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Barry Snell

ASSIGNEE LIABILITY UNDER THE TEXAS CONSUMER CREDIT CODE

BARRY SNELL*

When the Texas Legislature enacted the Credit Code,[1] it sought to provide a comprehensive code of legislation to regulate all phases of consumer credit transactions.[2] To ensure compliance with the Code, the legislature provided two different enforcement mechanisms: public enforcement by the Consumer Credit Commissioner[3] and private enforcement by means of a civil action for statutory penalties and attorneys' fees.[4] With the recent large scale entry into the consumer credit market by banks, credit unions, and consumer finance companies,[5] the question frequently arises as to the liability of third party financial institutions for the statutory penalties provided under private enforcement provisions of the Code.

In a typical consumer transaction, a consumer purchases goods from a retailer by means of a retail installment contract. The retail installment contract, which often contains a security agreement, is then assigned to a bank or other consumer finance company. Such assignments are often made on a regular basis, sometimes pursuant to written agreement. The financial institution frequently furnishes the preprinted form contract used in the transaction. The financial institution may play an active role in the approval of the buyer's credit prior to the assignment. If the contract violates the Texas Credit Code, the question is presented as to the liabilities of the financial institution to which it is assigned.

Failure to Disclose

If the violation consists of a failure to make one of the disclosures required by the recently enacted chapter fourteen of the Texas Credit

* Partner, Bayne, Snell & Krause, San Antonio, Texas; B.A., J.D., St. Mary's University.

1. TEX. REV. CIV. STAT. ANN. arts. 5069-1.01 to -51.19 (1971 & Supp. 1976-1977).
2. Declaration of Legislative Intent, 15 TEX. REV. CIV. STAT. ANN. 1 (1971).
3. TEX. REV. CIV. STAT. ANN. art. 5069-2.03 (1971).
4. *Id.* arts. 5069-8.01, -8.02.
5. Federal Trade Commission—Preservation of Consumers' Claims and Defenses: Final Regulations, Proposed Amendment and Statement of Basis and Purpose, 40 Fed. Reg. 53,506 (1975) (to be codified at 16 C.F.R. § 433).

Code (which substantially adopts the Federal Truth-in-Lending Act in Texas), the assignee's liability depends on whether the violation is apparent on the face of the instrument. If so, the assignee is liable, unless the assignment was an involuntary one.[6]

Failure to Perform Specifically Imposed Duties

The Texas Credit Code does not deal directly with the liability of an assignee for violations by the original seller of the other chapters of the Texas Credit Code. Section 8.01, containing the provisions for private enforcement, provides:

> Any person who violates this Subtitle by contracting for, charging or receiving interest, time price differential or other charges which are greater than the amount authorized by this Subtitle, or by failing to perform any duty specifically imposed on him by any provision of this Subtitle, shall forfeit to the obligor twice the amount of interest or time price differential and default and deferment charges contracted for, charged or received, and reasonable attorneys' fees fixed by the court, provided that there shall be no penalty for a violation which results from an accidental and bona fide error.[7]

Under the foregoing section, direct liability is imposed on persons who contract for, charge, or receive excess interest, time-price differential, or other charges or who fail to perform "any duty specifically imposed" by the Code. Thus, even though one is an assignee, he may be directly liable if, for example, he charges excess time-price differential. Such was the fate of the assignee in *Moore v. Sabine National Bank*,[8] a case in which the financial institution purchased an installment contract from a mobile home dealer. The buyer defaulted, and the bank sued. In doing so, the bank "charged" excessive time-price differential by suing for all of the time-price differential, both earned and unearned.[9] The court held that the bank had violated the Code and found it liable to the buyer for penalties provided by articles 5069-8.01 and 8.02.[10]

There are other circumstances in which the Code imposes duties directly upon an assignee or holder, the breach of which would result

6. TEX. REV. CIV. STAT. ANN. art. 5069-14.10 (Supp. 1976-1977).
7. *Id.* art 5069-8.01.
8. 527 S.W.2d 209 (Tex. Civ. App.—Austin 1975, writ ref'd n.r.e.).
9. *Id.* at 210.
10. *Id.* at 214.

