

CLEARINGHOUSE # 52,155 A

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA.

CASE NO.: 96-5098-CA

DIVISION: CV-A

ANNIE R. CHURCHWELL, on
behalf of herself and others
similarly situated,

PLAINTIFF,

v.

NATIONAL TITLE LOAN, INC.,

DEFENDANT.

RON ROSS MEARDY, d/b/a AUTO
LIQUIDATION CENTER,

INTERVENOR.

PARTIAL SUMMARY JUDGMENT FOR PLAINTIFF CLASS AS TO COUNT I (FEDERAL TRUTH IN LENDING ACT) OF AMENDED COMPLAINT

This cause came before the Court in this class action¹ for a hearing on the Plaintiff's Motion for Summary Judgment as to Count One [federal Truth in Lending Act claim] of the Amended Complaint.² Present were counsel for the Plaintiff; counsel for the Defendant; and *pro*

¹ Members of the plaintiff class in this action are those persons who: (i) entered into a Contract for Title Pledge with the Defendant, National Title Loan, Inc., (ii) where the signature line of the Contract bears the signature of one identified as an employee of National Title Loan, Inc. See page 7, paragraph 1 of December 3, 1997 "Order Certifying Class" in this action.

² Because the certification of the class in this action is presently on appeal, the Court, by May 18, 1998 Order Granting Motions of Defendant NTL and Intervenor Meardy for Protective Order and Staying Action; Denying Motion of Non-Party SATL to Intervene; Reserving Ruling on Motions of Defendant and Intervenor for Rehearing; and Amending Caption of Case, stayed

se Intervenor Mr. Meardy. The Court heard and considered the argument of counsel and of Mr. Meardy. In accordance with Rule 1.510, Fla. R. Civ. P., the Court also considered the affidavits filed in support of and in opposition to the motion and considered the pleadings and the discovery responses filed in this matter.³

At the hearing, counsel for the Plaintiff clarified that the Plaintiff, as class representative, seeks only a summary determination that the form entitled Contract of Title Pledge ("the form") used by National Title Loan, Inc., ("NTL") in its title loan transactions, violates the requirements of the federal Truth in Lending Act ("TILA" and "the Act"), 15 U.S.C. §§ 1601 *et seq.*

The disclosure provisions of the TILA apply only to extensions of consumer credit. *Katz v. Carte Blanche Corporation*, 496 F.2d 747, 750 (3d Cir.), *cert. denied*, 419 U.S. 885 (1974).

Counsel for NTL concedes that the form used by NTL does not comply with the requirements of the TILA but asserts that compliance is not required and that a partial summary judgment is not

this action except that, with the agreement of all affected, it agreed to consider the Plaintiff's previously-filed Motion for Summary Judgment.

³ There was some discussion and disagreement at the hearing as to whether the Plaintiff had responded to all outstanding discovery. Plaintiff's counsel indicated that Plaintiff had; Defendant's counsel (who was recently substituted for prior counsel) was uncertain; and Intervenor thought that she had not. No party or intervenor moved to continue the hearing to permit any completion of any outstanding discovery.

Even if there were outstanding discovery, however, that would not prevent entry of this partial summary judgment because this judgment addresses only the facial validity of the Contract for Title Pledge form and not whether the class representative's individual title loan was a consumer credit transaction. If the class representative's individual title loan transaction is later determined to be not to be primarily for personal, family household or agricultural purposes and thus not a consumer credit transaction, *see* 15 U.S.C. § 1602(h), then a different class member can be substituted for her as class representative.

appropriate because there remain genuine issues of material fact⁴ as to whether the class representative, Ms. Churchwell, used the funds from her individual title loan for a business, rather than for a consumer, purpose. If she used the funds for a business purpose, it contends, then the transaction would not be a "consumer credit transaction" within the meaning of TILA and the form would not need to comply with the TILA requirements.⁵

Ms. Churchwell, however, does not seek a partial summary judgment as to her individual entitlement as a member of the class to damages or other relief as a consequence of any violation of the TILA but instead, on behalf of the class, simply seeks a determination that the form violates the TILA.

The question whether title loans are consumer credit transactions subject to the requirements of the federal Truth in Lending Act appears to be a question of first impression in Florida. The Court concludes that title loans are consumer credit transactions which are subject to the requirements of the TILA. That the claim of a particular member of the plaintiff class may ultimately be found to be other than a consumer credit transaction (because the funds from the

⁴ Indeed, the affidavits filed in opposition to the motion (in which Mr. Meardy states that Ms. Churchwell told him that the funds realized from her title loan transaction would be used for a business purpose rather than for a consumer purpose) would create a genuine issue of material fact which would preclude partial summary judgment on the issue of whether Ms. Churchwell's individual title loan transaction was a "consumer credit transaction" within the meaning of the Act and whether she, individually, would be entitled to damages and other relief as a result of the failure of the form to comply with the TILA.

