

IN THE SUPREME COURT OF OHIO

Sondra Anderson,	:	Supreme Court
	:	Case No. 11-0908
Plaintiff-Respondent,	:	
	:	On Review of Certified Questions
v.	:	From the United States District Court
	:	Northern District of Ohio,
Barclays Capital Real Estate Inc.	:	Western Division
d/b/a HomeEq Servicing,	:	
	:	Case No. 3:09-cv-02335-JGC
Defendant-Petitioner.	:	

**PRELIMINARY MEMORANDUM OF PETITIONER
 BARCLAYS CAPITAL REAL ESTATE INC. D/B/A HOMEQ SERVICING
 IN SUPPORT OF ACCEPTANCE OF CERTIFIED QUESTIONS**

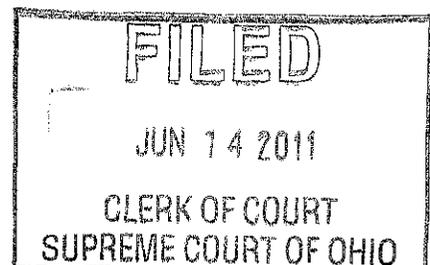
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INTRODUCTION

U.S. District Judge Carr of the Northern District of Ohio has certified compelling questions of Ohio law to this Court for its determination pursuant to Rule 18 of the Court's Rules of Practice. The certified questions concern the applicability of the Ohio Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq., to mortgage servicers and mortgage servicing. For the reasons that follow, pursuant to Supreme Court Practice Rule 18.6, Petitioner Barclays Capital Real Estate Inc. d/b/a HomEq Servicing ("HomEq") respectfully urges this Court to answer the questions certified. Doing so will promote judicial economy by allowing this Court to put to rest multiple issues of first impression that have arisen under the CSPA in multiple state and federal lawsuits against multiple mortgage-servicing firms like HomEq.

STATEMENT OF THE CASE AND FACTS

Respondent-Plaintiff Sondra Anderson ("Anderson") purchased a house in Norwalk, Ohio in 2005. She financed this purchase through a note and mortgage in favor of Meritage Mortgage Corporation ("Meritage"). In connection with this loan, Anderson executed an Adjustable Rate Note ("ARM Note" or "Note") and Mortgage. Pursuant to the terms of the Note, Anderson agreed to make monthly payments "to the lender, Meritage, or to anyone who takes this Note by transfer and is entitled to receive payments under this Note." This Note was transferred to the MSHEL 2005-2 Trust, which is the current creditor and owner of the Note and deed of trust associated with

Anderson's loan. Anderson alleges that, at some point thereafter, HomEq became the servicer for Anderson's loan.¹

HomEq is a mortgage servicer of residential mortgage loans held by individuals residing in the State of Ohio. HomEq's mortgage service obligations are set forth in various contracts, known as Pooling and Service Agreements, between HomEq and the owners of the mortgage loan notes. As a mortgage servicer, HomEq receives scheduled periodic payments from a borrower pursuant to the terms of a residential mortgage loan, including amounts received for deposit in an escrow account, and applies the mortgage loan payments received toward principal, interest, and other obligations of the borrower. In this case, HomEq acted as servicer for the holder of the Note and the deed of trust at relevant times and collected payments, to the extent any were made by Anderson.² Anderson does not allege that HomEq originated the loan or that HomEq is a party to the Note or Mortgage. Nor does Anderson allege that HomEq ever owned or held the ARM Note.

Anderson alleges that HomEq is a "supplier" subject to regulation under the CSPA because HomEq is "engaged in the business of effecting consumer transactions by servicing residential mortgage loans held by individuals" residing in Ohio and that HomEq has violated the CSPA.³ Anderson further alleges that HomEq, as a mortgage servicer, performs various functions, including accepting, applying, and distributing

¹ The facts set forth in this paragraph are alleged in paragraphs 8-13 of the Second Amended Complaint in *Anderson*, N.D. Ohio No. 3:09-cv-02335, ECF No. 35 (Aug. 10, 2010).

