

# **New California Court of Appeal Decision Reaffirms General Rule that Residential Lenders Owe No Duty to Borrowers, Including in the Loan Modification Context**

Article By:

Joshua A. del Castillo

---

In a recent decision, *Lueras v. BAC Home Loans Servicing, LP*, 2013 Cal. App. LEXIS 886, the California Court of Appeal returned to the general rule that, absent unique circumstances giving rise to a duty of care, lenders do not owe a duty of care to their borrowers. The decision may bolster the position of mortgage lenders and servicers defending against negligence claims in foreclosure-avoidance and related actions.

## **Relevant Background and Summary of Case**

*Lueras* resolves, for the moment, the apparent tension between two California Court of Appeal cases, *Nymark v. Heart Fed. Savings & Loan Assn.* (1991) 231 Cal.App.3d 1089, and *Jolley v. Chase Home Finance, LLC* (2013) 213 Cal.App.4th 872, each of which address the degree to which lenders owe a duty of care to their borrowers. The *Nymark* court held that a lender owed no duty of care to a borrower in preparing an appraisal of real property when the purpose of the appraisal was to protect the lender by satisfying it that the collateral provided adequate security for its loan. The court reached its holding by considering six factors to determine whether to recognize a duty of care: (1) the extent to which the transaction was intended to affect the borrower; (2) the foreseeability of harm to the borrower; (3) the degree of certainty that the borrower suffered an injury; (4) the closeness of the connection between the lender's conduct and the injury suffered; (5) the moral blame attached to the lender's conduct; and (6) policy concerns relating to the prevention of future harm.

The more recent *Jolley* decision, however, questioned whether the *Nymark* decision stood for the blanket proposition that lenders do not owe borrowers a duty of care, finding that a construction lender might indeed owe such a duty to a borrower. The court's rationale for this holding was premised on its reasoning that the relationship between a lender and borrower on a construction loan is "ongoing." While the court limited its holding to construction loans, its decision did call into question the long standing rule that lenders owe no such duty. The *Jolley* court, after a highly selective discussion of federal and state legislation aimed at providing assistance to homeowners at risk of foreclosure, concluded that, while the new legislation did not directly apply to construction loans, it "sets forth policy considerations that should affect the assessment whether a duty of care was owed to [the plaintiff] at that time."

---

The *Lueras* decision reflects a return to the general rule. However, the decision did not do away with the exception to the general rule. As such, unique lender-borrower relationships may still give rise to a duty of care. In *Lueras*, the court based its conclusion on a rigorous examination of federal and state law regarding duty in the lender/borrower context. In *Lueras*, homeowner Richard Lueras sued his lender, alleging, among other things, causes of action for negligence, breach of contract, violation of the Perata Mortgage Relief Act, fraud/misrepresentation, unfair and unlawful practices, and to quiet title. Lueras alleged that, after falling behind in his mortgage payments, he requested a loan modification from his lender pursuant to the Home Affordable Modification Program, or HAMP. Instead, he alleged, the lender offered Lueras reduced monthly payments under the Federal National Mortgage Association (Fannie Mae) HomeSaver Forbearance program. Lueras accepted the offer and made the reduced payments as directed. During the forbearance period, Lueras claimed that his lender was to work with him to find a more permanent solution to avoid forbearance, but it did not.

As alleged by the Plaintiff in *Lueras*, shortly after the forbearance period ended, Lueras was served with notice of a pending foreclosure sale. The date of the sale was pushed back several times, from February 2011 to May 2011. During that period, the lender informed Lueras that he qualified for loan modification under HAMP. The lender orally offered to modify Lueras's loan. Lueras accepted the offer. The lender also repeatedly advised Lueras that he was not at risk of foreclosure during the pendency of the loan modification process. Days after the last communication regarding modification, the lender foreclosed on Lueras' property. Lueras alleged that the lender breached its duty of care in the handling of his application for a loan modification and in foreclosing on his property.

The trial court sustained the lender's demurrer, without leave to amend. The Court of Appeal reversed the trial court's ruling, in part, largely because Lueras "had filed only two complaints in a complicated and evolving area of law before facing dismissal." As to Lueras's cause of action for negligence, the Court of Appeal undertook a substantial, detailed survey of the evolving law regarding lenders' duties of care, if any, including an analysis of the *Jolley* decision and the state and federal law upon which it was based. Ultimately, the *Lueras* court expressly rejected the *Jolley* court's reasoning, holding that "a loan modification is the renegotiation of loan terms, which falls squarely within the scope of a lending institution's conventional role as a lender of money[,] and that this "conventional role" is governed by the general rule that no duty of care is owed. In so doing, the *Lueras* court clarified the duty issue in the residential loan modification setting and reaffirmed the longstanding general principle that a lender does not owe a duty of care to its borrowers.

## Potential Implications

*Lueras* temporarily resolves the tension between *Nymark* – one of the cases most commonly relied on by lenders accused of negligence – and *Jolley*, which raised questions about kinds of lender-borrower relationships which might give rise to a duty of care. In so doing, *Lueras* reaffirms the general principle that lenders do not owe their borrower a duty of care, expanding the principle to hold that a residential lender owes no common law duty of care to offer, consider, or approve a loan modification, or to explore and offer foreclosure alternatives. Accordingly, and for the time being, the *Lueras* decision may serve to bolster mortgage lender and servicer defenses to negligence claims brought by defaulting borrowers, or borrowers denied a loan modification, in foreclosure-avoidance and related actions.

---

© 2010-2025 Allen Matkins Leck Gamble Mallory & Natsis LLP

Source URL: <https://natlawreview.com/article/new-california-court-appeal-decision-reaffirms-general-rule-residential-lenders-owe>