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UNITED STATES DISTRICT COURT CLERK  
DISTRICT OF CONNECTICUT U.S. DISTRICT COURT  
BRIDGEPORT, CONN.

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4 ANTHONY J. IUTERI, JR. :  
ADRIANNE IUTERI, :  
5 PLAINTIFFS, :  
6 V. : Civil No. N-81-254 (TFGD)  
7 BRANHAVEN MOTORS, INC., :  
DEFENDANT. :  
8

9  
10 MEMORANDUM OF DECISION

11 Plaintiffs, Anthony J. Iuteri and Adrienne Iuteri, filed  
12 this action on June 1, 1981 alleging that defendant, Branhaven  
13 Motors, Inc., failed to disclose information required by the  
14 Truth in Lending Act ("TILA"), 15 U.S.C. §1601, et seq. and  
15 CONN. GEN. STAT. §36-393 et seq. and the regulations promulgated  
16 thereunder. On September 13, 1985, the Court heard the  
17 testimony of Anthony J. Iuteri and Branhaven Motors' President,  
18 John Lavallee, in a brief thirty-eight minute trial. At the  
19 close of the evidence, the Court instructed the parties to  
20 submit proposed findings of fact and conclusions of law. Having  
21 reviewed and considered the evidence and each party's  
22 submissions, the Court hereby makes the following findings of  
23 fact and conclusions of law.  
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FINDINGS OF FACT

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3 (1) On March 31, 1981, the plaintiffs purchased from the  
4 defendant a used 1976 Chevrolet Chevette. To finance this  
5 purchase, the defendant extended credit to the plaintiffs  
6 through the Chrysler Credit Corp.

7  
8 (2) Steven Zullo, a salesperson for the defendant, informed the  
9 plaintiff, Anthony J. Iuteri, that monthly payments would be in  
10 the amount of \$86.70. See Plaintiffs' Exhibit 1. Plaintiff,  
11 Anthony J. Iuteri, made clear to Mr. Zullo that he had been  
12 unemployed for some time, was just returning to work, and could  
13 not afford payments which exceeded \$86.70 by any significant  
14 amount. Mr. Iuteri also indicated that the monthly payment  
15 amount, \$86.70, multiplied by the twelve installments to be  
16 made, did not cover the total purchase price. Mr. Zullo's  
17 response led Mr. Iuteri to believe that there was no need to be  
18 concerned about the payments exceeding \$86.70; the finance  
19 company would take care of this matter.

20  
21 (3) The plaintiffs thereafter signed a retail installment  
22 contract which provided for financing of the automobile as  
23 twelve monthly payments of \$86.70. It should be noted that this  
24 fact was never disputed at trial. See Plaintiffs' Exhibit 1.

1  
2 (4) Plaintiffs later received from Chrysler Credit Corp. a  
3 payment booklet specifying monthly payments in the amount of  
4 \$186.70 for twelve months. When plaintiffs sought an  
5 explanation from Chrysler Credit Corp., they were told that this  
6 \$186.70 amount was correct.

7  
8 (5) Plaintiffs then complained to defendant's salesperson, Mr.  
9 Zullo, who arranged a meeting between the plaintiffs and  
10 officials of the defendant corporation, including John Lavalley,  
11 Branhaven Motors, Inc. President. At this meeting defendant  
12 presented a retail installment contract which plaintiffs had not  
13 seen previously. This contract, purportedly financing the  
14 plaintiffs' automobile purchase, indicated that monthly payments  
15 were to be in the amount of \$186.70. The contract also  
16 contained forged signatures for both plaintiffs. Defendant at  
17 no time contested the fact that these signatures were forged.

18  
19 (6) On or about May 20, 1981, defendant accepted plaintiffs'  
20 return of the automobile, refunded to plaintiffs their  
21 downpayment of \$324.50, and executed a withdrawal statement  
22 acknowledging that the deal was rescinded. See Defendant's  
23 Exhibits 502 and 503.  
24  
25  
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CONCLUSIONS OF LAW

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2  
3 (1) The Court has jurisdiction over this matter pursuant to 15  
4 U.S.C. §1602, et seq. and 28 U.S.C. §1331.

5  
6 (2) For purposes of the TILA, plaintiffs are "consumers", as  
7 defined in 15 U.S.C. §1602(h), and the defendant is a  
8 "creditor", as defined in 15 U.S.C. §1602(f).

9  
10 (3) When plaintiffs' cause of action arose, 12 C.F.R. §226.8  
provided in pertinent part:

11 (a) General rule. Any creditor when extending  
12 credit other than open end credit shall, in  
13 accordance with §226.8 and to the extent  
14 applicable, make the disclosures required by this  
15 section with respect to any transaction consummated  
16 on or after July 1, 1969. Except as otherwise  
17 provided in this section, such disclosures shall be  
18 made before the transaction is consummated. At the  
19 time disclosures are made, the creditor shall  
20 furnish the customer with a duplicate of the  
21 instrument or a statement by which the required  
22 disclosures are made and on which the creditor is  
23 identified.

