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RECENT DEVELOPMENT

***NATIONSTAR MORTG. LLC v. KEMP*: MARYLAND USURY LAWS APPLY TO ASSIGNEES OF A MORTGAGE LOAN, NOT JUST THE LOAN ORIGINATOR, AND IT IS ILLEGAL FOR MORTGAGE SERVICERS TO CHARGE INSPECTION FEES DURING THE LIFE OF A LOAN.**

By: Fateh Tarar

The Court of Appeals of Maryland held that assignees of a mortgage are considered “lenders” and are prohibited from charging a mortgagee inspection fees during the life of a loan. *Nationstar Mortg. LLC v. Kemp*, 476 Md. 149, 193, 258 A.3d 296, 332 (2021). The court’s holding resolved a matter in which a mortgagee contested the assessment of an inspection fee pursuant to Maryland Usury Laws, to which the assignee of the loan argued the laws did not apply to it because it did not fit the statute’s definition of a “lender”. *Id.* at 153-54, 258 A.3d at 299. The court also decided a matter between the parties concerning a violation of the Maryland Consumer Debt Collection Act (“MCDCA”). *Id.* at 161, 258 A.3d at 303-04 (citing Com. Law §§ 14-201-03).

Donna Kemp (“Kemp”) obtained a mortgage loan secured by a deed of trust on her home. The loan was later assigned by the originator to the Federal National Mortgage Association (“Fannie Mae”) who contracted with Nationstar Mortgage LLC (“Nationstar”) to service the loan. Kemp later fell behind on her loan payments and Nationstar declared she was in default of the loan agreement. Nationstar conducted drive-by inspections of the property and charged Kemp inspection fees.

Kemp, Nationstar, and Fannie Mae entered into a loan modification agreement to resolve the default, but Kemp argued that she was improperly charged inspection fees pursuant to Maryland Usury Laws, section 12-121 of the Maryland Commercial Law. (citing Com. Law § 12-121). Nationstar and Fannie Mae argued that they did not fit within the definition of a “lender” that had been added to the Maryland Usury Law as part of code revision. Therefore, Nationstar and Fannie Mae asserted that they were exempt from the prohibition outlined in Maryland Usury Law section 12-121. (citing Com. Law § 12-121).

In December 2017, Kemp filed a complaint concerning the assessment of inspection fees in the Circuit Court for Montgomery County against Nationstar and Fannie Mae. Kemp asserted a federal claim as well as five

counts based on State law. Each count asserted that Fannie Mae and Nationstar improperly charged Kemp the inspection fees. The federal court dismissed the federal claim and remanded the remaining state law claims to the circuit court.

In the circuit court, Nationstar filed a motion to dismiss, and the court granted the motion. The circuit court held that neither Fannie Mae nor Nationstar fit the definition of a “lender” and therefore neither was subject to the service fee prohibition in Maryland Usury Law section 12-121. (citing Com. Law § 12-121). Kemp appealed to the Court of Special Appeals, and the court found that the usury law’s prohibition of inspection fees applied to an assignee of a mortgage loan. The Court of Special Appeals also concluded that the dismissal of the MCDCA claim was appropriate because the MCDCA prohibits the use of an illegal method of debt collection, but it does not proscribe a method of addressing the validity of the underlying debt. The Court of Appeals of Maryland granted Nationstar’s petition for a writ of *certiorari*.

The Court of Appeals was asked to determine whether Maryland Usury Law section 12-121 is applicable to an inspection fee assessed by an assignee of a loan. *Nationstar*, 476 Md. at 168, 258 A.3d at 308 (citing Com. Law § 12-121). The Court also had to determine whether Kemp’s MCDCA claim was adequately asserted against Nationstar. *Id.* at 169, 258 A.3d at 308 (citing Com. Law § 14-203).