² *Id.* at ¶4-18.

³ *Id.* at ¶69.

mortgage loan payments and other fees, penalties, and assessments.⁴ These alleged mortgage-servicing functions served as the basis for the mortgage-servicing activities listed in Judge Carr's Certification Order. See *Anderson* (May 26, 2011), Ohio Supreme Court Case No. 11-0908, Certification Order, at 2-3.

HomEq moved to dismiss Anderson's CSPA claim, arguing that mortgage servicers are not "suppliers" and mortgage servicing is not a "consumer transaction" under the CSPA. Holding in abeyance his ruling on the CSPA issues, Judge Carr indicated that he intended to certify these questions to this Court.⁵ After briefing by HomEq, Anderson, and Amicus Curiae the Ohio Attorney General, Judge Carr issued the Certification Order on May 24, 2011. Judge Carr designated HomEq as the moving party in his Certification Order, which makes HomEq the Petitioner in this certified-question case. S.Ct. Prac. R. 18.5. Now, pursuant to Rule 18.6 of this Court's Rules of Practice, and for the reasons set forth below, HomEq respectfully urges this Court to set this cause for briefing and argument and to answer the questions certified.

⁴ See, *id.* at ¶71.

⁵ See *Anderson* (June 18, 2010), N.D. Ohio No. 3:09-cv-02335, Order, ECF No. 26, at 18.

ARGUMENT IN SUPPORT OF ACCEPTANCE OF CERTIFIED QUESTIONS

THIS COURT SHOULD AGREE TO ANSWER THE QUESTIONS OF OHIO LAW CERTIFIED BY DISTRICT JUDGE CARR IN THIS CASE

A. The Questions Certified By District Judge Carr Here Present Compelling Issues Under The Ohio Consumer Sales Practices Act That This Court Should Hear And Determine Pursuant To Rule 18 Of The Court's Rules Of Practice.

1. The questions certified are questions of law.

The Court's Rules of Practice specify that questions certified to it by courts of the United States shall be questions of law. S.Ct. Prac. R. 18.1; 18.2; 18.6. That is the case here. HomEq's motion to dismiss Anderson's CSPA claim in the district-court case presents questions of law. See *Hunt v. Marksman Prod., Div. of S/R Industries, Inc.* (1995), 101 Ohio App.3d 760, 762, 656 N.E.2d 726 ("Since all factual allegations in the complaint are presumed true, only legal issues are presented" by a Civ.R. 12(B)(6) motion to dismiss.); *Coffey v. Smith & Wesson, Corp.* (Jan. 11, 2011), N.D. Ohio 5:10CVO1286, 2011 WL 94617, at *1 ("The propriety of dismissal pursuant to Rule 12(b)(6) is a question of law."), citing *Roberson v. Tenn.* (C.A.6, 2005), 399 F.3d 792, 794.

Accordingly, Judge Carr certified questions of law to this Court, asking it to make categorical, legal determinations concerning whether mortgage servicers (and the activities they undertake) are regulated by the CSPA. This Court has previously utilized its discretionary jurisdiction to make the very same kinds of categorical determinations of general applicability concerning the scope of the CSPA. See, e.g., *Culbreath v. Golding Enterprises, LLC*, 114 Ohio St.3d 357, 2007-Ohio-4278, 872 N.E.2d 284, paragraphs two and three of the syllabus (holding that "individual," within the meaning

of the CSPA, is a natural person, and that the sending to and receipt by an individual of unsolicited facsimile advertisements are not violations of that Act unless deceptive, unfair, or unconscionable); *Johnson v. Microsoft Corp.*, 106 Ohio St.3d 278, 2005-Ohio-4985, 834 N.E.2d 791, at ¶26 (holding that claims of monopolistic pricing could not be brought under the CSPA); *Heritage Hills, Ltd. v. Deacon* (1990), 49 Ohio St.3d 80, 551 N.E.2d 125, syllabus (holding that the CSPA does not apply to residential lease transactions). The goal of Judge Carr's Certification Order is to obtain answers from this Court that are as categorical and definitive as these prior holdings – answers that will not only help determine the action pending before him but other pending actions against mortgage servicers as well.

