

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

WILSHIRE CREDIT CORPORATION : CIVIL ACTION
as servicing agent for First :
Bank of Beverly Hills and :
Girard Savings Bank, successors :
in interest to the Boston Trade :
Bank :
 :
 :
v. :
 :
 :
EDWIN C. ALLEN and :
PHYLLIS K. ALLEN : NO. 96-7257

MEMORANDUM AND ORDER

Fullam, Sr. J.

June , 1997

Plaintiff Wilshire Credit Corporation has filed a motion for partial summary judgment in this action, in which it seeks to collect amounts due on a bank loan. At the time the loan was made, the defendants were husband and wife; they have since been divorced. The bank required both parties to sign the loan documents, which involved a line of credit for the husband's business, collateralized by a mortgage on real estate jointly owned by the defendants.

The complaint asserts that the defendants owe a total of \$277,122.03, plus interest from October 15, 1996, plus costs and attorneys' fees. The motion for partial summary judgment now before the Court seeks a partial judgment against the wife-defendant alone, in the sum of \$153,585.14, plus interest, arising from an initial disbursement of approximately of \$100,000, which was made at the time of closing of the loan. Both defendants were

present at the closing, and both signed documents authorizing that disbursement; there is (at least) a disputed issue of fact as to whether the wife-defendant authorized additional disbursements which were made later; her written consent was necessary, under the provisions of the loan documents, to render her personally liable for disbursements.

The motion for partial summary judgment will be denied. Plaintiff is suing as agent for assignees of the original lending bank, but has not established of record its right to do so, or its status as the real party in interest. Plaintiff has also failed to establish the state of citizenship of the husband-defendant, hence, on the present record, subject-matter jurisdiction has not yet been established. Finally, plaintiff has not ruled out the existence of genuine disputes of material fact concerning compliance with the Equal Credit Opportunity Act, 15 U.S.C. § 1691 et seq.

Defendant's assertion that this action is barred by a statute of limitations lacks merit. Other arguments advanced by the defendant relate only to matters which are not within the scope of the pending motion for partial summary judgment (i.e., they relate to plaintiff's possible right to collect the subsequent loan-disbursements) and will not be considered. An Order follows.

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ORDER

AND NOW, this day of June, 1997, upon consideration of plaintiff's Motion for Partial Summary Judgment, and defendant's response, IT IS ORDERED:

1. Plaintiff's Motion for Partial Summary Judgment is DENIED.
2. Plaintiff is afforded a further period of 30 days in which to file of record evidence which establishes (a) that the named plaintiff is a real party in interest, and (b) that this Court has subject-matter jurisdiction based upon complete diversity of citizenship.

John P. Fullam, Sr. J.