. LOPEZ, ESQ.

For the Defendant BRANDON TROUT, ESQ.
Breckenridge:

For Defendant ANDREA HICKS, ESQ.
Nationstar:

Court Reporter: Lisa McMillan, CSR #10383

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Via Zoom, California

June 8, 2023

P R O C E E D I N G S

THE COURT: Good afternoon. All right. This is Department 17. This is the law and motion calendar.

The first item on calendar is Ramos versus Wilmington Trust National Association and others.

Is there anybody here on this case?

MR. LOPEZ: Good afternoon, Your Honor. Stephen Lopez on the telephone for Ms. Ramos.

MR. TROUT: Good afternoon, Your Honor. Brandon Trout for Breckenridge.

MS. HICKS: Good afternoon, Your Honor. Andrea Hicks for Nationstar Mortgage.

THE COURT: All right. I had issued a tentative ruling asking the parties to appear to have a conversation about an undertaking. I issued a tentative ruling with regard to the preliminary injunction issue.

Somebody wanted to make an argument. Who was that?

MR. TROUT: That was me, Your Honor.

THE COURT: All right. Go ahead, Mr. Trout.

MR. TROUT: Thank you, Your Honor.



1 Just briefly, I would like to point out that
2 plaintiff's own declaration, when she talks about this
3 tender she purportedly made, which she did not support
4 with any e-mails or written documentation, she admits
5 that the loan approval she submitted was a conditional
6 loan approval. And under the case law that we have
7 submitted, to make a tender, it needs to be an
8 unconditional tender.

9 THE COURT: Did you read her entire
10 declaration?

11 MR. TROUT: Yes, Your Honor.

12 THE COURT: Did you read the part where it says
13 that she tried to get a payoff amount and the company
14 wouldn't give it to her?

15 MR. TROUT: Yes, Your Honor. I also saw the
16 e-mails.

17 THE COURT: My understanding of that is that
18 it's a defense saying that, I had a loan in place ready
19 to go. They wouldn't give me a payoff amount, so I
20 couldn't actually close the loan because we didn't have
21 a payoff amount. And then comes the sale. The sale
22 occurs. And she tells everybody there at the place of
23 the sale that she, in fact, has tendered, and they went
24 ahead with the sale anyway.

25 So when you're telling me that she wasn't able



1 to actually hand a check at that very moment, it sounds
2 like she is alleging that she couldn't do that because
3 of something that -- it wasn't your client. You're the
4 person that wanted the foreclosure sale, but the sale is
5 invalid, and that that affects you.

6 MS. HICKS: Your Honor, this is Andrea Hicks,
7 counsel for Nationstar.

8 THE COURT: Hold on just a moment. Mr. Trout
9 has the microphone here.

10 Go ahead, Mr. Trout.

11 I just wanted you to understand that it's not
12 just that she didn't appear with the cash in hand; that
13 it is what she says in her declaration. You didn't seem
14 to be aware of that.

15 MR. TROUT: No, Your Honor. I apologize, Your
16 Honor. And she did state that in her declaration. We
17 attached the e-mail that she previously submitted on the
18 motion for summary judgment, demonstrating that she did
19 have a payoff, and she did have a number, and she had a
20 conditional loan approval but not a full loan approval.
21 And she purportedly has these documents. Her
22 declaration says that the facts in the written evidence
23 shows this, but hasn't attached any. E-mails that she
24 previously provided that we attached in our opposition,
25 Your Honor, I think demonstrates, at least from those



1 e-mails, that there was not a full unconditional tender
2 of any amount. And her e-mail said that she needed --

3 THE COURT: Mr. Trout, let me stop you for just
4 a moment.

5 You presented no factual underpinning to your
6 opposition whatsoever.

7 MR. TROUT: Your Honor, that's why I attached
8 the e-mails that were previously submitted by the
9 plaintiff. They're her own e-mails.

10 THE COURT: Mr. Trout, litigation is a very
11 formal process. You can't attach e-mails to an
12 application -- or to a memorandum of points and
13 authorities and expect anyone to consider it evidence.

14 MR. TROUT: Understood, Your Honor.

15 THE COURT: The consequence of that is that you
16 have presented no factual underpinning to your
17 opposition.

18 MR. TROUT: Understood, Your Honor.

19 THE COURT: What do you want me to do? I
20 accept the facts as they're presented in the factual
21 underpinning that's presented.

22 MR. TROUT: Correct, Your Honor.

23 And in plaintiff's declaration, she, in
24 addition to stating that she had money in escrow, she
25 also stated that she submitted a conditional loan



1 approval. But I understand the Court's tentative
2 ruling. Those are the only points I wanted to make with
3 regard to that. And I understand the Court also wanted
4 to discuss the undertaking as well.

