

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

<b>GARY PRIFTI and IRENE PRIFTI, h/w,</b>	:	<b>CIVIL ACTION</b>
	:	
<b>Plaintiffs,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>PNC BANK, N.A.,</b>	:	
	:	
<b>Defendant.</b>	:	<b>NO. 01-1163</b>
<b>Reed, S.J.</b>		<b>October 9, 2001</b>

**MEMORANDUM**

This action, brought by plaintiffs Gary Prifti (“Mr. Prifti”) and Irene Prifti (“Mrs. Prifti”) (collectively referred to as “the Priftis”), arises out of an unsecured line of credit obtained from defendant PNC Bank, N.A. (“PNC” or “the Bank”). Plaintiffs bring suit under the Truth in Lending Act (“TILA”), 15 U.S.C. § 1601 et seq., and the accompanying Regulation Z, 12 C.F.R. § 226.1 et seq., as well as the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 et seq. Currently before this Court is the motion of PNC to dismiss (Document No. 3), pursuant to Federal Rules of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction, or in the alternative pursuant to 12(b)(6), for failure to state a claim upon which relief can be granted. Plaintiffs request oral argument (Document No. 9) pursuant to Local Rule 7.1. Upon consideration of the motion, response, supplemental response and reply, as well as the request for oral argument thereto, the motion will be granted without oral argument.<sup>1</sup>

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<sup>1</sup> Jurisdiction is premised under 28 U.S.C. § 1331 because this action arises under federal law. Supplemental jurisdiction over the remaining state claim is premised under 28 U.S.C. § 1367.

## I. Background<sup>2</sup>

In late 1998 or early 1999, Mr. Prifti received a mail solicitation from PNC to extend an unsecured line of credit to his business, GPI Industries, Inc. (“GPI”), a retail general merchandising corporation. Sometime thereafter, Mr. Prifti applied for a \$50,000 unsecured line of credit with PNC. The Bank informed Mr. Prifti that the line of credit to GPI would be approved if the following conditions were met:

- A. His home would be used as security for the loan;
- B. Mrs. Prifti would sign the mortgage;
- C. The second mortgage on their home, with a balance in excess of \$19,700 would be paid in full with the loan proceeds;
- D. Several of his personal credit cards, totaling in excess of \$20,000, would be paid with the loan proceeds;
- E. A Certificate of Deposit held by the Priftis from PNC, in the amount of \$10,000, would be deposited with PNC to guarantee the loan for the first six months;
- F. Mr. Prifti would personally guarantee the loan;
- G. The remaining balance of the loan, which totaled under \$10,000 would be paid to creditors of GPI as chosen by PNC.

(See Compl. ¶ 9.) While the parties appear to dispute the amount of money from the loan which was used to satisfy personal debt, plaintiffs clearly concede that the loan was extended to GPI and not to the Priftis personally. (See Compl. ¶ 9; Prifti Aff. ¶¶ 4-5.)

On or about February 19, 2000, settlement for the line of credit took place. In September, 2000, PNC took the Certificate of Deposit held by the Priftis and applied it to the line of credit without their permission.

Plaintiffs bring claims for damages and rescission under the TILA, as well as a claim under the Pennsylvania Unfair Trade Practices and Consumer Protection Law.

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<sup>2</sup> The following facts are gleaned from the complaint and taken as true in the light most favorable to plaintiffs, as the non-moving party.

## II. Standard

PNC fashions the motion as one brought under Federal Rule of Civil Procedure 12(b)(1), or in the alternative, one brought under Rule 12(b)(6). The standards which govern these motions are different.

