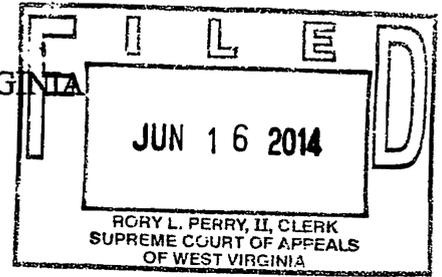


IN THE SUPREME COURT OF WEST VIRGINIA



-----X
NANCY & STJEPAN SOSTARIC,
Defendants/Appellants

-vs-

Case Number: 14-0143
Morgan County Case Number: 12-C-160

SALLY MARSHALL,
Plaintiff/Appellee
-----X

APPELLANT'S BRIEF

STJEPAN SOSTARIC/NANCY SOSTARIC
APPELLANT'S/DEFENDANT'S
Apartment 1301 E
3709 George Mason Drive
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T: (202) 543-3088

FACTS

My then wife, Nancy McCoy Sostaric, and I borrowed \$200,000 from Sally Marshall in 2005. At that time we executed an updated promissory note and also gave her a deed of trust for property, located at 99 Garden Drive, Berkeley Springs, West Virginia. (See Exhibits "1" & "2").

On September 21, 2012 Pill & Pill gave notice of acceleration by reason of non-payment of the note to Sally and right to cure. (See Exhibits "3" & "4"). I was unaware of many unpaid items.

Shortly thereafter, the property was sold at foreclosure. The winning bidder was Sally. It seems that she was able to buy it as part of a Sheriff's sale. (See Exhibit "5")

Subsequently, and not known by me, Sally sued Nancy and I. (See Complaint).

There was originally a default submitted but the trial court judge, Michael D. Lorensen, had a hearing on November 8, 2013 and noted that it would consider her request as a motion for summary judgment and that Nancy and I were to submit pleadings to contest the motion. Nancy, on behalf of both of us, submitted an Answer, which she believed satisfied the Judge's directive. Sally then filed a Response and included email communication between us. The only item that the Court should have taken into consideration was Sally's Answer and not the email communication. This communication should not have been used as evidence since it was intended for settlement purpose only, and anything said in it was not factual and/or binding.

On January 16, 2014, Judge Lorensen issued his Order granting summary judgment to Sally. (See Order Granting Summary Judgment).

STANDARD OF REVIEW

This Court must conduct a completely new review of the case record

**NANCY AND I ARE PRO SE LITIGANTS
AND SHOULD HAVE BEEN TREATED AS SUCH**

I understand that a trial court must recognize the right of a person to act in a pro se capacity. However, I also know that the right to be one's own attorney should not be abridged because he or she is unfamiliar with legal procedures. *Blair v. Maynard*, 174 WV 257 (1984). As a result the trial court "must insure that no person's cause or defense is defeated by reason of their unfamiliarity with procedural or evidentiary rules." *Bego v. Bego*, 177 WV 74 (1986)

My then wife, Nancy McCoy Sostaric, is not an attorney and has no legal training. When I appeared at the hearing on November 8, 2013, the judge said that we had "to file a response supported by admissible proof of a defense to the claim." (See Order granting Summary Judgment). Nancy filed an Answer with the court in both of our names. She raised issues about the foreclosure sale and the fact that Sally had purchased the house and was now suing for the money on the note. Nancy tried to the best of her ability to articulate our position and filed what she believed was admissible proof in our defense. Sally filed a Response and set forth in the response that there were more issues that Nancy had made misleading or not addressed in her Answer. Obviously when two parties claim that there are issues in dispute, a trial is needed. This joint stance of both parties was ignored by the Judge.

The judge did state in his decision that courts in West Virginia prefer trials rather than summary judgments. (See Order granting Summary Judgment) As a result, he should have held a trial in order for Sally and we to explain in greater detail the issues and facts in dispute. The judge in the decision notes that Nancy addressed the issues but not in the form of an affidavit or other admissible proof of defense in contrast Sally's materials reflect that she had the assistance of any attorney. (See Oder Granting Summary Judgment). Our case was lost due to our unfamiliarity with procedural and evidentiary rules. Nancy's response should have been taken by the Court as a joint affidavit, thereby creating an issue in fact.

The Court's approach goes against this court's position that a person's cause is defeated by reason of unfamiliarity with procedural or evidentiary rules. The Judge, instead, elevated form over substance and should have held a trial to allow an airing of all of the factual and legal issues. Had he taken into consideration Sally's Response to Nancy's filing, he would have plainly seen that there was an issue that needed to be explored further at trial. Both sides

presented facts but did not do so (especially us) in a fashion that the Court deemed proper. The Judge just relied upon Sally's initial papers. This failure obviously showed our joint unfamiliarity with proper court procedures and should not be held against us.

THERE ARE ISSUES OF FACT

In my research I found that Courts in West Virginia have to look at all of the materials in a case and determine whether or not there is a genuine issue of fact for trial. I believe that there are some here, which the court overlooked.

Sally bought the house at foreclosure, on which she had a deed of trust. (See Exhibit). She then sued for the differential but did not present proper evidence as to what is the value of the damages she incurred. The Court made a mistake when it relied upon Sally's statements. Sally was unjustly enriched. She received both the property back and is now seeking funds, without giving a proper credit for the NOTE/Deed of Trust.

In the case of *Realmarks Development v Ranson*, 208 WV 717 (WV 2000), this court was faced with an argument about unjust enrichment. There the Court held that if benefits have been received and retained under circumstances it would be inequitable and unconscionable for the party receiving the value to avoid payment - the party receiving the value must pay their reasonable value.

Here Sally bought the house at foreclosure and then sued on the note. She did not give a proper credit for the value of the Note/Deed of Trust. Furthermore, the deed of trust was given as collateral for the loan. By foreclosing on the house, Sally elected her option – to take the house and not pursue the note. ¹ Her actions of “double dipping” are inequitable and unconscionable. She should not be enriched, as she has ownership of the house and wants money for the same house.

CONCLUSION

For these reasons, I ask that this Court set aside the judgment of the court and send it back for a

¹ This Court should also note that the sole reason that Sally wanted a judgment on the note, was to use it for income tax purposes and not to take the money actually.

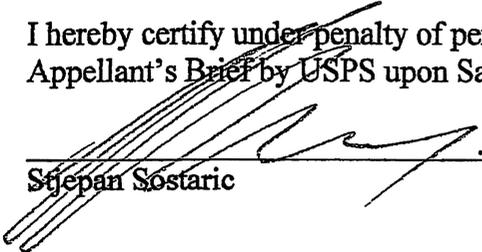
trial.



STJEPAN SOSTARIC and OBO Nancy Sostaric

Certificate of Service

I hereby certify under penalty of perjury that I have served a true and accurate copy of Appellant's Brief by USPS upon Sally Marshall this 14th day of June 2014.



Stjepan Sostaric