

**Summary of SC93951, *Davis R. Conway and Sheri D. Conway v. CitiMortgage Inc. and Federal National Mortgage Association Inc.***

Appeal from the St. Charles County circuit court, Judge Jon A. Cunningham  
Argued and submitted April 2, 2014; opinion issued August 19, 2014

**Attorneys:** The Conways were represented by Mitchell B. Stoddard of Consumer Law Advocates in St. Louis, (314) 692-2001; and CitiMortgage and Fannie Mae were represented by Amy J. Thompson of Bryan Cave LLP in St. Louis, (314) 259-2000. The attorney general, who filed a brief as a friend of the Court, was represented by Solicitor General James R. Layton and Brian Bear of the attorney general's office in Jefferson City, (573) 751-3321.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** Homeowners appeal the trial court's dismissal of their claims, under the state's merchandising practices act, in chapter 407, RSMo, alleging wrongful foreclosure by mortgage companies. In a unanimous decision written by Chief Justice Mary R. Russell, the Supreme Court of Missouri reverses the judgment and remands (sends back) the case. The homeowners stated a claim under the act because the companies' alleged foreclosure actions were "in connection with" the mortgage loan. Because a loan is an ongoing transaction, loan collection procedures – whether initiated by the company originating the loan or a later company servicing the loan – are "in connection with" the original procurement of the loan. The act may cover a party such as a loan servicer who enters the relationship after the buyer enters the transaction.

**Facts:** Davis and Sheri Conway purchased a home in 2007 in Wentzville but continued to reside at their St. Peters home during renovations of the Wentzville home. They financed their purchase of the Wentzville home with a loan that was serviced by CitiMortgage Inc. During renovations, the Wentzville home was damaged in a fire and had to be torn down. The Conways settled a claim with their insurance company for \$150,000. As rebuilding progressed, the insurance company issued checks payable to both the Conways and CitiMortgage. The Conways endorsed the checks, which CitiMortgage held in escrow. As the Conways submitted bills, CitiMortgage sent payments to their St. Peters address. The insurance company paid the full amount of the claim, but the property required an additional \$150,000 in construction. The Conways notified CitiMortgage they lacked funds to complete the construction, and CitiMortgage stated it intended to hold the last \$15,000 from the insurance proceeds in escrow until construction was complete. The Conways fell \$9,000 behind on their mortgage payments, but CitiMortgage would not apply the escrow to the balance owed. Instead, it sent a foreclosure notice, but it sent it to the Wentzville address rather than the St. Peters address. CitiMortgage foreclosed, and Fannie Mae acquired title to the property. The Conways then sued CitiMortgage and Fannie Mae under the state's merchandising practices act, claiming the companies engaged in unfair practices "in connection with the sale of the mortgage loan" through their actions regarding the alleged wrongful foreclosure. The trial court granted the companies' motion to dismiss, finding the act did not apply. The Conways appeal.

**REVERSED AND REMANDED.**

**Court en banc holds:** The Conways have stated a claim under the merchandising practices act because the companies' alleged foreclosure actions were "in connection with" the 2007 loan.

The act protects consumers by making unlawful the "act, use or employment by any person" of any unfair or deceptive practice "in connection with the sale or advertisement of any merchandise." Under the act, an unlawful practice violates the act "whether committed before, during or after the sale" if it was made "in connection with" the sale. The act does not define when an unlawful act is "in connection with" a sale. Because the dictionary defines "to connect" as "to have a relationship," the act prohibits the use of deceptive practices if there is a relationship between the sale of merchandise and the alleged unlawful action.

A loan, comprised of both the initial extension of credit and a bundle of related services, creates a long-term relationship in which the borrower and lender continue to perform various duties, such as making and collecting payments over an extended period of time. The lender's right to collect the loan is part of the sale and is, therefore, "in connection with" the loan. Because a loan is an ongoing transaction, loan collection procedures – whether initiated by the company that originated the loan or a later company servicing the loan – are "in connection with" the original procurement of the loan. To the extent certain court of appeals opinions conflict with this holding, they no longer should be followed. It is not necessary for both mortgage companies to have had a direct contractual relationship with the Conways when they first obtained the loan. The merchandising practices act may cover a party – including a loan servicer – who enters the relationship after the buyer enters the transaction.