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COMMERCIAL LAW

By JOHN M. HEWSON, III*

The field of commercial law has traditionally concerned itself with sales, commercial paper, secured transactions, and bank collections. In the last few years, both the state and federal legislatures have enacted numerous laws which affect everyday commercial transactions, but extend far beyond these traditional concepts. This writer has taken the liberty of touching on what he sees as some of the more important aspects of these "peripheral areas," as well as reporting the cases and statutes for the 1974-75 year within the traditional realm of commercial law.

I. LEGISLATION

The Georgia legislature, during its 1975 session, enacted three statutes which are of particular interest to lawyers practicing commercial law. Ga. Code Ann. §57-202(d) (Rev. 1971) was amended to provide that the maximum rate of interest that may be charged a borrower on a loan secured by a second deed to secure debt on residential real estate consisting of four or less family dwelling units, is the *equivalent* of six percent added interest.[1] Section 57-202(d) previously provided that the maximum rate of interest was either (1) six percent added interest or (2) eight percent simple interest. This created an anomalous situation in that Ga. Code Ann. §57-101.1 (Rev. 1971) provided for a maximum rate of nine percent simple interest on loans secured by first deeds to secure debt on real estate. Under the new amendment, the lender may either make an added interest loan with a maximum rate of six percent or a simple interest loan at a rate not to exceed the equivalent of six percent added interest. While the statute is deficient in that it does not define the term "a rate equivalent to six percent per annum," this writer assumes that a lender would be safe in charging an amount of simple interest equal to the "annual percentage rate" for an added interest loan at six percent for the specified term of the loan. The annual percentage rate can be easily determined by reference to the truth-in-lending tables.

Ga. Laws 1975, p. 772, prohibits a bank, lending company, financial institution, retail installment, seller, or person extending credit, from discriminating in extending credit on the basis of sex, race, religion, or national origin or marital status. The statute provides for individual damage suits by the prospective borrowers and a fine not to exceed $1,000 for willful violations. Ga. Laws 1975, pp. 1134, 1135, provides that a lender shall within 45 days after payment, tender a cancellation to a borrower who pays

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1. Ga. Laws, 1975, p. 1114, *amending* GA. CODE ANN. §57-202(d) (Rev. 1971).

any secured liability in full. Failure to do so subjects the lender to $200 liquidated damages, a suit for actual damages, plus reasonable attorney's fees. If payment is made to a servicing agent, it is subject to the same liabilities as the lender, if the cancellation is not forthcoming within the 45 day period.

During its 1974 session, the Georgia legislature enacted the Georgia Financial Institutions Act[2] which became effective April 1, 1975. Much note has been made of Ga. Code Ann. §41A-1313 (Rev. 1974) which authorizes state chartered banks to charge rates of interest permitted to other Georgia lenders with respect to designated types of loans. Specifically, state banks may now make loans under the Georgia Industrial Loan Act.[3] The stated purpose of the new section was to put state banks on an equal footing with national banks.[4] Under the National Bank Act, national banks have long enjoyed the privilege of charging the maximum rate permitted by state law to any competing state chartered or licensed lending institution.[5]

This privilege has been afforded the national banks without imposing on them any of the burdens or requirements imposed on the state chartered or licensed institutions.[6] This writer wonders if the state banks also are blessed with an exemption from the requirements of the Industrial Loan Act, specifically the disclosure requirements of Ga. Code Ann. §25-319 (Rev. 1971). Ga. Code Ann. §41A-1313 (Rev. 1974) expressly exempts the state banks from obtaining any license or permit. Ga. Code Ann. §25-305 (Rev. 1971) provides that the provisions of the Industrial Loan Act shall *not* apply to banks. If the true intent of section 41A-1313 is to place state and national banks on an equal footing, compliance should not be required.

