

Appeal from the District Court,  
Cass County, State of North Dakota,  
To the  
North Dakota Supreme Court

Cass Co. No. 2012-CV-02197  
Supreme Court No. 20130370

JPMorgan Chase Bank, National  
Association,

Plaintiff and Appellee

v

Frederick P. Skoda; Cynthia D. Skoda;  
Alerus Financial, N.A.; State of North Dakota: Workforce  
Safety and Insurance;  
North Star Insurance Co.; Job Service, North Dakota; First  
National Bank of Omaha; Discover Bank;  
and any person in possession.

Defendants

-----  
Frederick P. Skoda

Appellant

APPELLANT BRIEF  
Dated: January 7, 2014

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### Statement of the Issues

This case revolves around a homeowner, a mortgage made to secure that home and bank procedures surrounding their payment acceptance policies. It also involves how a bank reports payment information about a consumer.

The first issue arises after the bank stops accepting payments from a homeowner, arguing the homeowner has breached their responsibility in following the terms of the promissory note attached to homes mortgage and then commences a foreclosure action based on that lack of payment.

The second issue arises when the homeowner continues sending what they know to be full principal and interest payments, but the bank is reporting homeowner as having a delinquent payment history on his credit reports regardless of the fact that they are in fact the ones that decided to stop accepting the payments. This issue is not primary in this matter, but the issue of whether the Plaintiff has been violating the Fair Credit Reporting Act through the course of these proceedings I think should be a material fact.

### Statement of the Facts

The record shows I, Fred Skoda, continued to make and offer payment on the mortgage, payments of \$542.89, as required by my promissory note and continued to do so even after the Plaintiff was refusing to accept my payment. The record shows at the inception of the note that the original mortgage holder, Homeside Lending, then Washington Mutual, waived that right and I was not required to pay any extra escrow and I made no escrow payments. I was only required to pay \$542.89 per my note and mortgage and continued to do so for years. I voluntarily, while preserving my right to revoke, offered to pay part of my taxes as part of my payment for budgeting purposes in 2007.

The property taxes that year were paid by me thus the Plaintiff additionally had no right to try and collect prepayments for taxes and should have continued to accept my full payment of \$542.89. As part of the record, it is not disputed by the Plaintiff that I informed in late 2010 that I was reverting to my original payment of principal and interest only of \$542.89 and would pay the property taxes on my own as I had for the most of the loans life. Plaintiff was the party that refused to accept payment, which I presented evidence of, Index 37-Exhibit A, and is a part of the record. The Court states the mortgage requires me to prepay my insurance and taxes as part of the escrow, but this is not true. This is part of the record as a part of my Opposition to Motion for Summary Judgment.

I have responded to all court and plaintiff requests that I have received. In my Opposition to Motion for Summary Judgment I did deny the plaintiffs facts and arguments, contrary to Judge Marquart stated in his Findings of Facts.

#### Argument

Under N.D.R.Civ.P. 56 summary judgment is appropriate if, after viewing the evidence in the light most favorable to the non-moving party, there are no genuine issues of material fact or conflicting inferences that can reasonably be drawn from undisputed facts, or if only questions of law are involved. Defendant asserts it was Plaintiffs negligence that was the cause of the foreclosure action. I demonstrated as part of the record that I never ceased payment of the amount due under his promissory note and this is a material fact. If a mortgagor is making payments in accordance with the terms of their promissory note, why is a bank allowed to foreclose on that home. They shouldn't be allowed to and I know given the chance to argue the merits of side to a group of reasonable individuals I believe they agree. In addition, the questions surrounding whether the Plaintiff violated the mv rights under the Fair Credit Reporting Act also need to be fully resolved. This is another matter for a group of reasonable minded people to hear and decide.

In addition, I continue to deny Plaintiffs allegations that I was not paying my debt on time and mv filings and responses were in a timely manner per the record. I responded to all requests made of and received by me.

Unlike John Gosbee in Resolution Trust Corporation v. Gosbee Civil No. 940264, 536

N.W.2d 699, I was aware of what was due and continued to pay what was due in timely manner. My payment history is a material fact that should preclude the Plaintiff from being able to foreclose on my home.

For these reasons I ask this Court to grant Appellant's petition and reverse the Order for Summary Judgment and remand this matter for trial.

Respectfully submitted.

/s/ Frederick Skoda

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Defendant, Appellant

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CERTIFICATE OF SERVICE

I hereby certify that on January 7, 2014, I filed the foregoing with the Clerk of the Court for the Supreme Court, State of North Dakota. I certify all parties in the case have been mailed a copy of this appellant brief and the appendix.

/s/ Frederick Skoda

Frederick Skoda