

November 16, 2010 | Posted By

[NO PRIVATE RIGHT OF ACTION FOR VIOLATION OF STATUTES EXTENDING NOTICE PERIOD FOR FORECLOSURES](#)

Question: Is there a private right of action under sections 2923.52 or 2923.53 of the Civil Code, which generally require a mortgagee or trustee to give three months additional notice before noticing a foreclosure sale?

Answer: No, according to the Fourth District Court of Appeal, Division 3, in *Vuki vs. Superior Court*, No. G043544 (decided October 29, 2010).

In this case, the plaintiff homeowners filed a petition for writ of mandate in the Court of Appeal, seeking to enjoin HSBC Bank USA from proceeding with a foreclosure sale on grounds that HSBC had violated sections 2923.52 and 2923.53 of the Civil Code. Section 2923.52 imposes a 90-day delay in the normal foreclosure process. (Section 2923.53 provides an exemption to that delay if the lender in question has a loan modification program that meets certain criteria.) The issue the Court of Appeal had to decide was whether there was a private right of action under either of these statutes.

The Court held the answer was no. In particular, the Court noted that section 2923.54 provides that a failure to comply with either of these statutes "shall not invalidate any sale that would otherwise be valid under section 2924(f)." The court also rejected the homeowners' argument that this section only protects bona fide purchasers for value, and HSBC could not be a bona fide purchaser because it would have known of its own noncompliance. The Court reasoned that "any noncompliance with sections 2923.52 and 2923.53 is entirely a regulatory matter, and cannot be remedied in a private action."

Authored by:

[Robert J. Stumpf, Jr.](#)

(415) 774-3288

rstumpf@sheppardmullin.com