

Ninth Circuit rules there is no private right of action under the PTFA

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In a case of first impression, the Ninth Circuit Court of Appeals handed down its decision in *Logan v. U.S. Bank National Association*, No. 10-55671, on July 15, holding that there is no private right of action under the Protecting Tenants at Foreclosure Act of 2009 (PTFA).

Plaintiff Karen Logan sought injunctive relief and damages against U.S. Bank after it filed an unlawful detainer action against her in state court, allegedly without first providing 90 days' notice to vacate the foreclosed property as is required under the PTFA. The district court dismissed the complaint, abstaining from exercising jurisdiction in light of the pending state-court unlawful detainer action pursuant to *Younger v. Harris*, 401 U.S. 37 (1971). The district court also concluded that it lacked subject matter jurisdiction over Logan's damages claim under the PTFA because the statute did not create a private right of action.

The Court of Appeal affirmed, but solely on the ground that Logan had no cognizable claim under the PTFA.

The Court disagreed with the district court's *Younger* abstention analysis, noting that the *Younger* decision created a narrow exception to a district court's general obligation to decide the cases before it. It found that U.S. Bank's unlawful detainer action met three of the four requirements necessary to support abstention: There was an ongoing proceeding in state court when Logan filed her federal action; Logan had the opportunity to litigate her federal question in state court; and the purpose of her federal action was to enjoin the state proceeding directly or achieve the same practical result by limiting US Bank's ability to pursue its state court proceeding. The Court found the final element to be lacking, however, because unlawful detainer actions do not represent a sufficient state interest to warrant *Younger* abstention. The Court instead labeled unlawful detainer actions as simply private disputes between two private parties over possession of a property.

The Court nevertheless affirmed because there is no private right of action under the PTFA.

In first looking to the language of the PTFA, the Court noted that nothing in the PTFA's language explicitly creates a private cause of action. Nor does the PTFA's language or structure reflect Congress's clear and unambiguous intent to create a private right of action or put tenants like Logan into a class whose "especial" benefit it was enacted. Furthermore, the

PTFA was enacted as part of a larger statutory framework, which added a notice requirement to the Truth in Lending Act, among other things. While Congress explicitly amended TILA's private right of action provision so that the new notice requirement could be enforced, no such private right of action provision is included in the PTFA.

The Court then looked to the legislative history and policy behind the PTFA. The legislative history is silent as to any right or remedy available to individual tenants, further bolstering the Court's determination that none exists. The Court found nothing in the statute's policy indicating a private right of action, either. The PTFA is framed in terms of "protections" for tenants, suggesting that it is intended to provide a defense in state eviction proceedings rather than a basis for offensive suits in federal court.

This decision will be helpful to achieving quick dismissals of frivolous PTFA lawsuits filed by borrowers or their tenants after foreclosure for purposes of delaying lawful evictions.

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