

Lender-borrower relationship not fiduciary one

The North Carolina Supreme Court recently reaffirmed that a run-of-the-mill lender and borrower are not fiduciaries, reversing the Court of Appeals decision that would have this issue to go to the jury. The case is [*Dallaire v. Bank of America*](#).

The Dallaires sought a home refinance loan from Bank of America (BOA). They claimed that a loan officer with Bank of America (BOA) repeatedly assured Mr. Dallaire that a prior bankruptcy and a mortgage on their home with BB&T “would not be a problem” and that the BOA loan would be secured by a first lien mortgage against the home.

The Dallaires brought suit against BOA, alleging negligent title search, negligent misrepresentation, breach of contract, and breach of fiduciary duty. The trial court granted defendants’ motion for summary judgment on all claims. The Dallaires appealed, arguing that the traditional arm’s length view of borrower-lender relationships was out of step with the modern loan origination process in which lenders have control and borrowers place their complete trust in them. The Dallaires further claimed that Bank of America did not use reasonable care in representing the lien’s first priority status.

The Court of Appeals found that there was a question of fact “as to whether or not the circumstances of the parties’ interaction prior to signing the loan give rise to a fiduciary relationship and consequently created a fiduciary duty for Defendant.” *Dallaire v. Bank of Am.*, ___ N.C. App. ___, ___, 738 S.E.2d 731, 735 (2012). The Court reasoned that BOA’s alleged assurance of a first priority lien on the Dallaires’ new mortgage loan was an act beyond the scope of a normal debtor-creditor relationship. *Id.* at ___ n.5, 738 S.E.2d at 735 n.5. The Court of Appeals also remanded the Dallaires’ negligent misrepresentation claim “to determine, if a duty existed, whether Defendant negligently misrepresented the priority the loan would receive.” *Id.* at ___, 738 S.E.2d at 736.

The Supreme Court reversed, explaining that fiduciary relationships are those characterized by “confidence reposed on one side, and resulting domination and influence on the other,” such as those shared between spouses, attorney-client, trustee-beneficiary, and partners in a partnership.

The Court further noted that “the law does not typically impose upon lenders a duty to put borrowers’ interests ahead of their own. Rather, borrowers and lenders are generally bound only by the terms of their contract and the Uniform Commercial Code.”

While noting “it is possible, at least theoretically, for a particular bank customer transaction to “give rise to a fiduciary relation given the proper circumstances,” the Supreme Court found that a loan officer’s mere assertion that the Dallaires could obtain a first priority lien mortgage loan was insufficient to transform the relationship from arm’s length to fiduciary.

The Court likewise concluded that the Dallaires’ negligent misrepresentation claim failed even assuming BOA owed them a duty. Noting that even though “determining the effects of a previous bankruptcy on a home’s liens is complicated,” the Court found that the Dallaires produced no evidence that they made any reasonable inquiry into the loan officer’s alleged negligent misstatements of lien priority, or were prevented from doing so by the bank, and thus there was no justifiable reliance.

Business litigators frequently encounter claims for breach of fiduciary duty, negligent misrepresentation, and constructive fraud (which rests on the existence of a fiduciary duty) in which plaintiffs urge the courts to find such a duty based on some act by a borrower or business that creates special confidence and trust in a transaction. *Dallaire* confirms that such attempts are likely to fail barring some extraordinary circumstances. Although plaintiffs will undoubtedly continue to assert that their particular circumstances usurp the nature of arms-length transactions, for the time being lender are on solid ground for defeating any claims that depend on a fiduciary relationship or rest on the lender having some sort of superior knowledge that the borrower could have also had upon a reasonable investigation.