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Georgia's Long-Awaited Ruling Finds in Favor of Lenders

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Today, the Georgia Supreme Court, in *You v. JP Morgan Chase Bank, N.A. et al.*, S13Q0040, held that the assignee of a security deed can conduct a non-judicial foreclosure sale without holding or owning the underlying promissory note. The unanimous ruling is a landmark victory for lenders and loan servicers in Georgia because it holds definitively that a large portion of the glut of recent Georgia foreclosure litigation potentially is subject to dismissal for failure to state a claim.

In *You*, the Court answered three certified questions from the United States District Court for the Northern District of Georgia. The first question was the controlling issue: can the holder of a security deed be considered a secured creditor with the power to conduct a non-judicial foreclosure sale if it has no ownership or beneficial interest in the underlying indebtedness. The Court answered yes, based on plain language of the relevant statute, O.C.G.A. § 44-14-162.2, and the long history of non-judicial foreclosures in Georgia. The Court found that the Georgia non-judicial foreclosure statutory scheme does not require or even contemplate that a secured creditor must own an interest in a promissory note to enforce a related security deed. Further, the Court noted that non-judicial foreclosure is governed primarily by contract law. The security deed in this case, a standard Georgia residential security deed, granted the holder of the deed, and not the owner of the promissory note, with the power to foreclose in the event of the borrowers' default.

The Court's answer to the second certified question gave lenders and servicers another victory. The Court held that a statutory foreclosure notice need not identify the secured creditor or note holder per se but that the notice must identify the party with the authority to "negotiate, amend, and modify" the terms of the mortgage. Thus, identifying only a servicer in a foreclosure notice, a practice common in Georgia, satisfies the statute so long as the servicer has full authority to modify the terms of the loan and deed. This issue is the subject of another pending Georgia case, *Reese v. Provident Funding Assocs.*, 317 Ga. App. 353 (1) (2012), cert. denied. The Court of Appeals' holding in *Reese* that a foreclosure notice must identify the underlying secured creditor appears implicitly overruled by the Supreme Court in *You*. The third certified question was made irrelevant by the first two answers.

This ruling resolves a split of opinion throughout Georgia Superior Courts and even in the United States District Court for the Northern District of Georgia. Lenders and servicers should review their active litigation files to determine if some cases, which involved previously viable causes of action, are now subject to dismissal. This ruling may result in a decrease in frivolous litigation or may simply provide ammunition with which to move to dismiss some of the consistent stream of wrongful foreclosure suits that have plagued Georgia lenders and servicers in recent years.