



## Servicemembers' Civil Relief Act

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The Servicemembers' Civil Relief Act ("SCRA") is a powerful shield protecting military service members against overreaching by creditors. The United States Supreme Court has opined that the SCRA should be read "with an eye friendly to those who dropped their affairs to answer their country's call."

Notwithstanding that sentiment, the United States District Court for the Eastern District of Virginia has identified a situation in which the service member is not protected by the SCRA.

The case of Sibert v. Wells Fargo Bank, N.A. decided on May 4, 2016, involved the purchase and subsequent foreclosure of a home in Virginia Beach. Richard D. Sibert joined the United States Navy on July 9, 2004. He was honorably discharged from the Navy on July 8, 2008. Shortly before his discharge, on May 15, 2008, Sibert obtained a loan of approximately \$175,000.00 secured by a deed of trust on property he had purchased on Northwood Court in Virginia Beach.

Wells Fargo directed its trustee to commence foreclosure proceedings on the Northwood Court property in March of 2009, eight months after Sibert's discharge from the Navy. A foreclosure sale took place on May 13, 2009, and the Northwood Court home was sold. In the meantime, Sibert had enlisted in the United States Army in April of 2009, after the direction by Wells Fargo to foreclose on his home but before the May 13, 2009 sale. Sibert remained a Sergeant in the Army at the time of this decision.

On October 29, 2014, Sibert filed suit against Wells Fargo, claiming its foreclosure on his home violated the SCRA. Wells Fargo responded that the SCRA did not apply to Sibert's loan, and moved for summary judgment against him.

In analyzing the competing claims, the United States District Court first identified the relevant sections of the SCRA. Those sections state that any sale, foreclosure or seizure of property for breach of an obligation is invalid if made during the period of the service member's military service, except upon a court order. An obligation covered by that section is an obligation on real or personal property owned by a service member that (1) originated before the period of the service member's military service and for which the service member is still obligated, and (2) is secured by a mortgage, trust deed or other security in the nature of a mortgage.

The court highlighted the phrase "originated before the period of the service member's military service" and determined that the entire case turned on the interpretation of that phrase. If Sibert's mortgage originated before the period of his military service, then he would be entitled to SCRA protection because Wells Fargo's foreclosure was non-judicial, i.e. not ordered by a court. If Sibert's mortgage was not originated before the period of his military service, then he was not entitled to SCRA protection and the foreclosure was valid.

Under the definitions section of the SCRA, the term "period of military service" means the period beginning on the date when the service member enters military service and ending on the date on which the service member is released from military service or dies while in military service. In this case, Sibert had two terms of military service, one with the Navy and one with the Army, separated by a period of nine months. Sibert obtained his mortgage during his first stint of military service, and Wells Fargo foreclosed during his second stint.

Sibert argued that the "period of military service" in the definition means only the specific period of service for which the service member invokes the protections of the SCRA. In other words, Sibert sought the protection of the SCRA as it pertained to his second period of service. Because the loan originated prior to that second period of service, he asserted he should be entitled to the protections of the SCRA. Wells Fargo countered that the "period of military service" means any period of service, and because Sibert's mortgage originated while he was serving in the military (his Navy term) the SCRA was inapplicable. The court could not find any existing case resolving those differing interpretations, making this a decision of first impression on that issue.

In order to make that decision, the court looked to underlying purpose of the SCRA. That purpose is to protect the service member from being disadvantaged by answering the call to military service. With respect to a loan obtained by a civilian who thereafter enters the military, the resulting change in income and lifestyle compared to his civilian income and lifestyle could materially affect the service member's ability to maintain payments. In addition, the loan underwriter would evaluate the loan based on the civilian's ability to repay, and would not contemplate the later limitations of military service and pay. In short, the SCRA protects service members who, as civilians, incur financial obligations and thereafter answer the call to duty, because answering that call can materially affect the service members' ability to repay those obligations.

Conversely, the SCRA does not apply to obligations that originate while a service member is already in the military. In that circumstance, the limitations of military service and pay would already be contemplated by the service member/borrower and the lender at the time the loan was made. That was

the position occupied by Sibert, according to the court. His loan originated while he was on active duty in the Navy, so a change in income and lifestyle from joining the military was not a factor in that loan. He thus did not fall within the class of persons intended to be protected by the SCRA. The fact that he later rejoined the service after a brief interlude as a civilian did not change the fact that both he, as borrower, and Wells Fargo, as lender, knew that the mortgage was being made to an active duty service member at the time it was originated. Because the mortgage was not originated before the period of Sibert's period of military service, it was not an obligation covered by the protective sections of the SCRA. The court thus held that Wells Fargo's foreclosure was not invalidated by the SCRA.

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