

## MSC Order List: January 30, 2012

January 31, 2012 by Madelaine Lane

On January 30, 2012, the Michigan Supreme Court denied 50 applications for leave to appeal and five motions for reconsideration. The Court vacated the September 2, 2010 judgment of the Court of Appeals and remanded [Mitchell v. State Employees' Retirement System, Case No. 141909](#), back to the State Employees' Retirement Board for reconsideration of petitioner's request for benefits in light of [Nason v. State Employees' Retirement System, 290 Mich App 416 \(2010\)](#). Additionally, the Court remanded the case of [People v. Lackey, Case No. 143758](#), back to the Saginaw County Circuit Court, for a determination whether the defendant was properly awarded good-time and "trustee days" credit. If necessary, the trial court was ordered to issue an amended Judgment of Sentence reflecting the proper sentencing credit and directed to forward a copy of the amended Judgment to the Michigan Department of Corrections.

The Court also vacated three Court of Appeals' opinions and remanded the cases back to that court for further consideration.

The Court vacated the May 24, 2011 judgment of the Court of Appeals in [McGee v. City of Warren, Case No. 143337](#). On remand, the Court of Appeals was instructed to apply MCL 600.5807(8) to the City of Warren's contract claims, because the City was not seeking indemnity for damages sustained as a result of a tortious injury. The Court explained that the statute of repose found in MCL 600.5839(1) does not apply to non-indemnity actions for breach of contract.

In [Richard v. Schneiderman & Sherman, P.C., Case Nos. 143836 & 143839](#), the Court vacated the Court of Appeals' August 25, 2011 judgment and remanded the case for further consideration in light of the Michigan Supreme Court's recent ruling in *Residential Funding Co., LLC, f/k/a/ Residential Funding Corp. v. Saurman*, 490 Mich \_\_ (November 16, 2011). Our post on the Supreme Court's recent decision in *Residential Funding* is [here](#).

*Richard* has a long procedural history. Initially in *Residential Funding*, the Michigan Court of Appeals held that Mortgage Electronic Registration Systems, Inc. (MERS) did not have authority under MCL 600.3204(1)(d) to foreclose by advertisement when it did not own the underlying note secured by the mortgage. The question in *Richard* was whether this holding applied retroactively, to all cases pending at the time the decision was issued, regardless of whether the issue had been raised and preserved.

In the *Richard* case, the Michigan Court of Appeals issued an opinion and order on August 11, 2011, determining that *Residential Funding* applied retroactively. Two weeks later, the court vacated its opinion on its own motion and issued a new opinion. In this second opinion, the Court noted the long-standing requirement that a "mortgagor must challenge the validity of a foreclosure by advertisement

promptly.” The Court also noted that a foreclosure by advertisement may not be challenged after the property has been sold to a bona fide purchaser. Here, the Court held that the plaintiff had satisfied both these prerequisites, and so again the Court reversed the trial court’s grant of summary disposition, vacated the foreclosure proceeding, and remanded for further proceedings consistent with its opinion. The August 25, 2011 opinion was discussed on the One Court of Justice Blog [here](#).

However, on November 16, 2011, the Michigan Supreme Court reversed the Court of Appeals’ decision in *Residential Funding* and held that Mortgage Electronic Registration System (MERS) could not exercise its contractual right to foreclosure by advertisement, as it was not “the owner ... of an interest in the indebtedness” under MCL 600.3204(1)(d), because MERS was the mortgagee, but not the noteholder. Accordingly, the Michigan Supreme Court has now vacated the August 25, 2011 Court of Appeals opinion in *Richard* and remanded the case back to the Court of Appeals for reconsideration in light of *Residential Funding Co.*

Finally, in [In re Parole of Brian Lee Todd, Case No. 143838](#), the Court vacated the Court of Appeals’ August 25, 2011 judgment and remanded the case back to the Court of Appeals for reconsideration in light of *In re Parole of Elias*, \_\_\_ Mich. App. \_\_\_ (November 1, 2011). The Court of Appeals’ decision in *In re Parole of Elias* was discussed on the One Court of Justice Blog [here](#).