

9-2015

## Valbuena v Ocwen Loan Servicing, LLC

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### Recommended Citation

38 Real Property Law Reporter 128 (2015).

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September 2015

*Valbuena v Ocwen Loan Servicing, LLC* (2015) 237 CA4th 1267

(Borrowers sued their mortgage loan servicer after their lender bought their residence at a nonjudicial foreclosure sale, alleging that the servicer violated CC §2923.6 (the dual tracking prohibition in the Homeowner Bill of Rights (HBOR) (Stats 2012, ch 86–87)) when it proceeded with giving notices and other prerequisites for the sale while their loan modification application was pending. The HBOR requires that the foreclosure process be completely suspended while the application is pending. The trial court sustained the servicer's demurrer, ruling that Borrowers' failure to allege tender of the loan balance defeated their claims. Borrowers appealed.

The court of appeal reversed, holding that a tender of the amount due under the loan is not required to state a cause of action for damages for violations of §2923.6. Such a requirement would eviscerate the statute's remedial provisions. In addition, the rationale for the tender rule did not apply here because Borrowers' action was based on HBOR statutory grounds, not on the traditional premise of a defect in giving notice.)

**THE EDITOR'S TAKE:** The borrowers lost this case at the trial level and won at the appellate level on the question of the necessity of a tender. It is regrettable that the court of appeal devoted only one paragraph to this issue, although there is some chance that the supreme court, when it renders a decision on some other cases currently before it, will have more to say about it. We all need to know a good deal more than we do about the role of a tender in a foreclosure challenge.

Questions I would like to see answered are:

What kinds of claims require a tender? This opinion distinguishes between challenges based on defective notice and those premised on the Homeowner's Bill of Rights. But what about other alleged violations?

Does a tender requirement operate differently when the challenge is to a pending foreclosure sale as opposed to one that has been already completed? In this case, the opinion reveals that the complaint was filed before the sale but is silent as to when the demurrer and the second amended complaint occurred, if those events matter.

If a tender is required, must it cover merely the unpaid installments, or the entire loan balance, or some other amount? How much must be tendered if the contention is that nothing is owed? *Roger Bernhardt*