

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT



In re:

**James Kelley and Linda M. Kelley,
Debtors.**

**Chapter 7 Case
01-11686**

**James Kelley and Linda M. Kelley,
Plaintiffs,**

v.

**Ernest LaBrie and Linda LaBrie,
Defendants.**

**Adversary Proceeding
02-1013**

Appearances: *Alexander W. Banks, Esq.*
 S. Royalton, VT
 Attorney for Debtors-Plaintiffs

Ernest and Linda LaBrie
Barre, VT
Pro Se Defendants

ORDER GRANTING DEFENDANTS SUMMARY JUDGMENT
ON THE FIFTH CAUSE OF ACTION OF PLAINTIFFS' AMENDED COMPLAINT
AND SETTING TRIAL DATE
ON THE FIRST, SECOND, THIRD AND FOURTH CAUSES OF ACTION
OF PLAINTIFFS' AMENDED COMPLAINT

The Defendants have filed four motions for partial summary judgment seeking judgment on each of the five causes of action alleged by the Plaintiffs in their Amended Complaint (doc. #11). See docs # 82, 83, 86 and 84, respectively. The Plaintiffs have filed memoranda in opposition to each of these motions, alleging that there are material facts in dispute and that the Defendants are not entitled to judgment as a matter of law. For the reasons set forth below, the Court grants one of the motions for partial summary judgment and denies the other three motions for partial summary judgment.

This Court has jurisdiction to resolve this adversary proceeding pursuant to 28 U.S.C. §§ 1334 and 157(b)(2)(B) & (O).

I. SUMMARY JUDGMENT STANDARD

Summary judgment is proper only if the record shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c); FED. R. BANKR. P. 7056. A genuine issue exists only when “the evidence is such that a reasonable [trier of fact] could return

a verdict for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); see also Celotex Corp. v. Catrett, 477 U.S. 317 (1986). The substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. See Anderson, 477 U.S. at 247. Factual disputes that are irrelevant or unnecessary are not material. See id. Furthermore, materiality is determined by assessing whether the fact in dispute, if proven, would satisfy a legal element under the theory alleged or otherwise affect the outcome of the case. See id. The court must view all the evidence in the light most favorable to the nonmoving party and draw all inferences in the nonmovant’s favor. See Cruden v. Bank of New York, 957 F.2d 961, 975 (2d Cir. 1992). In making its determination, the court’s sole function is to determine whether there is any material dispute of fact that requires a trial. See Anderson, 477 U.S. at 249; see also Delaware & Hudson Ry. Co. v. Conrail, 902 F.2d 174, 178 (2d Cir. 1990).

II. THE CAUSES OF ACTION

A. The First Cause of Action

The Defendants argue that they have not violated 9 V.S.A. § 2355(f), that there are no material facts in dispute relating to this cause of action; therefore, they are entitled to summary judgment on the first count of the Amended Complaint. However, the Court finds that there is a dispute as to whether the Defendants charged the Plaintiffs a finance charge and that this fact is material. Compare Plaintiff’s Statement of Disputed Facts in Support of Plaintiff’s Response to Defendant’s Motion for Summary Judgment Regarding the Plaintiff’s First Cause of Action at ¶4 (stating, “On May 24, 2001, the defendants completed the sale of the Mobile Home to the Plaintiffs for \$14,000, plus the cost of financing.”) (doc. #96), with Defendants’ Statement of Undisputed Facts at ¶¶ 8–12 (doc. #91) (indicating there were no financing charges assessed to the Plaintiffs in this transaction). Thus, the Court denies the Defendant’s request for summary judgment in their favor on the Plaintiffs’ first cause of action.

B. The Second Cause of Action

In their motion for partial summary judgment on the second count of the Amended Complaint, see doc. # 83, the Defendants argue that 9 V.S.A. § 2405(g) is not applicable to the subject mobile home financing transaction, and that no material facts relating to this issue are in dispute; therefore, they are entitled to summary judgment on the second cause of action. The Court is not persuaded. While the Defendants are correct in their citation of 9 V.S.A. § 2603, a question remains whether 9 V.S.A. § 2405(g) is applicable to their mobile home transaction with the Plaintiffs. The Court finds that 9 V.S.A. § 2405(g) falls under the “Retail Installment Sales” chapter of Title 9 of the Vermont Statutes Annotated. Moreover, the first section in this chapter, chapter 61, is the definition section for the chapter. Section 2401 of Title 9 reads, in part:

§ 2401. Definitions

For the purposes of this chapter only, unless the context otherwise requires:

(1) “Goods” means all tangible personal chattels *The term includes a mobile home as defined in 10 V.S.A. § 6201. . . .*

* * *

9 V.S.A. § 2401(1) (emphasis added). Therefore, while 9 V.S.A. § 2603 discusses one way by which the purchase of a mobile home may be financed, it does not provide the exclusive means. Pursuant to the definition section of the Retail Installment Sales chapter, *i.e.*, 9 V.S.A. § 2401, mobile homes may be purchased via installment sales; therefore, the Court finds 9 V.S.A. § 2405(g) may be applicable in this proceeding. Moreover, since the parties dispute whether the Defendants charged the Plaintiffs a financing cost on this transaction, a genuine issue of material fact remains in dispute. Therefore, the Court denies the Defendants’ partial motion for summary judgment on the Plaintiffs’ second cause of action.