Other state supreme courts and courts of appeal agree that determinations by judges about the kinds of entities and activities that may be subject to regulation under state consumer protection statutes are determinations of law, not fact. See, e.g., *Connelly v. Hous. Auth. of the City of New Haven* (1990), 213 Conn. 354, 567 A.2d 1212, 1217 (Supreme Court of Connecticut noting that “[w]hether the defendant is subject to [the Connecticut Unfair Trade Practices Act] is a question of law, not fact”); *Childs v. Purll* (D.C. 2005), 882 A.2d 227, 237 (District of Columbia Court of Appeals, the District's highest court, noting that whether the Consumer Protection Procedures Act authorizes relief against a landlord, a management company, and the company's principals “presents a question of law”); *Santa Fe Custom Shutter & Doors, Inc. v. Home Depot U.S.A., Inc.* (2005), 137 N.M. 524, 113 P.3d 347, at ¶11 (Court of Appeals of New Mexico noting that where “operative facts” are not in dispute, the issue of whether a corporate shutter and door manufacturer could be a “consumer” entitled to relief under the Texas Deceptive Trade Practices Act is a “question of law”).

The Respondent may argue in opposition to acceptance of the questions certified here by Judge Carr that the certified questions are ones of fact, not law, or that “mortgage servicing” cannot be defined. Neither is the case. First, as noted above, whether a certain type of entity or activity is subject to the CSPA is a question of law. Second, Judge Carr’s Certification Order describes the mortgage-servicing activities on which Anderson bases her CSPA claim against HomEq. Furthermore, “mortgage servicer” is a term which has a commonly understood meaning within the mortgage industry and among courts and legislators. See, e.g., Am.Sub.H.B. No. 3, § 1323.01(A)(1) (as passed by the Ohio House of Representatives, 128th General Assembly, 2009-2010), lines 816-53, at 27-28 (defining “mortgage servicer”). Finally, this Court has accepted and answered certified questions containing comparable terms. See, e.g., *Am. Booksellers Found. for Free Expression v. Cordray*, 124 Ohio St.3d 329, 2010-Ohio-149, 922 N.E.2d 192 (answering the certified questions despite a key term – “personally directed devices” – not being defined by statute or in the certification order).

HomEq, Anderson, and the Attorney General agree on the wording of the questions that Judge Carr has certified to this Court for its determination.⁶ In fact, the Attorney General is the Petitioner in another certified-question case initiated contemporaneously with this one, *State of Ohio v. GMAC Mortgage, LLC*, Ohio Supreme Court Case No. 11-0890, in which District Judge Zouhary has certified to this Court questions markedly similar to those certified here by Judge Carr. The Attorney General supports this Court’s acceptance of the questions certified in that case. See *State of Ohio v. GMAC Mortgage LLC, et al.*, Ohio Supreme Court Case No. 11-0890,

⁶ See *Anderson*, N.D. Ohio No. 3:09-cv-02335, Joint Status Report, ECF No. 67 (Feb. 24, 2011).

Preliminary Memorandum of Petitioner State of Ohio in Response to the Certification Order (June 13, 2011). As explained in its amicus preliminary brief in *State of Ohio v. GMAC*, filed on June 10, 2011, HomEq respectfully urges this Court to accept jurisdiction over both of these cases certifying these related and significant questions of law concerning the scope of the CSPA.

