

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

HOUSEHOLD REALTY CORP.,	:	APPEAL NO. C-110647
Plaintiff-Appellee,	:	TRIAL NO. A-0908787
vs.	:	<i>JUDGMENT ENTRY.</i>
DUANE L. GRIFFITH,	:	
and	:	
LAVONE C. GRIFFITH,	:	
Defendants-Appellants.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendants-appellants Duane L. and Lavone C. Griffith appeal from the judgment of the Hamilton County Court of Common Pleas denying their motion for summary judgment and granting summary judgment in favor of plaintiff-appellee Household Realty Corp. (“Household”), on Household’s breach of contract claim and the Griffiths’ counterclaims. We affirm.

On June 18, 2004, the Griffiths executed two separate agreements with Household to borrow money: (1) an unsecured, revolving-loan agreement for a personal-credit line with a limit of \$15,000 (“revolving loan”), and (2) a loan repayment and security agreement involving a real estate loan in the principal amount of \$103,367.24, secured by a mortgage on real property (“real estate loan”). The Griffiths averred that the revolving

loan was for the purpose of “pay[ing] off personal loans and household obligations, and to purchase items for family and household needs.” They did not present any evidence that it was for the same purpose as the real estate loan. After the Griffiths failed to make payments as promised under the revolving-loan agreement, Household commenced this action for the breach of that agreement, and sought \$16,118.75 in damages, plus accrued interest and costs.

In their amended answer, the Griffiths raised “set off and/or recoupment” defenses and counterclaims that alleged several specific violations of the Truth in Lending Act (“TILA”); a violation of R.C. 1321.57, which is a part of Ohio’s Mortgage Loan Act (“OMLA”); and violations of both Ohio’s Consumer Sales Practices Act (“OCSPA”) and Ohio’s Mortgage Brokers Act (“OMBA”). Most of these defenses and counterclaims related to the real-estate-loan transaction, and not to the revolving-loan transaction that Household had sued upon.

Household moved for summary judgment on its claim and submitted an affidavit demonstrating that the Griffiths had breached the revolving-loan agreement. It also moved for summary judgment on the Griffiths’ counterclaims, arguing that the allegations concerning the real estate loan involved a separate transaction and were time-barred, and that the Griffiths’ recoupment defenses were refuted by the revolving-loan-agreement documents.

In their memorandum in opposition, the Griffiths did not dispute that they had breached the revolving-loan agreement. Instead, they contended that Household had also violated provisions of the Fair Debt Collection Practices Act (“FDCPA”); the Federal Trade Commission Act (“FTCA”); and Ohio’s Small Loan Act (“OSLA”), R.C. 1321.01 et seq., claims that the Griffiths had not pleaded in their answer or counterclaims. They also presented new theories of recovery under TILA and OCSPA. Finally, they filed their own

affidavits to support their claim that Household had violated TILA and OCSPA, and moved for summary judgment on the OSLA claim.

In four related assignments of error, the Griffiths challenge the trial court's denial of their motion for summary and its entry of summary judgment in favor of Household. We review the grant of summary judgment de novo, applying the standards set forth in Civ.R. 56. For the following reasons, we affirm.

First, the Griffiths have not presented any evidence that creates a genuine issue of material fact with respect to claims related to the real estate loan. The OMBA does not apply to that loan because Household is a lender, not a mortgage broker. *See* R.C. 1322.01(G)(2). The Griffiths' allegations under TILA, FDCPA, and OCSPA relating to the real estate loan are time barred. *See* 15 U.S.C. 1640(e); 15 U.S.C. 1692k(d); R.C. 1345.10(C). Further, the Griffiths have failed to set forth specific facts to show that the real estate loan and the unsecured, revolving loan for personal credit were in reality a single transaction split into two separate loans. *See Hemauer v. ITT Financial Servs.*, 751 F.Supp. 1241 (W.D.Ky.1990). Thus, the Griffiths cannot use those time-barred claims as part of a recoupment defense to Household's breach of the revolving-loan-agreement claim. *See Akron Natl. Bank & Trust Co. v. Roundtree*, 60 Ohio App.2d 13, 17, 395 N.E.2d 525 (9th Dist.1978). Finally, the FTCA does not authorize a direct, private cause of action under that act for the violation alleged by the Griffiths. *See* 15 U.S.C. 57b(a).

And second, the Griffiths have not presented any evidence that creates a genuine issue of material fact with respect to the revolving-loan-agreement claims. It is undisputed that the revolving-loan agreement, which involves a loan that exceeds \$5000, was made under the OMLA, and therefore, the OSLA did not apply. *See* R.C. 1321.02. Likewise, it is undisputed that the revolving loan involved an agreed interest rate of 22.98 percent APR, which is allowed under the OMLA. *See* R.C. 1321.571. Further, the Griffiths' claims under

the FDCPA fail as a matter of law because Household is a creditor, not a “debt collector.” *See MacDermid v. Discover Fin. Servs.*, 488 F.3d 721, 735 (6th Cir.2007); 15 U.S.C. 1692a(6). And, the Griffiths’ claims under the OCSPA fail as a matter of law because the 2004 revolving-loan transaction was not a “consumer transaction” as defined under R.C. 1345.01(A). *See* R.C. 5725.01(B)(1).

Finally, the Griffiths failed to demonstrate the existence of a genuine issue of material fact with respect to their TILA-based recoupment defense. The requirements that they cited either do not apply to the unsecured open-end loan, or they were not violated as demonstrated by the revolving-loan-agreement document. *See* Regulation Z, 12 CFR 226.4, 12 CFR 226.18; 12 CFR 226.5(a).

Ultimately, after considering Household’s claim and the Griffiths’ “defenses and counterclaims,” even those that were not raised in an actual pleading, we conclude that there are no genuine issues of material fact, that Household has demonstrated that it is entitled to judgment as a matter of law, and that the evidence demonstrates that reasonable minds can come to but one conclusion, and that conclusion is adverse to the Griffiths. *See* Civ.R. 56(C). Accordingly, we overrule the assignments of error, and we affirm the trial court’s judgment.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., HENDON and CUNNINGHAM, JJ.

To the clerk:

Enter upon the journal of the court on May 1, 2013

per order of the court _____.
Presiding Judge