\* \* \*

24 (b) Disclosures in sale and nonsale credit. In  
25 any transaction subject to this section, the  
26 following items, as applicable, shall be disclosed:

\* \* \*

(3) The number, amount, and due dates or  
periods of payments scheduled to repay the  
indebtedness.

(4) The parties consummated a car purchase on March 31, 1971.  
At no time prior to this date did defendant provide plaintiffs  
with a statement accurately setting forth the information

1 required to be disclosed by 12 C.F.R. §226.8.<sup>1/</sup> Rather, it was  
2 not until plaintiffs later met with Mr. Lavallee that plaintiffs  
3 were presented with a disclosure statement setting forth the  
4 monthly payment amount of \$186.70 which plaintiffs were now  
5 obligated to pay to Chrysler Credit Corp. Defendant's failure to  
6 disclose the correct amount of each monthly payment prior to the  
7 consummation of the transaction violated 12 C.F.R. §226.8(a) and  
8 (b)(3).

9  
10 (5) Defendant also violated the TILA, 15 U.S.C. §1639. At the  
11 time of plaintiffs' automobile purchase, 15 U.S.C. §1639(a)(6)  
12 and (b) provided for disclosure prior to the extension of credit  
13 of "the number, amount, and the due dates or periods of payments  
14 scheduled to repay the indebtedness." Credit was extended to  
15 plaintiffs on March 31, 1981. Defendant's failure to disclose  
16 the correct amount of plaintiffs' monthly payments prior to this  
17 date violated the TILA.

18 (6) Defendant argues that there was never any extension of  
19 credit to plaintiffs and, therefore, the TILA was not violated.  
20 The Court finds, however, that defendant extended credit to the  
21 plaintiffs on March 31, 1981. While the defendant may not have  
22 signed the March 31, 1981 retail installment contract setting  
23 forth the \$86.70 monthly payments, the plaintiffs did indeed sign  
24 this contract and were led to believe the contract was  
25 dispositive of their car purchase. Plaintiffs were also given  
26 possession of the car, despite their not having paid cash for its

1 purchase. Surely, the car was purchased on credit, a fact which  
2 defendant cannot now seek to deny, merely because defendant did  
3 not sign the erroneous March 31, 1981 contract. "The  
4 applicability of TILA ... depends on the words of the statute  
5 interpreted in light of the purposes of the act, and not on  
6 whether a particular transaction is enforceable under state law  
7 ... 'Credit' under the TILA means the right granted by a creditor  
8 to a customer to incur debt and defer its payment. 12 C.F.R.  
9 §226.2(q)." Dryden v. Lou Budke's Arrow Finance Co., 630 F.2d  
10 641, 646 (8th Cir. 1980). The Court finds that the defendant-  
11 creditor granted such a right to the plaintiffs-customers and  
12 thereby extended credit so as to invoke the provisions of the  
13 TILA. Defendant's other arguments on this issue are also  
14 unpersuasive.

15 (7) Defendant further argues that TILA liability should not  
16 attach since "defendant within fifteen days after discovering any  
17 error and prior to the institution of this action or receipt of  
18 written notice of the error, made appropriate adjustment by  
19 agreeing to rescission of the transaction and refunding all sums  
20 paid." Defendant's Proposed Conclusions of Law at ¶3.  
21 Defendant's argument essentially tracks the language of 15 U.S.C.  
22 §1640(b) which, when plaintiffs' cause of action arose, provided  
23 for a fifteen day period following discovery of an error in which  
24 the creditor could rectify such error. In Jumbo v. Nestor  
25 Motors, Inc., 428 F. Supp. 1085 (D. Ariz. 1977), the Court faced  
26 a similar situation where the defendant-creditor failed to

1 provide the plaintiff-consumer with a copy of the security  
2 agreement when the plaintiff purchased a pick-up truck. The  
3 Court rejected defendant's claim that it should be excused from  
4 liability because it mailed a copy of the security agreement  
5 within fifteen days after discovering the error.

6  
7 This contention must be rejected because of the  
8 nature of the alleged violation. The regulations  
9 require that disclosure be made before the  
10 transaction is consummated and that 'at the time  
11 disclosures are made' the creditor must provide a  
12 document identifying the creditor and making the  
13 required disclosures. 12 C.F.R. §226.8(a). To  
14 apply the exception in section 1640(b) would  
15 effectively nullify the regulation because lenders  
16 would be granted an automatic extension of time not  
17 contemplated by the regulations.

18 The defendant's claim that the regulations  
19 were satisfied when it gave the plaintiff a copy of  
20 the purchase order, rather than the security  
21 agreement, must also be rejected. Even if this  
22 document was delivered at the proper time, it fails  
23 in several respects to satisfy the requirements of  
24 12 C.F.R. §226.8(b) and (c).

25 Id. at 1087. While defendant provided plaintiffs with a  
26 document identifying the creditor and disclosing certain  
information when the transaction was consummated, that document  
failed to satisfy the requirements of the TILA. Quite clearly,  
plaintiffs' monthly payments were misstated by \$100.00. As in  
Jumbo, to apply the 15 U.S.C. Section 1640(b) defense to such a  
serious violation would effectively nullify the TILA requirement  
that consumers be provided with necessary information before a  
transaction is consummated.

