

JAMS
A CONSUMER ARBITRATION HELD IN THE STATE OF MISSISSIPPI
IN LAUREL, MISSISSIPPI, COUNTY OF JONES

JANE ELLEN DOE,

Plaintiff,

v.

REFERENCE NO.: -----

RURAL PAYDAY LOAN COMPANY, INC.

Defendant.

PLAINTIFF JANE ELLENDOE'S AMENDED ARBITRATION DEMAND AGAINST
DEFENDANT RURAL PAYDAY LOAN COMPANY AND REPLY TO THE RESPONSE
TO THE ARBITRATION FILED BY RURAL PAYDAY LOAN COMPANY

Plaintiff, JANE ELLEN DOE ("Ms. DOE"), submits the following amended arbitration demand for four counts of violation of the Truth in Lending Act ("TILA") against the defendant RURAL PAYDAY Loan Company ("RPLC").

Introduction: Ms. DOE loan transactions with RURAL PAYDAY Loan Company, Inc.

1. On November 26, 2011, Ms. DOE entered a loan transaction with RPLC, a subprime title loan company which operates a storefront office in Ms. DOE' hometown of Laurel, Mississippi, a modestly populated rural area with a very high poverty rate and a below average *per capita* income rate.
2. RPLC asked Ms. DOE and her daughter, Sally DOE, to use her daughter's car as security for a loan in the amount of \$10,022 in November, 2011.
3. Twenty days later RPLC had Ms. DOE come into its office to sign off on a new loan in the amount of \$46,146, including finance charges and interest.
4. As part of the closing of the second loan, the first loan was paid off to RPLC which collected \$10,761.58 from Ms. DOE to pay off the 20 day old loan of \$10,022. RPLC took \$739.77 in interest

and fees from Ms. DOE to pay off the first loan, which equals an interest rate 132.86% APR collected by RPLC for finance charges on the (1st loan) “first” loan (the November 2011 loan).

5. With the “second” loan (the December 2011 loan), RPLC recorded a mortgage/deed of trust against Ms. DOE’s family home in Laurel, Mississippi, which she had previously held free and clear of any mortgage before the transaction with RPLC.
6. The closing in December was very short in time duration and conducted by an RPLC staff member. Chuck Mitchell (“Mr. Mitchell”).
7. When Ms. DOE indicated to Mr. Mitchell that the deal was not what she was expecting and when she hesitated to go through with it, Mr. Mitchell told her she did not have any choice and had her quickly sign all the papers without taking time to slowly read through every line.
8. Ms. DOE was by herself at the closing and did not have legal counsel look over the documents for her and/or to provide her with legal counsel. RPLC proceeded with the closing nonetheless.
9. Ms. DOE was without funds and resources to hire legal or financial counsel to assist her at the RPLC closing.
10. Ms. DOE’s gross income was stated on the Loan Application completed by RPLC as \$3,085 per month. The new loan would require Ms. DOE to make payments to RPLC of \$1229 a month, almost 50 % of her gross monthly income.
11. The payments included principal and interest of \$757 and an escrow for taxes and homeowners’ insurance of \$471 per month.
12. Ms. DOE struggled to make the monthly payments from the beginning of the loan because the loan was unaffordable to her from the start.
13. Ms. DOE has made approximately 39 payments on the loan and the loan is currently paid to date (as of March, 2015) and Ms. DOE is not currently in default.
14. Before this, in October of 2014, RPLC staff started to make a series of collection phone calls to Ms. DOE which were very upsetting to her. RPLC staff would call Ms. Doe’s office three and four times a day. In these phone calls RPLC staff chided, denigrated and derided Ms. DOE for being late on her

payments to RPLC and threatened to come over to her house personally and put it on the market.

They in fact did come over to her home on several occasions while she was at work.

15. RPLC ruined Ms. Doe's credit rating.
16. RPLC was threatening to sell Ms. DOE's home, worth about \$200,000, for the approximately \$37,000 it claims to still be owed to RPLC by her.
17. After legal review of the loan documents it became apparent that there were several material errors in the RPLC loan documentation which violated federal Truth in Lending law, including violating the Home Owner Equity Protection Act.
18. On November 28, 2014, less than three years after the loan closing, Ms. DOE sent RPLC a timely notice of intent to rescind the loan and demanded RPLC to release the mortgage from the title to her home within 20 days, and also demanded RPLC to return all unspent funds in the tax and insurance escrow held by RPLC in Ms. DOE' name.
19. The defendant RPLC refused to release the deed of trust from the title to Ms. DOE's home and also refused to terminate and refund the tax and insurance escrow.
20. Since November 2014, the parties have engaged in informal discovery. However, some of Ms. DOE's questions about the loan paperwork and a pay off letter demand have yet to be plausibly answered by RPLC. For example, RPLC has not been able to itemize and breakdown what the "loan fees" of \$977 were for, which were demanded in a pay off letter from RPLC to Ms. DOE in September, 2014. Also, RPLC was unable to answer the question of whether or not it had made any negative reports against Ms. DOE to any of the credit bureaus.
21. Based only of the paperwork that RPLC has voluntarily provided Ms. DOE so far, Ms. DOE has confirmed at least four violations of the Truth in Lending law and regulations which are set forth herein as Counts 1 though IV. She will amend this demand if necessary to include additional counts as more facts come to light in this process.

