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

THERESA MCMASTER	:	CIVIL ACTION
	:	
v.	:	
	:	
CIT GROUP/CONSUMER FINANCE, INC., et al	:	NO. 04-339

O'NEILL, J May 11, 2006

MEMORANDUM

Plaintiff Theresa McMaster filed a complaint on January 26, 2004, alleging that defendants CIT Group, Fairbanks Capital Corporation,[1] US Bank National Association, Steven Rosen individually and d/b/a Security Mortgage Brokers, and Kevin Murphy violated federal and state laws in connection with their actions relating to a mortgage on McMaster's residence. Before me now are McMaster's motion for summary judgment against all defendants, CIT Group's response and cross-motion for summary judgment, Steven Rosen and Security Mortgage Broker's response and cross-motion for summary judgment,[2] Fairbanks Capital Corp and US Bank's motion for summary judgment, and McMaster's response to Fairbank and US Bank's motion. I have already denied Kevin Murphy's motion for summary judgment.

[1]Fairbanks is now known as Select Portfolio Servicing, Inc.

[2]Steven Rosen and Security Mortgage Broker's response and cross-motion for summary judgment is nearly a word-for-word copy of CIT Group's response, with all of the same arguments. The only substantive change concerns violations of the Credit Services Act.

FACTS

The factual background of this case can be found in my decision of February 8, 2006, McMaster v. CIT Group/Consumer Finance, Inc., No. 04-339, 2006 U.S. Dist. LEXIS 4760 (E.D. Pa. February 8, 2006). Nevertheless, I will discuss the relevant facts here.

On December 27, 1998, Walter McMaster, plaintiff's husband, died. At that time, he owned a rowhouse located at 415 Snyder Avenue, Philadelphia, Pennsylvania. Following her husband's death, plaintiff moved into the Snyder Avenue home and took steps to become appointed the administrator of her husband's estate. At the time of Walter McMaster's death, plaintiff and her husband had been separated for ten years. However, plaintiff failed to take any action to transfer the deed for the property from Walter McMaster's name to her own.

In February 2001, McMaster's home incurred a severe water leak from a bathroom. At that time, she applied through defendant Security[3] for a loan in order to obtain financing for the repairs. McMaster signed an undated broker agreement with Security agreeing to pay them 3% of the amount financed to place the loan (hereinafter "first broker agreement"). Prior to this loan, Theresa McMaster had never purchased a home or entered into a loan transaction. According to Security, the process of obtaining financing for McMaster became difficult due to the fact that she was not on the deed to the property, and Security ended up charging McMaster a higher loan procurement fee than originally agreed upon. The increased fee was listed only on the HUD-1 settlement statement. McMaster signed an additional document at closing (hereinafter "second broker agreement"), which indicated that the amount of the broker fee would be listed on the

[3]Steven Rosen does business as Security Mortgage Brokers. I will not conduct a separate analysis of his liability and Security's liability, since they are the same.

settlement statement. Neither one-page document contained a notice that McMaster had a right to cancel or included the name and address of the agent authorized to receive service of process. The second broker agreement also did not include Security's business address. Subsequent to approval, CIT was put on notice that the deed to the property was not in McMaster's name nor had any state inheritance tax return been filed as would be required to effect a transfer.

In April 2001, CIT preapproved McMaster for a $32,200 loan payable at a 14.7% rate of interest over thirty years. Although she originally desired only a home equity loan to pay for the repairs, she entered into a refinancing loan. The loan refinanced the $13,000 balance of the 6.3% original mortgage leaving a cash balance of $15,400.[4] According to McMaster's deposition. Security required her to endorse a check in that amount over to Ed Rosen, the contractor hired to perform the repairs. McMaster claims that the work done by Rosen was subpar and had a fair market value of only half the price paid.

The loan closed on April 23, 2001, at which time Kevin J. Murphy, Esq. conducted the closing. The total settlement charges on the Settlement Statement for the CIT Loan included:

Underwriting Fee	$	495.00
Loan Discount (0.50%)		155.99
Appraisal Fee		250.00
Appraisal Review Fee		42.00
Credit Bureau Fee		4.00
Mortgage Broker Fee		1380.00
Courier Fee		30.00
Closing Fee to Murphy		275.00
Title Examination Fee		91.00
Title Insurance		411.75
Recording Fee		135.50
Total	**$**	**3270.24**

[4]The remaining portion of the loan covered various fees.

