

IN THE SUPREME COURT OF OHIO

SAMUEL VOSS, :
 :
 Appellee, : Case No. 2024-0257
 :
 v. : On Appeal from the Hamilton County Court
 : of Appeals, First Appellate District
 :
 QUICKEN LOANS, LLC and : Court of Appeals Case No. C 2300065
 MORTGAGE ELECTRONIC :
 REGISTRATION SYSTEMS, :
 :
 Appellants. :

**MERIT BRIEF OF *AMICUS CURIAE*, OHIO ASSOCIATION FOR JUSTICE,
IN SUPPORT OF APPELLEE, SAMUEL VOSS**

W.B. Markovits (0018514)
(Counsel of Record)
Terence R. Coates (0085579)
Justin C. Walker (0080001)
Dylan J. Gould (0097954)
MARKOVITS, STOCK & DEMARCO, LLC
119 East Court Street, Suite 530
Cincinnati OH 45202
Telephone: (513) 651-3700
Facsimile: (519) 665-0219
Email: bmarkovits@msdlegal.com
tcoates@msdlegal.com
jwalker@msdlegal.com
dgould@msdlegal.com

Matthew C. Metzger (0082235)
WOLTERMAN LAW OFFICE, LPA
434 W. Loveland Avenue
Loveland OH 45150
Telephone: (513) 790-4207
Facsimile: (513) 322-4557
Email: matt@wolterman.com

Matthew C. Blickensderfer (0073019)
(Counsel of Record)
FROST BROWN TODD LLP
3300 Great American Tower
301 East Fourth Street
Cincinnati OH 45202
Telephone: (513) 651-6162
Facsimile: (513) 651-6981
Email: mblickensderfer@fbtlaw.com

William M. Jay (OH PHV #26577)
GOODWIN PROCTOR LLP
1900 N Street NW
Washington, DC 20036
Telephone: (202) 346-4000
Facsimile: (202) 346-4444
Email: wjay@goodwinlaw.com

Timothy M. Burke (0009189)
MANLEY BURKE LPA
225 W. Court Street
Cincinnati OH 45202

Counsel For Appellee, Samuel Voss
Margaret M. Murray (0066633)
(Counsel of Record)
MURRAY & MURRAY CO., L.P.A.
111 East Shoreline Drive
Sandusky OH 44870
Telephone: (419) 624-3000
Facsimile: (419) 624-0707
Email: mmm@murrayandmurray.com

Counsel for Amicus Curiae,
The Ohio Association for Justice

Jennifer Martinez Atzberger (0072114)
Bianna L. Stephan (0099250)
Advocates for Basic Legal Equality
523 Jefferson Avenue, Suite 300
Toledo OH 43604
Telephone: (419) 930-2317
Facsimile: (419) 259-2880
Email: JMartinez@AbleLaw.org
BStephan@AbleLaw.org

John E. Schrider, Jr. (0014967)
Legal Aid Society of Southwest Ohio, LLC
215 E. Ninth Street, Suite 5000
Cincinnati OH 45202
Telephone: (513) 241-9400
Facsimile: (513) 241-1187
Email: jschrider@lascinti.org

Miriam H. Sheline (0018333)
Pro Seniors, Inc.
7162 Reading Road, Suite 1150
Cincinnati OH 45237
Telephone: (513) 458-5509
Facsimile: (513) 345-4169
Email: msheline@preseniors.org

Counsel for Amicus Curiae Advocates for
Basic Legal Equality, Inc., Legal Aid Society
of Southwest Ohio, LLC and Pro Senior, Inc.

Patrick Perotti (0005481)
Dworken & Bernstein Co., L.P.A.

