

8th Circuit Affirms Dismissal Of TILA Claims Against Lenders

ST. LOUIS — The Eighth Circuit U.S. Court of Appeals on Jan. 4 affirmed a district court's dismissal of claims for recession and damages under the Truth in Lending Act (TILA) against a bank and mortgage lender, finding that it would not address arguments raised for the first time on appeal (John D. Dunn, et al. v. Bank of America, N.A., et al., No. 15-3985, 8th Cir.; 2017 U.S. App. LEXIS 76).

2nd Circuit Finds Rescission Period Under TILA Had Expired, Affirms Dismissal

NEW YORK — The Second Circuit U.S. Court of Appeals on Dec. 16 affirmed a decision granting dismissal for a bank of a borrower's claims for rescission under the Truth in Lending Act (TILA), finding that the rescission period had expired (Allyson Smith v. Wells Fargo Bank, N.A., No. 16-611, 2nd Cir.; 2016 U.S. App. LEXIS 22342).

9th Circuit Finds TILA Rescission Claim Is Barred By Statute Of Limitations

SAN FRANCISCO — After finding that a former home owner failed to file her rescission claim under the Truth in Lending Act (TILA) within the required three-year statute of limitations, the Ninth Circuit U.S. Court of Appeals on Dec. 22 affirmed a district court's decision to dismiss a borrower's claims as time-barred (Jane M. Sotanski v. HSBC Bank USA, NA, as Trustee for the Holders of the Deutsche Alt-A Securities, Inc. Mortgage Loan Trust, Mortgage Pass-Through Certificates Series 2007-OA4, No. No. 15-16798, 9th Cir.; 2016 U.S. App. LEXIS 23132).

Judge Refuses To Dismiss TILA Claims, Finds No Date Of Notice

PROVIDENCE, R.I. — After determining that a lender failed to show when it sent a notice of transfer to borrowers, a Rhode Island federal judge on Jan. 4 refused to grant summary judgment for the lender on the property owners' claims for violation of the Truth in Lending Act (TILA) (Stephen Yuszczak, et al. v. DLJ Mortgage Capital Inc., et al., No. 16-101, D. R.I.; 2017 U.S. Dist. LEXIS 486).

Judge Finds TILA And Quiet Title Claims Are Precluded By Foreclosure Case

CLEVELAND — An Ohio federal judge on Jan. 5 granted a mortgage company's motion to dismiss claims for violation of the Truth in Lending Act (TILA) and other claims related to a foreclosure, finding that the claims were barred by a ruling in a state court

case (Kariem Hasan v. Citimortgage Inc., No. 1:16cv2311, N.D. Ohio; 2017 U.S. Dist. LEXIS 1471).

RESPA

Judge Refuses To Dismiss RESPA Claim, Adopts Magistrate's Report

DETROIT — A Michigan federal judge on Dec. 20 adopted a magistrate judge's recommendation that the majority of claims asserted by former property owners against two loan companies in relation to the foreclosure of their property be dismissed, but found that their cause of action for violation of the Real Estate Settlement Procedures Act (RESPA) should be allowed to proceed (Rodney Helm, et al. v. Freedom Mortgage Corporation, et al., No. 15-cv-12394, E.D. Mich.; 2016 U.S. Dist. LEXIS 175450).

FDCPA

4th Circuit Finds No Evidence To Support FDCPA Claims Against Ocwen

RICHMOND, Va. — The Fourth Circuit U.S. Court of Appeals on Dec. 20 affirmed the grant of summary judgment to a loan-servicing company, finding that a borrower failed to submit sufficient evidence to create a genuine issue of material fact to support his claims related to the alleged improper reporting of his debt (Thomas W. Lovegrove v. Ocwen Home Loans Servicing LLC, No. 15-2158, 4th Cir.; 2016 U.S. App. LEXIS 22640).