CIT calculated the finance charges by adding together the (1) underwriting fee, (2) loan discount, (3) appraisal review fee, (4) credit bureau fee, (5) mortgage broker fee, (6) courier fee, and (7) closing fee to Murphy. These charges added up to $2381.99, 7.9% of the total loan amount.

Prior to closing, Murphy prepared for McMaster, as administratix of her late husband's estate, a Pennsylvania inheritance tax return and documents necessary to transfer the deed to plaintiff's name to enable her to mortgage the subject property. At closing, plaintiff signed documents agreeing to pay Murphy, as a partner of the entity Baltz, Murphy and Mazullo, the sum of $1000. The fee was deducted from the loan proceeds. McMaster asserts that McMurphy did not provide her with a copy of the fee agreement prior to closing. She also asserts that although she generally understood Murphy's role at closing to be making the transaction legal, she had no specific understanding of him as her attorney or what specifically he would do in connection with the loan transaction. Murphy also acted as the title agent and attorney for CIT for the loan transaction.

Murphy's title agency, Pinnacle Abstract, LLP, was wholly owned by Murphy's law firm at the time. Pinnacle received 85% of the title premium charge as a commission. Murphy testified at his deposition that the service of title examination was one of several services paid for by the title premium charge. Pinnacle charged McMaster a separate $91.00 title examination charge on the settlement statement. McMaster argues that the $91.00 fee was neither bona fide or reasonable. Murphy did not disclose at settlement that he also received a $275.00 payment for representing CIT.

At closing, McMaster was provided with a Federal Disclosure Statement providing the accurate annual percentage rate, finance charge, amount financed and payment information. She

also received a Notice of Right to Cancel. McMaster acknowledged that she understood that by signing the Notice she had three days to cancel the loan. She also executed a HUD-1 Settlement statement. The $1000 legal fee payable to Baltz, Murphy & Mazullo is disclosed on page 3 of the Settlement statement. Plaintiff admits that she read the HUD-1 at closing. US Bank eventually purchased Plaintiff's mortgage from CIT. Fairbanks, at one point, serviced the loan.

A foreclosure action against McMaster was filed in March 2003 in the Philadelphia Court of Common Pleas. A default judgment was entered, after which McMaster instituted the present action. Foreclosure is stayed during the pendency of this action.

McMaster asserts a variety of claims against CIT Group, Fairbanks Capital, US Bank, and Security. She asserts Truth in Lending Act ("TILA") and Home Ownership and Equity Protection Act ("HOEPA") claims against CIT, Fairbanks, and US Bank for damages and recission. She also asserts Unfair Trade Practices and Consumer Protection Law ("UTPCPL") claims against all defendants and seems to assert a Real Estate Settlement Procedures Act ("RESPA") claim against CIT.

On February 8, 2006, I denied Murphy's motion for summary judgment. In that opinion, I held that genuine issues of material facts still existed in this case, including (1) whether the fees paid to Pinnacle were essentially going to Murphy and/or CIT; (2) whether the fee charged for title examination was bona fide and reasonable; and (3) whether Murphy, Pinnacle and Murphy were acting in concert, confusing McMaster as to each of their roles in the loan process. In this memo, I now address McMaster's claims against the remaining defendants.

STANDARD OF REVIEW

Rule 56(c) of the Federal Rules of Civil Procedure provides, in relevant part, that summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c) (2005). Rule 56(e) provides that when a properly supported motion for summary judgment is made, "an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial."

Summary judgment will be granted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The party moving for summary judgment has the burden of demonstrating that there are no genuine issues of material fact. Id. at 322-323. If the moving party sustains the burden, the nonmoving party must set forth facts demonstrating the existence of a genuine issue for trial. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). An issue of material fact is genuine if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id. at 255. In addition, the "existence of disputed issues of material fact should be ascertained by resolving 'all inferences, doubts and issues of credibility against'" the moving party. Ely v. Hall's Motor Transit Co., 590 F.2d 62, 66 (3d Cir. 1978), quoting Smith v. Pittsburgh Gage & Supply Co., 464 F.2d 870, 878 (3d Cir. 1972).

