

DOES THE BORROWER'S FAILURE TO PROTEST THE PAYOFF AMOUNT BEFORE PAYING OFF THE LOAN, BAR THE BORROWER'S SUBSEQUENT LAWSUIT CONTESTING THE PAYOFF AMOUNT?

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According to the Washington state Court of Appeals, the answer may depend on the type of borrower and the nature of the loan. *S. Sound RV Park, LLC v. Cascade Props. PH LLC*, 21 Wn. App. 2d 311, 504 P.3d 885 (2022) [Click here](#) to view the published opinion.

Cascade Properties lent South Sound RV Park, LLC money to refinance a loan that South Sound had originally obtained to purchase, fix up and flip a mobile home park. South Sound was an experienced private money borrower, having taken out over 200 private money loans in the past. The refinance loan in question included compound interest, and upon default, 24% interest with a 5% penalty. South Sound defaulted under the refinance loan and opted to sell the property to satisfy its debts. Prior to closing the sale, Cascade Properties submitted a payoff demand, which included compound interest and late charges. At the closing, South Sound accepted the payoff demand without protest and the sale closed, even though the payoff quote was for a larger sum than what South Sound had anticipated. A few days **after** the closing, South Sound contacted Cascade to dispute the payoff amount and demand a refund. When Cascade Properties refused, South Sound sued Cascade Properties for violating Washington's Consumer Protection Act (CPA). Cascade Properties asserted defense of "Doctrine of Account Stated". Both parties moved for summary judgment. The trial court struck the defense and determined Cascade Properties violated the CPA; awarded treble damages in favor of South Sound; and awarded judgment interest at the contract rate of 24% until entry of judgment. As the reader could imagine, Cascade Properties appealed.

Doctrine of Account Stated: Basically, this Doctrine applies when both parties agree that a specific sum is the amount due. Even without an express agreement, the Doctrine can apply where a party pays the amount requested without objectively manifesting either protest or an intent to negotiate the sum at some future time. Fraud or mistake can be a reason to later contest. Because the borrower didn't contest until days later and didn't assert fraud or mistake, the Court of Appeals reversed, finding that South Sound's payment without protest satisfied the doctrine of account stated, which established Cascade's defense to the CPA claim.

CPA: Although the Court of Appeals held that the Account Stated Doctrine barred the CPA claim in this case, it made it clear that the result could have been different under different circumstances. Specifically, the Court of Appeals found that South Sound failed to establish an unfair or deceptive act. To be deceptive, it has to have the capacity to deceive a substantial portion of the public. In reaching this conclusion, the Court of Appeals focused on the fact that South Sound accepted the payoff demand without objection, confirming by signature that the demand had been "READ, REVIEWED, AND APPROVED," and there was no showing of fraudulent or coercive conduct by Cascade, thus precluding South Sound from establishing an unfair or deceptive act necessary to sustain a CPA claim.

Takeaways: The result might have been different had the borrower been an individual or less sophisticated. Nevertheless, it's a good ruling that will benefit lenders and loan servicers. To further protect themselves, we recommend whenever practical that you have the borrower sign and confirm approval of the payoff amount.

For any questions about this case or any matters in the Pacific Northwest, please feel free to contact Joseph McCormick at jmccormick@wrightlegal.net.



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