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U P D A T E

News of Developments in the Financial Sector and Related Areas

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Tortious Interference

Vowell v. Fairfield Bay Community Club, Inc.,346 Ark. 270 (2001) involves a non-profit organization responsible for administering certain amenities and facilities for both resident and non-resident property owners of a resort. All property owners are required to be members with non-resident property owners paying dues of $18.00 per month, and charter members paying dues of $25.00 per year. *Vowell* had been employed by the club for many years and had assisted in drafting the original restrictions and covenants of the club and its members. Following his employment with the club, *Vowell* began soliciting non-resident club members to participate in a competing resort utilizing a marketing strategy that included purchasing non-resident-property-owners' lots for $1.00 in exchange for their purchase of a membership in the competing resort. Under this scheme, *Vowell* sold 270 memberships of the competing resort and transferred a number of deeds, including forty-nine deeds back to the club, without the club's consent. The club filed a lawsuit alleging the *Vowell* tortiously interfered with its business expectancy by terminating its contractual relationships with non-resident property owners and by failing to make monthly dues payments after accepting former members' deeds. The Court granted injunctive relief sought by the club against *Vowell* and the reformation of the forty-nine deeds transferred to the club without its consent. The Court noted in its findings that to establish a claim of tortious interference, a party must prove (i) the existence of a contractual relationship or a business expectancy; (ii) knowledge of the relationship or expectancy on the part of the interfering party; (iii) intentional interference inducing or causing a breach or termination of the relationship or expectancy; and (iv) resultant damage to the party whose relationship or expectancy has been disrupted. The Court went on to note that with respect to a claim of tortious interference, the person's conduct must be at least "improper". Factors to be considered in determining whether an actor's conduct is improper or not includes (i) the nature of the actor's conduct; (ii) the actor's motive; (iii) the interest of the other with which the actor's conduct interferes; (iv) the interest sought to be advanced by the actor; (v) the social interest in protecting the freedom of action of the actor and the contractual interest of the other; (vi) the proximity or remoteness of the actor's conduct to the interference; and (vii) the relations between the parties.

Document Preparation Fees Charged to Borrowers

Dressel v. AmeriBank, No. 222447, is a case before the Court of Appeals of Washington involving fees charged by the defendant bank in connection with loans made by the bank to its customers. The case was certified as a class action to provide potential relief to approximately 8,000 real estate loan borrowers of the bank. In this case, the plaintiffs obtained a real estate loan from the defendant bank that was secured by a mortgage on their home. In connection with the loan, the bank prepared an adjustable rate note and a mortgage for plaintiffs. The settlement statement designated a $400 fee for "document preparation". According to the documentation the defendant bank provided to the plaintiffs, the document preparation fee was described as "a separate fee that some lenders or title companies charge to cover their costs of preparation of final legal papers, such as a mortgage, deed of trust, note or deed". The plaintiffs filed suit arguing that the charge for completing mortgage documents constituted the unauthorized practice of law by the bank. The bank argued that its actions were not the unauthorized practice of law because it was an interested party to the transaction. The Court concluded, after examining cases decided by other states, that the defendant bank engaged in the unauthorized practice of law when it charged a separate fee for the preparation of legal documents.

Anti-Money Laundering Legislation

Following the aftermath of the September 11 terrorist attacks, Congress enacted the International Money Laundering Abatement and Financial Anti-Terrorist Act of 2001 regarding banking transactions, financial relationships and the reporting of suspicious activities that may be the source of funding for global terrorist activities. Under Section 365 of the Act, any person who receives more than $10,000 in coins or currency, in any one transaction or two or more related transactions in the course of that person's trade or business, is required to file a report on the transaction with the Financial Crimes Enforcement Network. Regulations regarding this new reporting requirement are required to be promulgated by May 26, 2002.

Cases and Rulings

Louisiana Safety Systems, Inc. v. Tengasco, Inc., et al., 2001 WL 1105395, Tenn. Ct. App. (2001) involves a decision regarding the respective liabilities between two defendants in an arbitration award. One of the defendants argued that because there was no arbitration agreement in effect, the award should be vacated. The Court held that since there was no objection made to the trial court or to the arbitrator that there was no arbitration agreement in effect, the arbitration award may not later be attacked on that basis.

The Association of Banks in Insurance et al. v. Duryee, 270 F.3d 397 (2001) is a decision by the United States Court of Appeals for the Sixth Circuit holding that Ohio laws which restricted out-of-state national banks desiring to sell insurance in the state of Ohio were preempted by both the National Bank Act and the Gramm-Leach-Bliley Act and could not interfere with the authority granted by federal law. The application to a national bank of Ohio law that denied insurance sales licenses to those who sold insurance principally to persons in certain categories was preempted by the National Bank Act which allowed national banks to sell insurance from places of fewer than 5,000 persons. Prohibited categories under Ohio law included persons for whom the insurance seller acted as "agent, custodian, vendor, bailee, trustee, or payee." Since the bank would have had these relationships with its customers, the law was preempted because it interfered and prevented the bank from selling insurance to these customers.

TRW, Inc. v. Andrews, 70 S. Ct. 441 (2001) is a decision by the United States Supreme Court holding that the time limit on a consumer's cause of action for a consumer reporting agency's violations of the Fair Credit Reporting Act began when the violation occurred and not when it was discovered by the consumer. The Act generally requires that a lawsuit be filed within two years of the occurrence of the violation except where the violation consists of a willful, material misrepresentation in which case the time limit begins on a consumer's discovery of a violation.