DISCUSSION[5]

I. Fairbanks Capital

Fairbanks Capital argues that McMaster's claims against Fairbanks cannot stand because Fairbanks Capital acted only as assignee and servicer of the CIT loan. See, e.g., Canty v. Equicredit Corp. of America, 2003 U.S. Dist. LEXIS 8819, *10 (E.D. Pa. 2003) (no derivative liability under UTPCPL); see also 15 U.S.C. § 1614(f) (2006) (expressly excluding servicers from the Truth in Lending Act); Brodo v. Bankers Trust Co., 847 F. Supp. 353, 359 (E.D. Pa. 1994) (no liability for assignee who was neither responsible for nor had notice of TILA disclosure violations at time of assignment). McMaster stipulates to dismissing Fairbanks Capital from the complaint.

II. Count I: TILA and HOEPA

A. Statute of Limitations: Damages

Defendants argue that McMaster's TILA and HOEPA claims for damages are barred by a one year statute of limitations.[6] To maintain an action for either actual or statutory damages under TILA or HOEPA, the action must be brought "within one year of the occurrence of the violation." 15 U.S.C. § 1640(e) (2006); Harris v. EMC Mortgage Corp., 2002 U.S. Dist. LEXIS 12251 (E.D. Pa. April 10, 2002) ("HOEPA is an amendment to TILA, and therefore is governed by the same remedial scheme and the same statute of limitations."). A violation occurs when a "consumer becomes contractually obligated on a credit transaction." 12 C.F.R. §226.2(13)

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[5]Due to the fact that there are multiple defendants, each with their own contentions, some repetition is unavoidable.

[6]Defendants concede that McMaster's action for rescission under TILA is not barred by the statute of limitations.

(1999); see also Oldroyd v. Assoc. Consumer Discount Co/PA, 863 F. Supp. 237, 240 (E.D. Pa. 1994). McMaster entered into the loan agreement on April 23, 2001. She filed her original complaint on January 26, 2004, over two years later.[7] Therefore, her requests for damages under TILA and HOEPA are barred by the statute of limitations.

B. Substantive Issues

McMaster asserts that defendants CIT and US Bank committed multiple TILA and HOEPA violations against her. She argues that (1) CIT improperly excluded the $1000 for inheritance tax preparation conducted by Murphy in finance charge calculations; (2) CIT improperly excluded the $91.00 title examination charge in finance charge calculations; and (3) CIT failed to deliver all material disclosures required by TILA, including failing to provide the notice of a high interest loan. McMaster also submits that US Bank is subject to assignee liability for CIT's acts.

1. TILA

A. CIT

Pursuant to the TILA, a lender must disclose, as finance charges, all those charges "payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit. 15 U.S.C. § 1605(a) (2006).

[7]In a letter to the court, McMaster argues that the one year period to bring a TILA claim starts when the lender fails to act after receiving notice to rescind. The two cases that she cites, however, list the violation as the creditor's refusal to rescind the transaction, not violations at closing. See Velasquez v. HomeAmerican Credit, Inc., 254 F. Supp.2d 1043, 1048 (N.D. Ill. 2003); Canty v. Equicredit Corp. of America, 2003 U.S. Dist. LEXIS 8819, *6 (E.D. Pa. 2003). In this case, McMaster alleges that defendants violated TILA by failing to include information when the original loans were signed. Therefore, the statute of limitations regarding TILA damages began running at closing.

Fees for title examination are excluded from the finance charge calculation if they are both bona fide and reasonable in amount. Id. § 1605(e)(1); 12 C.F.R. § 226.4(c)(7) (2006).

McMaster claims that the title examination fee of $91.00 should have been included in the finance charge calculation because it was unnecessary and unreasonable. According to McMaster, she had already been charged by Murphy for that service. McMaster notes that Murphy described the services charged under the $411.75 Pinnacle fee as "order the title, review it, *examine it*, clear it, then issue a final policy, of course take care of the liens at closing." (Murphy dep. at 49-50) (emphasis added). Murphy later described the basis for the $91.00 title examination fee as "For just what it says, to examine the title." (Murphy dep. at 51). Murphy claims that separating these fees is permissible under Pennsylvania state law, but has not cited specific statutes allowing his conduct. He has also not sufficiently explained why he needed to charge for examining title twice. There remains a genuine issue of material fact as to whether the fees charged by Pinnacle and Murphy were bona fide and reasonable. Therefore, there remains a genuine issue of material fact whether the title examination fee should have been included in the finance charge calculations.

B. US Bank

US Bank argues that it is not subject to assignee liability under the TILA because it was not on notice of any alleged TILA violations. This is true only in regard to damages. As the TILA provides, "Any consumer who has the right to rescind a transaction under section 125 [15 U.S.C. § 1635] may rescind the transaction against any assignee of the obligation." 15 U.S.C. § 1641. Therefore, US Bank's assignee status will not preclude McMaster's rescission remedy.

