

Quicken Loans, Inc., v. Wayne D. Wilson; Calvin O. Wilson, III; Any other Heirs-in-Law or devisees of Ezekiel (Ellen) T. Wilson, deceased their heirs, personal representatives, administrators, successors and assigns, and all other persons entitled to claim through them; all unknown persons with any right, title or interests in the real estate described herein; also any persons who may be in a class designated as John Doe; any unknown minors or persons under a disability being a class designated as Richard Roe; Park; Sterling Bank

Appellate Case No. 2016-001214

Quicken Loans, Inc. (“Quicken Loans”) is a large national mortgage lender doing business in South Carolina. In November of 2011, Ezekiel Wilson and her husband, Calvin Wilson, arranged to refinance the existing loan on their house with Quicken Loans, Inc. (“Quicken Loans”). Quicken Loans provided the Wilsons with a copy of the application and an Attorney/Insurance Preference Checklist (“checklist”). See S.C. Code Ann. § 37-10-102. At the time the checklist was presented to the Wilsons, it had already been completed to state that “I/We will not use the services of legal counsel.” The Wilsons closed on the loan refinancing, but died shortly thereafter. The loan went into default, and foreclosure proceedings were commenced. The heirs of the Wilsons argued that the refinancing loan was unconscionable under Section 37-10-105(c). The Court ruled in favor of the Wilsons and Quicken Loans appealed the case to the South Carolina Court of Appeals.

This key issue in this case is whether or not Quicken Loans’ checklist satisfies requirements of the Attorney/Insurance Preference statute. On August 18, 2017, the Department filed a Petition and Motion for Leave to Appear as Amicus Curiae to offer its opinion on the history and requirements of the Attorney/Insurance Preference statute. On August 28, 2017, Quicken Loans filed a Return in Opposing to the Department’s Motion for Leave to Appear as Amicus Curiae. On September 14, 2017, the Court issued an Order stating that it would consider the motion for leave to file the amicus curiae brief and Quicken Loans’ return after it received the conditionally-filed brief from the Department. On October 3, 2017, the Department conditionally filed its amicus curiae brief, and on November 8, 2017, the Court granted the Department’s motion to file its brief.

In its Amicus Curiae brief, the Department gives a historical overview of the Attorney/Insurance Preference statute. The Department goes on to explain why the lower court’s ruling in favor of the Wilsons’ heirs was proper because the use of the prepopulated form was not a sufficient means for ascertaining the Wilsons’ preference for an attorney. Furthermore, the Department argues Quicken Loans’ use of the prepopulated form amounted to a waiver of rights, an action prohibited by the Consumer Protection Code, and rose to the level of unconscionability.

On September 10, 2018, an oral argument was held in the South Carolina Court of Appeals. On January 9, 2019, the Court issued its Order, reversing the findings of the lower court in favor of Quicken Loans. The Court ultimately agreed with Quicken Loans’ argument that it did not violate the Attorney/Insurance Preference statute with the use of its checklist.