

**THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION**

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OHANES ANOUSHIAN, Plaintiff	:	November Term, 2001
	:	
v.	:	No. 2679
	:	
RENT-RITE, INC., d/b/a RENT-RITE RENTAL PURCHASE, Defendant	:	Commerce Case Program
	:	
	:	Control No. 031032
	:	Control No. 031291

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**OPINION**

Plaintiff Ohanes Anoushian and Defendant Rent-Rite, Inc., d/b/a Rent-Rite Rental Purchase (“Rent-Rite”) have each filed a cross-motion for partial summary judgment (“Motion”). The Motions address the Plaintiff’s claims for breach of the Goods and Services Installment Sales Act (“GSISA”),<sup>1</sup> the Rental-Purchase Agreement Act (“RPAA”)<sup>2</sup> and the Unfair Trade Practices and Consumer Protection Law (“UTCPL”).<sup>3</sup> For the reasons set forth in this Opinion, the Court enters judgment in favor of the Plaintiff on his claim for breach of the GSISA, permits the Plaintiff continue on his claim for violations of the UTCPL and dismisses the claim for breach of the RPAA.

**BACKGROUND**

In November and December 2000, the Plaintiff executed three pre-printed form rental-purchase agreements (“Agreements”) for the purpose of acquiring items of household furniture and

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<sup>1</sup> 69 Pa. C.S. §§ 1201-2303.

<sup>2</sup> 42 Pa. C.S. §§ 6901-6911.

<sup>3</sup> 73 Pa. C.S. §§ 201-1 to 201-9.2.

jewelry (“Property”) from Rent-Rite.<sup>4</sup> Under the Agreements, Rent-Rite leased the Property to the Plaintiff for a specified period of time, at the end of which the Plaintiff would acquire ownership of the Property. The Plaintiff was not required to reach the end of this specified period and to purchase the Property, as the Agreements allowed the termination of the arrangement at any time. After a series of tumultuous events, including the Plaintiff’s bankruptcy, Rent-Rent’s attempt to repossess the Property and police involvement, the Plaintiff initiated the instant action.

In his Motion, the Plaintiff asks for a declaration that the Agreements are within the scope of the GSISA, a deferral on his RPAA and UTPCPL claims and summary judgment on his GSISA claim. Rent-Rite counters that the Court should dismiss this action in its entirety.

## **DISCUSSION**

The key issue in this matter is which, if any, of the GSISA or the RPAA apply to the Plaintiff’s allegations. Because the GSISA and the RPAA are mutually exclusive, the fact that the GSISA applies to the Agreements renders the RPAA irrelevant and allows for summary judgment on the Plaintiff’s GSISA claim. In addition, the Plaintiff may proceed on his UTPCPL claim.

### **I. The Agreements Are Subject to Either the GSISA or the RPAA, but Not Both**

The RPAA applies to any “rental purchase agreement,” which is defined as follows:

An agreement for the use of personal property by an individual primarily for personal, family or household purposes for an initial period of four months or less that is automatically renewable with each rental payment after the initial period and that permits the lessee to acquire ownership of the property. It does not include nor is it subject to laws governing any of the following:

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<sup>4</sup> This is referred to as the “Transaction.”

...

(6) A retail installment sale, retail installment contract or retail installment account as defined in the act of October 28, 1966 (1st Sp. Sess., P.L. 55, No. 7), known as the Goods and Services Installment Sales Act.

42 Pa. C.S. § 6902 (footnote omitted and emphasis added).

The Parties advance conflicting interpretations of this definitional statute. The Plaintiff contends that the provision excludes GSISA transactions and documents from RPAA coverage and does not substantially interfere with the GSISA as it previously existed. In contrast, Rent-Rite relies on the phrase “nor is it subject to laws governing” GSISA events to assert that the provision bars application of the GSISA to any agreement covered by the RPAA and that the RPAA trumps the GSISA.

