Supreme Court Wades Into Credit Issues

October 13, 2011 â€“ This week, the US Supreme Court dipped its toes into the water surrounding two contentious credit issues. Justices heard arguments in a case involving mandatory binding arbitration clauses placed in credit card user agreements. And they agreed to hear another case involving unearned fees charged by some lenders when issuing mortgage. Both cases could have a significant impact on consumer rights.

In Freeman vs. Quicken Loans, the plaintiffs in the case are alleging that they were charged thousands of dollars in loan discount fees by Quicken Loans but that they actually didnâ€™t get lower interest rates as a result of the fees. Discount fees are commonly referred to as â€œpointsâ€•. Borrower s are often given the option to pay points at the time a home loan is originated in return for a lower interest rate for the life of the loan.

The Real Estate Settlement Procedures Act of 1974 is the basis of the law suit. The law states that unearned fees are illegal but appellate courts have disagreed about what this actually means. The section of the law forbidding unearned fees deals with kickbacks to other service providers. So, for instance, it would be illegal for an escrow company to provide a payment to a real estate agent for using the escrow companyâ€™s services. But can a company already involved in a real estate transaction, such as Quicken Loans, simply tack on fees of their own without having to justify them? This is where lower courts have split on the issue.

The other case is CompuCredit vs. Greenwood. This is a case that could present real issues for the justices. The real question to be answered is what does congress mean when they provide language in a bill that gives consumers a â€œright to sueâ€•? That may sound pretty straight forward but, because of previous Supreme Court rulings, it is not.

In this case, CompuCredit was issuing credit cards to consumers with bad credit records. New cards were issued with a $300 credit limit on them. And the fees for issuing the card and maintaining individual credit accounts amounted to $257; leaving new cardholders with a whopping $43 of new found spending power.

CompuCredit included language in their cardholder agreements baring cardholders from suing. In cases of dispute, the agreements limited the cardholdersâ€™ options to mandatory binding arbitration. Last year, the Supreme Court overturned a California law which outlawed mandatory binding arbitration clauses. The Supreme Court has also made other rulings affirming the Federal Arbitration Act.

But this particular case is a little different because it involves a credit card company that is marketing a product specifically designed for credit repair. The Credit Repair Organizations Act gives explicit permission for consumers to sue when the law is violated. It also bars any agreements that require consumers to waive their right to sue and specifically states that both federal and state courts are barred from enforcing agreements that force consumers to waive their rights.

But when asked by the justices on numerous occasions and in numerous ways why a law that gives consumers a right to sue should actually mean that consumers only have a right to binding arbitration, lawyers for the defendant stated over and over again that it is because of previous Supreme Court rulings say so. And there is the rub. The defendantâ€™s attorneys may be correct. If that is the case, the court may be faced with the unsavory prospect of either upholding mandatory binding arbitration even in the case of credit repair, or overturning its own prior rulings. Neither prospect will be appealing to any of the justices.

Weâ€™ll keep you posted on both cases.

byJim Malmberg
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