

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

DENISE ROBERTS, individually and : CIVIL ACTION  
for all others similarly situated :  
:   
v. :   
:   
FLEET BANK (R.I.), NATIONAL :   
ASSOCIATION, a nationally :   
chartered bank, and FLEET CREDIT :   
CARD SERVICES, L.P., a Rhode :   
Island limited partnership : NO. 00-6142

MEMORANDUM AND ORDER

Fullam, Sr. J.

January , 2004

Plaintiff was solicited to obtain a credit card issued by the defendant. The solicitation materials asserted that the interest rate (APR) was not just an introductory rate, and would not go up in a few months. The credit card agreement itself, however, made clear that, upon specified notice, the defendant could change the interest rate at any time. The interest rate did remain constant during the first year, but eventually was raised, triggering this lawsuit (brought on behalf of a putative class of similarly-situated persons). The class action complaint asserted claims under the Truth in Lending Act, a Rhode Island consumer protection statute, and a common law claim for breach of contract. I granted summary judgment to the defendant on all of these claims. On appeal, the Third Circuit affirmed the dismissal of all of the claims except those brought under the

Truth in Lending Act. The court ruled that a disputed issue of fact existed as to whether the disclosures required by that statute had been made in a sufficiently "clear and conspicuous" manner (i.e., in the so-called "Shumer box"), and thus reinstated the TILA claim.

After remand, plaintiff now seeks to file an amended complaint, adding a claim for common law fraud, and a claim for negligent misrepresentation. Defendant objects, on the grounds that the amendments would be futile, since the only claim found potentially viable by the Court of Appeals was the TILA claim. I agree. The entire thrust of the appellate court's opinion is that while defendant did disclose that the interest rate could be changed at any time, it did not do so adequately in the Shumer box, or otherwise conspicuously, as required by the TILA and implementing regulations under that statute. Thus, as to all issues other than conformity to the requirements of the TILA, plaintiff cannot prevail.

An Order follows.

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ORDER

AND NOW, this day of January 2004, upon  
consideration of plaintiff's Motion for Leave to File an Amended  
Class Action Complaint, and defendant's response, IT IS ORDERED:

1. To the extent that plaintiff seeks to amend her  
complaint to include Counts II (common law fraud) and III  
(negligent misrepresentation) the motion is DENIED.

2. In all other respects, the motion is GRANTED, and  
the amended complaint (other than its addition of Counts II and  
III) is deemed filed. Defendant need not file a response.

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John P. Fullam, Sr. J.