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LEGAL UPDATE

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BANKRUPTCY

Keep it in the Family: Fraudulent Transfers Under Michigan Law [6TH CIR]

The mortgagor, a farmer and business owner, purchased three properties via quitclaim deed from the mortgagee, his mother. The parties later amended the mortgage agreements, lowering interest rates and changing terms, and the mortgagor paid off one of the mortgages. The mortgagor later received a loan from the mortgagee for his business, evidenced by an agreement that contained only one signature line. The mortgagor later became insolvent after defaulting on his business obligations. The creditors repossessed the mortgagor's physical assets and then sued him for the rest he owed. The mortgagor later transferred the three properties back to his mother through quitclaim deed via a "mutual release agreement." The mortgagor subsequently filed for Chapter 7 bankruptcy. The bankruptcy trustee sued the mortgagee, alleging that the mortgagor transferred the properties for the purpose of shielding them from creditors. The trustee claimed that the mortgagor received less than fair value for the exchange and stated that the property that had been paid off should be returned to the bankruptcy estate so all the mortgagor's creditors could share in its value. The mortgagee argued that the forgiveness of the business loan and the release of the mortgagor's obligations constituted fair value for the transferred properties. The bankruptcy court ordered the mortgagee to return one of the properties, and the district court affirmed. The mother appealed in reliance on her interpretation of the agreements.

In Wylie v. Miller (In re Wylie), 186 F.4th 347 (6th Cir. 2026), the Sixth Circuit affirmed the district court's judgment of the bankruptcy court order. The Sixth Circuit applied Michigan law, under which two signatory lines indicated assignment of personal liability in addition to corporate liability. Because the business loan contained only one line, the mortgagee argued that the agreement as a whole imposed personal as well as corporate liability. To determine whether the mortgagor assumed personal liability, the court looked to the language of the contract to see if the evidence supported this contention. In the court's examination, it found only language indicating the mortgagor's company liability, not his personal liability. The only reference the court found for personal liability existed in a mention of the mortgagor's life insurance, but the court interpreted that portion as intending the reference in an official capacity for the mortgagor's company, not for imposing personal liabilities. Additionally, the mortgagee relied on extrinsic evidence admitted under Michigan's "stranger-to-the-contract" exception to the parol-evidence rule, arguing that the surrounding circumstances showed that the mortgagor intended to be personally liable. However, the Sixth Circuit rejected the mortgagee's arguments and upheld the rulings of the bankruptcy and district court.

TC Chovanec tchovane@ttu.edu
Edited By Charlie Cole charcole@ttu.edu
Edited By Landon Womack landon.womack@ttu.edu
Edited By Taylor O'Brien tavlobri@ttu.edu

FORECLOSURE

Giving the Pro Se Debtor Another Chance: Court Allows a Fourth Amended Complaint [ND TX]

The debtor received a Chapter 7 bankruptcy discharge, and after the discharge, the creditor repossessed the debtor's vehicle. The debtor alleged that the creditor demanded over $5,000 in past-due payments and fees and told her that she remained personally liable for the loan balance. The debtor filed suit in state court, and the creditor removed the case to federal court. The court dismissed the debtor's second amended complaint with leave to replead. Accordingly, she filed a third amended complaint asserting civil contempt for violation of the discharge injunction, willful violation of the automatic stay, failure to provide required pre-disposition notice, and a commercially unreasonable disposition under the Texas Business and Commerce Code. The creditor filed

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a motion to dismiss under Fed. R. Civ. P. 12(b)(6).

