54,063

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

RENE RIVERO, Plaintiff, vs. J.P. AUTOMOBILES, INC. dba PFLUEGER HONDA, Defendant.	CIVIL NO. 96-01010 HG

ORDER DENYING DEFENDANT'S MOTION TO ALTER OR AMEND JUDGMENT

On December 4, 1996, defendant J.P. Automobiles, Inc. dba Pflueger Honda ("Defendant") filed a Motion to Dismiss or, in the Alternative, for Summary Judgment on Plaintiff Rene Rivero's Complaint Filed on November 6, 1996 ("Defendant's Motion to Dismiss"). On January 31, 1997, plaintiff Rene Rivero ("Plaintiff") filed a Counter Motion for Partial Summary Judgment on Count II (Truth in Leasing) ("Plaintiff's Counter Motion"). On June 10, 1997, the Court issued an order denying Defendant's Motion and granting Plaintiff's Counter Motion ("June 10, 1997 Order").

On June 20, 1997, Defendant filed a motion to alter or amend judgment, pursuant to Local Rule 220-11 and Fed. R. Civ. P. 59(e) and 60(b), requesting that the Court reconsider the portion of the June 10, 1997 Order granting Plaintiff partial summary judgment on Count II ("Motion for Reconsideration"). On June 30, 1997, Plaintiff filed a memorandum in opposition to Defendant's Motion for Reconsideration ("Plaintiff's Opposition"). On July 11, 1997, Defendant filed a reply memorandum in support of its Motion for Reconsideration ("Defendant's Reply").

The Court finds Defendant's Motion for Reconsideration to be suitable for disposition without a hearing pursuant to Local Rule 220-2(d). For the reasons set forth below, Defendant's Motion for Reconsideration is DENIED.

ANALYSIS

The disposition of a motion for reconsideration is committed to the sound discretion of the district court. Fuller v. M.G. Jewelry, 950 F.2d 1437, 1441 (9th Cir. 1991). In entertaining such a motion, courts should not lightly disregard the "compelling interest in the finality of judgments[.]" Rodgers v. Watt, 722 F.2d 456, 459 (9th Cir. 1983).

It is well settled in the Ninth Circuit that a party seeking reconsideration and reversal of a prior decision of the Court must satisfy two burdens:

> First, a motion for reconsideration must demonstrate some reason why the court should reconsider its prior decision. Second, a motion for reconsideration must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision. . . . Courts have established only three grounds justifying reconsideration: (1) an intervening change in controlling law; (2) the discovery of new evidence not previously available; and (3) the need to correct clear or manifest error in law or fact, to prevent manifest injustice.

Stein v. State Farm Mut. Auto. Ins. Co., 934 F. Supp. 1171, 1173 (D. Haw. 1996) (citing Great Hawaiian Financial Corp. v. Aiu, 116 F.R.D. 612, 616 (D. Haw. 1987), rev'd on other grounds, 863 F.2d 617 (9th Cir. 1988)). Local Rule 220-11 reflects this standard

governing motions for reconsideration.[1]

Defendant does not identify any intervening change in controlling law or present any new evidence not previously available. Defendant claims that it "now has, or is able to obtain new evidence pertinent to the case at bar." Motion for Reconsideration at 3. This alleged "new" evidence consists of another affidavit of Dan Keppel, Defendant's General Sales Manager, who already submitted a declaration attached to Defendant's opposition to Plaintiff's Counter Motion, and an undated promissory note from Defendant's files. June 20, 1997 Affidavit of Dan Keppel ("Keppel Affidavit"), attached to Defendant's Motion for Reconsideration, and Exhibit A attached thereto.

The Keppel Affidavit and attached promissory note do not constitute "new evidence not previously available" and may not be used as the basis for a motion for reconsideration. Defendant's prior counsel's failure to present this evidence in opposition to Plaintiff's Counter Motion does not permit Defendant's current counsel to claim this evidence as new, when it was previously available prior to the February 18, 1997 hearing in this matter.

---

[1]Local Rule 220-11 provides:

> Motions for reconsideration of interlocutory orders may be brought only upon the following grounds:
>
> (a) Discovery of new material facts not previously available;
>
> (b) Intervening change of law;
>
> (c) Manifest error of law or fact.
>
> Motions asserted under Subsection (c) of this rule must be filed within ten (10) days of the court's written order.

