McGLINCHEY STAFFORD

MHI Manufactured Housing Institute

McGlinchey Stafford and the Manufactured Housing Institute (MHI) are pleased to bring you the Manufactured Housing Law Update. With content prepared by McGlinchey Stafford's nationally-recognized consumer financial services team, the Update focuses on legal and regulatory actions in the manufactured housing industry. More about MHI and McGlinchey Stafford can be found at the end of the Update.

WELCOME!

Thank you for reading the July Manufactured Housing Law Update. It is hard to believe summer is almost over!

If you are a manufactured housing retailer, you should read the recent decision from the Supreme Court of Wyoming, then review your standard purchase and sales agreement to make sure that the agreement's language does not have provisions that are inconsistent with your actual sales practices.

On the lending side, there were foreclosure-related statute of limitations decisions and other default servicing-related decisions that may be of interest.

On the communities side, take a look at the first decision in this month's update which involved a nonconforming use dating back to 1955.

These items and many more, so read on!

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COMMUNITIES

CASE LAW

Nonconforming use

CASE NAME: *City of Des Moines v. Ogden*
DATE: *03/16/2018*
CITATION: *Supreme Court of Iowa. 909 N.W.2d 417*

Mark Ogden owned the real estate and operated Oak Hill Mobile Home Park. The property was originally used as a heating and furnace repair business around 1938. The property transitioned into Oak Hill Tourist Camp. Between 1947 and 1955, the property became Oak Hill Mobile Home Park.

In 1953, the City of Des Moines enacted new zoning ordinances. In 1955, the owner of Oak Hill at the time was granted a certificate of occupancy from the City that allowed for the operation of the mobile home park as a nonconforming use.

The first aerial photograph on record of the property as a mobile home park was taken in 1963 and revealed thirty-nine concrete pads with mobile homes situated on them in close proximity to one another. Some of the homes had additional structures attached to them. More recent photographs revealed that Oak Hill had become more congested as residents added porches, decks, and more living space to their mobile homes.

The City took no action against Oak Hill from the time the certificate of occupancy was issued in 1955 until 2014, when it informed Ogden that the City had found violations of "the Municipal Code of the City of Des Moines as it was in effect in 1955."

The City asked that the court order Ogden to cease use of the property as a mobile home park.

The district court found that discontinuance of the nonconforming use under the 1955 Certificate of Occupancy was necessary for the safety of life or property as Oak Hill was congested and cluttered as to impede the ability of first responders to adequately address common urban dangers, such as fires and situations requiring police involvement.

Ogden appealed and, in a divided opinion, the appeals court affirmed the district court order enjoining the continued nonconforming use of the property as a mobile home park.

On further appeal, the Iowa Supreme Court found that the City had not shown that the discontinuance of the nonconforming use was necessary for the safety of life or property. The fire marshal acknowledged that Oak Hill has not been cited for any fire safety code violations and testified that the fire department does not inspect the individual mobile homes or mobile home parks in their entirety. Finally, the fire marshal testified that the current standards for fire access roads require a twenty-foot-wide access road, but he did not offer any testimony stating that the road as it existed at Oak Hill was dangerous.

Additionally, the city zoning inspector testified that the City had not cited Oak Hill for a zoning violation until she issued the 2014 notice. The City did not take any prior actions to remedy the zoning violations it claimed justified the discontinuation of the legal nonconforming use or the need for injunctive relief.

The City failed to present evidence that the zoning violations at Oak Hill had been expanded to the point where the established nonconforming use was 'substantially or entirely different' from the original use.

Further, the additions to the structures of the mobile homes, as well as the "detritus of life" the district court noted, represented a marginal change that fell within the degree of latitude that the law affords to property owners in their nonconforming use.

Reversed and remanded to the district court for an order dismissing the case.

CASE LAW

Wastewater

CASE NAME: *Stevens v. Prettyman Manor Mobile Home Park Wastewater Treatment Plant*
DATE: *06/27/2018*
CITATION: *Court of Special Appeals of Maryland. --- A.3d ----. 2018 WL 3159171*

Stevens and Quidas grew vegetables on their property as their primary source of income. To irrigate their crops, Stevens and Quidas drew water from a retaining pond constructed by diverting water from Little Creek.

Directly across from Quidas Farm was a mobile home park ("Prettyman Manor") owned and operated by Prettyman. Over time, the sewage generated by the residents of Prettyman Manor overwhelmed the park's septic tanks and drainfields. The Maryland Department of the Environment (MDE) initiated an enforcement action, forcing Prettyman to pump and haul the sewage to a treatment facility. Prettyman decided to build an on-site wastewater treatment plant ("WWTP").

In April of 2012, Prettyman submitted an application for a permit to discharge treated wastewater from the proposed WWTP into Little Creek ("the 2012 Application"). The proposed facility would treat up to 40,000 gallons per day. MDE published notice of the 2012 Application but did not receive any requests for an informational meeting.

MDE determined that the 2012 Application was not consistent with the Caroline County Water and Sewer Plan and met with Prettyman to discuss the application.

On July 21, 2014, Prettyman submitted a revised permit application ("the 2014 Revision"). Among other things, the new design lowered the treatment capacity from 40,000 gallons per day to 20,000 gallons per day. MDE did not publish a new notice of application.

On July 28, 2015, MDE notified Prettyman and other interested parties and published a notice of tentative determination.

There was no request for a public hearing. Stevens and Quidas sent a letter to MDE expressing their concern about the project. MDE met with Stevens and Quidas on September 15, 2015.

Stevens and Quidas sent a letter to MDE with additional questions and comments. MDE responded, addressing each issue raised by Stevens and Quidas.

MDE provided Prettyman with the final discharge permit and published notice of its final determination. Stevens and Quidas filed a petition for judicial review.

The circuit court found that MDE had "acted properly within its authority and did not err by granting the discharge permit in this matter[.]" Stevens and Quidas appealed.

According to the Court, the only question preserved for its review was whether MDE was required to publish a second notice of application for the 2014 Revision.

The Court found that the 2014 revision was not a new application, but merely a revised version of the 2012 Application. The Court noted that the outcome of this proceeding was a permit with more stringent standards than those proposed in the initial application; for instance, the effluent discharge in the 2014 Revision was decreased from 40,000 gallons to 20,000 gallons per day.

In addition, the 2012 Notice made it clear that members of the public could ask "to be notified of further action." Stevens and Quidas did not sign up for these notifications.

Further, the 2012 Notice and the notice of tentative determination published in 2014 were sufficient to place Stevens and Quidas on notice of the proposed discharge. Indeed, MDE went beyond the statutory requirements in

ensuring that Stevens and Quidas had an opportunity to participate.

Affirmed.

