

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

ROSLYN PORTER,	:	CIVIL ACTION
	:	
Plaintiff,	:	NO. 03-03768
	:	
v.	:	
	:	
NATIONSCREDIT CONSUMER	:	
DISCOUNT COMPANY, et al.,	:	
	:	
Defendants.	:	

Stengel, J.

March 31, 2006

MEMORANDUM AND ORDER

Currently before the Court is the second motion for summary judgment filed by defendants NationsCredit Consumer Discount Company ("NCCDC"), now known as NationsCredit Financial Services Corporation ("NCFSC"), Bank of America, N.A., NationsCredit Consumer Corporation ("NCCC"), NationsCredit Insurance Corporation ("NCIC"), and NationsCredit Insurance Agency, Inc. ("NCIA") (collectively the "NationsCredit Defendants"). For the following reasons, the NationsCredit Defendants' motion shall be granted in part and denied in part.

I. BACKGROUND

I write only for the parties and will therefore include only the facts and procedural history that are relevant to the present motion. This case originates from a loan agreement entered into between plaintiff Roslyn Porter ("Plaintiff") as the borrower, and

NCCDC as the lender. As a result of the transaction, Plaintiff received a \$33,265.34 loan secured by a mortgage on Plaintiff's residence. Plaintiff signed a number of documents provided by NCCDC during the loan closing, including: (1) a loan note (the "Note"); (2) a mortgage; (3) a "Truth-In-Lending Disclosure Statement" (the "TILA Disclosure Statement"); (4) a "Credit Life Insurance Application"; and (5) a "Credit Life Insurance Certificate." Each of these documents appears to be signed by Plaintiff.

The main point of contention in this case is whether Plaintiff purchased credit life insurance from NCCDC as a part of her loan transaction. The NationsCredit Defendants allege that Plaintiff purchased credit life insurance issued by defendant Protective Life Insurance Company ("Protective") when she signed the closing documents for her loan.¹ Plaintiff argues that she did not purchase life insurance at all because she already had coverage from another source.

As a result of this case's tortured procedural history, only three of Plaintiff's claims are at issue in the instant motion for summary judgment. The first is whether the NationsCredit Defendants violated the Truth in Lending Act, 15 U.S.C. §§ 1601, *et seq.* (the "TILA") or the Home Ownership and Equity Protection Act of 1994 (the "HOEPA") by failing to include the amount of a credit life insurance premium that Plaintiff paid in the "amount financed" portion of the TILA Disclosure Statement. The second remaining issue is whether Plaintiff was overcharged for the credit life insurance because NCCDC

¹The TILA Disclosure Statement provides that Plaintiff paid a credit life insurance premium of \$3,281.98 for a term of 180 months.

sold the insurance for a longer term than it was authorized to do (the "Excess Term Claim"). The third remaining issue is whether either of the two previously described acts violated the Pennsylvania Unfair Trade Practices and Consumer Protection Law (the "UTPCPL"), 73 PA. CONS. STAT. §§ 201-1, *et seq.*

II. STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate when "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). The moving party initially bears the burden of showing the absence of a genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). A fact is "material" only when it could affect the result of the lawsuit under the applicable law, see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986), and a genuine issue of material fact exists when "the evidence is such that a reasonable jury could return a verdict for the non[-]moving party." Id. The moving party must establish that there is no triable issue of fact as to all of the elements of any issue on which the moving party bears the burden of proof at trial. See In re Bessman, 327 F.3d 229, 237-38 (3d Cir. 2003) (citations omitted).

Once the moving party has carried its burden, the non-moving party must come forward with specific facts demonstrating that there is a genuine issue for trial. Williams v. West Chester, 891 F.2d 458, 464 (3d Cir. 1989). A motion for summary judgment looks beyond the pleadings, and factual specificity is required of the party opposing the

motion. Celotex, 477 U.S. at 322-23. In other words, the non-moving party may not merely restate allegations made in its pleadings or rely upon "self-serving conclusions, unsupported by specific facts in the record." Id. Rather, the non-moving party must support each essential element of its claim with specific evidence from the record. See id. This specificity requirement upholds the underlying purpose of summary judgment, which is "to avoid a pointless trial in cases where it is unnecessary and would only cause delay and expense." Fries v. Metro. Mgmt. Corp., 293 F. Supp. 2d 498, 500 (E.D. Pa. 2004) (citing Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1975), cert. denied, 429 U.S. 1038 (1977)).