2. The questions certified may be determinative of the proceeding in the District Court.

Anderson has asserted four claims against HomEq in the district-court case: (1) unjust enrichment; (2) conversion; (3) violations of the Real Estate Settlement Procedures Act at 12 U.S.C. § 2605(e)(2); and (4) violations of the Ohio Consumer Sales Practices Act.⁷ The questions of law certified by Judge Carr in this case may be determinative of Anderson's CSPA claim. If this Court determines, for example, that the CSPA does not apply to mortgage servicers and mortgage servicing, then Judge Carr will presumably grant HomEq's motion to dismiss Anderson's CSPA claim.

To the extent that the Respondent may oppose certification in this case because Anderson's case against HomEq involves multiple claims, and because resolution of her CSPA claim will not be determinative of the entire federal proceeding, those arguments misread Rule 18.1 of the Court's Rules of Practice. A question of law need not be dispositive of the entire litigation to be suitable for certification. As the federal courts have noted, "[a] question which may be determinative of a proceeding is one which would form the basis of the Court's disposition of one or more of a plaintiff's causes of action." (Emphasis added.) *Professionals Direct Ins. Co. v. Wiles, Boyle, Burkholder &*

⁷ See *Anderson*, N.D. Ohio No. 3:09-cv-02335, Second Amended Complaint, ECF No. 35, at ¶48-82 (Aug. 10, 2010).

Bringardner Co., LPA (Aug. 25, 2008), S.D. Ohio No. Civ. A. 2:06-cv-240, 2008 WL 3925634, at *2, citing *Super Sulky, Inc. v. U.S. Trotting Assn.* (C.A.6, 1999), 174 F.3d 733, 744. This use of certification procedures is consistent with the intent of the National Conference of Commissioners on Uniform State Laws, who adopted the Uniform Act upon which this Court's Rule 18 is based. See Uniform Certification of Questions of Law [Act] [Rule] (1995), Approved by the American Bar Association, at Section 2(2) (acknowledging the power to certify when "the answer to the question may be determinative of an issue in the pending litigation" (Emphasis added.)).⁸

Thus, simply because Anderson's case against HomeEq involves multiple causes of action does not preclude a single issue in the case from being appropriate for certification. Indeed, this Court has reviewed certified questions on multiple occasions in scenarios where other causes of action remained pending before the certifying court. See, e.g., *Berry, et al. v. Lucas Cty. Bd. of Commrs., et al.*, Ohio Supreme Court Case No. 10-0740 (constitutional claim remains pending); *Doe v. Ronan*, 127 Ohio St.3d 188, 2010-Ohio-5072, 937 N.E.2d 556 (breach-of-contract and constitutional claims remained pending); *Groch v. Gen. Motors Corp.*, 117 Ohio St.3d 192, 2008-Ohio-546, 883 N.E.2d 377 (negligence and loss-of-consortium claims remained pending).

3. There is no controlling precedent in the decisions of the Supreme Court of Ohio.

As Judge Carr acknowledged in his June 2010 Order on HomeEq's motion to dismiss, as well as in his Certification Order filed with this Court, no binding authority exists on the issue of whether the CSPA applies to mortgage servicers like HomeEq. That lack of controlling precedent in the decisions of this Court is precisely what led Judge

⁸ Available at:
<http://www.law.upenn.edu/bll/archives/ulc/fnact99/1990s/ucqla95.pdf>.

Carr to defer his ruling on HomEq's motion to dismiss Anderson's CSPA claim and to issue the Certification Order that this Court will now consider. As HomEq stated in seeking dismissal of Anderson's CSPA claim, she cannot state a claim against HomEq under the CSPA because that statute, as currently written, does not apply to mortgage loan servicers such as HomEq. The plain language and legislative history of the CSPA supports HomEq's position, as does the Ohio House of Representatives' House Bill 3. In that bill, which has yet to be enacted, the House proposed extending the CSPA to regulate mortgage services. See Am.Sub.H.B. No. 3, § 1323.361(A) (as passed by the Ohio House of Representatives, 128th General Assembly, 2009-2010), lines 1855-64, at 61. This proposed legislation would be superfluous and unnecessary if mortgage servicers like HomEq already were subject to the CSPA.

