

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In Re:

**GEORGE LAWRENCE FINCH,
LINDA ANN FINCH,**

DEBTORS.

**GEORGE LAWRENCE FINCH,
LINDA ANN FINCH,**

PLAINTIFFS,

v.

HOUSEHOLD FINANCE CORP. III,

DEFENDANT.

**CASE NO. 01-42012
CHAPTER 7**

ADV. NO. 01-7125

**ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY
JUDGMENT ON BONA FIDE ERROR DEFENSE, GRANTING PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT ON ISSUE OF VIOLATION OF TILA
AS IT RELATES TO MS. FINCH, AND RESERVING RULING ON PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT RELATING TO REMEDY
AVAILABLE TO MS. FINCH.**

This proceeding is before the Court on the Plaintiffs' motion to strike affidavit of Earl Glase (Doc. No. 35), Plaintiffs' motion for partial summary judgment on Defendant's asserted bona fide error defense (Doc. Nos. 20-21), and Plaintiffs' motion for summary judgment (Doc. Nos. 18-19). Both sides have submitted briefs on all three matters. After reviewing the facts, arguments, and law, the Court is now ready to rule.

The parties agree that this proceeding concerns the validity, priority, or extent of a lien in property of Debtors, and is a core proceeding that may be determined by this Court under jurisdiction conferred by 28 U.S.C.A. §§157 and 1334. The Court is satisfied that this is a proceeding arising in a case under Title 11, so bankruptcy jurisdiction is conferred by §1334(b), and that it is a core proceeding under §157(b)(2)(K), so this Court has authority under §157(a) and (b)(1) to decide it.

I. FACTS

The following facts are uncontroverted except as otherwise indicated.

Plaintiffs George Lawrence Finch and Linda Ann Finch are married, but live in separate houses located at 2017 and 2021 S.W. Clay, respectively, in Topeka, Kansas. They own both houses as joint tenants. In the schedules for their joint Chapter 7 bankruptcy case, Mr. Finch claimed 2017 S.W. Clay as his homestead, and Ms. Finch claimed 2021 S.W. Clay as hers.

In December 2000, Ms. Finch, alone, borrowed approximately \$32,000 from Defendant, Household Finance Corporation III (“Household”). As security, she and Mr. Finch gave Household a mortgage, apparently on the 2021 S.W. Clay real estate.¹ All parties agree that the transaction at issue in

¹In their statements of uncontroverted facts, the parties’ attorneys state that the mortgage the Finches gave was on 2017 S.W. Clay. However, in affidavits, both the Finches say the mortgage was actually on 2021 S.W. Clay. Comparing the property description in the mortgage to the property descriptions given on the Finches’ bankruptcy schedules, it appears the mortgage more likely covers 2021 S.W. Clay—Ms. Finch’s house, although no street address is included in the mortgage. On the other hand, all the other loan documents provided to the Court indicate 2017 S.W. Clay is Ms. Finch’s address. In her affidavit, Ms. Finch claims that she noticed this error when she first started signing the documents, and pointed it out to Household’s employee. She says the employee told her he would correct the documents and she could return to sign them later, which she did. However, as indicated, the copies of the documents supplied by the Finches from their files and the copies supplied by Household from its files all still give 2017 S.W. Clay as Ms. Finch’s address.

this case was subject to the federal Truth in Lending Act (“TILA”), 15 U.S.C. §1601, *et seq.*² When consumers give mortgages on their homes to secure non-purchase-money loans, the TILA gives them the right to rescind the transaction for a period of time, usually limited to three days, and requires the lender to give them notice of that right. *See* 15 U.S.C.A. §1635.

The parties agree that the TILA required Household to give at least Ms. Finch disclosures of certain information about the loan and notice of her right to cancel (or rescind) the transaction (“the Notice”). The Finches claim that Mr. Finch was also entitled to, but did not, receive the disclosures and the Notice. Household responds that it did give those items to Mr. Finch, but that it was not required to do so. In support of its response, Household submitted the affidavit of its employee, Earl Glase, who handled the transaction with the Finches. The Finches have moved to strike Glase’s affidavit because it states that Glase “believe[d]” he had provided the Notice and explained it to the Finches. The word “believe,” they argue, shows that Glase did not have personal knowledge of the facts asserted in the affidavit.

