



## Seventh Circuit Affirms Trial Court's Ability to Condition TILA Rescission on the Borrowers' Tender of Loan Proceeds

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On May 28, 2014, the Seventh Circuit issued an important decision regarding rescission under the Truth in Lending Act (TILA). *Iroanyah v. Bank of America, et al.*, No. 13-1382 (7th Cir. May 28, 2014). Rejecting the plaintiffs' argument that a court must accommodate a borrower who is entitled to rescind a mortgage loan, the Court held that the plaintiffs misunderstood the nature of rescission. The court confirmed the defendants' arguments that rescission imposes mutual obligations on both the borrower and the lender. The lender must terminate its security interest, but the borrower must return the money borrowed on terms set by the district court. If the borrower is unable to meet those terms, the lender is entitled to a judgment.

In *Iroanyah*, the Seventh Circuit affirmed the district court's decision to condition rescission under TILA on repayment of the money borrowed within 90 days. The court also confirmed that a loan is not rescinded when a borrower sends a notice of rescission to its servicer or note holder, even if the notice of rescission is based on a valid TILA violation. Rather, a loan is not rescinded unless and until the money that was borrowed is paid back (less interest paid and financing charges), and the mortgage is released.

The Seventh Circuit wholly rejected the plaintiffs' argument that the language of TILA, along with its implementing regulation and official commentary, bars any court from conditioning rescission upon the borrowers' repayment. Similarly, the court rejected the borrowers' argument that, even if they were unable to tender the loan proceeds, they were still entitled to a reduction of the balance due by the interest paid and financing charges. The court stated that both of these arguments "evince a flawed conception of rescission."

Elaborating on this point, the court said "[w]hat the Iroanyahs misunderstand is that rescission is a process involving two parties, each with their own obligations." The Iroanyahs' argument that a court "cannot affect the borrower's right to rescind" fails for that reason—the Iroanyahs "ignore the role of their own tender obligations in the process of rescission." Recognizing that rescission is two-way street, the Seventh Circuit confirmed that "[t]ender is inherently part of rescission, not an occasional effect of it." Stated differently, if a borrower cannot repay the loan proceeds on terms the district court deems equitable, "rescission, by any definition, has not taken place and there is no benefit to claim."

In reaching this decision, the Seventh Circuit acknowledged that "rescission is often unavailable to consumers because they are unable to return unpaid principal as a result of decreased property



value, poor housing market or any number of reasons.” While certain circumstances may make rescission impossible as a practical matter, a borrower is not entitled to procedures that allow him to take advantage of his right of rescission. Instead, a borrower is only “entitled to an equitable plan.”

The Seventh Circuit also rejected the Iroanyahs’ argument that the district court erred in rejecting their proposal of a tender in installments over a 26-year period, without interest. In affirming the district court, the Seventh Circuit noted that the equities were in favor of the defendants. Most importantly, the Seventh Circuit recognized that the Iroanyahs’ proposed plan was effectively a reformation of the original loan agreement, not a rescission, and would create an unjust windfall in their favor. In addition, the equities favored the defendants because: (i) the defendants were not the “wrongdoers,” they were merely assignees of the loans; (ii) the TILA violations were hyper-technical and caused no actual harm; and (iii) the Iroanyahs received the benefit of living in the property without making any payments during the pendency of the litigation.

The *Iroanyah* decision unequivocally establishes that a federal court in the Seventh Circuit can condition rescission on the borrower tendering the loan proceeds within a time period the district court deems equitable. The decision is also very helpful because of the way it describes the rescission process and when that process is actually complete. This decision should be cited liberally by the residential mortgage lending and servicing industry, both in the Seventh Circuit and in other jurisdictions.

Defendants-appellees Bank of New York Mellon, as Trustee, and Mortgage Electronic Registration Systems, Inc. were represented by Thomas J. Cunningham and Douglas R. Sargent of Locke Lord LLP.

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