

In re: CARLOS HUMBERTO D’ALESSANDRIA, Case No. 05-14163-BKC-AJC

**WELLS FARGO FINANCIAL NATIONAL BANK v. D’ALESSANDRIA,
Adv. No. 05-1228-BKC-AJC-A**

Wells Fargo National Bank (“Wells Fargo”) filed a Complaint against the Debtor/Defendant, seeking to except his debt to Wells Fargo from discharge pursuant to 11 U.S.C. §523(a)(2)(A) and 11 U.S.C. §523(a)(6). The Debtor filed a counterclaim against Wells Fargo for violations of the Truth in Lending Action, 15 U.S.C. §§1601 *et seq.* (“TILA”). Wells Fargo and the Debtor moved for summary judgment. On February 27, 2006, the Court denied the parties’ cross-motions for summary judgment.

On March 24, 2006, this Court conducted a trial. At the close of Wells Fargo’s case, the Court granted the Debtor’s motion for directed verdict, and denied the Debtor relief on his counterclaim under TILA. The Debtor’s request for attorneys fees was consequently denied under TILA, but the Court improvidently awarded Debtor fees in the amount of fifty cents pursuant to 11 U.S.C. §523(d), based on an *ore tenus* motion made as the judge was walking out of the courtroom.

On April 14, 2006, the Debtor timely filed a motion to alter the final judgment, in which he sought (i) attorneys fees and costs in excess of those awarded in the judgment, and (ii) reconsideration of the ruling that Wells Fargo did not violate TILA. On May 17, 2006, the Court granted the Debtor’s motion to alter the final judgment, amending and modifying same to include an increased award of attorneys fees to the Debtor and an award of costs. The Court awarded costs in the amount of \$250.00 and fees in the amount of \$12,500.00, based on a representation by Wells Fargo’s attorney that substantially more than \$13,000 in fees had been expended by Wells Fargo in the trial of the case. The Court did not alter its conclusion that Wells Fargo did not violate TILA.

On May 25, 2006, Wells Fargo timely filed *Wells Fargo Financial National Bank’s Motion to Alter or Amend or for Relief from this Court’s May 17, 2006, Order Granting Motion to Alter Judgment* filed May 26, 2006.

The Court held that Wells Fargo’s motion set forth grounds to establish that its Complaint may initially have been substantially justified under 11 U.S.C. §523(a)(6), but as the case developed, the record as a whole establishes that Wells Fargo did not have the ability to prove the elements of its case under 11 U.S.C. §523(a)(2). Accordingly, relief under 11 U.S.C. §523(d) appears mandatory from the point Wells Fargo knew or should have known that it was not able to produce evidence to overcome the defense raised by the Defendant Debtor.