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Legal Updates

Firm Offer Update

March 2007

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The Firm serves as coordinating counsel to the Mortgage Bankers Association in the so-called "firm offer of credit" class actions, so each issue we track the developing case law under the FCRA relating to this latest "Pet Rock" of the class action bar.

Great Chase Case

On March 5, the district court in New York City handed down what might be the single most favorable "firm offer" decision to date. In *Nasca v. J.P. Morgan Chase Bank N.A.*, Judge Stein found that that an "up to $417,000 or more" mortgage offer met the FCRA's statutory definition. He rejected the argument that conditioning the offer on application and collateral made it illusory, and the notion that the FCRA requires that the solicitation disclose credit terms. Judge Stein declined to follow *Cole v. U.S. Capital, Inc.*, 389 F.3d 719, 725 (7th Cir. 2004), concluding that it implies a value term that is not found in the statute.

For more information,contact Michael Agoglia at magoglia@mofo.com.

Failing to Disclose Minimum Amount of Credit Offered

Failing to disclose the minimum amount of credit offered does not make a pre-screened credit offer illusory for purposes of the Fair Credit Reporting Act. That was the first of two key holdings in *Forrest v. Universal Savings Bank*, No. 06-C-445, 2006 U.S. Dist. LEXIS 87669 (E.D. Wis. Dec. 1, 2006).

Dismissing plaintiff's FCRA claims, the court also considered the effect of offering a gift to entice consumers to obtain a credit card where the amount of interest and finance charges a consumer would pay if they accepted the credit offer far outstrip the value of the gift. The court rejected plaintiff's argument that Universal Savings Bank was simply selling her a product, not extending credit, when it offered her a Visa Platinum Card and a free computer if she transfered $5,000 of qualifying balances to the card and maintained a balance of $3,500 for at least 18 months. Although the court agreed that the fees and costs of accepting the offer would almost certainly pay for the value of the computer, it nevertheless held that Universal Savings' offer was of value and plaintiff had no claim under the FCRA because Universal offered a general use credit card with no annual fee and a competitive interest rate.

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No Liability for Negative Amortization ARM Offer

In *Cavin v. Home Loan Center, Inc.*, No. 05 C 4987, 2007 U.S. Dist. LEXIS 2713 (N.D. Ill. Jan. 10, 2007), a case that positively cites the *Forrest* decision discussed above, the court granted summary judgment in favor of the sender and against the recipient of a pre-screened credit offer for an adjustable rate mortgage with a negative amortization payment option. Paying special attention to the unique nature of mortgages as opposed to other credit products, the court rejected the plaintiff's claims about adequate disclosure of all loan terms. The court also found that it was not necessary to

disclose in a solicitation the maximum negative amortization provisions and prepayment penalties that do not apply to every borrower.

Bonner, the New Murray

Daniel Edelman and his firm have secured class certifcation in another suit alleging violation of the FCRA, *Bonner v. Team Toyota LLC*, No. 2:06cv157 PPS, 2006 U.S. Dist. LEXIS 88827 (N.D. Ind. Nov. 21, 2006). Finding a name plaintiff other than his usual Mr. Murray, Mr. Edelman this time represents Evita Bonner, who received a letter from Team Toyota LLC and Enterprise America stating that she was pre-approved for an auto loan and offering her the opportunity to participate in a "special test market finance program." In approving class certification, the court relied on the language of the solicitation letter to rejected Team Toyota's suggestion that the plaintiff had not satisfied the requirements of Rule 23(a)(2) because she had not established that defendants utilized her consumer report in connection with the issuance of the letter.

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