

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

HUDSON, VONNIE T,)	
)	
Plaintiff,)	
vs.)	
)	
ACE CASH EXPRESS, INC,)	
GOLETA NATIONAL BANK,)	
NEUSTADT, DONALD H,)	CAUSE NO. IP01-1336-C-H/G
SHIPOWITZ, JAY B,)	
HEMMIG, RAYMOND C,)	
ZILLIOX, KAY D,)	
)	
Defendants.)	

π Daniel A Edelman
Edelman Combs & Lattuner LLC
120 S Lasalle St 18th Floor
Chicago, IL 60603

π Clifford W Shepard
Attorney at Law
2325 W Washington St
Indianapolis, IN 46222-4256

Arthur P Kalleres
Ice Miller
One American Square
Box 82001
Indianapolis, IN 46282

Robert K Stanley
Baker & Daniels
300 N Meridian St #2700

Indianapolis, IN 46204

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

VONNIE T. HUDSON,)

Plaintiff,)

v.)

ACE CASH EXPRESS, INC., DONALD H.)

NEUSTADT, JAY B. SHIPOWITZ,)

RAYMOND C. HEMMIG, and KAY D.)

ZILLIOX,)

Defendants.)

CAUSE NO. IP 01-1336-C H/S

ENTRY

On May 30, 2002, the court dismissed plaintiff's original complaint for failure to state a claim upon which relief can be granted. The court gave plaintiff an opportunity to file an amended complaint, which she filed on June 25, 2002. Defendants then moved to dismiss the amended complaint with prejudice.

The amended complaint does not differ from the original complaint in any respect material to this court's analysis of the issue of preemption under the National Banking Act, 12 U.S.C. § 85, as interpreted in *Marquette National*

Bank v. First of Omaha Serv. Corp., 439 U.S. 299 (1978), and *Smiley v. Citibank (South Dakota) N.A.*, 517 U.S. 735 (1996).

The court has reviewed the decision in *Goleta National Bank v. Lingerfelt*, 211 F. Supp. 2d 711 (E.D.N.C. 2002), *appeal filed*, No. 02-1688 (4th Cir. filed June 21, 2002). The court in *Lingerfelt* was not called upon to address the merits of the preemption defense, but only to decide whether the defense was so strong and conclusive as to invoke the “extraordinary circumstances” exception to the abstention doctrine under *Younger v. Harris*, 410 U.S. 37 (1971), so as to warrant a federal injunction against a state enforcement proceeding testing that defense. To the extent the *Lingerfelt* court addressed the merits of the preemption defense, it found factual issues concerning the identity of the “real lender” and whether Ace was “the de facto lender.” 211 F. Supp. 2d at 717. The *Lingerfelt* court did not address the legal and practical problems posed by having preemption and regulatory jurisdiction depend on such an uncertain legal standard. This court respectfully adheres to the views expressed in the entry of May 30, 2002.

Accordingly, defendants’ motion to dismiss is hereby granted, and this action is dismissed with prejudice. Final judgment shall be entered accordingly.

So ordered.

Date: September 30, 2002

DAVID F. HAMILTON, JUDGE
United States District Court
Southern District of Indiana

Copies to:

Daniel A. Edelman
Edelman Combs & Lattuner, LLC
120 South LaSalle Street
18th Floor
Chicago, IL 60603

Clifford W. Shepard
Attorney at Law
2325 West Washington Street
Indianapolis, IN 46222-4256

Arthur P. Kalleres
Ice Miller
One American Square
Box 82001
Indianapolis, IN 46282

Robert K. Stanley
Baker & Daniels
300 North Meridian Street
Suite 2700
Indianapolis, IN 46204

Alan S. Kaplinsky
Ballard Spahr Andrews & Ingersoll
1735 Market Street, 51st Floor
Philadelphia, Pennsylvania 19103