

Press Release

Munsch Hardt Attorneys Persuade Federal Judge to Declare State Statute Unconstitutional

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Munsch Hardt Kopf & Harr, P.C., a commercial law firm with offices in Dallas, Houston and Austin, announced today that the firm successfully convinced the United States Court of Appeals for the Fifth Circuit that Section 16.063 of the Texas Civil Practice and Remedies Code, a 150 year old law, was unconstitutional under the United States Constitution because it imposed too great a burden on interstate commerce. Munsch Hardt's team included Gregory (Greg) C. Noschese and Devon D. Sharp. Munsch Hardt was co-counsel with LaDawn Conway of Alexander, Dubose, Jones & Townsend LLP for the appeal.

The case, *Cadles of Grassy Meadows II v. Goldner et al.*, arose out of a note and deed of trust the Goldners guaranteed in 1985. Munsch Hardt represented the Goldners, New York residents. The debtor on the note defaulted in 1988 and the bank, which was in RTC receivership at the time, foreclosed on its deed of trust. After applying the proceeds from a foreclosure sale, there was still a balance of approximately \$1.4 million. The bank proceeded to obtain a default judgment against the Goldners in 1994 for approximately \$1.4 million plus interest and attorney's fees. The FDIC then sold the judgment to another party who eventually sold the judgment to Cadles. Cadles initiated collection actions in New York in 2004. At that point the judgment had grown to approximately \$4.4 million. Because the judgment had gone dormant under Texas law at the time, Cadles tried to collect and the New York Court sent the parties back to Texas to revive the judgment. In the action to revive the judgment, the Munsch Hardt team argued that the judgment should be vacated as to the Goldners because of defects in service. The record revealed that they served the wrong David Goldner and that the Service of Process for Mr. Goldner was returned with a notation of no such address. After four hearings and mountains of briefs and evidence, the Dallas County District Court vacated the judgment as to the Goldners.

Once the Dallas County District Court vacated the judgment, Cadles filed a new lawsuit against the Goldners seeking to collect on the original instruments and guaranties which at that point were nearly 20 years past due. Cadles argued that limitations would not bar its claims because Texas Civil Practice and Remedies Code Section 16.063 tolls limitations anytime the defendant leaves the state. The Munsch Hardt team removed the case to Federal Court under diversity jurisdiction and then filed a motion for judgment on the pleadings arguing that Section 16.063 was unconstitutional under the United States Constitution because it imposed an impermissible burden on interstate commerce and the power to affect interstate commerce legislatively is expressly reserved for Congress. Munsch Hardt supported the argument with the United States Supreme Court's opinion in *Bendix Autolite Corp. v. Midwesco Enters., Inc.*, 486 U.S. 888 (1988) and the cases that have followed *Bendix*. After briefing was completed, Judge Lynn issued an order inviting the Texas Attorney General to intervene and to submit briefing, which he did.

On June 12, 2007, Judge Lynn struck down Section 16.063 as unconstitutional as applied to the Goldners under the United States Constitution. Section 16.063 in some form or fashion had been a law in this state since 1841. Cadles and the Attorney General appealed to the Fifth Circuit Court of Appeals in New Orleans. The Court heard arguments in early June and just last week issued its opinion holding that, "the burden imposed on interstate commerce by the tolling statute [Section 16.063] exceeds any local interest that the State might advance." The

Court of Appeals decision was more expansive than the District Court's opinion and really seemed to severely limit the circumstances under which the statute could still be applied successfully.

Munsch Hardt, a full-service commercial law firm, provides the highest quality legal services and strategic business advice to companies and individuals of all sizes. Our areas of practice include: Appellate, Bankruptcy, Construction Litigation, Corporate and Securities, Corporate Finance and Financial Institutions, Director and Officer Litigation, Employment and Labor, Energy/Oil and Gas, Environmental, Hospitality, Intellectual Property, Intellectual Property Litigation, International, Leasing and Development, Litigation and Dispute Resolution, Mergers and Acquisitions, Professional Liability, Real Estate, Receiverships, Reorganization and Creditors' Rights, Securities Enforcement and Compliance, Tax, Technology, Telecommunications and Venture Capital. Munsch Hardt is a multi-specialty firm where experienced practitioners work together as a team across disciplinary lines to solve legal problems.

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