When analyzing a motion for summary judgment, a district court "must view the facts in the light most favorable to the non-moving party" and make every reasonable inference in favor of that party. Hugh v. Butler County Family YMCA, 418 F.3d 265, 267 (3d Cir. 2005) (citations omitted). Summary judgment is therefore appropriate when the court determines that there is no genuine issue of material fact after viewing all reasonable inferences in favor of the non-moving party. See Celotex, 477 U.S. at 322.

III. DISCUSSION

A. The TILA and HOEPA Claims

The TILA requires creditors to disclose certain information to potential debtors in a specific manner prior to the extension of credit. See 15 U.S.C. §§ 1601, *et seq.* TILA section 102 requires creditors to "accurately and meaningfully" disclose all credit terms.

15 U.S.C. § 1601(a). By enacting the TILA, Congress sought "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." Id. The TILA therefore enables consumers to more easily compare the various credit terms available to them and to avoid the uninformed use of credit. 15 U.S.C. §§ 1637.

In 1994, Congress augmented the TILA by enacting the HOEPA. Congress chose to enact the HOEPA because "the type of disclosures required under TILA were insufficient to ensure adequate notification of the financial ramifications of high cost, nonpurchase money mortgages." Newton v. United Cos. Fin. Corp., 24 F. Supp. 2d 444, 450 (E.D. Pa. 1998). The provisions of the HOEPA apply to "mortgages," which are defined by the statute as:

A mortgage referred to in this subsection means a consumer credit transaction that is secured by the consumer's principal dwelling, other than a residential mortgage transaction, a reverse mortgage transaction, or a transaction under an open end credit plan, if—

(A) the annual percentage rate at consummation of the transaction will exceed by more than 10 percentage points the yield on Treasury securities having comparable periods of maturity on the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or

(B) the total points and fees payable by the consumer at or before closing will exceed the greater of—

(i) 8 percent of the total loan amount; or

(ii) \$400.

15 U.S.C. § 1602(aa).

Congress has authorized the Federal Reserve Board (the "FRB") to "prescribe regulations to carry out the purposes" of the TILA. 15 U.S.C. § 1604. As a result, the FRB has promulgated "Regulation Z," set forth in 12 C.F.R. § 226.1, *et seq.*, to implement the TILA. Rossman v. Fleet Bank (R.I.) Nat'l Ass'n, 280 F.3d 384, 389 (3d Cir. 2002). In Ortiz v. Rental Mgmt., Inc., 65 F.3d 335, 339 (3d Cir. 1995), the Third Circuit noted that "the Supreme Court has emphasized the broad powers that Congress delegated to the [FRB] to fill gaps in the statute." Accordingly, I must give great deference to Regulation Z. See id.

1. The TILA and HOEPA apply only to "creditors" and NCCDC (now NCFSC) is the only creditor defendant in this case.

The NationsCredit Defendants argue that none of the named defendants in this case, other than NCCDC, and its successor NCFSC, are "creditors" as defined by the TILA. Specifically, they assert that Plaintiff has inappropriately named Bank of America, NCCC, NCIC, and NCIA (the "Non-Creditor Defendants") as defendants to her

TILA and HOEPA claims. As a result, the NationsCredit Defendants argue that all of Plaintiff's claims under those statutes must be summarily adjudicated with respect to the Non-Creditor Defendants.

The TILA by its terms applies to "creditors" as defined by the statute. See Riethman v. Berry, 287 F.3d 274, 279 (3d Cir. 2002). See also Judge Newcomer's Order of February 9, 2004 at 1. Section 103 of the TILA defines the term "creditor." It provides in pertinent part that:

The term "creditor" refers only to a person who both (1) regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, and (2) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement. Any person who originates 2 or more mortgages referred to in subsection (aa) of this section in any 12-month period or any person who originates 1 or more such mortgages through a mortgage broker shall be considered to be a creditor for purposes of this subchapter.

15 U.S.C. § 1602(f). The final sentence of section 1602(f) was added by the HOEPA's enactment.

The parallel provision in Regulation Z provides:

Creditor means: (i) A person (A) who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than 4 installments (not

including a downpayment), and (B) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.