The Finches filed a joint Chapter 7 bankruptcy petition on July 30, 2001, and about a month later, notified Household that they chose to exercise their right under the TILA to rescind their transaction with Household. Household did not take any of the steps the TILA calls for when consumers validly rescind a transaction under §1635. Household contends that any right to rescind that the Finches may have had expired before they attempted to exercise that right.

Besides their contention that Mr. Finch was not given the required disclosures and the Notice, the Finches claim the Notice that was given to Ms. Finch was not adequate to fulfill Household’s obligation to

²All statutory references are to the Truth in Lending Act, 15 U.S.C. § 1601, *et seq.*, unless otherwise specified.

inform her of her right of rescission. The Board of Governors of the Federal Reserve System (“the Fed”), the agency charged with administering the TILA, *see* 15 U.S.C.A. §§ 1602(a) and 1604(a), has created two model forms that creditors can use to give consumers notice of their right to rescind a home mortgage transaction. One form is used for a loan where the consumer has no outstanding loan with the same creditor (“New Loan Form”), and the other is used for a loan that includes a refinancing of an outstanding loan with the same creditor that is already secured by the consumer’s home (“Refinancing Form”). *See* Regulation Z, Forms, 12 C.F.R. Appendix H, forms H-8 and H-9 (2003).

Rather than using these separate model Forms, Household chose to create a single form (the Notice) that contains alternative paragraphs using language similar to that in each of the Fed’s Forms, with a space (created by an underscore surrounded by parentheses) adjacent to each paragraph that is to be marked or checked to indicate which one applies to the particular transaction. On the copy contained in Household’s files, the designated space beside the paragraph for a new loan is checked, and both the Finches signed at the bottom to certify that they “received this Notice in duplicate.” A second page (perhaps the back) of the Notice has a hand-written date added, and both the Finches have signed it to certify that: (1) three or more days had elapsed since they “received in duplicate this notice” and executed the loan contract to which the Notice referred; and (2) they had not canceled the contract. The copies of the Notice that the Finches concede Ms. Finch was given, on the other hand, contain no signatures and neither designated space has been checked. Household concedes the copies of the Notice given to the Finches did not have either designated space checked.

When Household failed to take action after receiving the rescission notice, the Finches filed this adversary proceeding against it, seeking, among other things, a declaration that they had validly rescinded

the transaction and that Household's mortgage was void. In its answer to the complaint, Household included an assertion that any violations of the TILA that it may have committed were the result of "a bona fide error." The Finches moved for partial summary judgment that Household could not prove it was protected by this defense. In response to that motion, Household withdrew the defense (Doc. No. 30). Consequently, the Court will grant the Finches' motion directed to that affirmative defense.

In addition to their motion on the bona fide error defense, the Finches have also moved for summary judgment on their TILA claims against Household. They contend that Household violated the TILA in three ways: (1) failing to give Mr. Finch a copy of the required TILA disclosures; (2) failing to give Mr. Finch two copies of the Notice; and (3) using a Notice of right to cancel that failed to properly inform the Finches of their rights.

II. CONCLUSIONS OF LAW

A. The alleged TILA violations.

1. Standard for Summary Judgment

Summary judgment is appropriate if the moving party demonstrates that there is "no genuine issue as to any material fact" and that the party is "entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Under the rule, "the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). The substantive law identifies which facts are material. *Id.* at 248. A dispute over a material fact is genuine when the evidence is such that a reasonable jury could find for the nonmovant. *Id.* "Only disputes over

facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Id.*

The movant has the initial burden of showing the absence of a genuine issue of material fact. *Wolf v. Prudential Insurance Co.*, 50 F.3d 793, 796 (10th Cir.1995). The movant may discharge its burden “by ‘showing’—that is, pointing out to the [trial] court—that there is an absence of evidence to support the nonmoving party’s case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). The movant need not negate the nonmovant’s claim. *Id.* at 323. Once the movant makes a properly supported motion, the nonmovant must do more than merely show there is some metaphysical doubt as to the material facts. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The nonmovant must go beyond the pleadings and, by affidavits or depositions, answers to interrogatories, and admissions on file, identify specific facts showing there is a genuine issue for trial. *Celotex*, 477 U.S. at 324. Rule 56(c) requires the Court to enter summary judgment against a nonmovant who fails to make a showing sufficient to establish the existence of an essential element of that party’s case, and on which that party will bear the burden of proof. *Id.* at 322.