Regarding damages, the TILA "imposes assignee liability only if a violation is 'apparent

on the face of the disclosure statement.'" Ramadan v. The Chase Manahttan Corp., 229 F.3d 194, 197 (3d Cir. 2000). The TILA specifically addresses assignee liability:

> [A]ny civil action for a violation of this title . . . which may be brought against a creditor may be maintained against any assignee of such creditor only if the violation for which such action or proceeding is brought is apparent on the face of the disclosure statement. . . . For the purpose of this section, a violation apparent on the face of the disclosure statement includes, but is not limited to (1) a disclosure which can be determined to be incomplete or inaccurate form the face of the disclosure statement or other documents assigned, or (2) a disclosure which does not use the terms required by this title.

15 U.S.C. § 1641(a) (2006). Assignee financial institutions have no duty of inquiry in these cases and are only liable for "violations that a reasonable person can spot on the face of the disclosure statement or other assigned documents." Ramadan, 229 F.3d at 198 quoting Taylor v. Quality Hundai, Inc., 150 F.3d 689, 694 (7th Cir. 1998). McMaster responds by alleging that US Bank could have been on notice of the TILA violations because the disbursement of $1000 to Murphy was not in accord with any disclosure to plaintiff in the loan file of an attorney-client relationship between McMaster, Murphy or his firm. This allegation is not strong enough to impose TILA assignee liability on US Bank. There are no apparent errors on the face of the loan documents. All the loan documents were complete and signed by McMaster. Even if Murphy's fees were unreasonable, lawyers fees listed as costs of a loan are not per se unreasonable, and US Bank has no obligation to interview Murphy and McMaster to uncover whether Murphy's fees were bona fide. Separate charges for title examination and title insurance are also not per se unreasonable. Therefore, US Bank is not subject to damages for assignee liability under the TILA.

2. HOEPA

A. CIT

McMaster asserts that the defendants failed to provide notice of a high interest loan as required by HOEPA. HOEPA is an extension of TILA, imposing additional disclosure requirements for certain "high cost" mortgage loans. See 15 U.S.C. §§ 1639, 1602 (2006). A high cost mortgage is one which "the total points and fees payable by the consumer at or before the closing will exceed" "eight percent of the total loan amount." Id. § 1602(aa)(1). TILA specifies which costs are to be included in the HOEPA calculations as "all charges, payable directly or indirectly by the person to whom credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit." Id. § 1605(a). Certain charges are specifically excluded from the fee calculation, including "fees for preparation of loan related documents" and "fees or premiums for title examination, title insurance, or similar purposes." Id. § 1605(e). Section 226.4(e) of Regulation Z additionally requires that the charges be "bona fide, reasonable in amount, and not for purposes of circumvention or evasion of this part." 12 C.F.R. § 226.4(e) (2006).

McMaster's complaint alleges that the loan was a high rate mortgage within the meaning of 15 U.S.C. 1602(aa)(1)(a) because the total points and fees exceeded eight percent of the total loan amount. In my February 8, 2006 opinion in this case, I specifically found that there remains a genuine issue of material fact as to whether the fees charged by Pinnacle and Murphy were reasonable. These fees included the $91.00 title examination fee. If the title examination fee is unreasonable, as McMaster alleges, it will be included in the finance charge. The total points and fees payable by the consumer at or before the closing will then exceed eight percent of the total

loan amount, thus making it a high interest loan under HOEPA.

B. US Bank

Under TILA, HOEPA loan assignees are subject to a broader standard of liability than non-HOEPA loan assignees. See Kane v. Equity One, Inc., 2003 U.S. Dist. LEXIS 23810 (E.D. Pa. 2003). US Bank also asserts that it can only be liable for the greater of (1) the applicable TILA damages or (2) rescission and recovery of all the payments made. HOEPA assignees are fully liable for HOEPA violations unless the "assignee demonstrates, by a preponderance of the evidence, that a reasonable person exercising ordinary due diligence, could not determine, *based on the documentation required by this subchapter*, the itemization of the amount financed, and other disclosure of disbursements that the mortgage" was a high interest mortgage under HOEPA. 15 U.S.C. § 1641(d) (emphasis added) (2006). As discussed above, McMaster's claims that this is a high interest loan under HOEPA is premised on her allegation that the $91.00 title examination fee was unreasonable and should be included from the finance charge. As with the TILA violation, this allegation is not sufficient to impose HOEPA damages liability on US Bank. As noted above, there is no way that US Bank could have determined, based solely on the loan documentation, that the $91.00 was unreasonable. Therefore, US Bank is not liable for damages under HOEPA.[8]

[8]US Bank could still be liable for rescission under HOEPA because under TILA, a borrower may rescind against any assignee if she has the right to rescind against the original lender. 15 U.S.C. § 1641(c) (2006).

