



Kevin Keen v. Jpmorgan Chase Bank

2017 | Cited 0 times | Ninth Circuit | October 24, 2017

FILED NOT FOR PUBLICATION OCT 24 2017 UNITED STATES COURT OF APPEALS MOLLY C. DWYER, CLERK U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

KEVIN J. KEEN; TAMRA E. KEEN; No. 15-17188 CURT CONYERS; KELLY E. CONYERS, individually; on behalf of D.C. No. 3:15-cv-01806-WHO themselves and all others similarly situated, MEMORANDUM* Plaintiffs-Appellants,

v.

JPMORGAN CHASE & CO., a national banking association,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of California William Horsley Orrick, District Judge, Presiding

Argued and Submitted September 13, 2017 San Francisco, California

Before: KOZINSKI and FRIEDLAND, Circuit Judges, and ARTERTON,** District Judge.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3. ** The Honorable Janet Bond Arterton, United States District Judge for the District of Connecticut, sitting by designation.

page 2 1. The Truth in Lending Act (“TILA”) protects a concrete interest in

receiving accurate credit information. See 15 U.S.C. § 1601(a); Fed. Election

Comm’n v. Akins, 524 U.S. 11 , 21 (1998); Havens Realty Corp. v. Coleman, 455

U.S. 363 , 373–74 (1982). At the pleading stage, plaintiffs’ allegation that Chase

violated TILA by understating a finance charge satisfies the Article III injury-in-



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fact requirement. See *Van Patten v. Vertical Fitness Grp., LLC*, 847 F.3d 1037 , 1043 (9th Cir. 2017). So plaintiffs have standing. The case isn't moot because the availability of statutory damages preserves a live controversy. *Ho v. ReconTrust Co., NA*, 858 F.3d 568 , 571 n.1 (9th Cir. 2016).

2. A district court may dismiss for failure to state a claim "where [a] complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory." *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097 , 1104 (9th Cir. 2008). The note and deed of trust for plaintiffs' mortgage establish that neither Chase nor a subsequent debt holder could charge 365/360 interest. See *Fletcher v. Sec. Pac. Nat'l Bank*, 591 P.2d 51 , 55 (Cal. 1979); *Chern v. Bank of Am.*, 544 P.2d 1310 , 1314 (Cal. 1976). Because Chase disclosed an accurate finance charge, the district court didn't err by dismissing this case.

page 3 3. We grant the Consumer Financial Protection Bureau's motion for leave to file a brief as amicus curiae and the parties' unopposed motions to file supplemental briefs in response to the Consumer Financial Protection Bureau. We deny all remaining motions as moot.

AFFIRMED.

