Dodd-Frank news - RESPA - July, 2014

***Roth v. CitiMortgage Inc.,* 13-3839-CV, 2014 WL 2853549 (2d Cir. June 24, 2014).**

In *Roth v. CitiMortgage Inc.*, the Second Circuit held that although the mortgagor's attorney had sent three letters to defendant CitiMortgage requesting various mortgage related information sent by her lawyer, the mortgagor's RESPA claim was properly dismissed on the basis that her lawyer's letters were not sent to CitiMortgage's designated QWR address. Accordingly, the requests were not QWRs under RESPA and did not trigger CitiMortgage's QWR duties under RESPA.

In *Roth*, Defendant CitiMortgage Inc. serviced a second residential mortgage for Plaintiff Patricia Roth. Roth alleged, inter alia, that CitiMortgage's responses to request for information about her mortgage violated RESPA. Since 2008, Roth had been in default and made no payments on the mortgage. During 2011, her attorney made the requests for information to CitiMortgage that were the subject of this suit. The district court dismissed Roth's complaint for failure to state a claim and, on appeal, the Second Circuit affirmed.

The Second Circuit recognized that in order to aid mortgage servicers with the task of providing consumers with timely information, RESPA's implementing regulations allow (but do not require) servicers to establish a designated address for QWRs. According to the Court, "[t]he final rulemaking notice for the operative regulation, Regulation X, explained that if a servicer establishes a designated QWR address, then the borrower must deliver its request to that office in order for the inquiry to be a [QWR]." The Second Circuit expressly agreed with the Tenth Circuit in that "Regulation X's grant of authority to servicers to designate an exclusive address is a permissible construction of RESPA." Furthermore, the Court explained that even if an employee of CitiMortgage responded to the letters sent by Roth's attorney, the letters were not QWRs.

Additionally, Roth's attorney argued that CitiMortgage's QWR address failed to comply with the obligations of Regulation X in three ways. First, Roth argued that the change in the QWR address on the back of her mortgage statements and the fact that other departments apparently handled her lawyer's letters suggested that CitiMortgage may not have had just one exclusive QWR address as required by Regulation X. The Court held that no authority prevents a servicer from changing its QWR address, and how Roth's letters were handled was irrelevant if the letters were not QWRs.

Second, Roth argued that the notice on the back of her mortgage statements was not "separately delivered." The Court quickly dismissed this argument, holding that 24 C.F.R. § 3500.21(e) does not prohibit a notice of QWR address from being delivered along with other mortgage information.

Finally, Roth argued that notice of CitiMortgage's QWR address was insufficient because it was "buried in the fine print." The Second Circuit disagreed, however, pointing to the fact that

CitiMortgage's notice "clearly specifies in capital letters, and in the same font size as the rest of the information on her mortgage statement, that "A QUALIFIED WRITTEN REQUEST REGARDING THE SERVICING OF YOUR LOAN MUST BE SENT TO THIS ADDRESS." In sum, the Second Circuit concluded that Roth failed to allege that CitiMortgage did not properly designate a QWR address or that any of her lawyer's letters were sent to the designated address. Because Roth's letters were not QWRs, CitiMortgage's RESPA duties were not triggered.

***Bryan v. Fed. Nat. Mortg. Ass'n,* 2014 WL 2988097 (M.D. Fla. July 2, 2014)**

In *Bryan v. Federal National Mortgage Association*, plaintiffs alleged violations of RESPA and the applicable regulations set forth in 24 C.F.R. § 3500 and 12 C.F.R. § 1024.30, et seq. (Regulation X) against

Seterus and Fannie Mae, respectively. Plaintiffs alleged that Fannie Mae was the "master servicer" of the note and mortgage, and Seterus was the "subservicer" of the note and mortgage. Specifically, plaintiffs alleged that defendants Seterus, and Fannie Mae by the failure of Seterus, failed to timely respond to plaintiffs' requests to correct errors relating to allocation of payments, final balances, and avoidance of foreclosure, and failed to respond within ten business days to plaintiffs' request to provide the identity of the owner or assignee of the loan. Defendants filed a motion to dismiss plaintiff's Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6). The District Court denied defendants' motion, however.

Defendants contended that the alleged statutory violations did not occur because the applicable CFPB mortgage regulations, §§ 2605(k)(1)(C) and (D), did not become effective until January 10, 2014, which was after the conduct alleged in the amended complaint occurred. Plaintiffs argued, however, that the effective date of the CFPB's mortgage regulations was January 21, 2013 based on the language of the Dodd-Frank Act itself and, therefore, were effective at the time of the alleged statutory violations. Although the Court cited *Steele v. Quantum Servicing Corp.*, 2013 WL 3196544 (N.D. Tex. June 25, 2013) (holding the CFPB's final rule's effective date for the Dodd-Frank amendments was January 10, 2014), the court held "that at this stage of the proceedings on a motion to dismiss, . . . the precise dates of the violations are best left for factual development through the discovery process." Accordingly, the Court denied defendants' motion to dismiss.