5 THE COURT: Ms. Hicks, did you want to make
6 argument here?

7 MR. LOPEZ: Your Honor, before Nationstar --
8 Nationstar hasn't appeared in this case yet. Are they
9 responding to this? Because they have yet to make an
10 appearance in this case.

11 THE COURT: Mr. Lopez, I will permit a special
12 appearance, because they are, in fact, a named party.

13 MR. LOPEZ: That's fine, Your Honor.

14 MS. HICKS: Your Honor, thank you. We'll be
15 filing our answer tomorrow. And we did not have the
16 opportunity to respond to this preliminary injunction
17 because we were not actually served with the papers, so
18 did not have --

19 THE COURT: Does Nationstar claim a right to a
20 possessory interest in this real estate?

21 MS. HICKS: We do not. But --

22 THE COURT: That would mean that a preliminary
23 injunction wouldn't impact you so whatsoever.

24 MS. HICKS: No. But it does go to -- the
25 claims Ms. Ramos are making go to -- the underlying



1 claims go to conduct of Nationstar.

2 THE COURT: Oh, I think that you're certainly
3 correct about that.

4 But the preliminary injunction that has been
5 applied for is merely that the parties with a right to a
6 possessory interest or who have claims to a possessory
7 interest, not proceed with eviction proceedings.

8 MS. HICKS: That's correct. And Nationstar no
9 longer has a possessory interest in the property.
10 That's correct.

11 THE COURT: Okay. So that rather truncates
12 what your involvement would be in this particular
13 motion. But you can argue if you think that there's a
14 reason to do something different than what I have
15 indicated on the TR.

16 MS. HICKS: I just think the Court doesn't have
17 the full picture of the underlying claims, given the
18 litigation history here, and the prior litigation with
19 Ms. Ramos and Nationstar. There's been a long
20 litigation history between plaintiff and Nationstar
21 related to this foreclosure, going back multiple years.

22 THE COURT: Okay. How would it impact the
23 factual basis of --

24 MS. HICKS: I think it would impact the Court's
25 analysis whether Ms. Ramos is likely to prevail on the



1 merits of her claims in this litigation.

2 THE COURT: Okay. Is there anything else that
3 you would like to add?

4 MS. HICKS: Not right now, Your Honor.

5 THE COURT: Mr. Lopez?

6 MR. LOPEZ: I'm sorry, Your Honor?

7 THE COURT: Is there anything that you would
8 like to argue?

9 MR. LOPEZ: Your Honor, I know that the Court
10 had indicated questions about an undertaking. And I'll
11 be honest with the Court, I didn't respond or suggest
12 any undertaking in this case because, again, I saw no
13 evidentiary basis for an undertaking. I didn't see any
14 evidence as to the rental value. I didn't see any
15 evidence as to the potential damages that they might
16 incur. So as a result of that, I didn't even address an
17 undertaking in regard to this motion.

18 I think the Court is right to issue the
19 preliminary injunction. I think the facts are the
20 facts, and I think the Court has them right.

21 And again, I don't see any evidentiary basis to
22 issue an undertaking in this particular case. They
23 didn't submit any declarations. They didn't submit
24 anything regarding the reasonable rental value of the
25 property. They have nothing in front of the Court. So



1 I'm not sure how the Court determines what an
2 undertaking should be in this case without some evidence
3 as to potential harm or damages.

4 THE COURT: All right. Mr. Trout, what's your
5 opinion about -- well, Mr. Lopez thinks that there
6 shouldn't be an undertaking. What is your opinion?

7 MR. TROUT: I believe there should be an
8 undertaking here, Your Honor. Particularly at the --

9 THE COURT: What kind of undertaking do you
10 think there should be?

11 MR. TROUT: Your Honor, when the Court granted
12 summary judgment in the unlawful detainer action, it
13 made a finding that the damages were \$145.33 per day.
14 And that was discussed at the ex parte hearing, and that
15 was submitted with the opposition to the ex parte's
16 application and incorporated in our opposition. So we
17 would submit, Your Honor, that at a minimum basis, any
18 bond should be that \$145.33 per day.

19 My client purchased this property at a
20 foreclosure sale almost four years ago. I don't have
21 that math in front of me, and I don't think that bond
22 needs to be that entire amount, but that was the daily
23 amount for almost four years. But certainly something
24 substantial, Your Honor, to -- where the rubber meets
25 the road on this case. My client paid a substantial



1 amount of money for this property; still doesn't have
2 possession. Plaintiff lost an unlawful detainer case
3 and is essentially getting an appeal with this case.
4 And that's been stayed. So we ask that the Court issue
5 a substantial bond.

