

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION**

IN RE: MELISSA KAY RUSSELL,
Chapter 13 Debtor

CASE NUMBER 09-54114

MELISSA KAY RUSSELL

PLAINTIFF

VS.

VALUED SERVICES OF KENTUCKY, LLC, DBA
FIRST AMERICAN CASH ADVANCE

DEFENDANT
ADVERSARY NO 10-5043

**PLAINTIFF'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND JUDGMENT**

In this adversary proceeding, debtor Melissa Kay Russell (“Ms. Russell”) seeks statutory damages for usury, arising from a series of identical check-based, payday loans. The material facts are not disputed and the matter comes before the Court on Cross Motions for Summary Judgment. The matter appears to hinge on the definition of “renew” in KRS 286.9–100 (14) , specifically on whether “renew” as used in KRS 286.9–100 (14) has a meaning distinct from the term “roll over” or whether the term “renew” has a meaning identical to “roll over” and is therefore redundant. Ms. Russell contends that “renew” as used in the statute means to replace an old contract with a new identical contract, as opposed to the mere extension of the original contract. Valued Services contends that the term the “renew” is identical in meaning to the term “rollover” and, therefore, prohibits only the extension of a previous contract in exchange for a fee. Having reviewed the parties’ memoranda and heard arguments of counsel, the Court enters

the following findings of fact, conclusions of law, and judgment.

FINDINGS OF UNDISPUTED FACT

1. Beginning in April 2009 and ending December 4, 2009, Ms. Russell engaged in a series of pay day loan rewrites of \$425.00 pay day loans. Valued Services personnel used the term "rewrite" to describe these loans.

2. In each rewrite, Valued Services advanced Ms. Russell a pay day loan identical to her previous pay day loan in the sum of \$425.00 with an annual percentage rate of 207.70%, a term of one month, and a finance charge of \$74.97. To secure each rewritten loan, Ms. Russell gave First American a personal check in the sum of \$499.97, which First American agreed not to present or deposit for approximately thirty days, during which time, Ms. Russell could buy back the check for \$499.97.

3. Each rewrite occurred immediately after Ms. Russell had paid off a previously existing identical \$425.00 loan and bought back that check that secured the loan for \$499.97.

4. Each rewrite occurred at the end of the month or beginning of the next month at about the same time Ms. Russell received her monthly pay check from Blue Grass Christian School, which employed her as a preschool teacher.

5. Presumably, Ms. Russell used the proceeds from her paycheck to pay off the then existing pay day loan, which Valued Services required before they would allow her to rewrite. Upon payoff, Valued Services personnel would inquire of Ms. Russell whether she intended to rewrite. Ms. Russell felt financially compelled to rewrite, because paying the entire \$499.97 due under the loan, without writing, would leave her unable to meet her other monthly obligations.

6. This series of pay day loan rewrites ended on December 29, 2009, when Ms. Russell

filed her Chapter 13 bankruptcy petition.

7. At the time of filing her bankruptcy petition, Ms. Russell still owed Valued Services \$499.97. This sum consisted of loan amount of \$425.00, a sum identical to the sum she had originally borrowed in April 2009, plus a finance charge of \$74.97. At the time of her bankruptcy filing, Ms. Russell had paid Valued Services \$599.76 in fees resulting from the rewritten transactions, without reducing the original \$425.00 sum that she had owed from the original April transactions.

8. Had valued services simply repeatedly extended the original \$425.00 loan, each time for the loan fee of \$74.97, then by the time of her bankruptcy filing Ms. Russell also would have paid \$599.76, without reducing the original \$425.00 sum that she had owed from the original April transactions.

9. The series of rewrites left the parties in the same financial position relative to each other they would have been in had Ms. Russell simply repeatedly paid \$74.97 to rollover the original loan for another month and obtain an additional month's deferment on the presentment of the original check.

CONCLUSIONS OF LAW

1. KRS 286.9–100 (14) states “a licensee or its affiliate shall not for a fee renew, roll over, or otherwise consolidate a deferred deposit transaction for a customer.”

2. The parties agree that had Valued Services charged Ms. Russell \$74.97 each month for an extension of the original \$425.00 loan, without requiring Ms. Russell to first pay off that loan and buy back the check securing the loan, each \$74.97 fee would be unlawful because it would be a fee for a “roll over”, which fee KRS 286.9–100 (14) expressly prohibits.

