
“Robo-Signing” Could Spawn Class Suits

By Anna ScottStaff Writer, *Daily Journal*

Plaintiffs' lawyers filed what could be the state's first class action based on alleged “robo-signing” of home-loan documents, while lawyers at another firm launched a new practice group to advise lenders and institutional investors facing legal fallout from the hobbled housing market. Both developments last week could be a preview of how California lawyers on both sides of the fence will strategize around the latest issue to emerge from the foreclosure crisis.

On Oct. 18, lawyers at Bohm, Matsen, Kegel & Aguilera sued Chase Home Financial in Los Angeles County Superior Court for fraud, negligent misrepresentation and unfair competition on behalf of a woman who missed payments on a \$528,000 mortgage, and more than 10,000 other California borrowers. The complaint alleges the bank cut corners in moving to repossess Veronica Salinas' home, then misrepresented its actions in foreclosure documents. *Veronica Salinas v. Chase Home Financial*, BC447575.

The case appears to be one of the first in California to glom onto the “robo-signing” scandal that led big lenders to freeze foreclosures nationwide. The controversy has spread beyond the 23 states where foreclosures require a court hearing. Some lawyers predict the Salinas case could set the stage for a slew of similar cases in California.

“Even though we don't have the same affidavit procedure as the [judicial foreclosure] states, we do have a very complex and detailed statutory procedural process that has to be followed to have a valid foreclosure sale,” said Steven Wall, head of the real estate and environmental litigation group at Luce, Forward, Hamilton & Scripps. “I think we're going to see people challenging how the California process is followed, using the same theories they're using in the robo-signing states.”

John McNutt, a senior associate in real estate and environmental litigation at Luce Forward, took the prediction a step further.

“California is ground zero for the subprime-mortgage issue, and has been historically considered a plaintiff-friendly jurisdiction,” he said. “The class actions are coming.”

Others are less sure. Roman Silberfeld, a plaintiffs' lawyer and managing partner of Robbins, Kaplan, Miller & Ciresi in Los Angeles, said he questions whether the Salinas case and any others like it will hold up as class actions. While robo-signing might be a widespread practice, he said, the validity of each underlying foreclosure would likely have to be evaluated separately.

“It's hard to make those sorts of determinations on a class-wide basis,” he said. Nonetheless, Silberfeld added, “My hunch would be that would be an issue the plaintiffs' bar is thinking about as it looks at this whole process, to figure out whether class certification is appropriate.”

In any event, lawyers on the defense side at one firm at least are lining up the troops for a fight.

Wall and McNutt are both part of a new Luce Forward practice group launched Tuesday. The firm's National Foreclosure Litigation and Investigation practice, led by Wall and partners Pat Swan and Chris Healy, aims to provide “one-stop shopping” to institutions facing civil or criminal liability related to the foreclosure crisis. The interdisciplinary group brings together nearly 20 lawyers with experience in areas such as defending corporations facing criminal and civil investigations, defending corporations in class actions, conducting internal investigations, and creating compliance programs following deferred prosecution agreements.

“This is the first time you've seen this perfect storm with the national [foreclosure] suspension,” McNutt said. “You're going to have criminal investigations by government, federal and state agencies, civil investigations ... And substantive laws that govern all this are going to be the state-by-state foreclosure laws.”

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