

**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.

January 3, 2007

After a two-day bench trial, the Court entered a verdict in favor of the NationsCredit Defendants on November 14, 2006, finding that the Defendants did not violation federal or state law in a mortgage transaction concerning Rosyln Porter’s home (“Plaintiff”). See Porter v. Nationscredit Consumer Disc. Co., No. 03-3768, 2006 U.S. Dist. LEXIS 83161 (E.D. Pa. Nov. 14, 2006). On November 30, 2006, Plaintiff filed a motion under FED. R. CIV. PRO. 52(b)¹ and 59² asking the Court to amend its findings of

¹ Rule 52 provides, in relevant part, “[o]n a party’s motion filed no later than 10 days after entry of judgment, the court may amend its findings--or make additional findings--and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59.”

² Rule 59(a) states that “[a] new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.”

fact and judgment. The Court will deny Plaintiff's motion.

I. STANDARD OF REVIEW

The decision to grant or deny a motion to amend findings is within the discretion of the trial court. Greene v. United States Postal Serv., No. 04-1297, 2006 U.S. Dist. LEXIS 84223 at *10 (D. Del. Nov. 17, 2006). The purpose of a motion to alter or amend the judgment "is to correct manifest errors of law or fact or to present newly discovered evidence." American Trade Partners, L.P. v. K Mart Corp., No. 90-5313, 1992 U.S. Dist. LEXIS 10101at *3-4 (E.D. Pa. July 2, 1992) (citations omitted). The motion should be granted "if the party seeking reconsideration shows at least one of the following grounds: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion . . .; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999) (citing N. River Ins. Co. v. CIGNA Reins. Co., 52 F.3d 1194, 1218 (3d Cir. 1995)). See also Cont'l Cas. Co. v. Diversified Indus., Inc., 884 F. Supp. 937, 943 (E.D. Pa. 1995) ("Because federal courts have a strong interest in the finality of judgments, motions for reconsideration should be granted sparingly").

II. DISCUSSION

After years of litigation, only two narrow issues remained to be determined during the non-jury trial held in November 2006. The Court disposed of the majority of

Plaintiff's claims at the summary judgment stage³. See Porter v. NationsCredit Consumer Discount Co., No. 03-03768, 2006 U.S. Dist. LEXIS 14925 (Mar. 31, 2006) (granting summary judgment to Defendants on the majority of Plaintiff's claims) *reconsideration denied in part by* Porter v. NationsCredit Consumer Discount Co., No. 03-03768, 2006 U.S. Dist. LEXIS 41947 (June 22, 2006).

After ruling on these dispositive issues, only two narrow issue remained in the case: (1) whether Plaintiff signed an affirmative request for single life credit insurance as required by the Truth in Lending Act 15 U.S.C. § 1601, *et seq.* and (2) whether Defendant complied with the Pennsylvania Unfair Trade Practices and Consumer Protection Law 73 PA. CONS. STAT. § 201-1, *et seq.*, which protects consumers from unfair trade practices. The answer to these questions hinged on two disputed issues of fact: whether Plaintiff signed a request for credit life insurance and whether Plaintiff reasonably relied on a document (the "Blue Card") she received in the mail stating that she did not purchase credit life insurance. See Porter, 2006 U.S. Dist. LEXIS 41947 at *6.

At trial, the Court resolved these issues in favor of the NationsCredit Defendants and made significant factual findings that Plaintiff affirmatively signed for credit life insurance and chose not to exercise her right to cancel the policy. Porter v. Nationscredit

³ Judge Newcomer also issued two prior decisions in this case. See Porter v. NationsCredit Consumer Disc. Co., No. 03-03768, 2005 U.S. Dist. LEXIS 15813 (E.D. Pa. Aug. 1, 2005); Porter v. NationsCredit Consumer Disc. Co., 229 F.R.D. 497 (E.D. Pa. 2005).

Consumer Disc. Co., No. 03-3768, 2006 U.S. Dist. LEXIS 83161 (E.D. Pa. Nov. 14, 2006). Plaintiff identified her signature on the TILA Disclosure Statement beside the line that reads “I want single credit life insurance.” Next to this statement and her signature is a premium charge of \$3,281.98 for 180 months. Plaintiff also acknowledged that she signed two other documents that listed the \$3,281.98 premium charge: the HUD-1A Settlement Statement and the application for credit life insurance. Even though Plaintiff did not take home signed copies of these documents, the Court found her testimony that she did not realize the “unsigned copies” were in fact copies of the papers signed at the closing not credible. The Court also found that Plaintiff could not have reasonably relied on the Blue Card, which was sent by Mortgage Management Specialists, she received at some point after closing on the NationsCredit loans because so many documents in her closing packet listed a premium of \$3,281.98 for single life credit insurance.

