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American Coleman Co. v. Intrawest Bank of Southglenn, 887 F.2d 1382
Author: Judge Barrett

Plaintiff, American Coleman Company ("Coleman"), brought this action for damages after defendant, Intrawest Bank of Southglenn ("Bank"), refused to honor a request for payment pursuant to a letter of credit. The Bank alleged that the request was not in strict compliance with the letter of credit. Coleman argued that the request was in strict compliance even though it contained an error. Coleman further asserted that the Bank should be estopped from raising the strict compliance issue because it was not raised at the time of the request. Applying the strict compliance standard, the district court granted the Bank's motion for summary judgment. Coleman appealed.

The Tenth Circuit held that Colorado law requires literal and technical adherence to the requirements of letters of credit and thus the district court did not err in applying the strict compliance standard. The court further held that the waiver-estoppel rule is limited to situations where the statements have misled the beneficiary who would have cured the defect but relied on the stated grounds to its injury. Here, due to time constraints, Coleman could not have cured the error in its request even had it been advised of the grounds.

Doyle v. Trinity Savings and Loan Association, 869 F.2d 558
Author: Judge Seymour

Plaintiff, Doyle, executed an adjustable rate promissory note, secured by a real estate mortgage, in favor of defendant, Trinity Savings and Loan Association ("Trinity"). Trinity placed the incorrect interest rate on the note, later corrected the mistake, and placed Doyle's initials by the corrections. Trinity then sold the note to Federal National Mortgage Association ("FNMA"), who purchased in good faith. Doyle brought suit against Trinity and FNMA claiming the alterations were made without his knowledge or consent, and that his initials were forged. Doyle was awarded actual and punitive damages against Trinity, and the district court cancelled the note and mortgage against FNMA.

The Tenth Circuit affirmed the decision, finding that Trinity overreached in a bad faith effort to gain an unfair advantage. The court further held that the alterations were material because they changed the legal rights and liabilities of the parties. Moreover, Trinity was liable for its employee's acts even though Trinity did not authorize its employee to make the alterations.

The court also held that FNMA could not enforce the note because it was not a holder in due course. FNMA could not obtain this status because the note did not contain a promise to pay a sum certain. In-

stead, the note contained an adjustable interest rate tied to an external index, causing it to be non-negotiable. As a result, FNMA was not a holder in due course.

United States v. Kelley, 890 F.2d 220
Author: Judge Logan

Defendants appealed the grant of summary judgment by the district court in favor of the Small Business Administration in a deficiency judgment claim brought against the defendants. Defendants, having joined Fairlawn Plaza State Bank ("Bank") as a third-party defendant, claimed the liquidation sale by the Bank was conducted in a commercially unreasonable manner in violation of the Kansas Uniform Commercial Code ("UCC").

The Tenth Circuit considered whether the defendants, as guarantors, could raise the UCC defense of a commercially unreasonable sale, and, if so, whether they could and did waive the defense. Holding that the state's interpretation of its UCC provisions should control, the court concluded that the Kansas Supreme Court would hold that guarantors, such as the defendants, are to be treated as debtors under the Kansas UCC. As such, they would not be permitted to waive the commercially unreasonable defense. The court therefore reversed and remanded for further proceedings.

Mainland Savings Association v. Riverfront Associates, 872 F.2d 955
Per Curiam

Plaintiff, Mainland Savings Association ("Mainland"), brought suit against the defendants, Riverfront Associates and its guarantors ("Riverfront"), for default on a promissory note executed by defendants. Riverfront claimed an offset for failure on the part of Mainland to fund a second loan. The Federal Savings & Loan Insurance Corporation ("FSLIC") intervened as receiver for Mainland.

The Tenth Circuit found that the promise to fund the second loan was not part of the note or security agreements. The court held that there are limited defenses which can be asserted against federal authorities who are seeking to collect the assets of insolvent financial institutions. The court affirmed the district court's granting of summary judgment in favor of the FSLIC.

MSA Tubular Products v. First Bank and Trust Co., 869 F.2d 1422
Author: Judge Moore

Plaintiff, MSA Tubular Products ("MSA"), filed this action claiming defendant, First Bank and Trust Company ("Bank"), was liable to MSA for payment of a $104,000 judgment recovered against Oil West, one of the Bank's depositors. Although the district court found that the Bank gave misleading information regarding Oil West's credit worthiness, it held for the Bank, ruling that the Bank did not have a fiduciary relation-

ship with MSA absent a specific request for a written credit report and thus owed no fiduciary duty to disclose information concerning Oil West's account.

The Tenth Circuit reversed and remanded, holding that Oklahoma law would be construed to hold that when the Bank undertook to respond to MSA's inquiry, the Bank assumed the duty to respond accurately and could be held liable for giving misleading information if MSA reasonably relied upon the statement of the bank employee.

Title Insurance Co. v. American Savings and Loan Association, 866 F.2d 1284
Per Curiam

The predecessor of defendant, American Savings and Loan Association ("American"), made loans on condominiums secured by deeds of trust. These deeds were insured by insurance policies purchased from plaintiff, Title Insurance Company ("Title"). American foreclosed on the properties and a subsidiary eventually brought suit to recover deficiency judgments from the borrowers. The borrowers filed a third-party complaint against American claiming the loans were invalid under the applicable "doing business" law, Colo. Rev. Stat. § 11-43-101. American, relying on the policies, argued Title must defend and indemnify. Title argued it need not defend because American did not comply with the "doing business" law. The district court denied Title's motion for summary judgment stating that the statute was not a "doing business" law. Consequently, Title must defend.

The Tenth Circuit reversed the district court's denial of summary judgment. The court held that the statute was a "doing business" law. The court stated that the statute is not distinguishable from a "doing business" law merely because it is regulated by criminal penalties rather than by conditions and restrictions. Title, therefore need not defend or indemnify American.