SUPREME COURT OF SOUTH CAROLINA

Boone v. Quicken Loans, Inc.

420 S.C. 452 (2017) · Decided July 19, 2017

SUMMARY

The South Carolina Supreme Court considered whether Quicken Loans, Inc. and Title Source, Inc. engaged in the unauthorized practice of law through a residential mortgage-refinancing process. The court held that the process did not constitute unauthorized practice because South Carolina attorneys independently supervised or performed critical steps, including title review, document review, closing, recording, and disbursement. The court therefore rejected the Special Referee’s recommendation and did not address the homeowners’ remaining class-certification and remedial claims.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Justice Kittredge; Chief Justice Beatty; Justice Hearn; Justice Few; Acting Justice Costa M. Pleicones
JURISDICTION	South Carolina
DECIDED	July 19, 2017
DISPOSITION	other
PROCEDURAL POSTURE	Declaratory judgment action accepted in the South Carolina Supreme Court's original jurisdiction to determine whether Quicken Loans and Title Source engaged in the unauthorized practice of law in connection with residential mortgage refinancing transactions. After an evidentiary proceeding, a Special Referee recommended a finding of unauthorized practice of law and an injunction, while recommending against class certification and class relief. Both sides took exceptions.
STANDARD OF REVIEW	The Supreme Court considered the evidence and the Special Referee's proposed findings and recommendations in exercising its original jurisdiction over the declaratory judgment action.
PRECEDENTIAL VALUE	Published opinion; binding precedent of the Supreme Court of South Carolina.
PARTIES	Quicken Loans, Inc., Title Source, Inc., Vance L. Boone, Thelma Boone, Travis G. Messex, Theresa S. Messex, Brian Johnson, Kelli Johnson

TOPICS

real estate · consumer protection · constitutional law

PRACTICE AREAS

real estate · consumer protection · professional responsibility

QUESTIONS PRESENTED

1. Whether Quicken Loans and Title Source's residential mortgage-refinancing process constituted the unauthorized practice of law under South Carolina law.
2. Whether the attorney involvement in title examination, preparation and review of instruments, closing, recording, and disbursement was sufficient to satisfy South Carolina's unauthorized-practice-of-law requirements.
3. Whether the Court should require a closing attorney to use the attorney's own trust account to control the disbursement of loan proceeds under In re Breckenridge.

HOLDINGS

1. The Quicken Loans and Title Source refinancing process did not constitute the unauthorized practice of law because licensed South Carolina attorneys were involved at each critical stage and were permitted to exercise independent professional judgment.
2. To the extent In re Breckenridge could be read to require the closing attorney to use the attorney's own trust account to control disbursement of loan proceeds, that decision is modified. Attorney supervision remains required, but the supervision provided under Respondents' refinancing model satisfies the governing standard.
3. The Court did not reach the parties' remaining exceptions, including the Homeowners' requests to declare mortgages void and certify a class, because it rejected the finding of unauthorized practice of law.

KEY QUOTATIONS

> *"Thus, a refinance process does not constitute UPL as long as a licensed South Carolina attorney is involved at each critical stage and exercises independent professional judgment, including making corrections if necessary, at the key points throughout the transaction."* (465)

> *"Simply put, we believe requiring more attorney involvement in cases such as this would belie the Court's oft-stated assertion that UPL rules exist to protect the public, not lawyers."* (470-471)

FACTUAL BACKGROUND

Quicken Loans and Title Source used an online residential mortgage-refinancing process in which nonattorney personnel performed clerical and title-search tasks, while South Carolina attorneys reviewed title abstracts, certified title, reviewed and corrected closing documents, attended closings, advised borrowers, supervised execution, and monitored recording and disbursement. The attorneys testified that they maintained independent professional judgment and were not controlled by Quicken Loans or Title Source. The Homeowners did not allege that they were harmed by the refinancing model.

PROCEDURAL HISTORY

The Homeowners filed a declaratory judgment action seeking a ruling that Respondents' mortgage-refinancing model constituted unauthorized practice of law, along with class certification and class relief. The Supreme Court referred the matter to a Special Referee, whose report recommended finding unauthorized practice of law but denying class relief. The Supreme Court rejected the unauthorized-practice recommendation and therefore did not reach the remaining exceptions, including the request to void mortgages and certify a class.

DISPOSITION

other

CASES CITED

- Brown v. Coe, 365 S.C. 137, 616 S.E.2d 705 (2005)
- State ex rel. Daniel v. Wells, 191 S.C. 468, 5 S.E.2d 181 (1939)
- Crawford v. Cent. Mortg. Co., 404 S.C. 39, 744 S.E.2d 538 (2013)
- State v. Despain, 319 S.C. 317, 460 S.E.2d 576 (1995)
- State v. Buyers Serv. Co., 292 S.C. 426, 357 S.E.2d 15 (1987)
- Franklin v. Chavis, 371 S.C. 527, 640 S.E.2d 873 (2007)
- Roberts v. LaConey, 375 S.C. 97, 650 S.E.2d 474 (2007)
- Linder v. Insurance Claims Consultants, Inc., 348 S.C. 477, 560 S.E.2d 612 (2002)
- In re Unauthorized Practice of Law Rules, 309 S.C. 304, 422 S.E.2d 123 (1992)
- Doe Law Firm v. Richardson, 371 S.C. 14, 636 S.E.2d 866 (2006)
- Matrix Financial Services Corp. v. Frazer, 394 S.C. 134, 714 S.E.2d 532 (2011)
- Doe v. McMaster, 355 S.C. 306, 585 S.E.2d 773 (2003)
- Ex parte Watson, 356 S.C. 432, 589 S.E.2d 760 (2003)
- In re Lester, 353 S.C. 246, 578 S.E.2d 7 (2003)
- In re Breckenridge, 416 S.C. 466, 787 S.E.2d 466 (2016)
- In re UPL Advisory Opinion 2003-2, 277 Ga. 472, 588 S.E.2d 741 (2003)
- Real Estate Bar Association for Massachusetts, Inc. v. National Real Estate Information Services, 459 Mass. 512, 946 N.E.2d 665 (2011)
- In re Shoe Mfrs. Protective Ass'n, 295 Mass. 369, 3 N.E.2d 746 (1936)
- In re First Escrow, Inc., 840 S.W.2d 839 (Mo. 1992)
- Bennion, Van Camp, Hagen & Ruhl v. Kassler Escrow, Inc., 96 Wash. 2d 443, 635 P.2d 730 (1981)

INSTRUCTIONS FOR AN AI ASSISTANT