

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

FILED

JAN 14 2002

No. 5:02-cv-20-F(3)

DAVID W. DANIEL, CLERK
US DISTRICT COURT, EDNC
BY AD DEP. CLERK

GOLETA NATIONAL BANK and)
ACE CASH EXPRESS, INC.,)
)
Plaintiffs,)

v.)

The Honorable HAL D. LINGERFELT,)
in his official capacity as the)
Commissioner of Banks of North Carolina,)
and)

COMPLAINT

The Honorable ROY COOPER,)
in his official capacity as the Attorney)
General of North Carolina,)
)
Defendants.)

Plaintiffs Goleta National Bank (“the Bank”) and ACE Cash Express, Inc.

(“ACE” and, together with the Bank, “Plaintiffs”) bring this action against the Honorable Hal D. Lingerfelt (“Commissioner Lingerfelt”) and the Honorable Roy Cooper (“Attorney General Cooper” and, together with Commissioner Lingerfelt, “Defendants”), in their official capacities, for declaratory and injunctive relief with respect to Defendants’ threatened initiation of proceedings (the “State Proceedings”) against the Bank’s agent, ACE. The State Proceedings threaten to deprive the Bank of core rights conferred on it by federal banking law, to injure the Bank and ACE, and to deprive the Bank and ACE of economic liberty and property without due process of law.

PARTIES

1 The Bank is a national bank that has two full-service offices in Goleta and Ventura, California. The Bank makes loans (the “Loans”) to consumers in more than 30 states, including North Carolina. The Bank does not have offices or employees in North Carolina. All of its loans to North Carolina consumers are made with the assistance of ACE.

2. ACE is a Texas corporation that has its principal place of business in Irving, Texas. ACE offers consumers an array of financial services. ACE also helps the Bank offer the Bank’s consumer loans at ACE’s company-owned stores, including stores in this judicial district.

3. Commissioner Lingerfelt is the Commissioner of Banks of North Carolina. Commissioner Lingerfelt is the State of North Carolina official charged with enforcing North Carolina’s banking and lending laws. Commissioner Lingerfelt has the authority to sue and be sued on behalf of the State in matters related to banking and lending in North Carolina. Commissioner Lingerfelt is a “person” for purposes of 42 U.S.C. § 1983.

4. Attorney General Cooper is the Attorney General of North Carolina. He and his office represent the State of North Carolina, the State Banking Commission, and Commissioner Lingerfelt in connection with the State Proceedings and other litigation, regulatory actions, and/or enforcement actions. Attorney General Cooper is a “person” for purposes of 42 U.S.C. § 1983.

JURISDICTION AND VENUE

5. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 2201. This complaint asserts claims arising under the Constitution and laws of the United States and seeks a declaration of rights and other legal relations under the Constitution and laws of the United States.

6. Venue is proper pursuant to 28 U.S.C. § 1391(b) because Commissioner Lingerfelt and Attorney General Cooper are located within this district, and because a substantial part of the events giving rise to the claims asserted in the Complaint occurred in this district.

FACTS

7. The Bank makes Loans from \$100 to \$500, in increments of \$50, generally for 14-day periods. In accordance with section 85 of the National Bank Act, 12 U.S.C. § 85 (“section 85”) and Cal. Const. ch. XV, § 1, the Bank charges a fee of \$17 per \$100 borrowed. In accordance with the federal Truth in Lending Act, 15 U.S.C. §§ 1601-1615, the Bank clearly and conspicuously discloses that this 17% charge produces an annual percentage rate (“APR”) of approximately 440%.

8. The Bank warns its customers that the Loans are not intended to serve as a long-term financial solution to their needs.

9. Many of the Bank’s customers seek short-term funding to pay for home and automobile repairs, rent payments, and other living expenses, and to avoid dishonored checks and resulting charges at financial institutions where they maintain their

principal banking relationships. In many if not most cases, these dishonored check charges would be substantially higher than the interest charges on the Bank's Loans.

10. The legal documents that evidence the Loans clearly identify the Bank as the Lender. In those documents, the borrowers promise to repay the Loans to the Bank or the Bank's order. All applications for the Loans must be submitted to the Bank in advance for its approval or rejection. The Bank has established underwriting criteria for the Loans. The Bank uses a computerized process to approve or reject applications for the Loans. The Bank approves some of these applications and rejects others.