12 C.F.R. § 226.2(a)(17).² "[W]hether one is a TILA creditor is a bifurcated question, requiring a person both to be a 'creditor' in general, by extending credit in a certain minimum number of transactions, and to be the 'creditor' in the specific transaction in dispute." Pollice v. Nat'l Tax Funding, 225 F.3d 379, 411 (3d Cir. 2000) (quotation and citation omitted).

In this case, Plaintiff has not presented any specific facts demonstrating to the Court that whether the Non-Creditor Defendants are creditors under the TILA is an issue for trial.³ First, Plaintiff has failed to demonstrate that NCCC, NCIC, or NCIA regularly extended consumer credit. To the contrary, the only evidence in the record suggests the opposite conclusion. See Moss Aff. ¶ 7 ("In March 1998, none of the NationsCredit

²Regulation Z also addresses the meaning of "regularly extends" as used by the TILA:

A person regularly extends consumer credit only if it extended credit (other than credit subject to the requirements of § 226.32) more than 25 times (or more than 5 times for transactions secured by a dwelling) in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year. A person regularly extends consumer credit if, in any 12-month period, the person originates more than one credit extension that is subject to the requirements of § 226.32 or one or more such credit extensions through a mortgage broker.

12 C.F.R. § 226.2(a)(17) n.3.

³Plaintiff's argument that the Non-Creditor Defendants are subject to successor liability is inapplicable here. The TILA provides specific requirements for a person to be considered a "creditor," indicating Congress's intent to define the term narrowly. See 15 U.S.C. § 1602(f). Moreover, the Court has been unable to find any case law suggesting that Plaintiff could use the theory of successor liability as a liability conduit to a non-creditor defendant. Accordingly, NCCDC, and its successor corporation NCFSC, are the only proper defendants for Plaintiff's TILA claims.

Defendants, other than NCCDC, NCFSC, and Bank of America . . . regularly extended consumer credit. . ."). NCCC, NCIC, and NCIA therefore do not meet the first requirement of the TILA's definition of "creditor."

Second, Plaintiff has not provided any evidence demonstrating that any of the Non-Creditor Defendants are "the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness." See 15 U.S.C. § 1602(f)(2); 12 C.F.R. § 226.2(a)(17)(i)(B). Rather, the only defendant listed on the face of the Note, the "evidence of indebtedness" in this case, is NCCDC. See Note at 1. As a result, none of the Non-Creditor Defendants meet the second requirement to be a "creditor" under the TILA.

Likewise, Plaintiff has failed to demonstrate that the Non-Creditor Defendants are creditors under the HOEPA. A person qualifies as a creditor under the HOEPA when that person "originates 2 or more mortgages referred to in subsection (aa) of this section in any 12-month period or . . . originates 1 or more such mortgages through a mortgage broker." 15 U.S.C. § 1602(f).

Here, Plaintiff has not presented any evidence even suggesting that the Non-Creditor Defendants originated any mortgages themselves or through a mortgage broker. Accordingly, I find that the only proper defendant for Plaintiff's TILA and HOEPA

claims is NCCDC (now NCFSC). The NationsCredit Defendants' motion for summary judgment is therefore granted with respect to Plaintiff's TILA and HOEPA claims against the Non-Creditor Defendants.⁴

2. Plaintiff's TILA and HOEPA claims against NCCDC and NCFSC are not time-barred.

The NationsCredit Defendants argue that Plaintiff's TILA and HOEPA claims for civil penalties are time-barred by the applicable statutes of limitations. In his February 9, 2004 order, Judge Newcomer stated that "Plaintiff's claims are not time-barred. . . . [T]he Court will view Plaintiff's claims as equitably tolled, as she apparently did not discover that she might have had a cause of action until after the normal statutory period lapsed." Judge Newcomer's Order of February 9, 2004 at 1.

The law of the case doctrine provides that "when a court decides upon a rule of law, that rule should continue to govern the same issues in subsequent stages in the litigation." Devex Corp. v. Gen. Motors Corp., 857 F.2d 197, 199 (3d Cir. 1988) (citations omitted). See also Williams v. Runyon, 130 F.3d 568, 573 (3d Cir. 1997) (quoting Messenger v. Andersen, 225 U.S. 436, 444 (1912) ("the law of the case doctrine 'expresses the practice of courts generally to refuse to reopen what has been decided'")). Courts depart from the law of the case only in extraordinary circumstances, including the

⁴It is unnecessary to address the NationsCredit Defendants' argument that Plaintiff does not have standing to sue the Non-Creditor Defendants in light of the analysis above.

announcement of a supervening new law, the availability of new evidence, or upon a demonstration of manifest injustice. See In re City of Philadelphia Litig., 158 F.3d 711, 718 (3d Cir. 1998).