A 12(b)(1) motion is only proper where the claim “clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or ... is wholly insubstantial and frivolous.” Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d Cir. 1991) (quoting Bell v. Hood, 327 U.S. 678, 682, 66 S.Ct. 773, 776, 90 L.Ed. 939 (1946)). A court is not allowed to prejudge the facts alleged in a complaint because the claims must be “insubstantial on their face.” Kulick v. Pocono Downs Racing Ass’n, Inc., 816 F.2d 895, 898 (3d Cir. 1987) (quoting Hagans v. Lavine, 415 U.S. 528, 542 n. 10, 94 S.Ct. 1372, 1382 n. 10, 39 L.Ed.2d 577 (1974) (citation omitted)). Rule 12(b)(1) allows litigants to bring a factual or facial challenge to a court’s subject matter jurisdiction. See Gould Elec. Inc. v. U.S., 220 F.3d 169, 176 (3d Cir. 2000) (citing Mortensen v. First Fed. Sav. and Loan Ass’n., 549 F.2d 884, 891 (3d Cir. 1977)). In a facial attack, a court may consider only allegations made in the complaint. See id. In a factual attack, a court may look beyond the pleadings. See id. PNC brings a factual attack.

A 12 (b)(6) motion is brought when the plaintiff fails “to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). A court must take all well pleaded facts in the complaint as true and view them in the light most favorable to the plaintiff. See Jenkins v. McKeithen, 395 U.S. 411, 89 S. Ct. 1843, 23 L. Ed. 2d 404 (1969). A 12(b)(6) motion should be granted if “it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” Hishon v. King & Spalding, 467 U.S. 69, 73, 104 S. Ct. 2229,

2232, 81 L. Ed. 2d 59 (1984). The proper inquiry is not whether a plaintiff will ultimately prevail, but rather whether a plaintiff is permitted to offer evidence to support its claims. See Children’s Seashore House v. Waldman, 197 F.3d 654, 658 (3d Cir. 1999), cert. denied, 120 S. Ct. 2742 (2000).

The Court of Appeals for the Third Circuit has warned that a plaintiff may be prejudiced if what is in essence a challenge under 12(b)(6) is treated as a challenge under 12(b)(1). See Kehr, 926 F.2d at 1409; Young v. Francis, 820 F. Supp. 940, 944 (E.D. Pa. 1993). While under Rule 12(b)(1), the plaintiff bears the burden of demonstrating subject matter jurisdiction, the defendant, under Rule 12(b)(6), carries the burden of showing that no claim has been stated. See Kehr, 926 F.2d at 1409. The Court of Appeals has also warned against treating what is in essence a 12(b)(1) motion as a 12(b)(6) motion because the standard for surviving a 12(b)(1) motion is not as high as that of a 12(b)(6) motion. See Gould, 220 F.3d at 178.

I conclude, for reasons which will become clear, that the federal claims asserted in the complaint before this Court are not “insubstantial on their face” and will treat the motion to dismiss the TILA claims as a 12(b)(6) motion.

### **III. Analysis**

The stated purpose of the TILA is “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, and to protect the *consumer* against inaccurate and unfair credit billing and credit card practices.” 15 U.S.C. § 1601 (emphasis added).

The TILA’s scope is limited to “consumer” credit transactions which are defined as transactions “in which the party to whom credit is offered or extended is a *natural person*, and

the money, property or services which are the subject of the transaction are primarily for personal, family, or household purposes.” 15 U.S.C. § 1602(h) (emphasis added); 12 C.F.R. § 226.2(11). See also American Express Co. v. Koerner, 452 U.S. 233, 241, 101 S.Ct. 2281, 2286, 68 L.Ed.2d 803 (1981) (determining that two elements must be present in each ‘consumer credit’ transaction: “the party to whom the credit is extended must be a natural person, and the money, property or services received by that person must be ‘primarily for personal, family, or household purposes.’”) (emphasis omitted). “Credit transactions involving extensions of credit primarily for business ... purposes, or to ... organizations” are exempted under the Act. 15 U.S.C. § 1603(1) (emphasis added); 12 C.F.R. § 226.3(a). Corporations are included in the definition of “organization.” 15 U.S.C. § 1602(c). Thus, the first inquiry under the TILA focuses on *to whom the credit was extended* rather than the purpose of the transaction. The plaintiff bears the burden of showing that the transaction was made in connection with a consumer credit transaction and not a business credit transaction. See Katz v. Carte Blanche Corp., 496 F.2d 747, 751 (3d Cir. 1974); Gombosi v. Carteret Mortgage Corp., 894 F. Supp. 176, 177 (E.D. Pa. 1995); Martin v. Farmers First Bank, No. Civ. A. 92-6169, 1993 WL 264962, at \*2 (E.D. Pa. July 7, 1993).

