Ninth Circuit Rejects Appeal by Bank of America in Arizona Lawsuit Over Countrywide - Arizona v. Countrywide et al.

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Led by Vincent Howard, our Norco foreclosure defense attorneys have avidly watched the litigation by our neighboring states against Countrywide Financial. That company (through Bank of America, its successor in interest) settled in 2009 with states charges that it had engaged in consumer fraud in its mortgage lending. In particular, it faced accusations that it steered borrowers into loans it knew they couldn't afford, and sometimes engaged in race-based "reverse redlining." Perhaps not surprisingly, two of the states participating in that settlement were hard-sit southwestern neighbors of California's, Nevada and Arizona. Arizona made a splash in late 2010 when it sued Countrywide again, alleging failure to keep to the terms of its settlement. Now, the Ninth U.S. Circuit Court of Appeals has declined to hear an appeal in that case.

Arizona's lawsuit was originally filed in December of 2010, alleging violations of Arizona law in loan servicing by Countrywide, Bank of America and related companies. It accused the companies of continuing widespread consumer fraud, in large part because of the way they handle loan modification requests. According to the complaint, the defendants misrepresented to customers whether the customers were eligible for loan modifications in the first place; when and whether they would be approved for a modification; why the lender declined to make a loan modification; and whether and when a foreclosure would take place. This violates the part of the 2009 settlement requiring an $8.4 billion commitment by Bank of America to provide loan modifications, the lawsuit said.

Bank of America sought to remove that case to federal court under the Class Action Fairness Act, arguing that the state of Arizona was seeking relief for a large group of consumers. In an opinion from March of 2011, the Arizona federal court disagreed and remanded the case to Arizona state court. The federal district judge said CAFA does not apply because the state had filed a *parens patriae* action, which means it was acting in the interest it has in the well-being of its people. Thus, the district court said, the state was the real party in interest, rather than a discrete group of Arizona homeowners, and CAFA does not apply. The case was not filed as a class action, it said; nor does it raise a federal question or involve bankruptcy jurisdiction. Bank of America appealed the issue to the Ninth Circuit, which declined to hear an appeal in an order dated Jan. 3. Judge Gould, dissenting from that order, argued that hearing the case, consolidated with a related appeal from Nevada, would help resolve opposing decisions in Arizona and Nevada district courts.

The Fullerton foreclosure defense lawyers at Howard Law, P.C., will look forward to reading about the Ninth Circuit's decision in the Nevada case. Though we believe there was no basis to claim CAFA is involved in this case, the Ninth Circuit's dissent suggests that at least one Nevada judge disagrees. If that's upheld, it could mean major changes for the way all states file *parens patriae* actions. Those actions include the original Countrywide lawsuit, which led to the 2009 settlement, as well as any other consumer protection action pursued by a state attorney general rather than an individual. (Indeed, California is one of the few states that allows "public attorney general" suits.) Vincent Howard and our team of Murrieta foreclosure defense attorneys would prefer to see attorneys general allowed to do the necessary work of protecting their states without undue roadblocks.