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## Court of Appeals asks Supreme Court to Re-examine Issue of Equitable Subrogation

Author:

**Kurt E. Riedel**

Direct: (586) 466-7601

[kriedel@plunkettcooney.com](mailto:kriedel@plunkettcooney.com)

At the request of the Michigan Court of Appeals, the state's Supreme Court may soon take a closer look at equitable subrogation related to cases involving mortgage refinancing.

In the case of *Ameriquest Mortgage Company v Arkan D. Alton*, Michigan Court of Appeals No. 264213 (July 25, 2006), Ameriquest refinanced and paid off a prior mortgage. Three days before the closing of the refinanced mortgage to Ameriquest, an intervening mortgage to Alton was recorded. The mortgagor presented an affidavit that there were no other liens.

The lower court ruled in favor of Ameriquest. The appellate court reversed, stating it was following the *Washington Mutual* case recently decided by the Michigan Supreme Court. However, the appellate court also indicated in its opinion, that under the Restatement of Property and prevailing view across the country, equity should not allow this intervening lien holder to receive a significant windfall at the expense of an unsuspecting lender.

The appellate court invited the Supreme Court to re-examine this issue, suggesting that "existing Michigan law concerning equitable subrogation in the context of mortgage refinancing is confusing at best, and is contrary to logic, the Restatement of Property, and the prevailing view in many jurisdictions. These circumstances merit further consideration."

Stay tuned . . .

For a complete copy of the Michigan Court of Appeals's ruling in *Ameriquest Mortgage Company v Arkan D. Alton*, [click here](#).

For a complete copy of the Michigan Supreme Court's ruling in *Washington Mutual*, [click here](#).

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