

2001

Wasescha v. Terra, INC : Unknown

Utah Supreme Court

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Recommended Citation

Legal Brief, *Wasescha v. Terra, INC*, No. 13668.00 (Utah Supreme Court, 2001).
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WASESCHA v. TERRA, INC.
(Case No. 13668)

DEC 6 1975

SUPPLEMENT TO RESPONDENTS' BRIEF

BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

POINT V

Terra, Inc., was not entitled to
any interest on the amounts loaned to
the Waseschas.

Since the filing of respondent's
brief, a decision was published in Sosa
v. Fite, 498 F.2d 114 (5 Cir. 1974)
which has a direct bearing on the right
of the creditor to receive interest
where it has failed to comply with the
rescission procedures of the Federal
Truth in Lending Act. The court held
that the debtor was entitled to retain
property without paying the balance of
the debt, saying:

Congress' intended operation
of the statute, as evidenced by the
1635(b) creditor-forfeiture provi-
sion, therefore clearly calls for
a debtor windfall if the creditor

does not set about to rectify his earlier nondisclosures in the manner envisioned by the statute. In fact, the Act flatly provides that if his creditor continues in his ontoward ways, the debtor incurs no obligation to pay for property which he is at the time entitled to keep.

In the instant case the creditor failed to tender back the mortgage, or to release it, and the debtors had no obligation to pay interest on the money until he did so.

POINT VIII

The trial court properly awarded attorney's fees to Mrs. Wasescha.

In respondent's brief it was pointed out that the Uniform Consumer Credit Code provides for attorney's fees for violation of that act in any particular. Sosa v. Fite, supra, also held that a debtor is entitled to recover attorney's fees under the Federal Truth in Lending

Act even though there is not an express provision for them. The court said:

[The debtor] has therefore effectuated a strong Congressional policy and is entitled to attorney's fees in the exercise of the court's discretion, even though the statute sued under does not expressly provide for such an award.

It was pointed out by the court that it was not surprising that the rescission provision in the Truth in Lending Act did not deal with attorney's fees, inasmuch as that provision did not contemplate that judicial intervention would be necessary to effect rescission.

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