

Owner Denied Right to Prepay RHS 515 Loan

An Oregon federal district court has denied an owner of a Rural Housing Service (RHS) rural rental housing loan the right to prepay her Section 515 loans through a quiet title action that would circumvent the prepayment restrictions imposed on RHS by the Emergency Low Income Housing Preservation Act of 1987 (ELIHPA).¹ *Schroeder v. United States*.² The decision reverses a magistrate judge's recommendation that Ms. Schroeder be allowed to prepay the loan and be granted a quiet title judgment that would clear the RHS mortgage lien from her property.³

Ms. Alberta Schroeder is the owner of a six-unit RHS Section 515 project located in Heppner, Oregon. Ms. Schroeder purchased the property in 1984 from a previous owner who constructed the property with an RHS loan in 1975. At the time of the purchase, Ms. Schroeder executed two deeds of trust that required her to operate the property as affordable housing for a term of twenty years. In 2004, at the end of the twenty-year use restricted period imposed by the 1984 deeds of trust, Ms. Schroeder wrote to RHS seeking its permission to prepay her loans. In 2006, RHS, acting pursuant to the ELIHPA prepayment restrictions, denied her request and made her an incentive offer to keep the development in the Section 515 program as affordable housing. Ms. Schroeder rejected the offer and tendered the balance of her loans to the agency, which, relying on ELIHPA, rejected the prepayments. Shortly thereafter, Ms. Schroeder commenced a quiet title action against the United States, contending that RHS improperly refused to accept the prepayment of her loan and that she was entitled to a quiet title judgment under Oregon law.⁴

The matter was referred to a magistrate judge who, in response to cross motions for summary judgement, issued Findings and Recommendations that Ms. Schroeder be allowed to prepay her loan and issued a quiet title judgment.⁵ In making the recommendation, the magistrate judge relied on *Kimberly v. United States*,⁶ a 9th Circuit decision, and on the subsequent district court decision that granted the plaintiffs in that case, Idaho owners of a Section 515 development, a quiet title judgement.⁷ In *Kimberly*, the court of appeals held that the government had waived sovereign immunity in quiet title actions⁸ and that ELIHPA was not a sovereign act that immunized the government from liability under the unmistakability

doctrine.⁹ Misinterpreting the court of appeals finding that, for purposes of determining the applicability of the unmistakability doctrine, ELIHPA is not a sovereign act, the Idaho district court held that ELIHPA was not enforceable against the plaintiffs and granted the owners the quiet title judgment.¹⁰

The magistrate judge in *Schroeder* found *Kimberly* controlling and recommended that Ms. Schroeder be granted the same relief. In so doing, she rejected the government's argument that the 9th Circuit's subsequent opinion in *Goldammer v. Veneman*, explained and limited the *Kimberly* decision to its narrow holding.¹¹ The magistrate judge rejected the government's argument, believing that *Goldammer* simply distinguished *Kimberly* and that it remained good law.¹²

The government filed objections to the magistrate's Findings and Recommendations and the Oregon Law Center and the National Housing Law Project, who represented the residents in *Goldammer*, filed an *amicus* brief in support of the government's position. As a result, the case was transferred to the Oregon District Court for a *de novo* review of the magistrate's Findings and Recommendations. The case was assigned to Judge Brown, who issued the initial opinion in *Goldammer*—denying the residents the right to seek review of the prepayment—and who, subsequent to the court of appeals decision, issued an opinion stating that the 2003 loan prepayment violated ELIHPA.¹³

In reversing the magistrate, Judge Brown concluded that a quiet title action is an equitable proceeding and that when balancing the equities a court must act within the bounds of the statute and not use its equitable power to excuse or negate the illegal actions of agencies.¹⁴ In light of the Ninth Circuit's decision in *Goldammer*, her subsequent decision in the same case, further briefing by the parties and the *amicus* brief, Judge Brown held that equity did not favor granting Ms. Schroeder's quiet title claim. Accordingly, she denied her motion for summary judgement and granted the government's cross motion for summary

⁹*Id.* at 870.

¹⁰Civ. No. 98-003-S-LMB (D. Id. Dec. 12, 2002) at *9-11.

¹¹In *Goldammer*, the 9th Circuit explained that *Kimberly* was a limited decision that only addressed the issue of sovereign immunity in quiet title actions and the government's immunity from liability under the unmistakability doctrine. It did not hold that ELIHPA was an unenforceable act of Congress or that the owner plaintiff was entitled to a quiet title judgment. Accordingly, the *Goldammer* court held that the residents of an Oregon RHS development were entitled to seek review of whether the prepayment of another Section 515 loan violated ELIHPA and remanded the case for further proceedings to the Oregon District Court. See, NHLP, *Victory: Ninth Circuit Allows Residents to Challenge RD Prepayment*, 36 HOUS. LAW BULL. 206 (2006).

¹²No. 06-818-SU (July 2, 2007) at *6.

¹³2007 WL 1748665 (D.Or., June 14, 2007). See, NHLP, *Prepayment and Sale of RHS Apartment Complex Ruled Illegal*, 37 HOUS. LAW BULL. 103 (2007) for a more complete description of the *Goldammer* decision.

¹⁴No. 06-CV-818-SU (October 16, 2007) at *3.

¹Codified at 42 U.S.C. § 1472(c) (West 2003).

²No. 06-CV-818-SU (October 16, 2007).

³No. 06-818-SU (July 2, 2007).

⁴*Id.* at *2-4.

⁵*Id.* at *10-11.

⁶261 F.3rd 864 (9th Cir. 2001).

⁷Civ. No. 98-003-S-LMB (D. Id. Dec. 12, 2002).

⁸261 F.3rd at 868.

judgment.¹⁵ In conclusion, she found that Ms. Schroeder will have to comply with the ELIHPA prepayment restrictions before she is eligible to prepay her loan. As she did in *Goldammer*, Judge Brown reminded the plaintiff, Ms. Schroeder, that she is not without remedy and that if she cannot, or does not, prepay the loan she can bring a damage action against the government in the Court of Claims.¹⁶

The *Schroeder* decision is important in that it preserves another RHS Section 515 development. It is more significant, however, in that it is one of only two known cases remaining nationally where owners of Section 515 housing have continued to argue that they are entitled to quiet title judgments when the government refuses to accept the prepayment of a Section 515 loan that is subject to the ELIHPA prepayment restriction. The other case is *Meadowfield Apartments v. United States*,¹⁷ pending in the middle district of Florida. It is expected that the *Schroeder* decision will help bring to an end the owners' nearly ten-year effort to circumvent ELIHPA with state quiet title actions. ■

¹⁵*Id.* at *4.

¹⁶*Id.* at *5.

¹⁷No. 5:05-cv-412-Oc-10-GRJ (M.D. Fla., filed Sept. 26, 2005). Several residents of the Meadowfield Apartments have filed a motion to intervene in the action and have filed a separate action seeking review of the proposed prepayment. *Massinello v. Johanns*, No. 5:07-cv-33-Oc-10-GRJ (M.D. Fla., filed Jan. 23, 2007). The residents' motion to intervene has been denied, 2007 WL 1752271 (M.D. Fla., June 15, 2007), and is currently on appeal before the 11th Circuit Court of Appeals. The residents' separate case is pending in the Florida district court.