In Fair v. Ally Fin. Inc., No. 3:25-CV-3121-D, 2026 WL 2161182, 2026 U.S. Dist. LEXIS 165698, (N.D. Tex. July 27, 2026) (opinion not yet released for publication), the United States District Court for the Northern District of Texas granted the creditor's motion to dismiss and granted the debtor twenty-eight days from the filing of the order to file a fourth amended complaint. The court dismissed the automatic stay claim because the stay terminated at discharge; the debtor did not contest this dismissal. The court also dismissed the discharge injunction claim because the debtor's remedy was to seek contempt or declaratory relief in the bankruptcy court, not to pursue a private civil action in the district court. The debtor's notice claim alleged violations of Texas Business and Commerce Code §§ 9.611 and 9.614 because the notice was "internally self-contradicting," demanded discharged pre-petition payments as a condition of recovering the vehicle, and failed to provide a compliant accounting of the unpaid indebtedness. The court rejected these arguments because the notice disclaimed personal liability and described the remaining secured obligation without violating the statutory notice requirements. The court held that the offer to return the vehicle upon payment of $5,473 in past-due payments, late charges, and expenses did not violate §§ 9.611 or 9.614. The notice provided a telephone number for obtaining the exact payoff amount and instructions for requesting a written explanation, satisfying § 9.614(1)(C). Therefore, the court dismissed the notice claim. Lastly, the court dismissed the commercially unreasonable disposition claim under § 9.610 because the debtor alleged that the creditor had not yet sold the vehicle. The court granted the debtor leave to amend a fourth time because the debtor requested leave to cure any remaining defects and was proceeding pro se.

By Noah Coggan ncoggan@ttu.edu
Edited By Olivia Lewis oliviale@ttu.edu
Edited By Taylor O'Brien taylobri@ttu.edu

Buckshot Claims: Federal Jurisdiction Found Among the Spread [11TH CIR]

The homeowners (the mortgagors), proceeding pro se, sought relief regarding the bank's (the mortgagee) efforts to foreclose on their home. The mortgagors filed an initial complaint asserting claims under both state and federal law. They later filed the first amended complaint with six claims for relief, including four Florida law claims and two federal statutory claims. Later, the mortgagors filed a second amended complaint which included: (1) a request for declaratory judgment to void the foreclosure, (2) three Florida-law claims, including a quiet title, (3) three federal statutory claims, including alleged violations of the Truth in Lending Act (TILA), Real Estate Settlement Procedures Act (RESPA), and the Fair Debt Collection Practices Act (FDCPA). The mortgagee filed motions to dismiss the first amended complaint and strike the second complaint. Without addressing the motions to strike and dismiss, the district court dismissed the entire case, with prejudice, for lack of: (1) federal question jurisdiction 28 U.S.C. § 1331, (2) diversity jurisdiction 28 U.S.C. § 1332, and (3) jurisdiction under the Rooker-Feldman doctrine. The mortgagors appealed to the Eleventh Circuit.

In Bruce v. U.S. Bank N.A., No. 25-12152, 2026 WL 788893, 2026 U.S. App. LEXIS 8336 (11th Cir. Mar. 20, 2026) (opinion not yet released for publication), the Eleventh Circuit vacated the motion to dismiss. It remanded the case to the district court on the basis that the lower court had erred in finding a lack of federal question jurisdiction under 28 U.S.C. § 1331 and had improperly applied the Rooker-Feldman doctrine. Under 28 U.S.C. § 1331, federal courts have subject matter jurisdiction to decide cases when the cause of action is established by federal law and the plaintiff's complaint "invokes federal law as the basis for relief." Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987). The court held that in both the first and second amended complaints, at least one claim sought relief under a federal statute, giving the district court proper subject matter jurisdiction. It explained that the Rooker-Feldman doctrine bars a federal district court from exercising jurisdiction over claims that effectively seek review and rejection of a state-court judgment. The court further explained that when applying Rooker-Feldman, each claim should be assessed on whether it asks for a rejection of a state court judgment. The circuit court concluded that the district court failed to do the necessary "claim-by-claim" analysis when it held that the entire complaint asked for a rejection of a state foreclosure ruling. Additionally, the Eleventh Circuit held that Rooker-Feldman did bar some of the present claims that attempted to reverse the state court foreclosure judgment, such as the declaratory judgment claim or the request for an injunction to block the foreclosure sale. However, the claims for damages and the relief sought under federal statutes were not barred by Rooker-Feldman, making the lower court's dismissal of the entire case error. Therefore, the Eleventh Circuit vacated and remanded the lower court's decision.

By Emma Jaax ejaax@ttu.edu
Edited By Noah Coggan ncoggan@ttu.edu
Edited By Olivia Lewis oliviale@ttu.edu
Edited By Taylor O'Brien taylobri@ttu.edu.

