

TILA

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Augusta Division

In the matter of:	)	
	)	Adversary Proceeding
SAM GIBBONS	)	
DOROTHY GIBBONS	)	Number <u>187-0047</u>
(Chapter 13 Case <u>187-00191</u> )	)	
	)	
Debtors	)	
	)	
	)	
DOROTHY GIBBONS	)	
	)	
Plaintiff	)	
	)	
	)	
v.	)	
	)	
LOUISVILLE FINANCE COMPANY	)	
	)	
Defendant	)	

**FILED**  
at 10 O'clock & 25 min. A.M.  
Date 12/30/87  
MARY C. BECTON, CLERK  
United States Bankruptcy Court  
Savannah, Georgia *PCB*

MEMORANDUM AND ORDER

Debtor filed this adversary proceeding against Defendant, alleging that Defendant made a loan to the Plaintiff and in violation of the Truth-in-Lending Act (TILA) failed to disclose the finance charge and amount financed. After trial on the merits, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1) The parties stipulate that the note-security agreement is the TILA form.

2) The TILA form contains four disclosure blocks entitled: "ANNUAL PERCENTAGE RATE, FINANCE CHARGE, AMOUNT FINANCED and TOTAL OF PAYMENTS" at the head of the form.

3) The terms "Annual Percentage Rate" and "Finance Charge" are disclosed more conspicuously in the disclosure boxes than other terms, data or information provided in connection with the transaction.

4) The disclosure boxes for the Finance Charge and Amount Financed are blank.

5) In the itemized statement box, Item 29, the Finance Charge, is listed as \$306.24, but is not disclosed more conspicuously than other terms, data or information provided in connection with the transaction.

6) The amount financed is disclosed as Item 23 in the itemized statement box as \$1,025.76.

7) The loan and purported TILA disclosures were given on September 16, 1986.

8) The same supervisor was employed at the Louisville and Eatonton branches.

9) The standard operating procedure in Louisville and Eatonton in Septmeber 1986 was a five level review of the loan documents as follows:

- (1) Customer;
- (2) Manager checks the documents twice: First with the customer and then before placing the documents in the drawer;
- (3) At the end of the day, by the manager's secretary;
- (4) At the end of the week, by the supervisor;
- (5) Periodically by a loan examiner.

10) Notwithstanding these five levels of review, no one noticed that the finance charge and amount financed disclosure boxes at the head of the document were left blank.

11) The manager who testified to the standard operating procedure worked at Eatonton, not Louisville, at the

time the loan transaction was made.

CONCLUSIONS OF LAW

The TILA's stated purpose is to "assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit." 15 U.S.C. §1601(a). "The applicable standard is strict compliance with the technical requirements of the Act." Smith v. Chapman, 614 F.2d 968 at 971 (5th Cir. 1980).

Section 1632(a) of the Act requires that the "terms 'annual percentage rate' and 'finance charge' shall be disclosed more conspicuously than other terms, data, or information provided in connection with the transaction . . ." (emphasis added). An inspection of the disclosure boxes at the head of the disclosure statement shows that the Defendant has technically complied with the requirements of Section 1632(a). Both the terms "annual percentage rate" and "finance charge" are more conspicuous than other terms, data or information. The Defendant failed, however, to disclose the corresponding finance charge in the space provided. Instead, the Defendant disclosed the finance charge at Line 29 of the itemized statement. The

Defendant argues that he has technically complied with the Act by disclosing: (1) The term "finance charge" more conspicuously and (2) the corresponding amount of the finance charge at Line 29 of the itemized statement.

Admittedly, the Defendant has technically complied with Section 1632(a) of the Act. The Defendant, however, has not disclosed the finance charge to the extent required by Section 1638(a)(3).

The Act requires the more conspicuous disclosure of the term "finance charge" to be disclosed together with a corresponding amount. 12 CFR Part. 226.17(a)(2). In this case, the Defendant has failed to disclose the corresponding amount with the more conspicuous term "finance charge". This is a clear violation of the Act, from which liability must follow. Shroder v. Suburban Coastal Corporation, 729 F.2d 1371 (11th Cir. 1984). The disclosure of the finance charge and corresponding amount in the itemized statement box will not operate to purge the creditor's failure to comply with the technical requirements of the Act.

Liability is imposed on the Defendant under Section 1640(a)(2)(A)(i) which provides that a creditor who violates any requirement of the Act is liable in an amount equal

to the sum of twice the amount of the finance charge, except that liability shall not be less than \$100.00 nor greater than \$1,000.00. The statutory civil penalties must be imposed regardless of whether any actual damages resulted or that the violataion was de minimus. Zamarippa v. Cy's Car Sales, Inc., 674 F.2d 877, at 879 (11th Cir. 1982). The Truth-in-Lending Simplification and Reform Act of 1980 set forth a laundry list of violations in Section 1640(a) for which statutory liability will attach. Among those violations for which statutory liability attaches is the failure to comply with the requirements of 15 U.S.C. Section 1638(a)(3).<sup>1</sup> The creditor has failed to so comply.

