Denver Law Review

Volume 68
Issue 4 *Tenth Circuit Surveys*

Article 14

January 1991

Banking & (and) Finance

Denver University Law Review

Banking & (and) Finance

Valley Nat'l Bank v. Abdnor, 918 F.2d 128
Author: Judge Theis, sitting by designation

Plaintiff, Valley National Bank (the "Bank"), appealed a judgment rendered in favor of defendant, Small Business Administration ("SBA"). The dispute involved SBA's refusal to purchase its guaranteed portion of a defaulted loan. The district court found that the Bank violated its guaranty agreement by failing to service the loan prudently, thereby excusing SBA of its obligation to purchase the loan. On appeal, the Bank argued that: (1) there were no specific provisions in its agreement with SBA that required it to take certain measures; (2) it administered the loan with the same level of attention and professionalism as it did other non-SBA loans; (3) the district court violated the parol evidence rule by relying on a letter from the president of the Bank to the SBA stating that certain steps would be taken with regard to securing the collateral for the loan; and (4) it could not have prevented the ultimate loss on the loan by servicing it differently, and the SBA should be excused from honoring its guaranty only when the Bank's conduct caused the loss.

The Tenth Circuit affirmed the decision of the district court. The court found substantial evidence to support the finding that the Bank did not act prudently with respect to the loan. First, the court rejected the Bank's argument that there were no provisions in the agreement requiring it to take certain actions. The court reasoned that acting prudently might require additional unspecified actions by the lender. Second, the fact that the Bank administered the loan with the same level of attention as it did other non-SBA loans was not a defense. The court reasoned that the Bank may normally service its non-SBA loans in an imprudent manner. Third, the district court did not violate the parol evidence rule. The court explained that the district court only considered the letter as evidence of specific actions that might be required of a prudent lender. The letter did not alter or contradict the terms of the parties' written agreement. Last, the court ruled that under SBA regulations, if the lender's actions may be expected to result in a substantial loss on the loan, the SBA is excused from honoring its guaranty.

FDIC v. Bank of Boulder, 911 F.2d 1466
Author: Judge McKay
Dissent: Judge Baldock

Plaintiff, Federal Deposit Insurance Corp. ("FDIC"), brought suit to enforce a letter of credit issued by defendant, Bank of Boulder, to the failed Dominion Bank of Denver ("Dominion"). The letter of credit was transferred by FDIC, as receiver of Dominion, to itself in its corporate capacity. The district court ruled that because the letter of credit could not legally be transferred to FDIC, there was no federal jurisdiction for

FDIC's claim. FDIC appealed, claiming that even though the letter of credit was not transferrable under state law, FDIC was entitled to transfer it in the course of a "purchase and assumption" transaction.

The Tenth Circuit, sitting *en banc*, reversed the district court. The court held that pursuant to 12 U.S.C. § 1823(c)(2)(A), the FDIC, in its corporate capacity, could purchase any assets, including assets nontransferable under state law, from itself, in its capacity as receiver/liquidator, in order to facilitate a Purchase and Assumption transaction. Consequently, the court held that this statute preempts any Colorado restriction on the transferability of letters of credit from FDIC/Receiver to FDIC/Corporation in the course of a "purchase and assumption" transaction. The court also stated that the letter was transferable under federal common law because: (1) there is a need for a nationally uniform rule allowing FDIC to acquire nontransferable assets of failed banks; and (2) the state law transfer restrictions significantly interfered with important FDIC objectives.

Chase Manhattan Fin. Servs., Inc. v. McMillian, 896 F.2d 452
Author: Judge Tacha

Plaintiff, Chase Manhattan Financial Services, Incorporated ("Chase"), filed suit against defendant, McMillian, to enforce its mortgage on McMillian's vessel. The district court found that the mortgage was preferred under the Ship Mortgage Act of 1920 ("SMA"). McMillian and other third-party plaintiffs appealed, claiming the district court erred because it should have found the mortgage invalid on grounds of incomplete documentation, fraud, and improper priority over preexisting material and labor liens.

The Tenth Circuit affirmed the decision of the district court. The court first established that contracts for building or supplying materials for original construction of ships are not "maritime" contracts under the SMA and do not create maritime liens. The court then addressed issues relating to passage of title. The court ruled that the manufacturer's statement of origin and the sales agreement taken together satisfied the relevant state statute concerning conveyance of good title. Accordingly, the mortgage was preferred under the SMA, giving Chase the right to proceed in admiralty with a preferred status over all nonmaritime claims.

