

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

AURORA LOAN SERVICES, LLC, a)
Delawre Limited Liability Company,)
Plaintiff,) 2:08-cv-01535-GEB-KJM
v.) ORDER
CHARLENE BRITTON,)
Defendant.)

Pending are cross motions for summary judgment. Plaintiff seeks summary judgment on its declaratory relief claim, in which it requests an order issue under 15 U.S.C. § 1635(b) of the Truth in Lending Act ("TILA"), that equitably modifies the rescission procedure prescribed in that Act so that Defendant is required to return the remaining balance on her home loan to Plaintiff before Plaintiff reconveys the security interest on Defendant's real property. (Compl. Prayer for Relief ¶ A.) Defendant seeks summary judgment on her counter-claim, in which she prays for damages arising from Plaintiff's failure to comply with the rescission procedure prescribed in § 1635(b) that requires Plaintiff to reconvey the security interest before Defendant returns to Plaintiff the balance on the loan.

1 Plaintiff asserts this rescission procedure needs to be
2 modified because Defendant has not been willing to return the loan
3 proceeds. Plaintiff submits a letter it sent to Defendant in support
4 of its position in which it proposed that it would deposit a
5 reconveyance of the security interest with an escrow agent, following
6 which Defendant would deposit the loan proceeds with the same escrow
7 agent, the escrow agent would then record the reconveyance and release
8 the loan proceeds to Plaintiff. (McCann Decl. Exh. 5.) Plaintiff has
9 also submitted Defendant's letters sent to Plaintiff, in which
10 Defendant rejected Plaintiff's proposal of using an escrow agent to
11 assist with the rescission process. (McCann Decl. Exh. 6, 9, 11.)

12 Defendant counters the equities do not weigh in favor of
13 equitable modification since she is able to return the loan proceeds,
14 which the Ninth Circuit stated in Yamamoto v. Bank of New York, 329
15 F.3d 1167, 1173 (9th Cir. 2003), is a factor to be considered when
16 weighing the equities. Defendant declares she has "received a loan
17 commitment" and a "pre-approved" loan from a third-party, which
18 enables her to repay Plaintiff the loan proceeds. (Britton Decl. ¶¶
19 9, 11.) However, the Ninth Circuit also stated in Yamamoto, "a court
20 may impose conditions on rescission that assure the borrower meets her
21 obligations [of repaying the loan proceeds] once the creditor has
22 performed its obligations [of reconveying the security interest]."
23 Id. at 1173. Since it is undisputed that Defendant refuses to repay
24 the loan by using the assistance of an escrow agent, conditions should
25 be imposed on rescission to assure that Defendant repays the loan
26 proceeds. Therefore, this refusal weighs in favor of equitable
27 modification of the § 1635(b) rescission procedure.

1 When weighing the equities, "all the circumstances" are
2 taken into consideration, "including the nature of the [TILA]
3 violations." Id. at 1173. As the Ninth Circuit observed in LaGrone
4 v. Johnson, 534 F.2d 1360, 1362 (9th Cir. 1976), when the TILA
5 violations are "not egregious," "[r]escission [] should [be]
6 conditioned on a tender by [the borrower] of the [loan proceeds]
7 advanced by the [creditor]." Here, Plaintiff's Vice President Laura
8 McCann explains the TILA violation at issue, declaring the original
9 lender of Defendant's loan provided Defendant a TILA disclosure which
10 erroneously understated the total finance charge by \$5072.50.
11 Plaintiff subsequently acquired Defendant's loan and thereafter
12 discovered the finance charge error in the TILA disclosure. Plaintiff
13 promptly notified Defendant of her right to rescind the loan and
14 refunded the \$5072.50 undisclosed fees. (McCann Decl. ¶¶ 17, 18.)
15 McCann further avers Defendant elected rescission and has not made
16 a loan payment since February 2008; the remaining balance of the loan,
17 after subtracting all fees Defendant paid on the loan, is \$313,711.97.
18 (McCann Decl. ¶¶ 28, 29.) Therefore, the nature of the TILA violation
19 weighs in favor of granting Plaintiff's request for equitable
20 modification of the § 1635(b) rescission procedure.

