

RECENT DEVELOPMENTS

CONSUMER CREDIT

\$22 MILLION TRUTH IN LENDING ACT CLASS AWARD OVERTURNED

Christ v. Beneficial Corp., 547 F.3d 1292 (11th Cir. 2008).

FACTS: Beneficial Florida, Inc. (“BFI”) issued a consumer loan to Kenneth Christ, Jr. The disclosure form in the loan documentation indicated BFI charged Christ a non-filing insurance premium (“NFI”), which was listed as a separate item under a column titled itemization of amount financed. Christ brought suit in Florida under the Truth in Lending Act (“TILA”) against BFI. Christ claimed that the NFI premium should have been disclosed in the finance charge column of the disclosure form, rather than the amount charged column because the NFI premium was not for insurance, and even if the NFI premium was for insurance, it was not for non-filing insurance. The Multi-District Litigation (“MDL”) transferred the case to the Middle District of Alabama for consolidated pretrial proceedings with similar cases.

Christ then moved under Fed. R. Civ. P. 23(b)(2) for certification of a nationwide class of borrowers who were charged a similar NFI fee by BFI’s consumer lending subsidiaries. Christ also moved for partial summary judgment under the Declaratory Judgment Act (“DJA”), seeking a declaration that defendants violated TILA’s disclosure requirements. The MDL court entered an order conditionally certifying an injunctive class. The MDL court granted summary judgment to the plaintiff class, remanding the case back to the Florida court. The district court invoked the DJA and awarded to the plaintiff class injunctive relief, and over \$22 million as restitution or disgorgement of the NFI fees. Defendants appealed, arguing that class certification was improper

because equitable relief, such as injunction or disgorgement, is not available to a class under TILA.

HOLDING: Vacated and remanded.

REASONING: Class certification requires that the plaintiff show the defendants acted on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate to the class as a whole. The court held MDL’s inference of injunctive relief was improper under TILA. The court noted that TILA did not expressly provide for private injunctive relief, but neither did it expressly preclude it. Because the court did not expect Congress to expressly preclude remedies, the court did not read TILA to confer upon private litigants an implied right to an injunction or other equitable relief such as restitution or disgorgement. Because injunctive relief was not a remedy available to Christ and plaintiff-class under TILA, certification under TILA was improper. The court vacated the MDL court’s order of class certification.

The court stated that the DJA does not create remedies otherwise unavailable to plaintiffs in anticipated coercive actions. Under DJA, relief beyond a declaratory judgment or decree is permitted only to the extent relief is necessary and proper. The relief ordered by the district court was awarded to Christ both unnecessarily and improperly. The injunction and \$22 million award as restitution or disgorgement of fees was considered impermissibly excessive. The court found the award circumvented the express remedies of actual or statutory damages provided by Congress. The court vacated the district court’s certification of an injunctive class, vacated the award of injunctive relief, and restitution or disgorgement. The case was remanded to the district court.

ARBITRATION

ARBITRATION WAIVED

Citizens Nat’l Bank v. Bryce, ___ S.W.3d ___ (Tex. App.—Tyler 2008).

FACTS: Homer Bryce died having appointed Citizens National Bank independent executor of his estate, and trustee of the marital trust created by his will. Bryce’s survivors (“Plaintiffs”) later asserted that Bank had misappropriated and mismanaged Bryce assets that were formerly community property of Bruce and his wife. Plaintiffs sued Bank for breach of fiduciary duty and negligence. Two months prior to trial, Bank filed a motion to compel arbitration, and to stay the proceedings in the trial court pending arbitration. Bank cited the arbitration clause contained in the agreement between the plaintiffs and Bank, which required arbitration if any dispute arose between them, relating to this agreement. Plaintiffs argued that Bank had waived its right to compel arbitration. The trial court found Bank did waive its right to compel arbitration. Bank filed an interlocutory appeal, asserting it did not waive the right to compel arbitration.

HOLDING: Affirmed.

REASONING: The court reasoned that when an agreement to arbitrate is enforceable under the Federal Arbitration Act, there is

a strong presumption in favor of arbitration and against waiver. However, the court recognized a party implicitly waives its arbitration rights when it substantially invokes the judicial process to the other party’s detriment or prejudice. Prejudice in this context refers to the inherent unfairness in terms of delay, expense, or damage to a party’s legal position, which occurs when the party’s opponent forces it to litigate an issue and later seeks to arbitrate the same issue.

The pertinent inquiry was whether the totality of the circumstances showed that Bank invoked the judicial process to such a degree that its actions resulted in prejudice or detriment to plaintiffs. Bank filed its motion to compel arbitration approximately twenty months after the suit was filed, and just two months prior to trial. During this period, Bank conducted extensive discovery, including a request for disclosure, several requests for production, several sets of interrogatories and a request for admission. The Bank also filed three motions to compel responses to written discovery, and conducted thirteen oral and two written depositions. Bank designated experts, filed a motion to strike experts, and filed several other motions and briefs. The court held that the extensive discovery and pre-trial activity conducted by Bank prejudiced the plaintiffs. Bank affirmatively waived arbitration by substantially invoking the judicial process. Accordingly,