Prolonging Litigation Shows Bad Faith: Foreclosure Dispute Resolved in Creditor's Favor [D MA]

The debtor and his daughter spent over ten years trying to stop the creditor from foreclosing on a property. In 2007, the debtor entered into two mortgage agreements with the original bank. By 2009, the original bank changed its name, converted into a national bank with a new name, and had merged with another bank. In 2012, the debtor filed for Chapter 7 bankruptcy and received a discharge. In 2014, the litigation began when the

debtor sued both the new bank and the original bank to stop them from foreclosing on the property. All the debtor's claims were eventually dismissed, either at the outset or summarily. In May 2019, the debtor filed a Chapter 13 bankruptcy petition, and the new bank asserted its rights to still collect on the property. This led to another lawsuit in June 2023, in which the debtor challenged the bank's authority to enforce the mortgage. This suit also requested relief from mortgage obligations: Res judicata blocked both claims in the 2023 suit. During the 2023 litigation, the debtor transferred the property to his daughter by warranty deed without informing the bank. The debtor and his daughter entered into a mortgage agreement in which the debtor agreed to provide the daughter with $499,999.00. In 2024, the daughter sought an injunction to prevent the bank from foreclosing on the property. The bankruptcy court denied the injunction, and the court warned that sanctions may apply for failure to follow ethical rules of pleading. The property then was scheduled for a foreclosure sale. The day before the scheduled sale, the debtor's daughter filed a voluntary Chapter 13 case. The bank successfully filed a proof of claim with supporting evidence. The daughter challenged the proof of claim, which challenge the bankruptcy court rejected on five grounds. Then the bankruptcy court granted the bank relief from the stay and denied the daughter's requested rehearing on the proof of claim challenge and relief from the stay order. The daughter appealed.

In In re Nelson, No. 25-CV-11178-AK, 2026 WL 710626, 2026 U.S. Dist. LEXIS 52318 (D. Mass. 2026) (unpublished opinion), the United States District Court for the District of Massachusetts affirmed the bankruptcy court's orders and rejected all nine of the daughter's challenges. The court condensed the nine challenges into eight issues: (1) whether the debtor's Chapter 7 discharge prevented in rem actions or filing a claim, (2) whether the bank is a creditor with a valid claim, (3) whether the bank's lien is perfected, (4) whether the bank's counsel can file a proof of claim on its behalf, (5) whether a statute of limitation barred the first mortgage, (6) whether the daughter took part in a scheme to delay, hinder, or defraud the bank, (7) whether the daughter filed her petition in good faith, and (8) whether the daughter was entitled to an evidentiary hearing. Concerning the first issue, the Chapter 7 discharge did not prevent a separate in rem action because a bankruptcy discharge does not affect a creditor's underlying lien on the debtor's property. Long v. Bullard, 117 U.S. 617, 620-21 (1886). Here, the lien is the property's mortgage that survived the discharge; therefore, the discharge did not affect the bank's lien. Second, the court determined that the bank was considered a "creditor" under 11 U.S.C. § 101(10) because it held the lien on the property. A "creditor" is any "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor." 11 U.S.C. § 101(10). The lien is a claim that the bank has, because the property was transferred via warranty deed and was "[s]ubject to existing taxes, assessments, liens, [and] encumbrances" on the property. Third, the lien was perfected as a matter of law during the merger of the two banks because bank mergers merge "all rights, franchises, and interests ... in and to every type of property...without any deed or other transfer." Rice v. Wells Fargo Bank, N.A., 2 F. Supp. 3d 25, 35 (D. Mass. 2014) (citing 12 U.S.C. § 215a). In addition, the issue itself had been determined previously, so the daughter's claim was precluded from further judgment. Fourth, the challenge to the counsel's filing failed because agents are permitted to file claims without personal knowledge of the facts, according to Fed. R. Bankr. P. 3001(b). Fifth, the daughter waived the statute of limitations challenge because she had addressed it in a conclusory and underdeveloped manner. The court considered the sixth; seventh and eighth issues together. The decade of litigation and the timing of the lawsuits so close to the scheduled foreclosure sales meant the debtor had acted to delay, hinder, or defraud the bank, which the daughter was complicit in after she took ownership of the property. Similarly, the history of litigation indicated the daughter had acted in bad faith throughout the past decade. Finally, the daughter was not entitled to an evidentiary hearing because she never requested one, had already appeared at three hearings before the bankruptcy court, and had received an adequate opportunity to contest the creditor's claims. Accordingly, the district court affirmed all decisions and fact findings of the bankruptcy court.

