

Fifth Circuit Confirms That Constitutionally Non-Compliant Home Equity Liens Are Invalid And That No Statute Of Limitations Applies To A Quiet Title Action Alleging Such Violations

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The Fifth Circuit recently confirmed that lenders and/or servicers cannot raise the statute of limitations as a defense where borrowers claim that a home equity loan fails to comply with the Texas Constitution.

In *Ocwen Loan Servicing v. Robert M. Berry*, the Fifth Circuit vacated and remanded a summary judgment granted in favor of Ocwen Loan Servicing ("Ocwen") in relation to a Texas home equity loan. In 2007, Robert Berry took out a home equity loan with Overland Mortgage, L.P. ("Overland"). Ocwen later acquired Overland's interest in the loan. In 2010, a Notice of Default and Intent to Accelerate was sent to Berry following missed payments. In June 2013, a Notice of Acceleration was sent to Berry after he failed to cure a default. In September 2014, Ocwen filed a complaint seeking to judicially foreclose on the property securing the loan. However, Berry answered the lawsuit by asserting that Ocwen's security interest in the loan was unenforceable because there were multiple violations of **Article 16, section 50(a)(6) of the Texas Constitution**—the section of the Texas Constitution governing home equity loans. Ocwen subsequently moved for summary judgment claiming that Berry's defense was barred by the statute of limitations and the trial court granted summary judgment in favor of Ocwen.

The Fifth Circuit reversed the trial court's ruling on appeal citing the Texas Supreme Court's decision in *Wood v. HSBC Bank USA, N.A.* In *Wood*, which was decided after the trial court granted summary judgment in favor of Ocwen and against Berry, the Texas Supreme Court held that no statute of limitations applied to a borrower's quiet title action alleging that a lien securing a home equity loan was invalid due to violations of section 50(a)(6) of the Texas Constitution.

These cases are a good reminder that prior to originating a home equity loan and before foreclosing on a home equity loan, lenders and servicers should confirm that the home equity loan complies with all provisions of **Article 16, section 50(a)(6) of the Texas Constitution**.

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