Telephone: (513) 721-5525
Facsimile: (513) 721-4268
Email: tburke@manleyburke.com

Benjamin M. Flowers (0095284)
ASHBROOK BYRNE KRESGE LLC
Post Office Box 8248
Cincinnati OH 45249
Telephone: (312) 898-3932
Email: bflowers@ashbrookbk.com

Counsel For Appellants, Quicken Loans, LLC
and Mortgage Electronic Registration Systems

Dave Yost (0056290)
Attorney General of Ohio
T. Elliot Gaiser (0096145)
Solicitor General
(Counsel of Record)
Nicholas A. Cordova (0100969)
Deputy Solicitor General
30 East Broad Street, 17th Floor
Columbus OH 43215
Telephone: (614) 466-8980
Facsimile: (614) 466-5087
Email: Thomas.Gaiser@ohioago.gov

Counsel for Amicus Curiae Ohio Attorney
General Dave Yost

60 South Park Place
Painesville OH 44077
Telephone: (440) 352-3391
Facsimile: (440) 352-3469
Email: pperotti@dworkenlaw.com

Brian Ruschel (0046631)
1701 East 12th Street, Apt. 23B
Cleveland OH 44114
Telephone: (216) 621-3370
Email: bruschel@aol.com

Counsel for Amicus Curiae Dworkin &
Bernstein Co., L.P.A.

Tabitha M. Woodruff (0090315)
Sarah Ortlip-Sommers (pro hac vice
application forthcoming)
Public Justice
1620 L Street NW, Suite 630
Washington, D.C. 20036
Telephone: (202) 797-8600
Facsimile: (202) 232-7204
Email: twoodruff@publicjustice.net
sortlip-sommers@publicjustice.net

Counsel for Amicus Curiae Public Justice,
Berkeley Center for Consumer Law and
Economic Justice, and National Consumer
Law Center

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INTRODUCTION

Appellants concede the following legal points:

- (1) When a borrower pays off his or her mortgage, Ohio law requires the lender to record the satisfaction of that mortgage within 90 days.
- (2) If the lender misses that deadline, the statute provides a cause of action for the mortgagor or the property's current owner to recover any actual damages caused by the delayed recording, as well as a statutory penalty of \$250.
- (3) For the first few months of the pandemic, Rocket Mortgage did not meet the 90-day deadline for some mortgage releases.
- (4) This is a statewide class action seeking only one form of relief – to collect the statutory penalty of \$250 – for the alleged violation of the 90-day deadline to record mortgage releases.

Appellants' Brief, p. 1.

This case is as straightforward as these four statements posit. There is a law that includes statutory damages, Appellants admittedly did not file mortgage releases timely, and a class of mortgagors or current property owners seek payment of the statutory damages.

Despite the clarity of the law and of the legal points involved, Appellants insist that a later statutory amendment ostensibly takes away accrued rights and renders certification of a class unlawful. Further, Appellants argue that allegations of violation of a statute by the individuals affected are not injurious and therefore that such individuals lack standing to commence litigation for a violation of that statute. This is a clear misreading of Ohio law established by this Court.

The Court is urged to affirm the decision of the First Appellate District or, alternatively, dismiss this case as improvidently allowed.

IDENTIFICATION OF AMICUS CURIAE

The Ohio Association for Justice (“OAJ”) is a statewide association of attorneys whose mission is to preserve the legal rights of all Ohioans by protecting their access to the civil justice system. In this case, OAJ has an interest in protecting consumers from lax business practices and to ensuring that Ohio statutes are properly applied. The undersigned files this brief in support of Appellant and urges the Court to affirm the decision of the First District Court of Appeals.

STATEMENT OF FACTS

The amicus curiae adopts and incorporates the statement of facts as presented by Appellee in his merit brief.

ARGUMENT

Proposition of Law No. 1: A class cannot be certified where the General Assembly has specifically barred classwide relief sought by the class, even when that statute was not yet in effect at the time of certification.¹

Appellants rely on the enactment of statutory language occurring years after the cause of action arose and litigation commenced to bar aggrieved parties from being eligible to continue that litigation as a class action. The statute at issue is the language in Ohio Revised Code 5301.36 (B) and (C). At the time the cause of action arose and the litigation commenced, the law was as follows:

¹ Proposition of Law No. 1 as accepted by the Court contained the language typed here. In their merit brief, Appellants changed that language to state that “A class cannot be certified where the General Assembly as specifically barred class members from recovering “via a class action” the only relief they seek, even when that statute was not yet in effect at the time of certification.”