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2. Ga. Laws, 1975, p. 705, *creating* GA. CODE ANN., tit. 41A (Rev. 1974).
3. GA. CODE ANN., ch. 25-3 (Rev. 1971).
4. The comment following GA. CODE ANN. §41A-1313 (Rev. 1974) states:

   Section 13-2019 of the former Banking Code stated that banks may charge interest "not exceeding eight per cent per annum." This provision is an incomplete statement of the law and must be read together with other usury and related statutes codified in Title 57 of the Code of Georgia and elsewhere. This Code does not attempt to specify rates that banks may charge, allowing them to be fixed by other Georgia laws. It does however, authorize banks to charge rates permitted to other lenders with respect to designated types of loans. For example, small loans may be made at a special rate under the Industrial Loan Act, Ga. Code Ann., Chapter 25-3. National banks already enjoy the right to charge a similar rate on such loans under the construction which has been given to 12 U.S.C. 85. Lanes v. Hackley Union National Bank, 334 F. Supp. 723 (D.C. Mich. 1971). This provision restores competitive equality to State banks on this question.
5. 12 U.S.C.A. §85 (Rev. 1945).
6. *See* Evans v. National Bank of Savannah, 251 U.S. 108 (1919); American Timber & Trading Co. v. First Nat'l Bank of Oregon, 511 F.2d 980 (9th Cir. 1973); Northway Lanes v. Hackley Union Nat'l Bank & Trust Co., 334 F. Supp. 723 (W.D. Mich. 1971), *aff'd* 464 F.2d 855 (6th Cir. 1972); Partain v. First Nat'l Bank of Montgomery, 336 F. Supp. 65 (M.D. Ala. 1971); Moss v. First Nat'l Bank of Horse Cave's Receiver, 251 Ky. 390, 65 S.W.2d 88 (1933); Comptroller of The Currency Interpretive Rulings, 12 C.F.R. §7.7310 (1975).

II. Sales

A. Contracts And Agreements

Promech Corp. v. Brodhead-Garrett Co.[7] proves that the well-worn contract mechanisms of "offer" and "acceptance" still have their place under the Uniform Commercial Code. Broadhead-Garrett Company allegedly sold goods to Promech Corporation for delivery in New York. The goods were shipped to " 'Promech Corporation c/o Alltransport, Inc. . . .' " accompanied by an invoice sent to Promech showing thereon, " 'F.O.B. New York Domestic Packed.' "[8] When payment was not received, Broadhead-Garrett Company filed suit alleging breach of a contract of sale. Promech answered admitting the jurisdiction, but denying all of the other allegations of the complaint.

The court, after reviewing the sale provisions of the UCC dealing with contracts and agreements, found that Brodhead-Garrett had failed to prove the existence of a contract. While there was evidence to show an offer to sell by Brodhead-Garrett, there was no evidence that the offer had been accepted by Promech. Since there was no evidence of an acceptance, the court held that the plaintiff had failed to prove the existence of a contract. This case clearly demonstrates that while the UCC has set forth the circumstances from which an offer and acceptance may be inferred, the common law requirements still are requisite to the formation of a binding contract.

Buck Creek Industries, Inc. v. Crutchfield & Co.[9] deals with a suit on open account. Buck Creek sued for the balance of an account for yarn sold to Crutchfield, plus 7 percent interest from the due date. Crutchfield answered that the yarn was defective and, therefore, there had been a partial failure of consideration. The case went to a jury. A verdict was returned for the plaintiff, including the accured interest from the date the account came due. The defendant moved for a new trial. The trial court then entered an order requiring the plaintiff to write off the accrued interest. Plaintiff appealed from this order.

The court found that the plaintiff was entitled to the accrued interest under Ga. Code Ann. §57-110 (Rev. 1971), because the amount due to the plaintiff on the contract of sale was a liquidated demand. The court reasoned that if the defendant could convert the account from a liquidated demand to an unliquidated demand by merely *contesting* the amount due, then the provisions of section 57-110 would be a nullity. "[O]ne of the parties cannot by means of an *unsuccessful* defense render it (the amount due) uncertain."[10] It seems clear from both the majority opinion and the

7. 131 Ga. App. 314, 205 S.E.2d 511 (1974).

8. *Id.*

9. 133 Ga. App. 80, 210 S.E.2d 32 (1974).

