SUPREME COURT OF MISSOURI

Eisel v. Midwest BankCentre

230 S.W.3d 335 (Mo. banc 2007) · No. SC 88167 · Decided August 21, 2007

SUMMARY

The Supreme Court of Missouri held that a bank's charged document preparation fees for mortgage loan documents violated Missouri statutes prohibiting the unauthorized practice of law. The court rejected the bank's personal-interest and voluntary-payment defenses and declined to review its untimely constitutional challenge to the statute's mens rea requirement. The judgment awarding treble damages and other relief to the plaintiffs was affirmed.

CASE DETAILS

COURT	Supreme Court of Missouri
WRITING FOR THE COURT	Laura Denvir Stith, Chief Justice; Price, Judge; Teitelman, Judge; Limbaugh, Judge; Russell, Judge; Wolff, Judge; Parrish, Special Judge
JURISDICTION	Missouri
DECIDED	August 21, 2007
DOCKET	SC 88167
DISPOSITION	affirmed
PROCEDURAL POSTURE	Midwest appealed after a bench trial on stipulated facts in which the trial court entered judgment for the Eisels, awarded treble damages under section 484.020.2, and awarded other damages and costs.
STANDARD OF REVIEW	Under Murphy v. Carron, review of a court-tried case is for whether the judgment is supported by substantial evidence, is not against the weight of the evidence, and correctly applies the law. When a case is submitted on stipulated facts, the appellate court determines whether the trial court drew the proper legal conclusions from those facts; questions of law are reviewed de novo.
PRECEDENTIAL VALUE	Published en banc opinion and binding precedent of the Supreme Court of Missouri.
PARTIES	Midwest BankCentre v. Clark E. Eisel, Patricia S. Eisel, all others similarly situated

TOPICS

statutory interpretation · real estate · consumer protection · remedies · appellate procedure

PRACTICE AREAS

unauthorized practice of law · real estate finance · consumer protection · statutory interpretation · appellate procedure

QUESTIONS PRESENTED

1. Whether Midwest's charging a document-preparation fee for preparing or completing mortgage loan documents violated Missouri Revised Statutes sections 484.010 and 484.020.
2. Whether Midwest's financial interest in the loan transaction constituted a defense to the unauthorized-practice-of-law claim.
3. Whether the voluntary payment doctrine barred the Eisels from recovering fees they voluntarily paid.
4. Whether Midwest's constitutional challenge alleging that section 484.020 lacks a required mens rea could be reviewed when first raised in the motion for new trial.
5. Whether the Supreme Court of Missouri had jurisdiction over the appeal.

HOLDINGS

1. Charging borrowers a fee for preparing or completing mortgage loan documents, including promissory notes and deeds of trust, constituted engaging in the unauthorized business of law in violation of sections 484.010 and 484.020.
2. A lender's financial stake in the loan transaction does not defeat a claim that it engaged in the unauthorized business of law by charging a fee for document preparation.
3. The voluntary payment doctrine does not bar recovery of payments made for services prohibited by section 484.020 because the statutory prohibition is not subject to waiver, consent, or lack of objection by the recipient of the services.
4. Midwest waived its constitutional challenge that section 484.020 lacks a necessary mens rea by failing to raise it at the earliest opportunity, and the court declined plain-error review.
5. Appellate jurisdiction was proper because all issues and claims involving Midwest and the Eisels had been disposed of in the trial court.

KEY QUOTATIONS

> *“The document preparation fees at issue violate a plain reading of sections 484.010 and 484.020.”* (337)

> *“The judiciary is necessarily the sole arbiter of what constitutes the practice of law.”* (338-39)

> *“Possessing a financial stake in the outcome of a contract or loan does not defeat the fact that a non-lawyer charging a fee for document preparation constitutes the unauthorized business of law.”* (339)

> *“The voluntary payment doctrine is a principle based on waiver and consent. Consequently, Midwest cannot benefit from this defense.”* (340)

FACTUAL BACKGROUND

Midwest BankCentre processed mortgage loans using pre-printed forms, including promissory notes and deeds of trust, to place loans in the format needed for sale on the secondary mortgage market. It charged borrowers a document-preparation or processing fee for preparing or completing those forms. The Eisels paid the fee on two mortgage loans in 2001 and later served as class representatives in an action alleging that Midwest's conduct constituted the unauthorized business of law.

PROCEDURAL HISTORY

The Eisels brought a class action alleging that Midwest and other lending institutions engaged in the unauthorized practice of law by charging document-preparation fees in connection with real estate financing. The trial court certified subclasses, severed the claims against the various institutions, and after a bench trial on stipulated facts entered judgment for the Eisels on August 16, 2005. Midwest appealed, and the Court of Appeals transferred the case to the Supreme Court of Missouri. The Supreme Court affirmed and overruled motions to dismiss the appeal for lack of jurisdiction.

DISPOSITION

affirmed

CASES CITED

- Murphy v. Carron, 536 S.W.2d 30, 32 (Mo. banc 1976)
- Junior College Dist. of St. Louis v. City of St. Louis, 149 S.W.3d 442, 446 (Mo. banc 2004)
- General Motors Acceptance Corp. v. The Windsor Group, Inc., 103 S.W.3d 794, 796 (Mo. App. 2003)
- Smith v. Shaw, 159 S.W.3d 830, 832 (Mo. banc 2005)
- Hulse v. Criger, 363 Mo. 26, 247 S.W.2d 855 (Mo. banc 1952)
- Automobile Club of Mo. v. Hoffmeister, 338 S.W.2d 348, 354-55 (Mo. App. 1960)
- In re Mid-America Living Trust Associates, Inc., 927 S.W.2d 855, 871 (Mo. banc 1996)
- In re First Escrow, Inc., 840 S.W.2d 839, 846, 849 (Mo. banc 1992)
- American Motorists Ins. Co. v. Shrock, 447 S.W.2d 809, 812 (Mo. App. 1969)
- Bray v. Brooks, 41 S.W.3d 7, 13 (Mo. App. 2001)
- Crittenton v. Reed, 932 S.W.2d 403, 406 (Mo. banc 1996)
- Hanch v. K.F.C. National Management Corp., 615 S.W.2d 28 (Mo. banc 1981)
- State ex rel. Petti v. Goodwin-Raftery, 190 S.W.3d 501 (Mo. App. 2006)