2. Background of the TILA

Some background knowledge about the TILA is necessary to properly evaluate claims made under it. Congress enacted the TILA to regulate the disclosure of the terms of consumer credit transactions in order “to aid unsophisticated consumers and to prevent creditors from misleading consumers as to the actual cost of financing.” *Morris v. Lomas & Nettleton Co.*, 708 F. Supp. 1198, 1203 (D. Kan. 1989) (citing *Mourning v. Family Publ’ns Serv., Inc.*, 411 U.S. 356, 363-69 (1973)). Disclosure allows consumers to compare different financing options and their costs. 15 U.S.C.A. §1601(a). To encourage

compliance, TILA violations are measured by a strict liability standard, so even minor or technical violations impose liability on the creditor. *See, e.g., Mars v. Spartanburg Chrysler Plymouth, Inc.*, 713 F.2d 65, 67 (4th Cir. 1983) (“To insure that the consumer is protected, as Congress envisioned, requires that the provisions of [the TILA and Regulation Z] be absolutely complied with and strictly enforced”); *Davison v. Bank One Home Loan Services*, 2003 WL 124542, *6 (D. Kan. 2003). TILA is a strict liability statute and a technical violation is sufficient to impose liability. The consumer-borrower can prevail in a TILA suit without showing that he or she suffered any actual damage as a result of the creditor’s violation of the TILA. *Herrera v. First Northern Savings & Loan Ass’n*, 805 F.2d 896, 900 (10th Cir. 1986).

The Board of Governors of the Federal Reserve System (“the Fed”) is the agency charged with administering the TILA, 15 U.S.C.A. §§ 1602(a) and 1604(a), and has adopted extensive regulations implementing the TILA, 12 C.F.R. Part 226 (2003), all of which it calls “Regulation Z.” *See* 12 C.F.R. § 226.1(a). When the agency charged with enforcing a statute has promulgated a regulation that adopts a permissible construction of the statute, the courts must defer to that interpretation and not impose their own. *Chevron U.S.A., Inc., v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-44 (1984). Furthermore, the Supreme Court has indicated this requirement is especially strong in the context of the TILA and Regulation Z, where even official staff interpretations of the statute and regulation should control unless shown to be irrational. *Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555, 559-70 (1980); *see also Anderson Brothers Ford v. Valencia*, 452 U.S. 205, 219 (1981) (citing *Milhollin*, Court indicated that absent “obvious repugnance” to statute, Fed’s regulation implementing TILA and interpretation of that regulation should be accepted by courts) and *Davison v. Bank One Home Loan Services*, 2003

WL 124542, at *5 (D. Kan. 2003) (wherein Judge Vratil held that there existed unmistakable congressional decision to treat administrative rulemaking and interpretation under TILA as authoritative).

3. The TILA right to rescind a home mortgage transaction

This proceeding involves a non-purchase-money loan secured by a consumer-borrower's home (Ms. Finch's "principal dwelling"). *See* 15 U.S.C.A. §§ 1635(e)(1) and 1602(2) (excluding from rescission rights given by § 1635 liens against consumer-borrowers' homes that secure financing of acquisition or initial construction). In such non-purchase-money transactions, the consumer-borrower has a right to rescind established by TILA § 1635. It provides:

(a) Disclosure of obligor's right to rescind

Except as otherwise provided in this section, in the case of any consumer credit transaction . . . in which a security interest . . . is or will be retained or acquired in any property which is used as the principal dwelling of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the information and rescission forms required under this section together with a statement containing the material disclosures required under this subchapter, whichever is later, by notifying the creditor, in accordance with regulations of the Board, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with regulations of the Board, to any obligor in a transaction subject to this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the Board, appropriate forms for the obligor to exercise his right to rescind any transaction subject to this section.

