Banking and Finance Law Daily Wrap Up, INTEREST–USURY—3d Cir.: Applying Pennsylvania usury laws to out-of-state lender doesn't violate 'dormant Commerce Clause', (Jan. 25, 2022)

Banking and Finance Law Daily Wrap Up

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By Thomas G. Wolfe, J.D.

The Pennsylvania banking regulator applied the state's Consumer Discount Company Act and Loan Interest and Protection Law to companies doing business as 'TitleMax' in Delaware, Ohio, and Virginia.

The Pennsylvania Department of Banking and Securities' application of the Pennsylvania Consumer Discount Company Act and Pennsylvania Loan Interest and Protection Law to an out-of-state lender, doing business in Delaware, Virginia, and Ohio as "TitleMax," does not violate "the dormant Commerce Clause" of the Constitution, ruled the U.S. Court of Appeals for the Third Circuit. Although TitleMax conceded that, prior to 2017, it had engaged in loan servicing and motor vehicle repossession activities in Pennsylvania, the company argued that it "does not have any offices, employees, agents, or brick-and-mortar stores in Pennsylvania and is not licensed as a lender in the Commonwealth." However, the federal appellate court determined that "Pennsylvania has a strong interest in prohibiting usury" and that the Pennsylvania regulator is permitted to "investigate and apply its usury laws to TitleMax" because "any burden on interstate commerce … is, at most, incidental" (*TitleMax of Delaware, Inc v. Weissmann*, Jan. 24, 2022, Shwartz, P.).

In reaching its decision, the Third Circuit reversed the judgment of the federal district court and directed the lower court to enter judgment in favor of the Pennsylvania Department of Banking and Securities.

Backdrop. According to the court's opinion, TitleMax of Delaware, Inc., TitleMax of Ohio, Inc., TitleMax of Virginia, Inc., and TMX Finance of Virginia, Inc. (collectively TitleMax) provide motor vehicle loans to consumer borrowers, including some residents of Pennsylvania. The "entire loan process—from the application to the disbursement of funds—takes place … at one of TitleMax's brick-and-mortar locations" outside of Pennsylvania. Also, under the terms of the TitleMax motor vehicle loans, the borrower receives the applicable loan proceeds "in the form of a check drawn on a bank outside of Pennsylvania," with interest rates "as high as 180%," and TitleMax obtains a security interest in the motor vehicle.

While TitleMax did not dispute that, prior to 2017, it engaged in loan servicing and vehicle repossessions in Pennsylvania, the company maintained that it "does not have any offices, employees, agents, or brick-and-mortar stores" in Pennsylvania and is not licensed in the state. TitleMax also claims that it has "never used employees or agents to solicit Pennsylvania business, and it does not run television ads within Pennsylvania, but its advertisements may reach Pennsylvania residents."

Department's investigation; TitleMax's lawsuit. In keeping with its authority to monitor and enforce lending activities under the Pennsylvania Consumer Discount Company Act (CDCA), 7 Pa. Stat. §§ 6201-6221, and the Pennsylvania Loan Interest and Protection Law (LIPL), 41 Pa. Stat. §§ 101-605, the Pennsylvania Department of Banking and Securities issued a subpoena requesting documents regarding TitleMax's interactions with Pennsylvania residents.

After receiving the subpoena, TitleMax stopped making any vehicle loans to Pennsylvania residents. Asserting that the company "lost revenue as a result" of the Department's actions, TitleMax filed a lawsuit against the Pennsylvania Department in the federal district court in Delaware "seeking injunctive and declaratory relief for, among other things, violations of the Commerce Clause." Meanwhile, the Department separately filed a petition in Pennsylvania state court to enforce its subpoena.

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Lower court. On the parties' respective motions for summary judgment, the federal district court first decided that the "*Younger* abstention doctrine" did not apply to prevent it from hearing the case. Next, the court determined that "because TitleMax's loans are 'completely made and executed outside Pennsylvania and inside TitleMax [brick-and-mortar] locations in Delaware, Ohio, or Virginia,' the Department's subpoena's effect is to apply Pennsylvania's usury laws extraterritorially in violation of the Commerce Clause." The Pennsylvania Department appealed that ruling to the Third Circuit.

Appellate court's review. On appeal, the Third Circuit agreed with the federal trial court that "Younger abstention does not bar us from hearing this case" but parted ways with the lower court concerning its holding on the Pennsylvania Department's application of the CDCA and LIPL to TitleMax's conduct in connection with any violation of the Commerce Clause.

The Third Circuit addressed the "territorial scope" of the transactions the Department "has attempted to regulate" and whether these transactions occur "wholly outside" of Pennsylvania. Ultimately, the appellate court determined that "TitleMax's conduct does not occur wholly outside of Pennsylvania. Even if we consider the local benefits, we would conclude that they weigh in favor of applying Pennsylvania laws to TitleMax." The CDCA and LIPL "protect Pennsylvania consumers from usurious lending rates," the Third Circuit emphasized.

Moreover, the court asserted that "Pennsylvania has a strong interest in prohibiting usury." From the Third Circuit's perspective, applying Pennsylvania's usury laws to TitleMax's loans "furthers that interest, and any burden on interstate commerce from doing so is, at most, incidental. Pennsylvania may therefore investigate and apply its usury laws to TitleMax without violating the Commerce Clause."

The case is No. 21-1020.

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Companies: TitleMax of Delaware, Inc. d/b/a TitleMax; TitleMax of Ohio, Inc. d/b/a TitleMax; TitleMax of Virginia, Inc. d/b/a TitleMax; TMX Finance of Virginia, Inc.

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