

LEGAL SERVICES OF NEW JERSEY, INC.
BY: STEVEN P. MC CABE
78 Carroll Place
New Brunswick, New Jersey 08901
201-246-0770

SUPREME COURT OF NEW JERSEY
DOCKET NO. 16,528

BENEFICIAL FINANCE CO. OF
ATLANTIC CITY,

Plaintiff-Respondent,

v.

ROBERT SWAGGERTY and YVONNE SWAGGERTY,

Defendants-Appellants.

CONSUMERS FINANCIAL SERVICES,

Plaintiff-Respondent,

v.

THERESA A. TAYLOR,

Defendant-Appellant.

Civil Action

NOTICE OF MOTION TO FILE BRIEF
AND PRESENT ORAL ARGUMENT
AS AMICUS CURIAE, AND
CERTIFICATION OF SERVICE

TO: ARCHER, GREINER and REID
Attn: George F. Kugler, Jr.
Attorneys for Beneficial Finance Co.
of Atlantic City
One Centennial Sq. E. Euclid Ave.
Haddonfield, NJ 08033

YOUNG and YOUNG
Attn: Harold V. O'Grady
Attorneys for Consumers
Financial Services
Gateway One
Newark, New Jersey 07102

ESSEX-NEWARK LEGAL SERVICES
Attn: Jonathan I. Epstein
Attorneys for petitioners Swaggerty and Taylor
108 West State Street
Trenton, New Jersey 08608

SIRS:

PLEASE TAKE NOTICE that Legal Services of New Jersey, Inc. hereby applies to the Supreme Court of New Jersey for leave to file a brief and present oral argument as amicus curiae should certification be granted in the above-captioned matter.

In support of this motion, Legal Services of New Jersey Inc. will rely on the brief and supporting affidavits and their attachments submitted herewith.

Dated: November 9, 1979

LEGAL SERVICES OF NEW JERSEY, INC.

BY: Steven P. McCabe
STEVEN P. MC CABB

CERTIFICATION OF SERVICE

I hereby certify that two copies of the foregoing notice of motion, together with two copies of the accompanying brief and supporting affidavits were served this day by regular mail on all parties to this action listed in the foregoing notice of motion in the time and manner prescribed by the Rules of Court.

LEGAL SERVICES OF NEW JERSEY, INC.

By: Steven P. McCabe
STEVEN P. MC CABB

Dated: November 9, 1979

LEGAL SERVICES OF NEW JERSEY, INC.
BY: Steven P. McCabe
78 Carroll Place
New Brunswick, New Jersey 08901
(201) 246-0770

SUPREME COURT OF NEW JERSEY
DOCKET NO. 16,528

BENEFICIAL FINANCE CO. OF
ATLANTIC CITY,

Civil Action

Plaintiff-Respondent,

AFFIDAVIT IN SUPPORT OF MOTION

v.

ROBERT SWAGGERTY and
YVONNE SWAGGERTY,

Defendants-Appellants.

CONSUMERS FINANCIAL SERVICES,

Plaintiff-Respondent,

v.

THERESA A. TAYLOR,

Defendant-Appellant.

STEVEN P. MCCABE, of full age, being duly sworn according
to law, deposes and says:

1. I am an attorney and Chairperson of the Consumer Task
Force of Legal Services of New Jersey, Inc. I have served in this
position individually or jointly for the past 6 years.

2. I have been authorized by this organization to act as
counsel and request participation as amicus curiae for the purposes
of supporting the grant of certification, filing a brief and giving
oral argument before the Court in these consolidated matters.

3. Legal Services of New Jersey, Inc. is a non-profit corporation founded and funded by the sixteen independent Legal Services projects in this State to assist them in their aims of rendering the most effective legal representation to indigent clients unable to retain private counsel.

4. As part of this goal, Legal Services of New Jersey, Inc. has established task forces on various substantive areas of law in order to coordinate litigation throughout the State of New Jersey and to analyze and attempt to constructively address those areas of greatest concern to indigent persons.

