

3-1-2018

State, Dep't of Bus. v. Dollar Loan Ctr., 134 Nev. Adv. Op. 15 (Mar. 1, 2018) (en banc)

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Recommended Citation

Sirsy, Shady, "State, Dep't of Bus. v. Dollar Loan Ctr., 134 Nev. Adv. Op. 15 (Mar. 1, 2018) (en banc)" (2018). *Nevada Supreme Court Summaries*. 1140.

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BUSINESS LAW: STATUTORY INTERPRETATION

Summary

The Nevada Supreme Court determined that NRS 604A.480(2)(f) bars a licensee from bringing any type of enforcement action on a refinancing loan made under NRS 604A.480(2) and is not merely a condition precedent to making a refinancing loan under the subsection.

Background

NRS 604A.480(2) allows a licensee to offer a new loan to satisfy an outstanding loan for a period of not less than 150 days and at an interest rate of less than 200 percent.² In December 2009, the Financial Institutions Division (FID) issued a declaratory order and advisory opinion concerning mandatory disclosures for loans given pursuant to NRS 604A.480(2).³ In its opinion, the FID detailed that “civil action and alternative dispute resolution are specifically prohibited in loans made pursuant to NRS 604A.480.”⁴ Further, the FID stated that a “consumer should not feel that he is subject to civil action when, in fact such actions are prohibited by law.”⁵

Respondent Dollar Loan Center (DLC) sought judicial interpretation of NRS 604A.480(2)(f) and filed a declaratory relief action against FID in the district court. DLC argued that the plain meaning of NRS 604A.480(2) allows for a civil action on the original loan being refinanced or on a new subsection 2 loan because the conditions in subsections 2(a)-(f) serve as conditions precedent for a licensee to offer an extension or repayment loan for a longer term. The district court ruled in favor of DLC, concluding that NRS 604A.480 does not prohibit certain payday loan licensees from filing suit against borrowers who default on the loans. The FID appealed.

Discussion

II.

The parties disagree as to whether: (1) NRS 604A.480(2)(f) bars a licensee that provides a loan under NRS 604A.480(2) from bringing any type of enforcement action on that refinanced loan when the debtor defaults; and whether (2) the provision operates as a condition precedent to making a refinancing loan under that statute, and therefore, does not bar a subsequent action to enforce the refinanced loan.

¹ By Shady Sirsy.

² NEV. REV. STAT. § 604A.480(2) (2005).

³ State, Dep't of Bus. & Indus., Fin. Inst. Div., Declaratory Order and Advisory Opinion Regarding Mandatory Disclosures for Loans Made Pursuant to NRS 604A.480 (2009).

⁴ *Id.* at 5.

⁵ *Id.* at 6.

A.

The court reviews statutory questions de novo.⁶ "[S]tatutes with a protective purpose should be liberally construed in order to effectuate the benefits intended to be obtained"⁷ and interpretation must "not render any part of the statute meaningless," or "produce absurd or unreasonable results."⁸

B.

The policy purpose of NRS Chapter 604A was to put an end to the "debt treadmill."⁹ The debt treadmill is when a borrower is unable to repay a loan and takes out a larger loan to cover the principal, interest, and fees from the unpaid original loan. The Court follows a liberal construction to effectuate its intended benefits, as the statute suggests a "protective purpose."¹⁰

If a licensee gives a new deferred deposit loan or a new high-interest loan to a borrower to pay the balance of an outstanding loan on terms set forth in NRS 604A.480(2)(a), the licensee relinquishes the right to file a civil action or institute alternative dispute resolution proceedings on that new loan pursuant to NRS 604A.480(2)(f).¹¹ The plain language of NRS 604A.480(2) explicitly permits a licensee to offer a new deferred deposit or high interest loan that is not subject to the sixty-day restriction or principal adjustment prohibition of subsection 1. When a licensee does so, the licensee becomes subject to all the statute's limitations, including NRS 604A.480(2)(f), barring the licensee from pursuing "any civil action or process of alternative dispute resolution on a defaulted loan or any extension or repayment plan thereof."

NRS 604A.065 provides the definition of 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."¹² Based on a plain reading, the Court concluded that this statutory definition applies to extensions of the original loan. The Court further concluded that 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 under the terms in NRS 604A.480(2)(a), the licensee has no right to file a civil action or institute alternative dispute resolution proceedings on that loan.

C.

The plain meaning of NRS 604A.480(2) bars future civil action on loans made under subsection 2(f) and puts an end to the debt treadmill. DLC argues that the plain meaning of NRS 604A.480(2) allows for a civil action on the original loan being refinanced or on a new subsection 2 loan. DLC contends that the conditions in subsections 2(a)-(f) serve as conditions precedent for a licensee to offer an extension or repayment loan for a longer term and that subsection 2(f) applies to the original loan on which the licensee has not previously sued.

Here, the Court explained that such an interpretation would go against the statute's legislative purpose. The Court applied the same rationale as *Orion Portfolio Services 2 LLC v.*

⁶ Pub. Emps.' Ret. Sys. Of Nev. v. Reno Newspapers, Inc., 129 Nev. 833, 836, 313 P.3d. 221,223 (2013).

⁷ Cote H. v. Eighth Judicial Dist. Court, 124 Nev. 36, 40, 175 P.3d. 906, 908 (2008).

⁸ Orion Portfolio Servs. 2, L.L.C. v. Cty. of Clark ex rel. Univ. Med. Ctr. of S. Nev., 126 Nev. 397, 403, 245 P.3d. 527, 531 (2010).

⁹ See A.B. 384, 73d Leg. (Nev. 2005).

¹⁰ See Cote H. v. Eighth Judicial Dist. Court, 124 Nev. 36, 40, 175 P.3d. 906, 908 (2008).

¹¹ *Id.*

¹² NEV. REV. STAT. § 604A.065 (2005).

*County of Clark ex rel. Univ. Med. Ctr. of S. Nevada.*¹³ In that case the Nevada Supreme Court found that statutes should be interpreted so as not to "produce absurd or unreasonable results."¹⁴ Interpreting the conditions in subsections 2(a)-(f) as condition precedents would incentivize licensees to continue adding to the debt treadmill. Licensees would be allowed to make additional loans with a longer term and a much higher interest rate, which the licensee could ultimately enforce by a civil action, creating unreasonable results.

Conclusion

NRS 604A.480(2)(f) bars a licensee from bringing any type of enforcement action on a refinancing loan made under NRS 604A.480(2). The Court reversed the district court's order and remanded this case for further proceedings consistent with this opinion.

Dissent

(Pickering, J.)

The district court correctly analyzed NRS 604A.480 according to its text and its established rules of statutory interpretations. The purpose of NRS Chapter 604A is to prevent the debt treadmill. Consistent with that purpose, the statute reads Subsection 2 to require that the licensee not have strong-armed the customer-in-default by suing him on the defaulted loan before making the new loan, but that the lender agree, in making the Subsection 2 loan, never to sue on the debt, old or new. But this reading cannot be construed with the text and wording in NRS 604A.480(2). The district court's reading of the statute, requiring as one of its condition precedents that the lender not sue on the defaulted loan being paid off with the proceeds of the NRS 604A.480(2) loan being made, makes practical sense.

¹³ *Orion Portfolio Services 2 LLC v. County of Clark ex rel. Univ. Med. Ctr. of S. Nevada*, 126 Nev. 397, 403, 245 P.3d 527, 531 (2010).

¹⁴ *Id.*