

Banking and Finance Law Daily Wrap Up, SERVICEMEMBERS CIVIL RELIEF ACT—5TH Cir.: Foreclosures were not in violation of SCRA due to signed 'confession clause', (Dec. 20, 2019)

Banking and Finance Law Daily Wrap Up

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By [Colleen M. Svelnis, J.D.](#)

The Fifth Circuit affirmed the district court dismissal of a case alleging that a national bank's foreclosures on properties belonging to active duty military were in violation of the Servicemembers Civil Relief Act.

In a matter of first impression, the Court of Appeals for the Fifth Circuit has affirmed the district court's dismissal of a class action suit alleging that Trustmark National Bank foreclosed upon active duty military members' properties through executory proceedings in Louisiana state courts in violation of the Servicemembers Civil Relief Act. The district court dismissed the claims under Section 12(b)(6) for failure to state a claim upon which relief may be granted. The court reviewed the case *de novo* on appeal from the U.S. District Court for the Western District of Louisiana. The Fifth Circuit did not agree with the servicemembers' argument that the Louisiana executory foreclosure proceedings constituted default judgments under the SCRA due to the fact that each of the servicemembers' agreements with the bank contained a clause importing a confession of judgment ([Fodge v. Trustmark National Bank](#), Dec. 19, 2019, Graves, J.).

The appellant servicemembers relied on two sections of the SCRA—50 U.S.C. §§ 3931 and 3911—to support their argument. Section 3931 requires that a plaintiff file an affidavit stating whether a defendant is in military service and that courts appoint an attorney to represent defendants in military service. The court did not agree with the servicemembers' argument that the state court orders authorizing seizure and sale of their properties constitute default judgments under the SCRA. According to the court, 50 U.S.C. §3931 does not encompass Louisiana executory proceedings where, as here, the debtors confessed judgment by signing the agreement with the bank containing a clause importing a confession of judgment. The court found that by virtue of a confession of judgment, a debtor in an executory proceeding "has appeared in the suit, and answered the demand" and thus, Section 3931 does not apply to Louisiana executory proceedings.

The court further stated that the servicemembers' argument that they did not waive their right to SCRA protections against default judgment because their confessions of judgment do not constitute proper waivers under the SCRA was moot because §3931 of the SCRA "does not apply to Louisiana executory proceedings where the debtor has confessed judgment." SCRA's waiver requirements are inapplicable because the servicemembers "were never protected under § 3931 against seizures and sales ordered through Louisiana executory proceedings," according to the court.

The case is [No. 19-30279](#).

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Companies: Trustmark National Bank; Ocwen Loan Servicing, LLC; Barksdale Federal Credit Union

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