10. *Id.* at 81, 210 S.E.2d at 33, *citing* Lincoln Lumber Co. v. Keeter, 167 Ga. 231,236, 145 S.E. 68, 70 (1928) (emphasis in the original).

concurrence of Justice Stolz, that had the defendant proved a partial failure of consideration, however slight, the sum would have been unliquidated and the interest not due.

B. *Warranties*

In *City Dodge, Inc. v. Gardner*,[11] Justice Ingram stated the holding of the supreme court as follows:

> A suit in tort by a buyer against a seller for an alleged fraudulent misrepresentation of the seller's agent resulted in a jury verdict and judgment for the buyer and on appeal by the seller the Court of Appeals affirmed. Certiorari was granted to review this decision and we have determined the judgment of the Court of Appeals should be affirmed.[12]

In this case a buyer purchased a used car with the understanding that the vehicle had never been wrecked. The buyer signed a sales agreement which provided that "no other agreement, promise or understanding of any kind pertaining to this purchase will be recognized," and that the car is sold "as is."[13] The purchaser later discovered that the automobile had been wrecked and unilaterally rescinded the contract bringing an action for fraud and deceit. The jury found that the defendent's salesman had knowingly misrepresented the car as having never been wrecked and returned a verdict for the plaintiff. The defendant appealed.

The supreme court found the salesman's representation to be an express rather than implied warranty, citing Ga. Code Ann. §109A-2-316(3)(a) (Rev. 1973). Since it was an express warranty, the "as is" language in the contract was ineffective to disclaim it. The court hinted that the language of the merger clause would preclude an action in contract on the oral misrepresentations of the seller's agent. It then went on to decide whether or not a suit in tort for fraud was precluded.

After careful consideration of the pertinent UCC provisions, the court found that neither the draftsman nor the legislature intended to erase the tort remedy for fraud and deceit with the adoption of the UCC in Georgia. The court then turned to the question of whether or not the language of the merger clause in the contract precludes a suit for fraud. The court noted two lines of Georgia cases. In one line, a disclaimer clause in the contract prevents the buyer from asserting reliance, one of the requisite elements of fraud. In the other line, the courts have found that where the contract is void for antecedent fraud, the disclaimer therein is void and offers no protection to the seller.

In upholding the fraud remedy, the court accepted the latter view.

> We believe the better view is that the question of reliance on the alleged

11. 232 Ga. 766, 208 S.E.2d 794 (1974).
12. *Id.* at 766-67, 208 S.E.2d at 795-96.
13. *Id.* at 767, 208 S.E.2d at 796.

> fraudulent misrepresentation in tort cases cannot be determined by the provisions of the contract sought to be rescinded but must be determined as a question of fact by the jury. It is inconsistent to apply a disclaimer provision of a contract in a tort action brought to determine whether the entire contract is invalid because of alleged prior fraud which induced the execution of the contract. If the contract is invalid because of the antecedent fraud, then the disclaimer provision therein is ineffectual since, in legal contemplation, there is no contract between the parties.[14]

C. *Breach, Excuse And Remedy*

The case of *Roberts v. Macaulay*[15] is not properly a case of remedy under a sales contract, but for lack of a better place to put it, I have noted it here. It strikes down as unconstitutional Georgia's possessory warrant proceedings.[16] This is no surprise to those of us who have followed the flow of cases in this area.

In the area of excuse, the Georgia courts produced an interesting case in *Cook-Davis Furniture Co. v. Duskin.*[17] The defendant purchased some furniture from the plaintiff on time. The contract of sale was executed immediately preceding a holiday weekend. In the conditional sales contract, the buyer requested that the creditor provide physical hazard insurance. The seller's agent informed the purchaser that the finance company to whom the paper was to be sold was closed, and that only an employee of that company could activate the insurance. It was explained to the buyer that for this reason the furniture would have to be delivered on Monday. The buyer informed the seller's agent that he had his own insurance and that he waived the insurance coverage for the weekend. With the seller's permission, he took possession of the goods that afternoon.

