

## Litigation

June 10, 2019

# **Home Depot Inc. v. Jackson: The Supreme Court Deals Class Action Plaintiffs a Major Victory**

By **Rachel Maimin** and **Zachary D. Rosenbaum**

## **What You Need To Know:**

- Litigants can strand defendants in state court by bringing class action causes of action as counterclaims. This is a major victory for consumers and a potentially major problem for class action defendants, who tend to prefer federal court.
- Justice Thomas sided with the traditionally more liberal wing of the Court, continuing to demonstrate that, where state's rights and/or statutory interpretation mandate a result (from his point of view), he is willing to part ways with the more conservative justices.

On May 28, 2019, the Supreme Court issued its opinion in *Home Depot Inc. v. Jackson*, 17-1741 (May 28, 2019), holding that third-party counterclaim defendants—including those brought into class action lawsuits—cannot remove their cases to federal court. This deals a major victory to consumers and a defeat to class action defendants who prefer to litigate in federal court.

### **The Decision**

The opinion in *Home Depot*, authored by Justice Thomas and joined by Justices Ginsburg, Breyer, Sotomayor, and Kagan, presented the question whether third-party counterclaim defendants—defendants brought into an existing lawsuit by counterclaim, as opposed to defendants named in an original lawsuit—may remove the counterclaims to federal court. *Home Depot*, 17-1741, at 1. In *Home Depot*, a bank filed a debt-collection action in state court against Jackson, who filed third-party counterclaims against Home Depot and California Water Systems, Inc., alleging, among other things,

that they had engaged in deceptive sales practices. *Id.* at 3-4. Home Depot tried to remove the case to federal court and Jackson opposed. The District Court granted Jackson's motion to prevent removal, and the Fourth Circuit affirmed. The Supreme Court then affirmed, holding that the plain meaning of the term "defendant" in the general removal statute, 28 U.S.C. § 1441(a), and the Class Action Fairness Act of 2005 (CAFA), precluded counterclaim defendants from removing their counterclaims. *Id.* at 5, 9. In a fiery dissent, Justice Alito—joined by the remainder of the Court—disagreed with the majority's statutory interpretation of the term "defendant," but also pointed out the fundamental unfairness of the decision; Justice Alito stated that, under the majority's holding, "a defendant's routine attempt to collect a debt from a single consumer could be leveraged into an unremovable attack on the defendant's 'credit and lending policies' brought on behalf of a whole class of plaintiffs—all in the very state courts that CAFA was designed to help class-action defendants avoid." *Id.*, dissent at 7.

# Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

## **RACHEL MAIMIN**

Partner

**T: 212.419.5876**

[rmaimin@lowenstein.com](mailto:rmaimin@lowenstein.com)

## **ZACHARY D. ROSENBAUM**

Partner & Chair, Capital Markets Litigation

**T: 212.204.8690**

[zrosenbaum@lowenstein.com](mailto:zrosenbaum@lowenstein.com)

---

NEW YORK

PALO ALTO

NEW JERSEY

UTAH

WASHINGTON, D.C.

This Alert has been prepared by Lowenstein Sandler LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship. Lowenstein Sandler assumes no responsibility to update the Alert based upon events subsequent to the date of its publication, such as new legislation, regulations and judicial decisions. You should consult with counsel to determine applicable legal requirements in a specific fact situation. Attorney Advertising.