

55th Annual William W. Gibson, Jr.

**MORTGAGE LENDING AND
SERVICING INSTITUTE**

**RESIDENTIAL MORTGAGE LITIGATION
UPDATE**

Presented by:

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Daniel Durell

Attorney

Daniel Durell is a commercial trial lawyer with broad litigation experience, including putative class action defense, covering all stages of litigation from pre-trial matters through appeal and post-judgment collection. His experience includes representation of both plaintiffs and defendants in a variety of disputes related to consumer-protection statutes, breach of contract, breach of warranty, fraud in real estate transactions, mortgage lending and servicing practices, partition rights, business divorces and leasehold disputes.

Daniel has litigated and resolved disputes for lenders and mortgage servicing companies arising from claims alleging wrongful foreclosure and violations of the Real Estate Settlement Practices Act (RESPA), Truth In Lending Act (TILA), Fair Credit Reporting Act (FCRA), Fair Debt Collection Practices Act (FDCPA), Telephone Consumer Protection Act (TCPA), Deceptive Trade and Practices Act (DTPA) and Texas Debt Collection Act (TDCA).

Daniel also has substantial litigation experience in defending financial services clients in cases involving alleged constitutional violations of Article XVI, Sections 50(a)(6) and 50(k) of the Texas Constitution in relation to home-equity loans and reverse mortgages, challenges to the enforceability of security instruments based on an alleged expiration of the statute of limitations and title disputes.

With respect to business litigation, Daniel has aggressively assisted clients in ownership and management disputes between partners and members of LLCs, limited partnerships and other business entities that encompass cases involving breaches of fiduciary duty, non-compete agreements, and breach of company and partnership agreements.

As a former briefing attorney for the Texas Supreme Court, Daniel has defended judgments obtained through dispositive motions on behalf of clients in both the U.S. Courts of Appeals for the Fifth Circuit and Texas appellate courts.

Awards and Recognitions

Named, Best Lawyers: Ones to Watch, Commercial Litigation and Litigation
- Banking and Finance (2021-2022)
Named, Super Lawyers® Texas Rising Star, Business Litigation (2020-2021)

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Education

J.D., summa cum laude, Texas Tech
University School of Law, 2011
B.A., Political Science, summa cum laude,
Texas Tech University, 2008

Bar and Court Admissions

Texas, 2011
Fifth Circuit Court of Appeals
U.S. District Court for the Northern
District of Texas
U.S. District Court for the Southern
District of Texas
U.S. District Court for the Eastern District
of Texas
U.S. District Court for the Western
District of Texas

Case Summaries

A. SUBROGATION

1. *Federal Home Loan Mortgage Corporation v. Zepeda*, 601 S.W.3d 763 (Tex. 2020)

In 2007, Zepeda obtained a purchase-money loan. Years later, Zepeda refinanced her debt with a home equity loan, which paid the balance of Zepeda's preexisting purchase-money loan. Thereafter, Zepeda sent a letter to her lender providing notice that the home-equity loan allegedly did not comply with the Texas Constitution. Zepeda's home-equity loan was sold to Freddie Mac. Thereafter, Zepeda sent another letter providing notice of an alleged origination defect and opportunity to cure but Freddie Mac did not respond. Zepeda then sued to quiet title.

Zepeda argued that Freddie Mac did not possess a valid lien on her property because it failed to cure the constitutional defect. Freddie Mac argued that it was subrogated to the lender's rights under the purchase-money lien under equitable subrogation because its predecessor paid off the balance of that loan. On cross summary judgment motions, the United States District Court for the Southern District of Texas concluded that the home-equity loan was void and that Freddie Mac was not entitled to equitable subrogation because it was negligent in failing to cure the constitutional defect in the loan documents.

On appeal, the Fifth Circuit certified the following question to the Texas Supreme Court: Is a lender entitled to subrogation, where it failed to correct a curable constitutional defect in the loan documents under § 50 of the Texas Constitution. The Texas Supreme Court answered: Yes.

The Texas Supreme Court noted that common law subrogation has coexisted with this constitutional scheme for more than a century. The Texas Supreme Court held that, in the mortgage context, subrogation allows a lender who discharges a valid lien on the property of another to step into the prior lienholder's shoes and assume that lienholder's security interest in the property, even though the lender cannot foreclose on its own lien. The Court reasoned that "a lender's right to subrogation is 'fixed' when the prior, valid lien is discharged" and that it has previously "honored equitable subrogation claims against homestead property when a refinance, even though unconstitutional, was used to pay off valid liens."

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