

LENDER NOT LIABLE FOR SERVICER'S ACTIONS

The United States Court of Appeals for the Fifth Circuit recently held that a borrower's claim against a lender under the Real Estate Settlement Procedures Act ("RESPA") was properly dismissed because the lender could not be held vicariously liable for the servicer's alleged violation. See Christiana Tr. v. Riddle, 2018 WL 6715882 (5th Cir. Dec. 21, 2018). In the case, the borrower defaulted on her mortgage and the lender brought a foreclosure action. The borrower counterclaimed and alleged a violation of RESPA, among other things. Specifically, she alleged that she had sent a loss mitigation application to the servicer at least 37 days before the scheduled foreclosure sale and the servicer had failed to adequately respond. See 12 CFR 1024.41(c)(1) ("if a servicer receives a complete loss mitigation application more than 37 days before a foreclosure sale, then, within 30 days of receiving the complete loss mitigation application, a servicer shall: (i) Evaluate the borrower for all loss mitigation options available to the borrower; and (ii) Provide the borrower with a notice in writing stating the servicer's determination of which loss mitigation options, if any, it will offer to the borrower on behalf of the owner or assignee of the mortgage."). The lender moved to dismiss, arguing that such an allegation could only be made against the servicer, not the lender. The borrower opposed the motion and argued that the lender was vicariously liable for the servicer's RESPA violation. The District Court granted the motion and dismissed the complaint as against the lender.

On appeal, the Court affirmed. First, the Court found that the borrower did not plead an agency relationship between the servicer and the lender, so the complaint on its face does not state a RESPA claim against the lender. Second, and more importantly, the Court found that even if the borrower had pleaded an agency relationship, the lender could not be liable because the regulation at issue only affects servicers. **The Court noted that other sections of RESPA forbid any "person" from engaging in certain prohibited conduct, but "Congress chose a narrower set of potential defendants for the violations that the borrower alleges here."** Accordingly, "[b]y its plain terms, the regulation at issue here imposes duties only on servicers." The Fifth Circuit is the first circuit court to address this question.