

Wiley Rein Wins Important Procedural Victory in Pro Bono Case

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A federal judge in Washington last week handed Wiley Rein and its pro bono clients an important procedural victory when he declined to dismiss their case.

In a decision issued on June 18, Judge James Boasberg of the U.S. District Court of the District of Columbia denied defendants' motion to dismiss in *Lipscomb v. The Raddatz Law Firm*, a proposed class action under the Fair Debt Collection Practices Act (FDCPA).

Wiley Rein partner Theodore A. Howard and associate Bonnie Thompson Wise* represent the plaintiffs, in association with the Legal Aid Society of D.C. On behalf of the plaintiffs, we have alleged that the defendant law firm, a small boutique which represents large residential landlords, has engaged in a pattern of filing hundreds, if not thousands, of eviction complaints in the Landlord and Tenant Branch of the Civil Division in D.C. Superior Court (L&T Branch) which contain knowingly false representations regarding the subsidy status of the rental properties sought to be repossessed.

Ruling on issues of first impression in the D.C. Circuit, Judge Boasberg rejected each of the host of reasons offered by the defendants in their motion as to why the case should be dismissed. Specifically, he held that: (i) unpaid rent constitutes a "consumer debt" subject to the FDCPA; (ii) a law firm prosecuting an eviction action in which a claim for recovery of back rent is included acts as a "debt collector" subject to the FDCPA; (iii) a misrepresentation contained in a formal state court pleading is actionable under the FDCPA, without regard to whether the misrepresentation is directed primarily at the adverse litigant or the tribunal, so long as the subject matter of the misrepresentation is material in substance; and (iv) the plaintiffs have

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stated a “plausible” claim upon which relief can be granted because the defendants’ false representations as to the subsidy status of the rental properties for which eviction is sought might prevent tenants unrepresented by counsel or the court itself from recognizing the availability of special defenses that might effectively prevent repossession from being awarded. The court also declined to accept the defendants’ contention that, as a matter of law, the FDCPA does not permit private litigants—as distinguished from the Federal Trade Commission—to seek declaratory and injunctive relief and limits private plaintiffs solely to actions for damages.

Under federal law, individuals residing in rental properties that are subsidized by the U.S. Department of Housing and Urban Development and the D.C. Public Housing Authority are entitled to the opportunity to assert certain statutory defenses to eviction that are not available to tenants of non-subsidized housing.

Because a high percentage of tenants that are brought before the L&T Branch to face eviction do not have counsel, the form complaint that is used in order to commence an eviction proceeding expressly calls for disclosure by the landlord or its attorney as to whether the property at issue is or is not subsidized, so that to the extent necessary the judge can alert the defending tenant that he or she is entitled to interpose special defenses of which the tenant might not have knowledge. As a result, it is especially important for the complaint to be filled out in a truthful and accurate matter.

The plaintiffs assert that by routinely filling out and filing complaints that misrepresent the subsidy status of the rental properties they seek to repossess and the amount of unpaid rent allegedly due and owing that they seek to recover on behalf of their landlord clients, the Raddatz firm’s lawyers are engaging in “false, deceptive or misleading representations or means in connection with collecting a debt” and use of “unfair or unconscionable means to collect or attempt to collect a debt” as proscribed by Sections 1692e and 1692f of the FDCPA.

Chinh Le, the Legal Director at Legal Aid, and Heather Latino, the Supervising Attorney for their Consumer Law Unit, are our co-counsel. Ms. Wise conducted extensive legal research on a number of thorny issues, assisted with the briefing, and will continue to work with Mr. Howard on the case going forward.