

Supreme Court Case Has Lessons for Mortgage Lenders

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Lenders that resell or buy mortgage loans might feel the impact of a February decision by the New Mexico State Supreme Court that affects their ability to foreclose if the borrower defaults.

The case, *Bank of New York v. Joseph A. Romero*, involved a Chimayó man who refinanced a mortgage he had taken on a home he inherited from his father decades earlier. Romero secured the original loan to open a business in Española; the 2006 Equity One refinance was done to pay off that older mortgage and other debts.



Romero claimed his business made approximately \$5,600 per month, but Equity One didn't confirm that information or require an appraisal. To satisfy provisions of the state Home Loan Protection Act, or HLP, Equity One had Romero and his wife sign a document stating that their \$30,000 cash payout from the transaction was "a reasonable tangible net benefit" to them. The mortgage was later sold to Bank of New York. When the couple defaulted on the loan payments in 2008, Bank of New York filed for foreclosure in state District Court, claiming it was the successor in interest and holder of the Romero's note and mortgage.

The Romeros countered that the Bank of New York lacked standing to file a foreclosure action against them. They received support from numerous community groups, including the Santa Fe Neighborhood Law Center, which characterized the refinance as an example of predatory lending against unsophisticated borrowers that demonstrated no regard for the couple's ability to make loan payments.

The District Court and state Court of Appeals ruled for the bank, but the New Mexico Supreme Court reversed those rulings, instructing the lower court to vacate its foreclosure judgment.

In court, the Bank of New York had presented two copies of the note showing where the document changed hands. One copy had an endorsement, or signature, from Equity One and the other was endorsed to J.P. Morgan Chase. It offered no endorsement of the note to the Bank of New York. Absent that endorsement, the New Mexico Supreme Court said the Bank of New York had no more standing to foreclose on the Romero's property than someone who found a check payable to someone else had standing to cash it.

Justice Charles Daniels further argued that HPLA's requirement that the borrower receive a "reasonable, tangible net benefit" from a loan must consider the borrower's ability to repay the debt. A document signed by the couple testifying to that benefit was no substitute for the lender's "conscientious compliance with the obligations imposed by HPLA." Because the lender didn't diligently verify Romero's income claims, the court ruled that Equity One violated HPLA.

For mortgages refinanced before 2009, lenders hoping to foreclose on a defaulted loan must demonstrate meaningful, good-faith efforts to verify the borrower could meet his obligations. To have standing for a foreclosure suit in state District Court, the lender must prove a valid chain of transfers that led it to become the mortgage holder.

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