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State, Dep't of Bus and Indus. v. Titlemax of Nev., Inc., 137 Nev. Adv. Op. 55 (Sep. 23, 2021).

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TITLE LOANS: EXTENSIONS AND FAIR MARKET VALUE INCLUSIONS

Summary

Nevada Revised Statutes (NRS) § 604A.5074(1) regulates title loans and limits the duration of the original term to 30 days. NRS § 604A.5074(3) extends the permissible duration up to 210 days if the title loan meets the requirements outlined in the subsection. A specific requirement delineated in the subsection is that 210-day title loans cannot be subject to any extension. NRS § 604A.065 defines extensions. Here, the Nevada Supreme Court held that the extension prohibition on the 210-day title loans includes refinances based on the plain language of NRS § 604A.065.

Furthermore, NRS § 604A.5076(1) limits a title loan amount to the “fair market value” (FMV) of a secured vehicle. The Nevada Supreme Court held that the FMV limitation only refers to the principal amount of the loan and does not include interest and other costs and fees.

Background

In 2018, the Nevada Department of Business and Industry, Financial Institutions Division (FID) examined TitleMax’s practices. FID argued that TitleMax’s “refinances” were actually “extensions” which violated NRS § 604A.5074(3)(c). FID also argued that TitleMax failed to properly account for the fair market value when securing vehicles, as the amount of the loans did not include interest and fees in the calculation. Based on their findings, FID issued TitleMax a “Needs Improvement” rating.

TitleMax sued in the Nevada district court and sought declaratory, temporary, and permanent injunctive relief to enjoin FID from imposing disciplinary action based on the findings. TitleMax argued that refinancing a title loan does not amount to a prohibited extension and that the FMV limitation refers only to the principal amount of the loan. The district court granted TitleMax’s motion for summary judgment. FID appealed.

Discussion

Refinances are a species of extension that are prohibited under NRS § 604A.065

The Court held that TitleMax’s practice of refinancing violates NRS § 604A.5074 and NRS § 604A.065. In interpreting NRS § 604A.065, the Court analyzed the statutory words using their plain and ordinary meaning.² Using this interpretation, the Court rejected TitleMax’s argument that a refinance is not an extension simply because the original loan is paid off when a second loan is made. The Court held that TitleMax’s practice of refinancing functions substantively as an

¹ By Brandon Rusk.

² See *Lofthouse v. State*, 136 Nev. 378, 380, 467 P.3d 609, 611 (2020) (noting that the court gives statutory words their plain meaning unless the context requires a technical meaning, or a different meaning is apparent from the context).

extension because the same lender and borrower are involved, the principal is only given to the borrower once, and the principal must be repaid when the loan's term expires. The Court also held that, based on the ordinary meaning of the statutory terms used, the parties' dispute over the proper characterization of TitleMax's refinancing product was without merit.

Furthermore, NRS § 604A.065 defines an extension 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, *regardless of the name given to the extension or rollover.*”³ TitleMax argues that, by treating a refinance as a type of extension, certain language found in NRS § Chapter 604A would become superfluous. TitleMax references NRS § 604A.5037(3)⁴ to argue that the word “refinancing” would have no meaning and that the use of the word shows that the Legislature did not intend to include a refinance as a type of extension under NRS § 604A.5074(3). However, the Court held that the fact that NRS § 604A.5037(3) allows additional time when refinancing confirms that the Legislature views a refinance as a form of extension.

The FMV limitation refers to the principal amount of the loan

The Court held that NRS Chapter 604A's definition of “loan” was unhelpful in determining whether the FMV limitation refers only to the principal amount of the loan.⁵ In interpreting NRS Chapter 604A's definition of “loan,” the Court analyzed the term under its ordinary meaning. The Court also looked to other states and their definition of “loan” to hold that the term means “a sum of money at interest,” not the sum of money lent *and* the interest.⁶

The Court distinguished their holding from that of *Check City*.⁷ In *Check City*, the Court held that interest and other fees must be included in the loan calculation for deferred deposit loans. The Court acknowledged that it makes pragmatic and policy sense for the Legislature to regulate deferred deposit loans differently than title loans.⁸ The Court explained that deferred deposit loans allow a borrower to discern the total cost of the loan at the time the lender accepts a post-dated check. In the title loan context, however, interest accrues daily and is typically only determined when the loan is finally paid off.

Furthermore, the Court highlighted policy reasons to support the distinction between title loans and deferred deposit loans. The Court explained that a title loan lender does not have incentive to inflate the total amount of a loan and interest because the lender's recover is ultimately

³ NEV. REV STAT. § 604A.065 (2014) (emphasis added).

⁴ NEV. REV STAT. § 604A.5037(3) (2017) (prohibits a lender from “agree[ing] to establish or extend the period for the repayment, renewal, *refinancing* or consolidation of an outstanding high-interest loan for a period that exceeds 90 days after the date of the origination of the loan”).

⁵ See NEV. REV STAT. § 604A.5076(1) (2017) (“A licensee who makes title loans shall not... [m]ake a title loan that exceeds the fair market value of the vehicle securing the title loan”); see also NEV. REV STAT. § 604A.105 (2007) (defining title loan as a loan made to a customer pursuant to a loan agreement).

⁶ *Loan*, *Black's Law Dictionary* (11th ed. 2019); see also *State, Dept. of Bus. & Indus. v. Check City*, 130 Nev. 909, 913, 337 P.3d 755, 758 (2014) (recognizing that the “usual and natural reading” of the term is the principal amount borrowed before applying different statutory definition).

⁷ *Check City*, 130 Nev. 909, 337 P.3d 755 (2014) (examining the limitations of deferred deposit loans that are regulated by NRS Chapter 604A).

⁸ *Id.* at 130 Nev. at 913, 337 P.3d at 757 (explaining that a deferred deposit loan transaction includes some consideration to the lender beyond the customer's promise to repay the amount borrowed).

limited to the value of the vehicle that secures its loan.⁹ In fact, the Court argued that laws which cap the amount of a title loan based on the value of a vehicle should incentivize lenders to loan the maximum value of the vehicle.¹⁰ As a result, the Court held that, under NRS § 604A.5076(1), the FMV limitation only refers to the principal amount of the loan, not including interest and fees.

Conclusion

The Court reversed the district court's order granting declaratory relief to the extent that it held that TitleMax's refinancing practices does not violate NRS § 604A.5074 or NRS § 604A.065. The Court held that the extension prohibition on TitleMax's 210-day title loans includes refinances as a type of extension based on the plain language of NRS § 604A.065.

Furthermore, the Court affirms in part the district court's order granting summary judgment and declaratory relief relating to TitleMax's interpretation of the FMV limitation. The Court held that, based on policy reasons and the ordinary meaning of the term "loan," the FMV limitation only refers to the principal amount of the loan.

⁹ See Jim Hawkins, *Regulating on the Fringe: Reexamining the Link Between Fringe Banking and Financial Distress*, 86 IND. L.J. 1361, 1392 (2011) (noting that in the context of title loans, as opposed to other "fringe" banking products, "consumers have a safety hatch they can use if they cannot pay off the loan – they can walk away with the money and lose their vehicle").

¹⁰ See Jim Hawkins, *Credit on Wheels: The Law and Business of Auto-Title Lending*, 69 WASH. & LEE L. REV. 535, 601 (2012) (explaining that laws should "incentivize lenders to loan the highest percentage of the vehicle's value possible because then borrowers who lose a vehicle will lose the least amount of their equity").