

MEMORANDUM OF LAW

Truth in Lending Act

INTRODUCTION

Comes now affiant with his Memorandum on the Truth in Lending Act in support of his Motion to Dismiss the Banks frivolous claim

THE TRUTH IN LENDING ACT

Truth in Lending Act was passed to prevent unsophisticated consumer from being misled as to total cost of financing. Truth in Lending Act, Section 102, 15 U.S.C. Section 1601. Griggs v. Provident Consumer Discount. 680 F.2d 927, certiorari granted, vacated 103 S.Ct. 400, 459 U.S. 56, 74 L.Ed.2d 225, on remand 699 F.2d 642.

Purpose of Truth in Lending Act is for customers to be able to make informed decisions. Truth in Lending Act Section 102, 15 U.S.C. Section 1601. Griggs v. Provident Consumer Discount Co. 680 F.2d 927, certiorari granted, vacated 103 S.Ct. 400, 459 U.S. 56, 74 L.Ed.2d 225, on remand 699 F.2d 642,

Truth in Lending Act is strictly a liability statute liberally construed in favor of consumers. Truth in Lending Act Section 102 et seq., 15 U.S.C. Section 1601 et seq. Brophy v. Chase Manhattan Mortgage Co, 947 F.Supp. 879.

Truth in Lending Act should be construed liberally to ensure achievement of goal of aiding unsophisticated consumers so that consumers are not easily misled as to total costs of financing. Truth in Lending Act, Sections 102 et seq, 102(a), 105 as amended, 15 U.S.C. Sections 1601 et seq., 1601(a), 1604; Truth in Lending Regulations, Regulation Z, Sections 226.1 et seq., 226.18, 15 U.S.C. Section 1700, Basile v. H&R Block. Jlt(L. 897 F.Supp. 194.

Truth in Lending Act must be strictly construed and liability imposed for any violation, no matter how technical. Truth in Lending Act Section 102 et seq., as amended, 15 U.S.C. Section 1601 et seq, Abele v. Mid-Penn Consumer Discount. 77 B.R. 460, affirmed 545 F.2d 1009.

Truth in Lending Act must be liberally construed to effectuate remedial purposes of protecting consumer against inaccurate and unfair credit billing and credit card practices and of promoting intelligent comparison shopping by consumers contemplating the use of credit by full disclosure of terms and conditions of credit card charges, Truth in Lending Act Section 102 et seq, as amended, 15 U.S.C. Section 1601 et seq Lifschitz v. American Exp. Co. 560 F.Supp. 458

To qualify for protection of Truth in Lending Act [15 U.S.C. Section 1601 et seq.], plaintiff must show that disputed transaction was a consumer credit transaction not a business transaction, Truth in Lending Act, Section 102 et seq., 15 U.S.C. Section 1601 et seq. *Quino v. A-I CreditCom*. 635 F.Supp. 151

Requirements of Truth in Lending Act are highly technical, but full compliance is required; even minor violations of Act cannot be ignored, Truth in Lending Act, Section 102 et seq. as amended, 15 U.S.C. Section 1601 et seq.; Truth in Lending Act Regulations, Regulation Z Section 226.1 et seq., 15 U.S.C. Section 1700. *Griggs v. Providence Consumer Discount Co.* 503 F.Supp. 246, appeal dismissed 672 F.2d 903, appeal after remand 680 F.2d 927, certiorari granted, vacated 103 S.Ct, 400, 459 U.S. 56, 74 L.Ed.2d 225, on remand 699 F.2d 642.

A valid rescission of a "credit sale" contract does not render inoperative the disclosure requirements of the Truth in Lending Act, as creditor's obligations to make specific disclosures arises prior to consummation of transaction. Truth in Lending Act Section 102 et seq., 15 U.S.C. Section 1601 et seq.; Truth in Lending Regulations, Regulation Z, Sections 226.2(c) 226.8(a), 15 U.S.C., following section 1700. *O'Neil* 484 F.Supp. 18.

Under truth in lending regulation providing that disclosure of consumer credit loan shall not be "stated, utilized or placed so as to mislead or confuse" consumer, placement of disclosures is to be considered along with their statement and use. Truth in Lending Regulations, Regulation Z, Section 226.6(c), 15 U.S.C. following section 1700. *Geimuso v. Commercial Bank & Trust Co.* 566 F.2d 437.

Any violation of the Truth in Lending Act, regardless of technical nature, must result in finding of liability against lender. Truth in Lending Regulations, Regulation Z Section 226.1 et seq., 15 U.S.C. Section 1700; Truth in Lending Act Section 130 (a, e), 15 U.S.C. Section 1640 (a, e). *In Re Steinbrecher*. 110 BR. 155, 116 A.L.R. Fed. 881.

Question of whether lender's Truth in Lending Act disclosures are inaccurate, misleading or confusing ordinarily will be for fact finder; however, where confusing, misleading and inaccurate character of disputed disclosure is so clear that it cannot reasonably be disputed, summary judgment for plaintiff is appropriate. Truth in Lending Act Section 102 et seq; Truth in Lending Regulations, Regulation Z, Section 226.1 et seq., 15 U.S.C. Section 1700. *Griggs v. Provident Consumer Discount Co.* 503 F. Supp 246, appeal dismissed 672 F.2d 903, appeal after remand 680 F.2d 927, certiorari granted, vacated 103 S.Ct, 400, 459 U.S. 56, 74 L.Ed.2d 225, on remand 699 F.2d 642.

