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RECENT DEVELOPMENT

MASTER FINANCIAL, INC. v. CROWDER: A TWELVE-YEAR STATUTE OF LIMITATIONS APPLIES FOR SPECIALTY ACTIONS TO CLAIMS SEEKING CIVIL PENALTIES UNDER THE STATE SECONDARY MORTGAGE LOAN LAW.

By: Satoko Harada

The Court of Appeals of Maryland held that the applicable statute of limitations period for State Secondary Mortgage Loan Law (“SMLL”) violations claiming civil penalties is the twelve-year statute of limitations for specialty actions. *Master Fin., Inc. v. Crowder*, 409 Md. 51, 972 A.2d 864 (2009). The court set forth a standard requiring a statute to be the exclusive source of both enforceable obligations and ascertainable remedies in order to constitute an “other specialty” under Maryland Code, section 5-102(a)(6) of the Courts and Judicial Proceedings Article (“CJP”). *Id.* at 70, 972 A.2d at 875.

This was a consolidated action consisting of nineteen lawsuits, nine of which were class actions. The plaintiffs (collectively, “Borrowers”) alleged that the loan transactions, which they used to secure a second mortgage loan, violated the SMLL in several respects. The defendants (collectively, “Lenders”) included lender entities alleged to have originated the respective mortgage loans to the Borrowers, and holder-defendants that had purchased those mortgage loans from the lender-defendants. Non-holder defendants were also included as defendants in some of the class action suits. The Borrowers alleged that the non-holder defendants were “juridically linked” to the suit because they purchased from the named Lenders mortgage loans made to unnamed plaintiffs in the class action.

The Borrowers claimed that the Lenders were in violation of the SMLL, defined in sections 12-401 through 12-415 of the Commercial Law Article of the Maryland Code, by not meeting the licensing requirement, charging excessive fees, and failing to provide a disclosure form as mandated. The Borrowers sought application of the twelve-year limitations period under CJP section 5-102(1) or (5), claiming that the loan documents were signed under seal as required. In response to the Borrowers’ claim, the lenders filed a motion to

dismiss, arguing that the applicable limitations period precluded these actions.

The Circuit Court for Baltimore City granted the Lenders' motion to dismiss all actions on the ground that the suits were barred by limitations, because they had not been filed within three years of the closing of the respective loans. The court further ruled that the Borrowers' actions were based entirely on the statutes and not on the loan documents, and therefore, were subject to the three-year limitations period.

The Borrowers appealed to the Court of Special Appeals of Maryland, which agreed with the lower court, that the applicable limitations period to claims solely under the SMLL was three years. The intermediate court, however, reversed judgment in part, holding that the Borrowers' claims on the SMLL were not entirely barred by limitations. The court based its ruling on section 12-413 of the Commercial Law Article of the Maryland Code, which allows for recovery of any post-closing costs in excess of the principal amount of the loan, when the lender is in violation of the SMLL. On cross-petition by the Borrowers and the Lenders, the Court of Appeals of Maryland granted certiorari.

The Court of Appeals of Maryland noted that the lower courts and the parties had maintained an undisputed assumption that the limitations period applicable to SMLL violations was three years. During its proceedings, however, the court discovered a line of cases that were contrary to that assumption. The court directed for supplemental memoranda on whether the Borrowers' actions for civil penalties under the SMLL constituted an "other specialty" under CJP section 5-102(a)(6), and were thereby subject to a twelve-year statute of limitations.

The Court of Appeals of Maryland agreed with the lower courts that the Borrowers' claim that the loan documents were under seal, and therefore subject to the twelve-year limitations period, was invalid. *Master Fin.*, 409 Md. at 64, 972 A.2d at 872. The court noted that the actions were based on statutory violations of the SMLL, which were entirely extraneous to the loan documents themselves. *Id.* The court then took the unusual step of raising an additional issue to resolve whether claims based on the SMLL constituted an "other specialty" under CJP section 5-102(a)(6). *Id.* at 65, 972 A.2d at 873 (citing MD. CODE ANN., CTS. & JUD. PROC. § 5-102(a)(6) (2006)). If an SMLL claim was an "other specialty," the applicable limitations period would be twelve years and the Borrowers would be entitled to

bring their claim. *Id.* Otherwise, the three-year limitations period would preclude the Borrowers from recovery.

