



payment on the date of the sale, with two "pick-up payments" of \$91.17 each applied to the down payment on June 14, 1993 and June 21, 1993<sup>1</sup> respectively. Additionally, the Schedule of Payments specified that Ms. Hatcher would make four monthly payments of \$100.00 each beginning on July 7, 1993, and a final estimated payment of \$24.44. The Bill of Sale indicated that the sales price of the vehicle was \$500.00, and to that amount Arrington added a sales fee of \$89.00, a tag/title fee of \$58.00 and sales tax of \$35.34 for a total of \$682.34.

Ms. Hatcher filed her Chapter 13 petition on May 2, 1995, listing Arrington as an undersecured creditor. Arrington filed a secured proof of claim for \$588.23 on June 12, 1995. On June 20, 1995, Ms. Hatcher instituted the present action against Arrington alleging violations of the Georgia Motor Vehicle Sales Finance Act and TILA. A substantive hearing was held on October 2, 1995, at which hearing I granted Arrington's motion for directed verdict on Count I under the Georgia Act<sup>2</sup>. The only remaining issue is whether Arrington properly disclosed the amount financed and the finance charge under TILA.

**I. Arrington Adequately Disclosed the Down Payment**

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<sup>1</sup>Arrington did not charge interest on these pick-up payments.

<sup>2</sup>Count I alleged that Arrington charged Ms. Hatcher the \$58.00 tag/title fee twice. The undisputed evidence at trial proved that Ms. Hatcher was only charged once for this fee.

## Arrangement Under TILA

Ms. Hatcher alleges that Arrington's treatment of the down payment and "pick-up payment" amounts violated the disclosure requirements of TILA<sup>3</sup> and the implementing Federal Reserve Board Regulation Z<sup>4</sup>. Regulation Z defines a down payment as:

[A]n amount, including the value of any property used as a trade-in, paid to the seller to reduce the cash price of goods or services purchased in a credit sale transaction.

A deferred portion of the downpayment **may** be treated as part of the downpayment if it is payable not later than the due date of the second otherwise regularly scheduled payment and is not subject to a finance charge (emphasis added).

12 C.F.R. §226.2(a)(18).

This Regulation gives the creditor the option to treat the pick-up payments either as part of the down payment or as part of the amount financed. The Official Staff Commentary provides that:

2. *Pick-up payments.* Creditors may treat the deferred portion of the downpayment, often referred to as "pick-up payments," in a number of ways. If the pick-up payment is treated as part of the downpayment:

- It is subtracted in arriving at the amount financed under §226.18(b).
- It may, but need not, be reflected in the payment schedule under §226.18(g).

If the pick-up payment does not meet the

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<sup>3</sup>15 U.S.C, § 1601 et seq.

<sup>4</sup>12 C.F.R. §226 et seq.

definition (for example, if it is payable after the second regularly scheduled payment) **or if the creditor chooses not to treat it as part of the downpayment:**

- It must be included in the amount financed.
- It must be shown in the payment schedule.

Whichever way the pick-up payment is treated, the total of payments under §226.18(h) must equal the sum of the payments disclosed under §226.18(g).

12 C.F.R. Pt. 226, Supp. I Para. 2(a)(18) (emphasis added). Courts should give great deference to the Staff Commentary when interpreting TILA, and should follow these opinions unless the Commentary is irrational. Ford Motor Credit Co. V. Milhollin, 444 U.S. 555, 564-568, 100 S.Ct.790, 796-798, 63 L.Ed.2d 22 (1980).

Applying the above-cited Commentary opinion, Arrington correctly applied and disclosed the pick-up payments. The Contract indicates that Arrington treated the pick-up payments exclusive of the down payment, as allowed by the second option. Arrington properly included them in the amount financed and listed them in the payment schedule. Also, the Total of Payments equals the sum of payments disclosed. These actions are consistent with the requirements of TILA as set out by the Staff Commentary.

Ms. Hatcher alleges that Arrington's disclosure is inadequate under TILA, citing Glover v. Doe Valley Development Corp., 408 F. Supp. 699 (W.D. Ky. 1975). In Glover, the court held that the manner in which a creditor disclosed the amount of the down payment amount violated TILA and Regulation Z. The creditor had

listed the downpayment as follows:

'7. FEDERAL TRUTH IN LENDING DISCLOSURES (an integral part of this Agreement)

... (b) Cash Down Payments Received

\$600.00

\$200.00 Due Today

\$400.00 Due 7/25/74'

Id. at 704. The actual amount of the total down payment was \$600.00. However, this disclosure violated the down payment itemization requirement of 12 C.F.R. §§226.6(c)(2) & 226.8(c)(2) for two reasons. First, the creditor failed to specifically designate the "Total Down Payment" as required by TILA. Id. Second, the down payment disclosure was unduly vague because it was unclear whether the total down payment equaled \$600.00 or \$1200.00. Id.

Glover is not persuasive in this case for two reasons. First, significant portions of TILA and all of Regulation Z were repealed and re-enacted effective October 1, 1982. The revised Regulation Z contains no sections comparable to former §§226.6(c)(2) & 226.8(c)(2), on which the Glover court relied. Furthermore, even under the Glover analysis, the manner in which the down payment is disclosed by Arrington is straightforward and does not cause any confusion. The Contract accurately and completely disclosed the amount of the down payment, and the amount and timing of the remaining pick-up payments and principal and interest payments.

## **II. The Finance Charge Was Adequately Disclosed**

Ms. Hatcher also alleges that the \$20.00 courier fee

constituted a finance charge, that this finance charge should have been disclosed as such, and that Arrington's disclosure underreported the finance charge by \$20.00 in violation of TILA and Regulation Z. Assuming that the courier fee constitutes a finance charge which should have been disclosed under TILA, Ms. Hatcher cannot recover damages for this \$20.00 "violation". Under the most recent amendments to TILA, Arrington's disclosed finance charge is deemed accurate because it is within \$200.00 of the actual finance charge. 15 U.S.C. §1649<sup>5</sup>. Therefore, even if Arrington improperly

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<sup>5</sup>§1649 provides:

(a) Limitation on liability:  
For any Consumer credit transaction subject to this subchapter that is consummated before September 30, 1995, a creditor ... shall have no civil ... liability under this subchapter for...

(1) the creditor's treatment, for disclosure purposes, of--  
...

(C) fees and amounts referred to in the 3rd section of this title; or ...

(3) any disclosure relating to the finance charge imposed with respect to the transaction if the amount or percentage actually disclosed--

(A) May be treated as accurate for purposes of this title if the amount disclosed as the finance charge does not vary from the actual finance charge by more than \$200.00; ...

(b) Exceptions  
Subsection (a) of this section shall not apply to--

failed to disclose the courier fee as a finance charge, the actual finance charge is within \$200.00 of the disclosed finance charge, and is deemed accurate under TILA.

It is therefore ORDERED that judgment in this adversary be entered in favor of the defendant.

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JOHN S. DALIS  
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 31st day of January, 1996.

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(1) any individual action ...  
which was filed before June 1,  
1995; ...