

complaint

Mr G has complained that Southern Pacific Mortgage Limited (SPML) has failed to provide him with evidence to show there is a valid mortgage contract. Mr G says that because SPML has failed to disclose all material, it should void his mortgage.

background

In August 2006 Mr G granted a mortgage to SPML over his property as security for a loan. In 2014 Mr G complained that his mortgage had been sold to another company and he has since questioned its validity. Mr G has also raised concerns about whether or not Land Registry formalities have been complied with.

Our adjudicator considered what Mr G had said but didn't recommend his complaint should be upheld. She explained to him that the issue whether or not there is a valid mortgage is a matter for the courts. But because Mr G had had the benefit of the money advanced to him, it was fair and reasonable for him to repay it.

Mr G disagreed with the adjudicator's findings and has made a detailed response. In summary he has repeated his concerns that the mortgage is void.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have read everything Mr G has provided, but I'm not required to respond to each and every point he's made. No discourtesy is intended – it simply reflects the informal nature of the ombudsman service and my role within it.

I'm familiar with the arguments Mr G has put forward in support of his contention there is no valid mortgage. I'm aware that this is a popular topic on various internet "debt-avoidance" websites where consumers (who are often experiencing financial hardship) are encouraged to challenge the validity of their mortgages and loans.

Mr G has said that it is imperative that the Financial Ombudsman Service compels SPML to provide the documents he has been requesting concerning a Special Purpose Vehicle, Power of Attorney and evidence there is an actual loan to him. But I should explain here that the Financial Ombudsman Service is independent and impartial. When we consider a complaint, it is for us to decide what information we consider relevant in order to investigate the complaint. I note Mr G's requirement that we should ask SPML to provide the documents he has asked for.

But we do not take instructions either from consumers or the financial businesses they are complaining about. To do so would compromise our independence. Having reviewed the file, I'm satisfied that there is sufficient information to address Mr G's complaint about SPML's failure to provide him with documents he has requested. I do not require SPML to provide me with any further documents. I have a copy of the mortgage application and the mortgage offer, which satisfies me that Mr G asked SPML to lend him £109,000, and that it agreed to do this.

I am familiar with the arguments put forward by Mr G about the validity of his mortgage on the basis of a failure by SPML to comply with the necessary legal formalities. Mortgage

lenders typically send a mortgage offer letter that they invite their borrower to sign. Often the mortgage lender does not formally sign the offer letter. At the time of an advance there is usually a mortgage deed which is signed by the borrower but not the lender.

In an unreported case in Preston County Court decided in July 2013 a borrower raised the argument that the mortgage did not comply with the required legal formalities and was therefore void. This is one argument Mr G has raised here and so it is important to look at what the court said about this.

Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 (LP(MP)A) provides that a contract for the disposition of an interest in land must be made in writing, incorporating all the terms of the contract, and signed by each party to the contract. Section 27 of the Land Registration Act 2002 (LRA) provides that if a disposition is required to be completed by registration then it does not operate at law until the relevant registration requirements are met; and that the grant of a legal charge (or, a mortgage) is a disposition which is required to be completed by registration.

The borrower's argument was that her mortgage was null and void for want of statutory formality because it was signed by the borrower only and not the lender (as is the case with the vast majority of mortgage deeds) and as such it did not comply with the LP(MP)A. Therefore, according to her, the mortgage did not exist at law and so could not be completed by registration as required by the LRA, and thus it was not binding on the borrower.

But the judge held that the borrower's argument was "illusory" and "false". He was concerned that the promulgation of these dangerous arguments on the internet could mislead borrowers into wrongly thinking that their mortgage was not binding upon them and that in the event of default they would not be in danger of losing their homes.

The relevant statutory provision for a mortgage, section 53 of the Law of Property Act 1925, does not require every term to be included in a document signed by both parties; rather the document just needs to be signed by "the person creating or disposing of the interest" (i.e. the mortgagor/borrower). The judge also explained that section 27 LRA does not go so far as to say that a disposition required to be completed by registration (such as a mortgage) is created by registration and that it does not therefore exist or operate in equity before registration.

By signing the mortgage deed and by its registration at the Land Registry, applying what the judge said above, I'm satisfied Mr G created a valid mortgage in favour of SPML.

Mr G has asked who would take him to court if he stopped paying his mortgage. It is worth explaining to Mr G that the court has held in two cases decided in January 2014 (*Sinclair v Accord Mortgages Limited* and *Overson v Southern Pacific Mortgage Ltd t/a London Mortgage Co*) that it is irrelevant if the equitable interest in a loan has been transferred to a securitisation company. Where there is no transfer of the legal title to the mortgage the party named in the Charges Register at the Land Registry is still entitled to receive payment and enforce the loan if payment isn't made.

So as far as the law is concerned, I am not persuaded there is any merit to Mr G's argument that he does not have a valid mortgage.

Again I must reiterate that only a court is able to decide if SPML is entitled to pursue Mr G for the outstanding balance of the loan for which Mr G granted a mortgage over his property.

The wider issues Mr G has raised about the existence of the loan, securitisation and the banking industry generally fall outside the remit of the Financial Ombudsman Service. Those are matters that come within the regulatory framework of the Financial Conduct Authority, the Prudential Regulation Authority and ultimately the Bank of England.

As far as I am aware, no court or tribunal has found in favour of a borrower on the basis of the arguments put forward by Mr G as to why he considers his mortgage to be invalid or extinguished. On the other hand, there have been a number of cases where borrowers have lost their case after trying to raise these arguments and as a result have been ordered to pay the lender's substantial legal costs. So I would strongly suggest Mr G takes legal advice from a qualified solicitor rather than relying on advice obtained on the internet before attempting to raise in court the arguments he has put forward here.

I have no power to decide whether there is some legal technicality that would absolve Mr G of any responsibility for repaying the money he borrowed from SPML. My remit, pursuant to the powers granted to the Financial Ombudsman Service by the Financial Services and Markets Act 2000, is to decide what's fair and reasonable in all the circumstances. I am satisfied that it is fair and reasonable for Mr G to repay the money he borrowed from SPML in 2006 and that SPML is entitled to receive this money.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr G to accept or reject my decision before 12 March 2015.

Jan O'Leary
ombudsman