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Consumer Finance Litigation

Florida District Court Rejects Use of Statute of Limitations as a Basis for Asserting Consumer Protection Claims

Action Item: Florida District Court rejects use of statute of limitations as a basis for asserting a consumer protection claim and finds that SOL Issue should be raised—if at all—as an affirmative defense to an actual collection or foreclosure action. Unlike a “statute of repose,” a statute of limitations does not terminate a lien or extinguish a claim and the applicability of any statute of limitations cannot be resolved before a legal action is brought to enforce the loan.

In a recent ruling issued by Judge Roy B. Dalton, Jr. in the Middle District of Florida, the district court rejected the use of the Statute of Limitations (“SOL”) as a basis for asserting a consumer protection claim. See *Garrison v. Caliber Home Loans, Inc.*, United States District Court for Case No.: 6:16-CV-00978-RBD (M.D. Fla. January 10, 2017). In *Garrison*, Plaintiff brought an action against the servicer of its mortgage, claiming that certain communications and acts concerning her liability under the loan violated several consumer protection laws. The current servicer filed a motion to dismiss the consumer protection claims that were based in part on the SOL.

The servicer’s argument was that Garrison could not base her claims on the SOL issue because: (1) the statute of limitations is “a defense, not an affirmative cause of action;” (2) unlike a

“statute of repose,” a statute of limitation does not terminate a lien or extinguish a claim; and (3) the applicability of any statute of limitations cannot be resolved before a legal action is brought to enforce the loan. Garrison countered these “persuasive and well-founded arguments” with an FTC Publication¹ and distinguishable Eleventh Circuit cases.

The district court found that “seemingly inconsistent statements in the FTC Publication simply do not support Plaintiff’s reliance on the SOL issue to support her claims.” The district court also found that the Eleventh Circuit cases that Garrison primarily relied on—*Crawford v. LVNV Funding, LLC*, 758 F. 3d 1254 (11th Cir. 2014) and *Johnson v. Midland Funding, LLC*, 823 F. 3d 1334 (11th Cir. 2016), cert. granted, 137 S. Ct. 326 (2016)—“are similarly unavailing because neither concern non-judicial debt collection activity of a partially time-barred claim.” The district court held that “the SOL issue does not provide a plausible basis for Plaintiff’s claims.” Instead, the court held that “the SOL Issue should be raised—if at all—as an affirmative defense to an actual collection or foreclosure action.” The district court further explained that “the SOL Issue does not belong in this action—whether raised in the context of a consumer protection act violation or as a request for declaratory relief.”

This is an important ruling for cases that concern non-judicial debt collection activity relating to a partially time-barred claim, because it allows servicers more leeway in seeking to collect a valid debt without the added concern of violating consumer protection laws. However, servicers should be cautioned to avoid using language in their mortgage statements that could be construed as a threat to initiate foreclosure litigation on amounts that are time-barred by the SOL. *See, e.g., Sanchez v. Rushmore Home Loan Services, LLC*, United States District Court Case No. 8:15-CV-2714-T-30UAM, 2016 U.S. Dist. LEXIS 72627 (M.D. Fla. June 3, 2016).

1. See “FTC Publication” titled “Time-Barred Claims,” which is on the FTC’s website at <https://www.consumer.ftc.gov/articles/0117-time-barred-debts>.

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