SERVICER THAT'S NOT CREDITOR NOT LIABLE FOR FAILING TO IDENTIFY OWNER/MASTER SERVICER

The U.S. Court of Appeals for the Sixth Circuit recently confirmed[1] that the 2009 amendments to the Truth in Lending Act (TILA) via the Helping Families Save Their Homes Act did not create a private cause of action against a loan servicer that was not also a creditor; thus, the servicer could not be liable for a violation of 15 U.S.C. § 1641(f)(2).

The declared purpose of TILA is "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices." 15 U.S.C. § 1601(a)). Congress amended TILA's civil liability provision and liability of assignees provision as part of the Helping Families Save Their Homes Act of 2009, Pub. L. No. 111-22, § 404(g), 123 Stat. 1632, 1658. The Helping Families Save Their Homes Act of 2009 amended TILA in two ways: First, it added subsection (g) to 15 U.S.C. § 1641, requiring that new loan owners notify the borrower of certain information about the assignment. Second, it added the phrase "subsection (f) or (g) of section 1641" to the civil liability provision, 15 U.S.C. § 1640. Subsection (f) exempts servicers from liability unless the servicer also is or was the creditor or assignee of the obligation. 15 U.S.C. § 1641(f).

The case revolved around a letter from a borrower to her loan servicer, which requested information relating to the borrower's mortgage loan, including, but not limited to: the amount owed on the loan, the identity of the "current holder" of the loan, and the date on which the current holder obtained the loan. The servicer responded to the letter by providing copies of the promissory note, the security instrument, loan instruction history, escrow disclosure statements, appraisal, and a payoff quote. The servicer advised that any information that was requested but not included was either unavailable or considered proprietary and would not be provided. And, although requested by the borrower, the servicer did not provide the identity of the owner of the loan.

In pursuing a TILA claim, the borrower argued that by adding to the civil-liability provisions of § 1640(a) a reference to the failure to meet a requirement under subsection (f) or (g) of § 1641, Congress created a private cause of action for violation of those sections. Further, because only

servicers can violate § 1641(f), the borrower reasoned that Congress must have intended to create a cause of action against servicers for failure to comply with § 1641(f)(2), notwithstanding that the introductory language of § 1640 refers only to creditors.

Referencing two prior occasions in which it had held that a TILA action may not be maintained against a mere servicer – *Mourad v. Homeward Residential, Inc.*, 517 Fed. App'x. 360, 364 (6th Cir. 2013) (foreclosure of a loan) and *Coyer v. HSBC Mortg. Servs., Inc.*, 701 F.3d 1104, 1109 (6th Cir. 2012) (fraud and misrepresentation) – the Sixth Circuit held that the TILA claim was properly dismissed because TILA expressly exempts servicers from liability unless the servicer was also a creditor or a creditor's assignee. The Sixth Circuit concluded, then, that a servicer cannot be liable for violating 15 U.S.C. § 1641(f)(2) by failing to disclose information requested by a borrower.

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