Neece v. Internal Revenue Serv., 922 F.2d 573
Author: Judge Ebel

Plaintiffs, the Neeces, applied for a loan from a bank that held a mortgage on their home. They submitted a financial statement with the loan application. The bank suspected the Neeces were attempting to violate federal tax laws and contacted defendant, Internal Revenue Service ("IRS"). The Neeces claim the bank violated the Right to Financial Privacy Act ("RFPA"), 12 U.S.C. §§ 3401-3422, by turning over financial documents to the IRS without notifying the bank customer. The district court granted the IRS's motion for summary judgment, and the Neeces appealed.

The Tenth Circuit reversed the district court. The court stated that the RFPA balances the customer's right to privacy with the need for law enforcement agencies to pursue legitimate investigation. Specifically, § 3402 requires that notice be given to the customer when a federal agency seeks access to the customer's records. There are several exceptions, but the court held that none applied to the Neeces. Also, the court noted that the intent of Congress, as expressed in the RFPA, would be negated if a bank could waive the customer's protection under the RFPA simply by turning over records to the IRS.

United Bank & Trust Co. of Norman, Oklahoma v. Kansas Bankers Surety Co., 901 F.2d 1520
Author: Judge Moore

This action involved a dispute over coverage under a banker's blanket bond. Defendant, Kansas Banker Surety Company ("KBS"), issued a blanket bond to plaintiff, United Bank & Trust Company ("United"), which applied to losses sustained after the issue date. Also, it defined the loss sustained as occurring at the time of the act. In the case at hand, the borrower defaulted on a loan. This loan was made prior to the issue date, and secured by stock certificates. These certificates were later found to be counterfeit. The broker who sold the certificates obtained a judgment against United for the sale price of the securities and attorney's fees. When KBS denied coverage, United filed suit. The district court held in favor of United when the parties cross-moved for summary judgment. The district court found that the loss occurred when the judgment against United was granted, or alternatively no earlier than the time of the default. KBS appealed, arguing the bond had prospective application only.

The Tenth Circuit reversed. Following the rules of construction applicable to insurance contracts, the court reasoned that under the plain language of the contract, the loss was sustained at the time the loan was made. A different interpretation would impose retrospective coverage contrary to the parties' intent.

Ward Petroleum Corp. v. FDIC, 903 F.2d 1297
Author: Judge Logan

Plaintiff, Ward Petroleum Corporation ("Ward"), brought suit against defendant, Federal Deposit Insurance Corporation ("FDIC"), as receiver for First National Bank and Trust Company (the "Bank"). Ward claimed that the Bank improperly failed to honor a draft submitted by it. The Bank contended that the amount drawn did not represent the accurate balance due to Ward by the Oklahoma Refining Company. The district court ruled in favor of FDIC on Ward's claim for wrongful dishonor of its draft under a standby letter of credit. Ward subsequently appealed.

The Tenth Circuit reversed and remanded, holding that the duty of the issuing bank is confined to checking the presented documents. Under the independence principle of letters of credit, the issuer must honor the draft even though the underlying contract was breached. The Bank must, therefore, ignore the underlying transaction of the parties, and follow the letter of credit. As a corollary to the beneficiary's right to payment, the letter of credit must be explicitly written to include all preconditions for payment. Since the letter of credit at issue was clear regarding the basis for Ward's draft, the finding of summary judgment for FDIC was improper.

United States v. Williams, 899 F.2d 898
Author: Judge McKay

The district court dismissed a seven count bank fraud indictment because the government wrongfully withheld information from the grand jury that was exculpatory. The government appealed, arguing that since tax returns, general ledgers, and depositions were not relevant, they could not be considered exculpatory.

The Tenth Circuit stated that the withheld information was exculpatory and, therefore, affirmed the dismissal. The court ruled that even though the withheld materials seemed irrelevant and self-serving under the government's theory of the case, the grand jury must receive information that is relevant to any reasonable theory it may adopt. Thus, the district court properly found that the absence of the withheld evidence prejudiced Williams before the grand jury. Consequently, this rendered the grand jury's indictment suspect.