CONSUMER CREDIT

FOR PURPOSES OF TRUTH IN LENDING RESCISSION, CONSUMMATION MEANS DATE CONSUMER BECOMES CONTRACTUALLY OBLIGATED

Gaona v. Town & Country Credit, 324 F.3d 1050 (8th Cir. 2003).

FACTS: Annah and Peter Gaona are married and live in Minnesota. In January 1999, the Gaonas met with a representative of Town & Country Credit at one of the company's branch offices to apply for a residential mortgage loan.

At a subsequent meeting on January 26, 1999, the Goanas signed the loan agreement. The loan's proceeds were disbursed on February 1, 1999. Town & Country assigned the mortgage to Chase Bank of Texas (Chase) on February 18, 1999. The Gaonas defaulted on the loan sometime during 2000. In November 2000, Chase sought to foreclose on the Gaonas' house.

The Gaonas sought rescission of the loan contract from Chase. Responding to the Gaonas' request, Town & Country denied rescission. The Gaonas brought suit in Minnesota state court against Chase and Town & Country alleging, among other things, that Town & Country violated the Truth in Lending Act (TILA). Defendants removed the case to federal court.

The Gaonas argued that Town & Country violated the rescission provision of TILA. They claimed that their mortgage loan was not "consummated" on January 26, 1999 because the loan was conditioned on an appraisal review and the terms of the agreement were indefinite. They further contended that if the loan was not consummated on January 26, 1999, then the notice of the right to rescind listed an incorrect date of January 29, 1999 as the last day for rescission, a defect which they claim should give them an extended three-year right to rescind.

The Gaonas also argued that the interest rate terms of the loan agreement were indefinite. The district court rejected this argument on grounds that when the Gaonas executed the agreement, the interest rate was specified and definite. The court granted summary judgment in favor of Town & Country and Chase on both TILA claims. The Gaonas appealed.

HOLDING: Affirmed.

REASONING: TILA provides the borrower with the right to rescind within three days after the transaction is consummated. 15 U.S.C. § 1635(a) (2000). Consummation occurs on the date "that a consumer becomes contractually obligated on a credit transaction."

The Gaonas argue that their loan did not close on January 26, 1999, because the loan was conditioned on a satisfactory appraisal review. Since this appraisal did not take place until January 29, 1999, the Gaonas claim that the loan was consummated on January 29, not January 26, and that the rescission period should have expired three days after that date. Since the agreement did not state that date, the Gaonas claim that TILA gives them three additional years to rescind.

Rejecting this argument, the appeals court held the appraisal review was a condition precedent to the lender's performance that did not affect the Gaonas' obligation. In addition, the document relied upon by the Gaonas informed them that despite this condition, the loan was consummated. The Gaonas became contractually obligated when the loan documents were executed and consummated on January 26, 1999.

CLASS CERTIFICATION DENIED, MATTER SUBMITTED TO ARBITRATION

AutoNation USA Corp. v. Leroy, 105 S.W.3d 190 (Tex. App.—Houston [14th Dist.] 2003).

FACTS: Plaintiff Theresa Leroy, purchased a used car from AutoNation. AutoNation required customers who purchased used cars to sign a "Purchase Agreement" that included the details of the various charges and credits related to the transaction, which included an arbitration provision. AutoNation required customers who financed their cars were required to sign a "Retail Installment Contract" ("RIC") that governed the terms of the financing, which did not include an arbitration provision.

Both the Purchase Agreement and the RIC included a statement that limited a documentary fee to fifty dollars. However, between December 1997 and February 1998, certain RIC forms showed a documentary fee of ninety-five dollars. AutoNation explained that due to computer programming error, the fifty-dollar documentary fee was combined with a forty-five dollar vehicle fee, causing certain RIC forms to show a documentary fee of ninety-five dollars. Leroy subsequently sued AutoNation on behalf of herself and a proposed class, alleging that the documentary fee in the retail installment contract violated Tex. Fin. Code Ann. section 348.006 and that the vehicle preparation fee was not authorized under Tex. Fin. Code Ann. Ch. 348. Additionally, Leroy moved for certification of a class that included all persons or entities who purchased and financed a car from AutoNation in Texas and who were charged more than fifty dollars for a documentary fee or who were charged a vehicle

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preparation fee. AutoNation opposed Leroy's certification and moved to compel arbitration according to the terms of the Purchase Agreement. The trial court denied AutoNation's motion to compel arbitration and granted Leroy's motion for class certification.

