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State Urges Appellate Court to Uphold Law Restricting Credit Agencies

By Rebecca Beyer
Daily Journal Staff Writer

LOS ANGELES — Should consumers be able to decide which credit bureaus can release their credit reports?

A 2001 state law restricting agencies from distributing credit reports without consent from consumers is meant to curb identity theft.

But Los Angeles appellate justices seemed to agree Wednesday that the law has constitutional problems because it prohibits credit agencies from sharing information garnered from public records.

At the same time, one justice on the 2nd District Court of Appeal suggested during oral arguments that at least part of the law may survive a challenge from the credit agencies because the state has a "compelling interest" in protecting consumers from rampant identity theft.

California's Freeze Statute allows consumers to block the disclosure of their credit histories unless they give advance consent to certain kinds of information being shared with banks and other lending institutions.

An agency called U.D. Registry persuaded Los Angeles County Superior Court Judge Andria K. Richey two years ago to declare the law in violation of the First Amendment to the extent that it forbids agencies even from passing on information about consumers obtained from government records that are open to the public.

But the state is now urging the appeals court to reinstate the law in its original form, which allows consumers to control what credit agencies do with information from both public records and non-public sources.

"Right now, credit agencies can give out [non-public information] as long as it's for a specific purpose," said Robyn Smith, a deputy attorney general who argued Wednesday for the state. "There are limits as to whom they can give it to, but right now they do not need the consent of a consumer; they only need a permissible purpose."

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>
> Michael Saltz
> Jacobson, Russell, Saltz & Fingerman attorney representing U.D. Registry

Michael Saltz, who represents U.D. Registry, countered that consumers do not own all the information that credit agencies collect.

Saltz, of Jacobson, Russell, Saltz & Fingerman, agreed that the distinction between public and private records is not clear. But he disputed the notion that any of the information-sharing practices of credit agencies are to blame for identity theft.

"The state cannot prove that there is a connection between the issuance of credit reports and identity theft," Saltz said. "My analogy is attempting to stop drug dealers from selling marijuana by outlawing ziplock bags. Ziplock bags are just one way to sell marijuana. The Legislature should not punish the credit report agency; it should punish those who issue credit irresponsibly."

In oral arguments, Saltz tried to persuade the panel that the freeze law violates the 14th Amendment's Equal Protection Clause. When Justice Paul Turner asked him pointedly whether his company faces discrimination on the basis of race, gender or religion, Saltz answered that credit agencies should be protected as a "particular industry."

Turner acknowledged that U.D. Registry has a First Amendment right to peddle public information. But he was dismissive of the equal protection argument.

Since the state has a "compelling interest in preventing identity theft," Turner said, the law should be evaluated on "rational basis scrutiny."

Wednesday's hearing also featured a debate over attorney fees.

Judge Richey had ordered the state to reimburse U.D. Registry's lawyers after they won an injunction partially invalidating the freeze law.

But the Attorney General's Office objected Wednesday, saying that U.D. Registry has not advanced the public interest.

"In this case, the problem is that they filed this case because of financial interest," Smith said. "Their whole business is built on credit reports. Second, they need to show that their lawsuit is a significant benefit for a large number of persons. Our contention is, if they succeed in this case, it will actually work to the detriment of persons and businesses by not allowing people to control their information, thereby giving them no preventative measure against identity theft."

Saltz countered that creditors all across California benefited from the result of the lawsuit in 2004 and that "everyone benefits when a statute that violates the Constitution is overturned."