

Client Alert

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***Nicklaw v. CitiMortgage, Inc.*: Eleventh Circuit Holds Statutory Violation Insufficient to Confer Article III Standing Absent Concrete Injury-in-Fact**

On October 6, 2016, the United States Court of Appeals for the Eleventh Circuit issued its opinion in *Nicklaw v. CitiMortgage, Inc.*, dismissing, for lack of Article III standing, a class action complaint that alleged statutory violations and sought only statutory damages.¹ This important decision is the first published opinion in which the Court has applied the framework set forth by the Supreme Court in the *Spokeo, Inc. v. Robins* opinion, which issued in May 2016.² In *Spokeo*, the Supreme Court held that “Article III standing requires a concrete injury even in the context of a statutory violation” and instructed that “both history and the judgment of Congress play important roles” in determining whether an intangible harm rises to the level of a concrete injury-in-fact.³ The *Nicklaw* opinion confirms that where a plaintiff brings suit based only on alleged statutory violations, the plaintiff must, to establish Article III standing, allege a concrete harm resulting from the violation rather than relying simply on the alleged statutory violation.

Background

The plaintiff, Roger Nicklaw, used the proceeds of a real estate sale to satisfy the balance on his mortgage in July 2012.⁴ Under a New York statute, this triggered the mortgagee’s obligation to sign and record a certificate of discharge with the county clerk evidencing the satisfaction of the mortgage within thirty days.⁵ Failure to do so renders the mortgagee liable under that statute to the mortgagor for \$500 to \$1,500, depending on the length of the delay.⁶ Because the mortgagee in *Nicklaw*, CitiMortgage, allegedly failed to file a certificate of discharge within the time required by the statute, Nicklaw filed a class-action complaint based on the alleged statutory violation in federal court, seeking statutory damages for himself and a putative class. The district court dismissed Nicklaw’s claims as moot due to

¹ *Nicklaw v. CitiMortgage, Inc.*, __ F.3d __, No. 15-14216, 2016 WL 5845682 (11th Cir. Oct. 6, 2016).

² *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016).

³ *Id.* at 1549.

⁴ *Nicklaw*, 2016 WL 5845682, at *1.

⁵ N.Y. Real Prop. Law § 275.1; N.Y. Real Prop. Acts § 1921.

⁶ *Id.*

an earlier filing in another jurisdiction. Nicklaw appealed and CitiMortgage moved to dismiss the appeal for lack of standing.

The Eleventh Circuit's Opinion

In an opinion written by Judge Pryor, the Eleventh Circuit dismissed the appeal for lack of jurisdiction on the basis that the plaintiff lacked standing. To establish standing under Article III of the Constitution, a plaintiff must allege that he suffered an injury in fact, meaning an invasion of a legally protected interest that is “concrete” and “particularized.”⁷ Because Nicklaw alleged only a violation of the New York statute, the Court held that the proper inquiry is whether the intangible harm caused by the statutory violation is a concrete injury-in-fact, not whether the statute confers a substantive right.⁸

Applying *Spokeo*, the Court considered whether the intangible harm caused by CitiMortgage's delay in filing a certificate of discharge, *i.e.*, the statutory violation, constituted a concrete injury-in-fact. Nicklaw argued that the untimely filing constituted a concrete injury for two reasons: (1) “the New York legislature intended to create a substantive right to have the certificate of discharge timely recorded;” and (2) “the right to have a satisfaction of mortgage timely recorded has deep roots in American history.”⁹ The Court rejected both arguments.

The Court followed *Spokeo*'s holding that while “‘Congress may elevat[e] to the status of legally cognizable injuries concrete . . . injuries that were previously inadequate in law,’ . . . a plaintiff does not ‘automatically satisf[y] the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right.’”¹⁰ In other words, “the requirement of concreteness under Article III is not satisfied every time a statute creates a legal obligation and grants a private right of action for its violation,” meaning that Nicklaw was required to allege “some harm or risk of harm from the statutory violation.”¹¹ The Court found that he “allege[d] neither a harm nor a material risk of harm,” as “[h]is complaint does not allege that he lost money because CitiMortgage failed to file the certificate . . . that his credit suffered . . . [or] that he or anyone else was aware that the certificate of discharge had not been recorded during the relevant time period.”¹² Further, because Nicklaw waited more than two years to file suit, the Court held that he failed to allege even a material risk of future harm.¹³

The Court also rejected Nicklaw's attempt to equate the statutory right to a timely filing with the remedies available at common law, explaining that common law “causes of action provided a remedy to prevent the risk of harm that occurred while title to property was wrongfully clouded, not a remedy *after* the cloud was lifted.”¹⁴ Accordingly, the Court dismissed the appeal for lack of standing, reasoning that “[b]y alleging only that CitiMortgage recorded the certificate late and nothing else, [the plaintiff] failed to establish that he suffered or could suffer any harm that could constitute a concrete injury.”¹⁵

⁷ *Nicklaw*, 2016 WL 5845682, at *3 (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* (quoting *Spokeo*, 136 S. Ct. at 1549) (internal citations omitted).

¹¹ *Id.* (citing *Spokeo*, 136 S. Ct. at 1550).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* (emphasis in original).

¹⁵ *Id.* at *4.

The Significance of *Nicklaw*

Nicklaw is the first published, precedential post-*Spokeo* opinion issued by the Eleventh Circuit addressing whether a statutory violation standing alone suffices for purposes of Article III standing. In an unpublished, non-precedential opinion issued in July, *Church v. Accretive Health, Inc.*, a panel of the Court upheld standing in a case brought under the Fair Debt Collection Practices Act (FDCPA) based on the defendant's alleged failure to provide certain disclosures with communications governed by the FDCPA.¹⁶ The Court held that "through the FDCPA, Congress ha[d] created a new right—the right to receive the required disclosures in communications governed by the FDCPA—and a new injury—not receiving such disclosures."¹⁷ The *Nicklaw* opinion does not cite *Church*, suggesting that the *Church* opinion should not be relied upon as precedent in the Eleventh Circuit going forward in light of the precedential *Nicklaw* opinion. In short, depending on the nature of the alleged statutory violation, defendants in cases pending within the Eleventh Circuit should be able to cite *Nicklaw* to challenge a plaintiff's Article III standing.

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¹⁶ No. 15-15708, 2016 WL 3611543 (11th Cir. July 6, 2016).

¹⁷ *Id.* at *3.