(Emphasis added).

Defendant's prior counsel withdrew and was replaced by its current counsel on March 19, 1997. If this evidence was material to Defendant's opposition to Plaintiff's Counter Motion, as Defendant alleges here, Defendant's current counsel had ample opportunity to submit this evidence prior to the Court's issuance of the June 10, 1997 Order.

Even if the Court were to consider this evidence, it would not change the Court's ruling that "the Lease Contract did not accurately reflect the amount paid by Plaintiff at its inception and holds that this understatement constituted a violation of [the Consumer Leasing Act ("CLA")]." June 10, 1997 Order at 14. Defendants were required, pursuant to 15 U.S.C. § 1667a(2) and 12 C.F.R. § 213.4(g)(2) (1996), to disclose the total amount of any payment made by Plaintiff at the inception of the lease. As indicated in the June 10, 1997 Order, the lease contract stated Plaintiff's initial total payment as $935.07 when Defendant admits that Plaintiff actually paid $1564. The undated promissory note submitted by Defendant does not satisfy the requirements of 15 U.S.C. § 1667a(2) or 12 C.F.R. § 213.4(g)(2) (1996), or otherwise explain the $628.93 understatement contained in the lease contract. Assuming that Defendant's current contention that the $628.93 was used to pay off the outstanding note on Plaintiff's trade-in is accurate,[2] that amount should have been disclosed as such on the

[2]The Court notes that this figure is inconsistent with the previous figure asserted by Defendant as the amount of the outstanding balance on Plaintiff's trade-in. See February 6, 1997 Declaration of Dan Keppel, attached to Defendant's Opposition to Plaintiff's Counter Motion, at ¶¶ 3-4.

lease contract in accordance with the requirements of 12 C.F.R. § 213.4(g)(2) (1996).

Defendant also fails to identify any intervening change in controlling law. The amendments to Regulation M cited by Defendant are not applicable to the lease contract here, which was signed before those amendments went into effect,[3] and do not convince the Court that its interpretation of the prior version of Regulation M was erroneous. Defendant's failure to disclose the total amount of the payment made by Plaintiff at the inception of the lease contract was a CLA violation. As indicated in the June 10, 1997 Order, "CLA is . . . liberally construed in favor of the consumer and liability may attach even for technical violations thereof. Demitropoulos v. Bank One Milwaukee, N.A., 915 F. Supp. 1399, 1406 (N.D. Ill. 1996); Wiskup v. Liberty Buick Co., Inc., 953 F. Supp. 958, 965 (N.D. Ill. 1997)." June 10, 1997 Order at 13.

Finally, Defendant has failed to present any evidence to indicate to the Court that amendment of the June 10, 1997 Order is needed to correct a manifest error of law or fact, to prevent manifest injustice. Stein, 934 F. Supp. at 1173. As stated above, the evidence and argument presented here by Defendant are not the proper basis for a motion for reconsideration.

> [A] litigant is not permitted to assert new arguments seriatim, after losing at summary judgment. A motion for reconsideration is an improper vehicle to tender new

---

[3]Plaintiff's lease contract with Defendant was signed on January 24, 1996. Defendant's Motion to Dismiss at Exhibit E. The amendments to Regulation M went into effect on October 31, 1996. 61 Fed. Reg. 52246 (1996). Compliance with the amendments is optional until October 1, 1997. Id.

> legal theories not raised in opposition to summary judgment. The failure to raise the issues in opposition to summary judgment operates as a waiver.

All Hawaii Tours, Corp. v. Polynesian Cultural Center, 116 F.R.D. 645, 650 (D. Haw. 1987) (citations omitted), rev'd in part on other grounds, 855 F.2d 860 (9th Cir. 1988).

Plaintiff requests that he be granted additional attorneys' fees for defending this motion, pursuant to Judge Harold Fong's ruling in Joe v. Payco General American Credits, Civ. No. 92-00681 HMF (D. Haw., Feb. 1, 1994). Plaintiff's Opposition at 5. The Court does not find that a decision on Plaintiff's request for additional fees is appropriate or warranted at this time. Plaintiff may renew this request in conjunction with any motion for attorneys' fees that Plaintiff may file in the future with respect to Plaintiff's entitlement to attorneys' fees on the underlying complaint. The Court also notes, in response to Plaintiff's observation in his opposition that Defendant has failed to file an answer to Plaintiff's complaint, that Defendant subsequently filed an answer to Plaintiff's complaint on July 11, 1997.

