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Ark. Supreme Court returns payday loan lawsuit to lower court

State News

Ark. Supreme Court returns payday loan lawsuit to lower court

*By JON GAMBRELL
Thursday, November 16, 2006 7:46 PM CST*

LITTLE ROCK - A lawsuit challenging Arkansas laws allowing "payday loan" fees that exceed the state's interest limits again will return to a Pulaski County Circuit Court, the state Supreme Court decided Thursday.

While declining to make its own ruling on constitutionality of the Arkansas Check Cashers Act, the Supreme Court reversed and remanded the case to Judge Barry A. Sims for the second time. The court's decision keeps the lawsuit against the 1999 act alive for those suing, who claim it violates the state constitution by allowing payday lenders to make consumer loans with interest rates of more than 17 percent annually.

An opinion written by Associate Justice Donald L. Corbin disagreed with the lower court's decision saying that those suing must first exhaust administrative appeals before seeking a decision by the courts.

At the heart of the complaint, Corbin wrote, is that those suing are being injured by the Arkansas State Board of Collection Agencies allowing lenders to "charge usurious interest rates." Those suing were not required to first go before the board to argue the act's constitutionality before going to court, Corbin wrote.

Todd Turner, an Arkadelphia lawyer representing those suing the board and its members, said the court's decision will force a decision "once and for all" on the legality of the act.

"There's no way to avoid a ruling now," Turner said.

Through a payday loan in Arkansas, a customer writing a check for \$400, for example, typically would receive \$350. The lender would keep the check for about two weeks without cashing it and, thereby, allowing the customer time to buy back the check.

The \$50 charge on the \$350 loan for 14 days equates to 371 percent interest, well above Arkansas' usury limit of 17 percent.

Sims originally dismissed the lawsuit in 2003 on a series of grounds, ranging from those suing had no standing to file the lawsuit, that the agency was immune from suits and that the suit didn't offers facts that the court could use to grant relief. The Supreme Court reversed Sims' decision in 2005 and sent the suit back to trial. Sims ruled that the act was constitutional in November 2005.

The plaintiffs in the case include several customers who have used check cashing businesses and several private individuals, including North Little Rock Mayor Patrick Hays.

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As of now, Turner said he would prepare to argue the constitutionality of the act before Judge Sims. However, he said it would be "really nice" if the Legislature repealed the act in its session beginning next year.

"The state agency and check cashers have been trying to avoid a ruling on the constitutionality of the act because they knew it would be struck down," Turner said.

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