CASE LAW

Sale of home – Anti-SLAPP

CASE NAME: *Barss v. Vieira*
DATE: *06/29/2018*
CITATION: *Court of Appeal, Sixth District, California. Not Reported in Cal.Rptr.3d. 2018 WL 3198562*

John Barss rented space at Ocean Breeze Mobile Home Manor and placed a mobile home on that space. Ocean Breeze was operated by the Albert and Catherine Vieira Living Trust, a defendant in this case along with its manager, Manuel Vieira, and the trustee, Catherine Vieira. Plaintiffs executed a month-to-month rental agreement with the Park and occupied the home as their principal residence.

Ashley Barss notified Ocean Breeze that plaintiffs intended to sell their mobile home, acknowledging that the Park had the right to approve the purchaser, who also had to sign a rental agreement. On April 24, 2015, she asked that Vieira perform an inspection.

Under Civil Code § 798.73.5, Ocean Breeze had 10 business days—until May 8—to provide plaintiffs with a summary of repairs required before the sale could be effected. Plaintiffs did not receive the summary, however, until June 8, 2015. Vieira listed seven items that "must be completed prior to the approval of the sale."

Ashley entered into a written agreement to sell the home to Marcel Cathrein. Cathrein's application for tenancy was approved, but he was told that the seller had to complete the listed items before the sale could be approved. Plaintiffs requested an inspection from the California Department of Housing and Community Development (HCD), which found no violations.

Defendants sent plaintiffs the first of three seven-day notices to comply with Park rules and regulations and state law and regulations. Plaintiffs responded, pointing out the absence of violations and the remediation of other issues.

Defendants, however, refused to execute the documents for completion of the sale. They sent a second and a third seven-day notice to comply, alleging the same violations.

Defendants served a 60-day notice to terminate possession and consistently refused plaintiffs' tender of the rent. According to Cathrein, Vieira approached him and encouraged Cathrein to look at a vacant lot that Viera owned in the Park.

Plaintiffs filed suit, seeking declaratory and injunctive relief along with damages for "Interference with Mobilehome Resale," negligent infliction of emotional distress, breach of the covenant of good faith and fair dealing and intentional interference with contractual relations.

After filing their answer, defendants filed a motion to strike under the anti-SLAPP statute.

The trial court took judicial notice of an unlawful detainer action defendants had unsuccessfully brought against plaintiffs. The court found that the seven- and 60-day notices were themselves protected activities, but they were "simply collateral or incidental to the defendants' alleged activities designed to thwart the sale of the mobile home." Defendants appealed.

The appeals court found that plaintiffs' allegations were premised on the defendants' refusal to cooperate in, and interference with, the sale of plaintiffs' mobile home, which additionally constituted a breach of the covenant of good faith and fair dealing and intentional interference with contractual relations, and which caused plaintiffs not only to incur damages but to suffer emotional distress. According to the Court, the notices supplied evidentiary support for the claims, but they were not themselves the basis of liability. Plaintiffs could

have omitted allegations regarding the notices and still state the same claims. The Court therefore concluded, as did the superior court, that the notices preceding defendants' unlawful detainer action "merely provide context" to plaintiffs' claims and did not in themselves trigger application of the anti-SLAPP law.

The Court found that plaintiffs' evidence met the "minimal merit" threshold necessary to withstand defendants' motion to strike. No other showing was necessary for plaintiffs at this stage of the action.

Affirmed.

LEGISLATION
Alaska
Utilities

2017 AK H 374. Enacted 7/29/2018. Effective 10/27/2018.

This bill amends Alaska Stat. § 42.05.754 to provide that a utility may recover the costs under an on-bill financing agreement for a rental property by assessing a meter conservation charge on a utility bill only if the landlord is responsible for the entire utility bill, including the meter conservation charge.

LEGISLATION
Delaware
Ombudsman

2017 DE S 235. Enacted 6/28/2018. Effective immediately.

This bill provides that the Attorney General shall create a Manufactured Housing Ombudsman.

The Manufactured Housing Ombudsman must: provide information to manufactured home owners and community owners about the services available and rights and responsibilities of home and community owners; provide meetings, mediation, or other forms of alternative dispute resolution; receive and investigate complaints from manufactured home owners; refer violations to the Consumer Protection; and make an annual report.

Legislation
Delaware
Recording – Discrimination

2017 DE S 243. Enacted 7/23/2018. Effective immediately.

This bill amends Del. Code Ann. tit. 9, § 9605 to prohibit the recordation of instruments that restrict the sale, gift, transfer, assignment, conveyance, ownership, lease, rental, use, or occupancy of real property to or by any person because of the person's race, color, creed, sex, national origin, or ancestry.

The bill also adds Del. Code Ann. tit. 9, § 9628 to provide that an owner of real property that is subject to an instrument that contains a provision that is in violation of the above, including a governing document of a common interest community, may request that the recorder redact and strike the provision from the instrument.

LEGISLATION
Illinois
Service members – Termination

2017 IL H 4317. Enacted 7/20/2018. Effective immediately.

This bill amends 330 Ill. Comp. Stat. 62/5-15 to provide that if a service member who has entered into a residential lease is killed in action or while on active duty, the immediate family or dependents of the service member may terminate the lease.

LEGISLATION
Illinois
Security deposits

2017 IL H 4951. Enacted 7/31/2018. Effective immediately.

This bill amends the Security Deposit Return Act by changing 765 Ill. Comp. Stat. 710/1 to add that costs specified in a written lease shall be for damage beyond normal wear and tear and reasonable to restore the leased premises to the same condition as at the time the lease began.

LEGISLATION
Maine
Medical marijuana

2017 ME H 1060. Enacted 7/9/2018. Effective 11/01/2018.

This bill adds Me. Stat. tit. 22, § 2430-C to provide that a landlord may not refuse to lease to or otherwise penalize a person solely for that person's status as a qualifying patient or a caregiver involving the medical use of marijuana unless failing to do so would put the landlord in violation of federal law or cause it to lose a federal contract or funding.

A landlord may prohibit the smoking of marijuana for medical purposes on the premises if the landlord or prohibits all smoking on the premises and posts notice to that effect.

LEGISLATION
Missouri
Security deposits

2018 MO S 581. Enacted 7/13/2018. Effective 8/28/2018.

This bill amends Mo. Rev. Stat. § 535.300 to delete the provision that security deposits shall not be commingled with other funds of the landlord.

The bill also deletes the requirement that all security deposits be held in a trust established by the landlord and deposited in a bank, credit union, or depository institution account in the name of the trustee.

ADOPTED RULE
Washington
Architectural modifications

Effective 7/21/2018, this rule amends Wash. Admin. Code 388-832-0185, What are architectural modifications? to provide:

(4) The following limits apply to architectural modifications:

(i) Written consent from your landlord is required before starting any architectural adaptations for rental property. The landlord must not require removal of the architectural modification at the end of your tenancy as a condition of the landlord approving the architectural modification.