In addition, the Defendant is liable for costs and reasonable attorney fees. 15 U.S.C. §1640(a)(3).

The Defendant raises the bona fide error defense in response to the Plaintiff's allegations. The defense requires that the creditor show "by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably

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<sup>1</sup> 15 U.S.C. §1638(a)(3) requires the creditor to disclose the finance charge to the extent applicable. As previously explained herein, the "extent applicable" is set forth in 12 CFR Part. 226.17(a)(2).

adopted to avoid such error." 15 U.S.C. §1640(c). The Defendant presented evidence which established that a five tiered review process was in place at the Eatonton Finance Company at the time the loan was made. The Defendant's witness further testified that the Eatonton and Louisville Finance Companies had the same supervisor at the time the loan was made. The Defendant's witness, however, worked at the Eatonton Finance Company, not the Louisville Finance Company at the time the loan was made. Moreover, he had no personal knowledge of the procedures maintained at the Louisville office.

Even if I infer that the Louisville and Eatonton Finance Companies had adopted the same procedures to avoid bona fide errors, I cannot hold that the Defendant has established the defense by a preponderance of the evidence. "The mere establishment of procedures would not provide a defense; proof must be furnished establishing unquestionably that the procedures were being maintained at the time the error occurred." R. Clontz, Jr., Truth-in-Lending Manual, ¶11.04[1] at 11-20 (5th ed. 1982). No proof was entered by the Defendant which would establish unquestionably that such procedures were being maintained in Louisville at the time of the error. On the contrary, the fact that five alleged levels of review overlooked the blank spaces following the terms "Finance Charge" and "Amount Financed" strongly suggests that such procedures were not

maintained at the time the loan transaction was made. See: Turner v. Firestone Tire & Rubber Co., 537 F.2d 1296 (5th Cir. 1976) (Creditor must introduce evidence that the error was not intentional and that it maintained a procedure reasonably adapted to avoiding such errors); Mirabal v. General Motors Acceptance Corp., 537 F.2d 871 (7th Cir. 1976) (Burden on creditor to show by a preponderance of the evidence that it maintained procedures that were reasonably adapted to avoid errors and that such procedures were in effect and consistently followed during the time in question).

Based on the evidence presented I must reject the Defendant's bona fide error defense.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law IT IS THE ORDER OF THIS COURT that Defendant shall pay to the Plaintiff:

- 1) \$612.48 statutory liability;
- 2) The Plaintiff's costs and reasonable attorney's fees in the amount of \$375.00

to enforce the foregoing liability.



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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 22<sup>nd</sup> day of December, 1987.

United States Bankruptcy Court <sup>Date</sup> 12/30/87

For the SOUTHERN District of GEORGIA, United States Bankruptcy Court  
Savannah, Georgia PCB

MARY C. BECTON, CLERK

DOROTHY GIBBONS

Case No. 187-00191

Plaintiff

v.

LOUISVILLE FINANCE COMPANY

Defendant

Adversary Proceeding No. 187-0047

JUDGMENT

This proceeding having come on for trial or hearing before the court, the Honorable Lamar W. Davis, Jr., United States Bankruptcy Judge, presiding, and the issues having been duly tried or heard and a decision having been rendered.

[OR]

This proceeding having come on for trial before the court and a jury, the Honorable \_\_\_\_\_, United States Bankruptcy Judge, presiding, and the issues having been duly tried and the jury having rendered its verdict.

[OR]

The issues of this proceeding having been duly considered by the Honorable \_\_\_\_\_, United States Bankruptcy Judge, and a decision having been reached without trial or hearing.

IT IS ORDERED AND ADJUDGED:

That the Plaintiff, DOROTHY GIBBONS, shall recover of the Defendant, LOUISVILLE FINANCE COMPANY, the principal sum of Six Hundred Twelve Dollars and Forty-Eight Cents (\$612.48) as statutory liability and Three Hundred Seventy Five Dollars and 00/100 Cents (\$375.00) as costs and reasonable attorney's fees, together with interest in the amount of 7.22 percent from date until paid in full.

MARY C. BECTON

Clerk of Bankruptcy Court

[Seal of the U.S. Bankruptcy Court]

Date of issuance: December 22, 1987

By:

*Patsy C. Burkhalter*  
Deputy Clerk