15 U.S.C.A. § 1635(a). So long as the creditor has not given the obligor the items specified in this provision, the obligor's right to rescind will last for three years from the consummation of the transaction, with certain exceptions that do not apply in this case. *See* TILA § 1635(f), 15 U.S.C.A. § 1635(f). The main part of Regulation Z that implements § 1635 is 12 C.F.R. § 226.23. Relevant parts of that provision and other parts of Regulation Z will be discussed below.

The Finches sought to exercise a right to rescind the transaction with Household well after the normal three-day rescission period would have expired. They contend, however, that they were entitled

to an extended rescission period because Household committed three errors, any one of which would have prevented the rescission period from ending before the three-year limit fixed by TILA § 1635(f).

4. Household was not required to give George Finch the TILA disclosures and notice of right to cancel because, under Regulation Z, he was not a “consumer” in the transaction.

The Finches’ first two claims that Household violated TILA §1635 and Regulation Z § 226.23 are based on their assertion that Mr. Finch was entitled to receive one copy of the TILA-required disclosures and two copies of the TILA Notice of right to cancel or rescind the transaction. As a first line of defense, Household contends that Mr. Finch was not entitled to receive the disclosures and Notice.

Household relies on two provisions in Regulation Z. First, it points to § 226.17, which sets out some general disclosure requirements. Subsection (d) addresses transactions involving multiple creditors or multiple consumers, and provides:

(d) *Multiple creditors, multiple consumers.* If a transaction involves more than one creditor, only one set of disclosures shall be given and the creditors shall agree among themselves which creditor must comply with the requirements that this regulation imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the obligation. If the transaction is rescindable under § 226.23, however, the disclosures shall be made to each consumer who has the right to rescind.

12 C.F.R. § 226.17(d). Then Household points to § 226.23(a)(1), which provides:

(a) *Consumer’s right to rescind.* (1) In a credit transaction in which a security interest is or will be retained or acquired in a consumer’s principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind the transaction [with exceptions not applicable here].

12 C.F.R. § 226.23(a)(1). Household suggests that Mr. Finch had no right to rescind because the property being mortgaged was not his principal dwelling, while the Finches respond that he did have the right because he was a “consumer” whose “ownership interest” would be subject to the mortgage.

While the Court could engage in a detailed analysis of these provisions to resolve this dispute, a simpler answer is found in § 226.2 of Regulation Z, not cited by the parties, which contains definitions of terms. Section 226.2(a)(11) provides:

Consumer means . . . a natural person to whom consumer credit is offered or extended. However, for purposes of rescission under . . . [§]226.23, the term also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest.

12 C.F.R. § 226.2(a)(11). Mr. Finch is not covered by the first sentence of this definition because he was not obligated on the Household loan, only Ms. Finch was. He is not covered by the second sentence, either, because the mortgaged property was not his principal dwelling. Referring back to § 226.23(a)(1), then, although Mr. Finch's ownership interest was subject to Household's security interest, he was not a "consumer" under that provision. Consequently, Mr. Finch was not entitled to receive the TILA disclosures or the Notice, and had no right to rescind the mortgage transaction. The history of Regulation Z confirms this interpretation. In 1981, the Fed extensively revised Regulation Z, and adopted §§ 226.2(a)(11) and 226.23(a)(1) in their present forms. *See Truth in Lending; Revised Regulation Z*, 46 Fed. Reg. 20848, 20893 and 20904 (Apr. 7, 1981). At the time, the Fed said of the definition of "consumer" in § 226.2(a)(11):

The definition has been significantly revised from the December proposal. It provides a general rule for most sections of the regulation and a special rule applicable only to the provisions on the right of rescission. The general rule significantly reduces the scope of the definition from that in the current regulation and December proposal; it includes only cardholders and natural persons to whom consumer credit is offered or extended. This means that persons such as endorsers, guarantors or sureties are no longer "consumers" for purposes of the general rule.

