

Justices: Check law no shield

Bond firm liable in payday case

BY JIM BROOKS ARKANSAS DEMOCRAT-GAZETTE

The state Supreme Court ruled Thursday that the Arkansas Check Cashers Act doesn't protect a bonding company from an obligation to pay a settlement owed to an Arkansas woman who claimed fees charged by a Russellville check-cashing company violated the state constitution's ban on excessive interest.

The 1999 law allows checkcashing companies to charge "fees" that, as interest, would exceed the state usury limit of 17 percent.

The attorney for the woman in the case said Thursday's decision means check-cashing companies aren't excused from obeying the state constitution.

"I think that is an indication that transactions, even if they comply with the Check Cashers Act, are not going to be exempt from the Arkansas Constitution," said Todd Turner of Arkadelphia. "I'm very pleased that the insurance company was not able to use the Check Cashers Act as a defense to fulfilling its constitutional obligations."

Sharon McGhee of Houston argued before the court that Old Republic Surety Co., which put up a \$50,000 bond for a Russellville check-cashing business, was let off the hook by the state agency that regulates the check-cashing business.

McGhee won a \$200,000 settlement against Russellville Check Express in 2003 after she alleged that the company had charged its customers usurious rates of interest. When she could not collect from the check-cashing company, McGhee tried to have the bond forfeited to her.

The Arkansas Board of Collection Agencies ruled that the bond covered the business only for violations of the Arkansas Check Cashers Act and not constitutional violations.

McGhee appealed to Pulaski County Circuit Court, where Judge Ellen Brantley ruled that the bond covered the violation of any law that could be enforced. The state board appealed Brantley's ruling to the Supreme Court.

The Supreme Court opinion by Justice Robert Brown stated: "We conclude that the board's decision is at odds with the clear language of the Old Republic bond because this state's anti-usury policy as expressed by Article 19, Section 13 of the Arkansas Constitution has been violated."

"Hence, substantial evidence does not support the board's decision. We further hold that by violating the Arkansas Constitution, the applicable laws of this state were violated irrespective of whether the Check-Cashers Act provided that check-casher fees were not interest."

Brown said the bonding company should have been aware of the constitution's ban on usurious interest.

"It was incumbent upon Old Republic to know and abide by the clear public policy of this state as expressed by the Arkansas people in the Arkansas Constitution regardless of one legislative act (the Check-Casher Act) that runs counter to that public policy," Brown wrote. "Old Republic did not do so, and by this failure, it violated the laws of this state and became liable under the bond."

The board and bonding company argued that the bond was meant to cover damage suffered by any person resulting from Russellville Check Express' violation of the "applicable laws of the state of Arkansas."

"Without question, a violation of this state's usury laws is a violation of an applicable law of Arkansas," Brown wrote. "The usury laws of this state, including what constitutes interest or fees, have been part of our constitution, statutory law, and case law for decades."

Attorney general spokesman Gabe Holmstrom said attorneys with the office believe Thursday's decision was a narrow one, relating solely to the language in the bond.

"We read the case to say the language of the bond was triggered as to cover the judgment in question," Holmstrom said. "It is our opinion that nothing more definitive can be gleaned from the opinion, including a statement on the constitutionality of the check cashers law."

Holmstrom said he expects the board will read the decision, but the attorney general's office doesn't know whether the board will change any of its practices as a result.

Peggy Matson, executive director of the board, did not return phone messages left for her Thursday.

In November, in another suit filed by Turner on behalf of McGhee, Pulaski County Circuit Judge Barry Sims ruled the Check Cashers Act was constitutional, opening the door for an appeal to the Supreme Court. The appeal in that case has not yet been filed.

In the Supreme Court, the case involved in Thursday's ruling is CA2007-129, Arkansas Board of Collection Agencies and Old Republic Surety Company v. Sharon McGhee.