



HOW CREDITORS AVOIDED BILLIONS IN LIABILITY CAUSED BY SLOPPY LEGISLATIVE DRAFTING:

KOONS BUICK PONTIAC GMC, INC. v. NIGH

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On November 30, 2004, the U.S. Supreme Court in *Koons Buick Pontiac GMC, Inc. v. Nigh* ruled that statutory damages resulting from individual violations of the Truth in Lending Act (TILA) remain subject to a \$1,000 cap. The ruling resolved conflicting interpretations by the Seventh and Fourth Circuits of 15 U.S.C. §1640(a)(2)(A)(i) regarding civil liability for individual actions under TILA. Section 1640(a)(2)(A) provides generally that any creditor who fails to comply with Part B of TILA with respect to any person shall be liable to such person for statutory damages (in addition to actual damages and attorneys' fees) equal to:

(i) in the case of an individual action twice the amount of any finance charge in connection with the transaction, (ii) in the

case of an individual action relating to a consumer lease ... 25 per centum of the total amount of monthly payments under the lease, except that the liability under this subparagraph shall not be less than \$100 nor greater than \$1,000, or (iii) in the case of an individual action relating to a credit transaction not under an open end credit plan that is secured by real property or a dwelling, not less than \$200 or greater than \$2,000

Had the Court held otherwise, it is estimated that the increased liability to the lending industry could have been in the billions of dollars.

Dispute over the statute's meaning originated from a failed used car sale. Bradley Nigh attempted to purchase a used truck from Koons Buick Pontiac GMC and signed a retail installment sales contract evidencing the transaction. The dealership was unable to find a third-party lender who would finance Nigh's loan and, as a result, restructured the transaction to require a greater down

payment. Nigh signed a new sales contract after he was falsely told his trade-in vehicle had been sold, but, again, Koons Buick could not find a lender to purchase Nigh's payments. Ultimately, Nigh signed a third contract under protest. Koons Buick once more failed to secure a lender, due in part to an erroneous \$965 charge in the contract for a car alarm that Nigh allegedly neither requested nor received. Nigh filed suit against the dealership for violation of TILA, seeking statutory damages equal to twice the amount of the finance charges of the transaction, or \$24,192.80, under clause (i) of §1640(a)(2)(A).



A federal jury awarded Nigh the full \$24,192.80. A divided panel of the

Fourth Circuit Court of Appeals affirmed the decision, holding that the 1995 amendment to TILA not only raised the amount of statutory damages recoverable for transactions involving closed-end, real-property secured loans, but also removed limitations on statutory damages of twice the applicable

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finance charge for other individual actions not involving consumer leases. The Fourth Circuit reasoned that “[t]he inclusion of the new maximum and minimum in (iii) shows that the clause previously interpreted to apply to all of (A), can no longer apply to (A) but must now apply solely to (ii), so as not to render meaningless the maximum and minimum articulated in (iii).”¹

The Supreme Court found otherwise. In an opinion delivered by Justice Ginsburg, the Court held that the meaning of “subparagraph” as dictated by legislative drafting manuals for both the House and the Senate, together with the standard interpretation of “subparagraph,” indicate that the \$1,000 cap was intended to apply to clause (i) and clause (ii). The Court noted that the 1995 TILA amendment, and specifically clause (iii), was meant to increase punitive damages solely for violations involving real-estate transactions, particularly closed-end mortgages, while leaving damages awarded for transactions described in clause (i) and (ii) untouched.

Moreover, the Court observed that the statutory history of TILA re-

solves any ambiguity as to whether the \$100 minimum and \$1,000 maximum apply to recoveries under clause (i). TILA has undergone three amendments since it was first enacted in 1968 as part of the Consumer Credit Protection Act. The first two amendments clearly retained the \$100 minimum and \$1,000 maximum on statutory damages for individual actions. The

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1995 amendment merely added a new clause (iii) to §1640(a)(2)(A) and deleted the “or” before clause (ii). The Court found little indication that Congress meant to alter the meaning of clause (i) when it added clause (iii). As further support, the Court remarked that it would be “passing strange” if the statute capped recovery in connection with a closed-end, real-property secured loan at an amount substantially lower than recovery in connection with a personal property secured loan or an open-end, real property-secured loan.

Justice Scalia alone dissented, holding that the dispute did not begin and end with the interpreted meaning of “subparagraph,” which he found to be insufficient given the larger context of legislative drafting. Scalia also broached the larger question of the Court’s willingness to interpret Congress’s legislative intent when ineffectually or sloppily

drafted, stating that the decision sets a dangerous precedent “under which courts may refuse to believe Congress’s own words unless they can see the lips of others moving in unison.”

A ruling in favor of Nigh would have been a major blow to creditors, subjecting them to a dramatic increase in damages awarded to consumers. The decision will apply to millions of consumer loan transactions conducted each year, and further entrenches the precedent that the Court interprets laws, at least in part, using legislative history and Congressional intent, rather than solely the statutory text. □

1. *Koons Buick Pontiac GMC, Inc. v. Nigh*, 319 F.3d 119, at 127 (4th Cir. 2003), *rev’d*, 543 U.S. ___ (2004) (No. 03-377).