
SETTLEMENT AGREEMENT AND MUTUAL RELEASE

1. **PARTIES**: The parties to this Settlement Agreement (“Agreement”) are Plaintiff FEDERAL DEPOSIT INSURANCE CORPORATION as Receiver for Downey Savings & Loan Association, F.A. (“FDIC-R”), and Defendant loan officer FREDERICK WILLIAM WIT, an individual (“WIT”). The FDIC-R and WIT are sometimes herein jointly referred to as the “Parties.”

2. **RECITALS**: This Agreement is made with reference to the following facts:

2.1 Certain claims arose between the Parties concerning two (2) residential refinance loans that were made by Downey Savings & Loan Association, F.A. (“Downey”) to borrowers Lawanda Moore (“Moore”) and Paul Sirmay Jr. (“Sirmay”) in or about 2005 (jointly, the “Loans”).

2.2 The Loans were secured by trust deeds on real properties then owned by each borrower. American Benefit was the corporate mortgage broker that submitted to Downey the two loan applications. Wit is alleged to have been the Loan Officer working with American Benefit at the time, who is alleged to have submitted to Downey the two (2) loan applications.

2.3 The Loans were approved and funded by Downey and subsequently defaulted. Following foreclosure sales, each of the properties securing the Loans reverted to Downey, resulting in an alleged loss to the thrift of over \$470,000.

2.4 In November 2008, the FDIC-R was appointed the Receiver over all of Downey’s assets and liabilities. Among the assets the FDIC-R is charged with trying to recover upon is the loss relating to the Loans (“Claims”).

2.5 The Claims subsequently became the subject of an Adversary Complaint (“Adversary Complaint”) entitled *FDIC-R v. Frederick William Wit, an individual, et al.*, Case No. 10-90440, filed by the FDIC-R in the United States Bankruptcy Court for the Southern District of California (“Adversary Complaint”) in the bankruptcy proceeding WIT commenced under Chapter 7 of the U.S. Bankruptcy Code. WIT answered the FDIC-R’s Second Amended

Complaint and the Parties engaged in discovery in preparation for trial. In the meanwhile, WIT was discharged of his liability to all other creditors he scheduled in his Bankruptcy Petition, with the single exception of the FDIC-R because it challenged WIT's ability to discharge his liability to the FDIC-R under 11 U.S.C. Section 523(a)(2)(A).

2.6 By this Agreement the Parties hereto intend to settle and dispose of, fully and completely, any and all claims, demands, causes of action, obligations, damages, and liabilities that arise out of or relate to the Adversary Complaint and all of the Claims alleged therein by the FDIC-R against WIT.

2.7 The Federal Deposit Insurance Corporation in its separate corporate capacity as the insurer of deposits and bank regulator, and all other federal agencies of the United States of America, are not parties to this Agreement and are not bound in any manner to its terms and conditions. The FDIC-R enters into this Agreement solely in its limited capacity as the appointed Receiver of Downey Savings & Loan Association, F.A., and no other receivership now existing, previously existing or hereafter appointed.

3. **NO ADMISSION RE MERITS OF CLAIMS:** The Parties agree that nothing in this Agreement, and no performance under this Agreement, shall be construed as an admission by any Party of the validity or invalidity of the Claims alleged in the Adversary Complaint; and, the Parties agree that this Agreement is entered into solely for the purpose of convenience and to compromise the disputed Claims the FDIC-R has alleged in the Adversary Complaint.

4. **SETTLEMENT TERMS:** The Parties agree to the following settlement terms:
WIT is liable to the FDIC-R in the amount of One Hundred Thousand No/100 Dollars (\$100,000.00), but said amount may be satisfied by payment of the sum of Twelve Thousand No/100 Dollars (\$12,000.00) as follows:

(a) WIT shall pay \$3,000.00 by cashier's check, payable upon first presentation, within 20 days of the execution of this Settlement Agreement by all Parties and the related Stipulation for Entry of Judgment that secures his performance; and

(b) WIT shall pay the balance of \$9,000.00 at the rate of \$500.00 per month commencing on the 15th day of the month after WIT makes the down payment described in subparagraph (a) above, and shall continue to make said monthly payments in the

amount of \$500.00 on or before the 15th day of each month thereafter for a total of 18 months for a total in installment payments of \$9,000.00 to complete the settlement.

(c) Upon full payment of the sums described in subparagraphs (a) and (b) above, the Parties shall execute a stipulation for the Adversary Complaint to be dismissed with prejudice and the original Stipulation for Entry of Judgment shall be returned to WIT marked "CANCELLED."