6 Plaintiff was previously determined to be a
7 vexatious litigant. Again, that order was attached to
8 our prior opposition as well. And in that case the
9 court ordered a \$100,000 bond. Obviously, a vexatious
10 litigant bond is different than the preliminary
11 injunction bond here.

12 But certainly there should be something
13 substantial to demonstrate the -- to go to the damages
14 and the value of this property, Your Honor. I think at
15 a minimum, it should be \$145.33 per day for one year.

16 THE COURT: All right. Ms. Hicks, do have you
17 an opinion on this subject?

18 MS. HICKS: I do not, Your Honor.

19 THE COURT: Mr. Lopez, any further argument
20 that you would like to make?

21 MR. LOPEZ: Your Honor, I would note that there
22 are two other --

23 THE COURT: Can you hold on just a moment,
24 Mr. Lopez.

25 (Interruption in proceedings.)



1 THE COURT: I'm sorry to interrupt you, Mr.
2 Lopez. My clerk was confused by who you represent in
3 this case.

4 MR. LOPEZ: Thank you, Your Honor.

5 There are two other tenants in this property
6 currently, Your Honor. They're technically obligated
7 for rent. I mean, to say that the rental value of the
8 property is their potential damages, if that were the
9 case, and again, I don't know that that is the case --
10 and I don't agree that there's been any determination
11 that that is the reasonable rental value of the
12 property, but you would have to account for the other
13 people and the fact that they owe rent for living in the
14 property also.

15 I mean, I would say again, Your Honor, they
16 didn't submit any evidence in support of any undertaking
17 in this case. They may want one. I think my client, in
18 this case, has a very good case. I would acknowledge
19 she was found to be a vexatious litigant in the past,
20 and that was because she wasn't represented by counsel
21 who knew what he or she --

22 THE COURT: By definition, she can't be a
23 vexatious litigant if she is represented by counsel.

24 MR. LOPEZ: That's correct, Your Honor.

25 And I think I have stated a valid case. And I



1 know what the facts are. I know what the law is in this
2 case. She has a very good claim in this case. I
3 wouldn't be proceeding with this case if I didn't think
4 she had a very good claim.

5 THE COURT: All right. I'll issue a
6 preliminary injunction. She may not be evicted. She --
7 because there's a failure of proof on \$145 or whatever,
8 I'm going to require an undertaking in the nominal sum
9 of \$5,000.

10 I'll give you two weeks, Mr. Lopez, to get it
11 into the court.

12 MR. LOPEZ: Okay.

13 THE COURT: I'll mail out the order. Thank
14 you.

15 MR. LOPEZ: Thank you, Your Honor.

16 MR. TROUT: Thank you, Your Honor.

17 (Proceedings adjourned.)
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CERTIFICATION

I, LISA M. McMILLAN, a Certified Shorthand Reporter, License No. 10383, in and for the State of California, do hereby certify:

That said proceedings were taken down by me in shorthand at the time and place therein named and were thereafter transcribed by means of computer-aided transcription; and the same is a true, correct and complete transcript of said proceedings.

I further certify that I am not of counsel or attorney for any of the parties hereto, or in any way interested in the events of this cause, and that I am not related to any party hereto.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 8th day of June 2023.



