

9th Circuit Affirms Dismissal Of TILA And RESPA Claims Against Lenders

PASADENA, Calif. — The Ninth Circuit U.S. Court of Appeals on Nov. 23 dismissed an appeal of a borrower's claims for violation of the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA), finding that a letter he sent was not considered a qualified written request and that his TILA claim was barred by a statute of limitations (*Joseph A. Guerra v. Just Mortgage, Inc., et al.*, No. 13-16725, 9th Cir.; 2016 U.S. App. LEXIS 21108).

RESPA

Judge Allows Part Of RESPA Claim Against Loan Servicer To Proceed

SACRAMENTO, Calif. — A California federal magistrate judge on Nov. 29 partially granted a loan servicer's motion to dismiss claims for fraudulent misrepresentation but allowed part of a borrower's claim for violation of the Real Estate Settlement Procedures Act (RESPA) to proceed (*Frank Malifrando v. Real Time Resolutions Inc., et al.*, No. 2:16-cv-0223, E.D. Calif.; 2016 U.S. Dist. LEXIS 164497).

Judge Finds TILA And RESPA Claims Are Barred By Rooker-Feldman

NEWARK, N.J. — A New Jersey federal judge on Nov. 16 found that a borrower's claims for violation of the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) were barred by the doctrine established in *Rooker v. Fidelity Trust Co.* (263 U.S. 413 [1923]) and *District of Columbia Court of Appeals v. Feldman* (460 U.S. 462 [1983]), granting a motion to dismiss the case (*Maureen Dunbar v. Nationstar Mortgage LLC, et al.*, No. 2:16-cv-4259, D. N.J.; 2016 U.S. Dist. LEXIS 158350).

Judge Dismisses RESPA Claim, Finds Florida Is Improper Venue For Lawsuit

WEST PALM BEACH, Fla. — A Florida federal judge on Nov. 14 dismissed a property owner's claims for violation of the Real Estate Settlement Procedures Act, 12 U.S. Code Section 2601 (RESPA), against a bank, finding that Florida was an inappropriate venue for the case (*Albert Duenas v. Wells Fargo Bank, N.A.*, No. 16-80233, S.D. Fla.; 2016 U.S. Dist. LEXIS 157963).

BANKRUPTCY

10th Circuit Affirms Bankruptcy Court's Dismissal Of Fraudulent Transfer Claims

DENVER — The 10th Circuit U.S. Court of Appeals on Dec. 6 affirmed a bankruptcy court's decision to enter summary judgment against a debtor in relation to the sale of a property, finding that its claims for fraudulent transfer of the loan failed (In re: Expert

South Tulsa LLC, Steven R. Rebein, Chapter 7 Trustee for Expert South Tulsa LLC, et al. v. Cornerstone Creek Partners, LLC, No. No. 15-3190, 10th Cir.; 2016 U.S. App. LEXIS 21704).

UCL

9th Circuit Affirms Ruling For Wells Fargo On Mortgage Lending Claims

PASADENA, Calif. — The Ninth Circuit U.S. Court of Appeals on Dec. 6 affirmed a district court's decision to grant summary judgment on claims for violation of California's unfair competition law (UCL), negligence, wrongful foreclosure and other claims asserted against Wells Fargo Bank N.A., finding that the borrower failed to submit any disputed facts and that the claims were preempted (*Dennly R. Becker v. Wells Fargo Bank, N.A.; Dennly R. Becker and Becker Trust Dated March 25, 1991 v. Wells Fargo Bank, NA, et al.*, No. 13-16772, Nos. 14-16783, 15-15322, 9th Cir.; 2016 U.S. App. LEXIS 21715).

9th Circuit Finds No Support For Borrower's UCL And Negligence Claims

SAN FRANCISCO — The Ninth Circuit U.S. Court of Appeals on Nov. 23 affirmed a district court's decision to dismiss claims for negligence and violation of California's unfair competition law (UCL), finding that a borrower's claims related to the transfer of his mortgage lacked legal or factual support (*George M. Kramer v. Quality Loan Servicing Corporation, et al.*, No. 14-15973, 9th Cir.; 2016 U.S. App. LEXIS 21096).

Court Finds Appointment Of Referee Was Not A Settlement Of Claims

LOS ANGELES — A California appeals court on Nov. 8 affirmed a trial court's decision to dismiss a borrower's claims for violation of California's unfair competition law (UCL) and wrongful foreclosure, finding no evidence to support a ruling that the trial court treated his agreement to appoint a referee as a settlement of his claims (*Kurt Miller v. Maria Macias*, No. B269891, Calif. App., 2nd Dist., Div. 8; 2016 Cal. App. Unpub. LEXIS 8035).

FORECLOSURES

1st Circuit Finds Mortgage Assignment Was Valid, Affirms Dismissal

BOSTON — After determining that a lender had the authority to assign a mortgage to a bank, the First Circuit U.S. Court of Appeals on Nov. 14 affirmed the dismissal of all of a borrower's claims related to the alleged wrongful foreclosure of her property (*Edythe L. Dyer v. Wells Fargo Bank, N.A., d/b/a America's Servicing Co., et al.*, No. 15-2421, 1st Cir.; 2016 U.S. App. LEXIS 20432).