5. After systematic review, Legal Services of New Jersey Inc. occasionally requests amicus participation in appellate matters felt to be of special importance to low income persons. See Gaffney v. Acosta, 3d Cir., Docket No. 76-2094 (amicus participation granted in case dealing with constitutional rights of infant children of aliens under order of deportation).

6. In consumer cases, I have been attorney for Legal Services of New Jersey, Inc. as amicus curiae in Girard Acceptance Corporation vs. Wallace 76 N.J. 434 (1978). That case reversed three Appellate Division decisions and held that it was improper for sellers to take real property mortgages as supplemental collateral in transactions involving the sale of motor vehicles.

7. Despite their low income, in the past seven years my clients have regularly qualified for small loans, retain installment sales transactions and credit cards, and have occasionally obtained bank loans and secondary mortgages.

8. My clients have often been chiefly concerned with the size of their monthly payments, rather than finance charge savings resulting from shorter term transactions. Therefore they often seek longer term transactions of three, four and five years. Also, they often have educational deficiencies making it less likely that they could note violations of the Truth in Lending Act unless their credit documents are brought to the attention of an attorney.

9. In the seven years of my practice specializing in the consumer problems of low income consumers, I have never been aware of one administrative enforcement of the Truth in Lending Act in New Jersey. This observation has been borne out to Congress.¹ If consumers cannot enforce this act, it may well continue to go unenforced at all.

10. I am familiar with the legal and factual issues in this matter. I have litigated Truth in Lending cases since March 10, 1975, have followed the availability of the Truth in Lending Act as a recoupment defense since July of 1977 and began researching this case on January 12, 1979.

1. Need for the Legislation

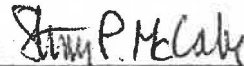
... In addition, this committee and other congressional and governmental sources have found the level of administrative enforcement by the Federal bank agencies seriously inadequate.

Senate Report No. 96-73, 96th
Congress, 1st Session (4/24/79) p.2
(Concerning the Truth in Lending
Simplification Act. See pp.17-19, supra
of the brief in support of this application)

Based on data collected by several bank regulatory agencies, the Committee believes [strengthening administrative enforcement] will result in the refunding of millions of dollars to consumers...

Ibid., p.8, emphasis supplied

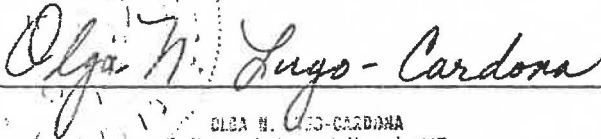
11. Legal Services of New Jersey, Inc. requests a short period of time in which to file the requested amicus curiae brief, and under these circumstances, the granting of this application will not unduly delay or prejudice the adjudication of the rights of the parties herein.



Steven P. McCabe

Dated: November 5, 1979

Sworn, and Subscribed before me
this 5th day of November 1979



OLGA N. LUGO-CARDONA
A Notary Public of New Jersey
My Commission Expires Jan. 26, 1983

STATE OF NEW JERSEY)
) SS:
COUNTY OF HUDSON)

AFFIDAVIT

NEIL J. FOGARTY, being duly sworn on oath according to law deposes and says:

1. I am a staff attorney at Hudson County Legal Services, Jersey City, New Jersey, and a member of the Consumer Task Force of Legal Services of New Jersey. The purpose of this affidavit is to explain my experience and expertise in the Truth in Lending Act in this application to file a brief as amicus curiae.

2. I have practiced two and one half years with the above office.

3. Our office's work is specialized: my specialty is consumer law and bankruptcy.

4. In that specialty I have represented several hundred people in all types of consumer law matters; affirmative and defensive, litigated and nonlitigated.

5. I have become expert in the Truth in Lending Act, among other federal and state consumer protection statutes.

6. As counsel for defendants, I raised the Truth in Lending Act as in affirmative defense in twenty-five lawsuits.

7. In none of those suits was defendant sued within one year of the consumer credit transaction.

8. In four of the above cases, the defendant(s) had defaulted within one year of the credit transaction, yet the creditors waited until after one year from the transaction to sue (i.e., after defendant's statute of limitations for raising the Truth in Lending Act had run).

