

## **Predatory Home Loan Practices Act Claim Barred by 5-Year SOL**

The U.S. Court of Appeals for the First Circuit recently held that a borrower's claim under the Massachusetts Predatory Home Loan Practices Act (MPHLPA) was barred by the applicable five-year statute of limitations where the loan was extended more than five years before the complaint was filed and the borrower did not allege facts to demonstrate that tolling should apply.

Accordingly, the First Circuit affirmed the ruling of the trial court dismissing the borrower's complaint with prejudice, and denying his motion for leave to file an amended complaint as futile.

A copy of the opinion is available at: [Link to Opinion.](#)

The borrower filed an eight-count complaint against the servicers, holders, and assignees of his mortgage loan that had been executed in 2006. The trial court dismissed the complaint in its entirety with prejudice, and denied the borrower's request for leave to file an amended pleading.

In reaching its ruling on the MPHLPA claim, the trial court determined that "because the facts underlying [the borrower's] claim that the loan was predatory were contained in the mortgage documents themselves," he could not avail himself of any tolling mechanism.

The borrower appealed the ruling with respect to one count only, the alleged violation of the MPHLPA. Specifically, the borrower argued that: (1) the trial court erred in dismissing the MPHLPA claim as untimely, and (2) the trial court abused its discretion in dismissing the complaint without leave to amend.

On appeal, the First Circuit noted that it was undisputed that the loan was extended on May 26, 2006, and that the complaint was not filed until April 28, 2015, outside the five-year statute of limitations. Thus, the only way the complaint could survive a motion to dismiss was if it was subject to tolling.

However, in the borrower's opening brief, he merely laid out the law on tolling, but, the Court held, "completely fail[ed] to articulate how the facts in this case support its application." In his reply brief, the borrower argued that the statute of limitations should have been tolled until Jan. 11, 2013, when

he purportedly first discovered that an assignment of mortgage securing his loan had not been properly signed.

In rejecting the borrower's argument, the First Circuit noted that it was waived because it was raised for the first time in the reply brief. The First Circuit further held that the argument lacked merit.

In so ruling, the Court noted that "the heart of [the MPHLPA claim] are the terms contained in the mortgage loan." Further, under Massachusetts law, "equitable tolling only applies if a plaintiff exercising reasonable diligence could not have discovered information essential to the suit."

Because the terms of the loan were in the borrower's possession since 2006, and because with reasonable diligence he could have discovered and initiated his claim within the five-year statute of limitations, tolling did not apply.

The First Circuit further held that to the extent the borrower alleged unlawful practices outside the terms of the loan itself, he made "no argument as to why these actions fall within the purview of the [MPHLPA] – a statute primarily concerned with loan origination and lending terms."

Thus, the First Circuit held the borrower's claim under the MPHLPA was time barred, and correctly dismissed by the trial court.

The Court next turned to the borrower's argument that the district court erred in denying his motion for leave to amend the complaint.

The borrower argued that he should have been permitted to file an amended pleading because "the proposed amendment has a valid [MPHLPA] claim against defendants."

The First Circuit disagreed, ruling that the "proposed second-amended complaint raises new allegations which go solely to the merits of his predatory loan claim," but did not "include any factual allegations that would either plausibly place [the MPHLPA claim] inside the 5-year window or support a tolling argument."

Thus, the proposed amended complaint would also be time barred. Accordingly, the First Circuit affirmed the ruling of the trial court

denying the borrower leave to amend, because “the complaint, as amended, would fail to state a claim upon which relief could be granted.”