In interpreting a statute, “[w]here the language of a statute is unambiguous, [courts] must not ignore the plain language under the guise of pursuing the spirit of the law. Words and phrases are to be given their common and approved meaning unless they are technical words that have acquired special meaning.” O’Donoghue v. Laurel Sav. Ass’n, 556 Pa. 349, 356, 728 A.2d 914, 917 (1999) (citations omitted). It is presumed that the legislature intended for each word in a statute to be significant in meaning and that no portion of a statute should be ignored. See Lynch v. Owen J. Roberts Sch. Dist., 430 Pa. 461, 469, 244 A.2d 1, 5 (1968) (“It is a well established doctrine of statutory construction that a statute must be read to give effect to [a]ll of its language. And the Legislature is presumed not to have intended its laws to contain surplusage.”); Primiano v. City of Phila., 739 A.2d 1172, 1176 (Pa. Commw. Ct. 1999) (“The Statutory Construction Act prohibits courts from interpreting statutes in a way that makes words used in statutes meaningless or mere surplusage.”).

After reviewing the provision's language, the Court must agree with the Plaintiff. Essentially, the meaning of the provision is that GSISA transactions and documents are not covered by the RPAA and that RPAA agreements, i.e., non-GSISA agreements that fit the definition provided, are not subject to the GSISA's requirements. Rent-Rite's proposed interpretation of the statute would have the Court overlook the phrase "does not include" and therefore flies in the face of the rules of statutory construction. Commentary on Pennsylvania law confirms this conclusion. See Carolyn L. Carter, ed., Pennsylvania Consumer Law § 5.4.2 (1997 & 2002 Supp.) ("The Rental-Purchase Agreement Act should have no effect on the typical rent-to-own transaction . . . because in its definition of 'rental-purchase agreement' it says that the term does not include a 'retail installment sale, retail installment contract or retail installment account as defined in . . . the Goods and Services Installment Act.'"). Thus, the statute provides that an agreement is subject to either the GSISA or the RPAA, but not both.<sup>5</sup>

Based on this analysis, it is necessary to examine whether the GSISA applies to the Agreements. If it applies, the RPAA is irrelevant to the Transactions, which must then be examined in the context of the GSISA. If the GSISA does not apply, it will be necessary to determine whether the Agreements meet the definition provided in the RPAA.<sup>6</sup>

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<sup>5</sup> Rent Rite also relies on 42 Pa. C.S. § 6902, which states that the RPAA controls in the event of a conflict with the GSISA. However, because the coverage of the two statutes "is mutually exclusive there is unlikely ever to be any conflict." Carter, § 5.4.2.

<sup>6</sup> As discussed infra, the definition of a GSISA "retail installment contract" is quite wide and has the potential to exclude a vast number of rental-purchase agreements that would otherwise be covered by the RPAA. However, the Court cannot ignore the plain language of the statute to find that the RPAA excises transactions from the GSISA's scope.

## II. The GSISA Applies to the Transactions

The GSISA applies broadly to a “retail installment contract” made in Pennsylvania. 69 Pa.

C.S. § 1103. “Retail installment contract” has an extensive definition:

[A]ny contract for a retail installment sale between a buyer and a seller which provides for repayment in installments, whether or not such contract contains a title retention provision, and in which a time price differential is computed upon and added to the unpaid balance at the time of sale or where no time price differential is added but the goods or services are available at a lesser price if paid by cash or where the buyer, if he had paid cash, would have received any additional goods or services or any higher quality goods or services at no added cost over the total amount he pays in installments. When taken or given in connection with a retail installment sale, the term includes but is not limited to a security agreement and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of their value and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of the goods upon full compliance with the terms of the contract. The term also includes any contract, obligation or agreement in the form of bailment or lease if the bailee or lessee has the option to renew the contract by making the payments specified in the contract, the contract obligates the bailor or lessor to transfer ownership of the property to the bailee or lessee upon full compliance by the bailee or lessee with his obligations under the contract, including any obligation incurred with respect to the exercise of an option by the bailee or lessee to renew the contract, and the payments contracted for by bailee or lessee, including those payments pursuant to the exercise of an option by the bailee or lessee to renew the contract, are substantially equivalent to or in excess of the aggregate value of the property and services involved.