5. **MUTUAL RELEASES AND WAIVER OF CIV. CODE § 1542:**

5.1 In consideration of the Settlement terms as set forth in Paragraph 4 above, and all other promises, covenants and consideration provided for herein, the Parties agree that, except as to such rights or claims as may be created by this Agreement, they hereby covenant not to sue each other ever again on the Claims and the Parties acknowledge full and complete satisfaction of, and hereby release, remise, and forever discharge each other, including their respective insurers, officers, directors, affiliated companies, agents, servants, representatives, spouse, heirs, successors or predecessors in interest, assignees, attorneys, employees and contractors from any and all the Claims, demands, counts, obligations, agreements, damages, liabilities, losses, costs and expenses of any kind, in law or in equity, whether known or unknown, that either Party now holds, or has ever held against the other, or may hold in the future, that arise out of or are in any way connected with, the Claims alleged in the Action.

5.2 This Agreement shall be binding on the Parties and on their respective officers, directors, affiliated companies, agents, servants, representatives, spouses, heirs, successors or predecessors in interest, assignees, attorneys, employees and contractors and shall inure to the benefit of the Parties, and each of them.

5.3 The Parties specifically intend that the release contained in this Agreement shall bar all released claims, including those which are currently unknown to them. The Parties understand and accept the risk that they may later discover a claim encompassed by the Release in this Agreement which they did not know or suspect to exist, or which they could not have known or suspect to exist. The Parties hereby specifically waive the protection of Civil Code section 1542 which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The foregoing waiver is expressly limited to the claims held by the Plaintiff, Federal Deposit Insurance Corporation as Receiver for Downey Savings and Loan Association, F.A., and no other receivership, nor to the Federal Deposit Insurance Corporation in its separate corporate capacity, as more particularly set for in paragraph 2.9 above.

6. **ATTORNEYS' FEES:** In the event any action is brought to enforce or interpret this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees in addition to any other relief to which the prevailing party may be entitled.

7. **REPRESENTATIONS AND WARRANTIES:** The Parties represent, warrant, and agree as follows:

7.1 The FDIC-R is the lawfully appointed Receiver for Downey and has succeeded to and now holds each of the Claims that are the subject of the Action and this Agreement. The FDIC-R has the authority to enter into this compromise and settlement of the Claims as the Receiver of Downey.

7.2 Each of the Parties have received or had the opportunity to seek their own independent legal advice with respect to the advisability of executing this Agreement. The Parties acknowledge that they have executed this Agreement without fraud, duress, or undue influence. The Parties affirm that they have read this Agreement and understand the contents hereof.

7.3 No Party, nor any agent or attorney of any Party, has made any statement, representation, or promise to any other Party regarding any facts which the Party has then relied upon in entering into this Agreement, and the Parties here each affirm that they have not relied upon any statement, representation or promise by any other Party, or of any agent or attorney for another Party, in executing this Agreement, or in making the settlement provided for herein, except as is expressly represented or promised in this Agreement.

To:

7.4 None of the Parties have heretofore assigned, transferred, or granted, or purported to assign, transfer, or grant, any of the Claims that are alleged in the Action.

7.5 Each Party agrees to execute any additional documents as reasonably convenient, necessary or desirable to carry out the provisions of this Agreement.

8. **MISCELLANEOUS:**

8.1 This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties hereto shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

8.2 This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties. This Agreement may only be modified in a writing signed by all the Parties. This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties to this Agreement.

8.3 The provisions of this Agreement are contractual and not mere recitals. The Agreement shall be considered severable, such that if any provision or part of the Agreement is ever held invalid under any law or ruling, that provision or part of the Agreement shall remain in force and effect to the extent allowed by law, and all other provisions or parts shall remain in full force and effect.

8.4 This Agreement may be executed in counterparts and shall be deemed effective on the earliest date first executed by either of the Parties hereto if so executed in counterparts (the "effective date"). Any signature obtained by facsimile or e-mail shall be as valid as an original signature. An authenticated copy of this Agreement can be used for any purpose for which the original may be used.

(b)(6)

DATED: 4/13/12

FREDERICK WILLIAM WIT, an individual

DATED: 17 Apr. 12

FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for Downey Savings & Loan Assoc., F/A

(b)(6)

By:

Name: Maryann M. Bullock

Title: Senior Attorney

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Page:6/6

APPROVED AS TO FORM:

HERSHORIN & HENRY LLP

(b)(6)

By:

(b)(6)

JEAN C. WILCOX
Attorneys for Federal Deposit Insurance
Corporation as Receiver for Downey
Savings & Loan Association, F.A.

(b)(6)

MUNIZ LAW CORPORATION

MARIA NUNEZ (b)(6)
Attorneys for Defendant,
Frederick William Wit, an individual