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Foreclosure Notice Which States that Servicer has Authority to Amend or Modify the Loan May Not Satisfy Georgia Law

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March 3, 2014

Eight months ago, we sent a client alert when the Georgia Supreme Court released its opinion responding to questions certified by the U.S. District Court for the Northern District of Georgia in *You v. J.P. Morgan Chase Bank, N.A.*, et al., in which it found, among other things, that a mortgage lender need only possess an assigned interest in a Security Deed to foreclose. The decision was widely reported and resolved an open question about Georgia foreclosure law that had been interpreted many ways by a variety of courts, both state and federal.

Less noticed, the *You* case continued to be litigated in the Northern District Court. On February 25, 2014, Judge Julie Carnes granted the Plaintiff's request to amend their Complaint to include a new claim that Chase was incorrectly identified in the notice of foreclosure as the entity with authority to modify the terms of the mortgage pursuant to O.C.G.A. 44-14-162.2. In granting the Motion to Amend the Complaint, the Court essentially found that this allegation stated a valid claim sufficient to survive a motion to dismiss. In its Opinion, the District Court tacitly acknowledged Georgia case law holding that lenders need only substantially comply with O.C.G.A. 44-14-162.2 as well as federal cases holding that identification of the loan servicer complied with the statute, but held that the Supreme Court's order in *You* required that the entity identified have "full authority" to negotiate "all terms of the mortgage." The District Court found that this determination was a factual issue.

If this conclusion is accepted by more judges, it could result in real liability for banks and mortgage servicers. At the very least, we fully expect this Order to result in a substantial number of new cases being filed and a number of those cases requiring discovery into the servicer-investor relationship.

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