COURT OF APPEALS OF MARYLAND

Drew v. First Guaranty Mortgage Corp., 379 Md. 318

842 A.2d 1 (2003) · No. No. 1, Sept. Term, 2003 · Decided November 12, 2003

SUMMARY

The Maryland Court of Appeals answered a certified question concerning whether Maryland's Secondary Mortgage Loan Law requires a lender to disclose in writing a borrower's statutory right to postpone a balloon payment for up to six months. The court held that the statute does not require written disclosure of that postponement right and therefore did not reach whether the statute's penalty provisions applied.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Battaglia, J.; Bell, C.J.; Eldridge, J.; Raker, J.; Wilner, J.; Cathell, J.; Harrell, J.
JURISDICTION	Maryland
DECIDED	November 12, 2003
DOCKET	No. 1, Sept. Term, 2003
DISPOSITION	other
PROCEDURAL POSTURE	The United States District Court for the District of Maryland certified a question of Maryland law to the Court of Appeals of Maryland under the Maryland Uniform Certification of Questions of Law Act and Maryland Rule 8-305.
STANDARD OF REVIEW	De novo statutory interpretation in answering a certified question of state law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Alton E. Drew, Verne Drew v. First Guaranty Mortgage Corporation, Wilshire Credit Corporation

TOPICS

statutory interpretation · legislative intent · expressio unius · consumer protection · mortgages

PRACTICE AREAS

consumer protection · real estate finance · mortgages · statutory interpretation

QUESTIONS PRESENTED

1. Whether Maryland Commercial Law Article § 12-404(c)(2) requires a lender or seller using a secondary mortgage or deed of trust with a residential balloon payment to state in writing that the borrower has a statutory right to postpone the balloon payment once for up to six months.
2. Whether the penalty provisions of § 12-413 apply if the written-disclosure requirement applies.

HOLDINGS

1. Section 12-404(c)(2)(iii) does not require a seller or lender whose residential secondary mortgage creates a balloon payment to state in writing that the statutory one-time, six-month postponement period is available to the borrower.
2. The court did not decide whether the penalty provisions of § 12-413 apply.

KEY QUOTATIONS

> *"We hold that Section 12-404(c)(2) does not require a seller or lender, who takes a secondary mortgage or a deed of trust securing all or a portion of a residence's purchase price and creating a balloon payment, to state in writing that the statutory postponement period of six months is available to borrowers."* (842 A.2d at 2)

> *"Section 12-404(c) does not require a seller or lender who takes a secondary mortgage or deed of trust securing all or a portion of a residence's purchase price and creating a balloon payment to state in writing that the statutory postponement period of six months is available to borrowers."* (842 A.2d at 10)

> *"CERTIFIED QUESTION ANSWERED AS SET FORTH ABOVE."* (842 A.2d at 10)

FACTUAL BACKGROUND

Alton and Verne Drew purchased a residence using a secondary mortgage loan secured by a junior mortgage, later held by Wilshire Credit Corporation. The loan required monthly payments for fifteen years and included a balloon payment estimated at $54,063.30, approximately 92% of the secondary-mortgage principal. The loan documents disclosed and obtained written agreement to the balloon payment but did not disclose the statutory one-time, six-month postponement right and instead stated that the lender had no obligation to refinance the balance. The balloon payment had not yet matured, and the Drews had not requested an extension.

PROCEDURAL HISTORY

The Drews challenged a secondary mortgage loan containing a balloon-payment provision that did not state in writing that the lender was required to postpone the balloon payment once for up to six months at the borrower's request. The federal district court certified whether Maryland law required that written disclosure and, if so, whether the statutory penalties applied. The Court of Appeals answered the certified question in the negative and declined to reach the penalty issue.

DISPOSITION

other

CASES CITED

- Beyer v. Morgan State Univ., 369 Md. 335, 349-50, 800 A.2d 707, 715 (2002)
- Derry v. State, 358 Md. 325, 335-36, 748 A.2d 478, 483-84 (2000)
- Marriott Employees Fed. Credit Union v. Motor Vehicle Admin., 346 Md. 437, 444-45, 697 A.2d 455, 458 (1997)
- Tucker v. Fireman's Fund Ins. Co., 308 Md. 69, 73, 517 A.2d 730, 731 (1986)
- In re Mark M., 365 Md. 687, 711-12, 782 A.2d 332, 346 (2001)
- Tracey v. Tracey, 328 Md. 380, 387, 614 A.2d 590, 594 (1992)
- Williams v. Mayor and City Council of Baltimore, 359 Md. 101, 116, 753 A.2d 41, 49 (2000)
- Graves v. State, 364 Md. 329, 346, 772 A.2d 1225, 1235 (2001)
- Frost v. State, 336 Md. 125, 137, 647 A.2d 106, 112 (1994)
- Dickerson v. State, 324 Md. 163, 171, 596 A.2d 648, 652 (1991)
- Baltimore Harbor Charters, Ltd. v. Ayd, 365 Md. 366, 385, 780 A.2d 303, 314 (2001)
- Macht v. Department of Assessments, 266 Md. 602, 618-19, 296 A.2d 162, 171 (1972)
- Ridge Heating, Air Conditioning & Plumbing, Inc. v. Brennen, 366 Md. 336, 352, 783 A.2d 691, 700 (2001)
- Alan J. Cornblatt, P.A. v. Barow, 153 N.J. 218, 708 A.2d 401 (1998)
- Liverpool v. Baltimore Diamond Exch., Inc., 369 Md. 304, 313 n. 11, 799 A.2d 1264, 1269 n. 11 (2002)
- General Motors Corp. v. Schmitz, 362 Md. 229, 236, 764 A.2d 838, 841 (2001)
- Anderson v. Ford Motor Credit Corp., 323 Md. 327, 335, 593 A.2d 678, 682 (1991)
- Rockville Grosvenor, Inc. v. Montgomery County, 289 Md. 74, 77, 422 A.2d 353, 356 (1980)
- Mayor and City Council of Baltimore v. Clerk of Superior Court, 270 Md. 316, 319, 311 A.2d 261, 263 (1973)
- State v. Crescent Cities Jaycees Found., Inc., 330 Md. 460, 470, 624 A.2d 955, 960 (1993)
- Valentine v. Board of License Comm'rs, 291 Md. 523, 534, 435 A.2d 459, 465 (1981)
- Read Drug & Chem. Co. v. Claypoole, 165 Md. 250, 257, 166 A. 742, 745 (1933)
- Toler v. Motor Vehicle Admin., 373 Md. 214, 223, 817 A.2d 229, 235 (2003)
- Paape v. Grimes, 256 Md. 490, 495, 260 A.2d 644, 647 (1970)