Court Allows Claim that Purchase of Ancillary Product Was Condition of Credit to Proceed, Based on Alleged Verbal Representation

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The advertising, sale, and financing of products ancillary to a credit transaction have been areas of regulatory scrutiny for years. Likewise, the always crucial question of what constitutes a cost of credit to be included in the finance charge has only grown in importance. A recent case before a federal district court touched on both topics.

Eva Perez bought a vehicle with a secured loan from Consumer Financial Services Corporation. Perez later sued CFSC, as part of a putative class action on behalf of Illinois borrowers who had obtained loans from the lender. The complaint alleged that CFSC violated the Truth in Lending Act, the Illinois Consumer Installment Loan Act, and the Illinois Consumer Fraud Act by understating the finance charge for the loan transaction, specifically by not including the cost of a car club membership in the finance charge. Perez alleged that purchasing the car club membership was a condition of the loan and that the car club membership was a contract of insurance under Illinois law. TILA permits certain types of insurance agreements to be excluded from the finance charge if, among other requirements, the consumer is not required to purchase them and is informed of that fact. CFSC moved to dismiss all of the claims.

The U.S. District Court for the Northern District of Illinois denied the motion to dismiss. The court found that Perez plausibly alleged that the car club membership was insurance under Illinois law, despite disclosures on the product's application stating that it did not constitute insurance. The car club membership provided the following services: roadside assistance for, among other things, breakdowns, flat tires, and dead batteries of not more than $75; costs of defending criminal and traffic charges arising out of the use of an automobile; cost of posting bail for charges arising out of the use of an automobile; and a reward for the recovery of a stolen automobile.

Next, the court found that Perez plausibly alleged that the purchase of a car club membership was mandatory, primarily based on her allegations that "she was 'specifically told that the car club membership was a condition for the extension of credit.'" The court came to this determination despite the fact that the application for the car club membership, which Perez attached as an exhibit to her complaint, expressly stated that the purchase of the membership was not a required condition of the loan. The court also noted that whether the membership was mandatory was a factual dispute that it could not resolve on a motion to dismiss. Therefore, the court concluded that Perez plausibly alleged that CFSC violated TILA by understating the finance charge. It also allowed the ICILA and ICFA claims to proceed.

It will be interesting to see how the court will decide this case, if it ultimately renders a judgment on the merits. Regardless, in addition to reflecting the wide scope of products that a court would potentially consider insurance, the case also shows the potential regulatory significance of verbal representations to consumers. As a general matter, consumer financial services providers need to develop and implement detailed internal policies and procedures around the conduct of consumer-facing employees and service providers that provide for sufficient training and regular monitoring.

Perez v. Consumer Financial Services Corporation, 2024 U.S. Dist. LEXIS 149532 (N.D. Ill. August 21, 2024).