CONSUMER CREDIT

CONSTITUTIONALITY OF CFPB UPHELD

Consumer Fin. Prot. Bureau v. Seila Law, LLC, 923 F.3d 680 (9th Cir. 2019).
https://www.leagle.com/decision/infco20190506075

FACTS: Plaintiff-Appellee Consumer Financial Protection Bureau ("CFPB") was investigating whether Defendant-Appellee Seila Law, LLC, violated the Telemarketing Sales Rule. The CFPB issued a civil investigative demand ("CID") to Seila Law, requiring the firm respond to interrogatories and requests for documents. Seila Law refused to comply. The CFPB filed suit, seeking enforcement of the CID.

The district court granted the petition and ordered Seila Law to comply with the CID. Seila Law appealed.

HOLDING: Affirmed.

REASONING: Seila Law argued that the CFPB's structure violates the Constitution's separation of powers because the agency is headed by a single director who exercises substantial executive power but can only be removed by the President for cause.

The court rejected Seila Law's argument, first holding that the CFPB exercised quasilegislative and quasi-judicial powers, not purely executive powers. The CFPB's for-cause removal restriction was a permissible means of insulating the CFPB from Presidential control. The court further held that, because of the CFPB's quasi-legislative and quasi-judicial roles, Congress could use the for-cause restriction to ensure that the CFPB acted independently of the President's will.

Second, the court held that the substantial executive power wielded by the director was not dispositive. The court relied on the Supreme Court opinion in *Free Enterprise Fund v. Public Company Accounting Oversight Board* 561 U.S. 477 (2010), analogizing the for-cause restriction for the Director of the CFPB to the for-cause restriction for the Commissioners of the SEC who wielded substantial executive power. Accordingly, it was not unconstitutional to require for-cause removal of an agency head who wielded substantial power.

Lastly, the court made no distinction between multi-member and single-individual leadership structures. Thus, it was not an issue that the CFPB was headed by a single individual.

FACTA STANDING UNDER *SPOKEO* SATISFIED BY EGREGIOUS VIOLATION

Jeffries v. Volume Servs. Am., Inc., ___F.3d___ (D.C. Cir. 2019).
https://www.anylaw.com/case/doris-jeffries-v-volume-services-america-inc/d-c-circuit/07-02-2019/PI1GtWsBGQqH1ylcIeS-

FACTS: Plaintiff Doris Jeffries made a credit card purchase from Defendant Volume Services America, LLC, doing business as Centerplate. Centerplate provided Jeffries a receipt containing all sixteen digits of her credit card number, as well as the card's expiration date. Jeffries filed suit, alleging Centerplate violated the Fair and Accurate Credit Transactions Act (FACTA), which prohibits printing more than the last five digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction.

Centerplate filed a motion to dismiss. The district court granted Centerplate's motion, concluding that Jeffries lacked standing.

HOLDING: Reversed and remanded.

REASONING: Jeffries argued that the violation of her statutory right under FACTA constitutes an injury in fact, without any additional showing of harm.

The court accepted Jeffries's argument, reasoning that, under *Spokeo v. Robins*, the violation of a procedural right granted by statute can itself manifest concrete injury. The court acknowledged that the statute must protect a concrete right, and interpreted FACTA as protecting the interest of avoiding an increased risk of identity theft. The court explained that protecting this risk is closely analogous to common law tort breach of confidence, both of which protect against unauthorized disclosure of information to a third party. Additionally, Congress determined that printing too much credit card information on a receipt creates a real harm.

The violation of a procedural right granted by statute can itself manifest concrete injury.

The court qualified its holding, stating that although not every violation of FACTA creates a concrete injury in fact, failure to truncate the sixteen-digit card number does because it provides too much credit card information on a receipt.

STUDENT LOAN BORROWERS CAN SUE SERVICERS UNDER STATE CONSUMER PROTECTION LAWS

Nelson v. Great Lakes Educ. Loan Servs., Inc., ___F.3d___ (7th Cir. 2019).
http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2019/D06-27/C:18-1531:J:Hamilton:aut:T:fnOp:N:2362027:S:0

FACTS: Plaintiff-Appellant Nicole Nelson borrowed federal student loans to help pay for her education. Defendant-Appellees, Great Lakes Education Loan Services, Inc. ("Great Lakes"), was a loan servicer that provided guidance to borrowers on the repayment of their loans. Nelson used Great Lakes' services to pay back her loans. Great Lakes was required under the Higher Education Act, 20 U.S.C. §1098g ("HEA"), to make certain disclosures about repayment options to borrowers. Under the HEA, Great Lakes was exempt from disclosure requirements imposed by state laws, which barred potential claims against Great Lakes for failing to disclose information to borrowers. The required disclosures included descriptions of forbearance and deferment to financially struggling borrowers.

When Nelson suffered a drop in her income and needed help on payments, she sought advice from Great Lakes. Great Lakes instructed Nelson that forbearance and deferment were her best options, and Nelson relied on this information. Nelson filed suit, alleging that Great Lakes steered borrowers away from income-driven repayment plans that are less lucrative to lenders and toward more burdensome options in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act.

Great Lakes moved to dismiss. The district court granted Great Lakes' motion, holding each of Nelson's claims alleged only that Great Lakes failed to disclose information which is expressly preempted by the HEA. Nelson appealed.

HOLDING: Vacated and remanded.

REASONING: Nelson argued that the HEA's preemption of state-law disclosure requirements does not entirely bar her use of state consumer protection laws because she relied, to her detriment, on Great Lakes' voluntary affirmative misrepresentations made to her in the counseling of the repayment of her loans.

The court accepted this argument, examining the different types of preemption that could potentially bar claims against the statute: express, conflict, and field. First, the court used statutory interpretation to hold that the HEA did not expressly preempt voluntary affirmative misrepresentations claims. The court noted that if a claim stated a loan servicer made misrepresentations in disclosures that they were not required to make in the first place, the claim would not necessarily imply a preempted disclosure requirement by the statute. Thus, it would be possible for student loan borrowers to apply state consumer protection laws to sue loan servicers.

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Second, neither conflict preemption nor field preemption barred Nelson's claims. Conflict preemption did not apply because it was not impossible for loan servicers to comply with both federal law and state law requirements. Field preemption did not apply because federal law did not so comprehensively occupy student loan regulation as to not leave room for state legislation to apply.