

Locke Lord QuickStudy: United States District Court Accepts the “Valid When Made” Doctrine

Locke Lord LLP

WRITTEN BY

John L. Whitlock | Stanley Keller | Brandon Curtin

In *Robinson v. National Collegiate Student Loan Trust 2006-2*, the U.S. District Court for the District of Massachusetts accepted the validity of the “valid when made” doctrine.¹ The District Court’s acceptance is noteworthy in light of recent challenges by states to the legality of an Office of the Comptroller of the Currency (“OCC”) regulation that codifies the doctrine. Our analysis of the OCC’s regulation is [here](#).

Robinson arose out of a lawsuit alleging that the defendant’s interest rate on student loans was in violation of Pennsylvania law. In 2006, the plaintiffs obtained student loans from PNC Bank, N.A. (“PNC”), a national bank located in Pennsylvania. The credit agreement between the plaintiffs and PNC established a variable interest rate that fluctuated from a low of 6.58% to a high of over 9%. Shortly after entering into the credit agreement, PNC assigned the plaintiffs’ loans to the defendant, a loan trust that was unaffiliated with PNC. The defendant then continued to charge the contract interest rate on the loans. The plaintiffs later sued, arguing that the defendant violated the interest cap imposed by Pennsylvania’s usury law by continuing to charge the same interest rate as PNC could have charged.

In rejecting this argument, the District Court accepted the “valid when made” doctrine, which provides that a loan that was valid when made will not be rendered usurious by a subsequent transfer. In its opinion, the District Court noted the historical pedigree of the doctrine, citing U. S. Supreme Court case law from the 19th century. Additionally, the District Court cited the OCC’s 2020 regulation codifying the doctrine, pointing out that the regulation resolved an ambiguity in the law caused by decisions like *Madden v. Midland Funding, LLC*.² The OCC’s regulation, which became effective on August 3, 2020, states that an assignee of a loan made by a national bank has the right to collect interest at the same rate as the national bank.³ The District Court also indicated that the OCC’s regulation is entitled to deference under Supreme Court precedent.

Applying the doctrine, the District Court noted that Pennsylvania law expressly permitted Pennsylvania state chartered banks to charge interest above the 6% rate set forth in the state’s usury law. In fact, Pennsylvania law allowed state banks to charge as much as 10.5% per annum. As a national bank, PNC is permitted under Section 85 of the National Bank Act⁴ to charge interest at the same rates allowed by the state where the bank is located. Thus, the loans to the plaintiffs were clearly valid when made. Under the “valid when made” doctrine, the defendant, as the assignee of PNC, was entitled to charge the same interest rate as PNC. Therefore, the District Court held that the defendant did not violate Pennsylvania usury law.

As noted above, several states are challenging the legality of the OCC’s regulation in federal court.⁵ For now, though, the regulation remains in effect. Moreover, the decision in *Robinson* serves as a reminder that a court

may recognize the “valid when made” doctrine even in the absence of an OCC regulation.

For more information on the matters discussed in this Locke Lord QuickStudy, please contact the authors.

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1. 2021 WL 1293707, 1, 8 (D. Mass. 2021).
2. 786 F.3d 246 (2d Cir. 2015).
3. See Permissible Interest on Loans That Are Sold, Assigned, or Otherwise Transferred, 85 Fed. Reg. 33,530 (Jun. 2, 2020).
4. 12 U.S.C. §85.
5. *California, et al. v. The Office of the Comptroller of the Currency, et al.*, No. 20-cv-05200 (N.D. Cal. 2020).

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