III. Count II: UTPCPL Violations[9]

A. Security

1. Credit Services Act

Under the Pennsylvania Credit Services Act ("CSA"), a credit services organization must provide the buyer with a dated contract, including notice of the buyer's right to cancel the contract, the organization's business address and the business address of its agent authorized to receive service of process, within five days of signing. A violation of the CSA shall be deemed to be a violation of UTPCPL. 73 P.S. § 2190(a). McMaster alleges that neither broker agreement contained those terms.

Security does not discuss whether it is a credit services agency subject to the CSA. A credit services organization is defined as follows:

> A person who, with respect to the extension of credit by others, sells, provides or performs or represents that he or she can or will sell, provide or perform any of the following services in return for the payment of money or other valuable consideration:
> (i) Improving a buyer's credit record, history or rating.
> (ii) Obtaining an extension of credit for a buyer.
> (iii) Providing advice ro assistance to a buyer with regard to either subparagraph (i) or (ii).

73 P.S. § 2182 (2006). The definition also sets forth seven exceptions to the rule, but Security does not allege that any of the exceptions apply. Id. Security is a credit services organization because it received compensation from McMaster for helping her obtain the mortgage from CIT.

McMaster argues that neither the first nor the second broker agreement contained the necessary notice requirements. The first broker agreement, attached as Exhibit B-1 to

[9]McMaster asserted UTPCPL claims against all defendants in this case. I have already denied summary judgment with respect to her claims against Murphy.

McMaster's motion, is a one page document authorizing Security to obtain mortgage financing for McMaster. It contains Security's name and address, but does not have a date or notice of the buyer's right to cancel the contract. It also does not include the name or address of Security's agent authorized to receive service of process. Security does not offer any explanation of why the first broker agreement is fails to include this information. Security also does not allege that the one page document was incomplete or that McMaster was provided with a copy of the necessary documents within five days of signing. Therefore, the first broker agreement violates the CSA, and thus UTPCPL, and I will grant summary judgment to McMaster against Security on the basis of the faults of the first broker agreement.

Regarding the second broker agreement, Security argues that it has not violated the CSA because McMaster was given a Notice of Right to Cancel at closing. The second broker agreement, also a one page document, is attached to McMaster's motion as Exhibit B-2. This document is dated and contains the name of the mortgage broker, but not its address. The page does not contain a notice of McMaster's right to cancel, but McMaster did testify that one was included in the documents given to her at closing. It, like the first broker agreement, also does not include the name or address of the agent authorized to receive service of process. Because it lacked this essential information, the second broker agreement also violates the CSA and UTPCPL, and I will also grant summary judgment to McMaster against Security on this claim.

2. Other UTPCPL Violations

The Pennsylvania UTPCPL contains twenty specific forms of prohibited conduct and a catchall provision covering other forms of "fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding. 73 Pa. Cons. Stat. § 201-2 (2005). The UTPCPL

is to be liberally construed to effectuate the legislature's goal of consumer protection. Commonwealth v. Monumental Properties Inc., 460, 329 A.2d 812, 817 (Pa. 1974); Keller v. Volkswagen of America, Inc., 733 A.2d 642, 646 (Pa. Super. Ct. 1999). McMaster argues that Security specifically violated (1) 73 Pa. Cons. Stat. § 201-2(4)(xxi) and (v) by "conspiring [with CIT] to deceive plaintiff as to the terms of Security's fee""; (2) § 201-2(4)(ix) by "bait[ing] plaintiff with the broker agreement 1 terms and switch[ing] them for the broker agreement 2 terms without notice or explanation to plaintiff"; (3) § 201-2(4)(xxi) and (v) by "conspir[ing] to deceive plaintiff as to the existence and disadvantages of her paying a higher interest rate than she otherwise qualified for to cover the yield spread premium fee"; (4) § 201-2(4)(xxi) and (v) by "unfairly broker[ing] a refinancing of her 6.3% first mortgage debt at 14+% with a first mortgage loan rather than seeking for her or disclosing the advantages and disadvantages of a second mortgage loan"; (5) § 201-2(4)(v) by "deceiv[ing] her as to the unfairness of her paying over loan proceeds to a home improvement contractor who she never met . . . and deny[ing] her control over the funds to prevent Rosen from performing poor or overpriced work"; and (6) § 201-2(4)(xxi) and (v) by "deceiv[ing] her . . . as to the disadvantages of entering into the Loan, including but not limited to the loan's higher monthly debt payments and higher annual percentage rate of interest." I will address each argument separately.