in the imposition of direct liability. For example, chapter six,[11] governing retail installment sales of goods and services, imposes limitations on a holder's right to collect delinquency charges,[12] deferment charges,[13] and charges for renewing, restating, or rescheduling the unpaid balance.[14] This chapter also establishes procedures to be followed by the holder in the event of an amendment to the contract.[15] The holder is required to furnish the buyer, on request, a written statement of his account.[16] It permits a holder to request or require credit life insurance, but prohibits the holder from requiring more than one policy of any one buyer with respect to any one contract or agreement at any one time.[17] The same is true in regard to credit health and accident insurance.[18]

Chapter six also permits the holder to require property insurance, but requires the insurance and premiums thereon to "bear a reasonable relationship to the amount, term, and conditions of the contract or agreement," and "the existing hazards or risk of loss, damage, or destruction."[19] The holder is prohibited from requiring insurance for unusual or exceptional risks or coverages which are not ordinarily included in policies issued to the general public.[20] When the holder requires insurance, he or the seller must "furnish the buyer a statement which . . . clearly and conspicuously states that insurance is requested or required . . . and that the buyer shall have the option of furnishing the required insurance either through existing policies" or of furnishing equivalent coverage "through any insurance company authorized to transact business in Texas."[21] When any "insurance is sold or procured by the seller or holder at a premium or rate of charge not fixed or approved by the State Board of Insurance, the seller or holder" must

11. TEX. REV. CIV. STAT. ANN. arts. 5069-6.01 to -6.09 (1971). "Holder" is defined as "the retail seller of the goods or services under the retail installment contract or retail charge agreement or the assignee if the retail installment contract or the retail charge agreement or outstanding balance under either has been sold or otherwise transferred." *Id.* art. 5069-6.01(m).

12. *Id.* art. 5069-6.02(11).

13. *Id.* art. 5069-6.02(12)(a).

14. *Id.* art. 5069-6.02(12)(b).

15. *Id.* art. 5069-6.02(12)(c).

16. *Id.* art. 5069-6.02(13).

17. *Id.* art. 5069-6.04(1).

18. *Id.* art. 5069-6.04(1).

19. *Id.* art. 5069-6.04(2).

20. *Id.* art. 5069-6.04(2). *See also* TEX. ATT'Y. GEN. OP. NO. H-709 (1975), prohibiting mechanical breakdown insurance in chapter seven (Motor Vehicle Installment Sales).

21. TEX. REV. CIV. STAT. ANN. art. 5069-6.04(3) (1971).

include this information in the insurance statement and give the buyer five additional days to procure the insurance elsewhere.[22] The insurance must "be written at lawful rates and in accordance with the . . . Texas Insurance Code by a company authorized to do business in this State."[23] If the insurance is to be procured by the holder, he must mail the policy or a certificate of insurance to the buyer within forty-five days after delivery of the goods.[24] The holder is required to credit the buyer for unearned insurance premiums if the insurance is terminated for any reason.[25]

Very similar "specific duties" are imposed on the holder of a contract evincing a motor vehicle installment sale under chapter seven of the Code.[26] Clearly, chapter eight imposes liability directly on a holder who breaches any of these specific duties.[27]

In addition to the duties directly imposed on holders, chapter six specifies several type size requirements, notices, and mandatory disclosures for retail installment contracts[28] and retail charge agreements.[29] Chapter seven imposes similar requirements for motor vehicle contracts.[30] Both chapters have a list of provisions which are prohibited.[31] The statutory language is directed to what the retail installment contract "shall" contain.[32] Also, in the case of the prohibited provisions, the phrase "no retail installment contract or retail charge agreement shall"[33] is used. Thus, because of the mandatory disclosures and the prohibited provisions, the Texas Credit Code speaks in terms of what the contract must say and what it must not say. The Code is silent, however, as to whose duty it is to prepare the contract, although a specific duty is imposed on the seller to deliver a copy to the buyer.[34]

In view of the language imposing liability on "any person who violates this Subtitle . . . by failing to perform any duty specifically imposed on him by any provision of this Subtitle,"[35] it must be determined

