

Hinshaw Appellate Team Wins Unanimous Decision in 7th Circuit FDCPA Case

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A Hinshaw legal team recently won a complete victory on behalf of three foreclosure law firms in Illinois. The U.S. Court of Appeals for the Seventh Circuit, in a unanimous opinion, affirmed the dismissal of three separate Fair Debt Collection Practices Act (FDCPA) class action lawsuits, holding that the use of language contained in state-form foreclosure complaints did not violate the FDCPA. David Schultz and Steve Swofford led the appellate team, while Schultz, Jennifer Weller and Jason Santos represented the firms in the trial court proceedings.

At issue, were three separate foreclosure complaints filed against the borrowers of Federal Housing Administration residential mortgages, who had defaulted due to financial hardship. The complaints had followed the template set forth in the Illinois Mortgage Foreclosure Law, which provides for naming “defendants claimed to be personally liable for deficiency, if any,” and a “personal judgment for a deficiency if sought.” This language was used in the complaints and each complaint listed the borrowers as personally liable for any deficiency.

In response, each borrower filed a separate class action lawsuit against the foreclosure law firms claiming violations of the FDCPA. The borrowers took issue with the allegations that they were “personally liable for the deficiency, if any,” and that the complaint sought a “personal judgment for a deficiency” against them. They claimed that such language violated the FDCPA because they pursued deficiencies without FHA prior authorization, and therefore, they were threatening to take an action “that cannot legally be taken or that is not intended to be taken” in violation of section § 1692e(5) of the FDCPA. The trial court granted each law firm’s motion to dismiss, which were appealed and consolidated on appeal.

On appeal, the Seventh Circuit held that the borrowers had not identified any law, regulation, or FHA policy requiring a mortgagee to obtain authorization from the FHA prior to including the two allegations at issue in their state-foreclosure complaint. The court further held that the borrowers had failed to distinguish themselves from all other Illinois mortgagors who have defaulted on their payments and had Illinois-statutory-short-form complaints filed against them.

The case is *Heng v. Heavner*, Nos. 16-1668, 16-2051 & 16-2052. [Download a copy of the decision \(PDF\)](#)

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