

## 8TH CIRCUIT COURT OF APPEALS DENIES BORROWERS' ATTEMPT TO RESCIND UNDER TILA

In a case brought by plaintiffs under the Truth in Lending Act (“TILA”) to rescind their mortgage loan, the United States Court of Appeals for the Eighth Circuit recently affirmed the district court’s grant of summary judgment in favor of the defendant lender and servicer (collectively as “defendants”), finding that plaintiffs’ conclusory affidavits could not rebut the presumption that they received the required notices under the TILA and that the disclosure statements received by plaintiffs were within TILA’s allowable margin of error. See Keiran v. Home Capital, Inc., 858 F.3d 1127 (8th Cir. 2017). In the case, **plaintiffs executed a promissory note in exchange for a mortgage on real property** purchased by plaintiffs in December 2006. In October 2009, plaintiffs sent rescission notices to defendant, alleging that they did not receive sufficient copies of the disclosures required by the TILA at the December 2006 closing. See 15 U.S.C. 1635. In January 2010, defendant informed plaintiffs that no basis for rescission existed. Plaintiffs then filed the instant action, seeking rescission of the mortgage loan. After the district court granted defendant’s motion for summary judgment, the case went up to the Supreme Court regarding the question of whether a party needs to file a lawsuit or simply send a rescission notice within the statutory rescission period. After the Supreme Court’s decision, the district court’s grant of summary judgment was vacated and the case was remanded. Both parties again moved for summary judgment. The district court again granted summary judgment in favor of defendant, holding that **plaintiffs did not rebut the presumption that they received all of the disclosures required by law, and rejecting the argument that the disclosure statements were materially inaccurate.** Because the court found no violations of TILA occurred and the right of rescission expired, **THE COURT HELD THAT DEFENDANT WAS NOT REQUIRED TO RESPOND TO PLAINTIFFS’ NOTICE OF RESCISSION.** Plaintiffs appealed.

On appeal, the Eighth Circuit rejected plaintiffs’ argument that they are entitled to rescission because they did not each receive a copy of a TILA disclosure statement. The Eighth Circuit affirmed that **a rebuttable presumption of delivery is created if a consumer acknowledges in writing that he or she received a required disclosure.** In this case, **it is undisputed that both plaintiffs signed an acknowledgement stating they each received a complete copy of the disclosure.** Plaintiffs’ conclusory

assertions that they did not receive the disclosures, without more evidence, were insufficient to overcome the presumption. Therefore, the three-day rescission window of 1635(a) barred their request for rescission.

The Eighth Circuit also rejected plaintiffs' argument that the finance charges in the disclosure statements were materially inaccurate. First, plaintiffs did not raise any specific objections to the accuracy of the disclosure statements during the first summary judgment proceedings; further, in the first round of proceedings the district court held that the statements were accurate. As such, the Eighth Circuit found this to be the law of the case (and in any event, plaintiffs' allegations were deemed waived). Second, even if plaintiffs had not waived the argument, **the Court found that the cumulative amount of alleged violations was less than 0.5% of the total credit extended, which would be within the allowable margin for error.** Finally, in light of the fact that plaintiffs had no more than a three-day window to rescind and that window closed in early 2007, the Eighth Circuit found plaintiffs' claim that the security interest is void because defendants' failed to adequately and timely respond to their notice of rescission in October 2009 to be **without merit.**