DEFAULT SERVICING

CASE LAW
Foreclosure – Claim preclusion

CASE NAME: *Federal National Mortgage Association v. Thompson*
DATE: *05/24/2018*
CITATION: *Supreme Court of Wisconsin. 381 Wis.2d 609 912 N.W.2d 364. 2018 WI 57*

In November 2010, BAC Home Loans Servicing, LP filed a lawsuit alleging that Thompson failed to make required payments on a promissory note as of April 2009. BAC sought a money judgment in the full amount owed under

the note and sought to foreclose on the property securing the note.

The circuit court determined that BAC failed to present evidence of the original notice of intent to accelerate full payment and failed to present evidence that BAC was in possession of the original note and dismissed the lawsuit with prejudice.

In December 2014, Bank of America filed a complaint initiating this lawsuit. The complaint alleged that Thompson had failed to make payments on the note as of September 2009.

Thompson moved to dismiss the suit, arguing that it was barred by the doctrine of claim preclusion.

The circuit court concluded that claim preclusion barred the portion of Bank of America's default claim that was alleged to have occurred between April 2009 and August 16, 2012, the date of the trial in the 2010 lawsuit. The circuit court further concluded that any default claim alleged to have occurred after August 16, 2012, remained viable.

Bank of America amended its complaint to allege a date of default occurring after the trial in the 2010 lawsuit.

The circuit court granted Fannie Mae a monetary judgment along with a judgment of foreclosure to satisfy the monetary judgment. Thompson appealed.

The Court concluded that when a lender does not validly accelerate payment of the amount due under the note and a foreclosure action brought on the borrower's default on an installment payment under the note has been dismissed with prejudice, claim preclusion does not bar the lender from bringing a subsequent foreclosure action based upon the borrower's continuing default on the same note. The failure of the borrower to pay an installment after the termination of the first lawsuit created a new set of operative facts upon which the lender could base a subsequent foreclosure action.

Affirmed.

CASE LAW

Repossession – Commercially reasonable

CASE NAME: *Williams v. American Honda Finance Corporation*
DATE: *06/05/2018*
CITATION: *Supreme Judicial Court of Massachusetts, Suffolk. 479 Mass. 656 98 N.E.3d 169*

Rachel Williams, defaulted on her automobile loan, causing Honda to repossess the vehicle. The price for the repossessed vehicle was determined at an auction open to licensed dealers. Honda then used that amount to establish the fair market value of the repossessed automobile and likewise referenced the auction sale amount in presale and postsale notices to the debtor. Williams sued Honda, alleging that the fair market value of her repossessed automobile was the fair market retail value of the automobile and Honda's notices to her were insufficient under Massachusetts law because of the manner in which Honda described and calculated her deficiency. The district court granted summary judgment to Honda, and the plaintiff appealed.

The United States Court of Appeals for the First Circuit certified to the Court three questions related to the calculation of "fair market value" under Mass. Gen. Laws ch. 255B, § 20B and the notices required with respect to this calculation. First, whether the fair market value of the collateral under § 20B is the fair market retail value of the collateral. The second and third questions then related to the contents of the presale and postsale notices that must be sent to the debtors.

The Court concluded that fair market value, not fair market retail value, is to be used when calculating a deficiency under Mass. Gen. Laws ch. 255B, § 20B. In this case, the collateral was sold in an automobile auction open to licensed dealers. The price set in such an open market was compelling, albeit not conclusive evidence, of the fair market value of the repossessed automobile.

The statute does not dictate use of a particular market. If contested, a court must determine the fair market value based on all the facts and circumstances.

The Court also concluded that the notice required by the Uniform Commercial Code is never sufficient where the deficiency is not calculated based on the fair market value of the collateral and the notice fails to accurately describe how the deficiency is calculated.

Therefore, when creditors are providing notice prior to disposing of the collateral under § 9–614 (3), the notice should include language similar to the following statement:

"The fair market value of your vehicle will be used to reduce the amount you owe, which is your outstanding balance plus the reasonable costs of repossessing and selling the vehicle. If the fair market value of your vehicle is less than you owe, you (will or will not, as applicable) still owe us the difference. If the fair market value of your vehicle is more than you owe, you will get the extra money, unless we must pay it to someone else."

Additionally, when providing notice of the deficiency after the sale under § 9–616, the notice should clearly identify the fair market value of the vehicle in the calculation of the deficiency. This statement replaces the description of "the amount of proceeds of the disposition" that is currently required by § 9–616 (c) (2). Ultimately, the notice required by the Uniform Commercial Code will only be considered sufficient if it accurately describes the deficiency under G. L. c. 255B, § 20B.

CASE LAW

Bankruptcy – Communications

CASE NAME: *In re Kirby*
DATE: *06/26/2018*
CITATION: *United States Bankruptcy Court, D. Maine. Slip Copy. 2018 WL 3197750*

Kirby commenced an adversary proceeding alleging that the post-petition communications he received from 21st Mortgage were attempts to collect a debt in violation of § 524, and were unlawful debt collection practices under the FDCPA. He also alleged 21st Mortgage violated the discharge injunction by a state court pleading which stated: "Defendants are already liable for costs and attorney fees associated with the enforcement of the note and mortgage."

The Court found that 21st Mortgage communicated to the debtor by sending the mortgage statements to Kirby, in the care of his lawyer—an experienced bankruptcy practitioner—during the course of ongoing loan modification negotiations and communications. Also, 21st Mortgage stopped sending the statements to Kirby (in the care of his counsel) immediately following his counsel's demand that 21st Mortgage refrain from any further contact with Kirby.

Given that 21st Mortgage filtered its communication of the mortgage statements, which included the Bankruptcy Disclaimer, through Kirby's bankruptcy counsel who could easily have allayed any concerns his client may have had that these letters were collection efforts, the Court concluded that the cumulative effect of the mortgage statements was not coercive, harassing, or tantamount to a threat. Further, the fact that Kirby's counsel waited approximately ten months before he requested that 21st Mortgage cease sending the monthly statements contributed to the conclusion that even he did not perceive the statements to be any danger or threat to his client. As such, these twenty-one letters did not constitute discharge injunction violations.

Similarly, the Request for Mortgage Assistance (RMA), short sale, Adjustable Rate Mortgage and Escrow correspondence were all sent to Mr. Kirby or Mr. and Ms. Kirby, in the care of their attorney.