(B) Within ninety days from the date of the satisfaction of a mortgage, the mortgagee shall record a release of the mortgage evidencing the fact of its satisfaction in the appropriate county recorder's office and pay any fees required for the recording. The mortgagee may, by contract with the mortgagor, recover the cost of the fees required for the recording of the satisfaction by the county recorder.

(C) If the mortgagor fails to comply with division (B) of this section, the mortgagor of the unrecorded satisfaction and current owner of the real property to which the mortgage pertains may recover, in a civil action, damages of two hundred fifty dollars. This division does not preclude or affect any other legal remedies or damages that may be available to the mortgagor.

This litigation commenced on August 19, 2020 as a class action. The class definition limited the class period to August 14, 2014 through August 19, 2020. Appellee filed his motion for class certification on June 1, 2022. A class was certified by the Hamilton County Common Pleas Court on February 8, 2023.

Subsequently, Ohio's general assembly enacted a second subdivision to division (C) of R.C. 5301.36. The amendments were effective on April 7, 2023, more than two years after litigation in this case commenced. The amendments are as follows:

(C)(1) Except as provided in division (C)(2) of this section, if the mortgagor fails to comply with division (B) of this section, the mortgagor of the unrecorded satisfaction and current owner of the real property to which the mortgage pertains may recover, in a civil action, damages of two hundred fifty dollars. This division does not preclude or affect any other legal remedies or damages that may be available to the mortgagor.

(C)(2) A mortgagor or current owner of the real property shall not be eligible to collect the damages described in division (C)(1) of this section via a class action for violations of division (B) of this section that occurred in calendar year 2020. This division does not preclude or affect any other legal remedies or damages that may be available to the mortgagor or current owner.

Despite this timeline and the nature of the amendment, Appellants come before this Honorable Court arguing that their tardiness years earlier should be absolved.

The April 7, 2023 amendment to R.C. 5301.36 is not expressly retroactive. Pursuant to R.C. 1.48, “[a] statute is presumed to be prospective in its operation unless expressly made retrospective.” The 2023 statutory amendment to R.C. 5301.36 is silent as to retroactivity.

“It is well-settled law that statutes are presumed to apply prospectively unless expressly declared to be retroactive.” *Pratte v. Stewart*, 2010-Ohio-1860, ¶ 28; R.C. 1.48; *Van Fossen v. Babcock & Wilcox Co.*, 36 Ohio St.3d 100, 105 (1988). “It is also settled that the general assembly does not possess an absolute right to adopt retroactive statutes.” *Pratte* at ¶ 28. “The retroactivity clause nullifies those new laws that ‘reach back and create new burdens, new duties, new obligations, or new liabilities not existing at the time’ the statute becomes effective.” *Bielat v. Bielat*, 87 Ohio St.3d 350, 353 (2000), quoting *Miller v. Hixson*, 64 Ohio St. 39, 51 (1901).

The general assembly shall have no power to pass retroactive laws, or laws impairing the obligations of contracts; but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this state.

Oh. Const., art. II, § 28.

Because the April 7, 2023 amendment to R.C. 5301.36 is not retroactive, this Court does not need to examine the issue of whether the amendment is substantive or remedial. Accordingly, Appellants’ first proposition of law must fail. The class action in this case was pending and certified before the amendments to R.C. 5301.36 were effective. Because the statute was not retroactive, it cannot serve to bar litigation as a class in this matter.

Proposition of Law No. 2: A statute does not and cannot abrogate the need to prove standing merely by specifying an amount of statutory damages, and the need for individualized proof means common issues do not predominate across the statewide class.

Appellants challenge statutory standing apparently asserting that specific statutory damages cannot confer standing when the statute is violated. Appellants also claim that

individualized proof is needed to establish such statutory damages. Neither of these arguments is based on the law of Ohio.

