

MINNESOTA SUPREME COURT CONCLUDES BORROWERS HAVE PRIVATE RIGHT OF ACTION AGAINST SERVICERS FOR HAMP VIOLATIONS

The Minnesota Supreme Court ruled that an individual borrower has a private right of action for damages under the Minnesota Mortgage Originator and Servicer Licensing Act (Minnesota Statute Chapter 58) for injury caused by a mortgage servicer's failure to perform in accordance with its contracts with third-parties. The Court expressly held that an individual borrower can sue for violations of a Servicer Participation Agreement (SPA) governing a mortgage servicer's involvement in the federal Home Affordable Modification Program (HAMP).

In *Gretsch v. Vantium Capital, Inc.*, __ N.W.2d __, A12-2270 (April 2, 2014), an individual borrower sued Vantium Capital, Inc. d/b/a Acqura Loan Services (Acqura) alleging a violation of Minn. Stat. § 58.18, subd. 1. The borrower alleged Acqura violated the statute because it breached its SPA with Fannie Mae, an agreement to which the individual borrower was not a party. **The Minnesota Supreme Court reversed the lower courts' decisions and held that an individual borrower has standing to sue under Minn. Stat. § 58.18, subd. 1, even though the borrower is not a party to the SPA.**

Minn. Stat. § 58.18, subd. 1 gives borrowers a private right of action to sue for violations of Minn. Stat. § 58.13. It is a violation of Minn. Stat. § 58.13 for a servicer to "fail to perform in conformance with its written agreements with borrowers, investors, other licensees, or exempt persons." In *Gretsch*, the individual borrower alleged the mortgage servicer breached its written agreement with an exempt person, Fannie Mae, by failing to follow the HAMP guidelines resulting in the premature foreclosure of her home. In addition to its holding that standing to sue exists, **the Minnesota Supreme Court held that federal law, which does not recognize a private right of action under HAMP, does not preempt Minnesota law because compliance with state law in this instance does not frustrate the congressional purpose in the federal legislation.**

This decision is a significant departure from cases holding that a borrower has no private right of action under HAMP.