In addition, some of them, such as the RMA and short sale letters, were sent during a time when the Kirbys were voluntarily engaged in settlement negotiations or

the state court foreclosure diversion program which required communication by and between 21st Mortgage and the Kirbys' counsel about the Kirbys' options to address their obligations to 21st Mortgage. And, although some of the correspondence, such as the Adjustable Rate Mortgage and Escrow disclosures, stated that certain payments would come due, given the subject matter of these letters and the fact that they were all sent directly to the Kirbys' bankruptcy counsel lead the Court to conclude these communications did not violate the discharge injunction.

As to the Default Letter, the vast majority of the letter contained information that a foreclosing mortgagee must, under Maine law, include in a default or right to cure letter. Thus, in order for 21st Mortgage to protect the in rem rights that § 524 recognizes and preserves, it was required to send the Default Letter. As such, the Default Letter did not violate the discharge injunction.

Finally, Kirby's claims that 21st Mortgage's actions violated the FDCPA failed as a matter of law because 21st Mortgage was not a "debt collector" under the FDCPA. 21st Mortgage originated the debt to the Kirbys which it attempted to collect and which was the subject of its communications and foreclosure pleadings. The fact that, following the foreclosure sale, 21st Mortgage conveyed the property by quitclaim deed to itself did nothing to undermine the undisputed fact that 21st Mortgage's actions involved Mr. Kirby's obligations to it, not to a third party.

21st Mortgage's motion for summary judgment granted.

CASE LAW

Bankruptcy – Value of collateral

CASE NAME: *In re: Rucker*
DATE: *07/03/2018*
CITATION: *United States Bankruptcy Court, S.D. Mississippi. Slip Copy. 2018 WL 3244458*

To finance the purchase of a manufactured home, the Debtor signed a Consumer Loan Note, Security Agreement and Disclosure Statement in favor of 21st Mortgage in the principal amount of $62,531.30 with a down payment of $6,255.00 and an interest rate of 10.01%. The Debtor granted 21st Mortgage a security interest in the Home. Although the Home was the Debtor's residence, it was considered personal property and not real property.

The Debtor filed chapter 13, listing 21st Mortgage as having a secured claim of $30,000.00 and an unsecured claim of $27,135.30.

21st Mortgage filed a proof of claim in the amount of $56,226.65 and filed an Objection on the ground that the Debtor's valuation of the Home was insufficient.

The Court noted that 11 U.S.C. § 506(a)(2) requires courts to determine the value of an allowed claim based on the replacement value of the personal property securing that claim. Section 506(a)(2) defines "replacement value" as "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." The Code, however, does not articulate a specific method for implementing this definition of "replacement value." As a result, bankruptcy courts determine valuation by reviewing the facts and circumstances of each case.

Keck, who appraised the Home on behalf of 21st Mortgage, identified the Home as having a base value of $53,541.00 from the NADA Guide. Factoring in a 97% multiplier for the Home's location in Mississippi and a 111% multiplier for its "good" condition as determined by physical inspection, then adjusting downward for the cost of needed repairs and upward for various components and accessories, Keck calculated the Home's replacement value as $65,500.00.

Crutcher, who appraised the Home on behalf of the Debtor, used the comparable sales/market approach.

Assessing the Home's condition as "poor" to "average," Crutcher valued the Home at $22,000.00. Despite the fact that the Home was not attached to land by a permanent foundation, and thus could be moved to and sold in a larger market, Crutcher emphasized the importance of the Home's location, based solely on the fact that the Home sat in the rural town of Macon, Mississippi. The Court, however, found that a manufactured home not attached to the land is more like a vehicle to which NADA values apply than like a site-built house to which MLS values apply.

However, Crutcher found that two additional repairs would need to be made. Since Crutcher did not provide the Court with any guidance on the estimated cost of the Home's needed repairs, the Court accepted Keck's valuation of the Home but, in its discretion, reduced the amount by $2,500.00 to account for the faults found during Crutcher's inspection of the Home. Accordingly, the Court concluded that the adjusted replacement value of the Home was $63,000.00.

CASE LAW

FDCPA – Compound interest

CASE NAME: *Coyne v. Midland Funding LLC*
DATE: *07/16/2018*
CITATION: *United States Court of Appeals, Eighth Circuit. --- F.3d ----. 2018 WL 3423469*

In 2016, Minnesota resident David Coyne received a collection letter about a credit-card debt from the law firm of Messerli & Kramer P.A. on behalf of Midland Funding, asserting he owed an "account balance of $17,230.29 consist[ing] of the principal balance of $13,205.30 and interest of $3,871.39 at the rate of 6.00% plus incurred costs of $153.60."

Coyne filed a putative class action under the Fair Debt Collection Practices Act. Coyne alleged that since the underlying credit-card agreement did not authorize the charging of compound interest the defendants falsely represented the amount of the debt and impermissibly tried to collect interest that they could not charge under Minn. Stat. § 334.01(1).

The district court dismissed the action on the ground that Coyne failed to allege that any statement in the collection letters "was not only false but materially so." Coyne appealed.

The Court found that Minn. Stat. § 334.01(1) provides that "[i]n the computation of interest upon any ... instrument or agreement, interest shall not be compounded" unless there is a "contract to pay [such] interest." Coyne alleged he did not agree to pay compound interest on the debt, and at this stage the Court had to accept that allegation as true.

The Court also found it plausible that the interest charged on the principal balance included interest on the contractual interest.

The Court held that a false representation of the amount of a debt that overstates what is owed under state law materially violates 15 U.S.C. § 1692e(2)(A). It was material not only because the representation violated the plain language of that subsection prohibiting the "false representation" of the "amount" of "any debt," but also because an overstatement of the debt's amount necessarily misleads the debtor about the amount he owes under his agreement with the creditor.

The Court reversed the judgment of the district court only as to Coyne's claim against Messerli that it violated 15 U.S.C. §§ 1692e and 1692f when it attempted to collect, and represented he owed, compound interest on the debt in violation of Minnesota law. Remanded.

CASE LAW

Qualified Written Request – Foreclosure

CASE NAME: *Phyllis Sparks-Magdaluyo v. New Penn Financial, LLC*
DATE: *07/23/2018*
CITATION: *United States District Court, N.D. California. Slip Copy. 2018 WL 3537188*

Plaintiffs obtained a loan from Quick Loan Funding, Inc., secured by a deed of trust encumbering real property.

On or about October 26, 2015, Plaintiffs sent Defendant a 'qualified written request' in an attempt to request validation of the debt associated with the Property. Plaintiffs requested "documentation that would clarify the debt amounts owed, validate the debt owed by Plaintiffs, and validate [Defendant's] ability to collect the debt." Defendant failed to provide the requested documentation.

Asserting one claim for violation of RESPA, arising out of foreclosure-related activities on Plaintiffs' real property, Plaintiffs filed an "Ex Parte Application for an Order to Show Cause re Preliminary Injunction and Temporary Restraining Order Enjoining Defendant and Its Agents from the Sale of Subject Property."

