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Client Alert: Important Supreme Court of Ohio Decision for Loan Workouts and Lenders

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The Supreme Court of Ohio issued its decision dated March 4, 2014, in the case of *FirstMerit Bank, N.A. v. Inks, et al* (2014-Ohio-789), confirming important Ohio statutory protections for lenders in workout situations under Ohio Revised Code Section 1335.05.

The decision upheld the requirements of that section of Ohio law that prohibits a party from raising a defense to a contract involving an interest in land based on an alleged oral agreement to modify the terms of a workout agreement. In other words, when dealing with a workout situation "...a party cannot assert an oral agreement pertaining to an interest in land in an effort to defeat a judgment entered pursuant to a written contract."

The *FirstMerit* case involved foreclosure proceedings in which the borrowers attempted to assert that the bankers had agreed to workout terms that included an alleged oral agreement to, inter alia, release the subject mortgage. Reliance on oral statements clearly was not provided in the underlying cognovit provision of relevant documents which required that "no amendment, modification, rescission, waiver or release of any provision of this Agreement shall be effective unless the same shall be in writing and signed by the parties hereto." Other documents involved in the foreclosure proceedings reminded the borrowers that "...until such time that FirstMerit executes a written agreement providing for forbearance ... there is no forbearance granted."

The borrowers alleged that there were verbal assurances that indicated that a foreclosure involving property on which FirstMerit held a mortgage and judgment lien would not go forward, and that therefore relief from the foreclosure (which had already taken place) should have been granted. The appellate court reversed the trial court decision upholding the validity of the bank's foreclosure, and FirstMerit appealed to the Supreme Court of Ohio. There the basic issue under consideration was whether a party can assert an oral agreement involving an interest in land as a defense in a motion for a relief from judgment.

The Supreme Court upheld the “writing” requirement of the statute (ORC 1335.05), referring back to holdings since the case of *Finch v. Finch* in 1860.

The *FirstMerit* case is especially important in support of the ability of lenders to have certainty in their workout negotiations with borrowers, and underscores the importance of securing written confirmation and/or agreement between the parties any time those workouts involve interests in land. As a result, oral agreements fall within the statute of frauds in these instances and borrowers will be precluded from asserting oral agreements as a defense when those oral agreements contradict the express written terms of relevant loan and workout documents.

The decision represents an important victory for certainty in lending and workout activities in Ohio.

Vorys represented the Ohio Bankers League as amicus curiae in the Supreme Court of Ohio in this case.