The Court of Appeals of Maryland discussed its recent decision in *Greene Tree H.O.A. v. Greene Tree Assoc.*, which examined the issue of whether a statutory claim constituted a specialty. *Id.* at 66, 972 A.2d at 873 (citing *Green Tree H.O.A. v. Greene Tree Assoc.*, 358 Md. 453, 749 A.2d 806 (2000)). In *Greene Tree*, the court concluded that attempts to draw a bright line rule identifying statutory specialties have yielded inconsistent results, and did not discern a reasonable standard or an exact definition of a statutory specialty. *Master Fin.*, 409 Md. at 66, 972 A.2d at 873 (citing *Greene Tree*, 358 Md. at 481-82, 749 A.2d at 821). The court also looked to *Mattare v. Cunningham*, where a claim to recover death benefits was held to constitute a statutory specialty because the cause of action existed solely by statute and not by common law. *Id.* at 67, 972 A.2d at 873-74 (citing *Mattare v. Cunningham*, 148 Md. 309, 314-15, 129 A. 654, 656 (1925)). The court expanded the *Mattare* principle in *Sterling v. Reecher*, by additionally requiring that the remedy be entirely statutory. *Id.* at 69, 972 A.2d at 874-75 (citing *Sterling v. Reecher*, 176 Md. 567, 6 A.2d 237 (1939)).

In light of the relevant legal history, the court devised a general principle for determining when a statutory action falls within CJP section 5-102(a)(6). *Id.* at 70, 972 A.2d at 875 (citing MD. CODE ANN., CTS. & JUD. PROC. § 5-102(a)(6) (2006)). According to the court, a statutory claim will constitute an “other specialty,” subject to the twelve-year limitations period, if: (1) the statute is the exclusive source of the enforceable duty, obligation, prohibition or right not within common law; (2) the statute is the exclusive source of the remedy to be pursued in the event the statute is violated; and (3) any civil damages sought are readily ascertainable. *Id.*

The Court of Appeals of Maryland ultimately found that the Borrowers’ actions arising from the enforceable duties, obligations, prohibitions, rights and remedies were derived solely from the SMLL, and that the remedy and specific amounts pursued were readily ascertainable. *Id.* at 72, 972 A.2d at 876. In satisfying the standard of a statutory specialty, subject to the twelve-year limitations period, the court ruled that, subject to producing sufficient evidence, the Borrowers were entitled to recover the statutory civil penalties. *Master Fin.*, 409 Md. at 72, 972 A.2d at 876.

The Court of Appeals of Maryland emphasized that the “other specialty” status under CJP section 5-102(a)(6) of the Maryland Code is to be applied narrowly, and that it is not applicable to every claim

that is related to a statute in some manner. *Id.* at 70, 972 A.2d at 875 (citing MD. CODE ANN., CTS. & JUD. PROC. § 5-102(a)(6) (2006)). The court demonstrated this by distinguishing the Borrowers' actions in which they sought a declaration that the mortgage loans were void or voidable due to SMLL violations. *Id.* at 73, 972 A.2d at 877. The court ruled that these claims did not meet the statutory specialty standard, because the remedy was found solely at common law, and was therefore barred by the three-year statute of limitations. *Id.*

The court also denied joinder of the non-holder defendants in the class action suits, finding the "juridical link" doctrine inapplicable. *Id.* at 80, 972 A.2d at 881. The juridical link doctrine would allow a class representative, on behalf of unnamed class members, to enjoin a defendant with whom they lack a direct connection. *Id.* at 74, 972 A.2d at 877. The court held that under Federal Rules of Civil Procedure Rule 23 and Maryland Rule 2-231(a), the Borrowers, having no connection with the non-holder defendants, lacked standing and could not sufficiently represent the interests of the unnamed class members who may otherwise have a direct connection and a cause of action against the non-holder defendants. *Master Fin.*, 409 Md. at 81, 972 A.2d at 882.

With this decision, the Court of Appeals of Maryland articulated a workable standard for determining the specialty status of claims for civil remedies under the SMLL. In light of the economic difficulties of recent years, many people have resorted to a second mortgage loan for additional funds. With both financial institutions and borrowers facing economic hardships, conflicts over issues, such as obligations of the lenders and excessive costs associated with the loan, are bound to arise. Practitioners must be attentive to the statutory nature of a borrower's claim, which could significantly increase the time in which to file it. Additionally, the extended limitations period could dramatically increase the potential liability that lenders face. Maryland attorneys must also take notice of the court's new standard, which may extend the statute of limitations on other statutes that lack a defined limitations period.