Regarding the first, that CIT and Security conspired to deceive plaintiff as to the terms of Security's fee, McMaster has not offered any evidence of a conspiracy between CIT and Security. CIT was not a party to either the first or the second broker agreement. McMaster has not alleged any facts which would indicate that Security was acting on behalf of CIT or that Security was CIT's agent. CIT and Security assert that Security's involvement with CIT was limited to

submitting to CIT, as a potential lender, the loan application and supporting documents and that Security does not have an agency relationship with the various lenders to whom it submits applications. Further, CIT and Security aver that Security was acting as McMaster's agent, acting to procure a loan on her behalf. Since McMaster offers no contrary evidence, I will grant summary judgment to Security on this claim.

Second, McMaster maintains that Security baited McMaster with favorable terms and later switched them without notice or explanation. Security responds that the second broker agreement was only a notice which directed plaintiff to consult the HUD Settlement Statement. The increase in fees was not for the previously agreed upon services but compensated the broker for his additional time and effort.[10] I will grant summary judgment to McMaster on this claim. Security violated the original agreement by charging McMaster more than the original 3% broker commission. Security acted deceptively when it changed the amount of fees by referencing another document, instead of clearly stating that the amount of fees had changed and listing the new amount. Security argues that there was only one broker agreement. If it truly took extra time and effort to secure a loan, Security should have made a separate, additional agreement with McMaster. It should not have changed the cost of the original agreement, then hidden the new cost on a different page of the closing papers.

Third, McMaster asserts that CIT and Security conspired to charge her a higher fee using

[10] Security seems to argue that the second broker agreement was merely an extension of the first agreement, not a new agreement. Security avers that the only function of the second broker agreement was to direct McMaster to the HUD settlement statement where she could find the amount of fees. Because I grant summary judgment to McMaster here regardless of whether the second broker agreement was a new agreement or merely a change in terms of the original broker agreement, I do not need to decide whether the second agreement was a new contract supported by additional consideration or indicated an intent to be bound.

the yield spread premium fee. Since, as noted above, McMaster has not offered any evidence of a conspiracy, I will grant summary judgment to CIT and Security on this claim.

Fourth, McMaster argues that Security unfairly brokered a refinancing of her first mortgage debt rather than seeking for her or disclosing the advantages and disadvantages of a second mortgage loan, a violation of § 201-2(4)(xxi) and (v). Neither § 201-2(4)(xxi) or (v) mandates that a mortgage broker obtain the best possible financing for a customer. Further, McMaster alleges that Security's conduct was likely to cause confusion or misunderstanding as to the loan's terms, but McMaster does not allege that she did not realize that she was refinancing all of the outstanding debt on the house. I will grant summary judgment to Security on this claim.

Fifth, McMaster asserts that Security violated UTPCPL by forcing her to pay her loan proceeds to Ed Rosen, a home improvement contractor who performed the repairs poorly . Security responds by noting that the check was made to McMaster, not to Rosen, and that McMaster was free to use the funds as she wished. Although the check was made out to McMaster, it is possible that she was forced by Security to turn over the funds immediately to Rosen. A genuine issue of material facts exists here.

Sixth, McMaster asserts that Security violated UTPCPL by deceiving her regarding the disadvantages of entering into the loan, including but not limited to the loan's higher monthly debt payments and higher annual percentage rate of interest. Here, McMaster has not offered enough evidence to survive summary judgment. McMaster does not allege that Security gave her misinformation with regards to the monthly payments and interest rate. Therefore, I will grant summary judgment to Security on this claim.