69 Pa. C.S. § 1201(6). This definition leads into a labyrinth of successive, and somewhat circular, definitions.<sup>7</sup> In short, however, a “retail installment contract” is a contract for a sale of goods whose price is payable in installments.

The Agreements appear to meet this definition. Paragraph Five of each of the Agreements states that, if the Plaintiff rents the leased property for the requisite amount of time, he will acquire ownership of the property. In addition, the Agreements include an early purchase option, and there is a “time price differential,” as shown by a total rental cost that is three times the cash price for the rented property and a 40 percent discount off the remaining balance for an early purchase.

Rent-Rite highlights the termination provision in the Agreements and the fact that the Plaintiff could terminate his rental arrangement “at any time” with liability only for past rent due. The fact that the Agreements do not impose any purchase obligations on the Plaintiff, but merely provide an option to purchase the rented property is irrelevant. In Commonwealth v. Riverview Leasing, Inc., 167 Pa.

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<sup>7</sup> Among the relevant definitions are the following:

(5) “Retail installment sale” or “sale” means the sale of goods or the furnishing of services by a retail seller to a retail buyer for a time sale price payable in installments.

...

(10) “Time price differential” or “service charge” means the amount however denominated or expressed which the retail buyer contracts to pay or pays for the privilege of purchasing goods or services to be paid for by the buyer in installments; it does not include the amounts, if any, charged for insurance premiums, delinquency charge, attorney’s fees, court costs, collection expenses or official fees. Wherever either of such terms is required to be used under the provisions of this act the other may be used interchangeably.

69 Pa. C.S. § 1201.

Commw. 32., 648 A.2d 580 (1994), the Commonwealth Court considered whether the defendant's form "rental agreement," which included an option and not an obligation to purchase, fell within the purview of the GSISA.<sup>8</sup> After careful consideration, the court concluded that it did:

The statute clearly applies to contracts, such as Riverview's, where one can become or has the option to become, the owner of the goods when they have fulfilled the terms of the contract. In this case, once an individual has paid a predetermined number of weeks for rent on the product, they can, at their option, become the owner of that product once they have fulfilled the terms of the contract, *i.e.* pay the then fair market value for the rental for the rented product.

Additionally, we agree with the Commonwealth's argument that this section of the GSISA is not concerned with how ownership passes, but rather if ownership can or has the opportunity of passing at all. The language in the section stated above clearly indicates that a contract is a "retail installment contract" if the consumer receives or can receive ownership under the contract.

167 Pa. Commw. at 40-41, 648 A.2d at 584.

Rent-Rite draws the Court's attention to non-binding decisions and to scholarly commentary to support its argument. Each of these sources has the potential to be persuasive, but does not trump the statutory language and analysis set forth *supra*. See *In re Street*, 214 B.R. 779 (Bankr. W.D. Pa. 1997) (holding that leases in question were not security interests and therefore were not excepted from RPAA coverage);<sup>9</sup> Barkley Clark, Dennis R. Dow, Steven P. Smith, "Rent-To-Own" Agreements in Bankruptcy: Sales or Leases?, 2 Am. Bankr. Inst. L. Rev. 115, 118 (1994) (generalizing that "[b]y

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<sup>8</sup> The fact that this decision was issued prior to the enactment of the RPAA does not diminish its impact, as the RPAA did not amend the definition section of the GSISA and the RPAA and the GSISA are, in effect, mutually exclusive.