22. *Id.*
23. *Id.* art. 5069-6.04(4).
24. *Id.* art. 5069-6.04(7).
25. *Id.* art. 5069-6.04(8).
26. *Id.* arts. 5069-7.01 to -7.10.
27. *Id.* arts. 5069-8.01,-8.02.
28. *Id.* arts. 5069-6.02,-6.04.
29. *Id.* arts. 5069-6.02(7),-6.03,-6.04.
30. *Id.* arts. 5069-7.02,-7.06.
31. *Id.* arts. 5069-6.05,-7.07.
32. *Id.* arts. 5069-6.02,-6.03,-6.04,-7.02,-7.06.
33. *Id.* arts. 5069-6.05,-7.07.
34. *Id.* arts. 5069-6.02(3),-6.03,-7.02(4).
35. *Id.* art. 5069-8.01.

who is liable for a failure of the form contract to meet the requirements of the Code. If a financial institution prepared the form contract and furnished it to a seller in anticipation that it would be used on sales to be financed through the financial institution, whose duty would it be to see that the requirements of the Code are met? This question was recently discussed in *O.R. Mitchell Motors, Inc. v. Bell.*[36] The buyer sued an auto dealer for violations of the Texas Credit Code contained in a preprinted form contract. The dealer contended that it was not liable since penalties are imposed only on one who fails to perform a "duty specifically imposed on him."[37] The dealer argued that the Code merely provides that the contract shall meet certain requirements and does not specifically impose the duty on the seller to assure that the contract conforms. Further, the dealer argued that retail credit sellers do not ordinarily prepared the contract documents; instead, they utilize documents prepared by a financing institution which acquires the obligation by assignment from the seller. The dealer contended that the legislature was aware of this practice and for that reason did not impose a specific duty on sellers to prepare and complete the documents.

The court in holding that as between the buyer and seller the seller was liable, said:

> It may be that the legislature realized that credit vendors of motor vehicles do not, in fact, prepare the documents which embody the terms and conditions of the credit transaction but, instead, rely on the person to whom they regularly assign such documents. But it is at least as likely that the legislature knew that the buyer, the person whose interests were intended to be protected, did not furnish the necessary documents, and that in all such transactions the buyer merely signed instruments handed to him by the seller, who completed the instruments and handed them to the buyer, in purportedly complete form, with the request that the buyer 'sign here.'[38]

Although the San Antonio Court of Civil Appeals concluded that "there can be no doubt that the purpose of article 7.02 was to impose duties on sellers,"[39] the court's holding suggests that the court may have felt that the legislature also intended to impose duties on the assignees who regularly prepare the contracts. Indeed, the Waco Court of Civil Appeals has since held that a financial institution which furnished the form contract and to whom the contract was assigned was liable for

36. 528 S.W.2d 856 (Tex. Civ. App.—San Antonio 1974, writ ref'd n.r.e.).
37. *Id.* at 859, *citing* TEX. REV. CIV. STAT. ANN. art. 5069-8.01 (1971).
38. 528 S.W.2d at 859.
39. *Id.* at 860.

violations of the Code contained within the contract.[40] Unfortunately, the opinion in that case simply imposes liability on the assignee without discussion of the underlying rationale. The result seems justified, however, in that both reason and fairness dictate that the party actually selecting or preparing the preprinted form contract is in a better position to ensure that it complies with the law. At a minimum, the financial institution which selects or prepares a contract containing violations of the Code should be held jointly responsible with the seller who uses that contract at the request of the financial institution.

Several federal courts had reached this result in cases under the Federal Truth-in-Lending Act by use of the conduit theory concept.[41] Under the conduit theory the courts treat the financial institution as the actual "creditor" when the financial institution works closely with the seller, prepares the form contracts, and regularly accepts assignments of the contracts from the seller. The seller is said to be a conduit for the real creditor, the financial institution. The financial institution is then liable for Truth-in-Lending disclosure violations contained on the face of the contract.[42]

Derivative Liability

Even though an assignee has not violated the Texas Credit Code personally and has had no connection whatsoever with the sale, he may nevertheless be liable under the law of assignment. Section 9.318 of the Texas Business and Commerce Code provides that the rights of an assignee are subject to any "claim of the account debtor against the as-

