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In *Blackstone v. Sharma*, Maryland’s Highest Court Rules That Foreign Statutory Trusts Do *Not* Need to Be Licensed as Debt Collectors to Foreclose upon Real Property

In a long-awaited decision, the Court of Appeals of Maryland holds that foreign statutory trusts do not need to be licensed as debt collectors before initiating in rem foreclosure proceedings. This holding will allow numerous foreclosures, which were placed on hold pending the ruling, to proceed, and eliminates the uncertainty of a multitude of foreclosure sales and REO transactions that occurred during the midst of the Blackstone v. Sharma litigation.

In a highly anticipated opinion, on August 2, 2018, the Court of Appeals of Maryland—the state’s highest court—ruled on the consolidated appeal of four trial court cases where the central issue was whether the Maryland Collection Agency Licensing Act Bus. Reg. § 7-301, *et seq.* (“MCALA”) regulates the mortgage industry. In a 5-2 ruling, the Court *reversed* lower court holdings, and held that foreign statutory trusts that owned the mortgages at issue did not need to be licensed as debt collectors under MCALA. The full version of the Court’s opinion (which is scheduled to be reported) is available on the Court’s website, [here](#).

SUMMARY OF THE COURT OF APPEALS DECISION

In each of the consolidated cases on appeal, the trial court dismissed foreclosure actions where the owner of the defaulted deed of trust/mortgage debt was a

Delaware foreign statutory securitized trust that was not licensed as a debt collector under MCALA.

Consistent with Maryland foreclosure law, following default on each of the mortgage loans at issue, the trustees of the statutory trusts appointed substitute trustees under the respective deeds of trust to initiate foreclosure proceedings. Upon their respective appointments, all rights and duties under the deed of trust—including the power of sale—were transferred to the substitute trustees. The substitute trustees’ actions were in turn directed by the servicer for each mortgage loan. The substitute trustees and mortgage servicers were properly licensed to the extent required by state and federal law.

In each of the consolidated cases, after the substitute trustees initiated foreclosure proceedings in the Maryland trial court, the respective borrowers filed counterclaims. In each respective counterclaim, the borrowers alleged that the foreign statutory trusts violated Maryland debt collection law by attempting to *indirectly* collect mortgage payments (through a properly licensed loan servicer) and by attempting to *indirectly* foreclose and enforce the power of sale in the deed of trust (through the duly appointed substitute trustees). In each case, the borrowers also moved to dismiss or enjoin the foreclosure sale of their respective properties.

The trial court in each case granted the borrowers' respective motions to dismiss *without prejudice* on the grounds that the foreign statutory trusts were "in the business of collection consumer debt"—and thus subject to MCALA debt collection licensing requirements—because they "indirectly attempted to collect on a defaulted mortgage loan purchased at a discount," and because the foreign statutory trusts "did not fall under the trust company exemption to MCALA." Two of the consolidated cases were affirmed on appeal to the Court of Special Appeals (the Maryland intermediate appellate court), and two were appealed directly to the Court of Appeals via direct petitions for certiorari.

Although the parties presented six separate issues on appeal, the Court of Appeals found that all issues presented on appeal could be resolved by answering a single question: "Did the Maryland General Assembly intend to require foreign statutory trusts, one of the entities in the mortgage industry, to obtain a collection agency license [i.e. become a licensed debt collector] pursuant to MCALA before pursuing an *in rem* foreclosure...?" After an exhaustive review of MCALA's legislative history and related laws regulating the mortgage industry, the Court answered that question in the negative.

Specifically, the Court of Appeals held that although the language in "MCALA is ambiguous as to whether the General Assembly intend to require licensure for foreign statutory trusts as collection agencies, the legislative history, subsequent legislation, and related statutes..." provide strong evidence that the legislature never intended for MCALA to encompass the mortgage industry. In particular, the Court held that the legislative history shows that in enacting MCALA in 1977, "the General Assembly was concerned with abusive practices within the collection agency industry..." (Emphasis added). Importantly, when MCALA was first enacted, "the General Assembly specifically exempted mortgage industry actors."

MCALA was significantly amended in 2007 to close a loophole, which at most, was only tangentially related to the mortgage industry and to investors in mortgage backed securities. As the Court of Appeals notes, leading up to the 2007 amendment, and to avoid state debt collection license requirements, "certain members of the collection agency industry were purchasing debt from their clients, often on a contingent fee basis, so that they would not be third-party collection agency" and thus not subject to MCALA. (Emphasis added). Therefore, the Maryland Department of Labor and Licensing ("DLLR") requested that the legislature amend MCALA to close this loophole by requiring that "persons who by the defaulted debt for 'goods and services'" be licensed debt collectors "...before engaging in typical collection practices."

Importantly, the Court of Appeals held that, in making this request for an amendment, the DLLR "**did not request**, and the **General Assembly did not intend**, to expand **the scope of MCALA's licensing requirement to other industries** beyond the **collection agency industry.**" (Emphasis added). Further, the Court held that nothing in the DLLR's bill request suggested that the DLLR "was

proposing to license and regulate the mortgage industry by revising the definition of ‘collection agency’ under MCALA.”

In addition, the Court of Appeals held that there was nothing in the legislative history of Maryland mortgage foreclosure law reform suggesting that the legislature considered MCALA to encompass licensing mortgage industry actors. To the contrary, the Court found that a task force set up by the General Assembly to review Maryland law relating to foreclosures “...did not mention MCALA’s licensing requirements.” After reviewing the task force’s report, the General Assembly enacted foreclosure law reforms in 2008, 2009, and 2010 to refine the specific procedures required for “all parties seeking an *in rem* foreclosure proceeding.” The Court held that given that none of those reforms mentioned MCALA licensing requirements, it “would have been contradictory for the General Assembly to have passed foreclosure reform legislation specifying how mortgage industry entities should pursue foreclosure actions without mentioning the requirement for a MCALA license if the legislature believed that these same parties were included under the scope of MCALA.”

Finally, the Court held that the language in the Maryland Statutory Trust Act—which was enacted in 2010—also demonstrated that foreign statutory trusts would not be subject to MCALA licensing requirements. As the Court of Appeals notes, in passing that law, “the legislature specifically decided that...statutory trusts were not doing business in Maryland when foreclosing on deeds of trust, recognizing that the previous Maryland mortgage foreclosure law reform [of 2008, 2009, and 2010] would dictate the requirements for the *in rem* proceeding.”

Therefore, based on the “legislative history surrounding MCALA...Maryland mortgage foreclosure law, and the Statutory Trust Act” the Court of Appeals held that “**the mortgage industry...[does] not fall under the scope of MCALA.**” (Emphasis added). Accordingly, the Court of Appeals held that foreign statutory trusts that hold mortgage backed securities do not need to be licensed as debt collectors in Maryland before foreclosures proceedings can be initiated on their behalf. Thus, the Court reversed and remanded the consolidated cases and directed that the underlying foreclosures be reinstated and proceed.

CONCLUSION

The Court’s holding resolves substantial uncertainty regarding the legal requirements for foreclosure in Maryland. Mortgage debt servicers and investors should review all mortgage loans in Maryland in which a foreclosure is presently on hold, to determine if foreclosure can now proceed in light of the Court of Appeals ruling.

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