While there are Ohio decisions regarding the applicability of the CSPA, they are not controlling and not on point for the proposition that the CSPA applies to mortgage servicers. See *Dowling v. Litton Loan Servicing* (Dec. 1, 2006), S.D.Ohio No. 2:05-CV-0098, 2006 WL 3498292; *State of Ohio, ex rel., Michael DeWine Attorney General of Ohio v. Barclays Real Estate Inc. d.b.a. HomEq Servicing* (Sept. 16, 2010), No. 2009 CV 10136, Montgomery County Court of Common Pleas (Judge O'Connell), Decision, Order and Entry Overruling Defendant's Motion to Dismiss (adopting *Dowling*); *Kline v. Mortgage Electronic Registration Systems, Inc., et al.* (Mar. 29, 2011), S.D.Ohio No. 3:08cv408, Decision and Entry, ECF No. 241.

As for *Dowling*, Judge Carr explained succinctly why it is not controlling in his decision in *Anderson v. Barclays Capital Real Estate Inc.* (June 18, 2010), N.D.Ohio No. 3:09CV2335, 2010 WL 2541807, at *9, fn. 7, saying:

[HomEq] does not argue that it falls within an exemption to the [CSPA], but rather that the [CSPA] does not, and never did, apply to mortgage servicers. *Dowling* interpreted the scope of an exemption to [CSPA], not the scope of [CSPA] itself. Additionally, as a federal district court case interpreting Ohio law, *Dowling* is not binding authority.

The same goes for *Kline*. As HomEq explained to Judge Carr when the Attorney General first offered that case as supplemental authority, it is not at all clear that the *Kline* decision provides any support for the Attorney General's position. In *Kline*, District Judge Rice viewed the issue as turning on whether mortgage servicers fall within one of the specifically exempted classes of persons under the CSPA. That, of course, is not the argument advanced by HomEq. HomEq argues that the CSPA does not even apply to it; not that HomEq falls within the listed exemptions in the statute. Moreover, like *Dowling*, as a federal district court case applying Ohio law, *Kline* is not binding authority. Accordingly, these cases simply do not contradict Judge Carr's determination in the Certification Order that no binding authority exists to guide him to a resolution of the certified issues.

B. Answering The Questions Certified In This Case Will Resolve Similar Questions In Other Pending State and Federal Cases Involving CSPA Claims Against Mortgage Servicers.

Other pending federal and state court cases involve questions of whether the CSPA applies to mortgage servicers and mortgage servicing. In *State of Ohio, ex rel., Michael DeWine Attorney General of Ohio v. Barclays Real Estate Inc. d.b.a. HomEq Servicing*, Montgomery County Court of Common Pleas Case No. 2009 CV 10136, (pending before Judge O'Connell), the Ohio Attorney General has alleged that HomEq is subject to the CSPA and that it "engaged in unfair and deceptive and unconscionable acts and practices in violation of [the CSPA] by its inadequate, incompetent, and

inefficient handling of complaints, inquiries, disputes, and requests for information and assistance in connection with its servicing of Ohio residential mortgage loans.”⁹ HomEq moved to dismiss the CSPA claim, but the court overruled HomEq’s motion based on the non-controlling and inapposite *Dowling* case.¹⁰ In anticipation of Judge Carr certifying questions to this Court here in *Anderson*, Judge O’Connell recently granted the parties’ joint motion to stay proceedings.¹¹

In *American Home Mortgage Servicing, Inc. v. State of Ohio, et al.*, Franklin County Court of Common Pleas Case No. 09CVH-11-16491 (pending before Judge Sheward), the Ohio Attorney General has alleged that American Home Mortgage Servicing, Inc. is subject to the CSPA and that it “engaged in unfair and deceptive acts and practices in violation of [the CSPA] by its inadequate, incompetent, and inefficient handling of complaints, inquiries, disputes, and requests for information and assistance in connection with its servicing of Ohio residential mortgage loans.”¹² In anticipation of

⁹ See *State of Ohio v. Barclays*, No. 2009 CV 10136, Montgomery County Court of Common Pleas, Complaint, at ¶17 (Dec. 16, 2009).

