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Lien Search Charge Isn't Illegal Transfer Fee, 4th Circ. Told

By **Nate Beck**

Law360 (July 26, 2023, 8:05 PM EDT) -- A pair of companies told the Fourth Circuit on Wednesday that the fees they charged for reviewing documents ahead of a North Carolina man's home sale do not amount to illegal transfer fees that must be paid to sell a home.

Property manager FirstService and online mortgage service firm Homewise told the Fourth Circuit in a **reply brief** that it should reject home seller Logan Dernoshek's argument that it was unreasonable for the companies to charge him to run a so-called resale demand to search for any homeowners association liens on a home he sold for \$510,000.

The two companies argued Wednesday that such fees are not, in fact, illegal transfer fees barred by North Carolina's Transfer Fee Covenant Prohibition Act, as Dernoshek claimed.

It's a theory that others in home purchases have unsuccessfully sought to advance in court. A trial judge fully rejected Dernoshek's arguments, granting summary judgment to FirstService and Homewise before Dernoshek's March appeal to the Fourth Circuit.

"We're confident that the Fourth Circuit, just like every other court that has considered these theories, will agree there's no viable claim," Phil Oliss of Jones Day, counsel for Homewise, told Law360 on Wednesday.

In January 2020, as Dernoshek sought to sell his Charlotte, North Carolina, home, his attorney requested a resale demand report to see if the home he wanted to sell had any liens.

After producing the report a week before closing, FirstService charged Dernoshek's attorneys \$169 for the resale demand report, plus a \$65 rush fee. Homewise, meanwhile, charged the attorneys \$23, with a \$10 expedition fee. Homewise said its \$23 service charge has not increased since it was set in 2011.

The home sale did not depend on the payment of those fees, the companies argued in their Wednesday brief. Dernoshek's attorney, however, required him to pay the fees to close on the purchase. He was not pleased, according to the defendants.

"Dernoshek was incensed, believing the fees were 'egregious' and unreasonable because he did not learn of them until the 'last minute,'" the companies said in their brief. "Dernoshek failed to appreciate until years later that his lawyer had voluntarily incurred the fees by placing an order for documents weeks ahead of closing."

Dernoshek then disputed the charges, and FirstService told him twice that he did not need to pay the fees to complete the home sale, the brief said. He also complained to his homeowners association board and talked with a neighbor about putting the fees on his credit card and then disputing the purchase, the companies said.

Ultimately, however, Dernoshek agreed to pay the fees before suing the companies, according to the brief. A federal trial judge rejected his arguments, finding the charges did not amount to illegal transfer fees.

Counsel for Dernoshek did not respond to requests for comment Wednesday.

Dernoshek is represented by Lucy N. Inman and Mark R. Sigmon of Milberg Coleman Bryson Phillips Grossman PLLC.

FirstService is represented by Steven A. Bader, Richard T. Boyette and Marshall Wall of Cranfill Sumner LLP.

Homewise is represented by Brett W. Bell, Philip M. Oliss and Alexander W. Prunka of Jones Day, Steven A. Meckler and Frederick Martin Thurman Jr. of Shumaker Loop & Kendrick PLLC.

The case is Logan Dernoshek v. FirstService Residential Carolinas, Inc., case number 23-1334, in the U.S. Court of Appeals for the Fourth Circuit.

--Editing by Haylee Pearl.

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