COUNT I

TILA Violation: RPLC materially misstated the true interest rate (APR) of the Loan and true costs of the finance charges.

22. The loan disclosures by RPLC indicated the interest rate for the loan was 15.89%, which is lower than the true APR of the loan.
23. Under Regulation Z, a copy of which is attached hereto as an appendix, certain finance charges, “§226.4 fees” must be deducted from the total amount of the amount before the APR can be calculated on the amount actually financed. Generally, monies which are not provided to the consumer directly and which benefit the creditor, are not includable in the “amount financed.”
24. RPLC deducted only the \$500 origination fee and the prepaid daily interest of \$218.13, from the total gross loan to establish the “amount financed” number.
25. At the least, RPLC should have also deducted (1) the \$395 Appraisal fee which was paid to the lender and (2) the \$8.00 Flood Certification fee which was paid to the lender; and the (3) \$738.77 in interest and fees paid to lender RPLC for the loan it made to Ms. DOE 20 days earlier which was rolled into the 2nd loan.
26. Had RPLC deducted these additional fees, the true APR for the loan is 16.567%, higher than the APR disclosed by RPLC. This calculation is shown as Plaintiff’s *Example A* attached hereto as Exhibits in support of Count I.
27. Plaintiff would further argue that the costs of \$761.80 for Title Services from a vendor selected by RPLC and for the annual premium for homeowners’ insurance to USAA of \$2634.46, under which RPLC was insured as a loss payee, should also be deducted from the total gross loan as finance charges. Under this example, *Example B*, the true APR for the loan is 18.79%.
28. In addition, RPLC understated the finance charges by between \$1,141 and \$4,538.
29. RPLC’s understatement of the APR and finance charges is in amount which far exceeds the “tolerance” or what is permissible under the regulations.

30. RPLC violated TILA by understating the APR and finance charges.
31. This error alone entitles plaintiff to remedies including the release of the deed of trust, reimbursement for interest and fees paid, actual damages and attorney's fees and costs.

COUNT II

TILA violation- RPLC made several Material Misrepresentations in the Notice of Right to Cancel

32. The Notice of Right to Cancel materially misstated the nature of the loan as a renewal/refinance of an existing mortgage loan.
33. The Notice of Right to Cancel used by RPLC indicated the loan was a refinance of the mortgage currently held by RPLC against the Ms. DOE's home. In fact, this was not a renewal or refinance of an existing mortgage held by RPLC.
34. Before this loan was closed, there was no mortgage recorded against the home.
35. This misstatement is a material misstatement which voids the effectiveness of any alleged disclosures.
36. RPLC concedes that it made a mistake in the language of the Notice of Right to Counsel. RPLC argues that the consumer "knew" the document was wrong so it does not matter that RPLC made the misrepresentation on the TILA disclosure, and RPLC argues that the misrepresentation was therefore not material.
37. The lender's argument must fail because TILA is a strict liability statute for the lender. *Bessie Lee Harris v. Tower Loan of Mississippi, Inc.*, 609 F.2d 120 (5th Cir. 1980) cert. denied, 449 U.S. 826, 101 S.Ct. 89, 66 L.Ed.2d 30 (1980).
38. RPLC is trying to reverse the standard where there is a presumption that the consumer is to be treated as the "least sophisticated consumer" and RPLC is trying to shift the responsibility for accurate disclosure of a complicated financial transaction to the consumer rather than have that responsibility staying squarely as a responsibility of the lender who has created and is selling the complex financial product to the unsophisticated consumer. The lender's suggestion that the consumer is ultimately responsible for material contained in the lender's disclosures, especially when the disclosures are

completely inaccurate, is not what the law intends or it requires. The law is meant to protect the “least sophisticated consumer,” not the lender.

COUNT III

TILA Violation Preclosing Disclosures Material Misstated Terms of the Loan as to the existence of a prepayment penalty.