I will read Judge Newcomer's order expansively and hold that his finding of equitable tolling encompasses Plaintiff's remaining TILA and HOEPA claims. Thus, I find Plaintiff's TILA and HOEPA claims are not time-barred under the law of the case doctrine.

Even if I chose not to read Judge Newcomer's order expansively, there is ample evidence in the record supporting a finding that the applicable statutes of limitations are equitably tolled. The Third Circuit has held that equitable tolling will generally suspend the running of a statute of limitations in three situations: "(1) where the defendant has actively misled the plaintiff respecting the plaintiff's cause of action; (2) where the plaintiff in some extraordinary way has been prevented from asserting his or her rights; or (3) where the plaintiff has timely asserted his or her rights mistakenly in the wrong forum." Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1387 (3d Cir. 1994) (citations omitted). Equitable tolling requires a plaintiff to demonstrate "that he or she could not, by the exercise of reasonable diligence, have discovered essential information bearing on his or her claim." Id. at 1390 (citation omitted).

In this case, there is sufficient evidence in the record to support a reasonable fact-finder's determination that NCCDC actively misled Plaintiff as to her cause of action. First, Plaintiff testified that she did not believe she had purchased credit life insurance from NCCDC because the copies of the closing documents provided to her by NCCDC did not contain a copy of her signature. Porter Dep. at 276. Furthermore, Plaintiff received a document in the mail stating that she had not purchased credit life insurance from NCCDC (the "Blue Card").⁵ I find that a reasonable jury, after viewing these facts in the light most favorable to Plaintiff, could determine that NCCDC's actions misled Plaintiff as to whether she had a cause of action under the TILA and the HOEPA. These facts could also demonstrate to a fact-finder that Plaintiff exercised reasonable diligence in discovering information related to her claim. Accordingly, I find that there is ample evidence in the record to support a finding of equitable tolling. I will deny the NationsCredit Defendants' motion for summary judgment in regard to the statute of limitations argument.

3. There is a genuine issue of material fact as to whether NCCDC improperly excluded the credit life insurance premium from the finance charge.

The NationsCredit Defendants argue that their motion for summary judgment should be granted because the credit life insurance premium paid by Plaintiff did not

⁵The copy of the Blue Card before the Court does not identify the sender. However, after viewing all reasonable inferences in favor of Plaintiff, I will assume that the NationsCredit Defendants mailed the Blue Card to Plaintiff's home.

need to be included in the finance charge. Specifically, the NationsCredit Defendants contend that they have met the requirements of 15 U.S.C. § 1605 and 12 C.F.R. § 226.4(d), allowing them to exclude the premium from the finance charge.

Section 106(a) of the TILA defines the "finance charge" as the sum of all charges payable by the borrower and imposed by the creditor as an incident to the provision of credit. See 15 U.S.C. § 1605(a). TILA section 106(b) generally requires lenders to include credit life insurance premiums in the finance charge. 15 U.S.C. § 1605(b). However, a creditor may exclude credit life insurance premiums from the finance charge if it meets both of the following requirements:

(1) the coverage of the debtor by the insurance is not a factor in the approval by the creditor of the extension of credit, and this fact is clearly disclosed in writing to the person applying for or obtaining the extension of credit; and

(2) in order to obtain the insurance in connection with the extension of credit, the person to whom the credit is extended must give specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.

15 U.S.C. § 1605(b).

The parallel provision contained in Regulation Z provides in pertinent in part that:

Premiums for credit life, accident, health or loss-of-income insurance may be excluded from the finance charge if the following conditions are met:

(i) The insurance coverage is not required by the creditor, and this fact is disclosed in writing.

(ii) The premium for the initial term of insurance coverage is disclosed. If the term of insurance is less than the term of the transaction, the term of insurance also shall be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(iii) The consumer signs or initials an affirmative written request for the insurance after receiving the disclosures specified in this paragraph. Any consumer in the transaction may sign or initial the request.