CONCLUSION

Defendant's motion to alter or amend this Court's June 10, 1997 Order fails to identify any new material facts not previously available, intervening change in controlling law, manifest error of law or fact, or any other ground justifying relief from the operation of the June 10, 1997 Order. In accordance with the foregoing, Defendant's motion to alter or amend judgment is DENIED.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, August 4, 1997

HELEN GILLMOR
United States District Judge

52063

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

RENE RIVERO, Plaintiff, vs. J.P. AUTOMOBILES, INC. dba PFLUEGER HONDA, Defendant.	CIVIL NO. 96-01010 HG

ORDER DENYING DEFENDANT'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT, AND GRANTING PLAINTIFF'S COUNTER MOTION FOR PARTIAL SUMMARY JUDGMENT ON COUNT II

On December 4, 1996, defendant J.P. Automobiles, Inc. dba Pflueger Honda ("Defendant") filed a Motion to Dismiss or, in the Alternative, for Summary Judgment on Plaintiff Rene Rivero's Complaint Filed on November 6, 1996 ("Defendant's Motion"). On January 31, 1997, plaintiff Rene Rivero ("Plaintiff") filed a Counter Motion for Partial Summary Judgment on Count II (Truth in Leasing) ("Plaintiff's Counter Motion"). On February 6, 1997, Defendant filed a Memorandum in Opposition to Plaintiff's Counter Motion ("Defendant's Opposition"). On February 12, 1997, Plaintiff filed a Reply Memorandum in Support of Plaintiff's Counter Motion.

These motions came on for hearing before the Court on February 18, 1997, and the Court took the motions under submission. On February 24, 1997, in response to a request by the Court at the hearing, Plaintiff filed Supplemental Citations in Support of Plaintiff's Counter Motion. After careful consideration of the evidence and arguments presented by the parties in their pleadings

and at the hearing, the Court denies Defendant's Motion and grants Plaintiff's Counter Motion.

STATEMENT OF FACTS

On January 20, 1996, Plaintiff went to Defendant to negotiate the purchase of a new Honda Accord LX. On that date, Plaintiff and Defendant signed a "Hawaii Credit Sale Contract" (the "Credit Sale Contract"). The Credit Sale Contract indicated that Plaintiff made a $3500 cash down payment, traded in a 1990 Ford Thunderbird which was not credited with a trade-in value, and was to finance a total of $20,207.29 under the contract. The Credit Sale Contract specified on its face in bold print that it was "SUBJECT TO APPROVAL OF CREDIT LENDER." The Credit Sale Contract does not specify further as to who the credit lender would be.

On January 24, 1996, Plaintiff was orally informed by two separate lenders that they had not approved his loan applications. In a letter dated January 25, 1996, Bank of Hawaii confirmed that it was unable to approve the terms of Plaintiff's credit application because of insufficient collateral, but indicated that the bank would offer him a loan of $18,000. Exhibit C to Plaintiff's Concise Statement. The Operating Engineers Local Union No. 3 Federal Credit Union (the "Engineers FCU") indicated in a letter dated August 22, 1996, that although Plaintiff was pre-approved for a $20,000 loan, the loan application was not approved because the purchase order from Defendant exceeded the Manufacturer's Suggested Retail Price ("MSRP") by $4,358.96, and that Defendant's finance manager had not provided a satisfactory

explanation for the discrepancy. Exhibit D to Plaintiff's Concise Statement.

On January 24, 1996, Plaintiff went to Defendant and stated that his credit applications had been denied and that he wanted to cancel the Credit Sale Contract. Defendant refused to cancel the contract and Plaintiff was told that there would not be a problem in obtaining financing through one of the banks with which Defendant had a working relationship. At this time, Defendant also extended to Plaintiff an option to lease the vehicle instead of purchasing it. Plaintiff returned to Defendant later that day and executed a New Vehicle Lease Agreement (the "Lease Contract").

Defendant utilized a General Electric Capital Hawaii ("GECH") standard closed-end credit contract form for the Lease Contract. Under the Lease Contract, Plaintiff agreed to lease the car for 48 months at $360.07 a month, for a total of $17,283.36 in lease payments over the term of the lease. The Lease Contract also states that the car is to be used for personal, family or household purposes.

