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Business

Connecticut Supreme Court ruling a win for homeowners facing foreclosure

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A state Supreme Court ruling this week gives thousands of state homeowners greater protection from foreclosure by mortgage companies that don't own their loans.

Christopher G. Brown, a partner in Begos Horgan & Brown of Westport, which represented Anna M. Miller, said the case turned on the difference between the legal import of the words "owner" and "holder" of the mortgage debt.

You have to be the owner of the debt to have the right to foreclose the mortgage, Brown said Tuesday.

"In the past, banks have said, 'All I have to be is the holder to have the right to foreclose.' After this decision, the law is now clear that holder and owner are not necessarily the same thing," Brown said.

"You can't tell from the note who owns the debt," Brown said. "If the borrower is going to raise the issue, the bank may have to take another step and prove that it's the owner and not just the holder," Brown said.

The case was RMS Residential Properties v. Miller.

RMS was represented by Jeffrey M. Knickerbocker of the law firm Hunt Leibert Jacobson of Hartford, which could not be reached for comment.

The court ruling can't be appealed, but both sides can ask for it to be reconsidered, Brown said. It also may have "persuasive authority" in other states, he said.

This is the second lawsuit involving the same debt and lasted about three years; the first action began in 2004.

Brown explained that in many cases, the owner of the debt hires a servicer to administer the loan. If there's a default, the owner can try to hide its identity and it can also tell the servicer that it's the servicer's job to collect the money. That makes the servicer the holder, and the servicer then starts the lawsuit, Brown said.

This lawsuit affects any loan owner that has its servicer foreclose, which is often Fannie Mae and Freddie Mac, Brown said.

Attorney George T. Holler IV, a Milford consumer lawyer, was "elated" by the ruling.

Holler said that he represents local homeowners whose mortgage company brought a foreclosure action against them in Superior Court in Bridgeport two years ago. The company claimed it was the holder of their mortgage.

When Holler wanted to know who owned the debt, the company admitted it was a different bank, he said Tuesday.

Monday's court ruling means that the company that sued his clients can not foreclose, Holler said.

Homeowners who are facing these types of foreclosures can recover their attorney's fees from the mortgage servicers who brought them, Holler said.

"These homeowners are struggling, and these mortgage servicers are giving them the runaround. They're not giving them a valid chance to stay in the home," Holler said.

A hearing on the local case is set for January.

"When we win, which I am confident we will, these people's home is going to be saved. Perhaps when we are dealing with the real owner of the mortgage, we will be able to work out a modification that works best for all parties," Holler said.

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