United States District Court for the Northern District of Ohio Addresses National Banking Act Preemption

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In a class action lawsuit brought before the United States District Court for the Northern District of Ohio, the court recently ruled on preemption issues pertaining to the Ohio Retail Installment Sales Act (RISA) and the Ohio Uniform Commercial Code (OUCC) insofar as they pertain to motor vehicle repossession. The court held that these provisions are not preempted by the National Banking Act (NBA) and as a result, may serve as a basis for liability going forward.

In White v. Wells Fargo Bank, N.A., (United States District Court of Ohio, Case No. 1:12 CV 943), Judge Dan Polster determined that there is no preemption of RISA and OUCC by the NBA in repossession activities. In this case, the plaintiff's vehicle was repossessed by the defendant, but the defendant failed to comply with certain provisions of RISA and OUCC. As a result, the plaintiff instituted litigation and sought class certification to include others similarly harmed. Wells Fargo argued that provisions of the NBA preempted the Ohio law under which the plaintiff brought litigation.

The court analyzed the express preemption, field preemption and obstacle preemption arguments put forward by the defendant. Each was rejected. The court held that repossession notices are not "other credit-related documents" related to "disclosure and advertising." Had the court determined the contrary, an express preemption would have been likely.

This ruling mirrors similar cases in the 9th Circuit and 4th Circuit. On the issue of field preemption, the court, again following the 9th Circuit, held that the Office of Thrift Supervision does not pertain to the field of debt collection.

Lastly, the court determined that debt collection activities are distinctly different from lending operations and as a result, there was no obstacle preemption that was applicable. The court took the extra step of noting that "a bank cannot, on the one hand, avail itself of the right to repossess a vehicle under state law and then, on the other hand, disclaim the applicability of that very law by arguing it significantly interferes with its ability to engage in the business of banking." White v. Wells Fargo Bank, N.A., at 13.

Wells Fargo also argued that RISA does not regulate transactions between consumers and financial institutions. The court rejected this argument, noting that RISA does apply to third-party transactions and, given that the financing was originally provided for by the car dealer who subsequently assigned that interest to Wells Fargo, this was a three-party transaction.

This ruling drew a distinct line in the sand between federal banking regulations and applicable state laws. Because of this, similar claims, including class action claims, can reasonably be expected going forward. Creditors need to be

mindful of the role of state laws as they engage in such recovery actions. Relying on preemption arguments will, likely, no longer provide a safe harbor.

Authors