Over the weekend a fire struck the buyer's house, destroying the furniture. The seller sued for the amount due on the contract. The court found the transaction was governed by The Retail Installment & Home Solicitation Sales Act.[18] Under this Act, all of the essential provisions of the contract must be in writing.[19] Any waiver of the provisions of the Act are unenforceable and void.[20] Since the contract provided for property damage insurance, and the buyer's "waiver" of this provision for the weekend was not in writing, the buyer's "waiver" was unenforceable. Therefore, the seller had to give the buyer credit for the insurance proceeds (although there were none) and the contract was satisfied.

There is a very strong dissent in this case by Justice Pannell. He points out that Ga. Code Ann. §96-913 (Rev. 1972) provides that the provisions

14. *Id.* at 770, 208 S.E.2d at 797-98.
15. 232 Ga. 660, 208 S.E.2d 478 (1974).
16. GA. CODE ANN., tit. 82 (Rev. 1970).
17. 134 Ga. App. 264, 214 S.E.2d 565 (1975).
18. GA. CODE ANN. §96-901 *et seq.* (Rev. 1972).
19. GA. CODE ANN. §96-903(a) (Rev. 1972).
20. GA. CODE ANN. §96-913 (Rev. 1972).

of the Act, not the contract, may not be waived. He finds that all of the provisions of the Act were met since there was no requirement in the Act that the insurance take effect immediately upon execution of the contract. Since the specific question involved in the case is not covered by the Act, the court must look to the general law. Justice Pannell finds Ga. Code Ann. §109A-2-303 (Rev. 1973) controlling:

> Where this article allocates a risk or a burden as between the parties "unless otherwise agreed," the agreement may not only shift the allocation, buy may also divide the risk or burden.[21]

Here the parties agreed to shift the burden of loss to the buyer until Monday, when the hazard insurance became effective. Justice Pannell would allow this allocation to stand and give judgment to the seller.

III. Commercial Paper

There were few, if any, significant developments in the area of commercial paper this year. *Citizens & Southern DeKalb Bank v. Hicks*[22] deals with guarantee agreements. In 1970, a partnership executed a note to C & S for $106,599. This note was secured by the personal guarantee of the principals and a deed to secure debt on realty owned individually by two of the principals. Subsequently, the partnership was incorporated and the partnership note was paid by renewal by a corporate note. The corporate note was guaranteed by the principals and the deed to secure debt was left outstanding. Upon default, the bank attempted to foreclose the deed to secure debt. This action for an injunction to stop the foreclosure resulted.

The court held that the corporate debt was secured by the deed to secure debt since the deed to secure debt contained an "open end" provision and the indebtedness was between exactly the same parties (in this case—the grantors of the deed to secure debt under their guarantee agreements to the bank for the partnership and corporate debts and the bank). The court found that the guarantors had at all times been indebted to the bank and that the deed to secure debt had never been paid out.

IV. Secured Transactions

There have been a number of interesting cases decided in the secured transaction area within the last year. Most of them deal with the foreclosure of a security interest upon default.

In *Park Avenue Bank v. Bassford*,[23] an owner of realty entered into a contract with a builder for the construction of a building. The builder

21. 134 Ga. App. at 274, 214 S.E.2d at 572 (dissent), *quoting* GA. CODE ANN. §109A-2-303 (Rev. 1973).
22. 232 Ga. 244, 206 S.E.2d 22 (1974).
23. 232 Ga. 216, 205 S.E.2d 861 (1974).

pledged his construction contract to the bank for a construction loan to provide the necessary monies for labor and materials to fulfill the contract. The owner specifically assented to this assignment of the contract and agreed to make checks jointly to the bank and the contractor. Prior to completion, the builder defaulted. The owner completed the project and then tendered the remaining funds due under the contract into court asking the court to determine the rights and priorities of the bank and those materialmen who had filed liens.

The court found that the bank had a security interest in "contract rights" (the construction contract), but that its interest was unperfected because it had failed to file a financing statement. The court noted that Ga. Code Ann. §109A-9-310 (Rev. 1973) generally provides that a perfected security interest takes priority over the liens described in Ga. Code Ann. §67-1701 (Rev. 1967) and §113-1508 (Rev. 1959). Since the bank's interest was unperfected, the materialmen's liens took priority.

