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1. *Legal Settlement Cash Advances Aren't Loans: Ga. Justices*

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Legal Settlement Cash Advances Aren't Loans: Ga. Justices

October 22, 2018

Author: Andrew Strickler

Summary

The Georgia Supreme Court handed a win to the consumer legal funding industry Monday in finding that legal case “investments” are not loans and are therefore outside the scope of state usury laws.

Body

The Georgia Supreme Court handed a win to the consumer legal funding industry Monday in finding that legal case “investments” are not loans and are therefore outside the scope of state usury laws.

In a unanimous decision in favor of Atlanta-based Cherokee Funding LLC, the court backed an appeals court conclusion that Cherokee’s cash advances to clients expecting settlements in personal injury cases aren’t covered by the state Payday Lending Act and the Industrial Loan Act. Both statutes carry strict limits on lender returns.

While acknowledging some ambiguity in the definition of a “loan” under the laws, the court drew a hard line between a traditional recourse loan and Cherokee deals in which the client is only obligated to pay money back when their personal injury lawsuits end successfully.

If the client’s case fails, the settlement is less than the advance amount, and even if clients withdraw their own suits, Cherokee is out of the money.

“We agree with our Court of Appeals that, when the obligation to repay is only contingent and limited, there generally is no ‘loan’ as defined under the Industrial Loan Act, the court said. That statute defines a ‘loan’ as any advance of less than $3,000 under a contract requiring repayment; it also caps interests on those loans at 10 percent.

The court also agreed that the Cherokee transactions don’t fall under the state Payday Lending Act — the law that effectively outlaws the business of payday lending in the state — which includes a provision “most reasonably understood” to apply to contracts that impose an obligation to repay.
“We fail to see any meaningful distinction between a ‘contract requiring repayment’ (as used in the Industrial Loan Act) and an agreement pursuant to which ‘funds are advanced to be repaid’ (as used in the Payday Lending Act),” the court said in its decision.

“When funds are advanced under an agreement that repayment is required only upon the occurrence of a contingency, and even then, perhaps only to a limited extent ... the funds are not, we think, ‘advanced to be repaid’” under the PLA.

The decision comes in a putative class action brought by former Cherokee clients who claimed they were the victims of usurious contracts and exorbitant payment demands after they accepted advances on recoveries from automobile crash claims.

"The starting point when construing a statute must be its text and, as the court stressed, we must presume the legislature 'meant what it said and said what it meant,'” said Cherokee counsel Laurie Daniel.

The Cherokee case had the attention of the consumer legal funding business, which has been under regulatory and legislative scrutiny in a number of states.

Industry lobbying groups have resisted the imposition of capped returns designed for other kinds of loan products, arguing in part that the nonrecourse nature of legal claim advances makes them distinct from payday loans and other kinds of products.

Eric Schuller of trade group the Alliance for Responsible Consumer Legal Funding cheered the Georgia ruling.

“I think this reiterates our position that these are not loans, and the fact that these transactions are a different financial product altogether that you can’t lump together with everything else just because it’s easy,” said Schuller, who also directs government and community affairs at legal claim funder Oasis Financial.

Kelly Gilroy, executive director of the American Legal Finance Association, said the decision recognizes “the fundamental differences between pre-settlement advances and loans.”

The consumer funding industry “needs appropriate standards and regulation — such as those we supported in Oklahoma, Indiana, Tennessee and Vermont — to protect consumers and preserve access to this important resource,” she said. “ALFA will continue to advocate for these high standards so that victims can pursue justice, no matter the cost.”

Oklahoma, Indiana, Tennessee and Vermont have passed consumer protection laws for claim funders. The statutes contain various disclosure, bonding, licensing or other requirements, but do not impose hard caps on funder returns or rates. Other states, including Tennessee and Arkansas, included funder return limits in their statutes.

A lawyer representing the plaintiffs did not respond to a message seeking comment.

Cherokee is represented by Laurie W. Daniel of Holland & Knight LLP, Allan C. Galis and Bradley M. Harmon of HunterMaclean, and Geoffrey H. Bracken and Scott D. Ellis of Gardere Wynne Sewell LLP.

The plaintiffs are represented by Jeremy McKenzie of Karsman McKenzie & Hart and Robert B. Turner of Savage Turner Durham Pinckney & Savage.

The case is Ruth et al. v. Cherokee Funding, certiorari number S17G2021, in the Supreme Court of Georgia.
--Editing by Aaron Pelc.