By Hoshi Colina hcolina@ttu.edu
Edited By Andrew Fielden afielden@ttu.edu
Edited By Landon Womack landon.womack@ttu.edu
Edited By Taylor O'Brien taylobri@ttu.edu

Iqbal Strikes Again: Wrongful Foreclosure Dismissed for Failure to State a Claim [6TH CIR]

The mortgagor applied for assistance with the mortgage servicer. After completing the steps the servicer outlined, the mortgagor received a letter of approval; however, the mortgagor died before receiving the letter. The mortgagor's son resided at the mortgagor's home at the time of the mortgagor's death and continued to reside there afterwards. The mortgagor's son informed the servicer that the mortgagor had died, and he identified himself as successor-in-interest. Once the servicer confirmed the son's status, it required him to assume liability for the mortgagor's obligation, return an acceptance form, and make three trial-period payments. The successor did not complete these requirements, and the servicer withdrew its mortgage assistance offer. The loan remained in default, and the bank soon began foreclosure proceedings.
The successor initiated a lawsuit against the loan servicer and the bank for: (1) breach of contract; (2) fraud; (3) wrongful foreclosure; (4) infliction of emotional distress; (5) violation of Michigan Mortgage Brokers, Lenders, and Servicers Licensing Act (MBLSLA); (6) violation of the Real Estate Settlement Procedures Act (RESPA); and (7) violation of 12 C.F.R. § 1024.38. The bank

and the servicer moved to dismiss the complaint, and the district court granted the motion. The district court determined that the successor lost standing when the period to redeem the property expired. The successor appealed the dismissal of his complaint for lack of standing.

In Moore v. PHH Mortg. Corp., No. 25-1214, 2026 U.S. App. Lexis 2889 (6th Cir. Jan. 30, 2026) (opinion not yet released for publication), the Sixth Circuit affirmed the district court's ruling. Michigan statutes provide "the mortgagor six months after the sheriff's sale in which to redeem the property" Mich. Comp. Laws § 600.3240(8). The successor did not redeem the property within_ the six-month redemption period; therefore, he lost his right, title, and interest in the property. However, the court disagreed that the successor lost standing solely based on this fact. It ruled that the successor maintained standing because he last possessed the property and claimed a continuing right to do so. See Elsheick v. Select Portfolio Servicing, Inc., 566 F. App'x 492, 496-97 (6th Cir. 2014). However, the court concluded that the successor still failed to state a claim for relief. The court cited Iqbal for the proposition that conclusory statements do not suffice. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). The court found that the successor failed to make the "clear showing of fraud and prejudice" required to set aside a completed foreclosure sale. Schulthies v. Barron, 167 N.W.2d 784, 785 (Mich. Ct. App. 1969). Additionally, the successor failed to allege a violation of RESPA or § 1024.38 in the servicer's communications with him, so the court ruled the allegations conclusory under Iqbal. Finally, the court also held that the successor failed to state a claim for emotional distress based on the failure to plead how the servicer could have engaged in extreme and outrageous conduct. Walsh v. Taylor, 689 N.W.2d 506, 517 (Mich. Ct. App. 2004). Accordingly, the court held that while the successor possessed standing, he failed to state a claim for relief, and it affirmed the judgment.

By Liliana Villegas lilville@ttu.edu
Edited By Deanna Dulske dedulske@ttu.edu
Edited By Landon Womack landon.womack@ttu.edu
Edited By Taylor O'Brien taylobri@ttu.edu

FRAUD

What Not to Do After Getting Scammed: The Consequences of Untimely Lawsuits [6TH CIR]

