



# Supreme Court: Mortgage firm misstepped in locking out homeowner

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OLYMPIA — The state Supreme Court weighed in on a Wenatchee class action case Thursday, saying a national mortgage service company wrongfully locked a woman out of her home when she defaulted on her mortgage.

The decision allows the multi-million-dollar class action case to go forward in federal court, with Wenatchee plaintiff Laura Zamora Jordan and some 3,600 other Washington home buyers seeking damages after being similarly treated by Nationstar Mortgage LLC.

Wenatchee attorney Clay Gatens, who represents Jordan and the class plaintiffs, said the service company's action violated state foreclosure law, taking possession of the home without court process. The Supreme Court's 6-3 decision upholds that claim, but strikes down a related complaint that Nationstar attempted to bypass state laws that require a court-appointed receiver.

Gatens, an attorney with Jeffers, Danielson, Sonn & Aylward in Wenatchee, said Thursday the foreclosure-law decision supports Jordan's case, which now must be heard by U.S. District Court Judge Thomas O. Rice in Spokane.

"My phone's kind of been ringing off the hook," Gatens said. "A lot of media have been following the story, a lot of consumer law groups have been following the story, and frankly, a lot of folks that have been in foreclosure — they've all been watching this case.

Jordan sued Dallas-based Nationstar in 2012 after the company changed the locks on her Wenatchee house in March 2011. Her loan had been in default for two months, and she arrived from work to find she couldn't enter the home she'd lived in since 2007.

Nationstar is not a lender, but a mortgage servicer that processes loan payments and handles other business for the lender. In Jordan's case, Nationstar was the intermediary for Fannie Mae, which held her loan. Nationstar acted under "entry provisions" in the deed that allowed the lender to enter and secure homes whose owners had abandoned or defaulted on the property.

However, the Supreme Court decision found Washington borrowers cannot be deprived of their property without foreclosure. The Supreme Court decision, authored by Justice Susan Owens, rules the entry provisions in Jordan's deed are "in conflict with state law" and therefore "unenforceable."

Investigating the case, Gatens found that thousands of Washington borrowers had been locked out of their homes by Nationstar under similar circumstances. The number given in case pleadings is 3,600, but Gatens said Nationstar has continued its lockout practices while the case was pending, and the class could now be as large as 5,000.

The case began in Chelan County Superior Court, but Nationstar sued to remove it to federal court. The state Supreme Court decision comes after Rice last August asked the justices to provide clarity on the laws of Washington. Gatens and attorneys for Nationstar gave oral arguments in Olympia Jan. 19.

Any damages awarded if the case goes against Nationstar could be significant. Jordan's claim was made under the Consumer Protection Act, which typically allows for damages to be capped at \$10,000 per plaintiff. But the act also allows for treble damages, or three times that amount.

"If we had roughly \$10,000 of damages per person and we had 4,000 to 5,000 class members, you can see that that scale kind of gets up there," Gatens said.

Justice Debra L. Stephens authored a dissent in the case, signed by Chief Justice Barbara A. Madsen and Justice Sheryl Gordon McCloud. The three argued that "entry" under the deed provisions does not equal "possession," the key word in Washington's foreclosure law. The majority decision finds that changing the locks on Jordan's home amounted to taking possession, while Stephens' dissent notes that Jordan was allowed to reenter her home and remove her belongings.

“At no point did Nationstar ever object to Jordan’s continued right to possession before foreclosure,” Stephens wrote.

No new hearing date has been set in the federal court suit, but it could be heard in 2018. A corporate representative for Nationstar declined to comment Thursday.

“This was a big day for us, a big victory, but there’s still a lot of work to be done,” Gatens said.

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