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City's refusal to provide water service violates the Equal Protection Clause

by Thomas Holt

In *O'Neal v. City of Seattle*, 66 F.3d 1064 (9th Cir. 1995), the Ninth Circuit held that a city's failure to provide water service to a tenant based on a previous tenant's outstanding water bill violated the Equal Protection Clause. 42 U.S.C. § 1983.

Maria O'Neal ("O'Neal") rented a residence located in Seattle, Wash. The City of Seattle (the "City") had ceased to provide water to the premises as a consequence of the previous tenants failure to pay the water bill. O'Neal contacted the City to request that a new water account be opened in her name. A representative of the City informed her that water would not be supplied to the residence until the outstanding balance was paid. O'Neal filed a complaint in the United States District Court for the Western District of Washington seeking injunctive relief and damages. Four days after O'Neal brought the action, the property owner paid the outstanding utility charges.

Although O'Neal's request for class certification was denied, the district court granted O'Neal partial summary judgment finding that the City had violated her equal protection rights under 42 U.S.C. § 1983. The court also issued a permanent injunction prohibiting the City from discontinuing water service as a result of a previous tenant's unpaid account. The parties agreed upon appropriate damages, and the district court entered an

award of attorney's fees and costs in the amount of \$38,807.25. The City appealed the district court's grant of partial summary judgment for O'Neal, the issuance of a permanent injunction, and the award of attorney's fees for O'Neal's unsuccessful motion for class certification.

Absence of live controversy

In evaluating the district court's issuance of the permanent injunction, the Ninth Circuit recognized that Article III of the Constitution requires that there be a justiciable or live controversy at the time the federal court decides the case. The court had to determine whether a justiciable or live controversy existed after the property owner paid the outstanding water bill. The court concluded that past exposure to illegal activity did not independently create a present controversy that warranted the permanent injunction granted by the district court. Therefore, the district court was instructed to vacate the injunction on remand.

Classification fails to promote state interest

In determining whether the district court's grant of summary judgment was proper, the court focused on the City's classification scheme. The City classified tenants into two categories: 1) those who

moved into a premises with no prior debt; and 2) those who moved into a premises which had prior debt, and the debt was not that of the new tenant. The court was faced with the issue of whether the City's classification promoted a legitimate state interest.

The court referenced two cases from the Fifth and Third Circuits. In *Davis v. Weir*, 497 F.2d 139 (5th Cir. 1974), the Fifth Circuit found that the city's interest was the collection of rents from "defaulting debtors." The court held that the city's classification scheme was not rationally related to this interest and was an irrelevant basis for distinguishing potential customers. *Id.* at 145.

However, the Third Circuit in *Ransom v. Marrazzo*, 848 F.2d 398 (3d Cir. 1988), rejected *Davis* and held that the city's interest was collecting unpaid debt from "any source." The court further concluded that a logical relation exists between a classification scheme that ignores personal liability and the general goal of collecting debts. *Id.* at 398.

The *O'Neal* court rejected the approach taken in *Ransom* and adopted the *Davis* analysis. The court stated that the City's purpose was to collect debts from the landowner. In addition, the court held that the City's refusal to provide service to new tenants is not rationally related to the City's interest in collecting unpaid debts for previous water usage.

Claims must be related

The City also argued that the district court erred in awarding O'Neal \$4,715 in attorney's fees pursuant to her unsuccessful class certification motion. The City contended that this amount should be excluded from the award because the motion was denied and unrelated to the remaining claims. A two-part inquiry was used to determine if the fees for the unsuccessful motion were appropriate: 1) whether the plaintiff's unsuccessful claim was related to the prevailing claims; and 2) if the claims were related,

whether the plaintiff's claims were successful. If the plaintiff prevailed and obtained excellent results, full compensation may be appropriate, but if only limited success was obtained, full compensation may be excessive. The court concluded that the class certification was related to the other claims. The motion was not a separate claim, but rather a means of pursuing her successful claims. Because O'Neal prevailed on the merits of these claims, the court held that the district court was correct in awarding attorney's fees for the class certification motion. On remand, the district court was

instructed to reevaluate the attorney's fees after the reversal of the injunction.

In summary, the Ninth Circuit concluded that the City had violated O'Neal's equal protection rights by refusing to provide water service to her based on a prior tenant's unpaid water bill. O'Neal was awarded attorney's fees and costs as deemed appropriate on remand. However, the court found no justiciable controversy to warrant the issuance of an injunction against the City. Therefore, the court affirmed in part, reversed in part, and remanded.

Interest construed to include late payment charges

by John Bartels

In *Smiley v. Citibank (South Dakota) N.A.*, 44 Cal. Rptr. 2d 441, 900 P.2d 690 (1995), the Supreme Court of California determined the National Bank Act must preempt California regulation of bank interest rates, and the term "interest," as used in section 30 of the National Bank Act of 1864, must be construed to cover late payment fees charged by credit card issuers, if such fees are allowed by a national bank's home state.

Class action suit in state court: late payment charges claimed to be penalties

Plaintiff Barbara Smiley filed a class action suit in the Superior Court of Los Angeles County against defendant Citibank. Smiley was acting on behalf of herself and fellow California Citibank credit card holders who had been contracted for, or charged with, late payment fees by Citibank. Smiley contended that the regulation of interest rates by California was not preempted by the National Bank Act. Further, she argued that late payment fees charged by Citibank were properly considered penalties, and thus fairly regulated by California consumer law prohibiting the imposition

of such penalties. Citibank argued that the National Bank Act, which permits national banks to "export" the interest rates of their home states (late payment charges are permitted by South Dakota, Citibank's home state for credit card operations), should be determined to preempt California regulations. Citibank also argued that late payment fees must be included within the definition of interest. Citibank unsuccessfully attempted to remove the case to federal district court. The Superior Court of California denied Citibank's demur for a judgment on the pleadings; the Court of Appeals, finding that the National Bank Act preempted California regulation, reversed. Smiley appealed.

Section 85 preempts California law

Section 30 of the National Bank Act of 1864, codified in section 85 of title 12 of the United States Code ("section 85") provides that a national banking association, or a national bank, "may take, receive, reserve, and charge on any loan . . . interest at the rate allowed by the laws of the State . . . where the bank is located." The court concluded that the federal act did