¹⁰ See *State of Ohio v. Barclays* (Sept. 16, 2010), No. 2009 CV 10136, Montgomery County Court of Common Pleas, Decision, Order and Entry Overruling Defendant’s Motion to Dismiss.

¹¹ See *State of Ohio v. Barclays* (May 10, 2011), No. 2009 CV 10136, Montgomery County Court of Common Pleas, Decision, Order Granting Joint Motion to Stay Proceedings.

¹² See *Am. Home Mortgage Servicing, Inc. v. State of Ohio, et al.*, No. 09CVH-11-16491, Franklin County Court of Common Pleas, Answer and Counterclaim of Defendants State of Ohio and Attorney General of Ohio to Plaintiff’s Complaint (Jan. 21, 2010).

Judge Carr certifying questions to this Court here in *Anderson*, Judge Sheward, like Judge O'Connell, recently granted the parties' joint motion to stay proceedings.¹³

Finally, in *Kline v. Mortgage Electronic Registration Systems, Inc., et al.*, Southern District of Ohio Case No. 3:08cv408 (pending before United States District Judge Rice), the Plaintiffs alleged that the mortgage-servicer Defendants violated the CSPA because they required the Plaintiffs "to pay fees, charges and/or attorneys' fees which were in excess of those permitted by the underlying loan documents or applicable statutes."¹⁴ HomEq, a Defendant in *Kline*, moved to dismiss the Plaintiffs' CSPA claim. In its decision and entry overruling HomEq's motion to dismiss the CSPA claim, the court acknowledged Judge Carr's plans to certify questions to this Court and said, "This Court anticipates that the parties will inform it of the progress of *Anderson* before the Ohio Supreme Court, assuming that that matter was certified."¹⁵

Thus, at least these three pending cases in both state and federal forums – *State of Ohio v. Barclays, American Home*, and *Kline* – involve questions of whether the CSPA applies to mortgage servicers, and each of the judges in these cases has expressed an interest in the outcome of Judge Carr's certification of questions to this Court here in *Anderson*. Answering the questions certified by Judge Carr will, therefore, promote judicial economy by putting to rest multiple issues of first impression that have arisen under the CSPA in multiple state and federal lawsuits against mortgage-servicing firms

¹³ See *Am. Home Mortgage Servicing, Inc. v. State of Ohio, et al.* (Mar. 18, 2011), No. 09CVH-11-16491, Franklin County Court of Common Pleas, Order Granting Joint Motion to Stay Proceedings.

¹⁴ *Kline v. Mortgage Electronic Registration Systems, Inc., et al.*, S.D. Ohio No. 3:08cv408, First Amended Complaint, ECF No. 157, at ¶142-43 (Apr. 14, 2010).

¹⁵ *Kline v. Mortgage Electronic Registration Systems, Inc., et al.* (Mar. 29, 2011), S.D. Ohio No. 3:08cv408, Decision and Entry, ECF No. 241, at 10.

like HomEq. Under circumstances like these, it is easy to see why the United States Supreme Court long ago endorsed the certification process in cases involving doubt as to issues of state law. *Lehman Bros. v. Schein* (1974), 416 U.S. 386, 391 (“It does, of course, in the long run save time, energy, and resources and helps build a cooperative judicial federalism.”).

C. The Court Should Accept The Questions Certified In This Case In Addition To The Questions Certified In *State of Ohio v. GMAC Mortgage, LLC*.