The special rule for rescission, however, broadens the definition to include any natural person (such as a guarantor, surety, or a person who is not liable on the credit obligation) when

that person's home is subject to the risk of loss. That person has the right to receive the material disclosures and the notice of the right to rescind and may rescind the transaction.

46 Fed. Reg. at 20850. The Fed also included this comment about § 226.23:

Under paragraph (a)(1), a consumer has the right to rescind only if the transaction involves the consumer's principal dwelling and the consumer's ownership interest in that dwelling is or will be subject to a security interest. A number of commenters contended that the language in the December proposal could be interpreted to provide the right to rescind to a nonresident co-owner of a dwelling. To avoid such interpretations, the definition of "consumer" in § 226.2 has been expanded to clarify that, for purposes of rescission, a consumer is any natural person who is both an owner and a resident of a dwelling that is or will be subject to a security interest as part of the credit transaction. The definition therefore encompasses persons who are not parties to the credit agreement but who have signed the security agreement. As a signatory to the security agreement, that person is a party to the credit transaction and is obligated to the extent that his or her ownership interest is encumbered by the creditor's security interest. Accordingly, joint owners in this situation must be given the right of rescission, so long as the property represents the joint owners' principal dwelling.

Truth in Lending; Revised Regulation Z, 46 Fed. Reg. 20848, 20884 (Apr. 7, 1981) (emphasis added).

Thus, in response to comments it had received about an earlier draft of the regulation, the Fed revised § 226.2 to make clear that someone in Mr. Finch's position ("a nonresident co-owner of a dwelling") would not have a right to rescind a transaction creating a mortgage on property, even though the resident co-owner would have the right.

The conclusion that Mr. Finch had no rescission right does not appear to be at odds with the TILA, either. The TILA's main aim is to ensure that consumers receive information to help them use credit more wisely. *See* 15 U.S.C.A. §1601(a) (informed use of credit). Since Mr. Finch did not obtain credit in the transaction, this aim would not have been significantly hampered by failing to give loan information to him.

Given the Court's legal conclusion that Mr. Finch had no right to rescind the transaction, the factual dispute about whether Household gave him the disclosures and Notice is immaterial. Household did not

violate the TILA even if it did not provide those items to Mr. Finch. Thus, the Court denies the Motion for Summary Judgment as it relates to Mr. Finch and finds that he is not entitled to any remedy under the TILA.

5. The notice of right to cancel that Household gave to Linda Finch was insufficient to comply with TILA § 1635 and Regulation Z § 226.23.

The Finches' last claim that Household violated the TILA, resulting in Ms. Finch receiving up to three years to rescind the transaction, is based on the content of the Notice it gave her. Subsection (h) of TILA § 1635 provides:

(h) Limitation on rescission

An obligor shall have no rescission rights arising solely from the form of written notice used by the creditor to inform the obligor of the rights of the obligor under this section, if the creditor provided the obligor the *appropriate* form of written notice published and adopted by the Board, or a comparable written notice of the rights of the obligor, that was *properly* completed by the creditor, and otherwise complied with all other requirements of this section regarding notice.

15 U.S.C.A. § 1635(h) (emphasis added). Regulation Z § 226.23(b)(2) provides: “*Proper form of notice.* To satisfy the disclosure requirements of paragraph (b)(1) of this section, the creditor shall provide the appropriate model form in Appendix H of this part or a substantially similar notice.”

Household could, therefore, have satisfied the requirement that it give Ms. Finch proper notice of her right to rescind the transaction if it had simply used the correct model form, the New Loan Form (H-8) or the Refinancing Form (H-9). This regulation implements TILA § 1604(b), which directs the Fed to publish model forms and provides that creditors are deemed to have complied with non-numerical TILA disclosure requirements if they use the appropriate model form. Section 1604(b) also provides that a creditor shall be deemed to have complied if it: “(2) uses any such model form . . . and changes it by (A) deleting any information which is not required by this subchapter, or (B) rearranging the format, if in making

such deletion or rearranging the format, the creditor . . . does not affect the substance, clarity, or meaningful sequence of the disclosure.” 15 U.S.C.A. § 1604(b)(2)(A) and (B).

