

Court Holds Ohio's SCRA Not Applicable to Residential Mortgages

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In a case of first impression in Ohio, the Fairfield County Court of Common Pleas held that R.C. § 1343.031, Ohio's version of the Servicemembers Civil Relief Act (SCRA), does not apply to residential mortgages.[1] This decision could have wide-ranging implications for lenders and mortgage servicers handling residential loans in Ohio.

In *Troy Cihan v. PHH Mortgage Corporation* [2], Case No. 19CV733 (Sept. 10, 2021), the borrower filed a lawsuit alleging that he was on active military duty when he signed his note and mortgage with the originating lender, but, despite this, the interest rate on his note was not capped at 6% as required by Ohio's SCRA. The borrower sought recovery of the interest he allegedly overpaid, punitive damages, and attorneys' fees and costs. Ultimately, the court granted the lender's motion for summary judgment and held that R.C. § 1343.031 does not prohibit an originating lender of a residential mortgage from charging active duty personnel, or their spouses, interest or finance charges exceeding 6% per annum. In so doing, the court analyzed whether a promissory note for the repayment of a cash loan, secured by a mortgage on real property, constituted an "obligation" as defined by R.C. § 1343.031(A)(2). An obligation means "any retail installment sales contract, other contract for the purchase of goods or services, or bond, bill, note, or other instrument of writing for the payment of money arising out of a contract or other transaction for the purchase of goods or services." Based on the plain language of the statute, the court concluded that an obligation is only subject to R.C. § 1343.031 if it arises from the purchase of goods or services, and neither the note or mortgage met that definition.

As the court noted, its holding seemed to contradict the Ohio Attorney General's interpretation, as well as the overall purpose of the federal SCRA. Nonetheless, the court was bound by the rules of statutory interpretation and held that the language of the statute excluded residential mortgages from the scope of R.C. § 1343.031.

This decision limits the application of R.C. § 1343.031 to "obligations" as defined under R.C. § 1343.031(A)(2) and clarifies that this term does not encompass residential mortgages. Importantly, R.C. § 1343.031 does not have a statute of limitations, so an entity that originated a residential mortgage for an active duty servicemember or spouse at any time during its effective period (May 18, 2005-present) may have been subject to a claim for a violation of the statute. Thus, this decision could potentially bar claims against an originating lender for actions it took at least sixteen years prior. Practically, with the passage of time, information that can be used to defend these actions may be lost, making it difficult to present a defense. This decision eliminates

that problem while also providing clarity regarding the applicability of R.C. § 1343.031 to residential mortgages in the state of Ohio.

[1] Plaintiff appealed the decision, but the appeal was dismissed as it was untimely filed.

[2] McGlinchey attorney [Stefanie Deka](#) represented the lender in this matter.

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Stefanie L. Deka

Jim Sandy