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MEMORANDUM

May 29, 2015

To Our Clients and Friends

Re: Second Circuit Decision on Applying State Usury Laws to National Bank Loan Sales

The Second Circuit Court of Appeals has ruled that the National Bank Act does not necessarily pre-empt state usury laws when a nonbank entity purchases loans from a national bank.¹ Midland Funding, LLC (“Midland”) purchased the plaintiff’s loan from the national bank that had originated the loan and subsequently charged it off when the plaintiff defaulted. The rate of interest the national bank charged the plaintiff was permitted under the law of its home state. However, it exceeded the maximum rate permitted by the state of the plaintiff’s residence. The plaintiff brought an action against the loan purchaser alleging that after the bank sold the loan Midland was not permitted to charge the rate the bank imposed and was therefore limited to the rate of interest of the state of residence.

The court of appeals reversed a district court ruling in favor of Midland. The court stated that because Midland is not a national bank or its agent, or otherwise acting on behalf of a national bank, and because applying state law would not significantly interfere with the national bank’s ability to sell loans to third parties, the National Bank Act did not preempt the plaintiff’s claim that the rate charged on the loan exceeded state rate ceilings.

The court noted that in other instances where courts have concluded the National Bank Act continued to pre-empt state rate ceilings notwithstanding the sale of the loan, the transactions involved the sale of loan receivables only and the bank retained ownership of the underlying accounts. Additionally, in those cases, the bank continued to service the accounts. Here, the national bank did not retain any substantial continuing interest in the account.

¹ *Madden v. Midland Funding, LLC*, 2015 U.S. App. LEXIS 8483 (May 22, 2015).

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One issue left unresolved by the court is whether the rate ceiling of the bank's home state, which was provided for in the plaintiff's loan agreement or the ceiling of the state of the plaintiff's residence applied. The court remanded this issue to the district court for resolution, indicating that there is a split in the case law on this question.

A copy of the court's decision can be found on our website at <http://www.schwartzandballen.com/news.html>

If you have any questions, please call Gilbert Schwartz, Robert Ballen, Tom Fox, Heidi Wicker, or Ben Gray at (202) 776-0700.