

TOO LITTLE, TOO LATE FOR PLAINTIFF'S FRAUD-BASED MORTGAGE LAWSUIT

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In *Vaca v. Wachovia Mortgage Corporation*, --- Cal.Rptr.3d ----, 2011 WL 3659938 (Cal.App. 4 Dist. 2011), the California Court of Appeal affirmed the dismissal of a fraud claim on statute of limitations grounds. In 2005, the plaintiff sued her ex-husband, claiming he created false credit histories for their children and used those histories to refinance their mortgages with Wachovia. That case soon settled and, in 2009, the plaintiff sued Wachovia and its successor, Wells Fargo, claiming they participated in her ex-husband's fraud.

The trial court found that the plaintiff had failed to allege any wrongdoing after 2001. It sustained the defendants' demurrer without leave to amend on the ground that the three-year statute of limitations for fraud barred the plaintiff's claims. The Court of Appeal affirmed.

On appeal, the plaintiff argued that the defendants' participation in her husband's fraud constitutes a "continuing wrong" for which she suffered harm through 2010. The Court of Appeal rejected this argument, holding that a continuing injury from a completed wrongful act does not extend the limitations period. The Court also rejected the plaintiff's argument that the defendants fraudulently concealed their identities. According to the Court, even if true, this would not toll the statute of limitations. Any claim of equitable estoppel failed because, despite the initial concealment, the plaintiff admittedly discovered defendants' identities one year before the running of the statute of limitations.

The plaintiff had an obligation to file her complaint within this one-year time frame.

Vaca v. Wachovia Mortgage Corporation, --- Cal.Rptr.3d ----, 2011 WL 3659938 (Cal.App. 4 Dist. 2011)

Authored by:

Alejandro E. Moreno

(619) 338-6664

amoreno@sheppardmullin.com

and

Shannon Z. Petersen

(619) 338-6656

spetersen@shepparmullin.com