Plaintiff wrote a letter to Defendant on August 10, 1996 regarding the events outlined above, and did not receive a written response. Plaintiff's counsel then wrote to Defendant on October 15, 1996 and likewise did not receive a written response. On November 6, 1996, Plaintiff filed a complaint ("Complaint") in the United States District Court for the District of Hawaii claiming that Defendant had violated both the Truth in Lending Act ("TILA") and the Consumer Leasing Act ("CLA"), as well as alleging state law

causes of action for unfair and deceptive acts and practices, and for fraud and misrepresentation.

SUMMARY JUDGMENT STANDARD

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment shall be entered when:

> . . . the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

The moving party has the initial burden of "identifying for the court those portions of the materials on file that it believes demonstrate the absence of any genuine issue of material fact." T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)). The movant need not advance affidavits or similar materials to negate the existence of an issue on which the opposing party will bear the burden of proof at trial. Celotex, 477 U.S. at 323.

If the moving party meets its burden, then the opposing party must come forward with "specific facts showing that there is a genuine issue for trial" in order to defeat the motion. Fed. R. Civ. P. 56(e); T.W. Elec., 809 F.2d at 630. The opposing party cannot stand on the pleadings nor simply assert that it will discredit the movant's evidence at trial. Id. "[I]f the factual context makes the [opposing] party's claim implausible, that party must come forward with more persuasive evidence than would otherwise be necessary to show that there is a genuine issue for

trial." Cal. Arch. Bldg. Prods. v. Franciscan Ceramics, 818 F.2d 1466, 1468 (9th Cir. 1987) (citing Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986)) (emphasis added), cert. denied 484 U.S. 1006 (1988).

The standard for summary judgment reflects the standard governing a directed verdict. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). When there is a genuine issue of material fact, "the judge must assume the truth of the evidence set forth by the [opposing] party with respect to that fact." T.W. Elec., 809 F.2d at 631. Inferences from the facts must be drawn in the light most favorable to the non-moving party. Id.

ANALYSIS

I. Truth in Lending Act Claim (Count I)

TILA was enacted "to ensure 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). In order to effectuate this statutory purpose, TILA is liberally construed in favor of the consumer. Jackson v. Grant, 890 F.2d 118, 120 (9th Cir. 1989). Creditors must strictly adhere to TILA's requirements, as well as those of its implementing regulations, 12 C.F.R. §§ 226.1-.33 ("Regulation Z"), and liability attaches even for technical or minor violations. Id. (citing Semar v. Platte Valley Fed. Sav. & Loan Ass'n, 791 F.2d 699, 704 (9th Cir. 1986)).

The Complaint alleges that Defendant has violated TILA "by failing to properly disclose, and/or by disclosing in a misleading

and confusing manner: (a) the Annual Percentage Rate, (b) the Finance Charge, (c) the Amount Financed, (d) the Total of Payments and Payment Schedule, and (e) the Security Interest." Complaint at ¶ 25. These claims all refer to the original Credit Sale Contract entered into between Plaintiff and Defendant, which was later superseded by the Lease Contract.

Defendant is potentially liable for any TILA violations contained in the Credit Sale Contract. The total amount financed in the Credit Sale Contract was $20,207.29, which is within the $25,000 statutory maximum. 15 U.S.C. § 1603(3). Defendant is also a "creditor" for purposes of TILA. Even though the credit portion of the Credit Sale Contract was to be handled by a separate credit lender, Defendant "is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the [Credit Sale Contract]." 15 U.S.C. § 1602(f)(2). Defendant also regularly sells automobiles on credit pursuant to this type of contract. Id. at § 1602(f)(1). It is irrelevant for purposes of TILA liability if Defendant subsequently assigns the Credit Sale Contract to a separate credit lender. 12 C.F.R. § 226.2, Supp. I, Commentary 2(a)(17)(i), at p.298 (1996); see also Kinzel v. Southview Chevrolet Co., 892 F. Supp. 1211, 1216 (D. Minn. 1995).

