

PUBLICATION

Georgia Supreme Court Decision Should Reduce the Number of Wrongful Foreclosure Cases

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Last summer, the Georgia Court of Appeals ruled that a foreclosure advertisement must identify the secured creditor on whose behalf a foreclosure sale is being performed. See *Reese v. Provident Funding Assocs., LLP*, 317 Ga. App. 353, 730 S.E.2d 552 (2012). In that case, a loan servicer advertised a foreclosure sale on behalf of the holder of the security deed, but did not include the correct identification of the holder in the foreclosure advertisement.

Since 2008, Georgia foreclosure statutes have required that a foreclosure advertisement include the "name, address, and telephone number of the individual or entity who shall have full authority to negotiate, amend, and modify all terms of the mortgage with the debtor." O.C.G.A. § 44-14-162.2(a). The 2012 *Reese* decision interpreted O.C.G.A. § 44-14-162.2 to require that the holder of the security deed or mortgage be identified in the foreclosure advertisement. This created new grounds for lender liability in wrongful foreclosure cases-- now, foreclosed borrowers could point to any lack of identification as a reason to invalidate the foreclosure. Observers noticed a rise in wrongful foreclosure suits as a result. See Alyson M. Palmer, *Lenders Win on Foreclosures*, Daily Report, May 21, 2013.

This spring, in *You v. JP Morgan Chase Bank, N.A.*, 2013 WL 2152562 (Ga. 2013), the Georgia Supreme Court effectively overturned *Reese* and made clear that O.C.G.A. § 44-14-162.2(a) requires only what its plain language says it requires: the identity of the person or entity who has authority to negotiate or amend the terms of the security deed or mortgage. This decision effectively disposes of the additional "secured creditor identification" requirement that *Reese* created, and with it, any wrongful foreclosure cases brought on the grounds of failure to identify the secured creditor in the foreclosure advertisement. (Of course, if the secured creditor is the party with authority to amend the security deed, then the secured creditor should still be identified, but if the servicer is the party with that authority, then identification of the servicer would be deemed sufficient.) The effect of the *You* decision should be a corresponding decrease in last year's increased wrongful foreclosure suits.

In addition, the Georgia Supreme Court sided with lenders in another unsettled point of Georgia foreclosure law and held that where securitization has caused a note and a security deed to be held by different parties, "the holder of a deed to secure debt is authorized to exercise the power of sale in accordance with the terms of the deed even if it does not also hold the note or otherwise have any beneficial interest in the debt underlying the deed." With this additional question answered, the *You* decision provides an extra level of reassurance to CMBS deed holders and loan servicers who participate in Georgia's non-judicial foreclosure process.