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BANKING & FINANCE

Glenpool Utility Services Auth. v. Creek County Rural Water Dist. No. 2., 861 F.2d 1211

Appellant Water District No. 2 appeals a district court decision denying it declaratory and injunctive relief in a suit to determine the rights to furnish water to an annexed area of land. Reversed in part and remanded.

Water District No. 2 is a rural district which was constructed using funds borrowed from the Farmers Home Administration (FHA). By using this method of financing, the court of appeals held that the water district came under the provisions of 7 U.S.C. § 1926(b), which states that the service area of an entity owing money to the FHA cannot be reduced by an act of a municipal corporation or similar public body. The court of appeals noted that since the state of Oklahoma had allowed for the acceptance of the federal loan money which was given, all of its political subdivisions, including the Glenpool Utility Services Authority, were bound and limited by the terms of § 1926.

United States v. Central Bank, 843 F.2d 1300

Appellant Internal Revenue Service (I.R.S.) appeals the district court's refusal to enforce an I.R.S. administrative levy on taxpayer property held by Central Bank. Reversed.

The thrust of Central Bank's argument was that under Colorado law, it had a perfected security interest in the accounts of the delinquent taxpayer which would take precedence over subsequent executions, including I.R.S. levies. In reversing, the court of appeals noted that while state court interpretations of lien priority are due some weight, they are not binding under the terms of the Federal Tax Lien Act. Here, the court of appeals held that Central Bank's interest in the taxpayer's accounts was only an unperfected setoff right, and the I.R.S. levy took priority over it.

FDIC v. Galloway, 856 F.2d 112

The Federal Deposit Insurance Corporation (FDIC), plaintiff below, appeals the finding of the district court that guarantors were not liable on certain promissory notes of the bank to which it was the successor in interest. Reversed and remanded.

Defendants signed unconditional guarantees for any and all indebtedness of the borrower to the bank which were to be valid until cancelled by written notice. Contrary to the district court's finding, the panel held that 12 U.S.C. § 1823(e) bars defendants' reliance on fraud in the inducement due to the bank's misrepresentations. The agreement failed to meet section 1823(e) requirements of a writing approved

by either the bank's board or loan committee, kept with bank records. The panel further found the FDIC's knowledge of such fraudulent misrepresentations at the time it acquired the notes did not prevent application of this section as a bar to defendants.

The panel also determined the six year federal statute of limitations applied to this action on a continuing guaranty. Applying the *Peterson* rule, the panel held a new cause of action accrues under the guaranty as each underlying debt becomes due. Hence, only the first two notes in this case were time-barred. Finally, the panel found defendants' guaranty of payment at maturity waived any requirement that the bank look first to the borrower for payment. Therefore, the FDIC's right to enforce the guaranty accrued at maturity of the note.

FDIC v. Bank of Boulder, 865 F.2d 1134

Upon the insolvency of the Dominion Bank of Denver, the Federal Deposit Insurance Corporation (FDIC), as receiver, entered into a Purchase and Assumption agreement, whereby it sold the "acceptable" assets of the insolvent bank to an assuming bank and purchased, as a U.S. insurance corporation, the remaining "unacceptable" assets. Among the "unacceptable" assets was a letter of credit issued by one bank to the insolvent bank. When the FDIC tried to draw on the letter of credit, the issuing bank refused to honor it. The FDIC sued in district court to obtain payment on the letter, but the court dismissed, holding that Colorado law, the law to be applied, only allows the transfer of a letter of credit where the letter is expressly designated as transferable or assignable.

The Tenth Circuit reversed, applying 12 U.S.C. § 1823(c)(2)(A) and by creating a new federal common law rule. The court held that there is a need for a nationally uniform rule allowing the FDIC to acquire non-transferable assets of a failed bank in the course of a Purchase and Assumption.

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