Alert: The Ohio Supreme Court holds that a lender may make short-term, single-installment loans under the Ohio Mortgage Loan Act, effectively rendering the more restrictive Short-Term Loan Act a “dead letter.”

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June 11, 2014

On June 11, 2014, the Ohio Supreme Court resolved an issue opened by the Ninth District Court of Appeals of Ohio in 2012: can Mortgage Loan Act (“MLA”) registrants make single-installment loans? In *Ohio Neighborhood Finance, Inc. v. Scott*, the Ohio Supreme Court unanimously held that, yes, MLA registrants may make such single-installment loans irrespective of the requirements and prohibitions of the Short Term Loan Act (“STLA”). The facts of this case are as follows.

In 2009, Ohio Neighborhood Finance, Inc., a MLA registrant, sued Rodney Scott for his alleged default of a single-installment, $500 loan. The amount allegedly in default included the original principal of $500, a $10 credit investigation fee, a $30 loan-origination fee, and $5.16 in interest, which resulted from the 25% interest rate that accrued on the principal during the two-week term of the loan. The TILA disclosure properly stated the cost of his loan as a yearly rate of 235.48%. When Scott did not answer the complaint, Ohio Neighborhood Finance moved for default judgment.

The magistrate court judge determined that the loan was impermissible under the MLA and should instead be governed by the STLA, reasoning that Ohio Neighborhood Finance had used the MLA as a pretext to avoid the application of the more restrictive STLA. The magistrate consequently recommended judgment for Ohio Neighborhood Finance for $465 (the original principal minus a $35 payment), plus interest in the amount of Ohio’s usury rate of 8%. The trial court adopted the magistrate’s decision over Ohio Neighborhood Finance’s objection. Ohio Neighborhood Finance appealed to the Ninth District Court of Appeals of Ohio, which affirmed, holding that the MLA does not authorize single-installment loans, and that the Ohio General Assembly intended the STLA to be the exclusive means by which a lender may make such short-term, single-installment loans. Ohio Neighborhood Finance appealed the Ninth District’s decision to the Ohio Supreme Court, which accepted the appeal.

The Ohio Supreme Court reversed. It first considered whether the MLA permits single-installment loans; more specifically determining whether the MLA’s definition of “interest-bearing loan” authorized a lender to require a loan to be repaid in a single installment. The Ohio Supreme Court found that the definition of “interest-bearing loan” unambiguously permitted single-installment loans, considering the Ninth District’s interpretation a “forced construction on the statute [which] also ignores . . . accepted rule [s] of construction.” The Supreme Court further stated that the Ohio General Assembly could easily have required multiple installments for interest-bearing loans under the MLA by making simple amendments to the definition of “interest-bearing loan,” or simply by making that a substantive requirement for any loan made under the MLA. However, the Ohio General Assembly did neither.

The Ohio Supreme Court then considered whether the STLA prohibits MLA registrants from making “payday-style loans,” even if those loans are permissible under the MLA. The Ohio Supreme Court held that “[h]ad the General Assembly intended the STLA to be the sole authority for issuing payment-style loans, it could have defined ‘short-term loan’” in such a way as to dictate that result. Again, the General Assembly did not do so.

Finding both statutes to be unambiguous and mutually exclusive from one another, the Supreme Court did not address the General Assembly’s intent behind its enactment of the STLA, stating that “[t]he question is not what the General Assembly intended to enact but the meaning of that which it did enact.” The Court then conclusively held that lenders registered under the MLA may make single-installment, interest-bearing loans, and that the STLA does not limit the authority of MLA registrants to make any loans authorized by the MLA.

This decision is a major victory for the short-term lending community in Ohio, and endorses the position long held by the Ohio Division of Financial Institutions that an entity may make short-term, single-installment loans under the MLA. This decision also effectively makes the STLA a “dead letter,” in that most, if not all, lenders would choose to make short-term loans under the MLA rather than the STLA, which is far more restrictive in what a lender may charge. This point was not lost on the Ohio Supreme Court.

In its concluding paragraph, the Ohio Supreme Court stated that “[i]f the General Assembly intended to preclude payday-style lending of any type except according to the requirements of the STLA, our determination that the legislation enacted in 2008 did not accomplish that intent will permit the General Assembly to make necessary amendments to accomplish that goal now.” And Justice Pfeifer’s tongue-in-cheek concurring opinion, expressing clear disappointment with the General Assembly’s failure to enact a cogent payday-lending statute, is worthy of reproduction in its entirety:

> I concur in the majority opinion. I write separately because something about the case doesn’t seem right.
>
> There was great angst in the air. Payday lending was a scourge. It had to be eliminated or at least controlled. So the General Assembly enacted a bill, the Short-Term Lender Act (“STLA”), R.C. 1321.35 to 1321.48, to regulate short-term, or payday, loans. And then a funny thing happened: nothing. It was as if the STLA did not exist. Not a single lender in Ohio is subject to the law. How is this possible? How can the General Assembly set out to regulate a controversial industry and achieve absolutely nothing? Were the lobbyists smarter than the legislators? Did the legislative leaders realize that the bill was smoke and mirrors and would accomplish nothing?

Consequently, short-term lenders may currently make single-installment loans under the MLA while ignoring the more stringent STLA in its entirety. However, this issue is worth following closely to see whether a legislator will propose the easy fixes to the law suggested by the Ohio Supreme Court that would make the STLA the sole mechanism by which short-term, single-installment loans are made in Ohio. Given the political and regulatory environment surrounding these types of loans, this is an issue we will certainly be following closely for the foreseeable future.

Of further note is that the Ohio Supreme Court gave some deference to the Division of Financial Institutions’ longstanding practice of allowing single-installment loans under the MLA. We view this as an interesting development because it is unclear whether the unpublished positions of regulatory agencies, rather than official regulations made pursuant to the rulemaking process, should be given judicial deference. This may prove interesting in other unresolved and controversial practices currently allowed by the Ohio Division of Financial Institutions, such as the CSO lending model. This line of reasoning is also something we will continue to follow.

Click here to read the opinion.

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