The Court must determine whether Household’s Notice constituted “a substantially similar notice,” as required by 12 C.F.R. § 226.23(b)(2). Section 1604(b)(2) aids the Court’s analysis by indicating some of what is required for a creditor’s non-model-form notice to be “substantially similar.” A copy of the New Loan Form is attached to this opinion as Appendix 1, and the Refinancing Form as Appendix 2. A reasonably accurate reproduction of Household’s notice, showing its content, type sizes and styles, formatting, and so forth, is attached as Appendix 3.

After carefully reviewing Household’s Notice and comparing it to the Fed’s New Loan and Refinancing Forms, the Court reaches the following conclusions. The Notice did not delete any information contained in the Fed’s Forms, but it definitely rearranged the format. It also incorporated certain language from each model form in an effort to make one form that could cover both types of transaction. The Court notes that the model forms are more concise than the Notice, and therefore express the right to rescind more clearly. The language in the Notice closely follows that in the model forms, but adds some repetitive language in each of the alternative paragraphs whose applicability was supposed to be indicated by marking the designated space. The model forms use the same type size and style throughout except for the headings and the phrase “I WISH TO CANCEL,” while the Notice appears to employ at least two type sizes and styles in a way that calls more attention to some portions, thus de-emphasizing others.

The Notice also adds the portion the borrower is to sign to certify the receipt of the Notice “in duplicate.” This creates some potential confusion by making the borrower sign once to indicate receipt of the Notice, and sign again if he or she decides to rescind the transaction. This added portion would also

be clearer if it indicated the receipt of “two copies of the Notice” instead of “this Notice in duplicate.” Most significantly, of course, the Notice includes the alternative paragraphs, making it necessary to mark the correct spaces to indicate which one applies. Because Household failed to mark either space on the Notice it gave to Ms. Finch, it placed on her the burden of determining which paragraph applied to her.

The Finches suggest that Household frequently tries to get people who already owe it unsecured debt to refinance that debt and secure it with a home mortgage, making it more likely that such customers will believe the refinancing paragraph applies to them when the new loan paragraph actually does, or will at least be uncertain which paragraph applies. While Household’s Notice might be especially confusing for such customers, the Court believes that problem is not relevant here because there is no indication that Ms. Finch owed Household any money before entering into the transaction at issue. Consequently, she had no reason to think the refinancing paragraph applied to her, because she had no outstanding prior loan with Household.

Nevertheless, considering the spirit and purpose of the TILA and Regulation Z, along with the full content of the Notice, the Court is convinced that the Notice was insufficient. The main thrust of the TILA is to require creditors to accurately disclose to consumers specified details of loan transactions, and for transactions like the one involved here, to give them notice of their right to rescind. Neither the TILA nor Regulation Z provide any protections for a creditor based on the knowledge or capabilities of the specific consumer involved in a transaction. While Household’s Notice might have been sufficient if the applicable paragraph had been marked, the Court concludes the unmarked Notice given to Ms. Finch was not.

Therefore, Ms. Finch was entitled to an extended rescission period under TILA §1635(a), which she exercised timely.

6. Effect of Ms. Finch’s timely exercise of her right to rescind

The Court is aware that the identical issue concerning what remedy Ms. Finch should receive as a result of her timely exercise of her right to rescind is presently on appeal in two cases, one pending before District Judge Robinson in *Ramirez v. Household Finance*, Appeal No. 03-4122-JAR and one pending before Judge Crow in *Merriman v. Beneficial*, Case No. 03-4121-SAC. The Court believes it would be a poor use of the parties’ and the appellate courts’ resources for this Court to enter a final decision at this point on the remedy issue, as such decision would simply force the non-prevailing party into yet another appeal on the same issue. Accordingly, the Court intends to reserve ruling on this remaining issue until either a final decision is entered in one of these cases on the merits, or the same legal issue is otherwise decided by the Court of Appeals for the Tenth Circuit in another factually similar case.

