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Summary of FDIC v. Rhodes, 130 Nev. Adv. Op. 8

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FDIC v. Rhodes, 130 Nev. Adv. Op. 8 (Oct. 30, 2014)[1]

SUPREMACY CLAUSE: NRS STATUTE PREEMPTION

Summary

The Court determined that (1) 12 U.S.C. § 1821(d)(14)(A) (the "FDIC extender statute")[2] preempts any similarly applicable state law, in this case NRS 40.4055(1)[3]; and (2) the Court refused to adopt a rule that a state statute of repose cannot be preempted by federal law.

Background

In 2005, Community Bank of Nevada ("Community Bank") loaned $2,625,000 to Tropicana Durango Ltd., of which respondent James M. Rhodes ("Rhodes") is a general partner. In 2009, Nevada Financial Institution Division took possession of Community Bank and appointed the Federal Deposit Insurance Corporation (the "FDIC") receiver/liquidator of Community Bank. At this time Tropicana Durango was in default on its loan. In November 2009, a trustee's sale was held for the real property that was secured by the deed of trust and the FDIC purchased the real property with a credit bill of $750,000.

In February 2011, the FDIC filed a suit for a deficiency judgment against Rhodes to recover the money still owed on the 2005 loan after the trustee's sale. Rhodes filed a motion to dismiss, asserting NRS 40.455(1) was a statute of repose and the six-month time limitation for deficiency judgments had passed. The FDIC claimed that the FDIC extender statute preempts any applicable state statute, regardless of whether NRS 40.455(1) is a statute of limitation or repose. The district court granted Rhodes' motion and dismissed the FDIC's complaint. The FDIC appealed.

Discussion

Rhodes argued (1) the FDIC waived their preemption argument because the FDIC did not assert the argument before the district court; (2) NRS 40.455(1) is a statute of repose this is not preempted by the FDIC extender statute, and (3) the *Olson* court correctly concluded that a

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[2] "Under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA),…the [FDIC] acts as a "conservator or receiver" for failed financial institutions. 12 U.S.C. § 1821(d)(2)(A) (2012). FIRREA extends the time period for the FDIC, in its capacity as the failed institution's conservator or receiver, to bring a contract claim that has otherwise been barred by a state statutory time limitation:

> [T]he applicable statute of limitations with regard to any action brought by [the FDIC] as conservator or receiver shall be-
>
> (i) in the case of any contract claim, the longer of—
>
> (I) the 6-year period beginning on the date the claim accrues; or
>
> (II) the period applicable under State law. 12 U.S.C. § 1821(d)(14)(A) (2012)"

[3] "Nevada provides for a shorter six-month time limitation for deficiency judgment actions under NRS 40.455(1), which states that

> upon application of the judgment creditor or the beneficiary of the deed of trust within 6 months after the date of the foreclosure sale or the trustee's sale held pursuant to NRS 107.080, respectively, and after the required hearing, the court shall award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust. . ."

federal agency must comply with state statutes that create substantive conditions for an action under state law.

The parties' arguments inherently concern preemption

Although it is true the Court generally does not address arguments that are made for the first time on appeal, the Court disagreed with Rhodes' contention that the preemption issue was not raised below. The issue of whether an action is governed by a state statutory time limitation or by federal statutory time limitations is inherently a matter that concerns the preemption doctrine, and the parties raised this issue below.

The FDIC extender statute preempts NRS 40.455(1)

Express preemption[4] occurs when Congress explicitly conveys in its statutory language the "clear and manifest" intent to preempt state law. Here, the FDIC extender statute expressly sets out the applicable statute of limitations for any action brought by the FDIC. Rhodes argued that the FDIC extender statute includes the phrase "statute of limitation" and omits the phrase "statute of repose."[5] Thus, Rhodes contends, Congress did not expressly intend the FDIC extender statute to omit statutes of repose. The Court disagreed and found this reading of the FDIC extender statute to be unreasonable. The FDIC extender statute does not refer to the time limitations in other state statutes itself, but uses the broad langue of the six-year time limitation to control over the shorter "period applicable under state law."[6] Therefore, the Court concluded that in the context of the FDIC extender statute, the plain meaning of the broad and undefined phrase "period applicable under State law" conveyed the intent to preempt any applicable state time limitation, including state statutes of repose.

The Court was not persuaded by Rhodes' argument from *In re Countrywide Financial Corp. Mortgage-Backed Securities Litigation*[7] and *Resolution Trust Corp. v. Olson*[8], claiming that federal statutes could not preempt state statutes of repose. The Court did not agree with *Olson*'s conclusion that whether a federal statute controls is based on whether the state statute is procedural or substantive.

Because the court held the FDIC extender statute applied to both statutes of limitation and repose, the Court declined to characterize NRS 40.455(1) as a statute of limitations or repose.

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[4] The preemption doctrine is rooted in the Supremacy Clause of the U.S. Constitution, which states: "[T]he Laws of the United States. . . shall be the supreme Law of the Land;. . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI.

[5] A statute of limitations prohibits a suit after a period of time that follows the accrual of the cause of action. Allstate Ins. Co. v. Furgerson, 104 Nev. 772, 775 n.2, 766 P.2d 904, 906 n.2 (1988). In contrast, a statute of repose bars a cause of action after a specified period of time regardless of when the cause of action was discovered or a recoverable injury occurred. *Id.*

[6] 12 U.S.C. § 1821(d)(14)(A) (2012).

[7] 966 F. Supp. 2d 1018 (C.D. Cal. 2013).

[8] 768 F. Supp. 283 (D. Ariz. 1991).

Conclusion

The Court held, under the Supremacy clause, the broad language of the FDIC extender statute preempts applicable state statutes, in this case NRS 40.455(1), and extends the deadline to file to six years. As such, the FDIC's claim was timely and the district court erred in dismissing the FDIC's claim for deficiency judgment. Accordingly, the Court reversed the portion of the district court's order that dismissed the FDIC's claim as barred by time and remanded the matter to the district court for further proceedings.[9]

[9] The dissent in this case argued (1) the FDIC failed to preserve its preemption argument by failing to raise it before the district court, and (2) The FDIC extender statute does not preempt state statutes of repose, which the dissent argued NRS 40.455(1) is.