

## Consumer Finance Litigation

A Burr & Forman **BLOG**

### **Florida's Fourth DCA Confirms that a Borrower is in the Best Position to Know Their Own Financial Information**

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The Fourth District Court of Appeal recently affirmed its prior decision in *Vidal v. Liquidation Properties, Inc.*, 104 So. 3d 1274 (4th DCA 2013). *Wells Fargo Bank, N.A. v. Hilary A. Williamson*, Case No. 4D15-285, 2016 WL 3745477 (Fla. 4th DCA 2016). It concluded, once again, that a borrower is in the best position to know their own financial information. Therefore, if a borrower executes their loan application including false information, that borrower is precluded from raising fraud as an affirmative defense in a subsequent action absent unique circumstances. See *Shahar v. Green Tree Servicing*, 125 So. 3d 251 (Fla. 4th DCA 2013).

Similar to the *Vidal* opinion, Williamson raised fraud as an affirmative defense alleging that the original lender inflated her income on her loan application. Based upon the original lender's alleged fraud, Williamson also raised the defense of unclean hands. The trial court found that Wells Fargo had unclean hands, was barred from foreclosing on the subject note and mortgage and dismissed the foreclosure action.

On appeal, the Fourth DCA reversed the trial court. It found Wells Fargo did not have unclean hands and that the trial court incorrectly applied the findings in the *Shahar* opinion. It states that the original lender's actions did not rise to the level of unclean hands because the borrower (1) had time to review the loan documents, (2) had the opportunity to review the falsified information, (3) specifically noticed the change from a fixed rate to an adjustable rate, (4) was not coerced into signing the application, (5) subsequently obtained a second loan in the form of a line of credit from the same lender, and (6) admitted that she failed to read the loan documents. Williamson failed to introduce any evidence that she relied on the misconduct alleged or that any resulting harm was caused by the misconduct. Therefore, the Fourth DCA concluded that Williamson failed to set forth enough evidence to establish the elements necessary to prove a defense of unclean hands. The Fourth DCA also sets forth in a footnote that even if it affirmed the trial court's dismissal, Wells Fargo would be entitled to pursue an action on the note.

Unfortunately, the Fourth DCA does not specifically address whether or not a valid unclean hands defense would extend liability to a successor bank.

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