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Ford Motor Credit Co. v. Milhollin

444 U.S. 555 (1980)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

February 1, 1980

Re: 78-1487 - Ford Motor Credit Co. v. Milhollin

Dear Harry:

Please show me as joining your concurring position and opinion.

Regards,

WEB

Mr. Justice Blackmun

Copies to the Conference

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Brennan

Circulated: JAN 14 1980

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1487

Ford Motor Credit Company et al., Petitioners, v. Dennis Milhollin* et al. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[February —, 1980]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The issue for decision in this case is whether the Truth in Lending Act (TILA), 15 U. S. C. § 1601 *et seq.*, requires that the existence of an acceleration clause always be disclosed on the face of a credit agreement. The Federal Reserve Board staff has consistently construed the statute and regulations as imposing no such uniform requirement. Because we believe that a high degree of deference to this administrative interpretation is warranted, we hold that TILA does not mandate a general rule of disclosure for acceleration clauses.

I

The several respondents in this case purchased automobiles from various dealers, financing their purchases through standard retail installment contracts that were assigned to petitioner Ford Motor Credit Corporation (FMCC), a finance company. Each contract provided that respondents were to pay a precomputed finance charge. As required by the Truth in Lending Act and Federal Reserve Board Regulation Z,

*Although respondents spell their name "Millhollin," throughout this litigation their name has been mispelled as "Milhollin." Because legal research catalogs and computers are governed by the principle of consistency, not correctness, we feel constrained to adhere to the erroneous spelling.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 22, 1980

Re: 78-1487 - Ford Motor Credit Co. v. Milhollin

Dear John:

Thank you for your comments on the opinion on the above. I shall substitute for "is not irrational" of page 12 "is reasonable in light of the policy of the statute", if this seems satisfactory.

I hesitate to delete footnote 13 since its a response to a fairly significant argument in the brief. Could you tell me what troubles you about it? Perhaps some changes in wording might meet your concerns.

Sincerely,

Bill

Mr. Justice Stevens

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 24, 1980

Re: No. 78-1487 Ford Motor Credit Co. v. Milhollin

Dear John:

Thank you for your "join." The enclosed is a revision of footnote 13 that I hope will meet your concerns.

Sincerely,

Bill

Mr. Justice Stevens
cc: The Conference

13/

The Federal Reserve might reasonably have adopted the disclosure approach of the Court of Appeals for the Fifth Circuit, focusing upon a creditor's contractual acceleration rebate rights, rather than upon the creditor's operating rebate policy. See McDaniel v. Fulton National Bank, supra, 576 F.2d, at 1157. But, again, it was equally logical to view the more important disclosure as being the creditor's actual practice, rather than its unexercised rights.

In arguing for affirmance, respondents contend that disclosure of a creditor's rebate policy at the time of credit contract formation is no guarantee against a change in that policy at some future date, perhaps after the TILA statute of limitations has run. See 15 U.S.C. § 1640(e)[13]. But when a genuine change in policy occurs after disclosure, the statute

S. Rep. No. 392, 90th Cong., 1st Sess., 18 (1967).

itself may arguably contemplate that the creditor be immune from liability. See 15 U.S.C. § 1634. On the other hand, if the creditor envisioned a change in policy at the time it disclosed practices contemporaneously in force, then the debtor might conceivably have a claim for fraud. In any event, it is open to the Federal Reserve to consider this question when reviewing its position on acceleration rebate disclosure.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

Feb. 6, 1980

Re: Ford Motor Co. v. Milhollin No. 78-1487

Dear John:

I am happy to accept your suggestion of February 5.

Sincerely,

Bill

To: Mr Justice Stevens
Copies to the Conference

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Brennan

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13-14

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–1487

Ford Motor Credit Company et al., Petitioners, v. Dennis Milhollin* et al. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[February —, 1980]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The issue for decision in this case is whether the Truth in Lending Act (TILA), 15 U. S. C. § 1601 *et seq.*, requires that the existence of an acceleration clause always be disclosed on the face of a credit agreement. The Federal Reserve Board staff has consistently construed the statute and regulations as imposing no such uniform requirement. Because we believe that a high degree of deference to this administrative interpretation is warranted, we hold that TILA does not mandate a general rule of disclosure for acceleration clauses.