If either party believes the Court’s decision to reserve ruling on this issue will prejudice their rights, that party should make a request for a status conference or hearing with the Court, at which time the Court will hear oral argument on where this issue should be decided prior to the conclusion of the cases currently on appeal to the district court. If the parties agree that the Court’s decision to reserve ruling on this issue is appropriate, they are requested to immediately notify this Court upon notice of any final decision in either the *Ramirez* or *Merriman* cases, so that the remaining issue in this case can be promptly decided.

B. The motion to strike Mr. Glase’s affidavit is moot.

The Court has found that Mr. Finch is not entitled to any relief under the TILA because he does not qualify as a consumer under the TILA as it relates to this case. Based on that ruling, the issue of whether

Mr. Finch received proper notice of his rescission rights is immaterial to this case, as a finding either way would have no effect on the outcome. Because Mr. Glase's affidavit relates only to the issue of whether Mr. Finch received proper notice, the issue of whether Mr. Glase's affidavit should be stricken is moot. Therefore, the Court denies the motion to strike Mr. Glase's affidavit as moot.

III. CONCLUSION

For the reasons set forth above, the Court denies Plaintiff's Motion to Strike Affidavit, grants Plaintiffs' Motion for Partial Summary Judgment that relates to the bona fide error defense, grants Plaintiffs' Motion for Summary Judgment in part, finding a TILA violation as to Ms. Finch, denies Plaintiffs' Motion for Summary Judgment to the extent it claimed a violation and remedy as to Mr. Finch, and reserves ruling on the Plaintiffs' Motion for Summary judgment as it relates to Ms. Finch's remedy for the TILA violation. In regard to the TILA violations, the Court finds that Household was not required to give George Finch the TILA disclosures and notice of right to cancel because Mr. Finch was not a consumer in the transaction. However, the Court finds that Household did not comply with TILA by failing to provide a sufficient notice of the right to cancel to Linda Finch. Therefore, Ms. Finch is entitled to the extended rescission period and timely exercised her rescission rights.

The Court will reserve ruling on the appropriate remedy available to Ms. Finch pending the outcome of two similar cases currently on appeal to the United States District Court for the District of Kansas.

IT IS, THEREFORE, BY THIS COURT ORDERED that the Plaintiffs' Motion to Strike Affidavit of Earl Glase (Doc. 35) is denied as moot.

IT IS FURTHER ORDERED that the Plaintiffs' Motion for Partial Summary Judgment on the Defendant's Asserted Bona Fide Error Defense (Doc. 20) is hereby granted.

IT IS FURTHER ORDERED that the Plaintiffs' Motion for Summary Judgment is granted in part. The motion is granted as it relates to the Plaintiff Ms. Finch's right to rescind the mortgage and denied to the extent it sought a remedy for Mr. Finch. The Court reserves ruling on the motion as it relates to the Plaintiff Ms. Finch's remedies at this time.

IT IS SO ORDERED this 7th day of November, 2003.

JANICEMILLERKARLIN, BANKRUPTCY JUDGE
UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the **ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON BONA FIDE ERROR DEFENSE, GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON ISSUE OF VIOLATION OF TILA AS IT RELATES TO MS. FINCH, AND RESERVING RULING ON PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT RELATING TO REMEDY AVAILABLE TO MS. FINCH** was deposited in the United States mail, postage prepaid on this 7th day of November, 2003 to the following:

Fred W. Schwinn
5241 Norma Way, #208
Livermore, CA 94550-3753

Todd W. Ruskamp
One Kansas City Place
1200 Main Street
Kansas City, Missouri 64105

Robert L Baer
COSGROVE WEBB & OMAN
1100 Bank IV Tower
534 South Kansas Avenue
Topeka, Kansas 66603

DEBRA C. GOODRICH
Judicial Assistant to:
The Honorable Janice Miller Karlin
Bankruptcy Judge

NOTICE OF RIGHT TO CANCEL

Your Right to Cancel

You are entering into a transaction that will result in a [mortgage/lien/security interest] [on/in] your home. You have a legal right under federal law to cancel this transaction, without cost, within three business days from whichever of the following events occurs last:

- (1) the date of the transaction, which is _____; or
- (2) the date you received your Truth in Lending disclosures; or
- (3) the date you received this notice of your right to cancel.