In a concurring opinion, Justice Gunter pointed out the flaws in the majority's reasoning.[24] He noted that the majority had reached the correct results, whether the security interest in the "contract rights" were perfected or not. The UCC does not provide for a security interest in realty (other than fixtures). Therefore, were the bank's security interest perfected, its claim would only relate to the *amounts due the builder* under the contract. Since the lien law provides that materialmen's liens must be paid first from the proceeds of the construction contract, a materialman would have priority to the proceeds. The bank merely stands in the shoes of the builder under the contract.

International Harvester Credit Corp. v. Associates Financial Services Co.[25] is another case dealing with conflicting security interests. Here International Harvester provided inventory financing for one of its dealers. In doing so it financed two tractor-trucks to be purchased from its dealer by a specified third party retail customer. Associates agreed to finance the purchase for the third party purchaser and perfected its security interest in the trucks, whereupon it sent to the dealer the proceeds of its loan. The dealer did not pay International Harvester.

In its on-site inspections of the dealer's inventory, International Harvester noted the trucks on its proceeds form as " 'on the lot but sold.' "[26] In the meantime, the third party purchaser had contracted with the dealer for the purchase of the equipment with delivery to be made at a future date. The down payment called for in the contract had not been made. It was to be made upon delivery of the equipment. When International Harvester learned of Associates' payment to the dealer, it demanded payment for the trucks. A check was sent, but it "bounced." International Harvester then repossessed the trucks.

24. *Id.* at 219, 205 S.E.2d at 863.
25. 133 Ga. App. 488, 211 S.E.2d 430 (1974).
26. *Id.* at 491, 211 S.E.2d at 432.

In a contest between International Harvester and Associates, the court found Associates was entitled to the trucks. A sale in the ordinary course of business had been made to the third party retail purchaser. This discharged International Harvester's lien on the equipment. The court noted that Ga. Code Ann. §109A-2-401(3) (Rev. 1973) provides:

> "Unless otherwise explicitly agreed where delivery is to be made *without moving goods*, . . . (b) if the goods are at the time of the contracting already identified and no documents are to be delivered, title passes *at the time and place of contracting*."[27]

Since the goods were identified to the contract and no further documents were to be delivered, title passed to the third party purchaser and International Harvester's security interest was cut off. This is a well-reasoned opinion and should go far in defining the rights of "retail" and "wholesale" financiers.

The court has, on numerous occasions, dealt with the question of deficiency judgments after a sale of collateral repossessed under a security agreement. In *Luxurest Furniture Manufacturing Co. v. Furniture Warehouse Sales, Inc.*,[28] Luxurest sold furniture to Furniture Warehouse Sales, Inc. (hereinafter referred to as FWS), for resale to retail customers. Luxurest retained a purchase money security interest in the goods. FWS defaulted and Luxurest repossessed the collateral remaining in FWS's hands. Some of the collateral had previously been sold to third party retail customers. After repossession, Luxurest informed FWS that the furniture would be sold at private sale after 15 days. One retail furniture store was contacted, but no sale ensued. No notice of a public sale was given. The furniture was sold at private sale to Luxurest 18 days after the notice was given. Luxurest then instituted this action for a deficiency.

The court of appeals found that the sale was not "commercially reasonable"[29] and that the goods did not have a widely distributed price quotation

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27. *Id.* at 493, 211 S.E.2d at 433 (emphasis by the court), *quoting* GA. CODE ANN. §109A-2-401(3) (Rev. 1973).

28. 132 Ga. App. 661, 209 S.E.2d 63 (1974).

29. GA. CODE ANN. §109A-9-504(3) (Rev. 1973) provides:

Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition *including the method, manner, time, place and terms must be commercially reasonable.* Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this State or who is known by the secured party to have a security interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarso as to allow Luxurest to purchase them at a private sale. The court then held that FWS should be given credit for the full value for the goods repossessed (the amount paid by FWS for the goods) but that Luxurest was entitled to a deficiency for the amount due it under the contract less the value of the goods repossessed. There was a difference since FWS had sold some of the goods and not remitted the proceeds to Luxurest.