12 C.F.R. § 226.4(d)(1).⁶

I find that the NationsCredit Defendants have clearly met the first two requirements of 12 C.F.R. § 226.4(d)(1) in this case. First, they have demonstrated that credit life insurance was not a condition of extending credit and that NCCDC disclosed that fact in writing. See 12 C.F.R. § 226.4(d)(1)(i). The NationsCredit Defendants have presented a large amount of documentary evidence, purportedly signed by Plaintiff at the loan closing, demonstrating that there is no genuine issue of material fact with respect to the first element of 12 C.F.R. § 226.4(d)(1). The NationsCredit Defendants' TILA Disclosure Statement provides that "[c]redit life insurance, credit disability insurance and

⁶In light of the Third Circuit's holding in Ortiz, 68 F.3d at 339, I will use Regulation Z's requirements for determining whether the NationsCredit Defendants properly excluded the credit life insurance premium from the finance charge.

credit unemployment insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost, which will be included in the Amount Financed." TILA Disclosure Statement at NC001058. The Credit Life Insurance Application provides that "[y]ou further understand . . . the [credit life] insurance is not required or needed in order to obtain the loan. . . ." Credit Life Insurance Application at NC000975. Finally, the text of the mortgage document states that "THE PURCHASE OF CREDIT LIFE OR CREDIT HEALTH INSURANCE IS NOT A PREREQUISITE TO OBTAINING A LOAN." Mortgage at NCC001028 (emphasis in original).

In addition to the documentary evidence described above, the NationsCredit Defendants have produced internal documentary evidence demonstrating that there is no triable issue of fact as to the first element of 12 C.F.R. § 226.4(d)(1). The NationsCredit Sales Manual instructs employees to inform borrowers that credit life insurance is "entirely optional." Sales Manual at NC002052. The NationsCredit Branch Operations Manual directs loan agents to have borrowers indicate whether they wish to purchase credit life insurance before signing the TILA Disclosure Statement or any other documents. Branch Operations Manual at NC00207. An internal NationsCredit memorandum addresses the procedures behind closing a loan (including the purchase of insurance) and provides that "UNDER NO CIRCUMSTANCES SHOULD THE TITLE COMPANY PRESSURE THE CUSTOMER(S) TO ACCEPT COVERAGE TO

FACILITATE THE CLOSING." NationsCredit Mem. Dated Sept. 2, 1997 at NC003189. The NationsCredit Payment Protection Sales Guide states that "we don't want the customer to believe that the loan is contingent upon the purchase of insurance." Payment Protection Sales Guide at NC001850. Finally, the NationsCredit Lending Manual instructs employees to "[c]learly inform the customer that credit insurance coverage is still completely voluntary." Lending Manual at NC001201. All of this documentary evidence demonstrates that NCCDC did not require Plaintiff to purchase credit life insurance.

The NationsCredit Defendants have also produced testimonial evidence demonstrating that they have met the first requirement of 12 C.F.R. § 226.4(d)(1). Robert LaSanta, the NCCDC branch manager responsible for closing Plaintiff's loan, testified that NCCDC did not require the purchase of credit life insurance as a condition to extending credit. LaSanta Dep. at 30-31. In light of this overwhelming evidence, I find that the NationsCredit Defendants have met their burden with respect to the first requirement of 12 C.F.R. § 226.4(d)(1).

Second, the NationsCredit Defendants have demonstrated that NCCDC adequately disclosed the premium for the initial term of insurance coverage in the TILA Disclosure Statement. See 12 C.F.R. § 226.4(d)(1)(ii). The TILA Disclosure Statement expressly states that Plaintiff paid \$3,281.98 as a single credit life insurance premium for a term of 180 months. TILA Disclosure Statement at NC001058. Plaintiff does not

contest this fact in her opposition, and I find that there is no genuine issue of material fact as to whether the NationsCredit Defendants met the second requirement of 12 C.F.R. § 226.4(d)(1).⁷

As described above, the NationsCredit Defendants have demonstrated that there is no triable issue of fact with respect to the first two requirements of 12 C.F.R.

