

SUPREME COURT OF SOUTH CAROLINA

Doe Law Firm v. Richardson, 371 S.C. 14

636 S.E.2d 866 (2006) · No. No. 26214 · Decided October 23, 2006

SUMMARY

The Supreme Court of South Carolina held that disbursement of loan proceeds in connection with a residential refinancing or credit line transaction is an integral part of the closing process and must be supervised by an attorney. The court did not require that funds pass through the supervising attorney's trust account and delayed the rule's effective date until January 22, 2007.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Chief Justice Toal; Justice Moore; Justice Waller; Justice Burnett; Justice Pleicones
JURISDICTION	South Carolina
DECIDED	October 23, 2006
DOCKET	No. 26214
DISPOSITION	other
PROCEDURAL POSTURE	The Supreme Court of South Carolina exercised its original jurisdiction to decide, on stipulated facts, whether disbursement of residential loan proceeds in connection with refinancing or credit line transactions constitutes the practice of law.
STANDARD OF REVIEW	The court exercised original jurisdiction and decided the stipulated legal question de novo.
PRECEDENTIAL VALUE	Published precedential opinion announcing a new rule governing attorney supervision of disbursements in residential real estate loan closings.
PARTIES	Doe Law Firm v. Henry B. Richardson, Jr., Disciplinary Counsel, Henry Dargan McMaster, Attorney General

TOPICS

- real estate
- administrative law

PRACTICE AREAS

unauthorized practice of law

legal ethics and professional responsibility

residential real estate transactions

QUESTIONS PRESENTED

1. Whether disbursement of residential loan proceeds in connection with a residential refinancing or credit line transaction constitutes the practice of law.
2. Whether disbursement of those proceeds must be supervised by an attorney.

HOLDINGS

1. Disbursement of funds in the context of a residential real estate loan closing is an integral part of the closing process and constitutes a step that must be supervised by an attorney.
2. The court required attorney supervision of disbursement but did not prescribe a specific form of supervision or require that the loan funds pass through the supervising attorney's trust account.

KEY QUOTATIONS

"We hold that disbursement is an integral step in the closing of a residential refinancing or credit line transaction which must be conducted under the supervision of an attorney." (371 S.C. at 15)

"In our view, however, the disbursement of funds in the context of a residential real estate loan closing cannot and should not be separated from the process as a whole." (371 S.C. at 18)

"Rather, we hold that the attorney's obligation to both his clients if he represents the buyer and the lender, and to his individual client if he represents only one party, includes overseeing this step of the closing process." (371 S.C. at 18)

FACTUAL BACKGROUND

Doe Law Firm served as closing counsel for an out-of-state lender in South Carolina residential refinancing and credit line transactions and represented both the lender and borrower after disclosure and consent. The firm supervised title work, reviewed and explained loan documents, supervised execution, recorded the mortgage documents, and returned the closing documents to the lender with instructions for disbursement. The lender—not Doe—made the disbursements, and Doe had no signatory authority over the lender's accounts and did not review, reconcile, or retain records of those disbursements.

PROCEDURAL HISTORY

The parties presented the matter directly to the Supreme Court of South Carolina in its original jurisdiction. The parties stipulated to the relevant facts concerning Doe Law Firm's role in residential refinancing and credit line closings, and the court resolved the legal question as an issue of unauthorized practice of law.

DISPOSITION

other

CASES CITED

- Doe v. McMaster, 355 S.C. 306, 585 S.E.2d 773 (2003)
- State v. Buyers Serv. Co., Inc., 292 S.C. 426, 357 S.E.2d 15 (1987)
- In re Boulware, 366 S.C. 561, 623 S.E.2d 652 (2005)
- In re Fortson, 361 S.C. 561, 606 S.E.2d 461 (2004)
- In re McMillian, 359 S.C. 52, 596 S.E.2d 494 (2004)
- In re Arsi, 357 S.C. 8, 591 S.E.2d 627 (2004)
- In re Pstrak, 357 S.C. 1, 591 S.E.2d 623 (2004)
- In re Boyce, 364 S.C. 353, 613 S.E.2d 538 (2005)
- In re Unauthorized Practice of Law Rules, 309 S.C. 304, 422 S.E.2d 123 (1992)

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