

# Order

Michigan Supreme Court  
Lansing, Michigan

September 12, 2018

Stephen J. Markman,  
Chief Justice

157212

Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano  
Richard H. Bernstein  
Kurtis T. Wilder  
Elizabeth T. Clement,  
Justices

FIFTH THIRD MORTGAGE COMPANY,  
Plaintiff-Appellee,

v

SC: 157212  
COA: 333926  
Charlevoix CC: 2015-029825-CH

TIMOTHY M. JODWAY and ALAINA M.  
ZANKE-JODWAY,  
Defendants-Appellants.

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On order of the Court, the application for leave to appeal the November 14, 2017 judgment of the Court of Appeals is considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REMAND this case to the Court of Appeals for consideration of the issue raised by the defendants but not addressed by that court during its initial review of this case regarding Timothy M. Jodway's recoupment defense. In its analysis, the Court of Appeals held that the defendants "are not barred under the doctrine of res judicata from asserting a defense of recoupment premised on plaintiff's alleged violation of the Equal Credit Opportunity Act, 15 USC 1691 *et seq.* (ECOA)." Having reached this determination, the Court of Appeals vacated "the portion of the trial court's award to the extent that it dismissed defendant Alaina M. Zanke-Jodway's recoupment defense as a spouse-guarantor, and remand for further proceedings on that issue." The Court of Appeals did not, however, specifically consider the recoupment defense of Timothy M. Jodway. On remand, the Court of Appeals shall: (1) clarify whether the trial court incorrectly determined that the doctrine of res judicata bars Timothy M. Jodway's recoupment defense, and (2) if res judicata does not apply, determine whether to vacate that portion of the trial court's award dismissing Timothy M. Jodway's recoupment defense and to remand for further proceedings.

We do not retain jurisdiction.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 12, 2018

Clerk