C. The Third and Fourth Causes of Action

_____The Defendants filed a motion for partial summary judgment encompassing both the third and fourth causes of action. See doc. # 86. These causes of action arise from alleged violations of the Vermont Consumer Fraud Act. The Plaintiff’s Statement of Disputed Facts in Support of Plaintiff’s Response to Defendant’s Motion for Summary Judgment Regarding the Plaintiff’s Third and Fourth Cause of Action (doc. #98) articulates a number of material facts in dispute regarding the Plaintiffs’ understanding of the transaction, their access to counsel and the circumstances surrounding the Defendants’ decision to finance the subject purchase. Accordingly, the Court finds that there are material facts in dispute relating to these two causes of action. Hence, granting summary judgment as to the third and fourth causes of action is not proper; the Defendants’ motion for partial summary judgment on these two counts of the Amended Complaint must be denied.

D. The Fifth Cause of Action

_____The focus of the fifth cause of action is whether the Defendants violated 8 V.S.A. § 2201 et seq.: the Licensed Lending provision of Vermont statutory law. In their motion for partial summary judgment on the fifth count of the Amended Complaint, the Defendants assert that the statute, namely 8 V.S.A. § 2201(c)(7), exempts them from the licensing requirements. The Defendants assert that the transaction was a sale of goods; the Plaintiffs do not dispute this. See Plaintiffs’ Memorandum in Opposition to Defendants’ Motion of Summary Judgment Regarding the Plaintiffs’ Fifth Cause of Action (doc. #99) (asserting that the argument that this might be a mortgage transaction, thereby requiring compliance with the licensing statute, was set forth in the alternative in the event that the Court found the transaction involved real estate rather than goods).

The Court agrees with the Defendants that they are exempt from the requirements of the Licensed Lending statute. The Court finds that the transaction, in fact, involved the sale of goods. Hence, the Court finds that the Defendants are not in violation of 8 V.S.A. § 2201, and that there is no dispute regarding any fact material to this cause of actions. Therefore, the Defendants are entitled to judgment as a matter of law on the fifth cause of action of the Plaintiffs' Amended Complaint.

**III. DATE, TIME AND LOCATION OF THE TRIAL
ON THE MERITS OF THE FIRST, SECOND, THIRD AND FOURTH CAUSES OF ACTION**

Since there are genuine disputes regarding material facts involved in the First, Second, Third and Fourth causes of action of the Plaintiffs' Amended Complaint, a trial shall be held to address those counts of the Amended Complaint. *The Court proposes that the trial in this matter take place at the Vermont Law School*, both to make it more convenient to the parties and counsel involved and to provide a learning experience to the students of Vermont Law School.

THE COURT HEREBY DIRECTS the parties to file either their consent to the following proposed dates or, if they are unable to accommodate the following proposed dates, a revised scheduling order by January 7, 2004. The proposed dates and times for litigation of this matter are:

1. By Monday, January 12, 2004, the parties will file a joint final pre-trial statement. (In the unlikely event the parties are unable to stipulate to the terms of a joint statement, each party is to file their own pre-trial statement by January 11th.)
2. On Tuesday, January 13, 2004, at 11:30 A.M., the parties shall appear for a final pre-trial conference, at the United States Bankruptcy Court in the Federal Courthouse in Burlington, Vermont.
3. On Wednesday, January 21, 2004, the parties shall appear, ready to begin the trial on the four remaining causes of action, at the Vermont Law School ("VLS") courtroom located in Oakes Hall (or at any other location at VLS as the parties may be directed by the Court) at 10:00 A.M. The parties are to arrive by 9:30 A.M. in order to mark exhibits, exchange copies of exhibits and determine to which exhibits they can stipulate being entered into evidence.

CONCLUSION

IT IS HEREBY ORDERED that the Defendants' motion for partial summary judgment on the fifth causes of action is hereby GRANTED.

IT IS FURTHER ORDERED that the Defendants' motions for partial summary judgment on the first, second, third and fourth causes of action are hereby DENIED.

SO ORDERED.

December 23, 2003
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge