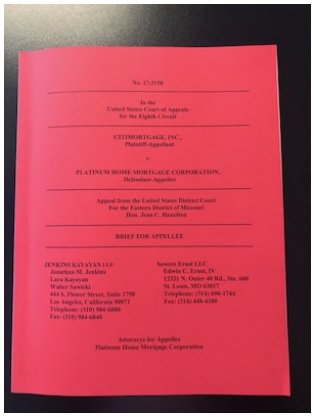
JENKINS KAYAYAN LLP

Newsletter Update: Nov. 2018



Mortgage Repurchase Litigation: JKLLP Obtains First-Ever Summary Judgment Victory Against CitiMortgage, Inc. in Missouri Federal Court

In a welcome victory for correspondent mortgage lenders everywhere, JKLLP has become the first law firm in history to defeat CitiMortgage, Inc. ("CMI") on summary judgment in a mortgage repurchase case. In 2015, CMI sued Platinum Home Mortgage Corporation in the U.S. District Court for the Eastern District of Missouri (Case No. 4:15-cv-01242(JCH)), demanding seven-figure sums for Platinum's failure to repurchase allegedly defective mortgage loans. CMI repurchase cases have become notoriously difficult to defend following the Eighth Circuit's decision in *CitiMortgage, Inc. v. Chicago Bancorp, Inc*., 808 F.3d 747 (8th Cir. 2015), which affirmed that Section 11 of the Form 200 Correspondent Agreement grants CMI contractual "sole discretion" to decide whether loans are defective – and courts are virtually powerless to review CMI's determinations.

Platinum retained JKLLP, based on our stellar track record in repurchase cases, to pioneer legal theories that evaded CMI's contractual sole discretion. After two years of hard-fought litigation, the parties filed cross-motions for summary judgment. Platinum argued CMI had violated Section 11's cure provision because CMI's demand letters never provided the "time prescribed by CMI" to "correct or cure" a loan defect – a period that, by definition, must *expire* before any repurchase obligation can arise.

CMI argued a provision in the parties' Delegated Underwriting Addendum set the prescribed time at 30-days – a position previously adopted by another federal judge in the same district. *See CitiMortgage, Inc. v. Chicago Bancorp, Inc*., Case No. 4:14-cv-1278(AGF), 2016 WL 3958594 (July 22, 2016). Platinum established CMI was misinterpreting its own contract and the 30-day period cited by CMI had nothing to do with the time prescribed to "correct or cure" a loan defect. The district court agreed and issued a 32-page Order granting summary judgment to Platinum, ruling the district court's opinion in *Chicago Bancorp, Inc*. had been wrongly decided.

While the district court's Order in the Platinum case remains under seal, its content (along with much of *the* previously-sealed summary judgment record) was recently disclosed in the parties' appellate filings before the Eighth Circuit, where CMI's appeal is currently pending (Case No. 17-3158). If affirmed, the Platinum decision may invalidate thousands of repurchase demands sent by CMI in recent years.

Attorney Update: Managing Partner Lara Kayayan Selected to Serve on Yale Law School Association's Executive Committee

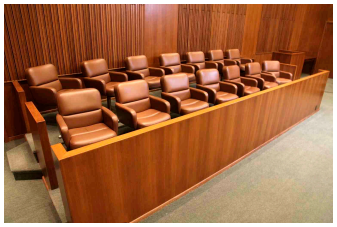
The Nominating Committee of the Executive Committee of the Yale Law School Association has selected JKLLP Managing Partner Lara Kayayan to serve a three-year term on its Executive Committee. The Executive Committee provides advisory support to the law school and Dean Heather K. Gerken.

Lara also serves on the Board of Directors of the Yale Club of Los Angeles and the Los Angeles County Bar Association's Judicial Appointments Committee. The Judicial Appointments Committee evaluates individuals who seek to be appointed as judges and makes recommendations to the Governor of California based on their evaluations of the candidates.