⁵ The Act defines a consumer credit transaction as one in which the natural person to whom credit is offered or extended uses the money, property or services from the loan for purposes which are primarily personal, family, household or agricultural. 15 U.S.C. § 1602(h).

Intervenor Mr. Meardy joined in the argument made by counsel for National Title Loan, Inc.

title loan in a particular case were not used primarily for personal, family household or agricultural purposes) and that individual class member thus not entitled to damages or other relief for the violations of the TILA does not alter the fact that the title loans, like pawn shop loans,⁶ are generally made to consumers for primarily consumer, not business, purposes.

The Court finds that there is no genuine issue of material fact regarding the failure of the form to comply with the requirements of the TILA. The pending motion correctly recites eleven specific instances in which the form deviates from the requirements of TILA (*see i through k* on pages 2-3 of Plaintiff's Motion for Summary Judgment as to Count One of the Amended Complaint). The Court adopts and incorporates into this judgment the recitation of those eleven violations.

TILA claims are often suitable for summary judgment. *Barlow v. Evans*, 992 F. Supp. 1299, 1304 (M.D. Ala. 1997). Liability under the TILA flows from even minute deviations from the requirements of the Act. *Id.* at 1307. Even a single violation of the TILA is sufficient to affix liability. *Id.* The Court concludes that the Contract for Title Pledge form used by National Title

⁶ A title loan in Florida may or may not also be a pawn. Section 538.03(1)(i), Fla. Stat., states:

"Title loan" means a loan of money secured by bailment of a certificate of title to a motor vehicle. A title loan is not a pawn if the secondhand dealer does not maintain possession of the vehicle throughout the term of the transaction.

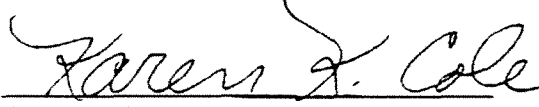
Although title loans may or may not be pawns, the case law on the applicability of the TILA to pawn transactions is nevertheless instructive. *See Barlow v. Evans*, 992 F. Supp. 1299, 1306 (M.D. Ala. 1997) ("Accordingly, the court finds that pawn transactions in Alabama are subject to the requirements of TILA and Regulation Z...") and *Hyde v. Hutto Enterprises, Inc.*, ___ F. Supp. ___, 1994 WL 653504 (M.D. Ala. 1994) ("Pawn transactions in the state of Alabama are covered by the FTLA.") (latter case not reported in official reporters).

Loan, Inc., violates the requirements of the TILA and the Plaintiff, on behalf of the plaintiff class, is entitled to a partial summary judgment as to Count One on that issue. This conclusion is consistent with the two-stage procedure followed by other courts in similar class actions. In the first stage, the Court determines whether a challenged form satisfies the requirements of law. If it does, there is no second stage. If it does not, then, in the second stage, the Court determines entitlement to declaratory, injunctive and related relief and the finder of fact determines class members' entitlement to and the amount of any monetary damages. *Cf. Simon v. World Omni Leasing, Inc.*, 146 F.R.D. 197, 202 (S.D. Ala. 1992), cited in the December 3, 1997 "Order Certifying Class" in the instant action.

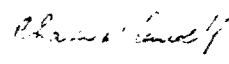
For the foregoing reasons, it is **ORDERED** and **ADJUDGED** that the Plaintiff's Motion for Summary Judgment as to Count One [federal Truth in Lending Act claim] of the Amended Complaint is granted and a Partial Summary Judgment as to Count One is hereby entered in favor of the plaintiff class as follows: The Court adjudges that the Contract for Title Pledge form used by Defendant National Title Loan, Inc., violates the requirements of the federal Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.*, and that any plaintiff class member who used the funds from his or her title loan(s) from Defendant National Title Loan, Inc., for primarily personal, family, household or agricultural purposes is entitled, upon appropriate proof, to the various forms of relief provided for under the TILA. This Partial Summary Judgment as to Count I does not determine which class members used the funds from their title loans in such a manner.

ORDERED this 23rd day of October, 1998, in Jacksonville, Florida.

A TRUE COPY HEREOF
IN ABOVE CASE SIGNED


Circuit Judge

OCT 23 1998


CIRCUIT COURT JUDGE

Copies to:

Lynn Drysdale, Esquire
Koko Head, Esquire
Mr. Ron Meardy