**Daily Decision** for publication on 6/14/22 Thumbs up

**Title:** Spino v. Rushmore Loan Management Services: Sending a Notice of Sale is Not “Collection Activity” Under the FDCPA

**Description:** A Rhode Island district court held that sending a notice of a non-judicial foreclosure sale is not “collection activity” for purposes of the FDCPA.

**Tags:** spino-rushmore-fdcpa-foreclosure-district-rhode-island-non-judicial-1692

**Quick links:**

*Spino v. Rushmore Loan Management Services, LLC & MTDLQ Loan Investors, LP,* No. CV 20-123-JJM-LDA, 2022 WL 2072871 (D.R.I. June 9, 2022).

*By Andrew Pavlik – Compliance Analyst*

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**Background:**

A husband and wife (plaintiffs) sued a loan servicer and a related entity (defendants) regarding a notice of foreclosure that the defendants had sent to the plaintiffs. The plaintiffs alleged violations of the Section 1692e(5) of the Fair Debt Collection Practices Act, and also requested a declaratory judgment questioning the defendants’ authority to foreclose on the property in question.

For background, the plaintiffs owned the property through a mortgage the was being serviced by the defendants. At some point the mortgage was reassigned but continued to be serviced by the defendants. Notably, the plaintiffs did not dispute that they defaulted on the loan. Rather, the plaintiffs contended that the mortgage note was not negotiable and therefore the defendants did not have authority to enforce the mortgage.

In opposition, the defendants argued that the plaintiffs did not plead any plausible facts to show that the subject promissory note was non-negotiable. Alternately, the defendants argued that even if the note was non-negotiable, the plaintiffs did not have standing to challenge the defendants’ authority to foreclose the mortgage because they held the mortgage by a publicly recorded assignment.

**Decision:**

First, the court turned to the defendants’ standing argument. The court noted that the defendants’ authorization to foreclose was derived from the assignment of the mortgage to the defendants that was recoded in local property records. Further, the court noted that the defendants presented evidence that the plaintiffs defaulted under the mortgage by failing to make their required monthly payments, thereby triggering the defendants’ right to foreclose.

Accordingly, the court dismissed count one, finding that the claim questioning the defendants’ authority to foreclose on the property was not “plausible on its face.”

Turning to the FDCPA claim, the court observed that the plaintiffs’ claim was premised on the assertion that the notice of foreclosure violated the FDCPA because the letter threatened “tak[ing] legal action which could not legally be taken, namely exercise the statutory power of sale....”

Next, the court explained that in order to establish liability under the FDCPA, the plaintiffs must show “(1) that [they were] the object of collection activity arising from consumer debt; (2) defendants are debt collectors as defined by the FDCPA; and (3) defendants engaged in an act or omission prohibited by the FDCPA.”

With those factors in mind, the court asserted that the plaintiffs failed to meet the first element of the FDCPA claim. The court reasoned that there was no dispute that the defendants had sent a notice of a non-judicial foreclosure sale that was required by state law. Additionally, the court averred that other courts have found that “sending a notice of sale is not a “collection activity” for purposes of the FDCPA.” See e.g., *Obduskey v. McCarthy & Holthus LLP*, 139 S. Ct. 1029, 1039-1040 (2019).

Based on the above analysis, the court dismissed the plaintiffs’ FDCPA claim, finding there was no need to consider any of the remaining arguments.

**ACA’s Take:**

Sending a notice of a non-judicial foreclosure sale is not collection activity under the FDCPA.

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