21 Defendant argues Plaintiff should not be granted the
22 requested equitable modification because Plaintiff unreasonably waited
23 four months after receiving Defendant's notice of rescission to file
24 this lawsuit. Plaintiff counters this delay is not unreasonable in
25 light of the ongoing negotiation between the parties since "[t]he
26 rescission process is intended to be private, with the creditor and
27 debtor working out the logistics of a given rescission," quoting
28

1 McKenna v. First Horizon Home Loan Corp., 475 F.3d 418, 421 (1st Cir.
2 2007) (citation omitted). The First Circuit also stated in McKenna:

3 If . . . a debtor elects to rescind[,] the debtor
4 notifies the creditor in writing of his or her
5 desire to rescind, and the creditor must respond
6 to that election within twenty days. During this
7 response period, the creditor may comply with the
8 request, resist rescission entirely, or agree to
9 rescission while seeking equitable modifications.
10 Should disagreements ensue or problems arise,
11 either party may [seek relief in] federal court.

12 Here, Plaintiff responded to Defendant's notice of
13 rescission within twenty days of receiving the notice and negotiated
14 the procedures for rescission with Defendant over the following four
15 months. Therefore, the four-month time period between Plaintiff's
16 receipt of Defendant's notice of rescission and filing of the instant
17 suit is not unreasonable and does not weigh against granting
18 Plaintiff's request for equitable modification.

19 Therefore Plaintiff prevails on this portion of its summary
20 judgment motion. Giving Defendant credit for all payments and other
21 credits due in the amount of \$44,288.03, leaves a net tender amount of
22 \$313,711.97 which Defendant must pay to Plaintiff to effectuate her
23 rescission.

24 Since Plaintiff's claim for equitable modification of the
25 §1635(b) rescission procedure is granted, Plaintiff did not breach its
26 statutory duty when it failed to comply with the §1635(b) rescission
27 procedure, and Defendant's motion on her claim for breach of statutory
28 duty is denied.

Plaintiff also seeks a 10% prejudgment interest on the
remaining balance on the outstanding loan. However, "[t]he proper
formula [for determining the amount Defendant must return to
Plaintiff] under [TILA] is . . . the loan amount less all charges in

1 the loan agreement." Semar v. Platte Valley Federal Sav. & Loan
2 Ass'n, 791 F.2d 699, 705 (9th Cir. 1986) (stating "[t]he district
3 court erred by making the [debtors] responsible for interest . . .").
4 This is a "substantive provision[]" of TILA, which the Court does not
5 have "equitable discretion to alter." Id. at 706 n.15. Accordingly,
6 this portion of Plaintiff's summary judgment motion is denied.

7 Plaintiff also moves for an order canceling a reconveyance
8 of the security interest on Defendant's real property which was
9 erroneously recorded by Plaintiff on October 6, 2008 under California
10 Civil Code § 3412. During the March 23, 2009 hearing on the motion,
11 Defendant conceded Plaintiff's claim for cancellation of the October 6
12 reconveyance is within the scope of this action and that this claim
13 should be granted since the October 6 reconveyance was recorded in
14 error. Accordingly, this motion is granted.

15 Plaintiff also moves for sanctions against Defendant and
16 Defendant's counsel under Federal Rule of Civil Procedure 11,
17 contending Defendant misrepresented facts and law in her summary
18 judgment motion. "Rule 11 provides for the imposition of sanctions
19 when a filing is frivolous, legally unreasonable, or without factual
20 foundation" Simpson v. Lear Astronics Corp., 77 F.3d 1170,
21 1177 (9th Cir. 1996) (citation omitted). "If, judged by an objective
22 standard, a reasonable basis for the position exists . . . then
23 sanctions should not be imposed." Golden Eagle Distributing Corp. v.
24 Burroughs Corp., 801 F.2d 1531, 1538 (9th Cir. 1986). Plaintiff has
25 not shown there is no reasonable basis for Defendant's position.
26 Therefore, this motion is denied.

27 Therefore, the reconveyance of the security interest on
28 Defendant's real property which was erroneously recorded at the office


1 of the County Recorder of Sacramento on October 6, 2008, Book
2 20081006, Page 0357, is canceled.

3 Defendant shall tender the remaining balance on the loan in
4 the amount of \$313,711.97 to the Clerk of this Court within thirty
5 (30) days of the date on which this Order is filed; thereafter the
6 Court shall release the \$313,711.97 to Plaintiff and release to
7 Defendant the reconveyance of the security interest on Defendant's
8 real property executed by Plaintiff on April 11, 2008, which is
9 currently deposited with the Court.

10 In the event that Defendant fails to deposit the remaining
11 balance on the loan as set forth above, judgment shall be issued
12 reinstating the loan and declaring the rescission void and of no
13 effect.

14 In light of the above rulings, the merits of the remaining
15 motions need not be reached because those motions are mooted by this
16 Order.

17 Dated: May 20, 2009

18
19 
20 _____
GARLAND E. BURRELL, JR.
United States District Judge