B. CIT

1. Credit Services Act

In McMaster's complaint, she alleges that CIT violated UTPCPL by violating the CSA. CIT, however, is not subject to the CSA because it specifically excludes licensed lenders. The CSA does not apply to "[a]ny person organized, chartered or holding a license or authorization certificate to make loans or extensions of credit pursuant to the laws of the Commonwealth or the United States." 73 P.S. § 2182. McMaster does not dispute that CIT is a licensed lender. Therefore, I will grant summary judgment to CIT regarding violations of UTPCPL under the CSA.

2. Other UTPCPL Violations

McMaster argues that CIT specifically violated (1) 73 Pa. Cons. Stat. § 201-2(4)(xxi) and (v) by "conspiring [with Security] to deceive plaintiff as to the terms of Security's fee""; (2) § 201-2(4)(xxi) and (v) by "conspir[ing] to deceive plaintiff as to the existence and disadvantages of her paying a higher interest rate than she otherwise qualified for to cover the yield spread premium fee"; (3) § 201-2(4)(xxi) and (v), by "conspir[ing with Murphy] to deceive plaintiff as to charging her a 'title examination' charge which . . . [was] a junk fee to enrich Murphy and benefit CIT by having their agent control all aspects of the loan; (4) § 201-2(4)(iii) and (xxi) by "deceiv[ing] plaintiff and caus[ing] her confusion" regarding the relationship between CIT and Murphy; (5) § 201-2(4)(xxi) and (v) by "deceiv[ing] her . . . as to the disadvantages of entering into the Loan, including but not limited to the loan's higher monthly debt payments and higher annual percentage rate of interest." I will address each claim separately.

Regarding the first and second allegations, that CIT and Security conspired to deceive

plaintiff as to the terms of Security's fee and to the disadvantages of the higher interest rate used to cover the yield spread premium, McMaster has not offered any evidence of a conspiracy between CIT and Security. CIT was not a party to either the first or the second broker agreement. McMaster has not alleged any facts which would indicate that Security was acting on behalf of CIT or that Security was CIT's agent. CIT and Security assert that Security's involvement with CIT was limited to submitting to CIT, as a potential lender, the loan application and supporting documents and that Security does not have an agency relationship with the various lenders to whom it submits applications. Further, CIT and Security aver that Security was acting as McMaster's agent, acting to procure a loan on her behalf. As McMaster offers no evidence to dispute CIT's statements, I will grant summary judgment to CIT on this allegation.

Third, McMaster asserts that CIT and Murphy conspired to deceive plaintiff as to the "title examination charge," which was merely a junk fee to enrich Murphy. As discussed when I denied Murphy's motion for summary judgment, the $91.00 title examination fee was charged by Pinnacle Abstract, the title company. That company was owned by Murphy's law firm and represented by Murphy at closing. Murphy was also representing CIT in the transaction. McMaster notes that Murphy described the services charged under the $411.75 Pinnacle fee as "order the title, review it, *examine it*, clear it, then issue a final policy, of course take care of the liens at closing." (Murphy dep. at 49-50) (emphasis added). Murphy later described the basis for the $91.00 title examination fee as "For just what it says, to examine the title." (Murphy dep. at 51). Murphy claims that separating these fees is permissible under Pennsylvania state law, but has not cited any authority justifying his conduct. He also has not sufficiently explained why he needed to charge for examining title twice. There remains a genuine issue of material fact as to

the validity of the $91.00 title examination fee and whether CIT and Murphy conspired to deceive plaintiff about it.

Fourth, McMaster asserts that CIT violated the UTPCPL by deceiving her regarding the relationship between CIT and Murphy. As discussed above, with the evidence offered so far a reasonable jury could find that Murphy, Pinnacle, and CIT were acting in concert, confusing McMaster as to each of their roles in the loan process.

Fifth, McMaster asserts that CIT violated UTPCPL by deceiving her regarding the disadvantages of entering into the loan, including but not limited to the loan's higher monthly debt payments and higher annual percentage rate of interest. Here, McMaster has not offered enough evidence to survive summary judgment. McMaster does not allege that CIT gave her misinformation with regards to the monthly payments and interest rate. Therefore, I will grant summary judgment to CIT on this claim.