After resolving these issues of fact, the Court concluded that the NationsCredit Defendants did not violate federal or state law. Plaintiff’s Rule 52 motion attempts to re-litigate these issues and present incredulous theories that have no basis in the record and therefore, must be denied.

A. Defendants’ did not violate TILA by not giving Plaintiff a signed copy of her affirmative written request for credit life insurance.

Plaintiff contends that the Court misapplied TILA law in rendering its decision. Plaintiff recycles her argument that TILA requires lenders to give borrowers signed copies of their affirmative requests for credit life insurance, once again, citing no

supporting authority.⁴

Judge Newcomer and I have previously rejected this theory. When granting partial summary judgment to Defendant Protective Life, Judge Newcomer concluded after “scouring” TILA regulations and commentary that NationsCredit did not violate TILA by failing to provide Plaintiff with a signed copy of her affirmative request for credit life insurance. Porter v. NationsCredit Consumer Disc. Co., 2005 U.S. Dist. LEXIS 15813 at *13-15 (E.D. Pa. Aug. 1, 2005). I reached the same conclusion. 2006 U.S. Dist. LEXIS 83161. Therefore, Plaintiff’s motion must fail because it attempts to re-litigate previous decisions without pointing to intervening changes in the controlling law. Max's Seafood Café ex rel. Lou-Ann, Inc., 176 F.3d at 677. Plaintiff’s recycled argument is not an appropriate basis for a motion to amend under Rules 52 and 59.

Plaintiff’s assertions also have no merit in the plain language of TILA, Regulation Z, or the relevant case law. TILA dictates that lenders must include credit life insurance premiums in the finance charge unless the lender meets disclosure requirements. 15 U.S.C. § 1605(b); Krajci v. Provident Consumer Discount Co., 525 F. Supp. 145, 151

⁴ Plaintiff cites the “teaching” of a Third Circuit decision in support of her argument “that the signed written affirmative request...must be disclosed.” Pl’s Mem. P. 3 *citing* Rossman v. Fleet Bank Nat’l Assoc., 280 F.3d 384 (3d Cir. 2002). Plaintiff does not specify how the “teaching” of Rossman informs this case and the Court’s own review of the decision does not find the decision relevant to the issues in this case. In Rossman, the Third Circuit reversed the district court’s dismissal of a credit card holder’s TILA claim. The Third Circuit held that the credit card company’s statement that the card had no annual fee was misleading and potentially violated TILA if the defendant company intended to impose a fee shortly after consumers established credit card accounts. Id. at 400. The Rossman case concerns specific TILA disclosure requirements that are not at issue in this case. See id. at 387-89 discussing the “Schumer Box.” The court also focused on allegations of a “bait and switch” scheme whereby the defendant lured consumers into credit card contracts with promises of no annual fees while intending to impose fees in the near future. Id. at 395-400. There is no substantiated evidence of similarly false and misleading practices in this case.

(E.D. Pa. 1981) *aff'd*, 688 F.2d 822 (3d Cir. 1982). Mandatory disclosures must be made clearly and conspicuously in writing in a form that the consumer may keep. 15 U.S.C. § 1632(a); 12 C.F.R. § 226.17(a). A lender must make three specific disclosures in order to exclude premiums for voluntary credit life insurance. 12 C.F.R. § 226.4(d)(i)-(iii). By the time of trial, only one of these three requirements remained in issue:⁵ whether the consumer signed an affirmative written request for the credit life insurance *after receiving the disclosures*. *Id.* at (iii) (emphasis added). After hearing testimony and reviewing evidence, the Court concluded that Plaintiff affirmatively requested credit life insurance as evidenced by her signature on the TILA Disclosure Statement, HUD 1A Settlement Statement, and the application for credit life insurance.

