SCRA DOES NOT APPLY TO MORTGAGE LOAN INCURRED DURING SERVICE, EVEN IF BORROWER RE-ENLISTS

The U.S. Court of Appeals for the Fourth Circuit recently held that the federal Servicemembers Civil Relief Act (SCRA) does not apply to a mortgage loan obligation incurred while a borrower is a member of the military, even where he subsequently leaves and then later re-enlists in the military prior to a foreclosure sale.

A copy of the opinion is available at: Link to Opinion.

The borrower obtained a mortgage loan to purchase his home from the lender while he was serving in the U.S. Navy. After his discharge from the Navy, the borrower defaulted on his mortgage loan, and the current loan owner ("mortgagee") began foreclosure proceedings

During the foreclosure proceedings, but before the sale was held, the borrower enlisted in the U.S. Army. The owner continued the foreclosure action and sold the property at a foreclosure sale while the borrower was an active member of the Army.

After the sale, the borrower also executed a "Servicemembers' Civil Relief Act Addendum and Move Out Agreement," in which he stated that he was "affirmatively waiv[ing] any rights and protections provided by [50 U.S.C. § 953] with respect to the May 15, 2008 Deed of Trust . . . and the May 13, 2009 foreclosure sale."

More than five years after the foreclosure sale, the borrower filed a lawsuit against the mortgagee alleging the foreclosure sale was invalid under the SCRA.

As you may recall, the SCRA requires a lender to obtain a court order before foreclosing on or selling property owned by a current or recent servicemember where the mortgage obligation "originated before the period of the servicemember's military service." 50 U.S.C. § 3953(a), (c).

The parties filed cross-motions for summary judgment, and the trial court granted summary judgment to the mortgagee, ruling that because the borrower obtained his mortgage loan during his service in the Navy, the loan was not subject to SCRA protection. The trial court found that the resolution of the case "turn[ed] on the interpretation of the phrase 'originated before

the period of the servicemember's military service,'" which the trial court noted was an issue of first impression where the borrower had multiple periods of military service.

The trial court noted that, on its own, "the language . . . is unclear on whether it contemplates multiple periods of military service," but "the specific context of the language indicates that the statute does not apply to obligations incurred while one is in the military, because the underlying concern is the impact military service may have on a servicemember's income and status, uncontemplated at the time when they incurred the obligation."

The trial court accordingly concluded that "[b]ecause it is undisputed that [the borrower's] mortgage originated while he was in the military, that obligation does not qualify under [§ 3953(a)]" and, "[a]s a result, the borrower cannot claim the remedy provided in [§ 3953(c)]."

Because of its ruling, the trial court did not reach the mortgagee's alternative argument that the borrower had waived his rights under the SCRA by executing the addendum to his move-out agreement.

The borrower appealed.

On appeal, the borrower argued that because he incurred his mortgage loan obligation during his service in the Navy, the SCRA applied.

The Fourth Circuit disagreed. In reaching its conclusion, the Fourth Circuit agreed with the trial court's interpretation of the SCRA, that it was "designed to ensure that servicemembers do not suffer financial or other disadvantages as a result of entering the service," and that the SCRA accomplishes this goal "by shielding servicemembers whose income changes as a result of their being called to active duty, and who therefore can no longer keep up with obligations negotiated on the basis of prior levels of income. Such a change in income and lifestyle was not a factor in [the borrower's] case, as the mortgage at issue here originated while he was already in the service."

The Fourth Circuit further held that the SCRA "explicitly creates two classes of obligations — those protected and those not. It provides protection to onlythose obligations that originate *before* the servicemember enters the military service. It thus grants protection to obligations incurred *outside of*

military service, while denying protection to obligations originating *during* the servicemember's military service."

Because the borrower's obligation originated when he was in the Navy, it "was not in the class of obligations protected by the statute."

The borrower further argued that even though his mortgage loan was not a protected obligation at the time he incurred it, he obtained retroactive protection when he later entered the Army because the obligation was incurred before he entered the Army.

The Fourth Circuit disagreed, noting that such an interpretation of the SCRA "reads the singular word 'before' myopically," and that "[i]t would lead to inconsistent treatment of substantially identical obligations and would introduce arbitrariness into Congress' distinction between protected and unprotected obligations."

The Court therefore held that "because [the borrower's] mortgage obligation originated when he was in the Navy, it was not a protected obligation under § 3953(a), and his later enlistment in the Army did not change that status to afford protection retroactively. Accordingly, we affirm the district court's judgment."

Because of the ruling, the Fourth Circuit did not determine whether, in the alternative, the borrower executed a valid waiver of his rights under the SCRA.