

THOUGHT LEADERSHIP

News

JUDGE IN MULTIFACETED SUIT BETWEEN HOMEOWNER, MORTGAGEE FINDS NO MISREPRESENTATION IN REFUSAL TO DISBURSE INSURANCE PROCEEDS

Newsbrief

23 DEC 2013

The proper disposition of \$33,000 in homeowners' insurance proceeds was a minor issue in a dispute between a foreclosed homeowner and his mortgagee and Judge Joe Fish, in an order last Monday, adopted a magistrate's recommendation concluding the mortgagee's alleged refusal to release the proceeds or apply them to the amount owed on the mortgage was not actionable. In *Lucas v. Ocwen Home Loan Servicing*, Civ. No. 3:13-CV-1057-G (BH), 2013 WL 6620856 (S.D. Tex. Dec. 16, 2013), the insured alleged that Ocwen fraudulently withheld an insurance payment for repairs to fire damages. Ocwen did not address the portion of the plaintiff's claim relating to the insurance proceeds. The court, however, found the plaintiff had failed to state how or why Ocwen's failure or refusal to part with the insurance funds constituted fraud. The court therefore dismissed the claims of its own accord for failure to meet the heightened federal pleading requirements for fraud claims. Similarly, the plaintiff's bare assertion that the failure to apply insurance proceeds constituted a misrepresentation of "the character, extent, or amount of a consumer debt" was not plausible, and so was subject to dismissal for failure to state a claim.