

Chapman Client Alert

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Current Issues Relevant to Our Clients

Bank Was True Lender on Loan to Student Loan Trust

A recent federal district court decision out of Massachusetts found that a bank was the true lender on a loan subsequently transferred to a trust consisting of student loans. *Robinson and Spears v. Nat'l. Collegiate Student Loan Trust 2006-2*, 2021 WL 1293707, Case No. 20-cv-10203 ADB (D. Mass. April 7, 2021).

A bank service provider designed and marketed a student loan program where the student loans which were funded by a national bank and subsequently sold to a trust established by the service provider. The plaintiffs, a borrower and co-signer of a student loan sued the trust primarily on the allegation that the loan exceeded the 6% usury rate set by Pennsylvania law and that the service provider and not the bank was the true lender on the loan. The plaintiffs sued 13 trusts originally. The defendant filed a motion to dismiss the action. The Court dismissed the action against 12 of the trusts as the loan was not a part of those trusts, but considered the allegations as it related to the one trust into which the plaintiffs' loan was sold.

The Court dismissed the action against the trust. The Court upheld the concept of "valid when made" and found the bank to be the true lender on the loan. The Court found that Section 85 of the National Bank Act preempts conflicting state law and national banks have the power to purchase and sell loans (citing 12 CFR 7.4008(a)). The Court ruled that the interest rate on the original loan was non-usurious and therefore could not become usurious upon assignment. The Court gave deference to the OCC's recently enacted valid when made regulation.

As to the true lender theory, the Court stated that the plaintiffs had not identified any binding authority that would require the Court to apply the true lender doctrine. In addition, the Court looked to the transaction documents finding that the national bank was the named lender on the loan, funded the loan and could be required to hold the loan for an extended period of time. The Court did not deem it necessary to address the OCC's true lender rule that is being challenged in court and in Congress. Therefore, the Court concluded that the bank did have economic risk as to the loan.

The Court also dismissed state law claims related to breach of contract and unfair practices.

As important as the ultimate findings of the Court, the OCC has filed this decision as a supplement in support of the OCC's Motion for Summary Judgment filed in the California federal court action challenging the OCC's promulgation of its valid when made rule. Thus, the OCC, even under the new administration, has taken a position supportive of its valid when made rule.

For More Information

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