As noted above, Judge Carr is not the only U.S. District Judge to have invoked Rule 18 to seek a definitive determination from this Court about whether mortgage servicers and their activities are within the scope of the CSPA. On May 24, 2011, only days before Judge Carr filed his Certification Order in this proceeding, his colleague in the Northern District, Judge Zouhary, filed a Certification Order in *State of Ohio v. GMAC Mortgage LLC, et al.*, Ohio Supreme Court Case No. 11-0890. HomEq on June 10, 2011 filed an amicus preliminary brief in that *GMAC* case, urging this Court to accept jurisdiction over both certified-question cases, to establish separate briefing schedules in both cases, and to set both cases for oral argument on the same day. HomEq adopts the arguments set forth in its amicus brief in *GMAC* as if fully set forth herein.

As HomEq explains in detail in that amicus brief, HomEq’s interests are not adequately represented by the parties in the *GMAC* case, which is why HomEq urges this Court to accept both this case and *GMAC*. The allegations, the parties, and the positions of the parties are not aligned in the two cases. The CSPA claims in *GMAC* are based on GMAC’s foreclosure-prosecution activities, while the CSPA claim in *Anderson* is based purely on HomEq’s servicing of Anderson’s mortgage loan. This distinction may have legal import when it comes to determining whether the CSPA applies.

Moreover, HomEq and the Petitioner in *GMAC*, the Attorney General, maintain opposing positions on whether the CSPA applies to mortgage servicers and mortgage servicing. See *State of Ohio v. GMAC Mortgage LLC, et al.*, Ohio Supreme Court Case No. 11-0890, Preliminary Memorandum of Petitioner State of Ohio in Response to the Certification Order (June 13, 2011). And HomEq's industry counterpart in the *GMAC* case – GMAC – opposes this Court's acceptance of the questions certified in that case. See *State of Ohio v. GMAC Mortgage LLC, et al.*, Ohio Supreme Court Case No. 11-0890, Preliminary Brief of Respondents GMAC Mortgage, LLC and Ally Financial, Inc. (June 13, 2011).

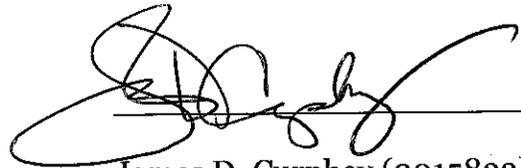
Accordingly, the Court's acceptance of both certified-question cases is the only way to ensure that all interested parties have a full and adequate opportunity to be heard on the important issues that have been certified. For example, if the Court accepts jurisdiction over *GMAC* but not this case, or takes this case but holds it in abeyance pending the disposition of *GMAC*, then HomEq will be relegated to the status of an amicus curiae in *GMAC* – left without complete and meaningful participation as Petitioner during briefing and oral argument.

CONCLUSION

For the reasons set forth above and in HomEq's amicus preliminary brief filed on June 10, 2011 in the *GMAC* certified-question case, Ohio Supreme Court No. 11-0890, HomEq respectfully asks the Court to answer the questions of Ohio law certified here by District Judge Carr and by District Judge Zouhary in the *GMAC* case. Due to the nature of the questions certified in these cases and HomEq's status as the Petitioner here, HomEq respectfully urges this Court to establish a briefing schedule in both cases and to set them both for oral argument on the same day. In the alternative, if this Court

chooses to answer the questions certified in the *GMAC* case, but not here in *Anderson*, or if this Court chooses to take and hold this case in abeyance pending the disposition of *GMAC*, then HomEq respectfully asks this Court to modify the questions certified in *GMAC* as set forth in HomEq's amicus preliminary brief.

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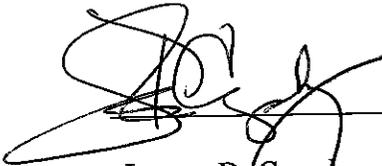
I hereby certify that a copy of the foregoing Preliminary Memorandum of Amicus Curiae Barclays Capital Real Estate Inc. d/b/a HomEq Servicing In Support Of Acceptance Of Certified Questions was sent by first class mail, postage prepaid, this 14th day of June, 2011 to the following:

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