Midwest Commercial Law

Spencer Fane Britt & Browne LLP

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A Month in Review summarizes our most recent blog postings. We encourage you to

Collection Fees Based on Percentage of Debt Violates FDCPA

For convenience, when collecting a debt, lenders may be tempted to simply add a percentage of the outstanding balance as the collection costs, rather than determining the actual costs of collection. The Eleventh Circuit, in the recent case of *Bradley v. Franklin Collection Service, Inc*., determined that, even in situations where the debtor has agreed to pay all costs of collection, this practice violates the Fair Debt Collection Practices Act ("FDCPA").

Manufacturer's Corner: The Unenumerated Implied Warranties

This post continues our series on implied warranties under the Uniform Commercial Code ("UCC"). In our last installment, we discussed the most-litigated implied warranty, the warranty of merchantability. Here, we go to the other extreme and discuss the least-litigated – and often forgotten – implied warranties: those that aren't actually enumerated in the UCC.

Federal Court Puts to Rest Challenges to the Method of Determining the Amount of Foreclosure Deficiency

In prior Alerts we described appellate court decisions addressing challenges to the Missouri common law rule of basing the amount of loan deficiency after real estate foreclosure on the foreclosure price paid, regardless of the fair market value of the affected real property. Challengers have pressed for adoption of a rule that would establish the amount of deficiency as the difference between the unpaid loan obligation and the fair market value of the real property subject to the foreclosure sale. By statute that is the rule in several states, including Kansas.

Seventh Circuit tells debtor who attempted to evade creditor by transferring assets to new entity after collection lawsuit was filed to heed the old adage: "When you're in a hole, stop digging"

Every so often, a debtor tries to evade creditors simply by transferring assets to another entity owned or controlled by the same principals. The Seventh Circuit, applying Illinois law, recently handed down an opinion dealing with this exact scenario in the case of *Centerpoint Energy*

Services, Inc. v. Halim, Nos. 13–1797, 13–1807, (7th Circuit, February 18, 2014). The defendant debtor and its principals owned numerous rental properties in the Chicago area and contracted with plaintiff, a natural gas supplier, to buy natural gas for those properties. Defendant stopped paying plaintiff and racked up $1.2 million in unpaid gas bills.

Idaho Supreme Court: No Implied Warranty Claims By Remote Purchasers (Usually)

We have written before about the need for clarity as to whether vertical contractual privity is an element of a breach of implied warranty claim under Section 2-314 of the Uniform Commercial Code. Idaho may not have reached that lofty goal quite yet, but it recently clarified that the answer is generally "yes."

Environmental Indemnity or Waste of Words?

On November 12, 2013, the First Circuit Court of Appeals handed down its decision in *VFC Partners 26, LLC v. Cadlerocks Centennial Drive, LLC*, slip op. (1st Cir., 2013). This decision serves as a reminder that courts will look carefully at the words used in a loan agreement's environmental indemnity provisions to decide whether or how they apply. If the actual wording chosen (likely many years earlier) does not fit the environmental costs sought to be indemnified, the party pursuing indemnity may be greatly disappointed.

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