“To succeed in establishing standing, plaintiffs must show that they suffered (1) an injury that is (2) fairly traceable to the defendant’s allegedly unlawful conduct, and (3) likely to be redressed by the requested relief.” *Moore v. Middletown*, 2012-Ohio-3897, ¶ 22; *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). “Standing may...be conferred by statute.” *Ohioans for Concealed Carry, Inc. v. City of Columbus*, 2020-Ohio-6724, ¶ 12. “Standing is defined at its most basic as ‘[a] party’s right to make a legal claim or seek judicial enforcement of a duty or right.’” *Ohio Pyro, Inc. v. Ohio Dept. of Commerce*, 2007-Ohio-5024, ¶ 27, quoting Black’s Law Dictionary (8th Ed.2004), 1442.

“When considered as a whole, R.C. 5301.36 is intended to promote efficiency and certainty in real-estate transactions and to penalize the untimely recording of satisfied mortgages rather than to compensate borrowers in full for actual losses.” *Radatz v. Fannie Mae*, 2016-Ohio-1137, ¶ 25.

As outlined hereinabove, R.C. 5301.36 confers standing to mortgagors or home owners whose mortgage releases are not filed within 90 days of satisfaction. The injury to the mortgagors and home owners is the failure by the mortgagee to file the mortgage release within 90 days as required by R.C. 5301.36. This failure to file the release timely is the justiciable matter. For a plaintiff to be “uninjured” as Appellants assert, their mortgage release must have been filed within 90 days of the satisfaction of the mortgage. These plaintiffs’ claims are necessarily for releases filed more than 90 days after the satisfaction of the mortgage. Therefore standing is readily apparent and satisfied.

Regarding Appellants' second claim within this proposition of law, there are no claims for individualized damages. "Certification pursuant to Civ.R. 23(B)(3) requires the trial court to make two findings: first, 'that the questions of law or fact common to the members of the class predominate over any questions affecting only individual class members' and, second, 'that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.'" *Cullen v. State Farm Mut. Auto. Ins. Co.*, 2013-Ohio-4733, ¶ 29, quoting *Ealy v. Pinkerton Govt. Servs., Inc.*, 4th Cir. No. 12-1252, 514 Fed. Appx. 299, 2013 WL 980035, *7 (Mar. 4, 2013). "To meet the predominance requirement, a plaintiff must establish that issues subject to generalized proof and applicable to the class as a whole predominate over those issues that are subject only to individualized proof." *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 544 (6th Cir. 2012).

"R.C. 5301.36 'is not simply aimed at aiding the individual borrower; it assists all others involved in all real estate transactions, and assists the State by encouraging those transactions and reducing costly disputes.'" *Pinchot v. Charter One Bank, F.S.B.*, 2002-Ohio-1654, 2002 WL 568400, *7 (8th Dist.), quoted with approval by *Pinchot v. Charter One Bank, F.S.B.*, 99 Ohio St.3d 390, 2003-Ohio-4122, ¶ 58. "While recovery of \$250 accrues to the current owner of the affected property and not to the state or a third party, recovery of that amount is not tied to any actual losses suffered by an aggrieved individual." *Radatz* at ¶ 26.

In the case at bar, the only claim in the complaint and certified by the trial court is for liquidated, statutory damages. With this claim, there is necessarily no claim for individualized damages. Accordingly, no individualized questions asserted in this litigation predominate over the common issues of fact and law. The common issues of when the mortgage was satisfied and

whether the release of mortgage was filed within 90 days run across the breadth of the class. This is a straightforward issue and manageable as a class action.

CONCLUSION

For the reasons stated herein, the Ohio Association for Justice respectfully requests that this Honorable Court affirm the decision of the First District Court of Appeals. Alternatively, this Amicus Curiae recommends that this Court dismiss this case as improvidently allowed.