<sup>9</sup> Moreover, at least one of the foreign cases cited in *Street* relies on a statute that does not include a GSISA exception like the RPAA does. See Ohio Rev. Code § 1351.01(F).

statute, case law, or both, it is settled in most states that a rental-purchase agreement is neither an installment sale nor a lease intended as security,” but failing to address Pennsylvania law). This is especially true in light of the fact that, in enacting the RPAA, the Pennsylvania General Assembly did not make any changes to the GSISA whatsoever and left its definitions, including those honed by the Commonwealth Court in Riverview Leasing, Inc., intact. See Carter § 5.4.2 (“Since Commonwealth v. Riverview Leasing, Inc., made it clear that rent-to-own contracts are governed by the GSISA, the [RPAA] by its terms does not apply to them.”). Accordingly, the Agreements are retail installment contracts subject to the GSISA, not the RPAA, and must comply with the GSISA’s requirements.<sup>10</sup>

### **III. The Agreements Do Not Comply with the GSISA**

Under Section 1303 of the GSISA (“Section 1303”),<sup>11</sup> a contract governed by the GSISA must include the following:

- (a) The names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer and a description of the goods or services sufficient to identify them. Services or multiple items of goods may be described in general terms and may be described in detail sufficient to identify them in a separate writing.
- (b) The cash sale price of the goods, services and accessories which are the subject matter of the retail installment sale.
- (c) The amount of the buyer’s down payment, itemizing the amounts paid in money and in goods and containing a brief description of the goods, if any, traded in.
- (d) The difference between item (b) and item (c).

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<sup>10</sup> The Plaintiff’s Motion suggests several reasons why the Agreements do not comply with the GSISA. However, the Plaintiff has requested only a declaration that the Agreements are within the scope of the GSISA and has not asked for summary judgment on his GSISA claim. For this reason, the Court will not address the question of whether the Agreements measure up to the GSISA’s requirements.

<sup>11</sup> 69 Pa. C.S. § 1303.

- (e) The amount, if any, included for insurance, specifying the coverages and the cost of each type of coverage.
- (f) The amount, if any, of official fees.
- (g) The unpaid balance, which is the sum of items (d), (e) and (f).
- (h) The amount of the service charge, if any.
- (i) The time balance, which is the sum of items (g), and (h), payable by the buyer to the seller, the number of installments required, the amount of each installment expressed in dollars and the due date or period thereof.
- (j) The time sale price.
- (k) The following provision in at least ten-point, boldface type:

#### NOTICE

Any holders of this consumer credit contract is [sic] 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 amount paid by the debtor hereunder.

The items need not be stated in the sequence or order set forth above; additional items may be included to explain the computations made in determining the amount to be paid by the buyer.

69 Pa. C.S. § 1303.<sup>12</sup>

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<sup>12</sup> Among the definitions helpful in interpreting this section are the following:

(8) “Cash sale price” means the cash sale price stated in a retail installment contract for which the seller would sell or furnish to the buyer and the buyer would buy or obtain from the seller the goods or services which are the subject matter of a retail installment contract if the sale were a sale for cash instead of a retail installment sale. The cash sale price may include any taxes and cash sale prices for accessories and services, if any, included in a retail installment sale.

(9) “Time sale price” means the total of the cash sale price of the goods or services and the amounts, if any, included for insurance, official fees and service charge.

10) “Time price differential” or “service charge” means the amount however denominated or expressed which the retail buyer contracts to pay or pays for the privilege of purchasing goods or services to be paid for by the buyer in installments; it does not include the amounts, if any, charged for insurance premiums, delinquency charge, attorney's fees, court costs, collection expenses or official fees. Wherever either of such terms is required to

The Plaintiff charges that the Agreements violate paragraphs (b), (c), (d), (g), (h), (i), and (j) of Section 1303, an assertion that Rent-Rite does not contest. Indeed, the Agreements do not even include a space where some of this information could be inserted, and much of the printed information is illegible. Moreover, Rent-Rite concedes that the Agreements include mathematical errors. Def. Mot. 4 n.2. Accordingly, the Plaintiff is entitled to summary judgment on his GSISA claim.

