



OHIO APPELLATE COURT UPHOLDS ARBITRATION CLAUSE IN PROMISSORY NOTE

The Ohio Court of Appeals upheld a lower court decision finding that a mortgagor's counterclaims against a mortgagee and the mortgagee's assignee for fraud, unconscionability, breach of contract, wrongful foreclosure, breach of covenant of good faith and fair dealing, and declaratory relief, asserted in response to a foreclosure action, were "claims" that arose from or were related to the manufactured home service contract and the promissory note each containing an arbitration agreement. *U.S. Bank National Association v. Allen*, 52 N.E.3d 1237 (Ohio App. 2016). Thus, the court found that the claims were subject to arbitration in accordance with both arbitration agreements. In reaching its conclusion, the court stated that arbitration is favored because it provides the parties with a relatively expeditious and economical means of resolving a dispute and has the additional benefit of unburdening crowded court dockets. The court explained that a contractual arbitration clause is generally viewed as an expression that the parties agree to arbitrate disagreements within the scope of the arbitration clause, and, with limited exceptions, an arbitration clause is to be upheld just as any other provision in a contract should be respected. According to the court, in light of the strong presumption favoring arbitration, all doubts should be resolved in favor of upholding an arbitration agreement.

The court rejected the mortgagor's claim that the mortgagee waived the right to arbitrate by, among other actions, filing the foreclosure action. The court stated that because of the strong public policy in favor of arbitration, the heavy burden of proving waiver of the right to arbitration is on the party asserting waiver.

The court remanded the case to the lower court to address several issues, including how the arbitration would be conducted and who would pay for the arbitration. In addition, the court found that the lower court erred in failing to issue an order staying the foreclosure proceeding when the court granted the motion to compel arbitration of the mortgagor's counterclaims.

The case illustrates the strong Ohio policy favoring arbitration. □

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