The Court found that Plaintiffs were not entitled to a TRO preventing a foreclosure sale merely by alleging they sent a QWR to Defendant. Plaintiffs must have also alleged facts showing they were damaged by the alleged violations. Since Plaintiffs did not allege they had paid the outstanding debt on the Property, or allege they could do so, they failed to establish they were likely to succeed on the merits.

Plaintiffs' TRO application denied.

CASE LAW

Foreclosure – FDCPA

CASE NAME: *Cohen v. Rosicki, Rosicki & Associates, P.C.*
DATE: *07/23/2018*
CITATION: *United States Court of Appeals, Second Circuit. --- F.3d ----. 2018 WL 3520253*

Cohen filed this putative class action against Ditech and its foreclosure counsel, Rosicki, seeking to recover statutory damages under the FDCPA. Cohen alleged that the defendants violated two provisions of the FDCPA by identifying Green Tree, and not Fannie Mae, as the creditor in the foreclosure complaint, Certificate of Merit, and Request for Judicial Intervention. Specifically, Cohen alleged that the defendants violated § 1692e, which prohibits false, deceptive, or misleading representations made in connection with collecting a debt, and § 1692g(a), which requires debt collectors to provide debtors with the name of the "creditor to whom the debt is owed" within five days of an "initial communication with a consumer in connection with the collection of any debt."

The district court dismissed Cohen's complaint, concluding that the "enforcement of a security interest through foreclosure proceedings that do not seek monetary judgments against debtors" does not qualify as debt collection within the scope of the FDCPA. Cohen appealed.

The appeals court first found that Cohen had alleged an injury-in-fact and therefore had standing. Both of Cohen's FDCPA claims were based on the defendants' allegedly incorrect identification of Green Tree as the creditor. Taken as true, this misrepresentation might have deprived Cohen of information relevant to the debt prompting the foreclosure proceeding, posing a "risk of real harm" insofar as it could hinder the exercise of his right to defend or otherwise litigate that action.

The Court next concluded that a foreclosure action is an "attempt to collect a debt" as defined by the FDCPA.

Cohen was a consumer required to pay money to the mortgagee, and his obligation to do so arose from a transaction involving property that was for Cohen's personal, family, or household purposes (the mortgage note financed the purchase of his personal residence). Cohen's obligation to pay off the mortgage note was therefore a "debt" for purposes of the FDCPA. FDCPA liability is defined not in terms of whether the relief sought is money or property, but in terms of whether the debt collector's communication with the consumer is in connection with that consumer's obligation to pay money.

However, the Court further found that identification of the servicer as creditor was not a material misrepresentation under FDCPA. There was no indication that the identification of Green Tree as the creditor misrepresented the nature or legal status of the debt or undermined Cohen's ability to respond to the debt collection.

In addition, Cohen's § 1692g claim failed because the documents Cohen identified as defective initial communications—the Certificate of Merit and Request for Judicial Intervention—were not initial communications as defined by the FDCPA.

Affirmed.

CASE LAW

Foreclosure– Statute of limitations

CASE NAME: *U.S. Bank, N.A. v. Amaya*
DATE: *07/25/2018*
CITATION: *District Court of Appeal of Florida, Third District. --- So.3d ----. 2018 WL 3553905*

The Borrowers executed a promissory note in favor of Countrywide Home Loans, Inc., secured by a mortgage on the Borrowers' real property. The Note was endorsed in blank and assigned to U.S. Bank. After the Borrowers defaulted, U.S. Bank filed its initial foreclosure action in 2009, alleging that the Borrowers failed to make a payment due on May 1, 2008, and all subsequent payments. On September 14, 2012, that action was involuntarily dismissed without prejudice.

After the dismissal of that previous action, Select Portfolio Servicing, Inc., U.S. Bank's servicer, sent a default letter dated February 19, 2013, informing the Borrowers that they were in default for payments due since May 1, 2008, as well as for advances made on the Borrowers' behalf and the deficit in their escrow account, and that they had thirty days to cure the default. On May 28, 2014, U.S. Bank filed a foreclosure complaint. Subsequently, U.S. Bank filed an amended complaint, re-alleging that the Borrowers "have defaulted under the covenants, terms and agreements of the Note in that the payment due May 1, 2008, and all subsequent payments have not been paid." The Borrowers filed their Answer, raising various affirmative defenses including the statute of limitations, res judicata, and failure to comply with conditions precedent.

The trial court entered the final judgment in favor of the Borrowers, finding that U.S. Bank's Verified Amended Complaint was barred by both the statute of limitations and res judicata. The bank appealed.

The Court found that the foreclosure action was not barred by the statute of limitations because U.S. Bank alleged and proved that the Borrowers were in default on payments within the five-year limitations period, even though the initial default date of May 1, 2008 fell outside the limitations period.

The Court also found that res judicata did not apply as U.S. Bank's previous foreclosure action was involuntarily dismissed without prejudice. Generally, an involuntary dismissal without prejudice does not operate as an adjudication on the merits. Moreover, U.S. Bank's complaint alleged that "all subsequent payments have not been paid" after the May 1, 2008, default, thereby including the "subsequent and different defaults" after the filing, and subsequent dismissal, of the previous action.

Reversed and remanded.

CASE LAW

Foreclosure – Statute of limitations

CASE NAME: *U.S. Bank, N.A. v. Ramirez*
DATE: *07/25/2018*
CITATION: *District Court of Appeal of Florida, Third District. --- So.3d ----. 2018 WL 3553338*

On April 21, 2008, US Bank filed a Mortgage Foreclosure Complaint against Ramirez, alleging that Ramirez failed to make all payments due pursuant to his mortgage from January 1, 2008. This initial action was involuntarily dismissed without prejudice by the trial court due to a lack of prosecution.

Subsequently, on June 12, 2015, US Bank filed a new foreclosure complaint, alleging that Ramirez had failed to make the August 1, 2010 payment and all subsequent payments thereafter. In response, Ramirez filed a Motion to Dismiss, arguing that US Bank had five years to bring its action for foreclosure from the date of the original acceleration in the April 21, 2008 action. Based on this argument, the trial court granted Ramirez's Motion to Dismiss.

On appeal, the Court found that, when a mortgage foreclosure action is involuntarily dismissed, either with or without prejudice, the effect of the involuntary dismissal is revocation of the acceleration, which then reinstates the mortgagor's right to continue to make payments on the note and the mortgagee's right to seek acceleration and foreclosure based on any subsequent defaults.

Reversed and remanded.