§ 226.4(d)(1). However, there is a genuine issue of material fact as to the final requirement of 12 C.F.R. § 226.4(d)(1)—whether Plaintiff signed an affirmative written request for credit life insurance. The NationsCredit Defendants point to the documents allegedly signed by Plaintiff at the closing as evidence of her affirmative written request for credit life insurance. In particular, the NationsCredit Defendants note that the TILA Disclosure Statement and the Credit Life Insurance Application, both of which appear to be signed and dated by Plaintiff, constitute an affirmative written request. They also argue that Plaintiff's failure to employ the 10-day cancellation period provided in the Credit Life Insurance Certificate acts as an affirmative request for credit life insurance.

Despite the NationsCredit Defendants' impressive and admittedly effective argument, I find that several pieces of evidence in the record create a genuine issue of material fact for trial. First, the Blue Card, allegedly received by Plaintiff at her home, states that Plaintiff did not purchase credit life insurance from NCCDC and offers to

⁷In addition, Judge Newcomer's February 9, 2004 order expressly states that the NationsCredit Defendants' disclosures were "adequate as a matter of law." Judge Newcomer's Order of February 9, 2004 at 1.

provide additional information should she be interested in purchasing such insurance in the future. Moreover, Plaintiff testified at her deposition that she "did not sign for any credit life insurance." Porter Dep. at 127. While I note that it is unlikely that a jury reviewing all of the evidence in the record would find that Plaintiff did not sign an affirmative request for credit life insurance, it is not for the Court to make credibility assessments of the evidence at summary judgment. Country Floors, Inc. v. A P'ship Composed of Gepner & Ford, 930 F.2d 1056, 1061-62 (3d Cir. 1991). After viewing the evidence in the light most favorable to Plaintiff, I find that a reasonable fact-finder could find that she did not sign an affirmative request for credit life insurance. Accordingly, there is a genuine issue of material fact and the NationsCredit Defendants' motion is denied as to this argument.⁸

4. The NationsCredit Defendants are entitled to summary judgment on the Excess Term Claim.

The NationsCredit Defendants present a panoptic array of arguments against Plaintiff's Excess Term Claim, but I need only consider one of these arguments to grant their motion for summary judgment on this claim. The FRB's Official Staff Commentary

⁸I note that Plaintiff's summary judgment victory on this claim may be a hollow one as I will not award any costs or fees even if Plaintiff is successful on this claim at trial. Judge Newcomer stated in his order dated August 1, 2005 that he would not award any costs or fees in this case. Judge Newcomer's Order and Memorandum of August 1, 2005 at 1. I agree with Judge Newcomer and will hold the same.

to Regulation Z provides that "[t]he disclosures [required by the TILA] should reflect the credit terms to which the parties are legally bound at the time of giving the disclosures." FRB Official Staff Commentary, 12 C.F.R. Pt. 226, Supp. I, cmt. 5(c)(1).

In the instant case, the TILA Disclosure Statement produced by NCCDC expressly stated that the credit life insurance term was for 180 months. The Certificate of Insurance, the document governing the legal duties of Plaintiff and Protective here, provides that the credit life insurance term of Plaintiff's policy was to last 180 months. As a result, the TILA Disclosure Statement adequately reflected the credit terms to which Plaintiff and Protective were legally bound regardless of any term limits imposed by a contract between NCCDC and Protective. There is no genuine issue of material fact, and I will grant the NationsCredit Defendants' motion for summary judgment with respect to this claim.

B. The UTPCPL Claims

The UTPCPL protects Pennsylvania consumers from unfair or deceptive practices or acts. See Balderston v. Medtronic Sofamor Danek, Inc., 152 F. Supp. 2d 772 (E.D. Pa. 2001), aff'd 285 F.3d 238 (3d Cir. 2002). As described by Judge Newcomer's order dated August 1, 2005:

73 [PA. CONS. STAT.] § 201-2(4)(ii) involves conduct causing a "likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services." 73 [PA. CONS. STAT.] § 201-2(4)(ii). 73 [PA. CONS. STAT.] § 201-2(4)(iii) deals with conduct causing a

"likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another." 73 [PA. CONS. STAT.] § 201-2(4)(iii).

Judge Newcomer's Order of August 1, 2005 at 6. In other words, the UTPCPL requires a plaintiff to show that she was harmed by her justifiable reliance on a defendant's fraudulent or deceptive conduct.

