SUPREME COURT OF SOUTH CAROLINA

Crawford v. Central Mortgage Co.

404 S.C. 39 (2013) · Decided June 19, 2013

SUMMARY

The South Carolina Supreme Court considered whether lenders engaged in the unauthorized practice of law by preparing, executing, and recording loan modification documents without attorney supervision. The court distinguished loan modifications from real estate purchases and mortgage refinancing, holding that loan modification without attorney participation does not constitute the unauthorized practice of law. The court entered judgment for the respondents and did not reach whether the mortgages should be deemed void.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Chief Justice Toal; Toal; Beatty; Kittredge; Hearn; Pleicones
JURISDICTION	South Carolina
DECIDED	June 19, 2013
DISPOSITION	other
PROCEDURAL POSTURE	Petitioners sought declaratory relief in the South Carolina Supreme Court's original jurisdiction to prevent foreclosure, arguing that their lenders engaged in the unauthorized practice of law by preparing, executing, and recording loan modifications without attorney participation.
STANDARD OF REVIEW	The opinion does not state a separate standard of review; the court resolved the legal issue concerning the scope of the unauthorized practice of law under its original jurisdiction.
PRECEDENTIAL VALUE	Published opinion; binding South Carolina Supreme Court precedent on the unauthorized-practice-of-law issue decided.
PARTIES	Cassandra R. Crawford, James W. O. Warrington, Sr. v. Central Mortgage Co., The Bank of South Carolina

TOPICS

mortgages · foreclosure · real estate · consumer protection · contracts

PRACTICE AREAS

real estate law · mortgage law · unauthorized practice of law · foreclosure

QUESTIONS PRESENTED

1. Whether lenders engage in the unauthorized practice of law by preparing and mailing loan modification documents to borrowers and recording the executed documents without the participation of a licensed attorney.
2. Whether the petitioners' mortgages should be deemed void if an attorney's participation was legally required for the loan modifications.

HOLDINGS

1. A lender does not engage in the unauthorized practice of law by preparing and mailing loan modification documents to borrowers and recording the executed documents without participation of a licensed attorney.
2. The court did not reach the issue because its rejection of the unauthorized-practice-of-law claim was dispositive.

KEY QUOTATIONS

> *"We disagree, and hold that modifying a loan without the participation of an attorney does not constitute the unauthorized practice of law."* (41)

> *"Thus, we hold that lenders do not engage in the unauthorized practice of law by preparing and mailing loan modifications to borrowers and recording the executed documents without participation of a licensed attorney."* (47)

> *"For the foregoing reasons, we hold that modifying a loan without attorney supervision does not constitute the unauthorized practice of law."* (47)

FACTUAL BACKGROUND

Crawford obtained a residential mortgage and later received two loan modifications that reduced interest rates, capitalized certain amounts, and extended the maturity date. Her second modification was not prepared or supervised by a licensed attorney, and she later defaulted, prompting Central Mortgage's foreclosure action. Warrington obtained a commercial loan for property development and received three successive modifications extending the maturity date; the Bank prepared and recorded those modifications without attorney participation. Both borrowers argued that the lenders' conduct constituted the unauthorized practice of law and should prevent foreclosure.

PROCEDURAL HISTORY

Central Mortgage filed a foreclosure action against Crawford in circuit court, and the Bank of South Carolina filed a foreclosure action against Warrington. Crawford and Warrington separately petitioned the South Carolina Supreme Court for declaratory relief. The Supreme Court granted both petitions for review under Rule 245, SCACR, stayed or expedited the lower-court proceedings, consolidated the matters because they presented the same legal issue, and entered judgment for respondents.

DISPOSITION

other

CASES CITED

- In re Unauthorized Practice of Law Rules, 309 S.C. 304, 422 S.E.2d 123 (1992)
- State v. Despain, 319 S.C. 317, 460 S.E.2d 576 (1995)
- In re Duncan, 83 S.C. 186, 65 S.E. 210 (1909)
- State v. Buyers Serv. Co., Inc., 292 S.C. 426, 357 S.E.2d 15 (1987)
- Doe v. McMaster, 355 S.C. 306, 585 S.E.2d 773 (2003)
- Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 518 S.E.2d 591 (1999)
- In the Matter of the Care and Treatment of McCracken, 346 S.C. 87, 551 S.E.2d 235 (2001)
- Solomon v. City Realty Co., 262 S.C. 198, 203 S.E.2d 435 (1974)
- Doe Law Firm v. Richardson, 371 S.C. 14, 636 S.E.2d 866 (2006)
- Matrix Fin. Servs. Corp. v. Frazer, 394 S.C. 134, 714 S.E.2d 532 (2011)

INSTRUCTIONS FOR AN AI ASSISTANT