The payor fell victim to a third-party scam. An unknown scammer (the originator) transferred money from an account belonging to the originating bank into the payor' s receiving bank account and convinced him to buy technological equipment and ship it. The originator then withdrew the transferred money, leaving the payor responsible for the credit card charges. The payor requested that the originating bank and the receiving bank stop the reversal of money, but both refused the request and reported the past-due charge to the credit reporting company. The credit company also refused to remove the payor's explanation of the unpaid debt, denied his review of the report, and reported a separate credit card debt. The payor sued. the originating bank and the receiving bank alleging they: "(1) committed common-law fraud, (2) violated criminal statutes, (3) defamed [the payor], (4) violated federal regulations, and (5) violated the Electronic Fund Transfer Act." The payor also sued the credit company. The originating bank, with permission from the receiving bank and the credit company, removed the case to federal court. The banks moved to dismiss for failure to state a claim, and the credit company moved to compel arbitration based on the payor's agreement. The district court granted both motions. After the payor refused to engage in arbitration, the court dismissed the case, leading the payor to appeal. The payor appealed the dismissal of his claims against the receiving bank and the credit company and filed motions "for sanctions, to conduct discovery, for summary judgment, to file a sur-reply, and to expedite the ruling and to seal."

In Hicks v. Wells Fargo Bank, N.A., No. 25-5353, 2026 U.S. App. LEXIS 18509, at *1 (6th Cir. June 24, 2026) (opinion not yet released for publication), the Sixth Circuit affirmed the district court's judgment. It held that the court did not abuse its discretion, concluding no clear error of judgment [occurred], such as applying the incorrect legal standard, misapplying the correct legal standard, or relying upon clearly erroneous findings of fact." Jones v. III Cent. R.R. Co., 617 F.3d 843, 850 (6th Cir. 2010). Following Federal Rule of Civil Procedure 41(b), the court ruled involuntary dismissal appropriate if a party willfully disobeyed a district court's order, as here where the payor refused to engage in arbitration with the credit company. The court had provided a warning to the payor, who still refused to engage in arbitration; thus, the court did not abuse its discretion by dismissing the claims against the credit company. Regarding the claims against the receiving bank, the court affirmed the dismissal of the claims. The payor failed to satisfy the Federal Rule of Civil Procedure 9(b) requirement of alleging specific claims; therefore, the court did not err in dismissing the payor's claims against the originating bank. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (6th Cir. 2009); see also Republic Bank & Tr. v. Bear Stearns & Co., 683 F.3d 239, 247 (6th Cir. 2012). The fraud allegations also failed, because Kentucky law requires "a showing of a) material representation b) which is false c) known to be false or made recklessly d) made with inducement to be acted upon e) acted in reliance thereon and f) causing injury." United Parcel Ser. Co. v. Rickert, 996 S.W.2d 464, 468 (Ky. 1990). The court reasoned that "[t]he [originating bank's] failure to remediate alleged fraudulent activity ... is not the same as the [originating bank] itself committing fraud." The payor also failed to state a claim because the statute of limitations had expired. Thus, the court correctly dismissed both the fraud and

defamation claims. The court also denied the payor's motions for sanctions, summary judgment, and to file a sur-reply against the credit company, found no bad faith, and refused to address this issue for the first time on appeal. The court also denied the payor's motion to expedite the appeal as moot. Lastly, the court did grant the payor's request to "redact the day and month of [the payor's] birth on this court's docket" because it liberally applied the FRCP 5.2 protections due to the payor's pro se status.

By Jose Alex Garcia garl4192@ttu.edu
Edited By Taylor O'Brien taylobri@ttu.edu
Edited By Olivia Lewis oliviale@ttu.edu

LOANS

No Answer, No Good: Bank Receives Default Judgment Against Borrower and Guarantor [D CO]

The borrower entered into a loan and security agreement with the lender to finance the borrower's purchase of a trailer (the collateral). The borrower granted the lender a first-priority security interest in the collateral, and the lender properly perfected its security interest. To secure the financing, the guarantor executed an unconditional continuing guaranty of the borrower's present and future obligations. The borrower later defaulted by failing to make required payments. The lender sent written notice of default and acceleration to both the borrower and the guarantor. After both parties failed to cure the default, the lender filed an action alleging breach of a commercial loan and security agreement and breach of a related personal guaranty. The lender served the borrower and guarantor with a summons and verified complaint, which they failed to answer. The court entered a default against both the borrower and guarantor and ordered the lender to file a motion for default judgment. The borrower and guarantor remained in default and failed to appear.

