

ORIGINAL

In The  
**Supreme Court of Ohio**

**SONDRA ANDERSON,**

Plaintiff-Respondent

vs.

**BARCLAYS CAPITAL REAL ESTATE,  
INC. d/b/a/ HOMEQ SERVICING,**

Defendant-Petitioner.

CASE NO.: 11-0908

On review of Certified Questions From the  
United States District Court Northern  
District of Ohio, Western Division

N.D. Ohio Case. No. 3:09-cv-02335-JGC

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**BRIEF OF *AMICUS CURIAE* OHIO ASSOCIATION OF JUSTICE  
IN SUPPORT OF PLAINTIFF-RESPONDENT SONDRA ANDERSON**

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James D. Curphey (0015832)  
(COUNSEL OF RECORD)  
Kathleen M. Trafford (0021753)  
L. Bradfield Hughes (0070997)  
Michael A. Wehrkamp (0084942)  
PORTER WRIGHT MORRIS & ARTHUR LLP  
41 South High Street  
Columbus, OH 43215  
Phone: 614-27-2096  
Fax: 614-227-2100  
jcurphey@porterwright.com

Benjami B. Klubes, *pro hac vice*  
(PHV 1659-2012)  
BUCKLEY SANDLER LLP  
1250 – 24<sup>th</sup> Street N.W., Suite 700  
Washington, D.C. 20037  
Phone: 202-349-8000  
Fax: 202-349-8080  
bklubes@buckleysandler.com

COUNSEL FOR PETITIONER  
BARCLAYS CAPITAL REAL ESTATE  
INC. d/b/a/ HOMEQ SERVICING

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John T. Murray (0008793)  
(COUNSEL OF RECORD)  
Leslie O. Murray (0081496)  
Michael J. Stewart (0082257)  
MURRAY & MURRAY CO. LPA  
111 E. Shoreline Drive  
Sandusky, OH 44870  
Phone: 419-624-3000  
Fax: 419-624-0707  
jotm@murrayandmurray.com  
lom@murrayandmurray.com  
mjs@murrayandmurray.com

COUNSEL FOR RESPONDENT  
SONDRA ANDERSON

G. Ian Crawford (0019243)  
(COUNSEL OF RECORD)  
CRAWFORD, LOWRY & ASSOCIATES, LLC  
116 Cleveland Ave. NW, Suite 800  
Canton, Ohio 44702  
Phone: 330-452-6773  
Fax: 330-452-2014  
icrawford@crawford-lowry.com

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SUPREME COURT OF OHIO

Amy L. Wells (0078247)  
WELLS LAW OFFICE, INC.  
7925 Paragon Road, Suite 101  
Dayton, Ohio 45459  
Phone: 937-435-4000  
Fax: 937-433-1510  
AWells@OhioConsumerHelp.com

COUNSEL FOR *AMICUS CURIAE*  
OHIO ASSOCIATION FOR JUSTICE

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## STATEMENT OF INTEREST OF AMICI CURIAE

The Ohio Association for Justice (“OAJ”), formerly the Ohio Academy of Trial Lawyers, was founded in 1954 and is comprised of approximately two thousand Ohio attorneys who represent those who have been injured by negligent conduct, those damaged by unfair and deceptive practices and other individuals who have been aggrieved by the wrongful acts of others. The OAJ and its members are dedicated to preserving the rights of Ohio consumers, workers and families, and to promoting public confidence in the civil justice system.

The OAJ, as the Amici Curiae, is intervening in this appeal on behalf of Plaintiff-Appellee Sondra Anderson, an Ohio consumer. The certified questions from the United States District Court for the Northern District of Ohio are: “(1) whether ‘mortgage servicers’ are ‘suppliers’ under the CSPA and (2) whether ‘mortgage servicing’ is a ‘consumer transaction’ under the CSPA.”