In terms of the inspection fee, the Court of Appeals of Maryland looked at the context of the statute, legislative history, and the legislature’s intent to interpret the statute’s purpose. *Nationstar*, 476 Md. at 169-71, 258 A.3d at 308-09. The Court of Appeals found that the term “lender” used throughout Maryland’s Usury Law described the terms of loaning money. *Id.* at 172-73, 258 A.3d at 310-11 (citing Com. Law §§ 12-101(f), 12-121). During the relevant period, a “lender” was defined as “a person who makes a loan under [Maryland Usury Law]”. *Id.* at 172-73, 258 A.3d at 310 (citing Com. Law § 12-101(f)). Nationstar argued that this definition did not apply to it because it was the assignee of the mortgage loan. *Id.* at 173, 258 A.3d at 310. The legislative history of the term’s use showed that a lender’s responsibilities do not diminish once the loan is assigned to another party. *Id.* at 187, 258 A.3d at 318-19. The Court explained that Nationstar’s interpretation violated a standard canon of statutory construction that statutes are not construed to repeal the common law by implication. *Id.* at 177-78, 258 A.3d at 313 (citing *United Bank v. Buckingham*, 472 Md. 407, 433, 247 A.3d 336, 352 (2021)). Following this reasoning, the Court of Appeals held that the General Assembly’s addition of the definition of “lender” into the Maryland Usury

Law's 1975 code revision did not change the rule that an assignee succeeds to the same rights and obligations under a loan agreement as its assignor. *Nationstar*, 476 Md. at 187, 258 A.3d at 318-19.

Next, the Court of Appeals looked at the record to determine whether Kemp adequately stated a claim under the MCDCA that Nationstar attempted to claim or enforce a right with knowledge that the right does not exist. *Nationstar*, 476 Md. at 189, 258 A.3d at 320 (citing Com. Law § 14-202(8)). In her complaint, Kemp asserted a claim that Nationstar violated the MCDCA, which also constitutes a violation of the Maryland Consumer Protection Act. *Id.* (citing Com. Law § 14-202(8)). The Court of Appeals held that Kemp's claim was not limited to the methods of debt collection because the remedial nature of the MCDCA required broad interpretation "to reach any claim, attempt, or threat to enforce a right that a debt collector knows does not exist". *Id.* at 190, 258 A.3d at 320 (citing Com. Law § 14-202(8)).

For the knowledge element of the MCDCA, the Court of Appeals held that to claim a defendant had adequate knowledge, a plaintiff must allege that the defendant had actual knowledge that it did not have a right that it claimed to have, or that it "recklessly disregarded" the inaccuracy of its claim. *Nationstar*, 476 Md. at 192, 258 A.3d at 321-22 (citing Com. Law § 14-202(8)). The complaint also included a 2014 advisory notice by the Maryland Commissioner of Financial Regulation informing mortgage servicers that it was likely illegal to charge mortgage borrowers inspection fees. *Id.* The court therefore found that the complaint properly alleged that Nationstar knew that it did not have the right to impose an inspection fee on Kemp. *Id.*

Judge Getty, dissenting, stated that the majority failed to properly interpret the relevant statutes in this case. *Nationstar*, 476 Md. at 193, 258 A.3d at 322-23 (Getty, J., dissenting). Judge Getty wrote that the General Assembly did not annul the common law by enacting sections 12-121 and 12-101(f) of Maryland Usury Law, and that the clearly stated intent of the General Assembly was to omit assignees from the term "lender". *Id.* at 194, 258 A.3d at 323 (citing Com. Law §§ 12-121, 12-101(f)). Getty also disagreed with the majority's decision regarding Kemp's MCDCA claim. *Id.* at 194, 258 A.3d at 323. Getty maintains that Maryland Usury Law section 14-202 only provides a cause of action in terms of a method of debt collection and not a challenge to the underlying reason for such debt. *Id.* at 194, 258 A.3d at 324 (citing Com. Law § 14-202).

In *Kemp*, the Court of Appeals of Maryland affirmed in part and reversed in part the lower court's decision and held that the prohibition on charging

inspection fees outlined in Maryland's Usury Laws applies to an assignee of a mortgage loan. The Court of Appeals also held that the MCDA prohibits lenders from attempting to collect inspection fees by asserting a right that it knowingly does not have. This decision clarifies the meaning of the term "lender" for the entire collection of Maryland Usury Laws. This clarification is important for the Maryland legal community because it resolves the ambiguity caused by the term's use. In addition, explaining what constitutes a proper claim under Maryland Usury Law section 12-121 allows borrowers to properly fight for their rights and contest the assessment of illegal fees. These holdings demystify the legality of money borrowing and empower borrowers to advocate against the imposition of illegal fees.