40. Southwestern Inv. Co. v. Mannix, 540 S.W.2d 747, 748-49 (Tex. Civ. App.—Waco 1976, writ filed).

41. Hinkle v. Rock Springs Nat'l Bank, 538 F.2d 295, 296-97 (10th Cir. 1976); Meyers v. Clearview Dodge Sales, Inc., 384 F. Supp. 722, 728 (E.D. La. 1974), *aff'd in part, rev'd in part*, 539 F.2d 511, 519 (5th Cir. 1976); Kriger v. European Health Spa, Inc., 363 F. Supp. 334, 336 (E.D. Wis. 1973); Philbeck v. Timmers Chevrolet, Inc., 361 F. Supp. 1255, 1261 (N.D. Ga. 1973), *rev'd on other grounds*, 499 F.2d 971 (5th Cir. 1974); Garza v. Chicago Health Clubs, Inc., 347 F. Supp. 955, 963-64 (N.D. Ill. 1972); Joseph v. Norman's Health Club, Inc., 336 F. Supp. 307, 318 (E.D. Mo. 1971). *But see* Manning v. Princeton Consumer Discount Co., 533 F.2d 102, 106 (3d Cir.), *cert. denied*, 97 S. Ct. 53 (1976), *noted* p. 853 *infra*.

42. The question was simplified by a 1974 amendment to the Truth-in-Lending Act which provides:

> Except as otherwise specifically provided in this subchapter, any civil action for a violation of this subchapter which may be brought against the original creditor in any credit transaction may be maintained against any subsequent assignee of the original creditor where the violation from which the alleged liability arose is apparent on the face of the instrument assigned unless the assignment is involuntary.

15 U.S.C. § 1614 (Supp. V 1975). An identical provision is now contained in chapter fourteen of the Texas Credit Code, which substantially enacts the Federal Truth-in-Lending Act in Texas. TEX. REV. CIV. STAT. ANN. art. 5069-14.10 (Supp. 1976-1977).

signor which accrues before the account debtor receives" notice of the assignment, unless he has made an enforceable agreement not to assert claims or defenses "arising out of a sale as provided in section 9.206."[43] When a security interest has been given to the seller, the buyer will fall within the definition of account debtor: "the person who is obligated on an account, chattel paper, contract right, or general intangible."[44] Chattel paper is defined as a writing which evidences a monetary obligation and a security interest in specific goods.[45] This would clearly include a retail installment contract and security agreement. Any cause of action for violations of the Texas Credit Code arising out of the provisions and disclosures of the contract would necessarily accrue upon execution of the contract and would exist prior to the assignment. Therefore, absent an enforceable agreement not to assert claims or defenses against an assignee, the assignee would take the contract subject to the buyer's claim for statutory penalties for any violations the contract contains.[46]

An enforceable agreement not to assert claims or defenses against an assignee would seem to be an impossibility, at least in motor vehicle installment sales. Although section 9.206 of the Uniform Commercial Code recognizes the enforceability of such agreements by an assignee who takes for value, in good faith, and without notice of claims or defenses, that section is expressly made "[s]ubject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods."[47] Section 7.07 of the Texas Credit Code specifically prohibits such provisions in motor vehicle installment sale contracts.[48]

Chapter six of the Credit Code (governing retail installment sales of services and goods other than motor vehicles) does not prohibit an agreement not to assert claims against an assignee. The prohibition in chapter six goes only to agreements not to assert claims against the original seller.[49] Nevertheless, it seems likely that the courts would attribute notice to an assignee of Credit Code violations apparent on the face of the retail installment contract. In an analogous situation,

43. TEX. BUS. & COMM. CODE ANN. § 9.206 (Tex. UCC Supp. 1976-1977).
44. *Id.* § 9.105(a)(1).
45. *Id.* § 9.105(a)(2). Note that § 9.318 applies only to a sale of goods, and does not apply to a contract for services. *See* Mingledorff's, Inc. v. Hicks, 209 S.E.2d 661 (Ga. Ct. App. 1974).
46. TEX. BUS. & COMM. CODE ANN. § 9.318 (Tex. UCC Supp. 1976-1977; 4 R. ANDERSON, UNIFORM COMMERCIAL CODE § 9-318:5(c) (2d ed. 1971).
47. TEX. BUS. & COMM. CODE ANN. § 9.206(a) (Tex. UCC Supp. 1976-1977).
48. TEX. REV. CIV. STAT. ANN. art. 5069-7.07(6) (1971).
49. *Id.* art. 5069-6.05(6).

assignees have been held liable for penalties for usury when the usurious nature of the agreement is ascertainable from the contents of the agreement itself.[50]

Preservation of Claims and Defenses

In any event, the Federal Trade Commission has recently promulgated a regulation making it an unfair or deceptive trade practice for a seller to "[t]ake or receive a consumer credit contract which fails to contain the following provision in at least ten point, boldface type:"