3. RESPA

Plaintiff seems to assert a RESPA violation under UTPCPL against CIT for withholding the good faith estimates of all the charges accompanying the loan so that McMaster would have as little time as possible to review and question each charge. Defendants argue that McMaster does not have standing to assert a RESPA claim. Under RESPA, each lender must send, within three days business days after the lender receives the application, "a good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement." 12 U.S.C. § 2604 (2006). There is no private right of action under this section. See Brophy v. Chase Manhattan Mortgage Co., 947 F. Supp. 879, 882 (1996) ("Since the statute specifically provides for a private right of action under specific sections – but

not § 2406 – a private right of action should not be implied under § 2604."). Therefore, McMaster's asserted RESPA violation cannot stand.[11]

C. US Bank

UTPCPL provides that a consumer may sue a seller of goods or services who commits an unfair trade practice. See Williams v. Nat'l School of Health Tech., 836 F. Supp. 273, 283 (E.D. Pa. 1993). US Bank argues that it cannot be liable for violating UTPCPL because it acted only as assignee and servicer of the CIT loan and did not commit any unfair trade practices. US Bank offers two cases in support of its argument. First, in Williams v. National School of Health Techology, 836 F. Supp. 273 (E.D. Pa. 1993), Judge Bartle refused to extend UTPCPL liability to a later holder of a consumer loan. Id. at 283 He noted that the plaintiff did not offer "any support for the proposition that the UTPCPL applied to non-culpable parties." Id. He continued, "The UTPCPL provides that consumers may sue a seller of goods or services who commits an unfair trade practice but does not impose liability on parties who have not themselves committed any wrongdoing." Id. (footnote omitted); see also Canty v. Equicredit Corp. of Am., 2003 U.S. Dist. LEXIS 8819, *10 (E.D. Pa. 2003) (finding mortgage holder not liable because plaintiff had not asserted any wrongful conduct by mortgage holder). In this case, McMaster has not attributed any specific acts of wrongdoing, or any unfair trade practices, to US Bank. While it is currently the holder of the mortgage, it cannot be held liable under UTPCPL because McMaster

[11]McMaster seems to argue that a violation of RESPA is also a violation of UTPCPL. She cites no cases to support this principle and also does not specify any facts which would make the RESPA violating conduct also satisfy the UTPCPL requirements. The statutes are different, one is state law, one is federal; they have different requirements; and grant different types of relief. Accordingly, I cannot find that a violation of one is a per se violation of the other. Further, the only case discussing this issue held that UTPCPL does not provide relief for RESPA violations. Koch v. First Union Corp., 2002 Phila. Ct. Com. Pl. LEXIS 82, *16 (2002).

has not offered any evidence to show that US Bank was a culpable party.

An appropriate Order follows.

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

THERESA MCMASTER	:	CIVIL ACTION
	:	
v.	:	
	:	
CIT GROUP/CONSUMER FINANCE, INC., et al	:	NO. 04-339

ORDER

AND NOW, on this 11th day of May 2006, upon consideration of McMaster's motion for summary judgment against all defendants, CIT Group's response and cross-motion for summary judgment, Steven Rosen and Security Mortgage Broker's response and cross-motion for summary judgment, Fairbanks Capital Corp and US Bank's motion for summary judgment, and McMaster's response to Fairbank and US Bank's motion, and for the reasons set forth in the accompanying memorandum, it is ORDERED that:

1. Fairbanks Capital Corporation n/k/a Select Portfolio Servicing, Inc.'s Motion for Summary Judgment is GRANTED;
2. McMaster's motion for summary judgment against Security Mortgage Broker and Rosen under the Pennsylvania Credit Services Act is GRANTED;
3. CIT's motion for summary judgment with respect to the Pennsylvania Credit Services Act claims against CIT is DENIED;
4. CIT, Security, and Rosen's motions for summary judgment with respect to conspiring to deceive plaintiff as to the terms of Security's fee (Count II, ¶ 54(a)) are GRANTED;

5. McMaster's motion for summary judgment regarding her claim that Security and Rosen baited her with certain terms and then switched them without notice (Count II, ¶ 54(b)) is GRANTED;

6. CIT, Security, and Rosen's motions for summary judgment with respect to conspiring to charge McMaster a higher fee using the yield spread premium fee (Count II, ¶ 54(c)) is GRANTED;

7. Security and Rosen's motion for summary judgment with respect to the refinancing interest rates (Count II, ¶ 54(e)) is GRANTED;

8. CIT, Security and Rosen's motions for summary judgment with respect to the advantages and disadvantages of entering into the loan (Count II, ¶ 54(I)) is GRANTED.

9. Motions for summary judgment in this case regarding all other claims are DENIED.

s/Thomas N. O'Neill, Jr.
THOMAS N. O'NEILL, JR., J.