3. KRS 446.080 (4) requires that Kentucky statutes be construed according to “common and approved usage of language.” Similarly, KRS 446.0115 requires that all bills enacted after 1978 “shall be written in nontechnical language and in a clear and coherent manner using words with common and everyday meaning.”

4. Merriam-Webster on-line dictionary defines “renew” as to “do again”, “to restore to existence” or to “begin again”. Black’s Law Dictionary, Seventh Edition (1999) defines “renewal” as “[t]he re-creation of a legal relationship or a replacement of an old contract with a new contract, as opposed to the mere extension of a previous relationship or contract.”

5. Similarly, Black’s Law Dictionary, Seventh Edition defines “rollover” to be “[t]he extension or renewal of a short term loan; the refinancing of a maturing loan or note.” By this definition, cited by Valued Services, it would appear that rewrites would be unlawful rollovers. Further by use of the alternative “or”, this definition appears to distinguish an extension from a renewal, the latter being a rewritten identical contract as stated in Black’s definition of “renewal”.

6. Kentucky Case Law holds that “all parts of a statute must be given equal effect so that no part of the statute will become meaningless or ineffectual.” *Lewis v. Jackson Energy Co-op. Corp.* 189 S.W.3d 87, 92 (Ky. 2005). Accordingly, the Court concludes that it should avoid construing KRS 286.9–100 (14) in a manner in which the terms “renew” and “roll over” would be redundant, rendering one of them meaningless.

7. The Virginia and Florida statutes cited by Valued Services are statutes designed to prevent financially draining repetitive pay day loans such as the loan rewrites Valued Services made Ms. Russell. KRS 286.9–100 (14) appears similarly designed to protect consumers from this financially draining scenario.

8. Although the Department of Financial Institutions appears to have found no violation of law in Valued Services' procedures, in light of the fact that DFI has promulgated no regulations and their interpretation appears at odds with the aforementioned statutorily prescribed rules and judicial precedent pertaining to statutory construction, the court gives DFI's interpretation no significant weight. See *White v. Check Holders, Inc.*, 996 S.W. 2d 496, 498 (Ky. 1999); see also *Hamilton v. York*, 987 F. Supp. 953, 955 n. 5 (E.D. Ky. 1997).

9. Each of the pay day loan "re-writes" was a transaction in which Valued Services charged a fee to "renew" a previously existing deferred deposit transaction (pay day loan) for Ms. Russell, within the meaning of KRS 286.9-100 (14).

10. Each \$74.97 fee charged in connection with each renewal was specifically prohibited by KRS 286.9-100 (14) and, therefore, was not authorized by Kentucky law to be considered a fee as opposed to interest

11. Each \$74.97 fee taken in connection with each renewal was consideration for the continued use of \$425.00, a sum identical to the sum she had originally borrowed in April 2009, or was consideration for the continued extension of \$425.00 of credit and, therefore, was interest within the meaning of Kentucky law. See *White v. Checkholder's, Inc.*, 996 S.W. 2d 496 (Ky. 1999).

12. The fees constituted interest at an annual rate of 207.70%, whereas for loans of less than \$15,000 KRS 360.010, Kentucky's Usury Statute, establishes a maximum interest rate of 19% per annum.

13. Each fee was usurious interest within the meaning of KRS 360.010 and KRS 360.020.

JUDGMENT

For the foregoing reasons, pursuant to KRS 360.020, Ms. Russell is entitled to judgment against Valued Services in the sum of twice the total interest she has paid. Accordingly, the Court grants Ms. Russell judgment in the amount of \$1,199.52 to be applied first as an offset against Valued Services claim, with the remaining \$699.55 being awarded directly to Ms. Russell. Similarly, Valued Services Motion for Summary Judgment is denied.

There being no just reason for delay, this is a final judgment and shall be entered.

Respectfully Submitted,

s/ Addison Parker
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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and accurate copy of the foregoing was this 26 day of August, 2010 served electronically, through the court's ECF, to:

Valorie D. Smith
Stites and Harbison
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s/ Addison Parker
ADDISON PARKER