#### **IV. Rent-Rite Is Not Entitled to Summary Judgment on Count Five**

While Count Five in the Complaint is untitled, it appears to be a claim for a violation of the UTPCPL. Because there are disputed issues of material fact as to this Count, Rent-Rite's request for summary judgment is denied.

The Plaintiff's UTPCPL claim is based on the argument that a violation of the GSISA is a per se violation of the UTPCPL. Pennsylvania courts have held that violations of certain consumer protection statutes are per se UTPCPL violations. See, e.g., Pekular v. Eich, 355 Pa. Super. 276, 513 A.2d 427 (1986) (addressing violations of Unfair Insurance Practices Act); Safeguard Inv. Corp. v. Commonwealth, 44 Pa. Commw. 417, 404 A.2d 720 (1979) (addressing usury statute).

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be used under the provisions of this act the other may be used interchangeably.

(11) "Unpaid balance" means the cash sale price of the goods or services which are the subject matter of the retail installment sale, plus the amounts, if any, included in a retail installment sale for insurance and official fees, minus the amount of the buyer's down payment in money or goods.

(12) "Time balance" means the total of the unpaid balance and the amount of the service charge, if any.

69 Pa. C.S. § 1201.

It is unclear if violations of the GSISA are entitled to such treatment. In Riverview Leasing, Inc., the Commonwealth Court granted the Commonwealth's motion for summary judgment as to liability for violations of the GSISA but was "unwilling" to enter summary judgment "at the preliminary stage of this litigation" as to the Commonwealth's UTPCPL claims "as there exist[ed] material issues of fact." 167 Pa. Commw. at 47, 648 A.2d at 587. However, other courts addressing this question have held that a GSISA violation is a UTPCPL violation. See, e.g., In re Steward, 93 B.R. 878, 887 (Bankr. E.D. Pa. 1988); Commonwealth ex rel. Zimmerman v. Nickel, 26 D. & C.3d 115, 133-34 (1983). See also Carter § 2.5.3.2 (noting that courts have found that violations of the GSISA may be violations of the UTPCPL).

Given the Parties' respective Motions, the Court need not resolve this issue entirely. The Plaintiff has not requested summary judgment on Count Five, and the Court must consider only whether to grant the Defendant's request for summary judgment on this Count. Thus, it is sufficient for the Court to conclude, as the Riverview Leasing, Inc. court did, that there are disputed issues of material fact that preclude summary judgment on the Plaintiff's UTPCPL claim and that Rent-Rite's Motion must be denied accordingly.<sup>13</sup>

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<sup>13</sup> Count Five also appears to be, in part, a claim based on the unconscionability of the Agreements. It is unclear if this is intended to be a separate cause of action more properly pled in a separate count or an assertion in support of the Plaintiff's UTPCPL claim. Pennsylvania courts hold that unconscionability does not come into play simply because of a disparity in contracting parties' bargaining power, but requires there to be "an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party." Wittmer v. Exxon Corp., 495 Pa. 540, 551, 434 A.2d 1222, 1228 (1981) (citing Williams v. Walker-Thomas Furniture Co., 350 F.2d 445, 449 (D.C. Cir. 1965)). The Plaintiff has advanced support for a finding of unconscionability, and, to the extent that the Plaintiff's allegations of unconscionability are merely support for a UTPCPL claim, its allegations and Count Five may stand.

## CONCLUSION

The Agreements are covered by the GSISA, not the RPAA, and fail to comply with the GSISA. The Plaintiff has provided sufficient evidence to support its UTPCPL claim at this stage, and Rent-Rite's request for summary judgment on Count Five is denied.

BY THE COURT:

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JOHN W. HERRON, J.

Dated: May 10, 2002



JOHN W. HERRON, J.