In BMO Bank N.A. v. IHG Transp., LLC, No. 1:24-cv-02048-CNS-SBP, 2026 WL 950829, 2026 U.S. Dist. LEXIS 79552 (D. Colo. Feb. 6, 2026) (opinion not yet released for publication), the court recommended granting the motion for a default judgment. To consider granting the default judgment, the court decided whether the allegations stated a claim for which relief could be sought and therefore evaluated the lender's damages claim. The court applied Colorado law, which required four elements for a breach of contract claim: "(1) the existence of a contract; (2) performance by the plaintiff or some justification for nonperformance; (3) failure to perform the contract by the defendant; and (4) resulting damages to the plaintiff." W. Distrib. Co. v. Diodosio, 841 P.2d 1053, 1058 (Colo. 1992). Since the borrower and the guarantor failed to respond to the allegations and therefore did not deny them, the court treated the allegations as admitted under Fed. R. Civ. P. 8(b)(6). The court concluded that the allegations satisfied the elements of the breach of contract claim, establishing the borrower's breach of the loan agreement and the guarantor's breach of the guaranty. The court then evaluated the lender's damages claim under Fed. R. Civ. P. 55(b)(2), finding the amount to be "arithmetically straightforward" and holding that it could award damages without a hearing. Further, the court held that the lender's perfected first-priority security interest entitled it to possession of the collateral. It also ruled that specific performance was an appropriate remedy given the collateral's "mobility, its ongoing depreciation," and the borrowers' "unwillingness to comply voluntarily." Additionally, applying the four-factor test from eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388, 391 (2006), the court found permanent injunctive relief was warranted. The factors consisted of: "(1) actual success on the merits; (2) irreparable injury; (3) that the balance of hardships favors equitable relief; and (4) that the injunction would not be averse to the public interest." The court held that the lender established the borrowers' liability for breach of contract. Secondly, the lender could suffer irreparable injury because the borrowers could move or cause the collateral to depreciate. Third, the "balance of hardships" favored the lender because the borrowers enjoyed the financed equipment without paying for it. Fourth, enforcing the injunction served the public interest by "discouraging self-help resistance to judicial process." Therefore, the court recommended default judgment against the borrower and the guarantor, awarded the lender damages, ordered surrender of the collateral, and granted a permanent injunction.

By Mia Garza gar326l5@ttu.edu
Edited By Deanna Dulske dedulske@ttu.edu
Edited By Olivia Lewis oliviale@ttu.edu
Edited By Taylor O'Brien taylobri@ttu.edu

Strike Three: Third Amended Complaint Dismissed with Prejudice [CD CA]

The borrower executed a promissory note and deed of trust on a residential property. The resident, not the borrower, lived there. The borrower recorded the deed of trust for the property. Public records later showed a corporate assignment of the deed of trust, transferring the beneficial interest to the beneficiary. Then, a recorded notice of default identified another party as the beneficiary. The borrower had previously disputed the debt and requested validation from the loan servicer. The beneficiary also had engaged in collection activity by recording a notice of default. The recorded documents reflected conflicting representations as to which beneficiary could collect on the debt. The beneficiary failed to notify the borrower and resident in writing about the ownership transfer of the mortgage loan to the second beneficiary within 30 days as required under the Truth in Lending Act (TILA). The borrower and resident brought an action, alleging they suffered damages from the delay and lack of notice, and sued for violations of the Fair Debt Collection Practices Act (FDCPA)

and TILA, specifically § 15 U.S.C. 1641(g). The beneficiary and the loan servicer filed a motion to dismiss, and the court considered it along with an ex parte application for a temporary restraining order (TRO) filed by the borrower and the resident.

