6TH CIR LIMITS SCOPE OF SERVICER LIABILITY UNDER TILA & EXPANDS SCOPE OF PLEADING DAMAGES UNDER RESPA

On November 26, 2013, in Marais v. Chase Home Finance LLC, the U.S. Court of Appeals for the Sixth Circuit issued two key findings: (1**) a servicer who is not also the original creditor or an assignee is exempt from liability under Sections 1640–1641 of the Truth in Lending Act ("TILA")**; and (2) a consumer/borrower can generally plead damages under subsections 2605(e)-(f) of the Real Estate Settlement Procedures Act ("RESPA") in order to proceed with her claim.

In Marais, the borrower alleged that Chase Home Finance LLC ("Chase") failed to adequately respond to her qualified written request ("QWR") for information regarding her mortgage loan and disputing charges that had been applied to her loan balance. The borrower alleged that Chase violated TILA by failing to provide her with the name of the owner of her loan. The borrower further claimed damages under RESPA by asserting that Chase failed to properly apply her payments, which resulted in the accrual of additional interest on a higher principal balance. She also claimed that she incurred actual costs in preparing the QWR.

In addressing the TILA claim, the Sixth Circuit concluded that a servicer who is not also the original creditor or an assignee cannot be held liable under subsection 1641(f)(2). In its holding, the Court dismissed the consumer's "argument that Congress intended the 2009 amendments to impose liability on mere servicers [because it] finds virtually no support in case law." This holding is significant because, while the Sixth Circuit has twice held that a "mere servicer" may not be held liable under TILA, Marais is the first case in which it has applied the same reasoning to subsection 1641(f)(2).

In addressing the RESPA claim**, the Sixth Circuit held that the borrower adequately pled RESPA damages by alleging that she incurred: (1) increased interest payments due to Chase's failure to adequately respond to the allegations in her QWR that payments had been misapplied; and (2) actual costs of preparing the QWR, which "were for naught due to Chase's deficient response, i.e., her QWR expenses became actual damages when Chase ignored its statutory duties to adequately respond."** The Court found that these generally alleged damages were sufficient to preclude judgment at the initial pleading stage.

The Court premised its ruling on the broad, remedial purposes of RESPA and its own unpublished case law, which "counsels against dismissal of RESPA claims on the basis of inartfully-pleaded actual damages."

The Sixth Circuit's TILA holding limits the potential liability exposure of servicers. However, the RESPA holding may result in more cases surviving the initial pleading stages. Notably, the Sixth Circuit recommended that Marais be published as binding case law for its lower courts in Ohio, Michigan, Kentucky, and Tennessee.