The principal of FWS had guaranteed payment of the account. After FWS went bankrupt, Luxurest filed suit against the principal for a deficiency. In *Gurwitch v. Luxurest Furniture Manufacturing Co.*,[30] the Supreme Court of Georgia held that Luxurest was not entitled to a deficiency. Its holding was based on *Braswell v. American National* Bank[31] and *Edmondson v. Air* Service Co.[32] In each of these cases the creditor had failed to give the debtor proper notice of the sale as required by Ga. Code Ann. §109A-9-504(3) (Rev. 1973). The supreme court did not rule on the notice to the debtor in the instant case, but merely relied upon the court of appeals finding that the sale was not commercially reasonable.[33]

While this result may not be particularly harsh in the context of this particular case, it bids ill tidings for creditors generally. The creditor must insure that his sale is "commercially reasonable" if he is to preserve his right to a deficiency. If his sale fails to meet the standards of the statute, he loses his right to *any* deficiency. It should be noted that in this case the creditor argued that there is a difference between a repossession under a retail contract and a repossession of inventory under a floor plan arrangement. In the case of a retail consumer transaction the creditor repossesses all of his security. This may not be so under the floor plan arrangement, if the debtor has made retail sales in the ordinary course of business and failed to apply the proceeds to the loan. The court rejected the creditor's argument and held that any violation of section 109A-9-504(3) precludes the creditor from gaining a deficiency judgment.[34] In light of the present trend toward consumerism and the ceaseless vitiation of well established precedents, this writer sees any private sale by a creditor where a deficiency is to be sought, as inordinately dangerous.

While creditors may find the ruling in *Gurwitch* somewhat disturbing, they can take comfort in the holding in *Timberlake Grocery Co. of Macon v. Cartwright*.[35] The Georgia Supreme Court found the new personal property foreclosure provisions[36] to be constitutional.

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ily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale. (Emphasis added.)

30. 233 Ga. 934, 214 S.E.2d 373 (1975).
31. 117 Ga. App. 699, 161 S.E.2d 420 (1968).
32. 123 Ga. App. 263, 180 S.E.2d 589 (1971).
33. *See* note 29, *supra*.
34. 233 Ga. at 936, 214 S.E.2d at 374.
35. 232 Ga. 281, 206 S.E.2d 472 (1974).
36. GA. CODE ANN. §67-701 *et seq.* (Rev. 1974).

V. Industrial Loan Act and Truth-In-Lending Act

The last few years have produced a plethora of cases under the Georgia Industrial Loan Act[37] and the Federal Truth-In-Lending Act.[38] These Acts have become the favorities of debtors' lawyers in Georgia for good reason. Both are extremely technical pieces of legislation and neither requires a showing of intent to produce a violation. The penalties under these Acts for the erring creditor are harsh indeed.

A common point of attack under both Acts has been the "acceleration clause" contained in all installment contracts. Under this provision, a creditor may accelerate the maturity of the remaining payments under the contract upon a default by the debtor. In *Lewis v. Termplan, Inc.*[39] the court of appeals held that a lender had violated the usury provisions[40] of the Industrial Loan Act by including such a provision in its contract because the creditor had *contracted for* the right to collect unearned interest in the event of default by the debtor. The contract was an added interest contract. This means that the finance charge was computed on the original principal balance of the loan over the whole term of the loan. It then was added to the principal and the resulting sum was divided by the number of installments to determine the periodic payment. Each installment under the added interest contract was composed of a constant amount of principal and a constant amount of interest. When the debtor defaulted, the acceleration clause gave the lender the right to advance the time of payment of not only the remaining principal balance, but also the unearned interest. Because of the shortening of time due to acceleration, the effective interest rate exceeded the allowable rate under the Act.[41]

The decision in *Lewis* has been recently affirmed in the case of *Hardy v. G.A.C. Finance Corp.*[42] The *Hardy* decision is important in another aspect. The court held that the Industrial Loan Act was not violated by a provision providing for 8 percent simple interest on the total amount due (including principal and interest) after maturity. The court found that the total due after maturity was a liquidated obligation and, therefore, subject to interest at the statutory rate.

