

Quicken Loans Can't Hang Up On TCPA Suit, Suit Says

By **Christopher Crosby**

Law360, New York (September 6, 2017, 6:12 PM EDT) -- A proposed class of consumers told a Florida federal judge Tuesday that Quicken Loans Inc. can't escape a suit alleging the mortgage lender calls consumers on the national do not call list, arguing that any consent to receive telemarketing inquiries was withdrawn long before the calls stopped.

Florida resident Eileen Nece, who seeks to represent a nationwide class of consumers, urged the court to reject Quicken Loans' motion for summary judgment, arguing the company's sales practices violate the Telephone Consumer Protection Act and Federal Communication Commission rules.

Nece argued she's adequately pled that Quicken Loans called her despite the fact that she'd listed her number on the national do not call registry, that any consent to calls from the company was revoked and that the company either lacks or fails to follow policies ensuring it abides by consumer protection laws.

"Reasonable minds cannot disagree on the meaning of the words 'stop calling me' or [Nece's] other statements and actions making clear that she did not want calls from [Quicken Loans]," the filing said. "Reasonable minds also cannot disagree on the meaning of 'NO' in answer to the question, 'Contact in Future?'"

Nece slapped the mortgage lender with the suit last September, contending that after emailing the company and contacting it through its website in 2012 to see whether it had any local branches she could deal with, she received 13 telemarketing calls, even though she told a representative to stop calling after the first call. Many of the calls were pre-recorded and sent from an automatic dialing machine, Nece said.

She also argued the company opened multiple internal sales leads that it failed to cross-reference against the national do not call list. As the calls persisted, Nece said, she even wrote a letter of complaint to the company's CEO. The company finally sent her a letter in March 2013 saying the calls would stop, according to court records.

After the court denied its motion to dismiss in January, Quicken Loans filed for summary judgement in February, arguing Nece gave consent to be called when she contacted the company in the first place and even provided her number for callbacks.

The company also argued its taped calls between Nece and sales representatives demonstrate that none of the calls were pre-recorded, and that they otherwise stopped within the statutory required period of time.

But Nece argued Tuesday that even assuming she gave consent by contacting the company, it was revoked after the first call when she told a representative, "Well, if you have [consumer]

complaints against you, period, I don't want to deal with your company." After two more calls that same day, the company internally marked her as not interested in its services and not to be called back.

Nece also argued a safe-harbor rule did not apply to the calls because the company knew or should have known her number was listed as do not call. She said the company failed to follow internal TCPA-compliant policies requiring sales representatives to identify themselves, provide a call back number or address and have a written policy outlining these standards available upon request.

In an email to Law360 Wednesday, a spokesperson for the company blasted the lawsuit as "another example of predatory law firms filing a baseless, misguided lawsuit against a U.S. corporation with the strategy of manipulating the law, the facts and their client, in hopes that the defendant will chose to 'settle' the case."

"The theory being that on top of unwanted publicity, along with the time, money and effort that the company would otherwise expend to defend a groundless action (such as this one), would still exceed the amount of money required for the plaintiff to settle the lawsuit. If this was not in the court system, their tactics would be called 'extortion' and the money the plaintiff firm extracted from their victim would be called a 'ransom'."

Counsel for Nece did not immediately return requests for comment Wednesday.

Quicken Loans is represented by Brooks R. Brown and W. Kyle Tayman of Goodwin Procter LLP, and J. Kirby McDonough and S. Douglas Knox of Quarles & Brady LLP.

Nece is represented by Gregory Duncan, Joseph S. Tusa, and David P. Mitchell and Richard D. Giglio of Maney Gordon Zeller PA.

The case is Nece v. Quicken Loans Inc., number 8:16-cv-02605 in U.S. District Court for Florida Middle.

--Editing by Marygrace Murphy.

Update: This story has been updated with comment from a Quicken Loans spokesperson.