Plaintiff alleges that the Court's finding is in error because the Court's discussion cites two cases decided before a revision to Regulation Z in 1982.⁶ Pl's Mem. pp. 2-3 *citing* Ballew v. Assocs. Fin. Servs. Co., 450 F. Supp. 253 (D. Neb. 1976); Anthony v. Cmty Loan and Inv. Corp., 559 F.2d 1363 (5th Cir. 1977). While rendered under different statutory language, the Court finds these older decisions still have relevance today

⁵ In Porter v. NationsCredit Consumer Discount Co., No. 03-03768, 2006 U.S. Dist. LEXIS 14925 (Mar. 31, 2006), the Court found that NationsCredit Defendants clearly met the first two disclosure requirements in Regulation Z. The Court found that Defendants demonstrated that credit life insurance was not a condition of extending credit, disclosed this fact in writing, and adequately disclosed the premium for the initial term of insurance coverage. *Id.* at * 20-26.

⁶ Plaintiff's motion ignores a recent decision that the Court cited in support of its judgment. See In re Johnson, No. 05-0341, 2006 Bankr. LEXIS 2133 at *7, 20-21 (Bankr. E.D. Pa. July 14, 2006) (holding that there was no TILA violation when a lender obtained an illiterate borrower's signature because the borrowers signature next to a request for credit life insurance constituted an affirmative request and satisfied Section 226.4(d)). As the court rendered this decision after the 1982 amendments to Regulation Z, there is no question that this decision construes the same statutory language that is at issue in this case.

because they stand for the broader principle that a borrower's signature serves an evidentiary function, not a disclosure function. Requiring lenders to obtain a signature evidences the borrower's acknowledgment that the insurance she is about to purchase is not a condition on obtaining the loan and also discloses the cost of the insurance.

This principle is still central and relevant to Regulation Z's current disclosure requirements. NationsCredit Defendants satisfied this requirement by obtaining Plaintiff's signature affirmatively requesting credit life insurance. There is no obligation under TILA or Regulation Z that the lender provide a borrower with a signed copy of an affirmative written request for credit life insurance. Plaintiff cites no authority for this proposition. See nt. 3 *supra*. Plaintiff's baseless motion must fail in the face of overwhelming evidence that Plaintiff signed multiple documents requesting credit life insurance, including the TILA Disclosure Sheet, HUD-1A settlement sheet, and application for credit life insurance.

B. Plaintiff's argument regarding her right to cancel is baseless and improperly raised for the first time in this post-trial motion.

Plaintiff argues that NationsCredit Defendants interfered with her right to cancel within the three-day statutory period by not giving her signed copies of her loan documents, by failing to include the charge for credit life insurance on the good faith estimate, and by allegedly post-dating a Real Estate Transaction Disbursement statement

for March 31, 1998.⁷

This argument, which is nothing more than a new variation on facts established at trial, fails in light of the overwhelming evidence that Plaintiff knew about and failed to exercise her right to cancel. For the reasons discussed in Section II.A. *supra*, failure to give Plaintiff signed copies of the loan documents does not violate state or federal law. Plaintiff testified that she did not ask for copies of signed documents, either at the loan closing or within the three day rescission period. Plaintiff also acknowledged that she understood that she had a right to cancel the loan without cost within three days of the loan transaction. Additionally, Robert LaSanta, a manager familiar with the standard business practices of NationsCredit Defendants, testified that it is Defendant's standard business practice to not include the charge for credit life on the good faith estimate. Plaintiff can hardly argue the absence of this charge on one form is material, considering that even the unsigned documents Plaintiff took home with her revealed a \$3,281.98 premium for single credit life insurance. This figure is listed on several documents in Plaintiff's packet including the TILA Disclosure Statement, HUD-1A settlement form, and both the application and certificate for credit life. Plaintiff's attempt to argue that the Defendant's intentionally interfered with her right to cancel by obscuring the fact that Plaintiff had purchased credit life insurance is simply not credible based on the evidence

⁷ Plaintiff now, for the first time, argues that NationsCredit Defendants intentionally interfered with her right to cancel because since Ms. Porter was only at the Bensalem office for the loan signing once, on March 26, 1998, she could not have acknowledged receipt of the disbursement on March 31, 1998. Plaintiff did not present evidence to support this alleged post-dating argument at trial.

in the record.

For the reasons stated above, Plaintiff's motion is denied. An appropriate Order follows.

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DISCOUNT COMPANY, et al.,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 3rd day of January, 2007, upon consideration of Plaintiff's Motion Pursant to Rule 52(b) and Rule 59 of the Federal Rules of Civil Procedure (Document No. 190) and Defendants' response thereto, it is hereby **ORDERED** that Plaintiff's Motion is **DENIED**.

BY THE COURT:

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