The adoption of Appellant’s arguments to the certified questions would represent a fundamental change to the manner in which Ohio’s primary consumer protection law has operated for over forty years. Moreover, adoption of Appellant’s arguments in this matter would be inconsistent with the language of Ohio’s Consumer Sales Practices Act, the stated purpose of the Consumer Sales Practices Act, the strong public policy upon which the Consumer Sales Practices Act is based and the liberal construction to which the Consumer Sales Practices Act is entitled as a remedial statute. Interpreting the Consumer Sales Practices Act as proposed by Appellant would effectively amend the Act by judicial fiat. The legislature has not deemed such an amendment necessary, in spite of several opportunities to do so during the past four decades. Moreover, as a practical matter, the adoption of Appellant’s propositions would encourage a

flood of contested litigation by dishonest suppliers seeking piecemeal exclusion from coverage under the Consumer Sales Practices Act where no such exclusions existed before.

For all these reasons, the Court should answer the certified questions in the affirmative; that is, conclude that under the Consumer Sales Practices Act the servicing of a borrower's residential mortgage loan is a "consumer transaction" as defined in R.C. §1345.01(A) and entities that service residential mortgage loans are "suppliers" within the meaning of R.C. §1345.01(C).

### **STATEMENT OF FACTS & STATEMENT OF THE CASE**

The Amici Curiae defer to and adopt herein the Statement of Facts and Statement of the Case as set forth in the Merit Brief of the Appellee Sondra Anderson.

### **LAW AND ARGUMENT**

#### **A. Ohio's Consumer Protection Laws Should be Interpreted to Protect Consumers.**

The Consumer Sales Practices Act<sup>1</sup> or "CSPA" was enacted by the Ohio General Assembly in 1972 and substantially follows the language of the Uniform Consumer Sales Practices Act approved by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in 1970. That Act is to be construed to protect consumers from suppliers who commit deceptive and unconscionable sales practices and the following policies and to encourage the development of fair consumer sales practices. 7A Uniform Laws Anno. 3, Uniform Consumer Sales Practices Act, Section 1 (1978).

The staff report of the Ohio Legislative Service Commission, which the legislature had before it when it considered and enacted Ohio's CSPA, states in its preface:

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<sup>1</sup> Ohio Revised Code Section 1345.01 *et seq.*

Deception is the classic consumer problem. From an early time the law has provided remedies for the buyer who has been deceived. As marketing and consumer services have become more complex, the private remedies of the common law, and traditional criminal actions, have become relatively ineffective as a means by which the consumer may protect himself, and government has intervened. \* \* \*

“Fraud, Deception, and Other Abuses in Consumer Sales & Services”, Legislative Service Commission Report No. 102 (January, 1971) at 2; see also *Thomas v. Sun Furniture & Appliance Co.* (1978), 61 Ohio App. 2d 78, 399 N.E.2d 567. Just as the uniform statute intended, the CSPA broadly protects Ohio consumers from suppliers (including service providers) who commit unfair, deceptive or unconscionable acts or practices before, during and after a consumer transaction. The enactment of the CSPA was a huge step forward in protecting Ohioans from unscrupulous dealers, dishonest sellers and other “suppliers” engaged in unfair or deceptive acts.

Taking the allegations of Ms. Anderson’s Amended Complaint to be true, Appellant’s misappropriation of her monthly mortgage payments and its failure to account for these funds certainly seems to be the type of unfair and deceptive acts and practices that were expected to be prohibited by the CSPA.

**1. Applicable Provisions of Ohio’s Consumer Sales Practices Act.**

Since its enactment in 1972,<sup>2</sup> R.C. §1345.02(A) has declared:

No supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction. Such an unfair or deceptive act or practice by a supplier violates this section whether it occurs before, during, or after the transaction.

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<sup>2</sup> 134 Ohio Laws, Part II, 1233-1243.

R.C. §1345.02(A) is clear and requires no interpretation. It unambiguously prohibits unfair or deceptive conduct by a “supplier” in the course of a “consumer action”. “[T]he General Assembly is not presumed to do a vain or useless thing, and ... when language is inserted in a statute, it is inserted to accomplish some definite purpose.” *Celebrezze v. Hughes*, 18 Ohio St.3d 71, 74, 479 N.E.2d 886 (1985) [citations omitted]. Given the broad language of R.C. 1345.02(A), the General Assembly clearly intended that the CSPA provide an accessible avenue for aggrieved consumers to seek redress for any alleged deception or similar misconduct by a supplier not specifically excluded by the terms of the statutory scheme itself.