NOTICE

> ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.[51]

The inclusion of such a notice will subject the assignee to the statutory penalties for violation of the Texas Credit Code, up to the amount of the debt. According to the Federal Trade Commission's staff, the intended effect of the notice is to permit the consumer to assert against the assignee any claims he has against the seller, not only to liquidate the unpaid balance owed to the creditor but also for an affirmative recovery up to the amount paid under the contract.[52] Further, where the assignee or holder is otherwise liable for either breaching some duty specifically imposed on holders or as a "creditor" under a conduit theory, the buyer should be able to recover amounts in excess of that paid under the contract, notwithstanding the notice. According to the Federal Trade Commission Staff Guidelines:

> The limitation on affirmative recovery does not eliminate any other rights the consumer may have as a matter of local, state, or federal statute. The words "recovery hereunder" which appear in the text of the Notice refer specifically to a recovery under the Notice.

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50. North Am. Acceptance Corp. v. Warren, 451 S.W.2d 921, 925 (Tex. Civ. App.—Dallas 1970, writ ref'd n.r.e.); Associates Inv. Co. v. Sosa, 241 S.W.2d 703, 705 (Tex. Civ. App.—San Antonio 1951, writ dism'd).

51. Federal Trade Commission—Preservation of Consumer's Claims and Defenses: Final Regulations, Proposed Amendment and Statement of Basis and Purpose, 40 Fed. Reg. 53,506 (1975) (to be codified at 16 C.F.R. § 433). See p. 691 *supra*.

52. [1976] 5 CONS. CRED. GUIDE (CCH) ¶ 11,394 (reprinting FTC guidelines relating to the preservation of consumer claims and defenses).

> If a larger affirmative recovery is available against a creditor as a matter of state law, the consumer would retain this right.[53]

Assignment and Negotiation

Finally, it is necessary to consider the effect of sections 6.07 and 7.08 of the Texas Credit Code, which deal with assignment and negotiation of retail installment contracts.[54] Each section contains the following provision: "No right of action or defense of a buyer arising out of a retail installment transaction which would be cut off by negotiation, shall be cut off by negotiation" unless the "holder gives notice of the negotiation to the buyer . . . and within thirty days of the mailing of such notice receives no written notice from the buyer of any facts giving rise to any claim or defense of the buyer."[55] Each section sets out a "notice of negotiation," which in ten point, bold type warns the buyer that he must notify the holder of claims and defenses within thirty days from the date the notice was mailed.[56]

It is important to note that neither section operates to eliminate any claims or defenses. Both sections simply impose restrictions on the holder's ability to cut off defenses by *negotiation* of the instrument. Thus, the sections affect only those transactions in which a negotiable instrument is used and serve only to limit the effects of negotiation. There is considerable doubt as to whether a retail installment contract could ever qualify as a negotiable instrument, the proverbial "courier without baggage."[57] Most of the courts which have held that retail installment contracts are not negotiable instruments have relied on section 3.104 of the UCC, which requires that a negotiable instrument contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation, or power given by the maker or drawer except as authorized under chapter three of the UCC.[58]

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53. *Id.*
54. TEX. REV. CIV. STAT. ANN. arts. 5069-6.07,-7.08 (1971).
55. *Id.* arts. 5069-6.07,-7.08(4).
56. *Id.* arts. 5069-6.07,-7.08(4).
57. As stated by one court:

> [R]etail installment contracts were never contemplated to be considered as negotiable instruments. . . . Furthermore, just as you cannot make a "silk purse from a sow's ear," you cannot make a negotiable instrument from a contract of sale. Contracts are assignable instruments, they are not negotiable instruments.

Discount Purchasing Co. v. Porch, 12 UCC REP. SERV. 600, 607 (Tenn. Ct. App. 1973).