CASE LAW

SCRA – Foreclosure

CASE NAME: *McGreevey v. PHH Mortgage Corp.*
DATE: *07/26/2018*
CITATION: *United States Court of Appeals, Ninth Circuit. --- F.3d ----. 2018 WL 3579874*

In 2006 McGreevey, a United States Marine, refinanced the mortgage on his home with PHH Mortgage Corporation. By January 16, 2009, PHH Mortgage and Northwest Trustee Services, Inc. had initiated foreclosure proceedings. Four months later, on May 18, 2009, the Marines recalled McGreevey to active service in Iraq. On July 21, 2010, after McGreevey completed his service in Iraq, the Marines released him from military duty.

Following his release, McGreevey promptly advised Defendants of his military service and requested an opportunity to refinance his mortgage. Defendants ignored his request and proceeded with a foreclosure sale of McGreevey's home on August 20, 2010.

Almost six years after the sale, McGreevey filed suit, alleging that Defendants had violated § 303(c) of the SCRA, which at that time prohibited the "sale, foreclosure, or seizure of property" for a breach of a mortgage obligation if "made during, or within nine months after, the period of the servicemember's military service" unless such sale, foreclosure, or seizure occurred by court order or under waiver by the servicemember of his SCRA rights.

Because the SCRA does not contain a statute of limitations, the district court, applying the four-year limitations period of what it determined to be the most closely analogous state statute, found that McGreevey's § 303(c) claim was time-barred and dismissed the case. McGreevey appealed.

The appeals court noted that, in 1990, Congress established—in 28 U.S.C. § 1658(a)—a uniform, catchall limitations period for actions arising under federal

statutes enacted after December 1, 1990. This provision states that "[e]xcept as otherwise provided by law, a civil action arising under an Act of Congress enacted after [December 1, 1990] may not be commenced later than 4 years after the cause of action accrues." Such enactments include amendments to preexisting statutes that create "new rights of action and corresponding liabilities."

According to the Court, if § 1658(a) applied, there was no need for a court to seek a state law analogue when analyzing a statute-of-limitations argument.

The Court found that a 2010 amendment to the SCRA created a new private right of action and corresponding liabilities that were not available to servicemembers before 1990 and that 28 U.S.C. § 1658(a) accordingly controlled and held that McGreevey's complaint was thus governed—and barred—by the four-year limitations period in 28 U.S.C. § 1658(a).

Affirmed.

CASE LAW

Foreclosure – Statute of limitations

CASE NAME: *Deutsche Bank National Trust Company for First Franklin Mortgage Loan Trust 2006-FF16, Asset-Backed Certificates Series 2006-FF16 v. Green*
DATE: *07/27/2018*
CITATION: *District Court of Appeal of Florida, Fifth District. --- So.3d ----. 2018 WL 3595290*

Deutsche Bank National Trust Company, as Trustee for First Franklin Mortgage Loan Trust 2006-FF16, Asset-Backed Certificates Series 2006-FF16 (Bank), appealed the trial court's involuntary dismissal of its foreclosure action against Paul A. Green on statute of limitations grounds.

The Court found that, because the specific default date asserted in Bank's foreclosure complaint, July 1, 2010, was within the five years prior to the filing of its complaint on June 30, 2015, the action was not barred by the statute of limitations, and it was error to conclude otherwise. It did not matter that a prior foreclosure action based on the same note and mortgage was involuntarily dismissed. Bank had the right to file a subsequent foreclosure action—and to seek acceleration of all sums due under the note—so long as the foreclosure action was based on a subsequent default, and the statute of limitations had not run on that particular default.

Green argued that the acceleration letter did not substantially comply with the mortgage because the amount necessary to cure the default was incorrect due to the effect of the dismissal of the previous foreclosure action. However, Green suffered no prejudice from the content of the acceleration letter, based on his testimony that he did not attempt to contact Bank or Bank's servicer after receiving the acceleration letter.

Reversed and remanded.

ADOPTED RULE CORRECTION

Maryland

Abandoned property

Effective 7/16/2018, this rule amends Md. Code Regs. 09.03.12.01, .08.

The rule provides that "Vacant and abandoned" means a finding by the appropriate circuit court that a residential property is vacant and abandoned pursuant to Real Property Article, § 7-105.14(c).

The rule also includes a copy of a notice to be used to comply with the notice of filing requirement when accompanying an order to docket or complaint to foreclose with respect to a property that is vacant and abandoned.

ADOPTED RULE
New Mexico
Creditor-placed insurance

This rule amends N.M. Code R. § 13.18.3.19, Notice Of Creditor-Placed Insurance From Insurer, to change the contact information for the FAIR Plan to:

New Mexico Property Insurance Program at 505-878-9563 or 2201 San Pedro NE, Building 20, Albuquerque, New Mexico 87110.

INSTALLATION

FINAL RULE
HUD
Penalties

83 Fed. Reg. 32790 (July 16, 2018).

Effective 8/15/2018, this rule amends 24 CFR § 3282.10, Civil and criminal penalties, under Manufactured Home Procedural and Enforcement Regulations, to increase the amount of monetary penalties from $2,795 to $2,852 for each violation, and the maximum for any related series of violations occurring within one year from the date of the first violation from $3,492,738 to $3,565,045.

LENDING

ADOPTED RULE
Arkansas
HOME Program

Effective 7/16/2018, this rule adopts 109.00.18 Ark Code R. §§ 1 – 15 regarding the 2014 HOME Program Operations Manual.

Eligible Property Types include a manufactured housing unit, including a mobile home.

The HOME Investment Partnerships Program funds can be used to support four general affordable housing activities:

Homeowner Rehabilitation Activities;

Homebuyer Activities;

Rental Housing Activities; and

Tenant-based rental assistance (TBRA).

TBRA is a rental subsidy that helps individual households with housing costs such as rent and security deposits.

LEGISLATION
Missouri
First-time home buyers

2018 MO H 1796. Enacted 7/13/2018. Effective 8/28/2018.

This bill adds Mo. Rev. Stat. § 143.1150, the "First-Time Home Buyer Tax Deduction," and Mo. Rev. Stat. §§ 443.1001 to 443.1007, the "First-Time Home Buyer Savings Account Act."

LEGISLATION
United States
Flood insurance

2017 US S 1182. Enacted 7/31/2018. Effective immediately.

This bill extends the National Flood Insurance Program from 9/30/2017 to 11/30/2018.

PROPOSED RULE
FEMA
Flood insurance

44 CFR 59. 83 Fed. Reg. 32956 (7/16/2018).

The National Flood Insurance Program (NFIP), established pursuant to the National Flood Insurance Act of 1968, as amended, is a voluntary program in which participating communities adopt and enforce a set of minimum floodplain management requirements to reduce future flood damages. This proposed rule would revise the NFIP's implementing regulations to codify certain provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 and the Homeowner Flood Insurance Affordability Act of 2014 that FEMA has already implemented and to clarify certain existing NFIP rules relating to NFIP operations and the Standard Flood Insurance Policy.

