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State, Dep't. of Bus. and Indus., Fin. Inst. Div. v. Dollar Loan Ctr., L.L.C., 133 Nev Adv. Op. 103 (Dec. 26, 2017) (en banc)

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State, Dep't. of Bus. and Indus., Fin. Inst. Div. v. Dollar Loan Ctr., L.L.C.,
133 Nev Adv. Op. 103 (Dec. 26, 2017) (en banc)[1]

TORTS: ENFORCEMENT ACTIONS AGAINST REFINANCED LOANS

Summary

The Court determined that NRS 604A.408(2)(f) bars a licensee from bringing any type of enforcement action on a refinancing loan under the statute. This is because allowing for enforcement action would go against the legislative purpose of the statute.

Background

In 2005, the State Legislature enacted a bill to regulate the payday loan industry.[2] In particular, the bill regulated deferred deposit loans and high-interest loans.[3] Normally, the loan terms are limited them to only 35 days, but the regulations created a 60 day extension beyond the original terms.[4] Additional interest cannot be accrued within that period[5] unless a new deferred loan meets specific exception requirements.[6] The requirement at issue is NRS 604A.408(2)(f), which allows for loans to be made if the licensee, "[d]oes not commence any civil action or process of alternative dispute resolution on a defaulted loan or any extension of repayment plan thereof."

There are varying interpretations of this statute by the appellant Nevada Department of Business and Industry, Financial Institutions Division (the FID); the Office of the Attorney General; and the Legislative Council Bureau. Because of this confusion, respondent, Dollar Loan Center (DLC), sought judicial interpretation. The court considered whether a payday loan licensee can sue to collect on the recovery of a loan made for the purpose of refinancing a prior loan.

Discussion

The court reviewed the question of statutory construction de novo.[7] Statutes should be liberally interpreted in order to "effectuate the benefits intended to be obtained."[8] In addition, statute interpretations must not "render any part of the statute meaningless" or "produce absurd or unreasonable results."[9]

The purpose of the Legislature enacting governing deferred deposits and high-interest loans was to stop the "debt treadmill" where a borrower is unable to repay a loan and often has to take

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[1] By Emily Meibert.
[2] *See* A.B. 384, 73d Leg. (Nev. 2005).
[3] *Id.*
[4] NEV. REV. STAT. § 604A.480(1) (2005).
[5] *Id.*
[6] NEV. REV. STAT. § 604A.480(2) (2005).
[7] Pub. Emps.' Ret. Sys. Of Nev. v. Reno Newspapers, Inc., 129 Nev. 833, 836, 313 P.3d. 221,223 (2013).
[8] Cote H. v. Eighth Judicial Dist. Court, 124 Nev. 36, 40, 175 P.3d. 906, 908 (2008).
[9] Orion Portfolio Servd. 2, LLC v. City of Clark ex rel. Univ. Med. Ctr. of S. Nev., 126 Nev. 397, 403, 245 P.3d. 527, 531 (2010).

out a larger loan to cover the original loan.[10] This suggests that the statute has a "protective purpose" requiring a liberal construction to effectuate its intended benefits.[11]

The statute sets out two loan options for when a licensee and a borrower enter an agreement to use a new loan to satisfy the existing one.[12] The first option, under subsection 1, confines the new loan to sixty days and does not allow for additional interest or fees to be added.[13] The second option, under subsection 2, exempts the new loan from subsection 1 if the new loan meets certain requirements—including when the licensee does not commence any civil action against the defaulted loan.[14]

Because of the statute's plain language, it is permitted for the licensee to offer a new deferred deposit or high-interest loan that is not subject to the sixty-day restriction. However, the licensee is still subject to all of the statutes limitations. This bars a licensee from pursuing "any civil action or process of alternative dispute resolution *on a defaulted loan or any extension or repayment plan thereof*."[15]

Extension is defined as "any extension or rollover of a loan beyond the date on which the loan is required to be paid in full under the original terms of the loan agreement."[16] This statutory definition applies to an extension of the original loan. If a licensee issues a new deferred deposit loan or a new high-interest loan to a borrower in order to pay the balance of an outstanding loan, the licensee is "foregoing the right to file a civil action or institute alternative dispute resolution proceedings on that new loan.

DLC argued the statute allows for civil actions on the original loan being refinanced or a subsection 2 loan because the conditions of subsection 2 serve as condition precedent for a licensee to offer an extension. The Court disagrees, and believes this interpretation would go against legislative purpose of getting rid of the "debt treadmill."

Conclusion

The NRS 604A.408(2)(f) bars a licensee from bringing any type of enforcement action on a refinancing loan under the statute. Additionally, applying A.B. 273 here was inconsistent with the Legislative intent to get rid of the "debt treadmill." The Court reversed the district court's ruling and remanded it for a judgment consistent with the opinion.

Dissent

(Pickering, J.)

The district court was correct in interpreting NRS 604A.480 to allow for enforcement actions. Nevada laws generally prohibit a lender who is subjecting themselves to Chapter 604A from issuing a new loan to pay of an existing loan. There are two exceptions to extending or making a new loan to pay of an existing loan,[17] and the district court was correct in determining

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[10] *See, e.g.*, Hearing on A.B. 384 Before the Senate Comm. On Commerce & Labor, 73d Leg. (Nev., May 6, 2005).
[11] *See* Cote H. v. Eighth Judicial Dist. Court, 124 Nev. 36, 40, 175 P.3d. 906, 908 (2008).
[12] NEV. REV. STAT. § 604A.480 (2005).
[13] *Id.*
[14] *Id.*
[15] *Id* (Emphasis added).
[16] NEV. REV. STAT. § 604A.065 (2005).
[17] NEV. REV. STAT. § 604A.480 (2005).

that there are two types of arrangements that a lender can extend these loans. The first way that a loan can be extended, under subsection one of the statute, is for the customer to agree to the new or extended loan. The second way for a loan to be extended, under subsection two of the statute, is for the lender and customer to agree to that the new or extended loan meets the requirements of subsection 2 of NRS 604A.480.

The dissent notes that the district court was correct when identifying that subsection two does not any prohibition against lenders, but rather only conditions that must be satisfied for a lender to be exempt from the subsection 1 prohibitions. Thus, the statute only provides that a licensee cannot be exempt from the requirements set forth in subsection 1 if the licensee has already commenced any civil action or process of alternative dispute resolution against a debtor. The majorities belief that the purpose of the statute is to prevent the "debt treadmill" actually goes against the way that they statute is written. Additionally, it goes against other sections of the statute that give lenders the authority to resort to civil actions to collect loans.[18] Also, it would go against common sense— "What lender will make a new loan to pay off an existing loan knowing that, in doing so, the loan being made cannot be collected on default?" The dissent agrees with the district court and would affirm rather than reversed.

[18] NEV. REV. STAT. § 604A.415 (2005).