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After *Taniguchi*: The Future Of Upset Clauses In Workout Transactions

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The recent case of *Taniguchi v. Restoration Homes, LLC*, on rehearing, held unenforceable a default clause in a loan modification agreement that purported to allow the lender to call due a deferred principal and interest balance if the borrower ever defaulted on the new, modified reduced payment schedule. The court found that this constituted an invalid waiver of the borrower's right of reinstatement under § 2924c of the Civil Code, and that the modification transaction was a "renewal" within the meaning of Civ. Code, § 2953, which directly prohibits a prospective waiver of certain statutory rights, including § 2924c, "at the time of or in connection with the making of or renewing of any loan secured by a deed of trust. . ."

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