ADVANCE NOTICE OF PROPOSED RULEMAKING
HUD
Disparate impact

83 Fed. Reg. 28569 (June 20, 2018).

Reconsideration of HUD's Implementation of the Fair Housing Act's Disparate Impact Standard.

HUD is reviewing the final rule and supplement to determine what changes, if any, are appropriate following the Supreme Court's 2015 ruling in Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc., which held that disparate impact claims were cognizable under the Fair Housing Act and discussed standards for, and the constitutional limitations on, such claims. As HUD conducts its review, it is soliciting public comment on the disparate impact standard set forth in the final rule and supplement, the burden-shifting approach, the relevant definitions, the causation standard, and whether changes to these or other provisions of the rule would be appropriate.

BULLETIN
CFPB
HMDA

Bureau of Consumer Financial Protection's Statement on the Implementation of the Economic Growth, Regulatory Relief, and Consumer Protection Act Amendments to the Home Mortgage Disclosure Act. Issued 7/5/2018.

On May 24, 2018, the President signed the Economic Growth, Regulatory Relief, and Consumer Protection Act (the Act), a section of which amends the Home Mortgage Disclosure Act (HMDA). The Act provides partial exemptions for some insured depository institutions and insured credit unions from certain HMDA requirements. The partial exemptions are generally available to insured depository institutions and insured credit unions:

For closed-end mortgage loans if the institution originated fewer than 500 closed-end mortgage loans in each of the two preceding calendar years.

For open-end lines of credit if the institution originated fewer than 500 open-end lines of credit in each of the two preceding calendar years.

For closed-end mortgage loans or open-end lines of credit subject to the partial exemptions, the Act states that the "requirements of [HMDA section 304(b)(5) and (6)]" shall not apply. Accordingly, for these transactions, those institutions are exempt from the collection, recording, and reporting requirements for some, but not all, of the data points specified in current Regulation C.

The Bureau expects later this summer to provide further guidance on the applicability of the Act to HMDA data collected in 2018.

LICENSING

LEGISLATION

Delaware

Dealers

2017 DE H 342. Enacted 7/23/2018. Effective immediately.

This bill amends Del. Code Ann. tit. 21, § 6313, to allow for the suspension of a dealership license for violations of either Title 21 or Title 30, rather than the current requirement for violations of both titles.

The bill adds that a dealer whose license is suspended cannot reapply for a new license until the terms of the suspension have been met.

The bill also adds that an applicant or licensee may not solely employ call forwarding, telephone answering services and/or mail forwarding services during scheduled business hours or otherwise sell motor vehicles from a remote or otherwise unlicensed location.

BULLETIN

Washington

Fee waivers

Issued 7/25/2018.

TO: Licensees under the Consumer Loan Act.

RE: Temporary Waiver of Certain Fees.

The fee waivers will be in the following areas:

Examination Hourly Fees: Hourly fees charged on consumer loan company examinations are temporarily waived for the period July 1, 2018, through December 31, 2019.

Annual Assessments on Residential Mortgage Loans: The assessment on the following categories of loans will be temporarily waived for the calendar year 2018: a) residential mortgage loans in portfolio on December 31, 2017; b) residential mortgage loans brokered in 2018; and c) residential mortgage loans purchased in 2018. Residential mortgage loans made during the 2018 calendar year will continue to be assessed. As a reminder, the assessment for calendar year 2018 is due on March 1, 2019.

Mortgage Loan Originator Renewal Fees: Mortgage Loan Originator Renewal Fees for the 2019 calendar year will be reduced from $155 to $75. This is a temporary waiver of $80 per MLO renewal for the calendar year 2019.

REGULATION

CASE LAW

CFPB – Constitutionality

CASE NAME: *Consumer Financial Protection Bureau v. RD Legal Funding, LLC*
DATE: *06/21/2018*
CITATION: *United States District Court, S.D. New York. Slip Copy. 2018 WL 3094916*

The CFPB and the Attorney General for the State of New York brought suit against RD Legal Funding, LLC; RD Legal Finance, LLC; RD Legal Funding Partners, LP and Roni Dersovitz, the founder and owner of the RD Entities, asserting that the Defendants violated certain provisions of the Consumer Financial Protection Act. The NYAG independently asserted that the RD Entities were liable under New York law for the same actions and events that formed the basis of the CFPA claims.

The Court found that because the CFPB's structure is unconstitutional, it lacked the authority to bring claims under the CFPA and was terminated as a party to this action. The NYAG, however, has independent authority to bring claims under the CFPA and Defendants' motion to dismiss the Complaint was denied.

CASE LAW

FHFA – Constitutionality

CASE NAME: *Collins v. Mnuchin*
DATE: *07/16/2018*
CITATION: *United States Court of Appeals, Fifth Circuit. --- F.3d ----. 2018 WL 3430826*

Shareholders in Fannie Mae and Freddie Mac brought suit alleging that actions of FHFA and United States Department of Treasury pursuant to Housing and Economic Recovery Act (HERA) adversely affected value of their shares, seeking declarative and injunctive relief invalidating transfer of shareholders' economic rights to Treasury and returning all divided payments made to the Treasury, asserting claims that the FHFA Director acted outside scope of his statutory authority under HERA, and that the FHFA was unconstitutionally structured in violation of Separation of Powers.

The Fifth Circuit Court of Appeals held that the FHFA's structure violated separation of powers and the appropriate remedy for the constitutional infirmity of FHFA was to sever language of HERA providing that the Executive Branch could remove the FHFA's director only for cause.

SALES AND WARRANTIES

CASE LAW

Magnuson-Moss – Implied warranties

CASE NAME: *Naquin v. Forest River, Inc.*
DATE: *05/16/2018*
CITATION: *United States District Court, W.D. Louisiana, Alexandria Division. Slip Copy. 2018 WL 3147497*

Plaintiffs purchased a new motor home from Camping World. Forest River manufactured and constructed the motor home, assembled the component parts, and sold the motor home to Camping World. Plaintiffs alleged a sales contract was presented to them and executed at the dealership.

Plaintiffs filed a Complaint against Defendants alleging violations of the Magnuson-Moss Warranty Act ("MMWA"), and for supplemental state claims for redhibition under Louisiana Civil Code Articles 2520, et seq., and negligent repair. Plaintiffs sought monetary damages, rescission of the sales contract, interest, attorney's fees, and costs. Defendants moved to dismiss.

The Court noted that the MMWA does not supply a statute of limitations, and federal courts apply the limitations period of the analogous state law claim.