Certified Shorthand Reporter



<p>\$</p> <p>\$100,000 10:9</p> <p>\$145 12:7</p> <p>\$145.33 9:13,18 10:15</p> <p>\$5,000 12:9</p> <hr/> <p>1</p> <p>17 2:7</p> <hr/> <p>2</p> <p>2023 2:3</p> <hr/> <p>8</p> <p>8 2:3</p> <hr/> <p>A</p> <p>accept 5:20</p> <p>account 11:12</p> <p>acknowledge 11:18</p> <p>action 9:12</p> <p>add 8:3</p> <p>addition 5:24</p> <p>address 8:16</p> <p>adjourned 12:17</p> <p>admits 3:4</p> <p>affects 4:5</p> <p>afternoon 2:6,11,13,15</p> <p>agree 11:10</p> <p>ahead 2:24 3:24 4:10</p> <p>alleging 4:2</p> <p>amount 3:13,19,21 5:2 9:22, 23 10:1</p> <p>analysis 7:25</p> <p>Andrea 2:15 4:6</p> <p>apologize 4:15</p> <p>appeal 10:3</p> <p>appearance 6:10,12</p> <p>appeared 6:8</p> <p>application 5:12 9:16</p> <p>applied 7:5</p> <p>approval 3:5,6 4:20 6:1</p>	<p>argue 7:13 8:8</p> <p>argument 2:21 6:6 10:19</p> <p>Association 2:9</p> <p>attach 5:11</p> <p>attached 4:17,23,24 5:7 10:7</p> <p>authorities 5:13</p> <p>aware 4:14</p> <hr/> <p>B</p> <p>back 7:21</p> <p>basis 7:23 8:13,21 9:17</p> <p>bond 9:18,21 10:5,9,10,11</p> <p>Brandon 2:14</p> <p>Breckenridge 2:14</p> <p>briefly 3:1</p> <hr/> <p>C</p> <p>calendar 2:7,8</p> <p>California 2:2</p> <p>case 2:10 3:6 6:8,10 8:12,22 9:2,25 10:2,3,8 11:3,9,17,18, 25 12:2,3</p> <p>cash 4:12</p> <p>check 4:1</p> <p>claim 6:19 12:2,4</p> <p>claims 6:25 7:1,6,17 8:1</p> <p>clerk 11:2</p> <p>client 4:3 9:19,25 11:17</p> <p>close 3:20</p> <p>company 3:13</p> <p>conditional 3:5 4:20 5:25</p> <p>conduct 7:1</p> <p>confused 11:2</p> <p>consequence 5:15</p> <p>conversation 2:19</p> <p>correct 5:22 7:3,8,10 11:24</p> <p>counsel 4:7 11:20,23</p> <p>court 2:6,17,24 3:9,12,17 4:8 5:3,10,15,19 6:3,5,11,19,22 7:2,11,16,22 8:2,5,7,9,11,18, 20,25 9:1,4,9,11 10:4,9,16, 19,23 11:1,22 12:5,11,13</p> <p>Court's 6:1 7:24</p>	<p>D</p> <p>daily 9:22</p> <p>damages 8:15 9:3,13 10:13 11:8</p> <p>day 9:13,18 10:15</p> <p>declaration 3:2,10 4:13,16, 22 5:23</p> <p>declarations 8:23</p> <p>defense 3:18</p> <p>definition 11:22</p> <p>demonstrate 10:13</p> <p>demonstrates 4:25</p> <p>demonstrating 4:18</p> <p>Department 2:7</p> <p>detainer 9:12 10:2</p> <p>determination 11:10</p> <p>determined 10:6</p> <p>determines 9:1</p> <p>discuss 6:4</p> <p>discussed 9:14</p> <p>documentation 3:4</p> <p>documents 4:21</p> <hr/> <p>E</p> <p>e-mail 4:17 5:2</p> <p>e-mails 3:4,16 4:23 5:1,8,9, 11</p> <p>entire 3:9 9:22</p> <p>escrow 5:24</p> <p>essentially 10:3</p> <p>estate 6:20</p> <p>evicted 12:6</p> <p>eviction 7:7</p> <p>evidence 4:22 5:13 8:14,15 9:2 11:16</p> <p>evidentiary 8:13,21</p> <p>expect 5:13</p> <hr/> <p>F</p> <p>fact 3:23 6:12 11:13</p> <p>facts 4:22 5:20 8:19,20 12:1</p> <p>factual 5:5,16,20 7:23</p>	<p>failure 12:7</p> <p>filing 6:15</p> <p>finding 9:13</p> <p>fine 6:13</p> <p>foreclosure 4:4 7:21 9:20</p> <p>formal 5:11</p> <p>found 11:19</p> <p>front 8:25 9:21</p> <p>full 4:20 5:1 7:17</p> <hr/> <p>G</p> <p>give 3:14,19 12:10</p> <p>good 2:6,11,13,15 11:18 12:2,4</p> <p>granted 9:11</p> <hr/> <p>H</p> <p>hand 4:1,12</p> <p>harm 9:3</p> <p>hearing 9:14</p> <p>Hicks 2:15,16 4:6 6:5,14,21, 24 7:8,16,24 8:4 10:16,18</p> <p>history 7:18,20</p> <p>hold 4:8 10:23</p> <p>honest 8:11</p> <p>Honor 2:11,13,15,23,25 3:11,15 4:6,15,16,25 5:7,14, 18,22 6:7,13,14 8:4,6,9 9:8, 11,17,24 10:14,18,21 11:4,6, 15,24 12:15,16</p> <hr/> <p>I</p> <p>impact 6:23 7:22,24</p> <p>incorporated 9:16</p> <p>incur 8:16</p> <p>injunction 2:20 6:16,23 7:4 8:19 10:11 12:6</p> <p>interest 6:20 7:6,7,9</p> <p>interrupt 11:1</p> <p>interruption 10:25</p> <p>invalid 4:5</p> <p>involvement 7:12</p> <p>issue 2:20 8:18,22 10:4 12:5</p> <p>issued 2:17,19</p>
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