

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 29 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PEGGY HALLAS,

Plaintiff - Appellant,

v.

AMERIQUEST MORTGAGE
COMPANY; FIDELITY NATIONAL
TITLE INSURANCE COMPANY;
TOWN & COUNTRY TITLE SERVICES,
a California corporation,

Defendants - Appellees.

No. 06-35108

D.C. No. CV-04-00433-DJH

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Dennis James Hubel, Magistrate Judge, Presiding

Argued and Submitted February 4, 2008
Portland, Oregon

Before: RYMER, T.G. NELSON, and PAEZ, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Peggy Hallas appeals the magistrate judge's¹ summary judgment in favor of appellees. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *see Prison Legal News v. Lehman*, 397 F.3d 692, 698 (9th Cir. 2005), and we affirm.

Reformation of the deed of trust is appropriate here.² First, the deed of trust may be reformed after the foreclosure sale. *See Rogers v. Miller*, 42 P. 525, 525-26 (Wash. 1895) (permitting reformation after a foreclosure sale).

Second, the undisputed facts clearly and convincingly show that, at the time the deed of trust was signed, Hallas and Ameriquest shared an identical intent—namely, for Ameriquest to take a security interest in Hallas' property and to reflect that interest in the loan documents. *See Saterlie v. Lineberry*, 962 P.2d 863, 865 (Wash. Ct. App. 1998); *Snyder v. Peterson*, 814 P.2d 1204, 1206-08 (Wash. Ct. App. 1991); *Tenco, Inc. v. Manning*, 368 P.2d 372, 373-74 (Wash. 1962); *Maxwell v. Maxwell*, 123 P.2d 335, 337 (Wash. 1942).

Third, Hallas' equitable defenses to reformation fail. Insertion of the correct property description into the deed of trust after it was signed does not, under these

¹ The parties consented to the entry of a final judgment by the assigned magistrate judge. *See* Fed. R. Civ. P. 73; 28 U.S.C. § 636(c).

² For purposes of this appeal, we assume (as did the magistrate judge) the truth of Hallas' contention that when she signed the deed of trust, it did not contain any legal description of the property.

circumstances, demonstrate the bad faith or unconscionable conduct necessary to support an unclean-hands defense. *See Dahlin v. Dahlin*, 193 P.2d 358, 360 (Wash. 1948); *J. L. Cooper & Co. v. Anchor Secs. Co.*, 113 P.2d 845, 857-58 (Wash. 1941). And Hallas’ assertion that Ameriquest is equitably estopped from seeking reformation is contrary to Washington law. *See Rogers*, 42 P. at 525-26 (permitting reformation after a foreclosure sale).

Hallas waived her right to pursue her remaining claims, with the exception of her Fair Debt Collection Practices Act (“FDCPA”) claims, by failing to sue before the foreclosure sale took place. *See Wash. Rev. Code* §§ 61.24.130, 61.24.040(1)(f)(IX); *see also Koegel v. Prudential Mut. Savs.*, 752 P.2d 385, 386, 389 (Wash. Ct. App. 1988).

Hallas’ claim that Fidelity’s and Town & Country’s conduct violated 15 U.S.C. § 1692f(6) because Ameriquest did not have a security interest in her property fails because, with reformation of the deed of trust, the existence of a security interest is unarguable.³ Hallas has abandoned her remaining FDCPA claims by failing to specifically and distinctly argue the claims in her opening

³ We assume, without deciding, that Fidelity and Town & Country were “debt collectors” for purposes of 15 U.S.C. § 1692f(6).

brief. *See Int'l Union of Bricklayers v. Martin Jaska, Inc.*, 752 F.2d 1401, 1404 (9th Cir. 1985).

The magistrate judge did not abuse his discretion in denying Hallas' motion to amend her complaint because the proposed amendment would have been futile. *See Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988).

We have considered and reject Hallas' other claims raised on appeal.

AFFIRMED.