PNC argues, *inter alia*, that because the unsecured credit line extended to GPI and not plaintiffs, the TILA does not apply to the transaction. Plaintiffs essentially argue that because the Plaintiffs used approximately 80% of the credit proceeds to pay personal consumer debt, the TILA does apply to the transaction. For the following reasons, this Court agrees with defendant. While this Court concludes that the complaint fails to state a federal claim, the reasons for this ruling do not warrant a conclusion that the alleged claims are “wholly insubstantial and frivolous.” Thus, as stated previously, a 12(b)(6) analysis is warranted.

It appears to this Court that the language of the statute is straightforward: under section 1602(h), the credit transaction must extend to a “natural person” and under section 1603(1), as defined in pertinent part in section 1602(c), credit transactions extended to corporations are exempted. Where a statute is clear and unambiguous, “the sole function of the court is to enforce the statute according to its terms.” Hotel Employees and Restaurant Employees Int’l Union Local 54 v. Elsinore Shore Assoc., 173 F.3d 175, 187 (3d Cir. 1999).

This reading of the statute finds further support in the following excerpt from a Federal Reserve Board Letter:

[W]e may have given the impression that if a credit transaction, in which a corporation is the customer is not for business purposes, it may be subject to the provisions of the Truth in Lending Act.

Section 226.3 ... of Regulation Z specifically exempts from coverage extensions of credit to organizations. Section 226.2(s) ... defines “organization” to include a corporation. Furthermore, the definition of consumer credit stated in 226.2(k) ... describes it as credit offered or extended to a “natural” person. *Consequently, credit to corporations is excluded from the coverage of Regulation Z, regardless of the purpose of that credit.* Moreover, the fact that an individual might guarantee the loan or use his residence as security for the loan would in no way change the status of the transaction with respect to Regulation Z. While § 226.2(o) ... includes guarantors in the category of customers, they are considered as such only when the credit is offered or extended to a “natural person.”

Federal Reserve Board Letter of Feb. 2, 1972, No. 572 , by Griffith L. Garwood, Chief, Truth in Lending Section (reprinted in Consumer Credit Guide, Truth in Lending Special Releases-Correspondence, Apr. 1969 to Apr., 1974, ¶ 30,801 at 184 (CCH 1972)) (emphasis added).

Federal Reserve Board letters interpreting Regulation Z have been deemed “dispositive” unless “demonstrably irrational.” Ford Motor Credit Co. v. Milhollin, 444 U.S. 555, 565, 100 S.Ct. 790, 797, 63 L.Ed.2d 22 (1980) (providing several reasons in support of such deference). See also Thorns v. Sundance Prop., 726 F.2d 1417, 1419 (9<sup>th</sup> Cir. 1984) (relying on Milhollin

standard of deference); Bury v. Marietta Dodge, 692 F.2d 1335, 1338 (11<sup>th</sup> Cir. 1982) (same); Pridegon v. Gates Credit Union, 683 F.2d 182, 193 (7<sup>th</sup> Cir. 1982) (same).

Federal courts have similarly determined that credit transactions extended to a corporation are not covered under the TILA. See K/O Ranch, Inc. by Olson v. Norwest Bank of Black Hills, 748 F.2d 1246, 1248 (8<sup>th</sup> Cir. 1984); American Airlines, Inc. v. Remis Indus., Inc., 494 F.2d 196, 199 (2d Cir. 1974) (emphasizing that the TILA intended to protect consumers where as “[c]orporate debtors ... were thought to be amply sophisticated – that is, sufficiently able to satisfy the Act’s goal of utilizing credit in an ‘informed’ manner”); Selman v. Manor Mortgage Co., 551 F. Supp. 345, 347-48 (E.D. Mich. 1982) (relying in part on Federal Reserve Board Letter).