Respectfully submitted,

s/ Margaret M. Murray _____

Margaret M. Murray (0066633)

MURRAY & MURRAY CO., L.P.A.

111 East Shoreline Drive

Sandusky OH 44870

Telephone: (419) 624-3000

Facsimile: (419) 624-0707

Email: mmm@murrayandmurray.com

Counsel for Amicus Curiae,

The Ohio Association for Justice

CERTIFICATE OF SERVICE

The foregoing was served by electronic mail pursuant to Civ.R. 5(B)(2)(f) on this 22nd day of August 2024 to the following:

W.B. Markovits
Terence R. Coates
Justin C. Walker
Dylan J. Gould
MARKOVITS, STOCK & DEMARCO, LLC
119 East Court Street, Suite 530
Cincinnati OH 45202
Email: bmarkovits@msdlegal.com
tcoates@msdlegal.com
jwalker@msdlegal.com
dgould@msdlegal.com

Matthew C. Metzger
WOLTERMAN LAW OFFICE, LPA
434 W. Loveland Avenue
Loveland OH 45150
Email: matt@wolterman.com
Counsel For Appellee, Samuel Voss

Jennifer Martinez Atzberger
Bianna L. Stephan
Advocates for Basic Legal Equality
523 Jefferson Avenue, Suite 300
Toledo OH 43604
Email: JMartinez@AbleLaw.org
BStephan@AbleLaw.org

John E. Schrider, Jr.
Legal Aid Society of Southwest Ohio, LLC
215 E. Ninth Street, Suite 5000
Cincinnati OH 45202
Email: jschrider@lascinti.org

Miriam H. Sheline
Pro Seniors, Inc.
7162 Reading Road, Suite 1150
Cincinnati OH 45237
Email: msheline@preseniors.org

Matthew C. Blickensderfer
FROST BROWN TODD LLP
3300 Great American Tower
301 East Fourth Street
Cincinnati OH 45202
Email: mblickensderfer@fbtlaw.com

William M. Jay
GOODWIN PROCTOR LLP
1900 N Street NW
Washington, DC 20036
Email: wjay@goodwinlaw.com

Timothy M. Burke
MANLEY BURKE LPA
225 W. Court Street
Cincinnati OH 45202
Email: tburke@manleyburke.com

Benjamin M. Flowers
ASHBROOK BYRNE KRESGE LLC
Post Office Box 8248
Cincinnati OH 45249
Email: bflowers@ashbrookbk.com

Counsel For Appellants, Quicken Loans, LLC
and Mortgage Electronic Registration Systems

Dave Yost
Attorney General of Ohio
T. Elliot Gaiser
Solicitor General
(Counsel of Record)
Nicholas A. Cordova
Deputy Solicitor General
30 East Broad Street, 17th Floor
Columbus OH 43215
Email: Thomas.Gaiser@ohioago.gov

Counsel for Amicus Curiae Advocates for
Basic Legal Equality, Inc., Legal Aid Society
of Southwest Ohio, LLC and Pro Senior, Inc.

Counsel for Amicus Curiae Ohio Attorney
General Dave Yost

Patrick Perotti
Dworken & Bernstein Co., LPA
60 South Park Place
Painesville OH 44077
Email: pperotti@dworkenlaw.com

Brian Ruschel
1701 East 12th Street, Apt. 23B
Cleveland OH 44114
Email: bruschel@aol.com

Counsel for Amicus Curiae Dworkin &
Bernstein Co., L.P.A.

Tabitha M. Woodruff
Sarah Ortlip-Sommers Public Justice
1620 L Street NW, Suite 630
Washington, D.C. 20036
Email: twodruff@publicjustice.net
sortlip-sommers@publicjustice.net

Counsel for Amicus Curiae Public Justice,
Berkeley Center for Consumer Law and
Economic Justice, and National Consumer
Law Center

/s/ Margaret M. Murray
MURRAY & MURRAY CO., L.P.A.

Counsel for Amicus Curiae,
The Ohio Association for Justice