R.C. §1345.01(A) broadly defines “consumer transaction” as “a sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things.” The statute goes on to specifically delineate what is **not** a “consumer transaction”:

transactions between persons, defined in sections 4905.03 and 5725.01 of the Revised Code, and their customers, except for transactions involving a loan made pursuant to sections 1321.35 to 1321.48 of the Revised Code and transactions in connection with residential mortgages between loan officers, mortgage brokers, or nonbank mortgage lenders and their customers; transactions involving a home construction service contract as defined in section 4722.01 of the Revised Code; transactions between certified public accountants or public accountants and their clients; transactions between attorneys, physicians, or dentists and their clients or patients; and transactions between veterinarians and their patients that pertain to medical treatment but not ancillary services.

The list of exclusions is supplemented by other sections of R. C. Chapter 1345. R.C. §1345. 12 excludes acts or practices required or specifically permitted by federal law or other provisions of the Revised Code (R.C. §1345. 12(A)), innocent publication of information by a publisher, broadcaster or printer (R.C. §1345. 12(B)) and personal injury claims or claims for damage to property other than the property that is the subject of the consumer transaction (R.C. §1345. 12(C)). In 2002, acting to supersede a specific Ohio Administrative Code section to the contrary, the General Assembly enacted R.C. §1345. 021, so that a retail gasoline dealer's failure to disclose the blending of ethanol was not to be considered a deceptive act or practice. However, none of the statutory exclusions apply to home mortgage services or servicers.

Similarly, R.C. §1345. 01(C) broadly defines "supplier" as "a seller, lessor, assignor, franchisor, or other person engaged in the business of effecting or soliciting consumer transactions, whether or not the person deals directly with the consumer." Effective January 1, 2007, this definition was amended so that: (a) in a transaction involving a residential mortgage, "seller" means a loan officer, mortgage broker, or nonbank mortgage lender; and (b) in connection with a residential mortgage transaction, "supplier" does not include an assignee unless the assignee committed the violation or is affiliated with the original supplier. Again, the legislature did not mention either "mortgage servicer" or "mortgage servicing".

The definitions of both "consumer transaction" and "supplier" have generally been liberally construed by the courts and given expansive interpretations in accordance with the statutory language, underlying public policy, legislative intent and the mandate for liberal construction to which the CSPA is entitled. See, e.g., *Brown v. Liberty Clubs, Inc.*, 45 Ohio St.3d 191, 543 N.E.2d 783 (1989); *Malone v. Academy of Court Reporting*, 64 Ohio App.3d 588, 582 N.E.2d 54 (10<sup>th</sup> Dist. 1990); *Simpson v. Smith*, 34 Ohio Misc.2d 7, 9, 517 N.E.2d 276 (Mun.

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2. **Public Policy and Legislative Intent.**

This long-term and relatively consistent enforcement of the CSPA is based in large part on the General Assembly's clear public policy in support of consumer protection. As this Court emphasized not so long ago:

The CSPA "is a remedial law which is designed to compensate for traditional consumer remedies and so must be liberally construed pursuant to R.C. 1.11." *Einhorn v. Ford Motor Co.* (1990), 48 Ohio St.3d 27, 29, 548 N.E.2d 933. One of its purposes is to make "private enforcement of the CSPA attractive to consumers who otherwise might not be able to afford or justify the cost of prosecuting an alleged CSPA violation, which, in turn, works to discourage CSPA violations in the first place via the threat of liability for damages and attorney fees." *Parker v. I&F Insulation Co., Inc.* (2000), 89 Ohio St.3d 261, 268, 730 N.E.2d 972.

*Whitaker v. M.T. Automotive, Inc.*, 111 Ohio St.3d 177, 2006-Ohio-5481, 855 N.E.2d 825 at ¶ 11; see also *State ex rel. Celebrezze v. Hughes*, 58 Ohio St.3d 273, 569 N.E.2d 1059 (1991).