Pursuant to regulations promulgated under Truth in Lending Act, violator of disclosure requirements is held to standard of strict liability, and therefore, borrower need not show that creditor in fact deceived borrower by making substandard disclosures. Truth in Lending Act, Sections 102-186, as amended, 15 U.S.C. Section 1601-1667(e); Truth in Lending Regulations, Regulation Z, Section 226.8(b-d), 15 U.S.C. Section 1700 *Soils v. Fidelity Consumer Discount Co.*, 58 B.R. 983,

Once a creditor violates the Truth In Lending Act, no matter how technical violation appears, unless one of statutory defenses applies, Court has no discretion in imposing liability. Truth in Lending Act, Sections 102-186 as amended, 15 U.S.C. Section 1601-1667e. *Solis v. Fidelity Consumer Discount Co.* 58 BR, 983.

Under the facts at hand the Plaintiff Bank has patently violated the Truth in Lending Act, At all relevant times the Bank misled and attempted to confuse Defendant. The Bank did not provide appropriate disclosure as required by the Truth in Lending Act in a substantive and technical manner.

"It is not necessary for recession of a contract that the party making the misrepresentation should have known that it was false, but recovery is allowed even though misrepresentation is innocently made, because it would be unjust to allow one who made false representations, even innocently, to retain the fruits of a bargain induced by such representations." Whipp v. Iverson, 43 Wis 2d 166.

"If any part of the consideration for a promise be illegal, or if there are several considerations for an unseverable promise one of which is illegal, the promise, whether written or oral, is wholly void, as it is impossible to say what part or which one of the considerations induced the promise." Menominee River Co. v. Augustus Spies L & C Co., 147 Wis 559, 572; 132 NW 1122

"When an instrument [note] lacks an unconditional promise to pay a sum certain at a fixed and determined time, it is only an acknowledgement of the debt and statutory presumptions like the presence of a valuable consideration, are not applicable." Bader vs. Williams, 61 A 2d 637

"Any false representation of material facts made with knowledge of falsity and with intent that it shall be acted on by another in entering into contract, and which is so acted upon, constitutes 'fraud,' and entitles party deceived to avoid contract or recover damages." Barnsdall Refining Corn. v. Birnam wood Oil Co., 92 F 2d 817.

"In the federal courts, it is well established that a national bank has not power to lend its credit to another by becoming surety, indorser, or guarantor for him." Farmers and Miners Bank v. Bluefield Nat 'l Bank, 11 F 2d 83, 271 U.S. 669.

"A national bank has no power to lend its credit to any person or corporation." Bowen v. Needles Nat. Bank, 94 F 925, 36 CCA 553, certiorari denied in 20 S.Ct 1024, 176 US 682, 44 LED 637.

"Mr. Justice Marshall said: The doctrine of ultra vires is a most powerful weapon to keep private corporations within their legitimate spheres and to punish them for violations of their corporate charters, and it probably is not invoked too often. Zinc Carbonate Co. v. First National Bank, 103 Wis 125, 79 NW 229." American Express Co. v. Citizens State Bank, 194 NW 430.

"It has been settled beyond controversy that a national bank, under federal law being limited in its powers and capacity, cannot lend its credit by guaranteeing the debts of another. All such contracts entered into by its officers are ultra vires" Howard & Foster Co. v. Citizens Nat'l Bank of Union, 133 SC 202, 130 SE 759(1926).

"It is not within those statutory powers for a national bank, even though solvent, to lend its credit to another in any of the various ways in which that might be done." Federal Intermediate Credit Bank v. L 'Harrison, 33 F 2d 841, 842 (1929).

"A bank can lend its money, but not its credit." First Nat 'l Bank of Tallapoosa v. Monroe, 135 Ga 614, 69 SE 1124, 32 LRA (NS) 550.

". . . the bank is allowed to lend money upon personal security; but it must be money that it loans, not its credit." Seligman v. Charlottesville Nat. Bank, 3 Hughes 647, Fed Case No.12, 642, 1039.

"The contract is void if it is only in part connected with the illegal transaction and the promise single or entire." Guardian Agency v. Guardian Mutual. Savings Bank, 227 Wis 550, 279 NW 83.

"Banking Associations from the very nature of their business are prohibited from lending credit." St. Louis Savings Bank vs. Parmalee 95 U. S. 557

Teste Meipso: With Christ as my witness, the above brief is true and correct to the best of my knowledge, information, and belief.

Submitted this _____ day of _____ in the year of the appearing of His Majesty, the Lord Jesus Christ, _____.

Presenter

State of New Mexico)

) ss.: **Jurat**

County of Bernalillo)

On this _____ day of _____, in the year of our Lord, _____,
_____ appeared before me to so swear and to attach his/her
signature to this instrument.

Public Notary Seal

Exp Date: _____