Under Louisiana law, a redhibition action against a seller who did not know of the existence of a defect prescribes in four years from the day of delivery. Regardless of whether the seller knew of the existence of the defect, a redhibition claim prescribes no later than one year from the day the defect was discovered. However, prescription is interrupted when the seller accepts the thing for repairs and commences anew from the day he tenders it back to the buyer or notifies the buyer of his refusal or inability to make the required repairs.

The Court found prescription was interrupted and did not commence to run until September 20, 2017. Plaintiffs' redhibition and MMWA claims were not prescribed.

The Court also found that the limited warranty provided coverage for a period of one year or 12,000 miles, whichever occurs first, from the date of purchase, which in this case was March 23, 2016. Forest River's limited warranty unambiguously excluded damages to the motor home based on defects of the "chassis including without limitation, any mechanical parts or systems of the chassis, axles, tires, tubes, batteries and gauges, optional generators, routine maintenance, equipment and appliances, or audio and/or video equipment." As required by the MMWA, the one-page warranty was conspicuously designated as a "limited warranty," and its terms were "fully and conspicuously disclosed[d] in

simple and readily understood language" on the "face" of the warranty. Accordingly, Plaintiffs' claim against Forest River for breach of express warranty under the MMWA should be dismissed for failure to state a claim for relief.

However, Plaintiffs identified purported redhibitory defects that allegedly had yet to be repaired. Plaintiffs pleaded enough facts to state a claim for relief for breach of implied warranties under the MMWA and Louisiana redhibition laws. Dismissal of Plaintiffs' breach of implied warranty claims under the MMWA and redhibition claims against Forest River and Camping World, was unjustified.

Defendants' motion to dismiss granted in part and denied in part.

CASE LAW

Sales - Title

CASE NAME: *Larson v. Burton Construction, Inc.*
DATE: *07/06/2018*
CITATION: *Supreme Court of Wyoming. --- P.3d ----. 2018 WL 3322902*

Burton and Larson entered into a written contract in which Larson agreed to purchase a new mobile home from Burton. The Contract was a "form" contract. Larson's agent obtained Larson's signature, and delivered the document to Burton with $500 in earnest money. Burton countersigned the Contract.

Although the mobile home was new, the form was designed for the sale of a used mobile home. Thus, the Contract required Burton, as the "Owner" of the mobile home, to execute and deliver a Wyoming title at closing.

Despite the Contract's clear language, Burton testified that it was not his custom to deliver a Wyoming title to purchasers of new mobile homes at closing. As a reseller, Burton would purchase a home from the manufacturer with borrowed funds, and the manufacturer would deliver the mobile home with an MCO. At closing, Burton would use the purchaser's funds to repay the lender, and the lender would return the MCO. Burton would collect sales tax from the purchaser and submit it to the state. Burton would pay no sales tax on his initial purchase from the manufacturer so long as he resold the mobile home directly to the consumer. After closing, Burton or the purchaser would bring the MCO and the Bill of Sale to the County Treasurer to issue a Wyoming title in the purchaser's name as the first assignee of the mobile home.

Burton testified that he "couldn't" deliver the Wyoming title at closing for three reasons. First, he would have to repay his lender in full to obtain the MCO necessary to issue title, which he could not do before receiving Larson's purchase money. Second, if Burton obtained a Wyoming title before closing, he would become the first "owner" of the mobile home, which would require him to pay sales tax on his initial purchase from the manufacturer, and, because the State of Wyoming taxes only the first sale of a mobile home, Larson would pay no sales tax on his purchase from Burton. Third, the manufacturer's warranty extended only to the first titleholder. Larson, as the second titleholder, would be deprived of the warranty.

At closing, Larson's agent discovered that Burton had provided an MCO instead of a Wyoming title, which added $1,806 in sales tax to Larson's purchase. Larson refused to complete the sale.

Burton brought suit for breach of contract. The circuit court found that the parties made a mutual mistake, cancelled the Contract, and ordered Burton to return Larson's earnest money. On appeal, the district court reversed, ruling that Larson breached the Contract when he refused to attend closing and to pay sales tax.

On further appeal, the Court found no evidence that the parties had an antecedent agreement as to how ownership would be transferred. With no prior agreement, there was no mutual mistake.

Also, although the Contract required Burton to deliver a Wyoming title at closing, the Contract also stated that Larson "shall be responsible for sales tax, if any."

The Court concluded that to obtain a Wyoming title before closing, Burton would become the first owner of the mobile home and would have to pay sales tax on his initial purchase from the manufacturer. As the second titleholder, Larson would not be subject to "any" sales tax.

In addition, although Burton testified that by obtaining a Wyoming title, the mobile home would no longer be "new," thus voiding the warranty to Larson, he also testified that he never discussed this concept with Larson.

The Court further found that, although that Burton did not "substantially perform" his obligation to deliver a Wyoming title, as the added tax burden rendered the delivery of an MCO to be more than a "technical, minor, inadvertent, or unimportant" performance defect, the doctrine of substantial performance was inapplicable here. Article 2 of the UCC and the "perfect tender" rule governed the Contract.

As Larson testified, by accepting an MCO, "I was required to pay $1,800 more for sales tax that was never agreed upon anywhere." It was neither pretextual nor commercially unreasonable for Larson to reject the MCO as an imperfect tender.

Finally, the Court found that Larson was justified to treat Burton's clear determination to deliver an MCO as a repudiation of Burton's contractual obligation to deliver a Wyoming title and Larson justifiably refused to join Burton's attempts to close the sale.

The Court reversed the district court's decision to hold Larson in breach of the Contract and conversely found that Burton breached the Contract. Remanded for further proceedings consistent with this opinion.

TAXES

LEGISLATION
Louisiana
Exemptions

2018 LA H 10 c. Enacted 6/24/2018. Effective 7/1/2018.

This bill amends La. Stat. Ann. §§ 47:302, 47:321, 47:321.1 and 47:331, regarding Sales and Use Taxes to provide that, beginning July 1, 2018, through June 30, 2025, there shall be no exemptions and no exclusions to the tax levied pursuant to the provisions of this Section, except for the retail sale, use, consumption, distribution, or storage for use or consumption of the following:

(51) A factory built home as provided in R.S. 47:301(16)(g).

LEGISLATION
Rhode Island
Tax liens

2017 RI H 8126 and 2017 RI S 2989. Enacted 7/5/2018. Effective immediately.

This bill amends 44 R. I. Gen. Laws § 44-7-28, to provide that:

(a) Taxes assessed against any person in the towns of Glocester, Coventry and Burrillville (adding, Burrillville) for either a mobile or manufactured home shall constitute a lien on the mobile or manufactured home. The lien shall arise and attach as of the date of assessment of the taxes, as defined in § 44-5-1.

(b) The lien shall terminate at the expiration of twenty (20) years. The lien shall be superior to any other lien, encumbrance, or interest in the mobile or manufactured home whether by way of attachment or otherwise.

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