

Texas Supreme Court hands victory to Ocwen in fight over lien release

Ocwen Loan Servicing secured a major victory in Texas' highest court recently, when seven of the nine justices on the Texas Supreme Court ruled that the state's constitution does not give a homeowner the right to repayment of their home loan amount because a lender did not release its lien on the home in the proper timeframe.

The ruling stems from a lawsuit filed against Ocwen by Teresa Garofolo, who sued Ocwen after the nonbank did not return the canceled note and lien release to her within 60 days despite her loan being paid off, as is required by state law.

Garofolo sued Ocwen, claiming that the nonbank's delay in providing her with the lien release entitled her to full repayment of all the principal and interest she paid on a \$159,700 home equity loan she took out in 2010.

Garofolo's loan was originated by **Ally Bank**, but when she paid off the loan in April 2014, Ocwen had become the note holder.

According to court documents, a release of lien was recorded in Texas' Travis County three weeks after Garofolo paid off the loan, but Garofolo did not receive a release of lien in recordable form as required by her loan's terms.

Garofolo then notified Ocwen she had not received the document, and Ocwen did not provide that to her within the 60 days that is required by state law. When that didn't happen, she sued Ocwen, claiming that the nonbank violated the home-equity lending rules contained in Texas' constitution, as well as breach of contract, and requested forfeiture of the principal and interest she paid on the loan.

The case made it to Texas' Fifth Court of Appeals, which asked the state Supreme Court to rule on two questions related to the case, and in both cases, the Supreme Court ruled in Ocwen's favor.

In a 7-2 opinion released Friday, the state Supreme Court ruled that Ocwen's failure to deliver the lien release with 60 days did not qualify as a constitutional violation.

The court ruled that Garofolo's suit attempted to use some of the rules that apply to foreclosures in relation to her mortgage loan, but said that because she paid the loan on time and in full, the stipulations did not apply.

“In the first certified question, we are asked if Ocwen’s failure to deliver a release of lien amounts to a constitutional violation for which a constitutional forfeiture remedy applies,” Texas Supreme Court Justice Jeff Brown wrote in the majority decision.

“If we answer ‘yes,’ the myriad terms and conditions required for a home-equity loan to be foreclosure-eligible would amount to substantive constitutional rights and obligations,” Brown continued. “As such, a lender’s failure to honor them would give rise to not just a breach-of-contract claim, but a violation of the constitution itself. Our constitution’s plain language, however, compels us to answer ‘no.’”

Brown writes that the state’s laws establish that the terms and conditions required to be included in a foreclosure-eligible home-equity loan are not “substantive constitutional rights, nor does a constitutional forfeiture remedy exist to enforce them.”

Brown’s opinion states that the Texas constitution guarantees “freedom from forced sale of a homestead to satisfy the debt on a home-equity loan that does not include the required terms and provisions—nothing more,” adding that Ocwen therefore did not violate the state’s constitution by failing to deliver a lien release on time.

The court’s decision states that Ocwen did not attempt to foreclose on Garofolo, giving her no standing in her attempt to use that portion of the state’s laws in her lawsuit.

“If Ocwen sought to foreclose on Garofolo’s homestead after she became delinquent in her payments, she could stand on the constitutional right to freedom from forced sale if her loan failed to include the release-of-lien requirement or forfeiture remedy,” Brown wrote.

“But that did not happen. Garofolo made timely payments and satisfied the balance in full,” Brown continued. “Ocwen never sought to foreclose, and there is no constitutional violation or remedy for failure to deliver a release of lien. Section 50(a) simply has no applicability outside foreclosure.”

The state Supreme Court also ruled that Farofolo cannot seek forfeiture through her breach-of-contract claim without being able to show actual damage.

“Although the forfeiture remedy incorporated into Garofolo’s loan might be applicable to a lender’s failure to comply with some of her loan’s terms, it does not apply to a failure to deliver a release of lien,” Brown wrote.

“Accordingly, Garofolo must show actual damages to maintain her breach-of-contract claim or seek some other remedy, such as specific performance,” Brown continued.

“In bringing a breach-of-contract claim, Garofolo has pleaded an appropriate cause of action for relief from a lender’s post-origination failure to honor the terms and conditions, constitutionally mandated or not, of a home-equity loan,” Brown wrote. “Her loan incorporates both constitutional provisions at issue in this case: the requirement to deliver a release of lien and the forfeiture remedy. Garofolo acknowledges she has not suffered any damages from Ocwen’s failure to deliver the release but argues she need not suffer any to access a contracted-for forfeiture remedy that is not contingent on proof of actual damages.”

While the court ruled the larger issues in Ocwen’s favor, the nonbank isn’t entirely out the woods yet. Brown’s ruling states that Garofolo may be better served by approaching her claim in a different manner.

“Again, we do not suggest Garofolo is without recourse,” Brown wrote. “Her remedy simply lies elsewhere—for instance, in a traditional breach-of-contract claim, in which a borrower seeks specific performance or other remedies contingent on a showing of actual damages.”

[Click here](#) to read the court’s opinion in full.