1 Furthermore, defendant was on notice of the monthly payment  
2 error long before the error was corrected. Plaintiff Anthony  
3 Iuteri indicated to the defendant when the transaction was  
4 consummated that the number of monthly payments times the  
5 payment amount would not cover the purchase price of the  
6 automobile. Defendant responded that there was no need to be  
7 concerned about the monthly payments exceeding \$86.70; the  
8 finance company would take care of the matter. In fact,  
9 defendant delayed in satisfactorily addressing this matter until  
10 May 20, 1981, when plaintiffs were refunded \$324.50 and the  
11 transaction was rescinded. In light of such delay, defendant  
12 cannot now seek the protection of 15 U.S.C. §1640(b). The  
13 Court disagrees with defendant's contention that the error was  
14 corrected within fifteen days of its discovery. In light of the  
15 foregoing, the Court rejects defendant's argument under 15 U. S.  
16 C. §1640(b). The TILA demands much more than what the plaintiff  
17 received.

18 (8) Finally, the Court rejects defendant's argument that it  
19 "has no liability ... since the transaction was rescinded."  
20 Defendant's Proposed Conclusions of Law at ¶4. An underlying  
21 purpose of the TILA is to "assure a meaningful disclosure of  
22 credit terms so that the consumer will be able to ... avoid the  
23 uninformed use of credit." 15 U.S.C. §1601(a). The TILA's  
24 mandate for disclosure would surely be undermined if all a  
25 creditor need do to escape liability is strike a rescission  
26 agreement with the consumer and return any monies paid.



1 TILA is a prophylactic measure that creates a  
2 system of 'private attorneys general' to aid its  
3 enforcement. ...In order to penalize noncomplying  
4 creditors and to deter future violations, these  
5 private attorneys general may recover the statutory  
6 penalties even if they have not sustained any  
7 actual damages, or even if the creditors are guilty  
8 of only minute deviations from the requirements of  
9 TILA and implementing Regulation Z.

10 Davis v. Werne, 673 F.2d 866, 869 (5th Cir. 1982). Thus, even  
11 though defendant refunded to plaintiffs their down payment and  
12 rescinded the agreement such that plaintiffs suffered no  
13 monetary damages, plaintiffs are nevertheless entitled to  
14 recover the statutory damages the TILA provides. The Court  
15 therefore holds that the rescission of a transaction and the  
16 refund of a plaintiff's money provide no basis for relief from  
17 liability under §1640(b). See Dryden v. Lou Budke's Arrow  
18 Finance Co., 630 F.2d 641, 647 (8th Cir. 1980)(abandonment of  
19 the transaction and refund of the consumers money is not a basis  
20 for relief from liability under §1640(b)); Poirrier v. Charlie's  
21 Chevrolet, Inc., 442 F. Supp. 894, 896 (E.D. Mo.  
22 1978)("Plaintiffs are not precluded from seeking damages for the  
23 statutory violation because the contract has been rescinded.");  
24 Davis v. Werne, 673 F.2d 866, (5th Cir. 1982)("...[P]ost-  
25 consummation abandonment of a financing agreement generally will  
26 have no effect upon a creditor's TILA liability.")

DAMAGES

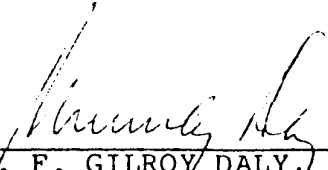
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2 (1) The plaintiffs suffered actual damages in the form of  
3 emotional trauma and unnecessary aggravation due to: (a) the  
4 undisputed forgery of plaintiffs' signatures; and (b) the  
5 defendant's failure to accurately disclose the terms of the  
6 financing arrangement pertaining to plaintiffs' purchase of the  
7 automobile. Pursuant to 15 U.S.C. §1640(a)(1) authorizing  
8 compensation for such damages, the Court awards \$2000.

9  
10 (2) The Court further awards statutory damages pursuant to 15  
11 U.S.C. §1640(a)(2)(A)(i) in the amount of \$961.60. See Nardello  
12 v. First Women's Bank, et al., No. N-78-25 (D. Conn. Sept. 22,  
13 1980).

14  
15 (3) Pursuant to 15 U.S.C. §1640(3), the Court also awards  
16 plaintiffs court costs and reasonable attorney fees to be  
17 assessed upon plaintiffs' counsel filing an affidavit and  
18 application. The Court hereby directs that this affidavit and  
19 application be filed within ten days of today's date.

20  
21 Judgment shall enter accordingly.

22  
23 Dated at Bridgeport, Connecticut this 12th day of November,  
24 1985.

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T. F. GILROY DALY, CHIEF JUDGE  
UNITED STATES DISTRICT COURT

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FOOTNOTE

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1. The Court acknowledges that defendant's exhibit 501 contains writing indicating monthly installment amounts of \$186.70. The Court has carefully scrutinized the handwriting on this exhibit and concludes that it is unpersuasive on its face.

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