The question arises, however, whether the Credit Sale Contract was ever "consummated", within the meaning of TILA, because it was never approved by a credit lender according to its own express provision. Regulation Z provides that "[c]onsummation means the time that a consumer becomes contractually obligated on a credit

transaction." 12 C.F.R. § 226.2(a)(13). The Official Staff Commentary accompanying Regulation Z, which must be given the utmost deference and is dispositive unless "demonstrably irrational[,]" Ford Motor Credit Co. v. Milhollin, 444 U.S. 555, 565 (1980), instructs that state law governs whether a contractual obligation on the consumer's part is created. 12 C.F.R. § 226.2, Supp. I, Commentary 2(a)(13), at p.297 (1996).

It is not necessary for the Court to reach the issue of whether the "SUBJECT TO APPROVAL OF CREDIT LENDER" provision is a condition precedent, the non-occurrence of which would vitiate the enforceability of the Credit Sale Contract. See Stevens v. Cliffs at Princeville Assoc., 67 Haw. 236, 242, 684 P.2d 965 (1984); see also Monroe v. United States, 184 U.S. 524, 527-528 (1902). Defendant is estopped from claiming that it is not subject to TILA liability because the Credit Sales Contract was never consummated. Defendant is bound by the statements contained in its own filings with the Court, as well as the statements of Daniel Keppel, Defendant's General Sales Manager, that the Credit Sale Contract was initially binding on Plaintiff because Defendant could have found a lender willing to provide credit under the contract. Defendant's Opposition at 2; Declaration of Daniel Keppel, attached to Defendant's Opposition ("Keppel Decl."), at ¶¶ 7-8; January 21, 1997 Deposition of Dan Keppel, attached as Exhibit Dep. to Plaintiff's Concise Statement ("Keppel Depo"), at 28, 30-31.

The Credit Sale Contract was later canceled because it was superseded by the Lease Contract. Plaintiff only entered into the

Lease Contract, however, because Defendant told him that was the only way to cancel the Credit Sale Contract because he was bound thereunder. Keppel Depo at 30-31. Any TILA violations that induced Plaintiff to enter into the Credit Sale Contract, therefore, would still have operated to the detriment of Plaintiff despite the subsequent cancellation of the contract.[1] Defendant is estopped from claiming that it cannot incur TILA liability because the Credit Sale Contract was never officially consummated. See GGS Co., Ltd. v. Masuda, 82 Haw. 96, 919 P.2d 1008 (Haw. App. 1996); AIG Hawaii Ins. Co. v. Smith, 78 Haw. 174, 891 P.2d 261, reconsideration denied, 78 Haw. 421, 895 P.2d 172 (1995). The Court holds that Defendant is liable for any TILA violations contained in the Credit Sale Contract.

The next question is whether that contract is in violation of TILA. A review of the Credit Sale Contract indicates that the form of the contract appears to comply with the requirements of TILA and Regulation Z. Plaintiff does not appear to dispute the adequacy of the form of the contract, as he did not identify any violations in relation to the Credit Sale Contract's format, but rather asserts that the amounts disclosed therein are incorrect. Plaintiff's Counter Motion at 10. The Court holds that a question of fact exists as to whether the Credit Sale Contract is in violation of

---

[1]The Court notes, however, that it is not necessary "to show that the consumer was actually misled or deceived by an ambiguous credit term in order to prevail." Purtle v. Eldridge Auto Sales, Inc., 91 F.3d 797, 800 (6th Cir. 1996) (citations omitted), cert. denied, __ U.S. __, __ S. Ct. __, 1996 WL 881728, 65 U.S.L.W. 3728 (U.S. June 2, 1997).

TILA.

Plaintiff contends that the Amount Financed section of the Credit Sales Contract contains portions of certain fees that should be within the Finance Charge section. Plaintiff's Counter Motion at 10. The contested amounts are the $175 listed in the Itemization of Amount Financed section 4.b. as fees paid to public officials for all other filing fees besides the transfer fee, and the $195 listed as a "Doc Fee" in section 4.d.. TILA provides:

> "[I]temization of the amount financed" means a disclosure of the following items, to the extent applicable:
>
> (i) the amount that is or will be paid directly to the consumer;
>
> (ii) the amount that is or will be credited to the consumer's account to discharge obligations owed to the creditor;
>
> (iii) each amount that is or will be paid to third persons by the creditor on the consumer's behalf, together with an identification of or reference to the third person; . . . .

