MISREPRESENTATION IN LOAN MODIFICATION AGREEMENT DID NOT VIOLATE FDCPA

The United States District Court for the Eastern District of California recently held that a borrower's claim that a lender made a misrepresentation in a loan modification agreement did not violate the Fair Debt Collection Practices Act ("FDCPA"). See Thomas v. Select Portfolio Servicing, Inc., 2018 WL 2356758 (E.D. Cal. May 24, 2018). In the case, plaintiff purchased a home in 2001 and obtained a loan to purchase the property. She refinanced in 2007 and, in 2010, entered into a modification agreement that "provided a new principal balance of $380,329.65, deferred a portion of the principal balance as non-interest bearing, varied the interest rate and payments, waived unpaid late charges, and suspended foreclosure activities." The modification agreement also stated: "If the Loan Documents currently provide for a balloon, the Balloon Amount resulting from this modification may be different. The balloon payment of $206,381.36 will be due on the maturity date unless due earlier in accordance with Section 2.D." Based on this language, plaintiff assumed there would be no balloon payment because her original loan did not provide for one. Plaintiff claimed she did not discover that this provision provided for a balloon payment until 2017 when an attorney informed her of it. Plaintiff then brought this action, alleging that defendant violated the FDCPA, among other statutes, by making a false representation in connection with the collection of a debt. Defendant moved to dismiss the action.

The Court granted defendant's motion and dismissed the action. First, it held that the FDCPA did not apply to the loan modification agreement because "**THE LOAN MODIFICATION AGREEMENT IN AND OF ITSELF IS NOT A DEBT COLLECTION AS COVERED BY THE FDCPA.**" Second, the Court held that plaintiff's "**misreading of the agreement" did not make that provision a "false representation" under the FDCPA**. Third, the Court held that the claim was barred by the FDCPA's one-year statute of limitations because plaintiff did not file this action for eight years. Although plaintiff made the conclusory argument that she was "unable to discover the misrepresentation" before 2017, the Court found no justification for delaying the accrual of the claim. Thus, the Court dismissed the action.