11. The Bank has no offices or employees of its own in North Carolina. It relies on ACE to assist it by promoting, originating, and servicing the Loans. As a practical matter, the Bank would not be able to offer the Loans to North Carolina residents without ACE's assistance.

12. On January 11, 2002, McNeil Chestnut, Esq., an Assistant Attorney General for the State of North Carolina, advised ACE representatives that the State intends to bring the State Proceedings against ACE imminently. Mr. Chestnut advised that the State Proceedings would allege violations of, among other laws, the North Carolina Consumer Finance Act, N.C. Gen. Stat. §§ 53-164 to -191; the North Carolina Loan Broker Act, N.C. Gen. Stat. §§ 66-106 to -112; and the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1. Mr. Chestnut had actual authority to make these statements on behalf of Commissioner Lingerfelt and Attorney General Cooper. Alternatively, Mr. Chestnut had apparent authority to make these statements on behalf of Commissioner Lingerfelt and Attorney General Cooper.

13. The State Proceedings threaten to injure the Bank by ending its ability to make Loans to North Carolina residents and by exposing the Bank to liability in other governmental and private proceedings. Even if the State does not prevail in the State Proceedings, those proceedings would injure the Bank by imposing the costs and burdens of defense on it, and by subjecting the Bank to regulation that conflicts with preemptive federal law.

14. The State Proceedings threaten to injure ACE by ending its ability to help the Bank make Loans to North Carolina residents and by exposing ACE to liability in other governmental and private proceedings. Even if the State does not prevail in the State Proceedings, those proceedings would injure ACE by imposing the costs and burdens of defense on it.

15. Commissioner Lingerfelt and Attorney General Cooper are acting under color of state law.

16. Plaintiffs and Defendants have adverse legal interests. There is a real and substantial controversy between Plaintiffs and Defendants over whether federal law preempts North Carolina law in this context.

COUNT I

(Declaratory and Injunctive Relief under 42 U.S.C. § 1983 and 28 U.S.C. § 2201 for Violations of 12 U.S.C. § 85 and the Supremacy Clause)

17. Paragraphs 1 to 16 are incorporated herein by reference.

18. The permitted interest charged by the Bank on its Loans is

governed by section 85, which authorizes the Bank to charge “interest at the rate allowed by the laws of the State . . . where the bank is located.”

19. The Bank is located in California for purposes of section 85.

Under California law, Cal. Const. ch. XV, § 1, national banks and other financial institutions are not subject to interest rate limitations.

20. The Bank’s right under section 85 to charge the interest allowed by

California law applies fully to Loans made to North Carolina residents, notwithstanding any contrary provisions in North Carolina law.

Defendants’ threatened enforcement of North Carolina law against

ACE in connection with the Loans directly conflicts with the Bank’s right to charge the interest permitted by section 85. That threatened enforcement violates the Supremacy Clause, U.S. Const. art. VI, § 2, and threatens to deprive Plaintiffs of their rights under federal law.

22. Under 42 U.S.C. § 1983 and 28 U.S.C. § 2201, Plaintiffs are

entitled to declaratory and injunctive relief from these violations of federal law.

COUNT II

(Declaratory and Injunctive Relief under 42 U.S.C. § 1983 and 28 U.S.C. § 2201 for Violations of 12 U.S.C. § 24 (Seventh), 12 C.F.R. § 7.1004(a), and the Supremacy Clause)

Paragraphs 1 to 22 are hereby incorporated by reference.

24. 12 U.S.C. § 24 (Seventh) authorizes the Bank to make the Loans

and to exercise this right through agents, including ACE.

25. 12 C.F.R. § 7.1004(a) expressly authorizes the Bank to employ

agents, including ACE, for the purpose of obtaining assistance in originating the Loans.

26. Insofar as North Carolina law is applied to require ACE to have a license to provide assistance to the Bank in connection with the Loans, and insofar as North Carolina law is applied to prohibit ACE from engaging in its current activities in connection with the Loans, North Carolina law significantly impairs the Bank's rights under 12 U.S.C. § 24 (Seventh) and 12 C.F.R. § 7.1004(a), and is preempted thereby.

27. Defendants' threatened enforcement of North Carolina law against ACE in connection with the Loans violates the Supremacy Clause, U.S. Const. art. VI, § 2, and threatens to deprive Plaintiffs of their rights under federal law.

