



In top court, borrowers defend win on loan law's statute of limitations

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Daily Record Legal Affairs Writer
March 5, 2009 9:17 PM

ANNAPOLIS — Banks battled borrowers Thursday at the Court of Appeals over whether a three-year limit for challenging allegedly excessive closing costs is restarted each time the borrower makes a mortgage payment.

Gerard J. Gaeng, representing more than a dozen banks, told the high court that the litigation window closes three years after the settlement date of the loan. The statute of limitations for borrowers — like that for any other plaintiff — begins running on the day they knew or should have known of their alleged injury. The borrowers knew or should have known they were allegedly overcharged on the day of settlement, and, therefore, the three-year clock for filing suit started on that day, Gaeng said.

But E. David Hoskins, representing 21 borrowers who sued their lenders more than three years after settlement, countered that each mortgage payment represents a separate violation under Maryland's Secondary Mortgage Loan Law, which starts a new three-year clock.

That argument drew criticism from Judge Dale R. Cathell, who grilled Hoskins on the sense of having a three-year statute of limitations that could renew itself on a monthly basis for the 30-year life of the mortgage.

"You're arguing for a [33]-year statute of limitations?" said Cathell, a retired judge who was sitting on the case by special assignment. "What good is a [33]-year statute of limitations?"

Cathell said that under Hoskins' theory, a person whose leg was amputated due to a car accident could sue the other driver decades later on the theory that the limitations period would start anew every morning.

"Every day I live without a leg, I'm injured," Cathell said, putting himself in the place of the hypothetical victim.

Hoskins responded that in the case of car accidents, the General Assembly has decided that injured parties have a short time in which to sue, allowing both sides to bring their dispute to relatively fast closure. But with statutes involving lending, the legislature wants statutes of limitations provisions "to be interpreted broadly to protect consumers."

To achieve that goal, the Secondary Mortgage Loan Law provides that each mortgage payment that includes interest gives borrowers an independent cause of action against the lender who charged too much at closing.

The law sends lenders the message that "if you get greedy and charge too much at closing, you're not going to collect for [all of those] 30 years," said Hoskins, a solo practitioner in Baltimore.

The borrowers, in separate lawsuits, have alleged that the banks charged them closing costs and fees in excess of those allowed under the SMLL. The lawsuits were filed more than three years beyond the date of closing but within three years of each borrower's most recent payment on the second mortgage.

The defendants include Countrywide Home Loans, Baltimore American Mortgage Corp., Premier Financial Corp. and PB Investment Corp. The lenders deny any wrongdoing.

The cases were consolidated and presented to Baltimore City Circuit Judge Kaye A. Allison, who dismissed the claims as time-barred. But the Court of Special Appeals revived the lawsuits, saying the three-year clock under the SMLL restarts with each mortgage payment.

The intermediate court based its decision on the fact that lenders who violate the SMLL's prohibition on excessive closing costs may not collect interest. Thus, any mortgage payment that includes interest represents ill-gotten gains for the lender and gives rise to a potential lawsuit by the borrower, the Court of Special Appeals held.

Gaeng, in appealing that ruling, told the Court of Appeals that permitting borrowers to sue more than three years beyond the date of closing would violate the public policy behind the statute of limitations. The time limit prevents plaintiffs from sitting on their rights and bringing lawsuits years after an alleged injury occurred, he said.

To have a statute of limitations clock restart with each mortgage payment, especially when the plaintiff suffered the alleged injury years earlier at closing, would create a "sweeping change" in civil procedure by allowing a claim to be filed well after the underlying law, the SMLL, would allow.

"They [the borrowers] knew all the facts that they alleged in the complaint ... at the closing," said Gaeng, of Rosenberg | Martin | Greenberg LLP in Baltimore. "There is no question about when the plaintiffs suffered the injury for which they seek redress."

The court did not indicate when it would render a decision in the case, *Master Financial Inc. v. Crowder*, No. 96, September Term 2008.