9. In one of those four cases a refinanced loan was made on May 4, 1977, and it went into default on August 15, 1977. Yet the creditor waited until June 8, 1978 to bring suit. The creditors waited ten months after default and sued just one month after the statute of limitations ran for defendant's Truth in Lending claim.

10. I have never had a consumer lawsuit in which a creditor sued within one year of the transaction, nor has Judith Denton, attorney of one and one half year's experience whom I supervise.

11. All of the twenty-five cases were either settled or disposed of before trial. There was no burden on judicial administration. Only one of the cases ever reached the stage where a judge made a decision on a summary judgment motion.

12. I was the attorney of record in ten lawsuits which Ms. Denton principally handled and which raised Truth in Lending as an affirmative defense.

13. In two of these suits, the default had occurred within one year of the transaction, yet the creditor waited until after one year to sue.

14. All of these ten cases were settled or disposed of before trial; there was no strain on judicial administration.

15. These thirty-six cases covered many subjects - credit cards, small loans, bank loans, secondary mortgages, retail installment sales of furniture, car purchases, etc. The Truth in Lending Act is important because it covers so many subjects.


16. My experience has been that while some creditors (such as banks and credit cards have a high degree of compliance with the Truth in Lending Act, other creditors (particularly ghetto furniture merchants) still do not comply with the Act (which has been in effect since 1969).

17. As a result of this noncompliance, consumers are still not been told the true cost of credit, thus defeating the purpose of the Truth in Lending Act.

18. Attached as exhibits are some consumer credit contracts which have egregious violations of the Act (no annual percentage rate, for example).

19. The purpose of these exhibits is to make the point that in view of the continuing and widespread problem of noncompliance with Truth in Lending, enforcement of the Act through a civil penalty affirmative defense is a matter of great public interest.

20. The proposed amicus curiae, Legal Services of New Jersey is thus uniquely qualified to assist the court through its great expertise and experience in the Truth in Lending field - a subject of great interest to every consumer who borrows money or buys on time (virtually everyone).


NEIL J. FOGARTY

Sworn to and subscribed
before me this 1st day
of November, 1979.



NILA ALONSO
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Aug. 6, 1984

EXHIBIT F-1

Small loan company consumer loan:

no Truth in Lending disclosure whatsoever, since disclosure statement not filled in.

STATEMENT OF DISCLOSURE

LENDER

CONSUMERS FINANCIAL SERVICES OF UNION COUNTY

23 W. Westfield Avenue
ROSELLE PARK, NEW JERSEY 07204
PHONES: 245-6400
686-5700

The Lender's name and address above and the items set forth in the box directly below are expressly made a part of this Statement of Disclosure.

BORROWER'S NAME AND ADDRESS

JMC

1504 Mr. [REDACTED]
431 Bergen Ave Apt 302
Jersey City, N.J. 07306

ACCOUNT NO.	DATE OF THIS LOAN	DATE FIRST PAYMENT DUE	DATE FINAL PAYMENT DUE	NO. OF AMT. OF EACH MONTHLY PAYMENT	PRINCIPAL AMT. OF NOTE & ACTUAL AMT. OF LOAN	AMOUNT OF LIFE INS.
1504	1/1/77	1/1/77	1/1/77	1	\$ 12.00	\$ 12.00

FINAL PAYMENT IS EQUAL IN ANY CASE TO UNPAID PRINCIPAL PLUS ACCURED INTEREST

The box above and the information contained therein expressly are made a part of this Statement of Disclosure

Insurance Authorization and Request and Acknowledgment of Receipt of Loan Proceeds and Statement of Disclosure

The undersigned hereby authorize and request the above identified Lender to arrange for the insurance described below and agree to pay from the proceeds of said loan the identifiable cost thereof as set forth.

Term group credit life insurance insuring the life of the designated Principal Borrower during the term of said loan for the unpaid principal balance of the loan at the date of death.