In Tung-Thanh v. Newrez LLC, No. EDCV 25-2615 JGB (DTBx), 2026 WL 1047906, 2026 U.S. Dist. LEXIS 87734 (C.D. Cal. Apr. 15 2026) (opinion not yet released for publication), the court granted the motion to dismiss the complaint and denied the TRO as moot. Further, because the borrower and resident had amended the complaint twice previously, the court dismissed all claims without leave to amend, consistent with Fed. R. Civ. P. 15. Although the district court could have granted the motion to dismiss based solely on the fact that the borrower and resident did not abide by the court's instructions to amend the complaint, the court reviewed the substantive issues. To survive a motion to dismiss, a complaint must allege facts that state a facially plausible claim to relief. See Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007); Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Under this rule, the court assumes all "well-pleaded" facts and assertions to be true and draws inferences in favor of the plaintiff. Iqbal, 556 U.S. at 678. A claim is well-pleaded when it alleges sufficient facts to state a facially plausible claim. Twombly, 550 U.S. at 570. Typically, courts grant plaintiffs leave to amend their complaints unless "the pleading could not possibly be cured by allegation of other facts." Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc). The court found that the borrower and resident did not offer legal or factual basis to raise a claim under the FDCPA because the beneficiary was not a debt collector within the meaning of the Act. The court relied on Obduskey v. McCarthy & Holthus LLP, which stated: "those who engage in only nonjudicial foreclosure proceedings are not debt collectors within the meaning of the Act." Obduskey v. McCarthy & Holthus LLP, 586 U.S. 466, 477 (2019). Because the beneficiary could not be a "debt collector[,]" no set of facts could plausibly allege a claim against them for a FDCPA violation. Further, the court reiterated that "actions taken to facilitate a non-judicial foreclosure, such as sending the notice of default and notice of sale, are not attempts to collect 'debt' as that term is defined by the FDCPA." Vien-Phuong Thi Ho v. ReconTrust Co., NA, 858 F.3d 568, 572 (9th Cir. 2017). The alleged debt collection in the complaint also did not assert any facts that "necessitate the conclusion that Defendants are not engaged in debt collection activities proscribed by the FDCPA." Plainly, the complaint only alleged that the beneficiary enforced his right as a beneficiary. The court provided several opportunities for the borrower and the resident to amend their claim, and the borrower had failed to do so. Thus, the court dismissed the claim with prejudice. Second, the court held that the borrower and resident's claim under the TILA also failed to sufficiently plead actual damages. Although the pleading successfully alleged a failure to receive notification, the borrower and resident only alleged they "suffered damages" as a result. But TILA only allows recovery of "any actual damage sustained by such person as a result of the failure." 15 U.S.C. § 1641(g) (emphasis added). The complaint's general allegation of damages did not rise to the standard of "actual damage" under the TILA. Nor did any facts in the complaint support the damage allegations. As a result, the court dismissed the TILA claim without leave to amend. Finally, because the court dismissed the action, it ruled the TRO application moot and denied it.

By Emma Morgan emma.morgan@ttu.edu
Edited By Andrew Fielden afielden@ttu.edu
Edited By Olivia Lewis oliviale@ttu.edu
Edited By Taylor O'Brien taylobri@ttu.edu

MORTGAGES

Don't Just Sit There, Do Something: Asserting Fraud in the Fifth Circuit [5TH CIR]

The buyers purchased real property from the seller (the mortgagor). The mortgagor's loan remained outstanding when the buyers purchased the property, and the bank (the mortgagee) recorded the deed of trust securing the loan in its name. The loan servicer then faxed a payoff statement to the mortgagor. On the same day, the title company received a payoff statement from a fax number that allegedly belonged to the mortgagor. The payoff statement received by the title company showed a lower remaining balance than the statement sent to the mortgagor. The title company then wired the balance listed on its statement to the loan servicer. Later, the mortgagee threatened to foreclose because the mortgagor had not fully repaid the loan, asserting that the payoff statement sent to the title company was fraudulent. The district court rejected the assertion of fraud and found that the payment the title company wired extinguished the deed of trust. The mortgagee appealed to the Fifth Circuit.

In Fountaine v. U.S. Bank N.A., No. 25-20085, 2026 WL 396357, 2026 U.S. App. LEXIS 4351 (5th Cir. Feb. 12, 2026) (opinion not yet released for publication), the Fifth Circuit affirmed the lower court's decision, concluding that its finding-that the loan servicer submitted the lower payoff statement-was not clearly erroneous. Under § 343.106(g) of the Texas Finance Code, if a mortgage servicer provides an incorrect payoff statement for a real property sale to a title company and receives the specified amount, the deed of trust is released; however, the former mortgagor will still remain liable for any remaining deficiency. The court found that the loan servicer submitted a lower payoff statement than what was owed, and the title company paid that amount. Thus, the payment released the deed of trust. On the assertion of fraud by the mortgagee, the court noted that the format and payoff amount of the payoff statement were consistent with previous and legitimate statements. The

