

Proof In Quicken Loans TCPA Case Is 'Powerful,' Court Told

By **Shayna Posses**

Law360, New York (October 26, 2017, 9:15 PM EDT) -- A consumer asked a Florida federal judge Thursday for a quick win on a couple of claims in her suit accusing Quicken Loans Inc. of bombarding her and others with calls without permission, saying the evidence makes it clear that the mortgage lender violated the Telephone Consumer Protection Act.

Eileen Nece moved for partial summary judgment on two counts alleged in her proposed class action, contending that audio recordings of her calls with Quicken Loans and other evidence show that the lender flouted the TCPA by calling her home phone number even though it was on the national Do Not Call list and by making telemarketing calls to her without instituting proper policies and procedures.

"The record before this court is thin, but it is replete with powerful documentary and audio evidence establishing Quicken Loans' violations of the TCPA. Defendant cannot rise above its own evidence and records," Nece said. "There are no genuine issues of material fact in dispute regarding these matters and summary judgment in favor of plaintiff on counts II and III of the complaint is appropriate."

Nece filed suit against the mortgage lender last year, contending that after emailing the company and contacting it through its website in 2012 to see if there were any local branches, she received at least 13 telemarketing calls, even though she told a representative to stop calling after the first call. In the process, Quicken Loans opened multiple internal sales leads that it failed to cross-reference against the national Do Not Call list, Nece said.

As the calls persisted, Nece went so far as to write a letter of complaint to the company's CEO, she alleged. Finally, in March 2013, Quicken Loans sent her a letter saying the calls would stop, according to court filings.

After the court denied its motion to dismiss in January, Quicken Loans filed for summary judgment in February, arguing that it never used a prerecorded or artificial voice to call the consumer and that Nece asked the lender to contact her.

But Nece **shot back** in September that even assuming she gave consent by contacting the company, it was revoked after the first call when she told a representative, "Well, if you have [consumer] complaints against you, period, I don't want to deal with your company."

The consumer went even further Thursday, contending that it is high time to find for her on two of her three counts based on the evidence before the court.

For one, Nece asserted, she has sufficiently demonstrated that Quicken Loans violated the TCPA as it pertains to the national Do Not Call list by showing that her home phone number has been on the registry since 2007 and that the calls she received were solicitations intended to encourage her to obtain a mortgage from the lender. Plus, she noted, even Quicken Loans admits that it called her home more than once within a year span, another required element of her allegation.

The consumer also reiterated that even if she initially gave consent to Quicken Loans by reaching out, she revoked that consent during her very first call with the lender in December 2012. In fact, the lender had clear knowledge that she didn't want to receive more calls, as the employee she spoke to that first time marked her as not interested in Quicken Loans' computer system, Nece argued.

In addition, Nece contended that she is entitled to summary judgment on her claim accusing Quicken Loans of making telemarketing calls to her home phone without having proper procedures for maintaining a list of people who ask not to receive calls, as well as failing to honor her do-not-call request within a reasonable time and to identify the caller's name and the company upon whose behalf they are calling.

That all clearly happened here, Nece said, asserting that Quicken Loans repeatedly failed to record her requests not to receive further unwanted calls, didn't place her phone number on its internal do-not-call list and didn't provide her with a phone number or address where she could contact the person calling her.

The consumer also filed a separate request to amend her complaint Thursday, explaining that she would like to add a claim under the Florida wiretapping statute now that discovery has confirmed that Quicken Loans recorded its phone calls with her and had a policy of not revealing that calls were being recorded.

Joseph S. Tusa, who represents Nece, told Law360 on Thursday, "It is our client's position that the evidence proves [Quicken Loans'] violations of the TCPA in these manners and that plaintiff should be awarded summary judgment."

Quicken Loans said in a Thursday statement that this case is a blatant example of law firms manufacturing claims in an attempt to force a settlement.

"Ms. Nece's most recent filing is nothing more than a regurgitation of her response to Quicken Loans' well-founded summary judgment motion," the lender said. "While this is disappointing, it is not surprising, given all three of these lawyers regularly file numerous similar lawsuits against primarily larger companies with the clear objective of forcing large settlements from which their predatory law firms received a significant percentage of the proceeds as compensation for the scheme."

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

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.

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

--Additional reporting by Christopher Crosby. Editing by Alyssa Miller.

Update: This story has been updated to include a statement from Quicken Loans.