In Yocca v. Pittsburgh Steelers Sports, Inc., 854 A.2d 425, 438-39 (Pa. 2004), the Pennsylvania Supreme Court held that "[t]o bring a private cause of action under the UTPCPL, a plaintiff must show that he justifiably relied on the defendant's wrongful conduct or representation and that he suffered harm as a result of that reliance." See also Huu Nam Tran v. Metro. Life Ins. Co., 408 F.3d 130, 139-41 (3d Cir. 2005) (concluding that UTPCPL plaintiffs must demonstrate justifiable reliance). The NationsCredit Defendants argue that Plaintiff's UTPCPL claim must be summarily adjudicated because she has failed to demonstrate reliance. Specifically, the NationsCredit Defendants contend that Plaintiff has not demonstrated that she purchased credit life insurance as a result of her reliance on NCCDC's statements or omissions.

Plaintiff has presented evidence demonstrating that she relied on NCCDC's statements and omissions in purchasing the credit life insurance, and I will deny the NationsCredit Defendants' motion for summary judgment on this argument. First, Plaintiff testified at her deposition that she told a NCCDC representative over the telephone that she did not wish to purchase credit life insurance. Porter Dep. at 70 ("Q:

What did you discuss about credit life insurance with NationsCredit? A: I told them I didn't need it, because I didn't need it"). Plaintiff also testified that she was told which closing documents to sign at the NCCDC office. A reasonable jury could conclude from these facts that Plaintiff relied on NCCDC's omission to tell her that she was agreeing to purchase credit life insurance.

Second, the Blue Card states that Plaintiff did not purchase credit life insurance from NCCDC and offers to provide additional information if she becomes interested in purchasing life insurance in the future. Plaintiff also testified that she did not call NCCDC to cancel her credit life insurance because she believed she did not purchase it. See Porter Dep. at 127. A reasonable jury, viewing this evidence in the light most favorable to Plaintiff, could conclude that Plaintiff relied on the Blue Card's statement that she did not purchase life insurance. I will therefore deny the NationsCredit Defendants' motion on this argument.⁹

IV. CONCLUSION

For the foregoing reasons, the NationsCredit Defendants' second motion for summary judgment is granted in part and denied in part. The motion is granted with respect to Plaintiff's TILA and HOEPA claims against the Non-Creditor Defendants and

⁹The NationsCredit Defendants' argument that Plaintiff's UTPCPL claims fail because her TILA and HOEPA claims fail is moot in light of my analysis supra. Likewise, the NationsCredit Defendants' argument that there is no legal duty in Pennsylvania for a lender to disclose the terms of an agreement for credit life insurance with its borrower is also moot. Whether there is a duty to disclose is irrelevant here because whether Plaintiff relied on the NationsCredit Defendants' statements or omissions is a genuine issue of material fact.

Plaintiff's Excess Term Claim. The motion is denied with respect to Plaintiff's TILA claim that NCCDC improperly omitted the credit life insurance premium from the finance charge and Plaintiff's UTPCPL claims. An appropriate Order follows.

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

ROSLYN PORTER,	:	CIVIL ACTION
	:	
Plaintiff,	:	NO. 03-03768
	:	
v.	:	
	:	
NATIONSCREDIT CONSUMER	:	
DISCOUNT COMPANY, et al.,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 31st day of March, 2006, upon consideration of the NationsCredit Defendants' second motion for summary judgment (Docket No. 98) and Plaintiff's response thereto, it is hereby **ORDERED** that the motion is **GRANTED** in part and **DENIED** in part.

With respect to Plaintiff's TILA and HOEPA claims against Bank of America, NationsCredit Consumer Corporation, NationsCredit Insurance Corporation, and NationsCredit Insurance Agency, Inc., the NationsCredit Defendants' motion is **GRANTED**.

With respect to Plaintiff's claim that the NationsCredit Defendants violated TILA by giving her a disclosure statement that showed an excess of credit life insurance coverage, the NationsCredit Defendants' motion is **GRANTED**.

With respect to Plaintiff's TILA claim that NationsCredit Consumer Discount Company improperly omitted the credit life insurance premium from the finance charge, the NationsCredit Defendants' motion is **DENIED**.

With respect Plaintiff's Pennsylvania Unfair Trade Practices and Consumer Protection Law claims, the NationsCredit Defendants' motion is **DENIED**.

BY THE COURT:

/s Lawrence F. Stengel
LAWRENCE F. STENGEL, J.