

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

ALLAN AND DONNA BONNEY,            )  
    Plaintiffs                        )  
  )  
  )     C.A. NO. 08-30087-MAP  
  )  
  )  
WASHINGTON MUTUAL BANK,        )  
AS SUCCESSOR IN INTEREST        )  
TO LONG BEACH MORTGAGE         )  
COMPANY,                            )  
    Defendant                        )

MEMORANDUM AND ORDER RE:  
REPORT AND RECOMMENDATION WITH REGARD TO  
DEFENDANT'S MOTION TO DISMISS  
(Dkt. Nos. 3 & 10)

February 9, 2009

PONSOR, D.J.

I. INTRODUCTION

This is an action pursuant to the Truth in Lending Act, 15 U.S.C. § 1601(a) ("TILA"), in which Plaintiffs challenge the legal sufficiency of the Notice of Right to Cancel provided to Plaintiffs in connection with their home loan transactions. Defendant filed a Motion to Dismiss, which was referred to Chief Magistrate Judge Kenneth P. Neiman for report and recommendation.

On July 30, 2008, Judge Neiman issued his Report and Recommendation, to the effect that Defendant's motion should be denied. Defendant thereafter filed timely objections. For the reasons set forth below, this court will decline to

adopt the Report and Recommendation and will allow Defendant's Motion to Dismiss.

## II. BACKGROUND

The essential facts are simple and undisputed. On or about May 13, 2005, Plaintiffs obtained a loan from Defendant's predecessor in interest, Long Beach Mortgage Company ("Long Beach"), secured by their residence, for the purpose of debt consolidation. Plaintiffs received a Notice of Right to Cancel in connection with the transaction that did not specify the date of the transaction or the date the rescission period expired. Nearly three years later, on or about March 20, 2008, Plaintiffs sent Defendant a rescission request based upon the allegedly deficient Notice of Right to Cancel. Defendant declined to rescind the loan, and in April 2008, Plaintiffs filed this complaint seeking a rescission of the loan, a refund of all monies paid to Long Beach in connection with the loan, statutory damages, and attorneys' fees and costs.

The wealth of authority in this Circuit and District makes lengthy discussion of the issues raised by this case unnecessary. The First Circuit in Palmer v. Champion Mortgage, 465 F.3d 24 (1st Cir. 2006), and the District of Massachusetts in Carye v. Long Beach Mortgage. Co., 470 F.

Supp. 2d 3 (D. Mass. 2007), addressed factual scenarios very similar to this one. In Palmer and Carye, the First Circuit and Judge William G. Young found that purely technical violations of TILA, in circumstances where the notice was in fact quite clear, could not provide the foundation for a statutory claim. This court has adopted the logic of the two decisions in Megitt v. Indymac Bank, F.S.D., 547 F. Supp. 2d 56 (D. Mass. 2008).

The Magistrate Judge here distinguished Palmer and Megitt, and disagreed with Carye, because the notice in this case omitted the transaction date. This precise issue has been addressed by Judge F. Dennis Saylor IV in two recent decisions, Quiles v. Washington Mutual Bank, C.A. 08-40039 (D. Mass. Dec. 30, 2008), and Omar v. Washington Mutual Bank, C.A. 08-40044 (D. Mass. Dec. 30, 2008).<sup>1</sup> In both these decisions, Judge Saylor agreed with Judge Young's logic in the Carye decision and ordered dismissal despite the absence of the transaction date in the Notice of Right to Cancel form.<sup>2</sup> This court agrees with Judge Saylor that the omission of a transaction date from the form "would not

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1 These two decisions came down after the Report and Recommendation.

2 Significantly, counsel in this case are the same as in Quiles and Omar.

be confusing to an average borrower, whether considered alone or in conjunction with the other omission." Quiles v. Washington Mutual Bank, Slip op. at 9, citing Megitt. An identical result was reached in McMillian v. AMC Mortgage Services, Inc., 560 F. Supp. 2d 1210 (S.D. Ala. 2008).

Counsel for Plaintiffs condemns the state of Massachusetts law in this area as being "in a state of total chaos." See Dkt. 12 at 1. This court must disagree. The law in this district is consistent that merely technical violations of TILA that would not confuse a reasonably alert buyer cannot form the basis for a cause of action. There is no persuasive reason to treat the scenario presented in this case any differently.

### III. CONCLUSION

Based upon the foregoing, the court declines to adopt the Report and Recommendation of July 30, 2008 (Dkt. No. 10), and hereby ALLOWS Defendant's Motion to Dismiss (Dkt. No. 3). The clerk is ordered to enter judgment for Defendant. This case may now be closed.

It is So Ordered.

/s/ Michael A. Ponsor  
MICHAEL A. PONSOR  
U. S. District Judge