Group credit disability insurance, insuring said Principal Borrower against disability during the term of said Note, the benefit of which after 14 days of disability shall be retroactive to the first day of disability and shall be equal for each day of disability to 1/30th of the monthly instalment on said loan.

The actual terms of any such insurance shall be those set forth in the certificate issued in connection therewith.

The undersigned expressly state and agree that this authorization is made voluntarily, not upon any requirement of the Lender or any of the Lender's employees, and acknowledge that the taking of such insurance is entirely optional.

- ☐ I desire Credit Life and Disability Insurance Date 19
- ☐ I desire Credit Life Insurance only. (Signature)
- ☐ I DO NOT want Credit Life or Disability Insurance.

The undersigned also acknowledge receipt of a Statement of Disclosure as respectively prescribed by the aforesaid Consumer Credit Protection Act and Regulation Z and further agree that the proceeds of loan were received on the date shown below and were disbursed, in accordance with the undersigned's authorization, for the items shown in the box to the right hereof, receipt of the item designated "Cash Received by Borrowers" hereby being acknowledged.

Principal Borrower

Witness Date 19

Co-Borrower

The Actual Amount of Loan shown hereon, together with interest on unpaid principal balances, is payable in successive monthly instalments and the Number and Amount of said instalments are set forth hereon. The first of said instalment is payable on the First Due Date shown hereon and each subsequent instalment on the same day of each succeeding month thereafter, the final instalment being due and payable on the Final Due Date shown.

Each instalment shall be as shown hereon if said loan is paid according to contract; otherwise, the final instalment shall be equal to the unpaid principal plus interest accrued at the time said final instalment is paid.

SECURITY: The security for this loan is checked in the box directly below headed "Nature of Security". (The box alongside the word "Furniture" is checked, the Security Agreement identified by the date shown hereon covers all of the consumer goods of every kind then owned or thereafter acquired by the Borrowers in replacement thereof and then or thereafter located at the Borrowers place of residence set forth above.

Such Security Agreement secures future advances or loans made by Lender to Borrowers, at Lender's option, within five years of the date of such Security Agreement.

NATURE of SECURITY (as Checked)
INSURANCE is included if amount is shown in COST

Security Agreement

on ☒ Furniture Yr. Make
on ☐ Auto
☐ Accounts

DISCLOSURE OF INFORMATION

as prescribed by

The Federal Consumer Credit Protection Act
And Regulation Z issued thereunder.

At the direction and request of the Borrowers, on their behalf and for their benefit, the Lender has disbursed the proceeds of the loan identified to the left above as follows:

Payment to Lender on Prior Loan No. 1504

Unpaid Principal Amount of Prior Loan \$ 0

Less { Life Ins. Cost \$ 0

Refunds { Disability Ins. Cost \$ 0

of { \$ - \$ 0

Unpaid Balance \$ - \$ 0

Group Credit Life Insurance Cost \$

Group Credit Disability Ins. Cost \$

To \$

To \$

To \$

To \$

Total Disbursements + \$

Cash Received by Borrower + \$

AMOUNT FINANCED - Actual Amount of Loan = \$

Finance Charge - Amount of Interest - computed on outstanding unpaid principal balances on the basis that instalments shall be paid according to contract \$

Annual Percentage Rate %

TOTAL OF PAYMENTS \$

The interest payable on this loan shall be at an annual percentage rate of 24% on that part of the unpaid balance not exceeding \$500.00, 22% on that part thereof exceeding \$500.00 but not exceeding \$1,500.00 and 18% on any remainder thereof, computed in accordance with the provisions of Chapter 10, Title 17, of the Revised Statutes, as amended, and with any regulations issued pursuant thereto.

All interest amounts stated are based on the assumption that all payments are made at monthly intervals starting one month after the date of the loan. The practice of making payments later than such dates will increase the total amount of interest paid and that of making such payments before such dates will reduce the total amount of interest paid.

EXHIBIT F-2

Furniture retail installment contract:

annual percentage rate not disclosed