15 U.S.C. § 1638(a)(2)(B).

Defendant's inclusion of the $175 amount in section 4.b. appears to comply with the requirements of § 1638(a)(2)(B)(iii), as the Credit Sales Contract identifies it as the amount paid to public officials for filing fees other than the transfer fee. Plaintiff's mere conclusory allegation that portions of the $175 amount listed in section 4.b. should be listed as a Finance Charge rather than as part of the Amount Financed is insufficient to avoid summary judgment. See Rothenberg v. Chemical Bank New York Trust Co., 400 F. Supp. 1299, 1302 (S.D.N.Y. 1975); T.W. Elec., 809 F.2d at 630. The "Doc Fee" in section 4.d., however, does not appear to

fall within one of the categories listed in § 1638(a)(2)(B), because the Credit Sale Contract does not identify to whom the payment is made and for what purpose. Defendant has not shown an absence of material fact on the issue of whether the "Doc Fee" was properly included in the Amount Financed figure. As it is possible that the Doc Fee would fall within 15 U.S.C. § 1605(a)'s definition of Finance Charge as a charge imposed by Defendant on Plaintiff incident to the extension of credit,[2] the Court holds that a genuine issue of fact exists.

Accordingly, Defendant's request for dismissal of Count I must be denied. In light of the Court's denial of Defendant's motion for summary judgment on Count 1, the Court does not need to reach at this time the issue of whether Defendant's allegedly erroneous disclosure of the down payment as $3500 instead of $3000, which alleged error would enure solely to Plaintiff's benefit, would constitute a violation of TILA. See Krenisky v. Rollins Protective Serv. Co., 728 F.2d 64, 67-68 & n.5 (2d Cir. 1984) (finding it unnecessary to consider "whether departure from strict compliance with the regulations would be permissible when a violation is both de minimis and of benefit to the consumer[,]" where reversal was appropriate on other grounds.).

II. Consumer Leasing Act Claim (Count II)

Defendant's sole basis for its request for dismissal of the CLA claim is that the total contractual obligation of the Lease Contract exceeds the $25,000 maximum amount set by 15 U.S.C. §

[2]See 15 U.S.C. § 1605(a).

1667(1).[3] Neither CLA nor its implementing regulations ("Regulation M") provide a definition of the term "total contractual obligation."

In Sanders v. Gold Key Lease, Inc., 906 F. Supp. 197 (S.D.N.Y. 1995), the district court reviewed CLA's legislative history in order to determine the proper interpretation of the term "total contractual obligation."

> The legislative history of the act states, "[t]he House bill definition of 'consumer lease' referred to those leases that are for a specified rent not exceeding $25,000, while the Senate amendment referred to those leases that are for a total contractual obligation not exceeding $25,000. The House receded to the Senate amendment. Due to the fact that the House accepted the phrase "total contractual obligation" in lieu of "rent" it follows that "total contractual obligation" includes fees more than the periodic lease payments.

Sanders, 906 F. Supp. at 200-201 (citing H. Conf. Rep. No. 94-872, 94th Cong., 2d Sess. 7, reprinted in 1976 U.S.C.C.A.N. 431, 443; Easterwood v. General Elec. Capital Auto Lease, Inc., 825 F. Supp. 306 (N.D. Ga. 1993)). The Court finds the conclusion drawn from the Sanders court's interpretation of CLA's legislative history to be sound, and adopts its holding that the term "total contractual obligation" should be construed as including all fees due under the contract, and not just the total of the monthly lease payments.

Applying this definition to the Lease Contract, the Court finds that the total contractual obligation thereunder is well

---

[3] 15 U.S.C. § 1667(1) provides, in pertinent part, "[t]he term 'consumer lease' means a contract in the form of a lease . . . for the use of personal property by a natural person for a period of time exceeding four months, and for a total contractual obligation not exceeding $25,000 . . . ."

within the $25,000 statutory maximum. The total contractual obligation under the Lease Contract consists of the sum of: (1) the total of monthly lease payments -- $17,283.36; (2) the security deposit -- $400.00; (3) the total of estimated official fees and taxes -- $1133.16; and (4) the $250 termination fee due at the end of the lease if Plaintiff chooses not to buy the vehicle. This total is $19,066.52.

Plaintiff is not contractually obligated to purchase the vehicle at the end of the lease term. It would be inappropriate, therefore, for the Court to add the $11,451.40 estimated end of term wholesale value of vehicle amount. The proper value the Court should apply is the lesser of this pay-off value and the termination fee, which is $250 under the Lease Contract. Id. at 201.

