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Locke Lord QuickStudy: California Supreme Court Interprets FTC “Holder Rule” to Allow Uncapped Attorneys’ Fees Awards

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On May 26, 2022, the California Supreme Court issued its decision in *Pulliam v. HNL Automotive Inc., et al.*, Case No. S267576, 2022 WL 1672918 (May 26, 2022). The court held that the Federal Trade Commission (FTC) “Holder Rule” does not limit the amount of attorneys’ fees a prevailing consumer can recover from the holder of a contract if a state statute authorizes a fee award against the holder.

The FTC’s Holder Rule requires consumer credit contracts to include specific language that permits a consumer to assert against the creditor all claims and defenses that could be asserted against the seller of the good or service. 16 C.F.R. § 433.2(a). The *Pulliam* court analyzed whether a consumer can recover attorneys’ fees in addition to amounts paid under the contract given the recovery language included in the Holder Rule Notice: “Recovery hereunder by the debtor shall not exceed amounts paid by the debtor hereunder.”

Prior to this decision, California Courts of Appeal were split in their interpretation of the Holder Rule’s limits to recovery of attorneys’ fees. Some courts had determined that the consumer could not recover more than the amount paid under the contract; others permitted awards of attorneys’ fees in excess of the amount paid under the contract. The *Pulliam* court analyzed the regulation’s language, the regulatory history, FTC commentary, and an FTC Advisory Opinion, and determined that the Holder Rule was not intended to displace state law providing for greater recovery than that provided by the Holder Rule. Therefore, the Supreme Court held, the Holder Rule does not limit the attorneys’ fees a prevailing consumer can recover from the creditor if a state prevailing party statute permits such recovery, as is generally the case in California. The *Pulliam* court found that attorneys’ fees are only capped when state law does not otherwise provide for an award of attorneys’ fees against a holder.

The *Pulliam* decision has significant implications. It is likely to increase plaintiffs’ incentive to aggressively litigate given the probability of a sizable fee award if they prevail. It also increases creditors’ liability exposure, because the downside risk is no longer limited to the amount paid under the sales contract, and attorneys’ fee awards are often disproportionate to the good’s sale price. *Pulliam* means that creditors will have to ensure they have enforceable indemnity agreements with sellers with which they do business and that they thoroughly screen, and regularly re-screen, those sellers.

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