HOLDING: Reversed and remanded.

REASONING: The Texas Supreme Court has held that "federal and state laws strongly favor arbitration" and that under the Federal Arbitration Act ("FAA"), "any doubts as to whether a plaintiff's claims fall within the scope of the agreement must be resolved in favor of arbitration." Contract law in Texas is well-settled: "when several instruments, executed contemporaneously or at different times, pertain to the same transaction, they will be read together although they do not expressly refer to each other."

The court held that Leroy's claim was subject to arbitration on the grounds that the contract's arbitration provision was not so inconspicuous that it was unconscionable. The court found that there was no entitlement to proceed as a class because the FAA is part of a substantive law of Texas, and "procedural devices", such as Rule 42's provision for class actions, "may not be construed to enlarge or diminish any substantive rights or obligations of any parties to any civil action." The court found sufficient notice because the front pages of both the Purchase Agreement and the RIC contained notices in capital letters that stated that a documentary fee is not an official fee, and that a documentary fee may not exceed fifty dollars. The arbitration provision did not violate public policy because the Supreme Court made clear in *Moses H. Cone Mem'l Hosp. V. Mercury Const. Co.*, that the FAA "requires piecemeal resolution when necessary to give effect to an arbitration agreement." 460 U.S. 1, 20 (1983).

LANDLORD TENANT

TENANT NOTICE REGARDING OWNERSHIP DISCLOSURE DOES NOT HAVE TO STATE SPECIFIC PROVISION UNDER WHICH LEGAL ACTION WILL BE TAKEN

McBeath v. Estrada Oaks Apartments, ____ S.W.3d ____ (Tex. App.—Dallas 2003).

FACTS: McBeath, a tenant at Estrada Oaks Apartments, requested disclosure of ownership and management from Estrada Oaks Apartments. McBeath's first letter to Estrada Oaks requested the name and address of the apartment owner. She sent that request on December 17, 2001. She then sent Estrada Oaks letters on January 19, 2002, and January 25, 2002, again requesting the name and address of the owner of her rental unit. McBeath wrote that if she did not receive the information within seven days, she "may take legal action." Estrada Oaks responded to McBeath on January 23, 2002 but provided only an address for its corporate office. Because she did not receive the requested information, specifically the name and address of her apartment's owner and the name of the management property's headquarters, within seven days of her letters, McBeath sued and requested remedies as listed in the Texas Property Code.

Estrada Oaks argued that McBeath had not performed all of the conditions precedent to a right of recovery under the property code and moved for summary judgment. McBeath responded and also moved for summary judgment, arguing she was entitled to judgment as a matter of law by virtue of copies of her three letters as summary judgment evidence. Estrada Oaks responded to McBeath's motion, contending that the sole dispute was whether the three notices sent by McBeath to Estrada Oaks satisfied the statutory requirements of the property code. The court entered summary judgment in favor of Estrada Oaks. McBeath appealed.

HOLDING: Reversed and remanded.

REASONING: When a tenant requests a disclosure of ownership and management under the property code, a landlord is liable for failing to disclose the information within seven days if the tenant makes a request and gives written notice that the tenant "may exercise his remedies under the subchapter." TEX. PROP. CODE ANN. § 92.202(a)(2).

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Estrada Oaks argued that McBeath was required to direct the landlord to the specific statutory provisions under which she could bring a cause of action and the specific provision requiring it to provide the information. Estrada Oaks also argued that the specific language was necessary to put it on notice of the specific penalties under the property code. However, there is no case law stating or supporting its position.

McBeath sent Estrada Oaks letters on January 19, 2002 and January 25, 2002, and in both letters she requested the name and address of the owner of her rental unit. Also in these letters, McBeath stated that if she did not receive the information within seven days, she "may take legal action." Because her letter notified Estrada Oaks that the consequences of its failure to respond would be "legal action," the Court concluded that McBeath substantially complied with section 92.202(a)(2). Accordingly, McBeath was entitled to summary judgment as a matter of law.