The clear intent of the General Assembly has been expressed in the very breadth and scope of the CSPA. It was also succinctly expressed in the purpose clause of the 1978 amendment to the CSPA:

... to prevent unfair, deceptive, and unconscionable acts and practices, to provide strong and effective remedies, both public and private, to assure that consumers will recover any damages caused by such acts and practices, and to eliminate any monetary incentives for suppliers to engage in such acts and practices.

Am. Sub. H.B. No. 681, 137 Ohio Laws, Part II, 3219 and 3227-3228. This announcement again emphasizes the State's strong public policy favoring protections for consumers, as recognized by this Court in *Einhorn, supra*, at 30. This Court has also noted: "consumer protection acts must be interpreted in a manner calculated to provide the courts with flexibility in fashioning remedies intended by the General Assembly to redress the wrong committed and reimburse the loss occasioned." *Celebrezze v. Hughes*, 18 Ohio St.3d 71 at 75, 479 N.E.2d 886.

Here, Appellant is really arguing for a change in the underlying public policy which generated Ohio's consumer protection legislation. Such policy arguments are best suited for the attention of the legislature. "A fundamental principle of the constitutional separation of powers among the three branches of government is that the legislative branch is 'the ultimate arbiter of public policy.'" *State ex rel. Van Cleave v. School Employees Retirement System*, 120 Ohio St.3d 261, 2008-Ohio-5377, 898 N.E.2d 33, ¶27; *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948 880 N.E.2d 420, ¶21 [citation omitted].

Furthermore, the General Assembly has had over forty years to reconsider the wide scope of the CSPA and the language of R.C. §1345.02(A) in particular. In all those years, the operative language of R.C. 1345.02(A) has never been amended and such long-term inaction demonstrates a legislative endorsement of the established body of case law. Additionally, amendments to other provisions of the CSPA, including R.C. §1345.01, demonstrate an overall trend that emphasizes the legislature's intent that the scope of the CSPA be wide.<sup>3</sup>

" [T]he primary duty of the court is to give effect to the intention of the Legislature enacting it. Such intention is to be sought in the language employed and the apparent purpose to be subserved, and such a construction adopted which permits the statute and its various parts to

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<sup>3</sup> In the past decade, the General Assembly broadened the coverage of the CSPA to include mortgage brokers, real estate appraisers and other actors implicated in then recent malfeasances in the mortgage lending industry. Am. Sub. S.B. 185, File 115, Ohio Laws (126<sup>th</sup> General Assembly, 2006).

be construed as a whole and give effect to the paramount object to be attained.' " *Northeast Ohio Regional Sewer Dist. v. Shank*, 58 Ohio St.3d 16, 23, 567 N.E.2d 993 (1991) quoting *Cochrel v. Robinson*, 113 Ohio St. 526, 149 N.E.2d 871 (1925) paragraph four of the syllabus. The purpose of the CSPA is to protect consumers from unfair or deceptive or unconscionable sales practices (*Charvat v. Farmers Insurance Columbus, Inc.*, 178 Ohio App.3d 118, 897 N.E.2d 167 (1980) at ¶20 (citing *Roelle v. Orkin Exterminating Co.*, 10<sup>th</sup> Dist. No. 00AP-14, 2000 WL 1664865 (Nov. 7, 2000)), to encourage fair consumer sales practices (OAC 109:4-3-01), and to make its enforcement feasible for consumers who might not otherwise have the funds to pursue violations of the Act in court. *Einhorn v. Ford Motor Co.* 48 Ohio St.3d at 29, 548 N.E.2d 933; *State ex rel. Van Dyke v. Public Emp. Retirement Bd.*, 99 Ohio St.3d 430, 2003-Ohio-4123, 793 N.E.2d 438, ¶27 ("A court's preeminent concern in construing a statute is the legislative intent in enacting a statute."). To determine legislative intent, the language of the statute should be made "reading undefined words and phrases in context and construing them in accordance with the rules of grammar and common usage." *State ex re. Pontillo v. Public Emp. Retirement Sys. Bd.*, 98 Ohio St.3d 500, 2003-Ohio-2120, 787 N.E.2d 643, ¶41, quoting *State ex rel. Portage Lakes Edn. Assn., OEA/NEA v. State Emp. Relations Bd.*, 95 Ohio St.3d 533, 2002-Ohio-2839, 769 N.E.2d 853 , ¶36.

