

## **Supreme Court Passes on Decision in *Midland Funding LLC. v. Madden***

On June 27, 2016, the United States Supreme Court decided it would not review the Second Circuit's ruling in *Midland Funding LLC. v. Madden*, letting stand the 2nd Circuit's ruling that an assignee of a loan originated by a national bank cannot rely upon the bank's ability to preempt state restrictions on interest rates.

In *Madden*, the Plaintiff brought a putative class action against Midland Funding, LLC ("Midland"), a non-bank lender/servicer, for violations of the Fair Debt Collection Practices Act and New York usury law. The Plaintiff, a New York resident, opened a credit card account with Bank of America in 2005. The account was subsequently consolidated with the accounts of FIA Card Services, N.A. ("FIA"), a national bank headquartered in Delaware. FIA sold the Plaintiff's account to Midland after determining it was not collectible. Madden alleged that in 2010, Midland sought collection of the debt at the original interest at a rate of 27 percent per year which exceeds the usury rate under New York law. The Plaintiff responded with the class action alleging usury under New York state law.

The United States District Court for the Southern District of New York held that the Plaintiff's claims were preempted by the National Bank Act, denied class certification and granted summary judgment in favor of the Defendants. On appeal, the Second Circuit held that the National Bank Act does not preempt state usury laws when loans are assigned to non-bank assignees. The Court held that while Section 85 of the Act preempts state law limitations on interest rates, preemption does not transfer to a third-party, non-bank assignee enforcing the debt.

The United States Solicitor General ("SG"), upon invitation from the Supreme Court, urged the Supreme Court not to hear the appeal. While the SG disagreed with the Second Circuit's ruling, it contended that the issue was not ripe for appeal because there was no identifiable circuit split on the issue.. The SG's brief explained that the National Bank Act and "valid-when-made" common law theory grants non-bank acquirers of bank originated loans the right to enforce the loans consistent with the terms established by the national bank at origination, and noted the significant market disruption resulting from its ruling.

The case was returned to the trial Court for further adjudication in what will likely continue to be a widely followed case.