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Summary of State of Nevada v. Reliant Energy, Inc., 128 Nev. Adv. Op. No. 46

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State of Nevada v. Reliant Energy, Inc., 128 Nev. Adv. Op. No. 46 (Sept. 27, 2012)¹

BUSINESS LAW – UPTA and FEDERAL PREEMPTION

Summary

The Court considered an appeal from a district court's order dismissing Appellants' complaint, which alleged violation of Nevada antitrust laws.

Disposition/Outcome

A claim under Nevada's Unfair Trade Practices Act (UTPA) is preempted by federal law, and therefore, the claim is not one upon which relief can be granted.

Facts and Procedural History

Appellants, The State of Nevada and Peggy Maze Johnson, Launa Wilson, and Larry Lancto, as class representatives, filed suit against respondents, Reliant Energy, Inc., a Texas Corporation; Reliant Resources, Inc.; CenterPoint Energy, Inc.; and Kathleen Zanaboni, in state district court, alleging violations of Nevada's UTPA.

More specifically, between November 2000 and March 2001, Reliant allegedly conspired with Enron to manipulate the natural gas market for the purpose of securing greater profits. Appellants claimed this manipulation took the form of "high-volume, rapid-burst trading," or churning. Appellants further alleged that Reliant made an oral agreement with Enron to average the purchase and sale prices separately and then net them against each other, which resulted in more profits for Reliant.

This case was brought following a Federal Energy Regulatory Commission (FERC) investigation, which concluded that supply shortages and a flawed market design were responsible for market meltdowns. In its report, the FERC determined, inter alia, that Reliant's transactions fell under FERC jurisdiction. Based on that determination, Reliant moved to dismiss the claim for failure to state a claim upon which relief can be granted, specifying federal preemption. The district court granted the motion to dismiss. Appellants responded by moving to amend the dismissal order because 1) the court relied on decisions that were later reversed and 2) the FERC no longer had exclusive jurisdiction over the natural gas market. Appellants filed this appeal after the district court denied the motion.

Discussion

Justice Cherry wrote the opinion, and the case was heard en banc. Appellants argued that because the natural gas field was deregulated, field preemption did not apply. Respondents answered that federal deregulation did not, on its own, demonstrate Congressional intent to allow states to regulate the field.

The Court found the analysis in *Leggett* persuasive.² The *Leggett* court reasoned

¹ By Brittnie Watkins.

² *Leggett v. Duke Energy Corp.*, 308 S.W.3d 843 (Tenn. 2010).

that federal statutes are not good indicators of congressional intent in cases of deregulation because the purpose of deregulation is to ensure that the industry is not overburdened by requirements that were too restrictive.³ Congress's attempt to deregulate did not amount to an end to federal oversight altogether.⁴ Moreover, it had been well established that Congress intended broad field preemption.⁵

In consensus with *Leggett*, this Court determined that the purpose of deregulation was to increase market competition, not to open regulation up to all fifty states. If all fifty states interfered, each asserting a different regulation, the maelstrom of competing regulations would hinder FERC's oversight of the market.

The Court expressed concern that this decision does not provide redress for its citizens, but determined that the long and complex history of natural gas regulations demands this result.

Conclusion

The Court affirmed the district court's order denying Appellants' motion to amend the dismissal order. The district court properly dismissed Appellants' claim. Federal preemption meant that Appellants failed to state a claim upon which relief can be granted.

³ *Id.* at 866.

⁴ *Id.*

⁵ *Id.*