NEW YORK COURT OF APPEALS

People of the State of New York, by Andrew M. Cuomo, Attorney General of the State of New York v. First American Corporation et al.

18 N.Y.3d 173, 960 N.E.2d 927, 937 N.Y.S.2d 136 (2011) · No. No. 184 · Decided November 22, 2011

SUMMARY

The New York Court of Appeals held that federal law did not preempt the New York Attorney General's claims against First American Corporation and eAppraiseIT concerning allegedly fraudulent and deceptive real estate appraisal practices. The court concluded that FIRREA contemplated cooperative federal and state regulation of appraisal standards and that the state-law claims only incidentally affected federal savings-association lending operations. The court also held that the Attorney General adequately pleaded a claim under General Business Law § 349 and had standing to pursue it.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Judge Ciparick; Chief Judge Lippman; Judge Graffeo; Judge Smith; Judge Pigott; Judge Jones; Judge Read
JURISDICTION	New York
DECIDED	November 22, 2011
DOCKET	No. 184
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed, with leave, from an Appellate Division order affirming the denial of their CPLR 3211 motion to dismiss claims brought by the New York Attorney General. The Appellate Division certified whether its order was properly made.
STANDARD OF REVIEW	De novo review of the denial of a CPLR 3211 motion to dismiss and the legal questions of federal preemption and sufficiency of the pleadings.
PRECEDENTIAL VALUE	Published precedential opinion of the New York Court of Appeals
PARTIES	First American Corporation, eAppraiseIT, LLC v. People of the State of New York, by Andrew M. Cuomo, Attorney General of the State of New York

TOPICS

administrative law · consumer protection · real estate · federalism · judicial review of agency action

PRACTICE AREAS

administrative law · consumer protection · real estate · federalism

QUESTIONS PRESENTED

1. Whether HOLA, FIRREA, and related federal regulations field-preempted the Attorney General's New York statutory and common-law claims challenging allegedly fraudulent and nonindependent real estate appraisal practices.
2. Whether the Attorney General adequately pleaded a cause of action under General Business Law § 349.
3. Whether the Attorney General had standing to pursue the General Business Law § 349 claim.

HOLDINGS

1. HOLA, FIRREA, and related federal regulations did not preempt the Attorney General from pursuing common-law and statutory New York claims against First American and eAppraiseIT for allegedly deceptive appraisal practices and violations of appraisal-independence standards.
2. The Attorney General adequately pleaded a cause of action under General Business Law § 349.
3. The Attorney General had standing to pursue the General Business Law § 349 claim.

KEY QUOTATIONS

> *"The primary issue we are called upon to determine is whether federal law preempts these claims alleging fraud and violations of real estate appraisal independence rules. We conclude that federal law does not preclude the Attorney General from pursuing these claims against defendants."* (18 N.Y.3d at 176)

> *"In conclusion, we hold that FIRREA governs the regulation of appraisal management companies and explicitly envisioned a cooperative effort between federal and state authorities to ensure that real estate appraisal reports comport with USPAP."* (18 N.Y.3d at 184)

FACTUAL BACKGROUND

First American provided real estate appraisal services through its wholly owned subsidiary, eAppraiseIT, which conducted business in New York and represented that its appraisals complied with USPAP. Washington Mutual became eAppraiseIT's largest New York client and allegedly pressured the appraisal company to produce higher property valuations so that associated mortgage loans could close. The Attorney General alleged that eAppraiseIT ultimately allowed WaMu's loan-origination personnel to control its appraiser panel and participated in appraisal practices that violated USPAP's independence requirements.

PROCEDURAL HISTORY

The Attorney General commenced the action in New York Supreme Court alleging fraudulent and deceptive business practices, violations of Executive Law § 63 (12) and General Business Law § 349, and unjust enrichment arising from allegedly improper real estate appraisal practices. Defendants removed the action to the United States District Court for the Southern District of New York, which remanded it to state court. Supreme Court denied defendants' motion to dismiss, and the Appellate Division affirmed, concluding that HOLA and FIRREA did not occupy the field of appraisal-management regulation and that the Attorney General adequately pleaded a General Business Law § 349 claim and had standing.

DISPOSITION

affirmed

CASES CITED

- People of New York ex rel. Cuomo v. First Am. Corp., 2008 WL 2676618, 2008 U.S. Dist. LEXIS 51790 (S.D.N.Y. 2008)
- People v. First Am. Corp., 24 Misc. 3d 672 (Sup. Ct. N.Y. County 2009)
- People v. First Am. Corp., 76 A.D.3d 68 (1st Dep't 2010)
- Guice v. Charles Schwab & Co., 89 N.Y.2d 31, 39 (1996), cert. denied, 520 U.S. 1118 (1997)
- California Fed. Sav. & Loan Ass'n v. Guerra, 479 U.S. 272, 280 (1987)
- Medtronic, Inc. v. Lohr, 518 U.S. 470, 485 (1996)
- Matter of People v. Applied Card Sys., Inc., 11 N.Y.3d 105, 113 (2008)
- Balbuena v. IDR Realty LLC, 6 N.Y.3d 338, 356 (2006)
- Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947)
- Fidelity Fed. Sav. & Loan Ass'n v. De la Cuesta, 458 U.S. 141, 144-145, 159-161, 167 (1982)
- In re Ocwen Loan Servicing, LLC Mortgage Servicing Litigation, 491 F.3d 638, 643 (7th Cir. 2007)
- Cedeno v. IndyMac Bancorp, Inc., 2008 WL 3992304, 2008 U.S. Dist. LEXIS 65337 (S.D.N.Y. 2008)
- Spears v. Washington Mut., Inc., 2009 WL 605835, 2009 U.S. Dist. LEXIS 21646 (N.D. Cal. 2009)
- Silvas v. E*Trade Mortgage Corp., 514 F.3d 1001 (9th Cir. 2008)
- Bolden v. KB Home, 618 F. Supp. 2d 1196, 1205 (C.D. Cal. 2008)
- Fidelity National Information Solutions, Inc. v. Sinclair, 2004 WL 764834, 2004 U.S. Dist. LEXIS 6687 (E.D. Pa. 2004)
- Barnett Bank of Marion County, N.A. v. Nelson, 517 U.S. 25, 31 (1996)