The rush of cases in Georgia dealing with acceleration clauses under the Georgia Industrial Loan Act and the Motor Vehicle Sales Finance Act[43] has carried over to suits under the Federal Truth-In-Lending Act. Under the Truth-In-Lending Act a creditor in a consumer transaction must disclose:

37. Ga. Code Ann., ch. 25-3 (Rev. 1971).
38. 15 U.S.C.A. §1601 *et seq.* (Supp. 1974).
39. 124 Ga. App. 507, 184 S.E.2d 473 (1971).
40. Ga. Code Ann. §25-315 (Rev. 1971).
41. Ga. Code Ann. §25-315(a) (Rev. 1971).
42. 131 Ga. App. 282, 205 S.E.2d 526, *aff'd*, 232 Ga. 632, 208 S.E.2d 453 (1974).
43. Ga. Code Ann. §96-1001 *et seq.* (Rev. 1972). *See, e.g.*, Cook v. First Nat'l Bank of Atlanta, 130 Ga. App. 587, 203 S.E.2d 870 (1974).

> The amount, or method of computing the amount of any default, delinquency, or similar charges payable in the event of late payments.[44]

As in the state law cases, the federal courts in Georgia have held that the acceleration of the unearned portion of the finance charge under an added interest contract is an *additional* charge owed by the borrower to the creditor.[45] Under this line of cases a creditor must disclose the existence of his acceleration clause on the face of the contract along with the other disclosures, unless the creditor is affirmatively required to rebate the unearned interest.

Time does not permit a complete exposition of all of the cases dealing with this point under the Truth-In-Lending Act. Since a number of these cases are on appeal, a definitive answer should be forthcoming in the near future. Suffice it to say that there are thousands of installment contracts in circulation today which contain potential violations of both the Georgia Industrial Loan Act and the Federal Truth-In-Lending Act. Lenders should be made aware of these potential dangers and the extreme penalties that can befall them in the event of a violation.

VI. Conclusion

In this age of consumerism the simple, mundane concerns of traditional commercial law seem inviting in the face of the complexities of a statute like the Federal Truth-In-Lending Act. Nevertheless, this is our age and creditors and their attorneys alike must learn to meet the exigencies of the times. This writer has not attempted to be exhaustive as far as problems in consumer lending are concerned. I have merely chosen one problem area common to almost all consumer installment contracts in Georgia to illustrate some of the problems which are now arising in the area of commercial law. These problems are sure to multiply as the state and federal legislatures enact additional consumer legislation and consumers' attorneys bring these matters before the courts with greater consistency. Most consumer legislation is couched in broad terms and is susceptible to many and varying interpretations. In addition, the courts seem amenable to following the consumer trend by vitiating well established principles of commercial law in favor of rules better suited to protect the consumer in his multitudinous dealings with creditors. It will be some years before the courts have set the house of commercial law in order. In the meantime, those of us practicing in this area must constantly keep apace of the whirlwind changes in the law or see our clients suffer the draconian penalties often contained in these acts.

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44. Regulation Z, Board of Governors of the Federal Reserve System, 12 C.F.R. §§226.1, 226.8(b)(4) (1975).

45. Barksdale v. Peoples Fin. Corp. of Alpharetta, 393 F. Supp. 112 (N.D. Ga. 1975); Barrett v. Vernie Jones Ford, Inc., 395 F. Supp. 904 (N.D. Ga. 1975); Gordon v. Backus Cadillac-Pontiac, Inc., No. 3225, 4 CCH Consumer Credit Guide ¶98,620 at 88,148 (S.D. Ga., Dec. 5, 1974); McDaniel v. Fulton Nat'l Bank of Atlanta, 395 F. Supp. 422 (N.D. Ga. 1974).