If you cancel the transaction, the [mortgage/lien/security interest] is also cancelled. Within 20 calendar days after we receive your notice, we must take the steps necessary to reflect the fact that the [mortgage/lien/security interest] [on/in] your home has been cancelled, and we must return to you any money or property you have given to us or to anyone else in connection with this transaction.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within 20

calendar days of your offer, you may keep it without further obligation.

How to Cancel

If you decide to cancel this transaction, you may do so by notifying us in writing, at

(creditor's name and business address).

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of _____ (date)

(or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL

Consumer's Signature Date

If we do not take possession of the money within 20 calendar days of your offer, you may keep it without further obligation.

NOTICE OF RIGHT TO CANCEL

HOW TO CANCEL

Your Right to Cancel

If you decide to cancel this new transaction, you may do so by notifying us in writing, at

You are entering into a new transaction to increase the amount of credit previously provided to you. Your home is the security for this new transaction. You have a legal right under federal law to cancel this new transaction, without cost, within three business days from whichever of the following events occurs last:

(Creditor's name and business address).

- (1) the date of this new transaction, which is _____; or
- (2) the date you received your new Truth in Lending disclosures; or
- (3) the date you received this notice of your right to cancel.

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of

If you cancel this new transaction, it will not affect any amount that you presently owe. Your home is the security for that amount. Within 20 calendar days after we receive your notice of cancellation of this new transaction, we must take the steps necessary to reflect the fact that your home does not secure the increase of credit. We must also return any money you have given to us or anyone else in connection with this new transaction.

(Date) _____

(or midnight of the third business day following the latest of the three events listed above).

If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

You may keep any money we have given you in this new transaction until we have done the things mentioned above, but you must then offer to return the money at the address below.

I WISH TO CANCEL

Consumer's Signature

Date

NOTICE OF RIGHT TO CANCEL

BORROWER'S NAME AND ADDRESS:

FINCH, LINDA A.
2017 SW CLAY
TOPEKA KS 66604

LOAN NO: 458202-00-877780

YOUR RIGHT TO CANCEL

You are entering into a new transaction and you have agreed to give us a mortgage, lien or security interest on your home in this transaction. You have a legal right under federal law to cancel this transaction and the new mortgage, lien or security interest on your home, without cost, within three business days from whichever of the following events occurs last:

- (1) the date of this transaction, which is 12/14/00 or such later date you sign you loan documents; or
(2) the date you receive your Truth-in-Lending disclosures for this transaction; or
(3) the date you received this notice of your right to cancel.

() New Loan: You are entering into a transaction that will result in a mortgage, lien or security interest on your home. You have a legal right under federal law to cancel this transaction as stated above. If you cancel this transaction, the mortgage, lien or security interest is also canceled. Within 20 calendar days after we receive your notice, we must take the steps necessary to reflect the fact that the mortgage, lien or security interest on your home has been canceled and we must return to you any money or property you have given to us or to anyone else in connection with this transaction.

() Refinancing Existing Loan: You are entering into a new transaction to increase the amount of credit previously provided to you by us. Your home is the security for this new transaction. You have a legal right under federal law to cancel this transaction as stated above. If you cancel this new transaction, it will not affect any amount that you presently owe. Your home is already the security for that amount. Within 20 calendar days after we receive your notice of cancellation of this new transaction, we must take the steps necessary to reflect the fact that your home does not secure the increase in credit. We must also return any money you have given to us or anyone else in connection with this new transaction.

If you cancel this transaction, you may keep any money or property we have given you in this transaction until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

HOW TO CANCEL

If you decide to cancel this transaction, you may do so by notifying us in writing, at HOUSEHOLD FINANCE CORPORATION III, 1700 SW WANAMAKER ROAD, WANAMAKER SQ CTR/STE 250, TOPEKA KS 66604

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram you must sent the notice no later than midnight of 12/18/00 (or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL

Consumer's signature

Date

I certify that I received this Notice in duplicate.

(SEAL)

(SEAL)

(SEAL)

[A bar code is printed here, with “*174026651195RES8000US000861C**FINCH” printed under it.]