

NOT ALL CONSUMER TRANSACTIONS ARE CREATED EQUAL
By Timothy Wan, Esq.

New York State law imposes an additional fee of \$95.00 for an Index Number in the Civil and District Courts, for consumer credit transactions. However, any other suit still holds the \$45.00 fee. We all understand that credit cards companies, banks, and other such consumer loans will be subject to the additional fees. However, cases such as a hospital bill, landscaper, action for rent, or other such bill, where there is no credit extended, should not be subject to the increase in filing fees. As a general practice, I do not consider these cases to be consumer credit transactions. Under CPLR § 105(f) "Consumer credit transaction", the law states as follows:

The term "consumer credit transaction" means a transaction wherein credit is extended to an individual and the money, property, or service which is the subject of the transaction is primarily for personal, family or household purposes.

Case law states that signs of consumer credit transactions are loan interest, periodic payment provisions, or late charges.

In Ratner v. Drucker 79 Misc.2d 216, 359 N.Y.S.2d 859 (N.Y.City Civ.Ct. 1974.), the Court held that "The plain and simple legislative intent of the bilingual summons requirement was to assure that our Spanish-speaking citizens would fully understand the legal papers which might be served upon them as a result of some purchase on credit into which they had entered and in which they may well have been 'taken.' The unexpressed idea was that, hopefully, they should not be 'taken' again by the myriad processes of the Law."... Moreover, "The key words in the definition of 'consumer credit transaction' for our purposes are 'a transaction wherein credit is extended to an individual' (NYCCCA, sec. 2101(g)).. this was not meant to apply to members of the medical profession and related arts, who traditionally do not extend credit as such to patients as a business or medical practice. That a physician might permit payment, or even time payments, after the rendition of his total bill for services performed, for the convenience of his patients, instead of demanding cash payment immediately, cannot serve to transform an original cash basis transaction into one denominated as a 'consumer credit transaction'."

In State v. Monteleone, 38 A.D.2d 821, 525 N.Y.S.2d 740 (N.Y.A.D. 3 Dept.,1988.), "Unlike the businesses whose abuses the statutes were aimed at curbing, plaintiff is not involved in the business of providing credit to its citizens. Nor is plaintiff a profit-seeking entity. There is no indication in the legislative history that these statutes were meant to apply to plaintiff and the mere fact that the Legislature did not specifically exempt plaintiff from these statutes does not mandate the conclusion that they apply to it."

In Westco Closet Corp. v. Friedman Not Reported in N.Y.S.2d, 2001 WL 940281 ZYNY, the Court stated, "Upon review and consideration of the subject contract,

applicable statutes, and legislative intent, the Court does not find that payment provisions calling for a downpayment prior to the commencement of work with the balance being due upon full completion constitutes an extension of credit under CPLR §105(f)... Such an arrangement lacks any material attribute of an extension of credit such as loan interest, periodic payment provisions, or late charges. The subject payment arrangement is no more an extension of credit than any other circumstance where payment simple awaits the final delivery of goods and/or services.”

In Jack Mailman & Leonard Flug DDS, P.C. v. Prince Inniss Not Reported in N.Y.S.2d, 2003 WL 21382471 (N.Y.Sup.App.Term,2003.), the Court stated, “the record fails to contain any evidence which establishes that the dental services performed by the plaintiff were in the nature of a consumer credit transaction... Thus, the summons did not need to set forth the notice requirements applicable to consumer credit transactions...”

In Jacobs v. Smith Boys Marine Sales, Inc. 23 A.D.3d 877, 804 N.Y.S.2d 842 (N.Y.A.D. 3 Dept.,2005.), the Court held that, “payment for the new boat was due in full at the time of purchase and Jacobs made that payment with cash and the trade-in value of his old boat. There is no indication in the record that Smith Boys of Rochester intended to permit Jacobs to incur further debt or defer payment. The fact that Smith Boys of Rochester permitted Jacobs time to complete the repairs and then took steps to protect its rights after Jacobs refused to do so did not serve to transform the cash-basis transaction at issue into a consumer credit transaction...”

As seen by the above case law, it should be clear what constitutes a consumer credit transaction.

A case where a hospital is suing for services rendered that remain unpaid, never contemplates any extension of credit. An action for rent is not a credit transaction, as rent is paid in advance to the tenancy. A landscaper has a monthly billing cycle, but that is for convenience, rather than an extension of credit.

These may all be consumer transactions, but they are not consumer CREDIT transactions.

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