The language of the CSPA, the underlying public policy and the legislative history all indicate the General Assembly intended consumers have a broad ability to address deceptive and unfair behavior in consumer transactions and thereby protect and promote the public welfare—excluding only actors and actions as specified as a part of the overall statutory scheme.



Given the foregoing, it is clear Appellant is arguing for a dramatic change in the way courts will be asked to interpret and enforce the law. As a general matter, the adoption of these arguments would create a dangerous precedent for Ohioans.

**B. The Court Should Reject the Arguments of Appellant.**

As a general proposition Appellant argues that the servicing of a borrower's residential mortgage loan should be excluded from what is defined as a "consumer transaction" under R.C. §1345.01(A). The Court should decline to create such an exemption for the home mortgage loan servicing industry.

Under the general rule of statutory construction, *expressio unius est exclusio alterius*, the expression of one or more items of a class implies that those not identified are to be excluded. *Thomas v. Freeman*, 79 Ohio St.3d 221, 224-225, 680 N.E.2d 997 (1997); *Behavior Mgt. Assoc. v. Buccilli*, 132 Ohio App.3d 847, 726 N.E.2d 592 (1999); *Independent Ins. Agents of Ohio, Inc. v. Fabe*, 63 Ohio St.3d 310, 314, 587 N.E.2d 814 (1992); *Montgomery Cty. Board of Commrs. v. Pub. Util. Comm.*, 28 Ohio St.3d 171, 503 N.E.2d 167 (1997); *State v. Droste*, 83 Ohio St.3d 36, 39, 697 N.E.2d 620 (1998). The legislature saw fit to create a statute that provides clear relief for consumers subjected to deceptive or unfair conduct in a "consumer transaction", but excepted from the definition of the term "consumer transaction" certain specified transactions, including ones related to the world of banking and finance. It did not, however, go further and except from that definition "mortgage services" or some other term that included the post-mortgage management service performed by Appellant. If that had been intended it could have easily been done, especially given the manner in which the CSPA was structured. The General Assembly is presumed to have known that its designation of a list of exceptions would be construed to

exclude other exceptions unless it manifested a different conclusion (see, e.g., *Hoops v. United Tel. Co. of Ohio*, 50 Ohio St.3d 97, 101, 553 N.E.2d 252 (1990)) as it did in other provisions of the CSPA.<sup>4</sup> There is “a sensible inference that the term left out must have been meant to be excluded.” *Chevron U.S.A. Inc. v. Echazabal*, 536 U.S. 73, 122 S.Ct. 2045, 153 L.E.2d 82 (2002), citing Crawford, *Construction of Statutes* at 337 (1940). Essentially, Appellant asks the Court to write another exception into R.C. §1345.01(A) by judicial fiat.

Had the Legislature meant to exempt mortgage services from the definition of a consumer transaction, it would have explicitly done so by adding such an exemption to the specific list of excluded transactions set forth in R.C. §1345.01(A) or some other section of R.C. Chapter 1345 as it has done various times in the past.

These principles were applied in the context of a CSPA case in *Elder v. Fischer*, 129 Ohio App.3d 209, 1999-Ohio-301, 717 N.E.2d 731, where the First District addressed a case involving the application of the CSPA to billing practices of a residential-care facility. That court reasoned:

We note that the legislature specifically excluded certain health-related transactions from the "consumer transactions" afforded protection under the CSPA. It did not, however, specifically exclude health-care, nursing-home, or residential-care facilities. Applying the maxim of *expressio unius est exclusio alterius* (specific inclusion of one thing implies the exclusion of another), we conclude that had the legislature wanted to exclude from the purview of the CSPA residential-care facilities or any other businesses or professions, it only needed to have said so. "Inasmuch as the legislature chose not to include such an exception it must be presumed that none was intended. Under such circumstances this court is not disposed to supply an exception where none exists by statute."

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<sup>4</sup> Both R.C. §1345.02(B) and R.C. §1345.03(B) contain lists of prohibited acts, but each begins with the phrase "Without limiting the scope of division (A) of this section" thereby explicitly declaring the respective lists are not intended to be exhaustive.

For example, one Ohio court, implicitly relying on the above maxim, has held that a demand-for-payment notice sent by a hospital was unconscionable under the CSPA because it simulated an official document. The court acknowledged that physicians were specifically excluded, but that because hospitals were not, hospitals had to abide by the CSPA. We believe that that construction applies to the facts at hand.

*Id.* at 215 (citations omitted). The CSPA was applied to the subject billing practices.

Appellant also argues that mortgage servicing is a “pure” real estate transaction and thereby excluded under R.C. §1345. 01(A). This argument is likewise without merit. Real estate sales and services directly related to the actual conveyance of the real estate have indeed been excluded under this section.<sup>5</sup> However, this exclusion has been limited in a variety of ways by the courts of Ohio.<sup>6</sup> Furthermore, Appellant did not act as an escrow agent, an auctioneer or provide “closing services” as a part of the original real estate transaction. Rather, Appellant is engaged in servicing residential mortgages **after** the closing on the loan. Appellant had no part in the “pure” real estate transaction. Theoretically, its job is to facilitate the collection of the debt from the consumer after the fact – and debt collectors have long been the subject of CSPA claims for their conduct which occurred well after the original “consumer transaction”.<sup>7</sup> Moreover, the role of mortgage services in the recent mortgage crisis has become common knowledge, as reflected in the recent settlement with the United States Department of Justice and most state attorneys general with mortgage services over the “robo-signing” scandal.

Taking Appellant’s argument to its logical conclusion, during the course of a thirty year loan, Appellant would never be subject to the CSPA notwithstanding the nature of its conduct

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<sup>5</sup> See R.C. §1345. 01(A) real estate exclusion as applied in *Hurst v. Enterprise Title Agency, Inc.*, 157 Ohio App.3d 133, 2004-Ohio2307, 809 N.E.2d 689; *Colburn v. Baier Realty & Auctioneers*, 2003-Ohio-6694 (11<sup>th</sup> Dist. 2003); *Hanlin v. Ohio Builders and Remodelers, Inc.*, 212 F. Supp.2d 752 (S.D. Ohio 2002).

<sup>6</sup> This court has long held that the CSPA applies to the personal side of a “mixed transaction” involving the transfer of personal property or services. *Brown v. Liberty Clubs, Inc.*, 45 Ohio St.3d 191, 195 (1989).

<sup>7</sup> See, e.g., *Broadnax v. Greene Credit Serv.*, 118 Ohio App.3d 881, 891-92, 694 N.E.2d 167 (2<sup>nd</sup> Dist. 1997); *Lee v. Javit, Block & Rathbone, LLP*, 484 F.Supp.2d 816, 821 (S.D. Ohio 2007).

and practices as it deals with consumers, no matter how egregious. Such a result would be nonsensical under the applicable statutory language as well as the broad underlying purpose of the CSPA.

Similarly, Appellant asks this Court to impose new definitions of both “consumer transaction” and “service” which would limit enforcement under the CSPA.

Appellant argues that the distinction between “effect” (as used in R.C. §1345. 01(C)) and “affect” relieves them from complying with the CSPA. This is the type of hyper-technical analysis that should be avoided – in favor of common sense – when applying Ohio’s consumer protection laws. See, e.g., *Doe v. SexSearch.com*, 502 F. Supp.2d at 732. Despite Appellant’s attempt at micro-surgery, the subject statute actually uses the present participle “effecting” not “effect”. Under the type of analysis presented by Appellant, that distinction should prohibit many suppliers from committing unfair and deceptive acts “during” a consumer transaction, but not before or after. More realistically, Appellant is “bringing about” or “putting into effect” a consumer transaction each time it engages a consumer in the course of its business. Appellant’s relationship with the mortgage holder is irrelevant as to whether the CSPA applies to the Appellant’s conduct towards the homeowner. Applying Appellant’s interpretation to another industry, such as automobile repair services (which have been routinely covered by the CSPA) illustrates the fundamental problem with Appellant’s underlying proposition. If a consumer was directed by his or her extended warranty provider to a particular “approved” repair shop to perform the necessary service covered under the warranty agreement, the repair shop could avoid application of the CSPA because it was working for the warranty company and not the consumer – notwithstanding any sort of misrepresentation or other deceptive practice committed by the

repair shop after the referral. Such micromanagement and misapplication of the CSPA was never considered by the legislature and simply makes no sense now.

Similarly, Appellant's attempt to limit "services" generally covered by the CSPA to those "transfer[red] ... to an individual for purposes that are primarily personal, family or household" flies in the face of how the CSPA has been applied for over forty years. Moreover, the term "transfer" is meant to be inclusive, not exclusive, of the types of transaction covered by the CSPA. See, e.g., *Williams v. Edwards*, 129 Ohio App.3d 116, 1999-Ohio-299, 717 N.E.2d 368 (1<sup>st</sup> Dist. 1998); *Estep v. Johnson*, 123 Ohio App.3d 307, 704 N.E.2d 58 (10<sup>th</sup> Dist. 1998); *Gayer v. Ohio Business Trading Assn.*, 8<sup>th</sup> Dist. No. 54892, 1988 WL 87629 (July 7, 1988). Again, this sort of hyper-technical interpretation is anathema to the overall language of and public policy behind the CSPA.

As noted early, the primary duty of the court is to give effect to the intention of the General Assembly and to adopt a construction that permits the statute and its various parts to be construed as a whole and give effect to the paramount object to be attained. The purpose of the CSPA is to protect consumers from unfair or deceptive or unconscionable sales practices. Under R.C. §1345.03(A), the provision of a service or the offer to provide a service to a consumer is a "consumer transaction". There is no need in this instance for the Court to engage in a major overhaul of the CSPA by requiring the "service" in a consumer transaction be first subject to some "transfer" to the consumer.

Furthermore, Appellant's focus upon the existence of other laws that may govern servicers' illegal activity is an immaterial distraction from the issue before the Court. The laws identified, with the exception of the Real Estate Settlement Practices Act or "RESPA",<sup>8</sup> are

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<sup>8</sup> 12 U.S.C. 2602 et seq. RESPA applies to all mortgages, but the protections and remedies afforded are limited.

inapplicable to Appellant's acts in the instant matter, demonstrating the lack of adequate consumer protection under current federal law. As to the RESPA claim, the violations thereunder also trigger the CSPA. The 2007 amendments to the CSPA, broadening the scope of this remedial law, expressly state that a failure to provide requisite disclosures violate the Act. R.C. § 1345.02(F).

Appellant provides this Court with no basis that would preclude application of the CSPA based upon the existence of other laws that may govern a particular group or industry. The reason for Appellant's omission is simple. No such basis exists, neither in law nor in equity. There is no authority permitting suppliers who break other laws to commit unfair and deceptive acts in violation of the CSPA. In fact, Ohio courts have held that violation of other federal laws and agency rules can be deemed a *per se* violation of the CSPA.<sup>9</sup> Similarly, violation of other consumer protection laws often give rise to a parallel claim under the CSPA.<sup>10</sup> This illustrates the intent of the General Assembly to not only permit parallel claims, but to expressly provide for them. As noted in the *Elder* decision when it addressed an analogous situation:

While the CSPA has excluded consumer transactions between physicians and patients, we do not believe, in light of the legislature's direction to consider decisions applying the FTC Act, that the legislature intended that the billing practices of a residential-care facility would be excluded from the CSPA solely on the basis that it is a regulated business.

*Elder v. Fischer*, 129 Ohio App.3d at 216, 717 N.E.2d 731. More generally. The availability of other remedies – whether considered adequate or not – is not relevant to the scope of the CSPA.

