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Supreme Court & Appellate Practice
Consumer Litigation & Class Actions Practice
Financial Services Regulatory & Enforcement Practice

Seventh Circuit Bars Rescission Class Actions In TILA Cases

On September 24, 2008, the Seventh Circuit held that rescission of a mortgage – one of the remedies available under the Truth in Lending Act (TILA) – may not be awarded to an entire class of borrowers. In *Andrews v. Chevy Chase Bank*, No. 07-1326 (7th Cir. Sept. 24, 2008), the court vacated the district court's certification of such a class, holding "as a matter of law that a class action for the rescission remedy under TILA may not be maintained." Mayer Brown represented the lender on this appeal.

This is a significant win for all mortgage lenders and their assignees. Allowing thousands of class members to rescind their mortgages in one fell swoop for technical violations of TILA without any showing of harm or having been misled would threaten lenders and their assignees with intolerable liability. The mere risk of such an outcome would inevitably drive up the cost of credit and likely reduce the availability of mortgage loans, an outcome that would harm borrowers as well, particularly at a time when the mortgage markets are already experiencing unprecedented levels of stress.

The court's ruling rested on the "individual" character of the rescission remedy, which makes it "procedurally and substantively unsuited to deployment in a class action." In particular, the court explained, "a host of individual proceedings would almost certainly follow in the wake of the certification of a class whose loan transactions are referable to rescission." The court found support for that conclusion in the text and history of the TILA statute, which limits the damages available in a class action, a limitation that would be inconsistent with the enormous costs that class-wide rescission would impose on lenders.

The court also ruled that the class certified by the district court would be incompatible with the requirements for a class action set forth in the Federal Rules of Civil Procedure. In particular, such a disparate class would not satisfy the requirements that common questions predominate over individual questions and that a class action be the superior method of resolving the borrowers' claims.

Mayer Brown is pleased to have helped achieve this important win for the financial services industry. If you have questions regarding this decision, please contact the Mayer Brown attorney with whom you normally communicate or any of the following attorneys: Jeffrey Sarles (jsarles@mayerbrown.com or +1 312 701 7819), Scott Anenberg (sanenberg@mayerbrown.com or +1 202 263 3303), Jeffrey Taft (jtaft@mayerbrown.com or +1 202 263 3293) or Lucia Nale (lnale@mayerbrown.com or +1 312 701 7074).

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