

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DENISE ROBERTS, Individually : CIVIL ACTION  
and for all others similarly :  
situated :  
 :  
v. :  
 :  
FLEET BANK (R.I.), National :  
Association and :  
FLEET CREDIT CARD SERVICES, L.P. :  
a Rhode Island Limited Partnership : NO. 00-6142

MEMORANDUM AND ORDER

Fullam, Sr. J. November , 2001

Plaintiff brought this putative class action for herself and all others who, in response to a promotion carried out by the defendants, applied for and obtained a certain type of credit card. Plaintiff was allegedly led to believe that the card would carry a "fixed" rate of 7.99 percent APR, whereas, approximately one year after the card was issued, defendants unilaterally increased the interest rate. The complaint charged the defendants with violating the disclosure requirements of the Truth in Lending Act, 28 U.S.C. §1391(b)(2) and the Rhode Island Unfair Trade Practices and Consumer Protection Act, R.I. Rev. L. Ann. §§6-13.1-1 through 6-13.1-27, and also contained counts alleging breach of contract and unjust enrichment.

The defendant filed a motion to dismiss the Truth-in-Lending Act claim and, by Order dated June 5, 2001, I granted

that motion. This ruling was based upon the undisputed facts that the solicitation letter sent to plaintiff was accompanied by a preliminary disclosure statement which made clear that the defendant had the right to change the interest rate, upon due notice; and that the credit card agreement which plaintiff executed after her application had been received and approved also contained an express provision giving the defendant the right to change the interest rate.

The defendants have now filed a Motion for Summary Judgment as to all counts of the complaint. Plaintiff has responded to the Motion for Summary Judgment, and has also filed a "Motion for Relief from the Court's June 5, 2001 Order." The latter motion asserts that the earlier motion to dismiss should not have been treated as a Rule 56 motion, and that later discovery has turned up documents giving rise to material issues of fact. The "Motion for Relief" is actually an untimely motion for reconsideration; such motions are required to be filed within 10 days of the Order in question, and this one was not filed until 78 days later. Plaintiff refers to the motion as having been filed under Fed.R.Civ.P. 63(b), but that rule has no application, since no final order has been entered. I shall nevertheless reconsider the June 5, 2001 Order, because this litigation has not reached its final terminus, and because the issues raised by the pending Motion for Summary Judgment, and

plaintiff's response to that motion, are identical to the issues I considered dispositive in entering the June 5 Order. Briefly stated, the undisputed facts - i.e., the documents sent to plaintiff and the contract she signed, clearly gave the defendants the legal right to do what they have done, and adequately disclosed that fact to plaintiff. There was no violation of the Truth in Lending Act, nor did the defendants breach their contract with plaintiff.

Plaintiff was promised a "fixed" rate, and that is what she received. Plaintiff was promised that this was not an "introductory" rate, and it was not. Defendants reserved the right to change the rate, upon giving advance notice of the change and, some 13 months later, availed themselves of that right. Nothing in the promotional materials can reasonably be regarded as having promised a "permanent" rate arrangement: neither party was indissolubly bound to perpetuate their arrangement.

It is undoubtedly true that, in marketing their credit card, the defendants stressed its desirable features; but they did not conceal or misrepresent the features plaintiff now regards as undesirable.

In opposing the defendants' Motion for Summary Judgment, plaintiff asserts that discovery is not yet completed, and that further documentary disclosures by the defendants, and

depositions of defense personnel, may bring to light further evidence of defendants' nefarious motivations and intentions. But, in my view, any such further disclosures would be irrelevant; discussions leading up to the issuance and execution of the written documents involved cannot change the undisputed contents of those documents, which, as noted above and in my June 5 Memorandum, flatly disprove the claims now being asserted.

It should also be noted that plaintiff cannot pursue a claim for violation of the Rhode Island Unfair Trade Practices and Consumer Protection Act because that statute does not apply to transactions that are otherwise subject to regulation by a "regulatory body or officer acting under statutory authority of [Rhode Island] or the United States." R.I. Gen. Laws § 6-13.1-4; and, as noted in the amicus brief filed by the Comptroller of the Currency, this case falls within that exemption.

I therefore conclude that the defendants' Motion for Summary Judgment must be granted.

An Order follows.

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ORDER

AND NOW, this day of November of 2001, IT IS

ORDERED:

1. Plaintiff's "Motion for Relief from this Court's Order dated June 5, 2001," treated as a Motion for Reconsideration, IS GRANTED.

2. Defendants' Motion for Summary Judgment is GRANTED. The complaint is DISMISSED WITH PREJUDICE.

3. The pending motion for class certification is DISMISSED AS MOOT.

4. Judgment is entered in favor of the defendants and against the plaintiff.

5. The Clerk is directed to close the file.

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John P. Fullam, Sr. J.