United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12-5229 **September Term, 2013**

No. 1:11-cv-01759-ABJ

SAMUEL MOLINA,

Filed On: November 26, 2013

APPELLANT

v.

OCWEN LOAN SERVICING, ET AL.,

APPELLEE

On Appeal from the United States District Court
for the District of Columbia

Before: GARLAND, *Chief Judge*, and HENDERSON and KAVANAUGH, *Circuit Judges*

JUDGMENT

This case was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. *See* Fed. R. App. P. 34(a)(2); D.C. Cir. R. 34(j). The Court has accorded the issues full consideration and determined that they do not warrant a published opinion. *See* D.C. Cir. R. 36(d). For the reasons stated below, it is

ORDERED and **ADJUDGED** that the judgment of the district court be affirmed.

On October 3, 2011, Samuel Molina filed a complaint in district court on behalf of himself and a putative class of Latino subprime mortgagors, alleging that Taylor, Bean & Whitaker Mortgage Corporation (TBW),[*] Ocwen Loan Servicing, LLC (Ocwen) and Shapiro & Burson, LLP, engaged in discriminatory lending, loan servicing and foreclosure practices that disparately affected minority borrowers in violation of the Fair Housing Act, 42 U.S.C. §§ 3601–3619, the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691–1691f, the Fair Debt Collection

[*] The Federal Deposit Insurance Corporation (FDIC) stood in for TBW as its court-appointed receiver.

Practices Act, 15 U.S.C. §§ 1692–1692p, and the Civil Rights Act of 1866, 42 U.S.C. § 1982. The thrust of Molina's complaint was that minority borrowers were being fast-tracked into foreclosure and denied foreclosure alternatives in contrast to their white counterparts. The defendants moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(1) for lack of standing and Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. The district court granted the defendants' motions to dismiss for lack of standing, concluding that Molina had failed to allege any facts showing that he suffered an injury in fact fairly traceable to the defendants. Molina appeals the dismissal of his claims against Ocwen only.

To establish an Article III injury in fact, a plaintiff must demonstrate that he has suffered "an invasion of a judicially cognizable interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). At the pleading stage, "the burden imposed on plaintiffs to establish standing is not onerous, and general factual allegations of injury resulting from the defendant's conduct may suffice." *NB ex rel. Peacock v. District of Columbia*, 682 F.3d 77, 82 (D.C. Cir. 2012) (internal quotation marks and citation omitted). A plaintiff cannot establish an injury in fact, however, by simply pleading membership in an affected group. *See Warth v. Seldin*, 422 U.S. 490, 502 (1975).

It is plain that Molina failed to demonstrate standing because he did not allege, in either his complaint or his opposition to the defendants' motions to dismiss, that he himself had been subjected to any of the discriminatory practices identified in the complaint. In other words, Molina did not set forth *any* factual allegations that he personally suffered a "concrete and particularized" injury. *Lujan*, 504 U.S. at 560. Molina's membership in a group of individuals as to whom injury in fact was properly alleged—Latino subprime mortgagors—does not cure the deficiency in his complaint. *See Warth v. Seldin*, 422 U.S. at 502. As the Supreme Court noted in *Warth v. Seldin*, plaintiffs "must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent." *Id.* Nor can Molina base injury in fact on Ocwen's failure to affirmatively offer him foreclosure alternatives when this injury was not mentioned in his complaint, *see Browning v. Clinton*, 292 F.3d 235, 242 (D.C. Cir. 2002) (noting that this Court does not accept "inferences drawn by plaintiffs if such inferences are unsupported by the facts set out in the complaint" (internal quotation marks omitted)), and Molina advised the district court that "[t]he relief [he] requested . . . ha[d] been obtained," *Molina v. FDIC*, 870 F. Supp. 2d 123, 127 (D.D.C. 2012) (internal quotation marks omitted).

A remand to allow Molina to amend his complaint is unwarranted. This Court stated in *City of Harper Woods Employees' Retirement System v. Olver*, 589 F.3d 1292, 1304 (D.C. Cir. 2009), that "[w]hen a plaintiff fails to seek leave from the District Court to amend its complaint, either before or after its complaint is dismissed, it forfeits the right to seek leave to amend on appeal." Because Molina never sought leave to amend his complaint in district court, before or after the court dismissed his case, he is foreclosed from doing so now. *Id.*

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. R. 41.

PER CURIAM

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Michael C. McGrail
Deputy Clerk