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Court Of Appeal Holds “May” Does Not Mean “May Only”

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California requires persons who are engaged in the business of making consumer loans or commercial loans to be licensed under the ***Finance Lenders Law,*** unless exempt. Cal. Fin. Code § 22100. The CFLL includes the following:

> A licensee may sell promissory notes evidencing the obligation to repay loans made by the licensee pursuant to this division or evidencing the obligation to repay loans purchased from and made by another licensee pursuant to this division to institutional investors, and may make agreements with institutional investors for the collection of payments or the performance of services with respect to those notes.

Cal. Fin. Code § 22340. By stating what a licensee “may” do, is the legislature also defining what a licensee may not do? In other words, is the effect of this statute to limit sales only to institutional investors? That was the argument of the plaintiff in ***Montgomery v. GCFS, Inc.***, 2015 Cal. App. LEXIS 508 (June 12, 2015).

In a recent opinion by Justice Mark B. Simons, the First District Court of Appeal held that the “the statute does not prohibit the sale of debts to other parties”. In reaching this conclusion, the Court referred to the legislative history of the statute:

> The legislative history reveals a very specific purpose: to permit licensees under the Finance Lenders Law to sell notes secured by real property to institutional investors without having to also be licensed as a real estate broker. An Assembly floor analysis explains: “Present law regulating [finance lenders] is silent concerning the authority of these lenders to sell and service promissory notes. The Real Estate Law, however, requires any person engaged in assigning notes ‘to the public’ to be licensed under that law. [Finance lenders] are exempt from the Real Estate Law when acting within the scope of their respective licenses. [¶] This bill would authorize [finance lenders] to sell and service promissory notes to institutional investors within the scope of their licenses. These businesses will consequently be exempt from licensing requirements under the Real Estate Law when engaged in these activities.” (Assem. Conc. in Sen. Amends. to Assem. Bill No. 346 (1985–1986 Reg. Sess.) as amended

> June 6, 1985, p. 2.) As explained in a statement of legislative intent printed with unanimous consent in the Assembly Journal, the bill "authorizes finance companies … to sell real estate loans they have made to specified classes of institutional investors, and to make agreements to service those loans. [¶] In accordance with the finance companies' exemption from the real estate law, this authority eliminates the possibility that they could be required to be licensed and regulated as real estate brokers when selling or servicing real estate loans they have made." (2 Assem. J. (1985–1986 Reg. Sess.) p. 3298.)

(Footnotes omitted).

Readers of this site shouldn't be too surprised by this case as it is consonant with three federal court rulings that I highlighted in this post from February 2014.

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