39. The loan disclosures RPLC provided to Ms. DOE indicated there would be no prepayment penalty.
40. Whereas, the final loan agreement prepared by RPLC which agreement RPLC had Ms. DOE sign at closing contained a 5 year prepayment penalty.
41. When Ms. DOE requested a pay off letter for the loan in September of 2014, RPLC demanded payment of “loan fees” in amount of \$977.07 (an amount believed to be a demand for a prepayment penalty) and “late charges” in the amount of \$279.89. When asked to itemize, break down and explain what these charges were for, RPLC was unable to do so.

COUNT IV

TILA violation : RPLC’s Good Faith Statement of Closing Costs Substantially Understated the Actual Closing Costs

42. RPLC’s preclosing Good Faith Estimate disclosure of closing costs indicated to the plaintiff that the closing costs would be \$2700.
43. When she got to settlement, plaintiff was presented with a settlement statement containing no less than \$5,335 in closing costs, nearly 100% more in closing costs than had been disclosed in the RPLC’s preclosing Good Faith Estimate.
44. The Good Faith Estimate of \$2700 in closing costs is attached hereto as an Exhibit for Count IV, as is the settlement statement where the closing costs were shown in excess of \$5300. The additional fees resulted from the consumer being required by the lender to prepay the homeowner’s insurance premium of \$2634 to USAA at closing.

Plaintiff's Timely Notice of Rescission

45. Because of these and other Truth in Lending violations, Ms. DOE exercised her right under 15 U.S.C. Section 1635 and Regulation Z, Section 226.23 and the Homeowner Equity Protection Act, Regulation X and the Dodd-Frank Act (2010) to rescind the mortgage transaction in a letter to RPLC dated November 28, 2014, demanding the lender to file a release of its December 2011 deed of trust against her home. A copy of this letter is attached as an appendix hereto.
46. Under the law the consumer has up to three years from the loan closing to send a notice of intent to rescind a loan to the lender when the lender's disclosures are inaccurate. Legal References setting forth that the right to rescind may be extended up to three years from the loan closing are attached hereto, including a recent United States Supreme Court decision. *Jesinsowski v Countrywide*, 574 U.S. ____ (2015).
47. RPLC failed to comply with the legal requirement of the rescission statute by failing to release the deed of trust within 20 days' of Ms. DOE' written Notice of Rescission, although asked in writing several times to do so thereafter.

PLAINTIFF'S REQUEST FOR REMEDIES FOR ALL TILA VIOLATIONS

Plaintiff respectfully requests the following remedies against the Defendant RPLC in this case:

- a. Release of the RPLC's mortgage/deed of trust from the title to her home.
- b. Equitable rescission for repayment of the loan under terms affordable to the consumer. All illegal interest and fees collected by the creditor from the consumer are first deducted from the principal amount.
- c. Extinguishment of any loan balance owed based on RPLC's failure to follow the law which required RPLC to release the deed of trust within 20 days of receiving the plaintiff's notice of rescission letter;
- d. Consumer's attorney's fees and costs.

- e. Double the amount of interest and fees collected by the creditor as reimbursement to the consumer. According to the amortization chart the amount of interest paid not including late fees or points for 39 payments made so far by Ms. DOE is \$21, 641.54, and two times the interest paid on the regular payments is \$42,283.08.
- f. Actual damages.
- g. Elimination by RPLC of any negative credit reports made by RPLC against plaintiff Ms. DOE to any and all credit reporting bureaus.
- h. Statutory damages to the consumer for each violation not less than \$400 and not more than \$4,000 for each violation of TILA by the creditor. Plaintiff is requesting \$400 in statutory damages for Count I, \$800 in statutory damages for Count II, \$1200 in statutory damages for Count III and \$1600 in statutory damages for Count IV, as a reasonable imposition of statutory damages in this case.
- i. Enter money judgment against RPLC in favor of plaintiff for the amounts assessed against RPLC for statutory and actual damages and attorney's fees and costs less any principal amount she may still owe, which is not expected, after offset.

Respectfully submitted,

 /s/ Elizabeth M. Boyle
Counsel for JANE ELLEN DOE:
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Dated: March 21, 2015

CERTIFICATE OF SERVICE

I hereby certify that I have served by email to counsel for RURAL PAYDAY Loan Company, Inc _____ and to the JAMS Arbitration Business Coordinator, Ms. Meghan Koransky at mkoransky@jamsadr.com and by first class mail to Ms. Meghan Koransky, Esq., Business Manager, JAMS, 1201 West Peachtree Street, NW, Suite 2650, Atlanta, GA 30309 and to COUNSEL FOR RURAL PAYDAY LOAN COMPANY, on this 21st day of March, 2015.

/s/ Elizabeth M. Boyle _____
Elizabeth M. Boyle, Esq.