Did the Fourth Circuit Just Create a Cause of Action for "Unconscionable Inducement" Under West Virginia Law?

In *McFarland v. Wells Fargo Bank, N.A.*, 14-2126 (4th Cir. Jan. 15, 2016), the Fourth Circuit Court of Appeals examined the argument that a loan was substantively unconscionable because it vastly exceeded the worth of the residential property by which it was secured. The case drew the attention of numerous amici for both the lender and the borrower.

In short, during the height of the housing bubble, the borrower received a call from a mortgage broker that the value of his home had doubled in two years. The borrower refinanced his home to pay down other debt, but could not manage the larger interest payments his new loan demanded. As housing prices fell, the borrower was faced with a loan he could not afford and a looming foreclosure. The borrower sued to have the loan invalided as unconscionable under the West Virginia Consumer Credit Protection Act. The District Court rejected the borrower's allegation holding that the loan exceeding the worth of the home could not, without more, be evidence of substantive unconscionability. The borrower appealed the ruling to the Circuit Court.

The Circuit Court affirmed the ruling of the trial court, stating that: "Whatever the pitfalls, receiving too much money from a bank is not what is generally meant by 'overly harsh' treatment, and we have no reason to think that the West Virginia Supreme Court of Appeals would apply its standard in such a counterintuitive manner. As the district court noted, it is not the borrower but the bank that typically is disadvantaged by an under-collateralized loan." The Court observed that a fundamental aspect of substantive unconscionability is an extreme lopsided or one-sided favoritism of one party to the contract. Thus, although a loan which exceeds the value of its collateral may be harmful to borrowers, because it may also be harmful to the lender, it cannot be said that loans exceeding the value of their collateral is substantively unconscionable since the harm is not sufficiently one sided.

However, the Circuit Court observed that West Virginia law permitted a claim for "unconscionable inducement" absent a showing of resulting substantive unfairness. This quirk of West Virginia law is in many ways unique to Section 46A-2-121 of West Virginia's statutes which authorizes a court to refuse enforcement of an agreement on one of two distinct findings:

that the agreement was "unconscionable at the time it was made, or [that it was] induced by unconscionable conduct." Many states do not have an analogue to this statutory language. Interestingly enough, the West Virginia Supreme Court has never recognized such a cause of action. However, after a lengthy examination of West Virginia law, ***the Fourth Circuit held that it was confident the West Virginia Supreme Court would recognize a standalone cause of action for "unconscionable inducement"*** based on the language of Section 46A-2-121 of West Virginia's statutes.

Since the District Court improperly held that no such claim existed under West Virginia law, that portion of the opinion was reversed by the Fourth Circuit.

A copy of the Fourth Circuits opinion can be found here.