

**IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA**

**CASE NO.: 16-2005-CA-7025-XXXX-MA
DIVISION: CV-D**

**ADVANCE AMERICA, CASH ADVANCE
CENTERS OF FLORIDA, INC.,**

Plaintiff,

vs.

**THE CONSOLIDATED CITY OF
JACKSONVILLE, FLORIDA,**

Defendant.

**ORDER ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, JUDGMENT ON THE PLEADINGS**

This cause came before this Court February 9, 2006 for a hearing on the Plaintiff's Motion for Summary Judgment or, in the Alternative, Judgment on the Pleadings, filed December 27, 2005. This Court having heard argument of counsel, having considered the motion, opposition thereto, the amicus memorandum, the record in this cause, and relevant authority, and being otherwise fully advised, makes the following findings of fact and conclusions of law.

Section 494.00797(1), Florida Statutes (2005) prohibits counties and municipalities from enacting and enforcing ordinances regulating financial or lending activities of persons or entities who are subject to the jurisdiction of the Office of Financial Regulation of the Financial Services Commission, except title loan lenders. §§ 494.00797(1), 494.001(8), (9), 537.004, Fla. Stat. (2005).

The Office of Financial Regulation is "responsible for all activities of the Financial Services Commission relating to the regulation of banks, credit unions, other financial institutions, finance

companies, and the securities industry.” § 20.121(3)(a)2., Fla. Stat. (2005). The Office of Financial Regulation has “[s]upervision over all money transmitters and their authorized vendors.” § 560.105(1)(a), Fla. Stat. (2005). By definition, “money transmitter” includes deferred presentment providers. § 560.103(11), Fla. Stat. (2005). In addition, deferred presentment providers are required to register with the Office of Financial Regulation, and to file with the Office of Financial Regulation a declaration of intent to engage in deferred presentment transactions. § 560.403(1), Fla. Stat. (2005). This Court therefore concludes as a matter of law that the legislature intended that deferred presentment providers be subject to the jurisdiction of the Office of Financial Regulation, for purposes of section 494.00797(1), Florida Statutes.

This Court concludes that section 494.00797(1), Florida Statutes, applies to prohibit Defendant from enacting or enforcing those portions of the ordinance at issue which regulate the financial or lending activities of deferred presentment providers. In so ruling, this Court has considered Defendant’s arguments and found them unpersuasive. The statute is unambiguous, and the assertion that it does not apply because it is found in a chapter entitled “Mortgage Brokerage and Mortgage Lending” is belied by the specific exception contained in the statute for title loan lenders.

Moreover, this Court finds in section 560.408, Florida Statutes, a legislative intent to preempt regulation of deferred presentment transactions, including regulation of “the allowable fees charged in connection with a deferred presentment transaction.” § 560.408(3), Fla. Stat. (2005). A “deferred presentment transaction” is defined by statute as “providing currency or a payment instrument in exchange for a person’s check and agreeing to hold that person’s check for a period of time prior to presentment, deposit, or redemption.” § 560.402(6), Fla. Stat. (2005). The Defendant argues that its regulation of allowable interest is not preempted by nor in conflict with the statute, explaining

that a deferred presentment "relationship" involves "two separate elements or transactions": the holding of a check, for which a "fee" is charged; and a contemporaneous loan of money, for which a rate of interest is charged. (City's Mem. Law at 13.) This Court concludes that the statutory definition of "deferred presentment transaction" encompasses both "elements" identified by Defendant, and that the legislature's stated intent to regulate the "allowable fees charged in connection with a deferred presentment transaction" embraces what Defendant, in its attempt to regulate by section 200.304(a) of the ordinance, identifies as "interest and administrative or service charges or costs" § 560.408(3), Fla. Stat. (2005)(emphasis added).

This Court finds persuasive Plaintiff's argument that "a challenge to the validity of the contract as a whole, and not specifically to the arbitration clause, must go to the arbitrator." Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. ___, 126 S. Ct. 1204, 1210 (2006). Therefore, those portions of the ordinance which direct a court to consider the question of unconscionability of a whole contract, or which refer to forum selection as "unconscionable," are invalid.

This Court concludes that the ordinance is not invalid for failure to notice or publish amendment, nor as an unlawful price control. Moreover, portions of the ordinance which do not regulate the "financial or lending activities" of deferred presentment providers, or which do not regulate "deferred presentment transactions[.]" are not invalid as preempted by, or in conflict with, a statute. §§ 494.00797(1), 560.408, Fla. Stat. (2005). In denying Plaintiff's motion as to those portions of the ordinance, this Court makes no ruling on the validity or invalidity of those portions of the ordinance. Rather, this Court simply concludes that Plaintiff has failed to carry its burden to show entitlement to judgment as a matter of law as to those portions of the ordinance.

In view of the above, it is

ORDERED AND ADJUDGED as follows:

1. that the Plaintiffs' Motion for Summary Judgment or, in the Alternative, Judgment on the Pleadings is hereby **GRANTED** as to the following subsections of Section 1, Legislative Findings, of Ordinance 2005-1012-E:

- a. Section 1(d);
- b. Section 1(h);
- c. Section 1(i);

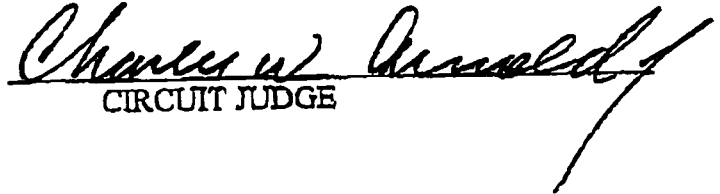
2. that the Plaintiffs' Motion for Summary Judgment or, in the Alternative, Judgment on the Pleadings is hereby **GRANTED** as to the portions of Section 2 of Ordinance 2005-1012-E which would create the following sections of the Jacksonville Ordinance Code:

- a. Section 200.303;
- b. Section 200.304;
- c. Section 200.305;
- d. Section 200.306;
- e. Section 200.308;
- f. Section 200.311;
- g. Section 200.313;

3. that the Plaintiffs' Motion for Summary Judgment or, in the Alternative, Judgment on the Pleadings is hereby **DENIED** as to all other portions of Ordinance 2005-1012-E.

DONE AND ORDERED in Chambers at Jacksonville, Duval County, Florida, this

6th day of June, 2006.


CIRCUIT JUDGE

Copies to:

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G. Todd Whitcomb, Esq.

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TELECOMMUNICATION LETTER

TO: Lynn Drysdale

Phone No: 224-7050

FROM: Michael B. Wedner, Esquire
 Office of General Counsel

DATE: June 2, 2006

PAGES: 6

RE: Order

TOTAL PAGES INCLUDING COVER:

MESSAGE: Sending Copy of Order

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