In the present action, plaintiffs clearly concede that the unsecured credit line extended to GPI and not directly to the Priftis. Viewing the facts in the light most favorable to the Priftis, it is evident that plaintiffs can prove no set of facts consistent with the allegations in the complaint which would demonstrate liability under the TILA. Since the credit was extended to a corporation, this Court will not address the merits of the purpose of the transaction.<sup>3</sup> I therefore conclude that PNC is entitled to judgment as a matter of law for the claims brought against them under the TILA.

Plaintiffs’ remaining claim is brought under the Pennsylvania Unfair Trade Practices and Consumer Protection Law. As the parties are all citizens of Pennsylvania, (Compl. ¶¶ 5-7), and therefore not diverse, this Court has no subject matter jurisdiction over this state law claim.

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<sup>3</sup> Plaintiffs argue that a unanimous United States Supreme Court in Koerner, 452 U.S. 233, 101 S.Ct. 2281, analyzed the purpose of for which the credit was extended. Plaintiffs are absolutely correct. This assessment, however, does not support plaintiffs’ position because the credit account at issue in Koerner was extended to a natural person: Louis R. Koerner. See id. at 237, 241-42; 101 S.Ct at 2284, 2286. Mr. Koerner was employed by Koerner & Co. and received an American Express credit card as part of a company account. See id. at 237; 101 S.Ct at 2284. Thus, the Court in Koerner was not faced with a credit extension to a corporation.

Plaintiffs assert supplemental jurisdiction under 28 U.S.C. § 1367 which provides that “in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy....” Because I have concluded that the federal claims will be dismissed, supplemental jurisdiction will not be invoked in this action. I therefore conclude that the state claim will be dismissed for lack of subject matter jurisdiction.

#### **IV. Conclusion**

The motion to dismiss claims brought under the TILA will be granted for failure to state a claim upon which relief can be granted. The motion to dismiss the state law claim will not be reached on its merits as this Court lacks subject matter jurisdiction over the claim. This Court appreciates and values the due process rights of the plaintiffs; however, because the motion presents such clear questions of law, this Court concludes that oral argument would not benefit plaintiffs or further the interests of justice and therefore will deny the request by plaintiffs for oral argument.

An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT  
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<b>GARY PRIFTI and IRENE PRIFTI, h/w,</b>	:	<b>CIVIL ACTION</b>
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<b>Plaintiffs,</b>	:	
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<b>v.</b>	:	
	:	
<b>PNC BANK, N.A.,</b>	:	
	:	
<b>Defendant.</b>	:	<b>NO. 01-1163</b>

**ORDER**

**AND NOW**, this 9th day of October, 2001, upon consideration of the motion of the motion of PNC Bank, N.A. to dismiss, (Document No. 3), pursuant to Federal Rules of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction, or in the alternative pursuant to 12(b)(6), for failure to state a claim upon which relief can be granted, the response, the supplemental response and the reply, as well as the request of plaintiffs Gary Prifti and Irene Prifti for oral argument (Document No. 9), pursuant to Local Rule 7.1., and having concluded for the reasons in the foregoing memorandum that the plaintiffs failed to set forth any federal claim upon which it can be granted relief for and that this Court therefore lacks jurisdiction over the state claim, it is hereby **ORDERED** that the motion to dismiss is **GRANTED** and the claims are **DISMISSED**.

**IT IS FURTHER ORDERED** that the request of plaintiffs (Document No. 9) for oral argument is **DENIED**.

**JUDGEMENT** is hereby **ENTERED** in favor of defendant and against plaintiffs.

This is a final order.

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LOWELL A. REED, JR., S.J.