I

The several respondents in this case purchased automobiles from various dealers, financing their purchases through standard retail installment contracts that were assigned to petitioner Ford Motor Credit Corporation (FMCC), a finance company. Each contract provided that respondents were to pay a precomputed finance charge. As required by the Truth in Lending Act and Federal Reserve Board Regulation Z,

*Although respondents spell their name "Millhollin," throughout this litigation their name has been mispelled as "Milhollin." Because legal research catalogs and computers are governed by the principle of consistency, not correctness, we feel constrained to adhere to the erroneous spelling.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

Feb. 25, 1980

MEMORANDUM TO THE CONFERENCE

Re: No. 79-5360 -- Morris v. Cate-McLaurin Co.

This case has been held for Ford Motor Co. v. Milhollin, No. 78-1487. The principal issue raised is whether failure to disclose an acceleration provision on the face of a retail credit agreement violates the Truth in Lending Act. The District Court for the District of South Carolina held that TILA does not mandate such disclosure, reasoning (1) that the right of acceleratio is not a default, delinquency or other charge that must be disclosed under 12 C.F.R. §226.8(b)(4), and (2) that the creditor is only obliged to make separate disclosure of unearned interest rebate practices under acceleration if those practices diverge from rebate policies with respect to voluntary prepayment. The Court of Appeals for the Fourth Circuit affirmed in a per curiam,* relying upon the opinion of the District Judge. Since the reasoning of the District Court opinion comports with our decision in Milhollin, there is no reason to grant cert on this issue.

Petitioner also raises the question whether a particular clause in the credit agreement pertaining to deficiency judgments is misleading "additional information" under 12 C.F.R. § 226.6(c). The District Court held the clause not misleading, and the Court of Appeals affirmed. There is no issue of general interest worthy of review.

Accordingly, I would deny the petition for certiorari.

Sincerely,

Bill

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* Judge Haynsworth, dissenting.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

January 21, 1980

Re: No. 78-1487, Ford Motor Credit Co.
v. Milhollin

Dear Bill,

I am glad to join your opinion for the Court.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 21, 1980

Re: 78-1487 - Ford Motor Credit Company
v. Milhollin.

Dear Bill,

Please join me.

Sincerely yours,

Byron

Mr. Justice Brennan

Copies to the Conference

cmc

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 21, 1980

Re: No. 78-1487 - Ford Motor Credit Co. v. Milhollin

Dear Bill:

Please join me.

Sincerely,

T.M.

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

Fenruary 8, 1980

Re: 78-1487 - Ford Motor Credit Co. v. Milhollin

Dear Bill:

Please join me.

Sincerely,

T.M.

Mr. Justice Brennan

cc: The Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: JAN 25 1980

Recirculated: _____

No. 78-1487 - Ford Motor Credit Co. v. Milhollin

MR. JUSTICE BLACKMUN, concurring.

I join the Court's opinion but write separately because I do not fully agree with the statement in note 13 of the opinion, ante, at 13, that the Federal Reserve Board's approach to the disclosure of acceleration rebates is "equally logical" with other alternatives it might have chosen. In particular, I am concerned that the Board's emphasis on a creditor's rebate policy rather than its contract rights steers the Truth in Lending Act away from the moorings of contract law in a manner that may not prove salutary for the welfare of consumers of financial credit.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: _____

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–1487

Ford Motor Credit Company et al., Petitioners, *v.* Dennis Milhollin et al. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[February —, 1980]

MR. JUSTICE BLACKMUN, concurring.

