

Rare Trial Looms on Claims Against Mortgage Lender

Sheri Qualters

The National Law Journal

2013-12-31 15:34:24.0

A Boston federal judge has moved a borrower's negligent misrepresentation claim against PNC Mortgage Corp. for allegedly misleading her about mortgage terms one step closer to a jury trial.

U.S. District Judge William Young denied the lender's dismissal motion in [Broderick v. PNC Mortgage Corp.](#)

"Here, a reasonable jury could find that PNC's failure to provide Broderick complete information about the mortgage terms when she was applying online or at the closing day, and which significantly differed from the terms that had been orally discussed, constituted negligent misrepresentation," Young ruled on Monday.

Jennifer Broderick claims that she and then-husband Steven Midgley told a PNC employee they wanted a joint loan for \$408,500 in November 2007. While speaking on the phone with the PNC employee, Broderick reported that the couple's joint monthly income was \$7,000. She says the PNC representative instructed her to indicate that amount on the borrower's income line.

However, she didn't know she actually was applying for a so-called no-income verification loan and that PNC had removed Midgley's name from the application. She claims that she signed documents at closing without knowing of the changes. At the time, she claims, she relied on the PNC employee's assurances that she and Midgley would be jointly liable for the loan.

After the couple's divorce, Broderick was unable to afford the payments and eventually defaulted.

Broderick's lawyer, Valeriano Diviacchi, a Boston solo practitioner, said the ruling is significant because it paves the way under Massachusetts law for jury trial on lender liability that doesn't include a Massachusetts Consumer Protection Act unfair and deceptive act claim. That statute requires proof of more than mere negligence, he said.

"Anytime a lender liability case makes it to trial these days it is significant, given the hurdles involved to get there," Diviacchi said. "The banks have so many technical defenses and so much money, time, and attorneys to throw at the defense of these cases.

Neither PNC nor its lawyers at Richmond, Va.-based LeClairRyan responded to requests for comment.

Glenn Russell Jr.—a Fall River, Mass. lawyer who runs a foreclosure defense firm but isn't involved in the case—agreed the result was significant.

"It appears that finally the financial industry has to fully explain its position, as opposed to merely just pointing to a borrower and vilifying them as a non payer 'dead beat,'" Russell said.

The unusual facts of this case probably helped the plaintiff survive a dismissal motion, said Marty Fantozzi, a partner at Boston's Goulston & Storrs whose practice includes real estate and litigation.

Court papers note that Midgley, an attorney, acted as Broderick's lawyer in the loan transaction, Fantozzi said.

"In the context of what a lot of judges believe were aggressive practices, there's perhaps more of willingness to entertain these [claims] or at least allow them to get to the discovery phase," Fantozzi said.

Sheri Qualters can be contacted at squalters@alm.com.

Copyright 2013. ALM Media Properties, LLC. All rights reserved.