58. Geiger Fin. Co. v. Graham, 182 S.E.2d 521, 525 (Ga. Ct. App. 1971); Pacific Fin. Loans v. Goodwin, 16 UCC REP. SERV. 750, 752 (Ohio Ct. App. 1974); Discount Purchasing Co. v. Porch, 12 UCC REP. SERV. 600, 606-07 (Tenn. Ct. App. 1973). *See*

The additional terms which can be added without sacrificing negotiability are listed in UCC section 3.112.[59] Some of the terms frequently found in retail installment contracts which appear to exceed those permitted under section 3.112 are the provisions giving the holder the right to impose delinquency charges; requiring the buyer not to remove the collateral without the holder's written permission; permitting the holder to inspect the collateral; requiring the buyer to notify the holder of any change in address; giving the holder the right to purchase insurance and to add such amounts to the contract; assigning the right to unearned insurance premiums to the holder; permitting the holder to waive particular defaults without waiving others; permitting the holder to take possession of other property belonging to the buyer found within the collateral; and requiring the buyer to assemble the collateral on default.[60]

One court has held that even though the retail installment contract contained the necessary elements of negotiability and contained no terms or conditions foreign to negotiability, the bulk of terms provided for a security interest under article 9, and that the provisions of article 9 have control over the provisions of article 3.[61] Under UCC section 9-105(1)(i)[62] a document which is itself a security agreement is not an "instrument." Accordingly, the court held that the document was not negotiable, and that the holder took it subject to the buyer's claim for penalties under the Federal Truth-in-Lending Act.[63]

Thus, assignee liability for violations of the Texas Credit Code may not be cut off by negotiation because most if not all such contracts are not negotiable instruments. Even if a particular contract is held to be negotiable, the holder may be charged with notice of violations apparent on its face.[64] Finally, the inclusion of the Federal Trade Commis-

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also the following pre-UCC Texas cases treating conditional sales contracts as nonnegotiable: Killingsworth v. General Motors Acceptance Corp., 37 S.W.2d 823, 825 (Tex. Civ. App.—Waco 1931, no writ); Southwest Contract Purchase Corp. v. McGee, 296 S.W. 912, 913 (Tex. Civ. App.—Eastland 1927), *aff'd*, 36 S.W.2d 978 (Tex. 1931).

59. TEX. BUS. & COMM. CODE ANN. § 3.112 (Tex. UCC 1968).

60. *See* Geiger Fin. Co. v. Graham, 182 S.E.2d 521, 524 (Ga. Ct. App. 1971); Commerce Acceptance, Inc. v. Henderson, 446 P.2d 297, 300 (Okla. 1968).

61. Jefferson v. Mitchell Select Furniture Co., 321 So. 2d 216, 221-22 (Ala. Civ. App. 1975).

62. TEX. BUS. & COMM. CODE ANN. § 9.105(a)(9) (Tex. UCC Supp. 1976-1977).

63. Jefferson v. Mitchell Select Furniture Co., 321 So. 2d 216, 221-22 (Ala. Civ. App. 1975).

64. North Am. Acceptance Corp. v. Warren, 451 S.W.2d 921, 925 (Tex. Civ. App.—Dallas 1970, writ ref'd n.r.e.); Associates Inv. Co. v. Sosa, 241 S.W.2d 703, 707 (Tex. Civ. App.—San Antonio 1951, writ dism'd).

sion "Notice," which is required after May 14, 1976, will eliminate the problem on contracts executed after that date.[65]

Conclusion

Holders of retail installment contracts are fully liable for penalties resulting from the breach of any of the several duties specifically imposed on them under the Texas Credit Code. They are explicitly liable for charging or receiving interest, time-price differential, or other charges which are greater than those authorized by the Code. Where they supply the forms and participate significantly in the transaction, they may be treated as the primary creditor under a conduit theory and be held directly responsible for violations of the Texas Credit Code. Even where none of these factors exist, assignees take the contract subject to the consumer's claims for penalties for violations of the Code, both under the law of assignment and the new Federal Trade Commission Preservation of Consumer's Claims and Defenses Rule.

By imposing liability on the financial institutions that receive consumer contracts as assignees, the courts have achieved greater compliance with the law. Placing a share of the responsibility on the financial institutions automatically creates an effective self-policing mechanism. The seller whose contract contains unlawful finance charges, prohibited provisions, or inadequate disclosures has difficulty assigning his paper and financing his sales. Financial institutions find it in their own interest to deal only with merchants whose contracts are in compliance with the law. The careful seller finds it easier to compete, while his less scrupulous rival encounters difficulty in finding sources of financing. In the end, both consumers and merchants can only profit from the imposition of partial liability on assignees.

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65. 16 C.F.R. § 433.2 (1976).