10th Circuit Finds FDCPA Claim Was Barred By Limitations Period

DENVER — The 10th Circuit U.S. Court of Appeals on Dec. 28 affirmed a district court's dismissal of a claim for violation of the Fair Debt Collections Practices Act (FDCPA) against several mortgage entities as time-barred by a one-year statute of limitations and that an exception to a federal evidence rule did not apply (Elbert Kirby Jr., et al. v. David M. O'Dens, et al., Nos. 15-5107 and 16-5029, 10th Cir.; 2016 U.S. App. LEXIS 23339).

UCL

9th Circuit Affirms Dismissal Of UCL And Antitrust Claims Against Bank

PASADENA, Calif. — The Ninth Circuit U.S. Court of Appeals on Dec. 14 affirmed a court's dismissal of claims for violation of California's unfair competition law (UCL) and for violation of the Sherman Act against several banks, finding that some of a borrower's claims could not be based on vicarious liability and that she lacked standing (Helen Galope v. Deutsche Bank National Trust Company, as Trustee under Pooling and

Servicing Agreement dated as of May 1, 2007 Securitized Asset Backed Receivables LLC Trust 2007-BR4, No. 15-55246, 9th Cir.; 2016 U.S. App. LEXIS 22210).

California Court Finds Borrower Lacked Standing To Challenge Foreclosure

LOS ANGELES — After finding that a borrower failed to show that he had standing to challenge the foreclosure of a property, a California court on Dec. 12 affirmed a trial court's decision to grant a demurrer in favor of Citibank N.A. (*Marc I. Rosenthal v. Citibank N.A., et al.*, No. B263465, Calif. App., 2nd Dist., Div. 7; 2016 Cal. App. Unpub. LEXIS 8947).

Federal Judge Dismisses UCL Claim Against MERS For Failure To Amend

SAN FRANCISCO — After finding that a borrower failed to amend her claims for violation of California's unfair competition law (UCL) and declaratory relief, a California federal judge on Jan. 3 granted a motion to dismiss a second amended complaint against lenders in relation to a mortgage (*Modesta Jacinto v. Ditech Financial LLC, et al.*, No. 16-cv-02815, N.D. Calif.; 2017 U.S. Dist. LEXIS 1012).

REVERSE MORTGAGE

Federal Judge Partially Grants Discovery Related To Reverse Mortgage

NEW HAVEN, Conn. — A Connecticut federal judge on Dec. 30 partially granted a property owner's request for production of documents in relation to his reverse mortgage but denied the motion as to his request regarding certain policies of the lender (*Vincent Bartold v. Wells Fargo Bank, N.A.*, No. 14-cv-00865, D. Conn.; 2016 U.S. Dist. LEXIS 180216).

FORECLOSURE

3rd Circuit Finds Capital One Did Not Misrepresent Loan

PHILADELPHIA — The Third Circuit U.S. Court of Appeals on Jan. 4 affirmed a district court's ruling in favor of a lender, finding that a property owner failed to allege any facts to support a finding that it breached any mortgage agreement with him or intentionally inflicted emotional distress (*Ruben Martinez v. Capital One, N.A.*, No. 16-2753, 3rd Cir.; 2017 U.S. App. LEXIS 89).

Federal Judge Finds Foreclosure Claims Are Barred By Previous Suit

HOUSTON — A Texas federal judge on Dec. 30 found that a foreclosure-related case was barred by the doctrine of res judicata because the pleadings in the previous case were identical and already dismissed (*Lester Anthony McPherson v. Bank of America, N.A., et al.*, No. 16-3498, S.D. Texas; 2016 U.S. Dist. LEXIS 180115).

Magistrate Recommends Dismissal Of Foreclosure-Related Claims Against Loan Servicer

SACRAMENTO, Calif. — After finding no evidence to support a borrower's claims for wrongful foreclosure and violation of California's unfair competition law (UCL), a California federal magistrate judge on Dec. 22 recommended that his claims against a loan servicer be dismissed without leave to amend (*Timothy Mulgrew Jr. v. Green Tree Servicing LLC, et al.*, No. 2:14cv2998, E.D. Calif.; 2016 U.S. Dist. LEXIS 177715).