With respect to Plaintiff's Thunderbird trade-in, Defendant claims that the Court should add the lien payoff amount of $11,207, because Defendant assumed this obligation of Plaintiff to the Engineers FCU as part of the transaction. Section E.1. of the Lease Contract, however, provides that there was no value applied to Plaintiff's trade-in. Moreover, even if the Court were to add the amount that Defendant had to pay to extinguish the trade-in's lien, Defendant admits that the trade-in was worth at least $7200, which amount Defendant would be able to recoup upon sale of the vehicle. Defendant's Concise Statement at ¶¶ 1-2. Even if the $4,007 negative value of the trade-in asserted by Defendant were included in the total contractual obligation figure, that would

only bring the total amount to $23,073.52.

In accordance with the foregoing, Defendant's motion to dismiss Count II is denied. The total contractual obligation under the Lease Contract was within the $25,000 statutory limit.

III. Counts III and IV (State Law Claims)

Defendant's sole basis for his request to dismiss Plaintiff's state law causes of action is that the Court would lack jurisdiction to hear these claims if Counts I and II were dismissed. Defendant's Motion with respect to Counts III and IV must be denied, therefore, because Defendant is not entitled to dismissal of Counts I and II and supplemental jurisdiction over these state law claims remain.

IV. Plaintiff's Counter Motion on Count II

Plaintiff also moves for partial summary judgment as to Count II. Plaintiff alleges that Defendant committed at least five violations of CLA in the Lease Contract. As with TILA, which is contained within the same statutory subchapter, CLA is also liberally construed in favor of the consumer and liability may attach even for technical violations thereof. Demitropoulos v. Bank One Milwaukee, N.A., 915 F. Supp. 1399, 1406 (N.D. Ill. 1996); Wiskup v. Liberty Buick Co., Inc., 953 F. Supp. 958, 965 (N.D. Ill. 1997). The Court holds that there was at least one violation of CLA in the Lease Contract and, therefore, partial summary judgment in favor of Plaintiff on Count II is appropriate.

Plaintiff alleges that the $1564.00 down payment he paid upon entering into the lease is not properly disclosed in the Lease

Contract, as required by 15 U.S.C. § 1667a(2) and 12 C.F.R. § 213.4(g)(2).[4] Plaintiff's Counter Motion at 8; Plaintiff's Concise Statement at ¶ 13. Section 3G of the Lease Contract states that Plaintiff made a total initial payment of only $935.07. Defendant's pleadings fail to dispute Plaintiff's allegation that the Lease Contract understated his initial payment by $628.93, and the deposition of Defendant's own sales manager indicates that Plaintiff did give Defendant two checks in the amount of $1500 and $64, respectively, upon entering into the Lease Contract. Keppel Depo at 30.

Accordingly, the Court finds that the Lease Contract did not accurately reflect the amount paid by Plaintiff at its inception and holds that this understatement constituted a violation of CLA. Plaintiff is entitled to partial summary judgment with respect to Count II based upon this violation. Consequently, it is unnecessary to address Plaintiff's other four claims of CLA violations with respect to the Lease Contract.

---

[4] 15 U.S.C. § 1667a provides, in pertinent part:
Each lessor shall give a lessee prior to the consummation of the lease a dated written statement on which the lessor and lessee are identified setting out accurately and in a clear and conspicuous manner the following information with respect to that lease, as applicable: . . . (2) The amount of any payment by the lessee required at the inception of the lease . . . .
12 C.F.R. § 213.4(g) provides, in pertinent part:
Specific disclosure requirements. In any lease subject to this section, the following items, as applicable, shall be disclosed: . . . (2) The total amount of any payment, such as a refundable security deposit paid by cash, check or similar means, advance payment, capitalized cost reduction or any trade-in allowance, appropriately identified, to be paid by the lessee at consummation of the lease. . . .

CONCLUSION

In accordance with the foregoing, Defendant's Motion to Dismiss or, in the Alternative, for Summary Judgment is DENIED. Plaintiff's Counter Motion for Partial Summary Judgment on Count II (Truth in Leasing) is GRANTED.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, June 18, 1997

HELEN GILLMOR
United States District Judge