court also noted that the loan servicer had produced erroneous payoff statements connected to the loan in the past, meaning that the statement could plausibly be both legitimate and erroneously low. Additionally, the court scrutinized the mortgagee's response to the alleged fraud. The mortgagee failed to assert fraud in earlier pleadings, did not conduct an internal investigation, and did not file criminal reports of fraud. These actions left the mortgagee with little evidence to substantiate its fraud theory. The court also rejected the mortgagee's argument that the title company's payoff request failed to comply with 7 Tex. Admin. Code § 155.2 because § 343.106(g) did not condition lien release on the manner in which the title company requested the payoff statement. Finally, the court concluded that any error in excluding phone calls that arguably supporting the fraud theory was harmless because the calls provided only weak, indirect support and would not have rendered the district court's finding implausible. Therefore, the Fifth Circuit affirmed the lower court's decision.

By Riley Hale rihale@ttu.edu
Edited By Landon Womack Landon.Womack@ttu.edu
Edited By Olivia Lewis oliviale@ttu.edu
Edited By Taylor O'Brien taylobri@ttu.edu

SECURITY INTERESTS

Title Tricks Do Not Excuse Car Debt Under Federal Plausibility Standard for Pleadings [D RI]

The debtor entered into an agreement with the creditor to refinance her vehicle. The agreement provided the creditor with a security interest in the vehicle and included a provision requiring the debtor to note the creditor's lien on the vehicle's title. The debtor did not note the lien on the title and failed to meet the payment terms of the agreement. This failure resulted in default, and the creditor eventually "charged off" the debtor's account, meaning it gave up on collecting the debtor's unpaid balance and wrote off the debt as a loss. The creditor reported the debtor's account to the credit reporting agencies (CRA), but the debtor alleged that the reporting was inaccurate and that the creditor's failure to correct this inaccuracy violated the Fair Credit Reporting Act (FCRA). After that, the borrower filed an action and then the creditor filed a Rule 12(b)(6) motion to dismiss the complaint, arguing that the borrower had failed to state a plausible claim entitling her to relief.

In McBride v. Cap. One Auto Fin., Inc., No. 1:25-cv-00646-MSM-PAS, 2026 WL 1520713, 2026 U.S. Dist. LEXIS 120161 (D.R.I. June 1, 2026) (opinion not yet released for publication), the court granted the creditor's motion and dismissed the debtor's claims with prejudice. Ordinarily, a consumer (the debtor) may submit a dispute to the CRA who forwards it to the furnisher (the creditor) and imposes an obligation on the furnisher to investigate the accuracy or completeness of the disputed information in the consumer's credit report. To successfully state a claim for an unreasonable investigation, the debtor must allege plausible inaccuracy. Factual information concerning a debtor's credit may be inaccurate if it is (1) "patently incorrect" or (2) if it is "incomplete" such that it creates a materially misleading impression that adversely affects credit decisions. The debtor did not dispute the existence of the debt, her missed payments, or the charge-off of her account. Instead, she challenged the alleged reporting of the loan as secured despite the security interest never having been perfected. The court ruled that the debtor did not plausibly allege that the creditor's reporting on the perfection of the lien constituted misleading information "that could materially alter how the reported debt is understood." The perfection of the lien on the debtor's vehicle cannot be materially misleading under the FCRA because it is not material information that could adversely affect credit decisions. The court found that absent a showing of factually inaccurate information, the debtor's claim of unreasonable investigation failed. The court cited the Foman factor of futility to deny with prejudice the debtor's request to submit a second amended complaint because she would not be able to sufficiently cure the deficiencies necessary to sustain her FCRA claim. Foman v. Davis, 371 U.S. 178, 182 (1962).

By Katherine Wurster kawurste@ttu.edu
Edited By Charlie Cole charcole@ttu.edu
Edited By Landon Womack landon.womack@ttu.edu
Edited By Taylor O'Brien taylobri@ttu.edu



Tracy Kennedy
NDBA General Counsel

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To contact Tracy Kennedy, NDBA General Counsel, call 701.772.8111 or email at tracy@dakotalawgroup.com.