28. Under 42 U.S.C. § 1983 and 28 U.S.C. § 2201, Plaintiffs are entitled to declaratory and injunctive relief from these violations of federal law.

COUNT III

(Declaratory and Injunctive Relief under 42 U.S.C. § 1983 and 28 U.S.C. § 2201 for Violations of 12 U.S.C. § 484, 12 C.F.R. § 7.4000, and the Supremacy Clause)

29. Paragraphs 1 to 28 are hereby incorporated by reference.

30. Subject to exceptions that do not apply here, 12 U.S.C. § 484 gives the United States Office of the Comptroller of the Currency (the "OCC") exclusive authority to exercise visitorial powers over the Bank.

31. 12 C.F.R. § 7.4000(a) states that, subject to exceptions that do not apply here, "State officials may not exercise visitorial powers with respect to national

banks, such as conducting examinations, inspecting or requiring the production of books or records of national banks, or prosecuting enforcement actions.”

32. 12 C.F.R. § 7.4000(b) states that the term “visitorial powers” includes regulation and supervision of activities authorized or permitted under federal banking law and “[e]nforcing compliance with any applicable federal or state laws concerning those activities.” The term “visitorial powers” also includes licensing.

33. In the State Proceedings, Defendants are seeking to indirectly exercise visitorial powers over the Bank, in contravention of 12 U.S.C. § 484 and 12 C.F.R. § 7.4000. Specifically, Defendants are seeking to apply North Carolina laws to restrict lending activities of the Bank that are authorized by the National Bank Act and OCC regulations thereunder, including section 85, 12 U.S.C. § 24 (Seventh), and 12 C.F.R. 7.1004(a). In addition, Defendants are seeking to indirectly impose state licensing requirements on national bank activities.

34. Defendants’ threatened enforcement of North Carolina law against ACE in connection with the Loans violates the Supremacy Clause, U.S. Const. art. VI, § 2, and threatens to deprive Plaintiffs of their rights under federal law.

35. Under 42 U.S.C. § 1983 and 28 U.S.C. § 2201, Plaintiffs are entitled to declaratory and injunctive relief from these violations of federal law.

COUNT IV

(Declaratory and Injunctive Relief under 42 U.S.C. § 1983 and 28 U.S.C. § 2201 for Due Process Violations)

36. Paragraphs 1 through 35 are incorporated herein by reference.

37. As applied in the context of the Loans, the North Carolina laws at

issue in the State Proceedings are not rationally related to the achievement of any legitimate government purpose.

38. Through the State Proceedings, Defendants are threatening to deprive Plaintiffs of their economic liberty and property without due process of law. These actions violate the Fourteenth Amendment to the United States Constitution.

39. Under 42 U.S.C. § 1983 and 28 U.S.C. § 2201, Plaintiffs are entitled to declaratory and injunctive relief from these violations of their federal constitutional rights.

WHEREFORE, Plaintiffs respectfully request that the Court enter a judgment:

(a) declaring that the Supremacy Clause of the United States Constitution, 12 U.S.C. § 85, 12 U.S.C. § 24 (Seventh), 12 C.F.R. § 7.1004(a), 12 U.S.C. § 484, and 12 C.F.R. § 7.4000 preempt North Carolina law insofar as that law is applied to require ACE to have a license to provide assistance to the Bank in connection with the Loans, and insofar as it is applied to prohibit ACE from engaging in its current activities in connection with the Loans;

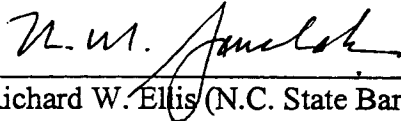
(b) declaring that North Carolina law, insofar as it is applied to require ACE to have a license to provide assistance to the Bank in connection with the Loans, and insofar as it is applied to prohibit ACE from engaging in its

current activities in connection with the Loans, violates the Bank's and ACE's constitutional rights to liberty and property;

(c) permanently enjoining Defendants from enforcing North Carolina law against ACE or the Bank, insofar as North Carolina law is applied to require ACE to have a license to provide assistance to the Bank in connection with the Loans, and insofar as it is applied to prohibit ACE from engaging in its current activities in connection with the Loans;

(d) awarding the Bank and ACE their attorney fees and costs, as permitted by 42 U.S.C. § 1988 and other law; and

(e) granting all other and further relief that the Court considers just.



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