Class Action Defense: JKLLP Obtains Dismissal of Employee Wage and Hour Class Action Against California Manufacturer

After three years of litigation, JKLLP procured dismissal of a wage and hour class action against a major apparel manufacturer by disqualifying the final putative class representative on the eve of the class certification hearing. In *Guerra v. Fantasy Activewear, Inc.*, L.A. County Superior Court Case No. BC517633, the initial class representative sought to certify a putative class of hundreds of current and former employees for a slew of alleged violations of California labor laws, including failure to provide meal and rest periods and failure to pay hourly wages. After the initial class representative was knocked out, class counsel spent two years seeking replacement representatives – even resorting to a time-consuming *Belaire West* procedure to conduct discovery on behalf of a "headless" class.

Shortly prior to the class certification hearing, JKLLP challenged the sole remaining class representative's ability to "adequately represent" the putative class based on use of a false Social Security Number to secure employment. The trial court sided with JKLLP and, when class counsel was unable to locate yet another replacement class representative within the allotted time, the case was dismissed.

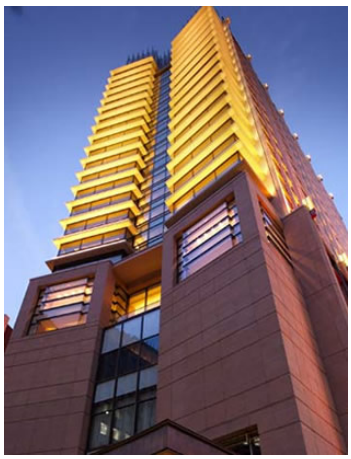


Complex Litigation: State Law Prohibition on Pre-Dispute Jury Waivers Extended to California Federal Courts

Many commercial contracts include pre-dispute waivers of the right to trial by jury. While the California Supreme Court has ruled that all such waivers (other than valid arbitration provisions) are void as a matter of public policy (*see Grafton Partners L.P. v. Sup. Crt.*, 36 Cal.4th 944, 950-56 (2005)), California federal courts have continued to enforce jury waivers, reasoning that federal law – which governs the right to trial by jury in federal courts – permits them.

However, in 2015, the Ninth Circuit, citing *Grafton*, explained that federal courts sitting in diversity should give deference to California's procedural rules when such rules are "intimately bound up" with substantive state law policies – so long as the underlying contract includes a California choice of law provision. *In re County of Orange*, 784 F.3d 520 (9th Cir. 2015).

JKLLP recently persuaded the U.S. District Court for the Eastern District of California to extend *In re County of Orange* and rule that jury waivers are unenforceable in California federal courts even when the underlying contract's choice of law is not California, but a state that *permits* jury waivers (in this case, New Jersey). In *JPMorgan Chase Bank, N.A. v. Sierra Pacific Mortgage Company, Inc.*, Case No. 2:13-cv-1397(JAM), the district court agreed with JKLLP that *Grafton's* prohibition on contractual jury waivers constituted an unwaivable "fundamental" public policy of California. Accordingly, jury waivers may not be enforced against a California citizen in any California court, regardless of which state's law is otherwise controlling.



Personal Injury: JKLLP Obtains Major Settlement Based on Injury Occurring at Peninsula Hotel in Tokyo, Japan

A friend of the firm was tragically injured after falling due to the *Lying Dragon Gate Statute*, a renowned work of art on display in the lobby of the Peninsula Hotel in Tokyo, Japan. After multiple high-profile personal injury firms declined the case due to the complex jurisdictional and choice-of-law issues, JKLLP agreed to step in – noting the Ninth Circuit had recently held that federal courts were empowered to freely ascertain and apply the laws of a foreign nation, as they would any other question of law. *See de Fontbrune v. Wofsy*, 838 F.3d 992 (9th Cir. 2016). JKLLP filed suit in California federal court, *Hekmat v. The Peninsula Tokyo et al*., Case No. 2:17-cv-2911 (C.D. Cal.), demanding damages pursuant to Chapter 5 of the *Japanese Civil Code*. The case settled for a confidential sum – more than three times larger than the initial demand made by the client's prior counsel.

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