I join the Court's opinion but write separately because I do not fully agree with the statement in note 13 of the opinion, *ante,* at 13, that the Federal Reserve Board's approach to the disclosure of acceleration rebates is "equally logical" with other alternatives it might have chosen. In particular, I am concerned that the Board's emphasis on a creditor's rebate *policy* rather than its contract *rights* steers the Truth in Lending Act away from the moorings of contract law in a manner that may not prove salutary for the welfare of consumers of financial credit.

To be sure, consumers contemplating installment purchases are concerned with the "bottom line," *ante,* at 13, of how much they will be required to pay. But there is little doubt, in my view, that consumers who read the required disclosures think that they are reading a description of their legal rights and obligations, and not merely an explanation of "practices" or "policies" of the creditor that may be changed to their detriment at the creditor's will. Although there may be reason to believe that a major finance company, such as Ford Motor Credit Co., will adhere to its rebate practices despite the legal right to demand more upon acceleration than it said it would, I am not sanguine that a less responsible organization always will do the same. The result could be confusion and unanticipated financial loss, as well as fruitless litigation.

Ultimately, I think the interpretation adopted by the Fifth

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 23, 1980

78-1487 Ford v. Milhollin

Dear Bill:

Please join me.

I approve of the suggestions in John letter of January 21, and hope you consider them favorably.

Sincerely,

L. Lewis

Mr. Justice Brennan

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 21, 1980

Re: No. 78-1487 - Ford Motor Credit Co. v. Milhollin

Dear Bill:

Please join me.

Sincerely,

Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 21, 1980

Re: No. 78-1487 Ford Motor Credit Co. v. Milhollin

Dear Bill:

I have already joined your opinion, and will continue to "stay put" whether or not you accept the changes suggested by John in his letter of January 21. I add, however, that I agree with both of his suggestions -- in particular the first one -- and would favor your inclusion of them.

Sincerely,

WHR

Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 21, 1980

Re: 78-1487 - Ford Motor Credit Co. v. Milhollin

Dear Bill:

With two minor exceptions, I am prepared to join your opinion.

First, on page 12, instead of saying that judges should defer to the Federal Reserve so long as its staff lawmaking "is not irrational," I wonder if it might be wiser to have the test a little less deferential by substituting something like "represents a reasonable interpretation of the statutory mandate," or perhaps, "is not inconsistent with the basic policy of the statute," or something similar.

Second, I am not sure I agree with everything said in footnote 13 and wonder if it would be acceptable simply to omit it since I do not believe it is necessary to your analysis.

Respectfully,

John

Mr. Justice Brennan

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 23, 1980

Re: 78-1487 - Ford Motor Credit Co. v. Milhollin

Dear Bill:

Frankly, the principal reason for my raising a question about footnote 13 is that I am not sure it would be sensible to require all of the creditors rights upon acceleration to be disclosed as a part of the disclosure statement on the front of the contract. Too much disclosure is simply confusing. I was also puzzled by the suggestion that a borrower should take his grievance to the Federal Reserve staff. I am not really sure I understand what that would entail. Nevertheless, and despite these misgivings, if you believe the footnote is necessary in order to meet respondent's arguments, I shall defer to your judgment. Please join me.

Respectfully,

Mr. Justice Brennan

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 5, 1980

Re: 78-1487 - Ford Motor Credit Co. v. Milhollin

Dear Bill:

My "join" remains unconditional, and I welcome the revision in footnote 13. I am still inclined to believe that there is a great deal of force to what Harry has written, however, and wonder if you would consider another change in the second sentence in the first paragraph of the footnote. Perhaps it could read something like this:

> "But, again, it was equally logical to conclude that so long as the creditor's actual practice upon acceleration was the same as its practice upon prepayment, it was not necessary to require disclosure of the creditor's unexercised rights in the disclosure statement itself."

As you will gather from my suggestion, my thought is that it may not be quite correct to describe the creditor's actual practice as "the more important disclosure"; instead, I think the significance of the practice is that it justifies the omission of this additional disclosure.

Respectfully,

Mr. Justice Brennan

Copies to the Conference