Federal Judge Allows Borrower To Amend Claims Against Loan Servicer

SAN FRANCISCO — A California federal judge on Dec. 5 dismissed claims for wrongful foreclosure and violations of the California civil code against two mortgage-related entities but granted a borrower leave to file a second amended complaint against one lender in relation to the foreclosure of her property (*Sadie S. Shaw v. Ocwen Loan Servicing LLC, et al.*, No. 15-cv-01755, N.D. Calif.; 2016 U.S. Dist. LEXIS 167720).

Judge Remands Foreclosure Case Filed By Wells Fargo To New York State Court
ISLIP, N.Y. — A New York federal judge on Dec. 2 remanded a bank's foreclosure action to a state court, finding that a property owner's federal claims were not raised until after removal of the case (*Wells Fargo Bank, National Association as Trustee for Option One Mortgage Loan Trust 2007-1, SSET-Backed Certificates, Series 2007-1 v. Ofra Levin, et al.*, No. 15-2773, E.D. N.Y.; 2016 U.S. Dist. LEXIS 167682).

Federal Judge Finds Fannie Mae Had Authority To Foreclose
CONCORD, N.H. — A New Hampshire federal judge on Dec. 1 granted a mortgage lender's motion to dismiss claims against it for negligent misrepresentation and lack of standing, finding that the lender had the authority to foreclose on the property (*Bridget Gasparik v. Federal National Mortgage Association*, No. 16-cv-147, D. N.H.; 2016 U.S. Dist. LEXIS 166778).

Federal Judge Finds Estate Lacks Standing To Challenge Foreclosure Sale
DETROIT — A Michigan federal judge on Nov. 28 granted a motion filed by lenders to dismiss claims asserted by an estate against them in relation to the foreclosure of a property, finding that the estate lacked standing to bring the claims and that it failed to assert that there was a defect in the foreclosure process (*Estate of Doreen Bessette v. Wilmington Trust N.A., Successor Trustee to Citibank N.A. as Trustee for Structured Asset Mortgage Investments II Trust 2007-AR1 Mortgage Pass-Through-Certificates Series 2007-AR1, et al.*, No. 16-cv-11936, E.D. Mich.; 2016 U.S. Dist. LEXIS 163372).

FDCPA

Judge Finds FDCPA Claim Against Debt Collector Was Adequately Pleaded
NEWARK, N.J.— A New Jersey federal judge on Dec. 5 refused to grant a motion filed by a debt collector to dismiss claims for violation of the Fair Debt Collection Practices Act (FDCPA), finding that she adequately pleaded her claims in relation to the instructions she was given on obtaining a verification of the debt (*Milagros Fontanez, on behalf of herself and all others similarly situated v. Stern & Eisenberg, P.C.*, No. 16-1562, D. N.J.; 2016 U.S. Dist. LEXIS 167172).

JURISDICTION

Judge Dismisses Claims Against New York Bank For Lack Of Jurisdiction

ALBANY, N.Y. — A New York federal judge on Dec. 6 dismissed a borrower's state law claims filed against a bank and others in relation to an underlying mortgage on a property, finding that the court lacked jurisdiction to hear the case (*Connie B. Rovigo v. The Bank of New York Mellon, as trustee for the Alternative Loan Trust 2005-55CB, et al.*, No. 1:15-cv-687, N.D. N.Y.; 2016 U.S. Dist. LEXIS 167964).

SANCTIONS

Judge Orders Borrower To Show Cause On Failure To Prosecute Lending Claims

SANTA ANA, Calif. — A California federal judge on Dec. 7 ordered a property owner to show cause as to why his claims against Nationstar Mortgage LLC should not be dismissed for failure to prosecute and why sanctions should not be imposed for fees incurred by the lender (*Frank J. Arlasky v. Nationstar Mortgage LLC, et al.*, No. 15-01514, C.D. Calif.; 2016 U.S. Dist. LEXIS 169421).

CLASS ACTIONS

Wells Fargo To Settle TILA Class Suit For \$880,000

OAKLAND, Calif. — A California federal judge on Nov. 18 granted preliminary approval of an \$880,000 settlement to be paid by Wells Fargo Bank N.A. to end a class suit accusing it of violating the Truth in Lending Act (TILA) by failing to include all required information on its payoff statements for residential mortgages (*Latasha McLaughlin, et al. v. Wells Fargo Bank N.A., d/b/a Wells Fargo Home Mortgage, No. 15-2904, N.D. Calif.*; 2016 U.S. Dist. LEXIS 160422).

Federal Judge Certifies Borrowers Class In Suit Alleging Mortgage Kickbacks

BALTIMORE — A Maryland federal judge on Nov. 8 certified a class of borrowers who allege that a title company violated the Real Estate Settlement Procedures Act (RESPA) by providing cash and other benefits to mortgage lenders in exchange for referrals (*Edward J. and Vicki Fangman, et al. v. Genuine Title, LLC, et al.*, No. 14-81, D. Md.; 2016 U.S. Dist. LEXIS 154582).