

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

JOHN GILLARD, <i>et al.</i> , individually and on	)	
Behalf of those similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 03 CH 6659
	)	
	)	
MASTERCARD INTERNATIONAL, INC.,	)	
A Delaware corporation,	)	
	)	
Defendant.	)	

**Memorandum Order and Opinion**

This matter comes before the Court on the Motion of Defendant Mastercard International, Inc. (“Mastercard”) to Reconsider this Court’s December 17, 2004 Opinion.

**Background**

On December 17, 2004, this Court denied Mastercard’s 735 ILCS 5/2-615 motion to dismiss plaintiffs’ class action complaint. In its motion, Mastercard argued that dismissal was warranted based upon its compliance with the Truth in Lending Act, 15 U.S.C. § 1640 (“TILA”). This Court found that Mastercard’s compliance with TILA was a question of fact and thus denied the motion to dismiss. Mastercard subsequently filed this Motion to Reconsider.

The parties agree that Mastercard is not directly subject to TILA’s disclosure requirements. Plaintiffs argue from this that no further inquiry is required and that the Court need only decide whether the complaint sufficiently alleges a deception under the Consumer Fraud Act. Mastercard, on the other hand, argues that because TILA applies to the extension of open-ended credit in general, plaintiffs cannot maintain their consumer fraud claim since it would effectively expand TILA’s disclosure requirements.

## Discussion

The issue before this Court is whether TILA's disclosure requirements are extended to Mastercard by virtue of its relationship with the card-issuing banks. No court has addressed this issue directly, however, the court in Beckett v. H&R Block, Inc., 306 Ill. App. 3d 381 (1<sup>st</sup> Dist. 1999), implied the answer. In that case, H&R Block provided its customers with short-term demand loans that customers were to repay with their income tax refunds. Block had agreements with various banks to provide the loans and Block advertised the loans as a part of its refund service. The banks made the required TILA disclosures at the time the loan check was issued to the customer. Nevertheless, plaintiffs attacked the disclosures under the Consumer Fraud Act, bringing claims against both Block and the banks. The court held that "if the disclosures were sufficient under TILA, they were also sufficient under the Act," thereby affirming the dismissal of both Block and the banks. Id. at 387. In other words, based upon the relationship between Block and the banks, the court implied an extension of the TILA disclosure requirements to Block such that compliance with TILA precluded any claim under the Consumer Fraud Act against Block.

In this case, there is no question that TILA applies to the banks which are extending open-ended credit to the consumers. Although the consumer contracts with the card-issuing banks and not Mastercard, the credit is extended under the Mastercard name and logo. In addition, Mastercard remains inherently connected to the relationship between the card-issuing bank and the consumer by reconciling the monthly charges that are being incurred and sending statements concerning those charges. As such, this Court finds that the relationship between the card-issuing banks and Mastercard, like that in Beckett, is sufficient to extend the requirements of TILA to Mastercard.

Plaintiffs attempt to distinguish Beckett on the basis that H&R Block dealt directly with its customers whereas Mastercard does not have any direct relationship with consumers. Even though the consumers in this case received their open-ended credit from the banks rather than Mastercard, they were issued a credit card bearing the Mastercard name. Thus, this Court does not find this distinction to be significant.

Plaintiffs also attempt to distinguish Beckett on the basis that the plaintiffs in that case actually alleged a TILA claim against the defendants whereas the plaintiffs in this case have not made a TILA claim against Mastercard. In other words, plaintiffs seem to make a distinction between a TILA claim and a TILA defense. This Court does not find this distinction to be of any consequence as the relevant inquiry is whether TILA applies to the transaction.

When both TILA and the Consumer Fraud Act apply in a particular situation, the Illinois Supreme Court has adopted “a consistent policy against extending disclosure requirements under Illinois law beyond those mandated by the Truth in Lending Act.” Lanier v. Associates Finance, Inc., 114 Ill.2d 1, 17 (1986). As such, a defendant’s compliance with TILA serves as a defense to a claim brought under the Consumer Fraud Act. Id.

Applying these principles to this case, the parties do not dispute that the foreign service fee is not a required disclosure under TILA. Consequently, allowing plaintiffs to pursue their consumer fraud claim against Mastercard would impose upon Mastercard an additional disclosure requirement that is not imposed by TILA. In other words, not only would card-issuing banks be required to provide consumers with those disclosures specifically provided pursuant to 15 U.S.C. §1637, but Mastercard would also need to provide additional disclosures to avoid suit for violation of the Consumer Fraud Act. This Court finds such a result contrary to the Illinois Supreme Court’s holding in Lanier, 114 Ill.2d 1.

Plaintiffs rely upon the decision in Jackson v. South Holland Dodge, Inc., 197 Ill.2d 39 (2001), stating that if the fraud is independent of TILA, it can be sustained despite the defendant's compliance with TILA. However, Jackson was decided in the context of assignees. Since Mastercard is not an assignee, this Court finds that Jackson is not applicable here.

Accordingly, Mastercard's Motion to Reconsider is granted and plaintiffs' consumer fraud claim is dismissed.

**ENTERED**

Entered: JUL 13 2005

JUDGE  
JULIA M. NOWICKI-293

Julia M. Nowicki

Circuit Judge

Dated: July 13, 2005