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<sup>9</sup> *Becker v. Montgomery, Lynch*, N.D. Ohio No. Civ. A. 1:02CV874, 2003 U.S. Dist.LEXIS 24992 (Feb. 26, 2003)(an FDICPA violation is a *per se* unfair and deceptive practice in violation of the CSPA); *Buskirk v. Harrell*, 4<sup>th</sup> Dist. No. 99CA31, 2000 Ohio App.LEXIS 3100 (June 28, 2000)(failure to post a Buyer's Guide, contrary to the mandates of the FTC Used Car Rule violates the CSPA); *Cummins v. Dave Fillmore Car Co.*, 10<sup>th</sup> Dist. No. 87AP71, 1987 Ohio App.LEXIS 9392 (Oct. 27, 1987).

<sup>10</sup> E.g., Ohio Retail Installment Sales Act, R.C. §1317.24 ("RISA")(violation of RISA is a violation of the CSPA); Debt Adjuster's Act, R.C. §4710.04(A) (violation is an unfair and deceptive act under the CSPA).

Finally, as Appellant notes, more laws and regulations are on the horizon for mortgage servicers. Obviously, the possibility of such proposed laws and regulations cannot excuse any prior misconduct by Appellant. Moreover, the fact that the Consumer Financial Protection Bureau has found it necessary to implement additional “comprehensive” regulations illustrates the need for the CSPA to comport with the legislative intent of protecting Ohioans from unfair and deceptive acts by mortgage servicers like Appellant.<sup>11</sup> Indeed, it echoes the broader intent of the General Assembly that *more* consumer be afforded protection from home mortgage servicing abuses, not less.

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<sup>11</sup> Bureau of Consumer Financial Protection, 12 CFR Part 1026 [Docket No. CFPB-2012-0033], RIN 3170-AA14, 2012 Truth in Lending Act (Regulation Z) Mortgage Servicing Proposals.

## CONCLUSION

Based upon the foregoing law and argument, the consumer protections of the Consumer Sales Practices Act apply to Appellant. Therefore, this Court should answer both of the certified questions in the affirmative. The servicing of a borrower's home mortgage loan is a "consumer transaction" as defined in R.C. §1345.01(A) and entities that service home mortgage loans are "suppliers" within the meaning of R.C. §1345.01(C).

Respectfully Submitted:



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G. Ian Crawford (#0019243)  
CRAWFORD, LOWRY & ASSOCIATES, LLC  
116 Cleveland Avenue NW, Suite 800  
Canton, OH 44702-1732  
(PH): 330-452-6773  
(FX): 330-452-2014  
icrawford@crawford-lowry.com

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Amy L. Wells (0078247)  
WELLS LAW OFFICE, INC.  
7925 Paragon Road, Suite 101  
Dayton, Ohio 45459  
Phone: 937-435-4000  
Fax: 937-433-1510  
AWells@OhioConsumerHelp.com

Co-counsel for the Amici Curiae  
Ohio Association for Justice



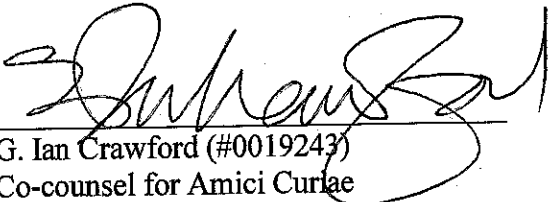
## CERTIFICATE OF SERVICE

THIS CERTIFIES THAT a copy of the foregoing was served on the 9<sup>th</sup> day of October 2012, upon the following by regular, U.S. Mail:

James D. Curphey, Counsel of Record for Appellant  
41 South High Street  
Columbus, OH 43215

Benjami B. Klubes, pro hac vice for Appellant  
1250 – 24th Street N.W., Suite 700  
Washington, D.C. 20037

John T. Murray, Counsel of Record for Respondent  
111 E. Shoreline Drive  
Sandusky, OH 44870



G. Ian Crawford (#0019243)  
Co-counsel for Amici Curiae  
Ohio Association for Justice