SUPREME COURT OF PENNSYLVANIA

Pennsylvania Department of Banking v. NCAS of Delaware, LLC

596 Pa. 638 (2008) (Pa. 2008) · No. No. 79 MAP 2007 · Decided May 29, 2008

SUMMARY

The Supreme Court of Pennsylvania considered whether NCAS of Delaware, LLC violated the Consumer Discount Company Act by charging Pennsylvania borrowers a monthly participation fee in connection with a line of credit. The court held that the statutory provision aggregates interest and other charges when determining whether an unlicensed lender exceeded Pennsylvania's six-percent limit, and that the contractual Delaware choice-of-law provision could not bind the Department of Banking in its enforcement action. The court affirmed the Commonwealth Court's permanent injunction.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Justice Saylor; Chief Justice Castille; Justice Eakin; Justice Baer; Justice Todd; Justice McCaffery
JURISDICTION	Pennsylvania
DECIDED	May 29, 2008
DOCKET	No. 79 MAP 2007
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from an order of the Commonwealth Court granting the Pennsylvania Department of Banking judgment on the pleadings and entering a permanent injunction against NCAS's collection of monthly participation fees.
STANDARD OF REVIEW	Review of judgment on the pleadings is limited to whether the lower court committed an error of law or whether unresolved material factual questions remained; well-pleaded allegations of the nonmoving party are accepted as true, and review of legal conclusions is plenary.
PRECEDENTIAL VALUE	published precedential opinion of the Supreme Court of Pennsylvania
PARTIES	NCAS of Delaware, LLC, d/b/a Advance America Cash Advance Centers v. Pennsylvania Department of Banking

TOPICS

usury consumer protection statutory interpretation administrative law contract interpretation

PRACTICE AREAS

consumer protection usury administrative law statutory interpretation contracts

QUESTIONS PRESENTED

1. Whether NCAS's contractual Delaware choice-of-law provision bound the Department of Banking in an enforcement action brought under Pennsylvania's police-power authority.
2. Whether Section 3.A of the Consumer Discount Company Act aggregates fees and other charges with interest when determining whether an unlicensed lender exceeded the permissible rate.
3. Whether a violation of the Consumer Discount Company Act requires a separate violation of the Loan Interest and Protection Law.

HOLDINGS

1. A private contractual choice-of-law provision cannot bind the Department of Banking or exempt a lender from investigation and enforcement of Pennsylvania's public policy against usurious lending when the Department acts pursuant to its statutory police power.
2. Section 3.A prohibits an unlicensed lender making loans under $25,000 from charging interest and any other additional charges that, in the aggregate, exceed 6% annual simple interest; the statutory phrase referring to the amount actually loaned or advanced modifies the benchmark interest, not every listed charge.
3. A lender may violate the Consumer Discount Company Act independently of violating the Loan Interest and Protection Law because the Consumer Discount Company Act aggregates interest with fees and other charges, while the Loan Interest and Protection Law addresses interest alone.

KEY QUOTATIONS

> *“We conclude that Section 3.A of the CDCA prohibits unlicensed lenders of under $25,000 from charging interest and any type of other or additional charge or charges that aggregate in excess of six percent, the amount they would otherwise be permitted to charge on a loan under the LIPL.”* (762)

> *“Further, because the CDCA applies the LIPL interest rate to an aggregation of interest and other charges, while the LIPL only refers to interest, we agree with the Department that one may violate the CDCA independent of any LIPL violation.”* (762)

FACTUAL BACKGROUND

NCAS, a Delaware payday lender, offered Pennsylvania consumers a $500 revolving line of credit at a stated 5.98% annual percentage rate and charged a $149.95 monthly participation fee while principal, fees, or finance charges remained outstanding. NCAS operated the program without a Pennsylvania Consumer Discount Company Act license and without a bank partner. The Pennsylvania Department of Banking alleged that the fee was effectively an additional charge on the loans and, when aggregated with the stated interest, exceeded the amount permitted for an unlicensed lender.

PROCEDURAL HISTORY

The Department filed an enforcement action in the Commonwealth Court seeking declaratory and injunctive relief against NCAS's payday-loan credit product. The Commonwealth Court granted the Department judgment on the pleadings and permanently enjoined collection of the monthly participation fee, concluding that Pennsylvania law applied and that the fee and interest violated the Consumer Discount Company Act. NCAS appealed directly to the Supreme Court of Pennsylvania.

DISPOSITION

affirmed

CASES CITED

- Smith v. Steinkamp, 318 F.3d 775 (7th Cir. 2003)
- Pennsylvania Department of Banking v. NCAS of Delaware, LLC, 931 A.2d 771 (Pa. Commw. Ct. 2007)
- Travelers Casualty & Surety Co. v. Castegnaro, 565 Pa. 246, 772 A.2d 456 (2001)
- Emerich v. Philadelphia Center for Human Development, Inc., 554 Pa. 209, 720 A.2d 1032 (1998)
- Lindstrom v. City of Corry, 563 Pa. 579, 763 A.2d 394 (2000)
- Earnest v. Hoskins, 100 Pa. 551 (1882)
- Richman v. Watkins, 376 Pa. 510, 103 A.2d 688 (1954)
- Gilbert v. Otterson, 379 Pa. Super. 481, 550 A.2d 550 (1988)
- Equitable Credit & Discount Co. v. Geier, 342 Pa. 445, 21 A.2d 53 (1941)
- BankWest, Inc. v. Oxendine, 266 Ga. App. 771, 598 S.E.2d 343 (2004)
- Tritt v. Cortes, 578 Pa. 317, 851 A.2d 903 (2004)
- McKinley v. PennDOT, 564 Pa. 565, 769 A.2d 1153 (2001)
- Barnhart v. Thomas, 540 U.S. 20, 124 S. Ct. 376, 157 L. Ed. 2d 333 (2003)
- Winslow-Quattlebaum v. Maryland Insurance Group, 561 Pa. 629, 752 A.2d 878 (2000)
- American Future Systems, Inc. v. Better Business Bureau of Eastern Pennsylvania, 592 Pa. 66, 923 A.2d 389 (2007)
- McIlvaine Trucking, Inc. v. Workers' Compensation Appeal Board (States), 570 Pa. 662, 810 A.2d 1280 (2002)
- McLaughlin v. Gastrointestinal Specialists, Inc., 561 Pa. 307, 750 A.2d 283 (2000)
- Commonwealth v. Williams, 525 Pa. 216, 579 A.2d 869 (1990)
- Smith v. Mitchell, 420 Pa. Super. 137, 616 A.2d 17 (1992)