

MOSLA Claim Cannot Be Predicated on Underlying RESPA Claim When No Injury Exists

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The U.S. Court of Appeals for the Eighth Circuit held that a claim based on an alleged violation of the Minnesota Mortgage Originator and Servicer Licensing Act (MOSLA) cannot be maintained when the MOSLA claim was based solely on a violation of the Real Estate Settlement Procedures Act (RESPA) that resulted in no damages to the borrower. *Wirtz v. Specialized Loan Servicing, LLC*.

MOSLA provides, in relevant part, that no residential mortgage servicer shall “violate any provision of any . . . federal law regulating residential mortgage loans.” Minn. Stat. § 58.13, subdiv. 1(a)(8). “A borrower injured by a violation of” any federal law regulating residential mortgage loans “shall have a private right of action” and is entitled to (1) actual, incidental, and consequential damages, (2) statutory damages, (3) punitive damages, if appropriate, and (4) court costs and attorneys’ fees. *Id.* § 58.18 subdiv. 1.

Under RESPA, a federal statute, a mortgage loan servicer has a duty to respond to a borrower’s qualified written request (QWR). 12 U.S.C. § 2605(e). When a loan servicer fails to adequately respond to the borrower’s QWR, the borrower is entitled to “any actual damages” the borrower incurs as a result of the failure. *Id.* § 2605(f)(1)(A).

The *Wirtz* case involved two separate appeals to the Eighth Circuit. The borrower’s loan originated in 2001, and servicing of the loan was transferred to the servicer in June 2013. Shortly after the servicing transfer, the servicer determined that the borrower was delinquent on the loan and issued a delinquency notice.

The borrower disputed the delinquency. The servicer responded that the borrower was two months in arrears on his loan obligations. Specifically, the borrower was one month delinquent in June 2011, missed two payments to a prior servicer in February 2012 and February 2013, and made an extra payment in May 2012, resulting in a two-month delinquency.

In response, the borrower retained counsel and sent three QWRs to the servicer requesting loan information, including the payment history for the life of the loan. The servicer responded by requesting that the borrower provide financial records to support his claims that his account was current.

The borrower sent two additional QWRs to the servicer in which he included copies of his loan payment history and bank records from January 2012 through November 2013. The borrower demanded reimbursement of the \$80 he spent to obtain a copy of his bank records, plus attorneys’ fees. The servicer denied reimbursement and maintained its position that the borrower was two months delinquent.

The district court granted summary judgment in favor of the borrower, finding that the servicer violated both RESPA and MOSLA, and awarded the borrower \$80 in actual damages. On appeal, the Eighth Circuit concluded that the servicer violated RESPA when it failed to provide the borrower with his pre-2011 payment history and failed to conduct a reasonable investigation of that history even after the borrower provided it. *Wirtz v. Specialized Loan Servicing, LLC*, 886 F.3d 713, 718 (8th Cir. 2018). However, the court reversed the award of summary judgment because the borrower had not established that he suffered any damages as a result of the RESPA violation. The \$80 the borrower spent on obtaining bank records concerned his disputes about the February 2012 and February 2013 missing payments, to which the servicer had adequately responded — the expense was not caused by the servicer’s failure to respond to the inquiry concerning payments made pre-2011. The Eighth Circuit remanded the case for further consideration as to whether MOSLA had been violated since that issue had not been briefed on appeal. *Id.* at 719-21.

On remand, the district court awarded the servicer summary judgment on the ground that the borrower could not maintain his MOSLA claim since it was premised solely on the RESPA violation, and he had suffered no actual damages under RESPA. The borrower appealed to the Eighth Circuit, which affirmed the district court.

On appeal, the borrower argued that he was entitled to statutory damages under MOSLA as a result of the RESPA violation. He further argued that a borrower could be injured by a servicer without sustaining any actual damages. The Eighth Circuit disagreed, and held that the district court properly dismissed the borrower’s MOSLA claim because he failed to establish a genuine issue of material fact as to whether he was “injured by” the RESPA violation.

The court noted that MOSLA provided the borrower with a private right of action only if he was “injured by” the RESPA violation. The court explained that the phrase “‘injured by’ is an umbrella term that encompasses several types of damages, not that the phrase ‘injured by’ requires no actual injury.” The court further explained, “The borrower’s injury must be something more than court costs and reasonable attorney’s fees that are generated in litigation under MOSLA. Otherwise, the statute would permit a borrower to create an injury by filing a lawsuit based on a violation that caused no injury.”

The court reiterated that the borrower’s \$80 expenditure for bank records was not caused by the servicer’s failure to investigate pre-2011 payments. The court ruled that the borrower could not base his damages claim on the payment of late fees because he conceded before the trial court that the servicer had credited him for the fees, thus waiving the argument for appeal. Finally, the court determined that the borrower could not base his damages claim on alleged derogatory credit reporting or on his investigative expenses because he raised those claimed damages for the first time on appeal.

The *Wirtz* case is an important reminder to the industry to closely scrutinize a borrower’s federal mortgage servicing claims when faced with state statutory claims premised on a violation of federal law. In particular, when faced with an alleged MOSLA violation, the servicer should determine whether the borrower sustained any damages as a result of the alleged underlying federal violation. Even if there has been a violation of federal law, the MOSLA claim cannot survive if there has been no injury resulting from the federal violation.

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